

When one considers the whole of this Woman's Evidence together, — the several Advertisements, — the Conference with this pretended Conjurer, — her wandering Thoughts, — the putting up Bills in the Church, and the Meeting-houses of Presbyterians and Methodists, to pray for her Daughter's safe Return, (by which the pious Congregations were predisposed to Charity) — the nightly repeated Prayers to the same Purpose with the Apprentice at Home, — particularly the praying with him on the 29th of *January* for the Daughter's Apparition, (never mentioned till that very Evening) — that Prayer answered in the same Moment by the Daughter's suddenly rushing into the Room, — her Mother's pretended Surprize at seeing her, "Feel her, feel her, 'tis an Apparition!" and then fainting away; — all these Things put together, together too with the Account the Daughter gave before Mr. Alderman *Chitty* about *Bishopsgate-Street*, though they do not directly prove, yet surely they create something more than a Suspicion, that the whole was a Contrivance.

To support the Defendant's Evidence, as to the Manner of her Escape out of Window, Mrs. *Canning* the Mother, *James Lord* the Apprentice, and Mrs. *Myers*, have sworn, that her Ear (which the Defendant said was scratched in breaking out of the Window) was bloody, when she returned Home. The Mother says, the "Ear was then bleeding." *James Lord* says, "it was all over bloody, and the Handkerchief bloody." And Mrs. *Myers* says, "the Blood then dropt from her Ear upon her Shoulder."

This was six Hours after the Time of her leaving *Enfield-Wash*; and, according to the Defendant's own Evidence, she wrapped a white Linen Handkerchief round her Head, which she found in *Wells's* Room, and wore it, instead of a Cap, all the Way to her Mother's: Now, if her Ear bled at the Rate those Witnesses would have you believe, the Handkerchief must have been extremely bloody in *one* particular Place. That Handkerchief has been produced to shew to the Witnesses under another Head of Evidence, and is now before you. Does it not give the Lye to these three Witnesses? It has indeed the Marks of little Spots of Blood upon it, but in *different* Places, all over the Handkerchief, and not at all corresponding with their Testimony, but rather like Dots made by a Finger on Purpose.

But it being a good while since Mrs. *Canning* had the Possession of this Handkerchief, I do not wonder at her forgetting in what Manner she had dressed it up, seeing her Want of Memory has betrayed her into a flat Contradiction to the Evidence she herself gave upon the Trial of *Squires*. For she now swears her Daughter came Home with two Handkerchiefs on her Head, and that "she had no Cap on;" but upon that Trial, she said nothing of the Handkerchief, but swore, that, upon her Return, "she had a Cap on."

Gentlemen, it is an Objection to the Credit of the Apprentice, that he has been hid, till he is brought here as a Witness, lest he should make Discoveries; for when Mr. *Biddulph* went to the House in order to ask him a few Questions, another Person was imposed upon him in his Stead.

It will be material to another Part of the Evidence afterwards, to recollect *Lord's* Description of the Defendant upon the 29th of *January*, that

"she was black and blue as if beaten," and that "her Arms and Face were as black as his Hat." He also tells you, what is contradictory to all the rest of the Evidence, that on her first coming Home, before Mr. *Scarrat* or any body came in, she said she had been confined at *Enfield-Wash*. If you consider the whole Tenor of the Evidence for the Defendant, you must be convinced that this Lad has sworn falsely, and that he was hid for a very iniquitous Purpose.

The Name of Mr. *Scarrat*, the next Witness, I have had Occasion to mention once or twice already, in Terms not much to his Advantage.

He came to the Defendant, *before* she was asked any Questions; — one of the Witnesses says, it was *before* she answered any Questions.

What brought *him* there, a total Stranger both to the Mother and Daughter? for, if you can believe him, he had never spoke to either of them in his Life.

He says, he was prompted merely by Curiosity, upon hearing, in the Neighbourhood, that *Betty Canning* was returned Home: And the Moment he came in he asked her, "where she had been confined!"

Ready to satisfy this Stranger at once, she told him she had been confined somewhere on the *Hertfordshire* Road, for she remembered the Coachman's going by.

The next Question was, "How far from London?" She answered, "Near nine or ten Miles."

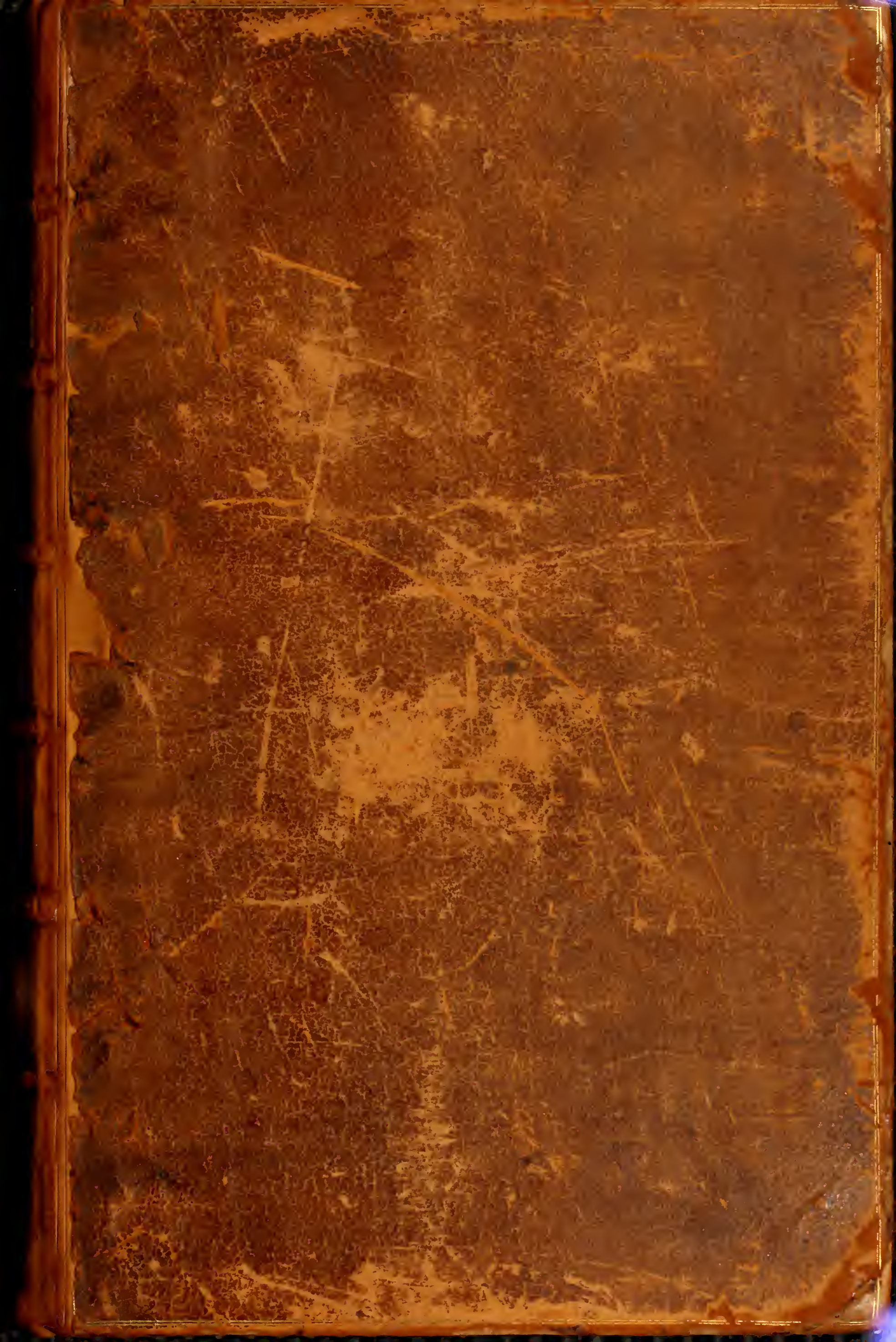
Without further Inquiry, *SCARRAT* instantly replied, "I'll lay a Guinea to a Farthing she has been at Mother *Wells's*:" She immediately said, "I think I did hear the Name of *Wills* or *Wells*:" And he then helped her to a perfect Description of *Wells's* House, and the Places about it.

Mr. *Scarrat* proceeds to ask her various Questions, in order (as he says) to be satisfied, whether she really had been there. He asked her about the Prospect from the Window, — the plough'd Land, — the Brook, — the Tanner's, — and every remarkable Thing he could recollect; and to every Question she answered in the Affirmative.

If *Scarrat* really meant to be satisfied whether she had been at *Wells's*, seeing she answered affirmatively to every Question, why did he not put *one* Question at least, to which her answering *Yes* would have convinced him, she had *not* been there? The Reason of that Omission may be easily collected from the rest of his Behaviour.

Being asked, whether he knew Mrs. *Wells's*, he would have you think he only knew her House by passing and repassing. Was you never there? Why, "he believes" — he is not sure — "he has been there *once or twice*." No oftener? — Upon your Oath, have not you been there more than twice? "I believe I have been there *two or three Times*." — Four Times, Sir? "He might have been there *three or four Times*." At last it came up to *ten*. "He could not say but he had been there *ten Times*!" But, says he, I had never been in the Hay-loft. In this I believe him, because the Defendant appears to have been helped to no Description of it. — If he had been there, he might have asked some Questions about that too, which she would also have answered in the Affirmative: But though he might have never been in this Hay-loft, yet he had been all round the House, and must have known by the Outside, that





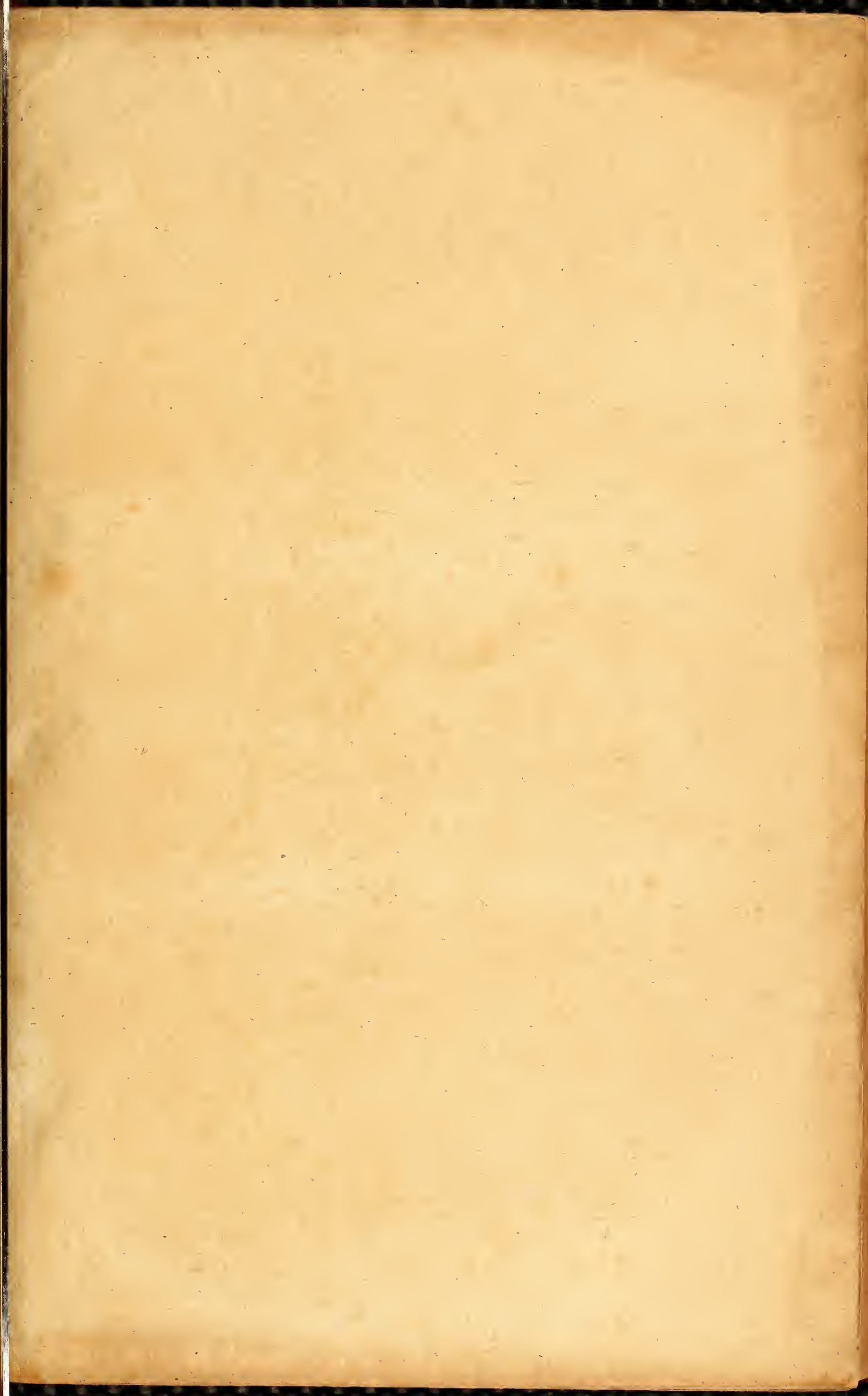
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FROM
The Reign of Queen ANNE,
TO
The Present TIME.

~~V~~OLUME X.

With an ALPHABETICAL TABLE.

L O N D O N :

Printed for T. W. J. RIVINGTON, R. HORSFIELD, T. LONGMAN,
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A COMPLETE
COLLECTION
OF
TRIALS, &c.

XLIV. *The TRIAL of MARY BLANDY, Spinster, for the Murder of her Father, FRANCIS BLANDY, Gent. at the Assizes held at Oxford for the County of Oxford, on Saturday the 29th of February, 1752. Before the Honourable Heneage Legge, Esq; and Sir Sydney Stafford Smythe, Knt. two of the Barons of his Majesty's Court of Exchequer.*

[Published by Permission of the Judges.]



ON Monday, the 2d of March 1752, a Bill of Indictment was found by the Grand Inquest for the County of Oxford, against *Mary Blandy*, Spinster, for the Murder of *Francis Blandy*, late of the Parish of *Henley upon Thames*, in the said County, Gentleman.

On Tuesday, the 3d of March 1752, the Court being met, the Prisoner *Mary Blandy* was set to the Bar, when the Court proceeded thus :

Clerk of the Arraigns. *Mary Blandy*, hold up thy Hand; (*which she did.*) You stand indicted by the Name of *Mary Blandy*, late of the Parish of *Henley upon Thames*, in the County of *Oxford*, Spinster; Daughter of *Francis Blandy*, late of the same Place, Gentleman, deceased; for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, and of your Malice aforethought, contriving and intending, him the said *Francis Blandy*, your said late Father, in his Life-time to deprive of his Life; and him feloniously to kill,

and murder, on the 10th Day of *November*, in the 23d Year of the Reign of our Sovereign Lord *George the Second*, now King of *Great Britain*; and on divers Days and Times, between the said 10th Day of *November*, and the 5th Day of *August*, in the 25th Year of the Reign of his said Majesty, with Force and Arms, at the Parish of *Henley upon Thames* aforesaid, in the County aforesaid, did knowingly, wilfully, and feloniously, and of your Malice aforethought, mix and mingle certain deadly Poison, to wit, white Arsenick, in certain Tea, which had been at divers Times, during the Time above specified, prepared for the Use of the said *Francis Blandy*, to be drank by him: You the said *Mary*, then and there well knowing that the said Tea, with which you did so mix and mingle the said deadly Poison as aforesaid, was then and there prepared for the Use of the said *Francis Blandy*, with Intent to be then and there administered to him, for his drinking the same; and the said Tea with which the said Poison was so mixed as aforesaid, afterwards, to wit, on the said 10th Day of *November*, and on the divers Days and Times aforesaid, at *Henley upon Thames* aforesaid,

was delivered to the said *Francis*, to be then and there drank by him; and the said *Francis Blandy*, not knowing the said Poison to have been mixed with the said Tea, did afterwards, to wit, on the said 10th Day of *November*, and on the said divers Days and Times aforesaid, there drink and swallow several Quantities of the said Poison, so mixed as aforesaid with the said Tea; and that you the said *Mary Blandy* might more speedily kill and murder the said *Francis Blandy*, you the said *Mary Blandy*, on the said 5th Day of *August*, and at divers other Days and Times between the said 5th Day of *August* and the 14th Day of *August*, in the 25th Year of the Reign of our said Sovereign Lord *George* the Second, now King of *Great Britain*, &c. with Force and Arms, at the Parish of *Henley* upon *Thames* aforesaid, in the County aforesaid, did knowingly, wilfully, feloniously, and of your Malice aforesaid, mix and mingle certain deadly Poison, to wit, white Arsenick, with certain Water-Gruel, which had been made and prepared for the Use of your said then Father, the said *Francis Blandy*, to be drank by him, you the said *Mary* then and there well knowing that the said Water-Gruel, with which you did so mix and mingle the said deadly Poison as aforesaid, was then and there made for the Use of the said *Francis Blandy*, with Intent to be then and there administered to him for his drinking the same; and the same Water-Gruel, with which the said Poison was so mixt as aforesaid, afterwards, to wit, on the same Day and Year, at *Henley* upon *Thames* aforesaid, was delivered to the said *Francis*, to be then and there drank by him; and the said *Francis Blandy*, not knowing the said Poison to have been mixed with the said Water-Gruel, did afterwards, to wit, on the said 5th Day of *August*, and on the Day next following, and on divers other Days and Times afterwards, and before the said 14th Day of *August*, there drink and swallow several Quantities of the said Poison, so mixed as aforesaid with the said Water-Gruel; and the said *Francis Blandy*, of the Poison aforesaid, and by the Operation thereof, became sick, and greatly disordered in his Body, and from the several Times aforesaid until the 14th Day of the same Month of *August*, in the 25th Year aforesaid, at the Parish aforesaid in the County aforesaid, did languish; on which said 14th Day of *August*, in the 25th Year aforesaid, the said *Francis Blandy*, at the Parish aforesaid, in the County aforesaid, of that Poison died: And so you, the said *Mary Blandy*, him the aforesaid *Francis Blandy*, at *Henley* upon *Thames* aforesaid, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforesaid, did poison, kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Clerk of the Arraigns. How sayest thou, *Mary Blandy*, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Prisoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Prif. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Cl. of Arr. Cryer, make a Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez; My Lords, the King's Justices strictly charge and command all manner of Persons to keep silence, upon pain of Imprisonment.

Cryer. Oyez; You good Men, that are impanelled to try between our Sovereign Lord the King and the Prisoner at the Bar, answer to your Names, and save your Fines.

The Jury were called over and appeared.

Cl. of Arr. You, the Prisoner at the Bar, these Men which were last called, and do now appear, are those who are to pass between our Sovereign Lord the King and you, upon the Trial of your Life and Death; if therefore you will challenge them, or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn: And you shall be heard.

Cl. of Arr. *Anthony Woodward.*

Cryer. *Anthony Woodward*, look upon the Prisoner; You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to the Evidence: So help you God.

And the same Oath was administered to the rest, (which were sworn) and their Names are as follow:

Anthony Woodward, - - - - - sworn.

Charles Harrison, - - - - - sworn.

Samuel George Glaze, - - - - - sworn.

William Farebrother, - - - - - sworn.

William Haynes, - - - - - sworn.

Thomas Crutch, - - - - - sworn.

Henry Swell, - - - - - challenged.

John Clarke, - - - - - sworn.

William Read, - - - - - challenged.

Harford Dobson, - - - - - challenged.

William Stone, - - - - - challenged.

William Hawkins, - - - - - sworn.

John Haynes, the Elder, - - - - - sworn.

Samuel Badger, - - - - - sworn.

Samuel Bradley, - - - - - sworn.

William Brooks, - - - - - challenged.

Joseph Jagger, - - - - - sworn.

Cl. of Arr. *Cryer*, count these.

Anthony Woodward,

John Clarke,

Charles Harrison,

William Hawkins,

Samuel George Glaze,

John Haynes, the Elder,

William Farebrother,

Samuel Badger,

William Haynes,

Samuel Bradley,

Thomas Crutch,

Joseph Jagger.

Cryer. Gentlemen, are ye all sworn?

Cl. of Arr. *Cryer*, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform My Lords the King's Justices, the King's Serjeant, the King's Attorney-General, or this Inquest now to be taken, of any Treasons, Murders, Felonies, or Misdemeanours, committed or done by the Prisoner at the Bar, let him come forth, and he shall be heard, for the Prisoner stands now at the Bar upon her Deliverance; and all Persons that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or they will forfeit their Recognizances.

Cl. of Arr. *Mary Blandy*, hold up thy Hand; Gentlemen of the Jury, look upon the Prisoner, and hearken to her Charge; she stands indicted by the Name of *Mary Blandy*, of the Parish of *Henley* upon *Thames*, in the County of *Oxford*, Spinster, Daughter of *Francis Blandy*, late of the same Place, Gentleman, deceased, for that she not having (as in the Indictment before set forth.) Upon this Indictment she has been arraigned, and upon her Arraignment has pleaded Not guilty; and for her Trial has put herself upon God and her Country, which Country you are: Your Charge therefore is, to inquire whether she be guilty of the Felony and Murder whereof she stands

stands indicted, or not guilty. If you find her guilty, you shall inquire what Goods or Chattels, Lands or Tenements she had; at the Time of the Felony committed, or at any Time since: If you find her not guilty, you shall inquire whether she fled for the same: If you find that she did fly for the same, you shall inquire of her Goods and Chattels, as if you had found her guilty: If you find her not guilty, and that she did not fly for the same, say so, and no more; and hear your Evidence.

The Hon. Mr. *Barrington* then opened the Indictment. After which, the Hon. Mr. *Batburst* spoke as follows:

May it please your Lordships, and you Gentlemen of the Jury; I am Council in this Case for the King, in whose Name, and at whose Expence, this Prosecution is carried on against the Prisoner at the Bar; in order to bring her to Justice, for a Crime of so black a Dye, that I am not at all surpris'd at this vast Concourse of People, collected together to hear, and to see, the Trial and Catastrophe of so execrable an Offender, as she is supposed to be.

For, Gentlemen, the Prisoner at the Bar, Miss *Mary Blandy*, a Gentlewoman by Birth and Education, stands indicted for no less a Crime than that of Murder. And not only for Murder, but for the Murder of her own Father; And for the Murder of a Father passionately fond of her, undertaken with the utmost Deliberation; carried on with an unvaried Continuation of Intention; and at last accomplished by a frequent Repetition of the baneful Dose, administred with her own Hands. A Crime so shocking in its own Nature, and so aggravated in all its Circumstances, as will (if she is proved to be guilty of it) justly render her infamous to the latest Posterity; and make our Children's Children, when they read the horrid Tale of this Day, blush to think that such an inhuman Creature ever had an Existence.

I need not, Gentlemen, paint to you the Heinousness of the Crime of Murder. You have but to consult your own Breasts, and you will know it.

Has a Murder been committed? Who ever beheld the ghastly Corpse of the murdered Innocent weltering in its Blood, and did not feel his own Blood run slow and cold through all his Veins?—Has the Murderer escaped? With what Eagerness do we pursue? With what Zeal do we apprehend? With what Joy do we bring to Justice? And when the dreadful Sentence of Death is pronounced upon him, every Body hears it with Satisfaction, and acknowledges the Justice of the divine Denunciation, that, *By whom Man's Blood is shed, by Man shall his Blood be shed.*

If this then is the Case of every common Murderer; what will be thought of one, who has murdered her own Father? Who has designedly done the greatest of all human Injuries to him, from whom she received the first and greatest of all human Benefits? Who has wickedly taken away his Life, to whom she stands indebted for Life? Who has deliberately destroyed, in his old Age, him, by whose Care and Tendernefs she was protected in her helpless Infancy? Who has impiously shut her Ears against the loud Voice of Nature and of God, which bid her honour her Father, and instead of honouring him has murdered him?

It becomes us, Gentlemen, Who appear here as Council for the Crown, shortly to open the History of this whole Affair; that you may be better able to attend to and understand the Evidence we have to lay before you. And though, in doing this, I will endeavour rather to extenuate than to aggravate: Yet I trust I have such an History to open as will shock the Ears of all who hear me.

Mr. *Francis Blandy*, the unfortunate Deceased, was an Attorney at Law, who lived at *Henley* in this County. A Man of Character and Reputation; he had one only Child,—a Daughter,—the Darling of his Soul, the Comfort of his Age. He took the utmost Care of her Education, and had the Satisfaction to see his Care was not ill-bestowed; for she was genteel, agreeable, sprightly, sensible. His whole Thoughts were bent to settle her advantageously in the World. In order to do that, he made use of a pious Fraud, (if I may be allowed the Expression,) pretending he could give her 10,000 *l.* for her Fortune. This he did in hopes that some of the neighbouring Gentlemen would pay their Addresses to her: For out of Regard to him, she was from her earliest Youth received into the best Company; and her own Behaviour made her afterwards acceptable to them. But how short-sighted is human Prudence! What was intended for her Promotion proved his Death and her Destruction.

For, Gentlemen, About six Years ago, one Captain *William Henry Cranstoun*, a Gentleman then in the Army, happened to come to *Henley* to recruit. He soon got acquainted with the Prisoner, and hearing she was to have 10,000 *l.* fell in love,—not with her, but with her Fortune. Children he had before; married he was at that Time, yet concealing it from her, he insinuated himself into her good Graces, and obtained her Consent for Marriage.

The Father, who had heard a bad Character of him, and who had Reason to believe what was afterwards confirmed, that he was at that very Time married, you will easily imagine was averse to the Proposal. Upon this Captain *Cranstoun* and the Prisoner determined to remove that Obstacle out of their Way, and resolved to get as soon as possible into Possession of the 10,000 *l.* that the poor Man had unfortunately said he was worth.

In order for this, the Captain being at Mr. *Blandy's* House in *August* 1750, they both agreed upon this horrid Deed. And that People might be less surpris'd at Mr. *Blandy's* Death, they began by giving out that they heard Music in the House.—A certain Sign (as Mr. *Cranstoun* had learned from a wise Woman, one Mrs. *Morgan*, in *Scotland*) that the Father would die in less than twelve Months.—The Captain too pretended he was indowed with the Gift of second Sight, and affirmed that he had seen Mr. *Blandy's* Apparition. This was another certain Sign of his Death, as she told the Servants; to whom she frequently said her Father would not live long. Nay, she went farther, and told them he would not live till the *October* following.

When it was she first began to mix Poison with his Victuals, it is impossible for us to ascertain; but probably it was not long after *November* 1750, when Mr. *Cranstoun* left *Henley*. The Effects of the Poison were soon perceived. You will hear Dr. *Addington* his Physician tell you, Mr. *Blandy* had for many Months felt the dreadful Effects of it.

it. One of the Effects was the Teeth dropping out of his Head, whole from their Sockets. Yet what do you think, Gentlemen, the Daughter did when she perceived it? *She d—n'd him for a toothless old Rogue, and wish'd him at Hell.* The poor Man frequently complained of Pains in his Bowels; had frequent Reachings and Sicknes: Yet instead of desisting, she wanted more Poison to effect her Purpose. And Mr. Cranstoun did accordingly in the April following send her a fresh Supply; under the Pretence of a Present of Scotch Pebbles, he inclosed a Paper of white Arsenic. This she frequently administred in his Tea; and we shall prove to you that in June having put some of it into a Dish of Tea, Mr. Blandy disliking the Taste left half in the Cup. Unfortunately! a poor old Chair-woman (by Name *Ann Emmet*) glad to get a Breakfast, drank the Remainder, together with a Dish or two more out of the Pot, and eat what Bread and Butter had been left. The Consequence was, that she was taken violently ill with purging and vomiting, and was in imminent Danger of her Life. The poor Woman's Daughter came and told Miss Blandy how ill her Mother was; she, sorry that the Poison was misapplied, said, *Do not let your Mother be uneasy, I will send her what is proper for her.* And accordingly sent her great Quantities of Sack Whey and thin Mutton Broth, than which no Physician could have prescribed better. And thus drenched the poor Woman for ten Days together; till she grew tired of her Medicines, and sent her Daughter again to Miss Blandy to beg a little small Beer. *No, no small Beer,* the Prisoner said, that was *not proper for her.* Most plainly then she knew what it was the Woman had taken in her Father's Tea. She knew its Effect. She knew the proper Antidotes.—Having now experienced the Strength of the Poison, she grew more open and undaunted; was heard to say, *Who would grudge to send an old Father to Hell for 10,000 l.?* I will make no Remark upon such an horrid Expression,—it needs none. After this she continued to mix the Poison with her Father's Tea as often as she had an Opportunity. Soon afterwards, *Susan Gunnell*, another Witness we shall call, happened to drink some which her Master had left; she was taken ill upon it, and continued so for three Weeks. This second Accident alarmed the Prisoner. She was afraid of being discovered. She found it would not mix well with Tea. Accordingly she wrote to Mr. Cranstoun for further Instructions. In answer to it, he bids her *put it into some Liquid of a more thickish Substance.*

The Father being ill, frequently took Water-gruel. This was a proper Vehicle for the Powder. Therefore from this Time you will find her always busy about her Father's Gruel. But lest *Susan Gunnell*, who had been ill, should eat any of it, she cautioned her particularly against it; saying, *Susan, As you have been so ill, you had better not eat any of your Master's Water-gruel; I have been told Water-gruel has done me harm, and perhaps it may have the same Effect upon you.* And lest this Caution should not be sufficient, she spoke to *Betty Binfield*, the other Maid-Servant, and asked her whether *Susan* ever eat any of her Father's Gruel, adding, *She had better not; for if she does, it may do for her, You may tell her.* Evidently then she knew what were the Effects of the Powder she put into her Father's Gruel; for if it would *do for* the Servant, it would *do for* her Father.

But the Time approached beyond which she had foretold her Father would not live.—It was the Middle of July, and the Father still living.—At this Mr. Cranstoun grows impatient. Upon the 18th of July he writes to her, and expressing himself in an allegorical Manner, which however you will easily understand, he says, *I am sorry there are such Occasions to clean your Pebbles, you must make use of the Powder to them, by putting it in any thing of Substance, wherein it will not swim a-top of the Water, of which I wrote to you of in one of my last. I am afraid it will be too weak to take off their Rust, or at least it will take too long a Time.* Here he is encouraging her to double the Dose; says, he is afraid it will be too weak, and will take up too much Time. And, as a farther Incitement to her to make haste, describes the Beauties of Scotland, and tells her that his Mother, Lady Cranstoun, had employ'd Workmen to fit up an Apartment for her at *Lennel-House.*

Soon after the Receipt of this Letter she follow'd the Advice. And you will accordingly find the Dose doubled. Her Father grew worse, and, as she herself told the Servants, complained of a Fireball in his Stomach, saying, *he never will be well till he has got rid of it.* And yet you will find she herself, fearful lest he should get rid of it, was continually adding Fuel to the Fire, till it had consumed her Father's Entrails.

Gentlemen, I will not detain you by going through every Particular, but bring you to the fatal Period. Upon the 3d of August, being Saturday, *Susan Gunnell* made a large Pan of Water-gruel for her Master. Upon Monday the 5th the Prisoner will be proved to go into the Pantry where it was kept, and after having, according to Mr. Cranstoun's Advice, put in a double Dose of the Powder, she stirr'd it about for a considerable Time, in order to make it mix the better. When fearing she should have been observed, she went immediately into the Laundry, to the Maids, and told them, that *she had been in the Pantry, and after stirring her Papa's Water-gruel, had eat the Oatmeal at the Bottom*, saying, that, *if she was ever to take to the eating anything in particular, it would be Oatmeal.* Strange Inconsistence! She who had caution'd the Maid against it not above a Fortnight before, who had declared that it had been prejudicial to her own Health, “is on a sudden grown mighty fond of it.”—But the Pretence is easily to be seen through. That Afternoon some of the Water-gruel was taken out of the Pan, and prepared for her Father's Supper. She again in the Kitchen takes care to stir it sufficiently; Looks at the Spoon; Rubs some between her Fingers; And then sends it up to the poor old Man, her Father. He scarce had swallow'd it, when he was taken violently ill, and continued so all the next Day, with a Gripping, Purging, and Vomiting. Yet she herself orders a second Mess, of the same Gruel, for her Father's Supper on the Tuesday, and was herself the Person who carried it up to her Father, and administred it to him as Nourishment. The poor old Man, grown weak with the frequent Repetition, had not drank half the Mess before he was seiz'd, from Head to Foot, with the most violent pricking Pains, continual Reaching and Vomiting;—and was obliged to go to Bed without finishing it. The next Morning the poor Chairwoman coming again to the House, unfortunately eat the Remainder of the Gruel, and was instantly affected

in so violent a Manner, that for two Hours together it was thought she would have died in Mr. Blandy's House. The Prisoner at this Time was in Bed, but the Maid going up to her Room told her how ill *Dame Emmet* had been, at the same Time saying, she had eat nothing but the Remainder of her Father's Water-gruel. The Prisoner's Answer was, *Poor Woman! I am glad I was not up, I should have been shock'd to have seen her.* Should have been shock'd to have seen the poor Chair-woman eat what was prepared for her Father; but was never shock'd at her Father's eating it, or at his Sufferings!

Gentlemen, in the Afternoon of the *Wednesday*, notwithstanding the poor Man, her Father, had suffer'd so much for two Days together, yet she again endeavours to give him more of the same Gruel. *No!* says the Maid, *it has an odd Taste; it is grown stale; I will make fresh.* - *It is not worth while to make fresh now, it will take you from your Ironing; this will do,* was the Prisoner's Answer. However, *Susan* made fresh, after which wanting the Pan to put it in, she went to throw away what was before in it. Upon tilting the Pan, she perceived a white Powder at the Bottom; which she knew could not be Oatmeal. She shew'd it her Fellow-Servant, when feeling it they found it gritty. They then too plainly perceived what it was had made their poor old Master so ill. What was to be done? *Susan* immediately carried the Pan, with the Gruel and Powder in it, to Mrs. *Mounteney*, a Neighbour and Friend of the deceased. Mrs. *Mounteney* kept it till it was deliver'd to the Apothecary, the Apothecary deliver'd it to the Physician, and he will tell you, that upon trying it, he found it to be white Arsenic. Mr. *Blandy* continued from Day to Day to grow worse. At last, upon the *Saturday* Morning, *Susan Gunnell*, an old honest Maid-Servant, uneasy to see how her poor Master had been treated, went to his Bed-side, and, in the most prudent and gentlest Manner, broke to him what had been the Cause of his Illness, and the strong Ground there was to suspect that his Daughter was the Occasion of it. The Father, with a Fondness greater than ever a Father felt before, cried out, *Poor love-sick Girl! What will not a Woman do for the Man she loves! But who do you think gave her the Powder?* She answer'd, *She could not tell, unless it was sent by Mr. Cranstoun.* *I believe so too,* says the Master, *for I remember he has talked learnedly of Poisons. I always thought there was Mischief in those cursed Scotch Pebbles.*

Soon afterwards he got up and came to Breakfast in his Parlour, where his Daughter and Mr. *Littleton*, his Clerk, then were. A Dish of Tea, in the usual Manner, was ready pour'd out for him. He just tasted it, and said, *This Tea has a bad Taste;* looked at the Cup; then looked hard at his Daughter. She was, for the first Time, shock'd; burst into Tears, and ran out of the Room. The poor Father, more shock'd than the Daughter, poured the Tea into the Cat's Bason, and went to the Window to recover himself. She soon came again into the Room. Mr. *Littleton* said, *Madam! I fear your Father is very ill, for he has flung away his Tea.* Upon this News she trembled, and the Tears again stood in her Eyes. She again withdrew. Soon afterwards the Father came into the Kitchen, and addressing himself to her said, *Molly! I had like to have been poison'd twenty Years ago, and now I find I shall die by*

Poison at last. This was Warning sufficient. She immediately went up Stairs, brought down Mr. *Cranstoun's* Letters, together with the Remainder of the Poison, and threw them (as she thought unobserv'd) into the Fire. Thinking she had now clear'd herself from the suspicious Appearances of Poison, her Spirits mend, *she thank'd God, that she was much better, and said, her Mind was more at ease than it had been.* Alas! how often does that, which we fondly imagine will save us, become our Destruction? So it was in the present Instance. For providentially, though the Letters were destroy'd, the Paper with the Poison in it was not burnt. One of the Maids having immediately flung some fresh Coals upon the Fire, Miss *Blandy* went well satisfied out of the Room. Upon her going out, *Susan Gunnell* said to her Fellow-Servant, *I saw Miss Blandy throw some Papers in the Fire, let us see whether we can discover what they were.* They removed the Coals, and found a Paper with white Powder in it, wrote upon, in Mr. *Cranstoun's* Hand, "Powder to clean the Pebbles." This Powder they preserved, and the Doctor will tell you, that it was white Arsenic, the same which had been found in the Pan of Gruel.

Having now (as she imagined) concealed her own being concern'd, you will find her the next Day endeavouring to prevent her Lover from being discover'd. Mr. *Blandy* of *Kingston* having come the Night before to see her Father, on *Sunday* Morning she sent Mr. *Littleton* with him to Church; while they were there, she sat down and wrote this Letter to her beloved *Cranstoun*:

Dear Willy,

MY Father is so bad, that I have only Time to tell you, that if you do not hear from me soon again, don't be frighten'd. I am better myself. Lest any Accident should happen to your Letters, take care what you write. My sincere Compliments. I am ever

Yours.

My Father is so bad.—Who had made him so? Yet does she say she was sorry for it? No. She knew her Father was then dying by that Powder that he had sent her, yet could acquaint him she was herself better. Under those Circumstances could caution him to take care what he wrote, lest his Letters should be discovered. What can speak more strongly their mutual Guilt? This Letter she sealed with no less than five Wafers. When Mr. *Littleton* came from Church, she privately gave it to him, desiring it might be directed as usual, and put into the Post. Mr. *Littleton* was at that Time too well apprised of this black Transaction to obey her Commands. He opened the Letter. Took a Copy of it. Upon further Recollection, carry'd the Original to the Father, who bid him open and read it. He did so. What do you think, Gentlemen! was all the poor old Man said upon this Discovery?

He only again dropp'd these Words, *Poor love-sick Girl! What will not a Woman do for the Man she loves?*

Upon the *Monday* Morning, after having been kept for two Days without seeing her Father, by the Order of the Physicians, her Conscience, or rather Fear, began to trouble her; she told the Maid she should go distracted if she did not see her Father, and sent a Message to beg to see him. Accordingly she was admitted. The Conversation between them was this, "Papa, how do

“ you do ?” *My Dear, I am very ill.* She immediately fell upon her Knees, and said, “ Dear Sir, “ Banish me where you will, Do with me what you “ please, so you do but pardon and forgive me. “ And, as to Mr. *Cranstoun*, I never will see, “ write, or speak to him again.” He answer’d, *I do forgive you, but you should, my Dear; have consider’d that I was your own Father.* Upon this the Prisoner said, “ Sir, as to your Illness I am innocent.” *Susan Gunnell*, who was present, interrupted her at this Expression, and told her she was astonish’d to hear her say she was innocent, when they had the Poison to produce against her, that she had put into her Father’s Water-gruel, and had preserved the Paper she had thrown into the Fire. The Father, whose Love and Tenderness for his Daughter exceeded Expression, could not bear to hear her thus accused; therefore turning himself in his Bed cried out, *Oh that Villain! that hath eat of the best, and drank of the best my House could afford, to take away my Life, and ruin my Daughter.* Upon hearing this the Daughter run to the other Side of the Bed to him, upon which he added, *My Dear, you must hate that Man, you must hate the very Ground he treads on.* Struck with this, the Prisoner said, “ Dear Sir! your “ Kindness towards me is worse than Swords to “ my Heart. I must down upon my Knees, and “ beg you not to curse me.” Hear the Father’s Answer, a Father then dying by Poison given by her Hand, *I curse thee, my Dear! no, I bless you, and will pray to God to bless you, and to amend your Life;* then added, *So do, my Dear, go out of the Room, lest you should say any thing to accuse yourself.* Was ever such Tenderness from a Parent to a Child! She was prudent enough to follow his Advice, and went out of the Room without speaking.

His Kindness was Swords to her Heart, for near half an Hour. Going down Stairs she met *Betty Binfield*, and whilst she was thus affected, owned to her, she had put some Powder into her Father’s Gruel, and that *Susan* and she for their Honesty to their Master deserved half her Fortune.

Gentlemen, not to tire you with the Particulars of every Day; upon *Wednesday*, in the Afternoon, the Father died. Upon his Death, the Prisoner finding herself discovered, endeavour’d to persuade the Man-Servant to go off with her; but he was too honest to be tempted by a Reward to assist her in going off, tho’ she told him it would be 500*l.* in his way. That Night she refused to go to Bed. Not out of Grief for her Father’s Death; for you will be told by the Maid, who sat up with her, that she never, during the whole Night, shewed the least Sorrow, Compassion, or Remorse upon his Account. But in the Middle of the Night she propos’d to get a Post-Chaise in order to go to *London*, and offer’d the Maid twenty-five Guineas to go with her. *A Post-Chaise! and go to London! God forbid, Madam! I should do such a Thing.* The Prisoner finding the Maid not proper for her Purpose, immediately put a Smile upon her Face, “ I was “ only joking.” Only joking! good God! would she now have it thought she was only joking?

Her Father just dead by Poison: She suspected of having poison’d him; accus’d of being a Parricide; and would she have it thought she was capable of joking?

When I see the Assistance she now has, (and I am glad to see she has the Assistance of three able Gentlemen, as any in the Profession) I am

sure she will not be now advis’d to say she was then joking. But it will appear very plainly to you, Gentlemen, that she was not joking; for the next Morning she dress’d herself in a proper Habit for a Journey, and, while the People put to take care of her, were absent, stole out of the House, and went over *Henley-Bridge*. But the Mob, who had heard of what she had done, follow’d her so close, that she was forced to take shelter in a little Alehouse, the *Angel*. Mr. *Fisher*, a Gentleman, who was afterwards one of the Jury upon the Coroner’s Inquisition, came there and prevail’d with her (or in other Words forced her) to return home. Upon her Return, the Inquest sitting, she sends for Mr. *Fisher* into another Room, and said, *Dear Mr. Fisher! what do you think they will do with me? Will they send me to Oxford Gaol? Madam!* said he, *I am afraid it will go hard with you. But if you have any of Mr. Cranstoun’s Letters, and produce them, they may be of some Service to you.* Upon hearing this, she cried out, *Dear Mr. Fisher! What have I done? I had Letters that would have hang’d that Villain, but I have burnt them. My Honour to that Villain has brought me to my Destruction.* And she spoke the Truth.

This, Gentlemen, is, in Substance, the History of this black Affair. But, My Lords! though this is the History in Order of Time; yet it is not the Order in which we shall lay the Evidence before your Lordships and the Jury. It will be proper for us to begin by establishing the Fact, that *Mr. Francis Blandy did die of Poison.* When the Physicians have proved that, we will then proceed to shew that *he died of the Poison put into the Water-gruel on the 5th of August.* After this we will call Witnesses, who from a Number of Circumstances, as well as from her own Confession, will prove *she put it into her Father’s Water-gruel, knowing it was for her Father, and knowing it to be Poison.*

Having done this, we will conclude with a Piece of Evidence which I forgot to mention before, and that is the Conversation between her and Mr. *Lane* at the *Angel*. Mr. *Lane* and his Wife happening to be walking at that time, finding a Mob about the Door, step’d into the Alehouse to see the Prisoner. The Moment she saw a Gentleman, though it was one she did not know, she accosted him, “ Sir! you appear to be a Gentleman; for Heaven’s sake, what will become “ of me?” *Madam!* said he, *you will be sent to Oxford Gaol, you will there be tried for your Life; if you are innocent, you will be acquitted; if you are guilty, you will suffer Death.*

The Prisoner, upon hearing this, stamped with her Foot, and said, *Oh! that damn’d Villain!* then pausing, *But why do I blame him? I am most to blame myself, for I gave it, and I knew the Consequence.* If she knew the Consequence, I am sure there are none of you, Gentlemen, but who will think she deserves to suffer the Consequence.

And let me here observe, how evidently the Hand of Providence has interposed to bring her to this Day’s Trial, that she may suffer the Consequence. For what, but the Hand of Providence, could have preserved the Paper thrown, by her, into the Fire, and have snatch’d it unburnt from the devouring Flame? Good God! how wonderful are all thy Ways! and how miraculously hast thou preserved this Paper, to be this Day produced in Evidence against the Prisoner, in order that she may suffer the Punishment due

due to her Crime; and be a dreadful Example to all others, who may be tempted in like Manner to offend thy Divine Majesty!

Let me add, that next to Providence the Public are obliged to the two Noble Lords, whose indefatigable Diligence in inquiring into this hidden Work of Darkneſs has enabled us to lay before you upon this Occaſion, the cleareſt and ſtrongeſt Proof that ſuch a dark Tranſaction will admit of. For Poiſoning is done in ſecret and alone; it is not like other Murders, neither can it be proved with equal Perſpicuity. However, the Evidence we have in this Caſe is as clear and direct as poſſible; and if it comes up to what I have opened to you, I make no doubt but you will do that Juſtice to your Country, which the Oath you have taken requires of you.

Mr. Serjeant *Hayward*.

May it pleaſe your Lordſhips, and you Gentlemen of the Jury; I likewise am appointed to aſſiſt the Crown on this Occaſion; but his Maſteſty's learned Council having laid before you ſo faithful a Narrative of this diſmal Tranſaction, it ſeems almoſt unneceſſary for me to take up any more of your Time, in repeating any Thing that has been before ſaid; and indeed my own Inclinations would lead me to caſt a Veil over the guilty Scene: A Scene, ſo black, and ſo horrid, that if my Duty did not call me to it, I could rather wiſh it might be for ever concealed from human Eyes. But as we are now making Inquiſition for Blood, it is abſolutely neceſſary for me to make ſome Obſervations upon that Chain of Circumſtances, that attended this bloody Contrivance and deteſted Murder.

Experience has taught us, that in many Caſes a ſingle Faſt may be ſupported by falſe Teſtimony, but where it is attended with a Train of Circumſtances that cannot be invented (had they never happened) ſuch a Faſt will always be made out to the Satisfaction of a Jury, by the concurring Aſſiſtance of circumſtantial Evidence. Becauſe Circumſtances that tally one with another are above human Contrivance. And eſpecially, ſuch as naturally ariſe in their Order, from the firſt Contrivance of a Scheme to the fatal Execution of it.

Having ſuggeſted thus much, I ſhall now proceed to lay before you thoſe ſort of Circumſtances that ſeem to me to ariſe through this whole Affair, and leave it to your Judgment, whether they do not amount to too convincing a Proof that the Priſoner at the Bar has knowingly been the Cauſe of her own Father's Death; for upon the Priſoner's Knowledge of what ſhe did, will depend her Fate.

Of all kinds of Murders, that by Poiſon is the moſt dreadful, as it takes a Man unguarded, and gives him no Opportunity to defend himſelf; much more ſo when adminiſtered by the Hand of a Child, whom one could leaſt ſuſpect, and from whom one might naturally look for Aſſiſtance and Comfort. Could a Father entertain any Suſpicion of a Child, to whom under God he had been the ſecond Cauſe of Life? No ſure, and yet this is the Caſe now before you. The unfortunate Deceas'd has received his Death by Poiſon, and that undoubtedly adminiſtered by the Hand of his own,—his only,—his beloved Child. Spare me, Gentlemen, to pay the Tribute of one Tear to the Memory of a Perſon, with whom I was moſt intimately acquainted, and to the Excellency of

whoſe Diſpoſition and Integrity of Heart, I can ſafely bear faithful Teſtimony; O! were he now living, and to ſee his Daughter there, the ſevereſt Tortures that Poiſon could give, would be nothing to what he would ſuffer from ſuch a Sight.

And ſince the bittereſt Agonies muſt at this Time ſurround the Heart of the Priſoner, if ſhe does but think of what a Father ſhe has loſt; I can readily join with her in her ſevereſt Afflictions upon this Occaſion, and ſhall never blame myſelf, for weeping with thoſe that weep; nor can I make the leaſt Queſtion, but my learned Aſſiſtants in in this Proſecution will with me rejoice likewiſe, if the Priſoner, by making her Innocence appear, ſhall upon the Concluſion of this Inquiry find Occaſion to rejoice. But alas! too ſtrong I fear will the Charge againſt her be proved, too convincing are the Circumſtances that attend it: What thoſe are, and what may be collected from them, is my next Buſineſs to offer to your Conſideration.

But before I enter thereupon, I muſt beg leave to addreſs myſelf to this numerous and crowded Aſſembly, whom Curioſity hath led hither to hear the Event of this ſolemn Trial; hoping that whatever may be the Conſequence of it to the Priſoner, her preſent melancholy Situation may turn to our Advantage, and reduce our Minds to Seriousneſs and Attention. Solemn indeed I may well call it, as being a Tribunal truly awful: For this Method of Trial, before two of his Maſteſty's learned Judges, has ſcarce ever been known upon a Circuit; Judges of undoubted Virtue, Integrity, and Learning, who undergo this laborious and important Work, not only for the ſake of bringing Guilt to Punishment, but to guard and protect Innocence whenever it appears.

But You, young Gentlemen of this Univerſity, I particularly beg your Attention, earneſtly beſeeching you to guard againſt the firſt Approaches of and Temptations to Vice. See here the dreadful Conſequence of Diſobedience to a Parent. Who could have thought that Miſs *Blandy*, a young Lady virtuoſly brought up, diſtinguiſhed for her good Behaviour and prudent Conduct in Life, till her unfortunate Acquaintance with the wicked *Cranſtoun*, ſhould ever be brought to a Trial for her Life; and that for the moſt deſperate and bloodieſt kind of Murder, committed by her own Hand, upon her own Father? Had ſhe liſtened to his Admonitions, this Calamity never had befallen her. Learn hence the dreadful Conſequences of Diſobedience to Parents: and know alſo, that the ſame Miſchief in all Probability may happen to ſuch who obſtinately diſregard, neglect, and deſpiſe the Advice of thoſe Perſons who have the Charge and Care of their Education; of Governors likewiſe, and of Magiſtrates, and of all others who are put in Authority over them. Let this fix in your Mind the excellent Maxim of the good Phyſician, *Venienti occurrere Morbo*. Let us defend ourſelves againſt the firſt Temptations to Sin, and guard our Innocency as we would our Lives; for if once we yield, though but a little, in whoſe Power is it to ſay, Hitherto will I go, and no further?

And now, Gentlemen of the Jury, thoſe Obſervations I had before mentioned, I ſhall attempt to lay before you, in order to aſſiſt you in making a true Judgment of the Matter committed to your Charge. The Author and Contriver of this bloody Affair is not at preſent here, I ſincerely wiſh

wish that he was; because we should be able to convince him, that such Crimes as his cannot escape unpunished. The unhappy Prisoner, ruin'd and undone, by the treacherous Flattery and pernicious Advice of that abandon'd, insidious and execrable Wretch, who had found means of introducing himself into her Father's Family, and, whilst there, by false Pretences of Love, gain'd the Affection of his only Daughter and Child. Love! did I call it? It deserves not the Name; if it was Love of any thing, it was of the Ten thousand Pounds, supposed to be the young Lady's Fortune. Could a Man that had a Wife of his own, and Children, be really in Love with another Woman? Such a Thing cannot be supposed, and therefore I beg leave to call it Avarice and Lust only; but be it what it will, the Life of the Father becomes an Obstacle to the criminal Proceedings that were intended and designed to be carried on between them, and therefore he must be remov'd, before that imaginary State of Felicity could be obtain'd, according to their projected Scheme. Mark how the Destruction of this poor Man is usher'd into the World: Apparitions, Noises, Voices, Musick, reported to be heard from time to time in the deceased's House. Even his Days are number'd out, and his own Child limits the Space of his Life but till the following Month of *October*. What could be the Meaning of this, but to prepare the World for a Death that was predetermin'd? Who could limit the Days of a Man's Life, but a Person that knew what was intended to be done towards the shortening of it?

In order to bring this about, *Cranstoun* sends Presents of Pebbles, as also a Powder to clean them; and this Powder, Gentlemen, you will find is the dreadful Poison that accomplished this abominable Scheme.

From time to time Mention is made of the Pebbles; but not a Syllable of the Powder. Why not of the one as well as of the other, if there had not been a Mystery concealed in it? Preparation is made for an Experiment of its Power before *Cranstoun's* Departure; he mixes the deadly Draught; but the Prisoner's Conscience, not yet harden'd, forc'd her to turn away her Eyes, and she durst not venture to behold the Cup prepared, that was to send the Father into another World.

Soon after this *Cranstoun* quits the Family, (having, no question, left Instructions how to proceed farther in compleating the Scheme he had laid for taking off the old Man) and this you'll find by Letters under his own Hand, that the Powder, whatever it was, must not be *mix'd in too thin a Liquid*, because it might be discover'd; and therefore Water-gruel is thought fitter for the Purpose. By the frequent Mixtures that were made upon these Occasions, the unfortunate Servant and Chairwoman accidentally drank Part of the deadly Composition. When Complaint is made of their Sicknefs, how does the Prisoner behave? Does she not administer to them with as much Art and Skill as a Physician could? Does she not prescribe proper Liquids and Draughts to absorb and take off the Edge of the corroding Poison? If she knew not what it was, how could she administer so successfully to prevent the fatal Consequences of it both in the Maid and the Chairwoman? During this Transaction, the unhappy Father finds himself afflicted with torturing Pains, immediately after receiving the Composition from

his Daughter. Is there any Care taken of him? Any Physician sent for to attend him? Any healing Draughts prepar'd to quiet the Racks and Tortures that he inwardly felt? None at all, that I can find. He is left to take care of himself, and undergo those Miseries that his own Child had brought upon him, and yet had not the Heart to give him any Assistance. What could this proceed from, but Guilt only? Would not an innocent Child have made the strictest Inquiry how her *own* Father came to be out of order? Would she not have sought the World over for Advice and Assistance? But instead of that, you hear the bitterest Expressions proceed from her, Expressions sufficient to shock human Nature. *They have been all mentioned already by my learned Leader, and I will not again repeat them.*

Observe, as Things come nearer the Crisis, whether her Behaviour towards her Father carries any better Appearance. When it began to be suspected that Mr. *Blandy's* Disorder was owing to Poison, and strongly, from Circumstances, that the Prisoner was privy to it, the poor Man, now too far gone, being inform'd that there was great Reason to suspect his own Child, what Expressions does he make use of? No harsher, than in the gentlest Method saying, *Poor Love-sick Girl! I always thought there was Mischief in those Scotch Pebbles. O! that damned Villain Cranstoun, that has eat of the best and drank of the best my House afforded, to serve me thus, and ruin my poor Love-sick Girl.* An incontestable Proof that he knew the Cause of his Disorder, and the Authors of it.

The Report spread about the House of the Father's Suspicions, soon alarm'd the Prisoner: What does she do upon this Occasion? Can any other Interpretation be put upon her Actions, than that they proceeded from a manifest Intention to conceal her Guilt? Why is the Paper of Powder thrown into the Fire? From whence, as my learned Leader most elegantly observes, it is miraculously preserved. What Occasion for Concealment, had she not been conscious of something that was wrong? If she had not known what had been in the Paper, for what Purpose was it committed to the Flames? And what really was contained in that Paper, will appear to you to be deadly Poison.

The long wished for and fatal Hour at last arrives; and but a little before, a Letter is sent by the Prisoner to *Cranstoun*, that her Father was extremely ill. Begging him to *be cautious what he writes*, lest any Accident should happen to his Letters. Do the Circumstances, the Language, or the Time of writing this Letter, leave any room to suppose the Prisoner could be innocent? They seem to me rather to be the fullest Proof of her knowing what she had done. What Accidents could befall *Cranstoun's* Letters? Why is he to take care what he writes, if nothing but the Effects of Innocency were to be contained in those Letters? In a very short Time after this, the Strength of the Poison carries the Father out of the World. Do but hear how the Prisoner behaved thereupon. The Father's Corpse was not yet cold, when she makes Application to the Footman, with a Temptation of large Sums of Money, as a Reward, if he would go off with her; but the Fidelity and Virtue of the Servant was Proof against the Temptation even of Four or Five hundred Pounds. The next Proposal is to the Maid, to procure a Chaise, with the Offer

of a Reward for so doing, and to go along with her to *London*; but this Project likewise failed, through the Honesty of the Servant: The next Morning, in the Absence of *Edward Herne*, (the Guard that was set over her) she makes her Escape from her Father's House, and dressed as if going to take a Journey, walked down the Street; but the Mob was soon aware of her, and forc'd her to take Shelter in a Public-House over the Bridge. Do these Proceedings look as if they were the Effects of Innocence? Far otherwise, I am afraid: Would an innocent Person have quitted a deceased Parent's House, at a Time when she was most wanting to make proper and decent Preparations for his Funeral? Would an innocent Person, at such a Time as this, offer Money for Assistance to make an Escape? I think not: And I wish she may find a satisfactory Cause to assign for such amazing Behaviour.

Let us put Innocence and Guilt in the Scale together, and observe to which Side the Prisoner's Actions are most applicable. *Innocence*, Celestial Virgin, always has her Guard about her; she dares look the Frowns, the Resentments, and the Persecutions of the World in the Face; is able to stand the Test of the strictest Inquiry; and the more we behold her, still the more shall we be in Love with her Charms. But it is not so with *Guilt*: The baneful Fiend makes use of unjustifiable Means to conceal her wicked Designs, and prevent Discovery. Artifice and Cunning are her Supporters, Bribery and Corruption the Defenders of her Cause; she flies before the Face of Law and Justice, and shuns the Probation of a candid and impartial Inquiry. Upon the whole Matter, you, Gentlemen, are to judge; and judge as favourably as you can for the Prisoner.

If this were not sufficient to convince us of the Prisoner's Guilt, I think the last Transaction of all will leave not the least Room to doubt. When in Discourse with Persons that came to her at the House where she had taken Shelter, what but a Self-conviction could have drawn such Expressions from her? In her Discourse with Mr. *Fisher* about *Cranstoun*, you will find she declared she had Letters and Papers that would have hanged that Villain: And again, says, *My Honour, Mr. Fisher, to that Villain has brought me to Destruction*: And again, in her Inquiry of Mr. *Lane*, What they would do with her, she bursts out into this bitter Exclamation, *O! that damned Villain!* then after a short Pause, *But why should I blame him? I am more to blame than he is, for I gave it him.* How could she be to blame for giving it, if she knew not what it was? And, as it is said, went yet farther, and declared, *that she knew the Consequence.* If she did know it, she must expect to suffer the Consequence of it too.

Thus, Gentlemen, have I endeavoured to lay before you some Observations upon this Transaction, and I hope you will think them not unworthy of your Consideration. I trust I have said nothing that relates to the Fact, that is not in my Instructions; should it be otherwise, I assure you it was not with Design. And whatever is not supported by legal Evidence, you will totally disregard.

If any other Interpretation than what I have offered, can be put upon these several Transactions, and the Circumstances attending them, I doubt not but you will always incline on the merciful Side, where there is Room for so doing.

We shall now proceed to call our Evidence.

VOL. X.

The other Gentlemen of Council for the King, were Mr. *Hayes*, Mr. *Nares*, and Mr. *Ambler*.

The Council for the Prisoner, were Mr. *Ford*, Mr. *Morton*, and Mr. *Aston*.

Dr. *Anthony Addington*, and Dr. *William Lewis*, sworn.

Council. Did you, Dr. *Addington*, attend Mr. *Blandy* in his last Illness?

Dr. *Addington*. Yes, Sir.

Council. When was you called to him the first Time?

Dr. *Addington*. On *Saturday Evening, August the 10th.*

Council. In what Condition did you find him?

Dr. *Addington*. He was in Bed; and told me, that, after drinking some Gruel on *Monday Night, August the 5th*, he had perceived an extraordinary Grittiness in his Mouth, attended with a very painful Burning and Pricking in his Tongue, Throat, Stomach, and Bowels, and with Sickness and Gripings; which Symptoms had been relieved by Fits of Vomiting and Purging.

Council. Were those Fits owing to any Physic he had taken, or to the Gruel?

Dr. *Addington*. Not to any Physic; they came on very soon after drinking the Gruel.

Council. Had he taken no Physic that Day?

Dr. *Addington*. No.

Council. Did he make any farther Complaints?

Dr. *Addington*. He said, that, after drinking more Gruel on *Tuesday Night, August the 6th*, he had felt the Grittiness in his Mouth again; and that the Burning and Pricking in his Tongue, Throat, Stomach, and Bowels, had return'd with double Violence, and been aggravated by a prodigious Swelling of his Belly, and exquisite Pains and Prickings in every external as well as internal Part of his Body; which Prickings he compared to an infinite Number of Needles darting into him all at once.

Council. How soon after drinking the Gruel?

Dr. *Addington*. Almost immediately. He told me likewise, that, at the same time, he had had cold Sweats, Hiccup, extreme Restlessness and Anxiety; but that then, *viz.* on *Saturday Night, August the 10th*, having had a great many Stools, and some bloody ones, he was pretty easy every where, except in his Mouth, Lips, Nose, Eyes, and Fundament; and except some transient Gripings in his Bowels. I asked him, to what he imputed those uneasy Sensations in his Mouth, Lips, Nose, and Eyes? He said, to the Fumes of something that he had taken in his Gruel, on *Monday Night, August the 5th*, and *Tuesday Night, August the 6th*.

On Inspection, I found his Tongue swelled, and his Throat slightly inflamed, and excoriated. His Lips, especially the upper one, were dry and rough, and had angry Pimples on them. The Inside of his Nostrils was in the same Condition. His Eyes were a little blood-hot. Besides these Appearances, I observed that he had a low, trembling, intermitting Pulse; a difficult, unequal Respiration; a yellowish Complexion; a Difficulty in the Utterance of his Words; and an Inability of swallowing even a Tea-spoonful of the thinnest Liquor at a Time.

As I suspected that these Appearances and Symptoms were the Effect of Poison, I asked Miss *Blandy*, whether Mr. *Blandy* had lately given Of-

fence to either of his Servants, or Clients, or any other Person? She answered, *That he was at Peace with all the World, and that all the World was at Peace with him.* I then asked her, whether he had ever been subject to Complaints of this Kind before? She said, that he had often been subject to the Cholic and Heart-burn; and that she supposed this was only a Fit of that Sort, and would soon go off, as usual. I told Mr. *Blandy*, that I asked these Questions, because I suspected that by some Means or other he had taken Poison. He replied, *It might be so,* or in Words to that Effect: But Miss *Blandy* said, *It was impossible.*

On Sunday Morning, August the 10th, he seemed much relieved; his Pulse, Breath, Complexion, and Power of swallowing, were greatly mended. He had had several Stools in the Night, without any Blood in them. The Complaints which he had made of his Mouth, Lips, Nose, and Eyes, were lessened; but he said the Pain in his Fundament continued, and that he still felt some Pinchings in his Bowels. On viewing his Fundament, I found it almost surrounded with gleety Excoriations and Ulcers.

About Eight o'Clock this Morning I took my Leave of him; but before I quitted his Room, Miss *Blandy* desired I would visit him again the next Day.

When I got down Stairs, one of the Maids put a Paper into my Hands, which she said Miss *Blandy* had thrown into the Kitchen Fire. Several Holes were burnt in the Paper, but not a Letter of the Superscription was effaced. The Superscription was, *The Powder to clean the Pebbles with.*

Council. What is the Maid's Name that gave you that Paper?

Dr. *Addington*. I cannot recollect which of the Maids it was that gave it me. I opened the Paper very carefully, and found in it a whitish Powder, like white Arsenic in Taste, but slightly discoloured by a little burnt Paper mixed with it. I cannot swear this Powder was Arsenic, or any other Poison, because the Quantity was too small to make any Experiment with, that could be depended on.

Council. What do you really suspect it to be?

Dr. *Addington*. I really suspect it to be white Arsenic.

Council. Please to proceed, Sir.

Dr. *Addington*. As soon as the Maid had left me, Mr. *Norton* the Apothecary produced a Powder, that he said had been found at the Bottom of that Mess of Gruel, which, as was supposed, had poisoned Mr. *Blandy*: He gave me some of this Powder, and I examined it at my Leisure, and believe it to be white Arsenic.

On Monday Morning, August the 12th, I found Mr. *Blandy* much worse than I had left him the Day before. His Complexion was very bad; his Pulse intermitted; and he breathed and swallowed with great Difficulty. He complained more of his Fundament than he had done before. His Bowels were still in Pain.

I now desired that another Physician might be called in, as I apprehended Mr. *Blandy* to be in the utmost Danger, and that this Affair might come before a Court of Judicature. Dr. *Lewis* was then sent for from *Oxford*. I staid with Mr. *Blandy* all this Day. I asked him more than once, whether he really thought he had taken Poison? He answered each Time, that he believed he had.

I asked him, whether he thought he had taken Poison often? He answered in the Affirmative. His Reasons for thinking so, were, because some of his Teeth had decayed much faster than was natural; and because he had frequently, for some Months past, especially after his Daughter had received a Present of Scotch Pebbles from Mr. *Cranstoun*, been affected with very violent and unaccountable Prickings and Heats in his Tongue and Throat, and with almost intolerable Burnings, and Pains in his Stomach and Bowels, which used to go off in Vomitings and Purgings. I asked him, whom he suspected to be the Giver of the Poison? The Tears stood in his Eyes; yet he forced a Smile, and said,—*A poor Love-sick Girl—I forgive her—I always thought there was Mischief in those cursed Scotch Pebbles.*

Dr. *Lewis* came about Eight o'Clock in the Evening. Before he came, Mr. *Blandy*'s Complexion, Pulse, Breath, and Faculty of swallowing, were got much better again; but he complained more of Pain in his Fundament.

This Evening Miss *Blandy* was confined to her Chamber; a Guard was placed over her; and her Keys, Papers, and all Instruments wherewith she could hurt either herself, or any other Person, were taken from her.

Council. How came that?

Dr. *Addington*. I proposed it to Dr. *Lewis*, and we both thought it proper; because we had great Reason to suspect her as the Author of Mr. *Blandy*'s Illness; and because this Suspicion was not yet publicly known, and, therefore, no Magistrate had taken any Notice of her.

Council. Please to go on, Dr. *Addington*, with your Account of Mr. *Blandy*.

Dr. *Addington*. On Tuesday Morning, August the 13th, we found him worse again. His Countenance, Pulse, Breath, and Power of swallowing, were extremely bad. He was excessively weak. His Hands trembled. Both they and his Face were cold and clammy. The Pain was intirely gone from his Bowels, but not from his Fundament. He was now and then a little delirious. He had frequently a short Cough, and a very extraordinary Elevation of his Chest, in fetching his Breath; on which Occasions an ulcerous Matter generally issued from his Fundament. Yet, in his sensible Intervals, he was chearful and jocose: He said, *he was like a Person bit by a mad Dog; for that he should be glad to drink, but could not swallow.*

About Noon this Day his Speech faltered more and more. He was sometimes very restless, at others very sleepy. His Face was quite ghastly. This Night was a terrible one.

On Wednesday Morning, August the 14th, he recovered his Senses for an Hour or more. He told me, he would make his Will in two or three Days; but he soon grew delirious again; and, sinking every Moment, died about Two o'Clock in the Afternoon.

Council. Upon the whole, did you then think, from the Symptoms you have described, and the Observations you made, that Mr. *Blandy* died by Poison?

Dr. *Addington*. Indeed I did.

Council. And is it your present Opinion?

Dr. *Addington*. It is; and I have never had the least Occasion to alter it. His Case was so particular, that he had not a Symptom of any Consequence,

sequence, but what other Persons have had, who have taken white Arsenic; and, after Death, had no * Appearance in his Body, but what other Persons have had, who have been destroyed by white Arsenic.

Council. When was his Body opened?

Dr. Addington. On *Thursday* in the Afternoon, *August* the 15th.

Council. What appeared on opening it?

Dr. Addington. I committed the Appearances to Writing, and should be glad to read them, if the Court will give me Leave.

Then the Doctor, on Leave given by the Court, read as follows:

Mr. *Blandy's* Back, and the hinder Part of his Arms, Thighs, and Legs, were livid. That Fat which lay on the Muscles of his Belly, was of a loose Texture, inclining to a State of Fluidity. The Muscles of his Belly were very pale and flaccid. The Cawl was yellower than is natural; and on the Side next the Stomach and Intestines looked brownish. The Heart was variegated with purple Spots. There was no Water in the Pericardium. The Lungs resembled Bladders half filled with Air, and blotted in some Places with pale, but in most with black Ink. The Liver and Spleen were much discoloured; the former looked as if it had been boiled; but that Part of it which covered the Stomach, was particularly dark. A Stone was found in the Gall-Bladder. The Bile was very fluid, and of a dirty yellow Colour, inclining to red. The Kidneys were all over stained with livid Spots. The Stomach and Bowels were inflated, and appeared, before any Incision was made into them, as if they had been pinched, and extravasated Blood had stagnated between their Membranes. They contained nothing, as far as we examined, but a slimy bloody Froth. Their Coats were remarkably smooth, thin, and flabby. The Wrinkles of the Stomach were totally obliterated. The internal Coat of the Stomach and Duodenum, especially about the Orifices of the former, was prodigiously inflamed and excoriated. The Redness of the White of the Eye in a violent Inflammation of that Part, or rather, the White of the Eye just brushed and bleeding with the Beards of Barley, may serve to give some Idea how this Coat had been wounded. There was no Scirrhus in any Gland of the Abdomen; no Adhesion of the Lungs to the Pleura; nor indeed the least Trace of a natural Decay in any Part whatever.

Council to *Dr. Lewis.*

Council. Did you, *Dr. Lewis*, observe that *Mr. Blandy* had the Symptoms which *Dr. Addington* has mentioned?

Dr. Lewis. I did.

Council. Did you observe that there were the same Appearances on opening his Body, which *Dr. Addington* has described?

Dr. Lewis. I observed and remember them all, except the Spots on his Heart.

Council. Is it your real Opinion, that those Symptoms and those Appearances were owing to Poison?

Dr. Lewis. Yes.

Council. And that he died of Poison?

Dr. Lewis. Absolutely.

Dr. Addington cross-examined.

Prisoner's Council. Did you first intimate to *Mr. Blandy*, or he to you, that he had been poisoned?

Dr. Addington. He first intimated it to me.

Prisoner's Council. Did you ask him, whether he was certain that he had been poisoned by the Gruel that he took on *Monday* Night, *August* the 5th, and on *Tuesday* Night, *August* the 6th?

Dr. Addington. I do not recollect that I did.

Prisoner's Council. Are you sure that he said he was disordered after drinking the Gruel on *Monday* Night, the 5th of *August*?

Dr. Addington. Yes.

Prisoner's Council. Did you ever ask him why he drank more Gruel on *Tuesday* Night, *August* the 6th?

Dr. Addington. I believe I did not.

Prisoner's Council. When did you make Experiments on the Powder delivered to you by *Mr. Norton*?

Dr. Addington. I made some the next Day; but many more some time afterwards.

Prisoner's Council. How long afterwards?

Dr. Addington. I cannot justly say; it might be a Month or more.

Prisoner's Council. How often had you Powder given you?

Dr. Addington. Twice.

Prisoner's Council. Did you make Experiments with both Parcels?

Dr. Addington. Yes: But I gave the greatest Part of the first to *Mr. King*, an experienced Chemist in *Reading*; and desired that he would examine it, which he did; and he told me, that it was white Arsenic. The second Parcel was used in Trials made by myself.

Prisoner's Council. Who had the second Parcel in keeping till you tried it?

Dr. Addington. I had it, and kept it either in my Pocket, or under Lock and Key.

Prisoner's Council. Did you never shew it to any body?

Dr. Addington. Yes, to several Persons; but trusted no body with it out of my Sight.

Prisoner's Council. Why do you believe it to be white Arsenic?

Dr. Addington. For the following Reasons: 1. This Powder has a milky Whiteness; so has white Arsenic. 2. This is gritty and almost insipid; so is white Arsenic. 3. Part of it swims on the Surface of cold Water, like a pale sulphureous Film; but the greatest Part sinks to the Bottom, and remains there undissolved; the same is true of white Arsenic. 4. This thrown on red-hot Iron, does not flame, but rises entirely in thick white Fumes, which have the Stench of Garlick, and cover cold Iron, held just over them, with white Flowers; white Arsenic does the same. 5. I boiled ten Grains of this Powder in four Ounces of clean Water, and then, passing the Decoction through a Filter, divided it into five equal Parts, which were put into as many Glasses: Into one Glass I poured a few Drops of Spirit of Sal Ammoniac; into another some of the Lixivium of Tartar; into the third some strong Spirit of Vitriol; into the fourth some Spirit of Salt; and into the last some Syrup of Violets. The Spirit of Sal Ammoniac threw down a few Particles of pale Sediment. The Lixivium of Tartar gave a white Cloud, which hung a little above the middle of the Glass. The Spirits of Vitriol and Salt made a considerable Precipitation of a lightish-coloured Substance; which, in the former, hardened into glittering Crystals, sticking to the Sides

* The Doctor intended to have excepted the Stone found in *Mr. Blandy's* Gall-Bladder.

Sides and Bottom of the Glafs. Syrup of Violets produced a beautiful pale green Tincture. Having washed the Sauce-pan, Funnel, and Glasses, used in the foregoing Experiments, very clean, and provided a fresh Filtre, I boiled ten Grains of white Arsenic, bought of Mr. *Wilcock*, Druggist in *Reading*, in four Ounces of clean Water; and filtering and dividing it into five equal Parts, proceeded with them just as I had done with the former Decoction. There was an exact Similitude between the Experiments made on the two Decoctions. They corresponded so nicely in each Trial, that I declare I never saw any two Things in Nature more alike, than the Decoction made with the Powder found in Mr. *Blandy's* Gruel, and that made with white Arsenic. From these Experiments, and others, which I am ready to produce, if desired, I believe that Powder to be white Arsenic.

Prisoner's Council. Did any Person make these Experiments with you?

Dr. Addington. No: But Mr. *Wilcock*, the Druggist, was present while I made them; and he weighed both the Powder and the white Arsenic.

Prisoner's Council. When did Mr. *Blandy* first take Medicines by your Order?

Dr. Addington. As soon as he could swallow, on *Saturday* Night, *August* the 10th. Before that Time he was under the Care of Mr. *Norton*.

Benjamin Norton sworn.

I live at *Henley*; I remember being sent for to Mrs. *Mounteney's* in *Henley*, on *Thursday*, *August* the 8th, in order to shew me the Powder. There was with her *Susan Gunnell*, the Servant-maid. She brought in a Pan; I looked at it, and endeavoured to take it out, that I might give a better Account of it; for as it lay, it was not possible to see what it was: Then I laid it on white Paper, and delivered it to Mrs. *Mounteney*, to take Care of, till it dried; she kept it till *Sunday* Morning, then I had it to shew to Dr. *Addington*; I saw the Doctor try it once at my House, upon a red-hot Poker; upon which I did imagine it was of the Arsenic-kind.

Council. Did you attend the Deceased while he was ill?

Norton. I did; I went on the 6th of *August*; he told me he was ill, as he imagined, of a Fit of the Cholick; he complained of a violent Pain in his Stomach, attended with great Reachings, and swelled, and a great Purging; I carried him Physic, which he took on the *Wednesday* Morning; he was then better; on the *Thursday* Morning, as I was going, I met the Maid; she told me, he was not up; so I went about Twelve, he was then with a Client in the Study, he told me the Physic had done him a great deal of Service, and desired more. I sent him some to take on *Friday* Morning: I was not with him after *Thursday*.

Council. Had you used to attend him?

Norton. I had for several Years. The last Illness he had before, was in *July* 1750. I used to attend him.

Council. Did you ever hear Miss *Blandy* talk of Music?

Norton. I did. She said, she had heard it in the House, and she feared, something would happen in the Family. She did not say any Thing particular, because I made very light of it.

Council. Did she say any Thing of Apparitions?

Norton. She said, Mr. *Cranstoun* saw her Father's Apparition one Night.

Council. How long before his Death was it that she talked about Music?

Norton. It might be about three or four Months before.

Council. Was the Powder you delivered to Dr. *Addington*, the self-same Powder you received of Mrs. *Mounteney*?

Norton. It was the very same, it had not been out of my Custody.

Council. Should you know it again?

Norton. I have some of the same now in my Pocket. (He produces a Paper sealed up with the Earl of *MACCLESFIELD* and Lord *CADOGAN's* Seals upon it.) This is some of the same that I delivered to Dr. *Addington*.

Cross-examined.

Prisoner's Council. Who sent for you to the House?

Norton. I cannot tell that.

Prif. Council. When you came, did you see Miss *Blandy*?

Norton. I did. She and Mr. *Blandy* were both together.

Prif. Council. What Conversation had you then?

Norton. I asked Mr. *Blandy*, whether or no he had eat any Thing that he thought disagreed with him? Miss *Blandy* made answer, and said, her Papa had had nothing that she knew of, except some Peas, on the *Saturday* Night before.

Prif. Council. Did you hear any thing of Water-gruel?

Norton. I knew nothing of that, till it was brought to me.

Prif. Council. Had you any Suspicion of Poison then?

Norton. I had not, nor Mr. *Blandy* had not mentioned any thing of being poisoned by having taken Water-gruel.

Prif. Council. What did Miss *Blandy* say to you?

Norton. She desired me to be careful of her Father in his Illness.

Prif. Council. Did she shew any Dislike to his having Physic?

Norton. No, none at all; she desired, when I saw any Danger, I would let her know it, that she might have the Advice of a Physician.

Prif. Council. When was this?

Norton. This was on *Saturday* the 10th.

Prif. Council. When he grew worse, did she advise a Physician might be called in?

Norton. Yes, she did, after I said he was worse; she then begged that Dr. *Addington* might be sent for. Mr. *Blandy* was for deferring it till next Day; but when I came down, she ask'd, if I thought him in Danger? I said, he is; then she said, Though he seems to be against it, I will send for a Doctor directly, and sent away a Man unknown to him.

Prif. Council. Was he for delaying?

Norton. He was till the next Morning.

Prif. Council. How has she behaved to him in any other Illness of her Father's?

Norton. I never saw but at such Times she has behaved with true Affection and Regard?

Prif. Council. Had she used to be much with him?

Norton. She used to be backwards and forwards with him in the Room.

Prif.

Pris. Council. Did you give any Intimation to Miss Blandy, after the Powder was tried?

Norton. I did not; but went up to acquaint her Uncle; he was so affected, he could not come down to apprise Mr. Blandy of it.

Pris. Council. When did she first know that you knew of it?

Norton. I never knew she knew of it till the Monday.

Pris. Council. How came you to suspect that at the Bottom of the Pan to be Poison?

Norton. I found it very gritty, and had no Smell. When I went down, and saw the old Washerwoman, that she had tasted of the Water-gruel, and was affected with the same Symptoms as Mr. Blandy, I then suspected he was poisoned, and said, I was afraid Mr. Blandy had had foul Play; but I did not tell either him or Miss Blandy so, because I found by the Maid, that Miss was suspected.

Pris. Council. Who did you suspect might do it?

Norton. I had Suspicion it was Miss Blandy.

King's Council. When was Dr. Addington sent for?

Norton. On the Saturday Night.

Mrs. Mary Mounteney sworn.

Susan Gunnell brought a Pan to my House on the 8th of August with Water-gruel in it, and Powder at the Bottom, and desired me to look at it: I sent for Mr. Norton, he took the Powder out on a Piece of white Paper, which I gave him: He delivered the same Powder to me, and I took care of it and locked it up.

Cross-examined.

Prisoner's Council. Did you ever see any Behaviour of Miss Blandy otherwise than that of an affectionate Daughter?

Mounteney. I never did. She was always dutiful to her Father, as far as I saw, when her Father was present.

Pris. Council. To whom did you first mention that this Powder was put into the Paper?

Mounteney. To the best of my Remembrance, I never made mention of it to any body, till Mr. Norton fetched it away, which was on the 11th of August, the Sunday Morning after, to be shewn to Dr. Addington.

Pris. Council. Between the Time of its being brought to your House, and the Time it was fetched away, was you ever at Mr. Blandy's House?

Mounteney. No. I was not in that Time, but was there on Sunday in the Afternoon.

Pris. Council. Had you not shewed it at any other Place during that Time?

Mounteney. I had not, Sir.

Pris. Council. Did you on the Sunday, in the Afternoon, mention it to Mr. or Miss Blandy?

Mounteney. No, not to either of them.

Susannah Gunnell sworn.

Gunnell. I carried the Water-gruel in a Pan to Mrs. Mounteney's House.

Council. Whose Use was it made for?

Gunnell. It was made for Mr. Blandy's Use, on the Sunday Seven-night before his Death.

Council. Who made it?

Gunnell. I made it.

Council. Where did you put it, after you had made it?

Gunnell. I put it into the common Pantry, where all the Family used to go.

Council. Did you observe any particular Person busy about there afterwards?

Gunnell. No, no body; Miss Blandy told me on the Monday she had been in the Pantry, (I did not see her) stirring her Father's Water-gruel, and eating the Oatmeal out of the Bottom of it.

Council. What Time of the Monday was this?

Gunnell. This was some time about the Middle of the Day.

Council. Did Mr. Blandy take any of that Water-gruel?

Gunnell. I gave him a half-pint Mug of it on Monday Evening, for him to take before he went to Bed.

Council. Did you observe any body meddle with that half-pint Mug afterwards?

Gunnell. I saw Miss Blandy take the Tea-spoon that was in the Mug, and stir the Water-gruel, and after put her Finger to the Spoon, and then rubb'd her Fingers.

Council. Did Mr. Blandy drink any of that Water-gruel?

Gunnell. Mr. Blandy drank some of it, and on the Tuesday Morning, when he came down Stairs, he did not come through the Kitchen as usual, but went the back Way into his Study.

Council. Did you see him come down?

Gunnell. I did not.

Council. When was the first Time you saw him that Day?

Gunnell. It was betwixt Nine and Ten; Miss Blandy and he were together; he was not well, and going to lie down on the Bed.

Council. Did you see him in the Evening?

Gunnell. In the Evening Robert Harman came to me, as I was coming down Stairs, and told me, I must warm some Water-gruel, for my Master was in haste for Supper.

Council. Did you warm some?

Gunnell. I warm'd some of that out of the Pan, of which he had some the Night before, and Miss Blandy carried it to him into the Parlour.

Council. Did he drink it?

Gunnell. I believe he did; there seemed to be about half of it left the next Morning.

Council. How did he seem to be after?

Gunnell. I met him, soon after he had eat the Water-gruel, going up Stairs to Bed; I lighted him up: As soon as he was got into the Room, he called for a Basin to reach; he seemed to be very sick, by his reaching a considerable Time.

Council. How was he next Morning?

Gunnell. About Six o'Clock I went up the next Morning, to carry him his Physic: He said, he had had a pretty good Night, and was much better.

Council. Had he reached much over Night?

Gunnell. He had, for the Basin was half full, which I left clean over Night.

Council. Was any Order given you to give him any more Water-gruel?

Gunnell. On the Wednesday Miss Blandy came into the Kitchen, and said, Susan, as your Master has taken Physic, he may want more Water-gruel, and as there is some in the House, you need not make fresh as you are ironing; I told her, it was stale, if there was enough; and it would not hinder much to make fresh; so I made fresh accordingly, and I went into the Pantry to put some in for my Master's Dinner; then I brought out the Pan (the Evening before, I thought it had an odd Taste) so I was willing to taste it again, to see if I was mistaken or not: I put it to my Mouth,

and drank some, and taking it from my Mouth, I observed some Whiteness at the Bottom.

Council. What did you do upon that?

Gunnell. I went immediately to the Kitchen, and told *Betty Binfield*, there was a white Settlement, and I did not remember I ever had seen Oatmeal so white before: *Betty* said, Let me see it; I carried it to her, she said, What Oatmeal is this? I think it looks as white as Flour. We both took the Pan, and turned it about, and strictly observed it, and concluded it could be nothing but Oatmeal. I then took it out of Doors into the Light, and saw it plainer; then I put my Finger to it, and found it gritty, at the Bottom of the Pan; I then recollected I had heard say, Poison was white and gritty, which made me afraid it was Poison.

Council. What did you do with the Pan?

Gunnell. I carried it back again, and set it down on the Dresser in the Kitchen; it stood there a small Time, then I locked it up in the Closet, and on the *Thursday* Morning I carried it to Mrs. *Mounteney*, and Mr. *Norton* came there and saw it.

Council. Do you remember Miss *Blandy* saying any Thing to you, about eating her Papa's Water-gruel?

Gunnell. About six Weeks before his Death, I went into the Parlour; Miss *Blandy* said, *Susan*, what is the Matter with you? You do not look well: I said, I do not know what is the Matter, I am not well, but I do not know what the Matter is. She said, What have you eat or drank? upon which I said, Nothing more than the rest of the Family. She said, *Susan*, have you eat any Water-gruel? for I am told Water-gruel hurts me, and it may hurt you. I said, It cannot affect me; Madam, for I have not eat any.

Council. What was it * *Betty Binfield* said to you about Water-gruel?

Gunnell. *Betty Binfield* said, Miss *Blandy* asked, if I had eat any of her Papa's Water-gruel? saying, if I did, I might do for myself, a Person of my Age.

Council. What Time was this?

Gunnell. I cannot say, whether it was just after, or just before, the Time she had spoke to me herself. On the *Wednesday* Morning, as I was coming down Stairs, from giving my Master his Physic, I met *Elizabeth Binfield*, with the Water-gruel in a Bason, which he had left; I said to the Chairwoman, *Ann Emmet*, Dame, you used to be fond of Water-gruel, here is a very fine Mefs my Master left last Night, and I believe it will do you Good; the Woman soon sat down on a Bench in the Kitchen, and eat some of it, I cannot say all.

Council. How was she afterwards?

Gunnell. She said, the House smelt of Physic, and every Thing tasted of Physic; she went out, I believe into the Wash-house, to reach, before she could finish it.

Council. Did you follow her?

Gunnell. No, I did not; but about twenty Minutes or half an Hour after that, I went to the Necessary-house, and found her there vomiting and reaching, and, as she said, purging.

Council. How long did she abide there?

Gunnell. She was there an Hour and half, during which Time I went divers Times to her; at first I carried her some Surfeit-Water; she then desired to have some fair Water; the next Time

I went to see how she did, she said she was no better; I desired her to come in a Doors, hoping she would be better by the Fire; she said, she was not able to come in; I said, I would lead her in; I did, and sat her down in a Chair by the Fire; she was vomiting, and reaching continually; she sat there about half an Hour or something more, during which Time she grew much worse, and I thought her to be in a Fit, or seized with Death.

Council. Did you acquaint Miss *Blandy* with the Illness and Symptoms of this poor Woman?

Gunnell. I told Miss *Blandy*, when I went into the Room to dress her, about Nine o'Clock, that Dame (the Name we used to call her by) had been very ill that Morning; that she had complained, that the Smell of her Master's Physic had made her sick; and that she had eat nothing but a little of her Master's Water-gruel, which he had left last Night, which could not hurt her.

Council. What did she say to that?

Gunnell. She said, she was very glad she was not below Stairs, for she should have been shocked to have seen her poor Dame so ill.

Council. As you have lived Servant in the House, how did you observe Miss *Blandy* behave towards her Father, and in what Manner did she use to talk of him, three or four Months before his Death?

Gunnell. Sometimes she would talk very affectionately, and sometimes but middling.

Council. What do you mean by middling?

Gunnell. Sometimes she would say, he was an old Villain, for using an only Child in such a Manner.

Council. Did she wish him to live?

Gunnell. Sometimes she wished for his long Life, sometimes for his Death.

Council. When she wished for his Death, in what Manner did she express herself?

Gunnell. She often said, she was very unkind, and that if he was dead, she would go to *Scotland*, and live with *Lady Cranstoun*.

Council. Did she ever say, how long she thought her Father might live?

Gunnell. Sometimes she would say, for his Constitution he might live these twenty Years; sometimes she would say, he looked ill and poorly.

Council. Do you remember when Dr. *Addington* was sent for, on the *Saturday*?

Gunnell. I do.

Council. Had Miss *Blandy* used to go into her Father's Room after that Time?

Gunnell. She did as often as she pleased till *Sunday* Night; then Mr. *Norton* took Miss *Blandy* down Stairs, and desired me not to let any body go into the Room, except myself, to wait on him.

Council. Did she come in afterwards?

Gunnell. She came into the Room on *Monday* Morning, soon after Mr. *Norton* came in, or with him; I went in about Ten o'Clock again.

Council. What Conversation passed between Miss *Blandy* and her Father?

Gunnell. She fell down on her Knees, and said to him, Banish me, or send me to any remote Part of the World; do what you please, so you forgive me; and as to Mr. *Cranstoun*, I will never see him, speak to him, nor write to him more, so long as I live, so you will forgive me.

Council. What Answer did he make?

Gunnell. He said, I forgive thee, my Dear,

* N. B. The Council for the Prisoner waved the Objection to this as Hearsay Evidence; because the Council for the Crown assured them, they should call *Betty Binfield* herself next.

and I hope God will forgive thee; but thee shouldst have considered better, than to have attempted any Thing against thy Father; thee shouldst have considered, I was thy own Father.

Council. What said she to this?

Gunnell. She answered, Sir, as for your Illness, I am intirely innocent. I said, Madam, I believe you must not say you are intirely innocent, for the Powder that was taken out of the Water-gruel, and the Paper of Powder that was taken out of the Fire, are now in such Hands, that they must be publickly produced. I told her, I believed I had one Dose prepared for my Master in a Dish of Tea, about six Weeks ago.

Council. Did you tell her this before her Father?

Gunnell. I did.

Council. What Answer did she make?

Gunnell. She said, I have put no Powder into Tea; I have put Powder into Water-gruel, and if you are injured, I am intirely innocent, for it was given me with another Intent.

Council. What said Mr. Blandy to this?

Gunnell. My Master turned himself in his Bed, and said to her, *Oh! Such a Villain! come to my House, eat of the best, and drink of the best, that my House could afford, to take away my Life, and ruin my Daughter.*

Council. What else passed?

Gunnell. He said, Oh! My Dear! thee must hate that Man, thee must hate the Ground he treads on, thee canst not help it. The Daughter said, Oh! Sir, your Tenderness towards me is like a Sword to my Heart; every Word you say is like Swords piercing my Heart; much worse, than if you were to be ever so angry. I must down on my Knees, and beg you will not curse me.

Council. What said the Father?

Gunnell. He said, *I curse thee! my Dear, how couldst thou think I could curse thee? No, I bless thee, and hope God will bless thee, and amend thy Life;* and said further, *Do, my Dear, go out of my Room, say no more, lest thou shouldst say any Thing to thy own Prejudice: Go to thy Uncle Stevens, take him for thy Friend, poor Man! I am sorry for him.* Upon this she directly went out of the Room.

Council. Give an Account of the Paper you mentioned to her, how it was found.

Gunnell. On the Saturday before my Master died, I was in the Kitchen. Miss Blandy had wrote a Direction on a Letter to go to her Uncle Stevens. Going to the Fire to dry it, I saw her put a Paper into the Fire, or two Papers, I cannot say whether. I went to the Fire, and saw her stir it down with a Stick: Elizabeth Binfield then put on fresh Coals, which I believe kept the Paper from being consumed. Soon after Miss Blandy had put it in, she left the Kitchen; I said to Elizabeth Binfield, Betty, Miss Blandy has been burning something; she asked, Where? I pointed to the Grate, and said, At that Corner; upon which Betty Binfield moved a Coal, and took from thence a little Paper; I stood by and saw her, she gave it into my Hand; it was a small Piece of Paper, with some Writing on it, folded up about three Inches long. The Writing was, *The Powder to clean the Pebbles,* to the best of my Remembrance.

Council. Did you read it?

Gunnell. I did not, Elizabeth Binfield read it to me. (*Produced in Court, Part of it burnt, sealed up with the Earl of MACCLESFIELD and Lord CADOGAN's Seals.*) This is the Paper, I believe, by

the Look of it; but I did not see it unfolded, I delivered it into Elizabeth Binfield's Hand on Saturday Night, between Eleven and Twelve o'Clock. From the Time it was taken out of the Fire, it had not been out of my Pocket, or any Thing done to it, from that Time till I gave it her. I went into my Master's Room about Seven o'Clock in the Morning, to carry him something to drink; when he had drank it, I said, I have something to say to you concerning your Health, and concerning your Family; I must beg you will not put yourself in a Passion, but hear me what I have to say: Then I told him, I believe, Sir, you have got something in your Water-gruel, that has done you some Injury, and I believe Miss Blandy put it in, by her coming into the Wash-house on Monday, and saying, she had been stirring her Papa's Water-gruel, and eating the Oatmeal out from the Bottom: He said, I find I have something not right: My Head is not right as it used to be, nor has been for some Time. I had before told him, I had found the Powder in the Gruel: He said, Dost thou know any Thing of this Powder? Didst thee ever see any of it? I said, No, Sir, I never saw any, but what I saw in the Water-gruel. He said, Dost know where she had this Powder, nor canst not thee guess? I said, I cannot tell, except she had it of Mr. Cranstoun. My Reason for suspecting that was, Miss Blandy had Letters came oftener than usual. My Master said, And now thee mention'st it, I remember when he was at my House, he mentioned a particular Poison that they had in their Country; saying, *Oh! that Villain! that ever he came to my House!* I told him likewise, I had shewed the Powder to Mr. Norton; he asked, what Mr. Norton said to it? I told him, Mr. Norton could not say what it was, as it was wet, but said, Let it be what it will, it ought not to be there; and said, he was fearful, there was foul Play somewhere. My Master said, What, Norton not know! that is strange, and so much used to Drugs. Then I told him, Mr. Norton thought proper he should search her Pockets, and take away her Keys and Papers. He said, I cannot do it, I cannot shock her so much; canst not thee, when thou goest into her Room, take out a Letter or two, that she may think she dropped them by Chance? I told him, I had no Right to do it: She is your Daughter, and you have a Right to do it, and no body else. He said, I never in all my Life read a Letter that came to my Daughter, from any Person. He desired, if possible, if I could meet with any Powder any where, that I would secure it.

Council. Do you remember when Ann Emmet was sick (the Chair-woman)?

Gunnell. I do, but cannot say how long, or how little a Time before this; I remember she was ill some Time before my Master's Death.

Council. What did the Prisoner order the old Woman to eat at that Time?

Gunnell. She sent her some Sack-Whey, and some Broth: I believe to the Value of a Quart or three Pints at twice, about once a Day, or every other Day, for four or five Days.

Council. Have you been ill from what you eat yourself?

Gunnell. I was ill after drinking a Dish of Tea one Sunday Morning, which I thought was not well relished, and I believed somebody had been taking Salts in the Cup before.

Council. Who was it poured out for?

Gunnell.

Gunnell. I believe it was poured out for my Master.

Council. Why do you believe that?

Gunnell. Because he used to drink in a different Dish from the rest of the Family, and it was out of his Dish.

Council. When was this?

Gunnell. This was about six Weeks and three Days before his Death.

Council. How did you find yourself, after drinking it?

Gunnell. I found no ill Effect till after Dinner: I then had a Hardness in my Stomach, and apprehended it was from eating plentifully of Beans for Dinner.

Council. What Symptoms had you afterwards?

Gunnell. My Stomach seemed to have something in it that could not digest, and I had remarkable Trembling for three Days, and after that for three Mornings was seized with a Reaching.

Council. Have you since that Time been ill, from what you eat or drank?

Gunnell. I tasted the Water-gruel twice, once on the *Tuesday* Evening, when I was mixing it for my Master; and on *Wednesday*, when I was going to pour it away, I put the Pan to my Mouth, and drank a little of it.

Council. How did you find yourself after that?

Gunnell. I did not find any remarkable Disorder till the *Wednesday* Morning about Two o'Clock, before my Master's Death; then I was seemingly seized with Convulsions. My Throat was very troublesome for five or six Weeks after, and seemed a little sore and a little swelled. I continued very ill for three Weeks and upwards after my Master's Death, which was on the *Wednesday*. I went to Bed sick at Two that Morning, and apply'd to Dr. *Addington*.

Council. Do you remember any Thing besides Letters coming from Mr. *Cranstoun*?

Gunnell. I remember she had once a large Box of Table-Linen, and some *Scotch* Pebbles in it; she said, they came from him.

Council. What Time was this?

Gunnell. This was early in the Spring, before my Master's Death.

Council. Had she more than one Box sent to her?

Gunnell. She had a small Box sent afterwards of *Scotch* Pebbles; that might be about three Months before his Death, or less, I cannot say.

Council. Did she use to shew the Pebbles to any body?

Gunnell. She used to shew them to any Person of her Acquaintance; but I never heard of any Powder to clean them.

Cross-examined.

Prisoner's Council. For a Year before the 5th of *August* last, had any Thing ailed your Master, so as to call in the Apothecary?

Gunnell. About a Year before he had had a violent Cold.

Pris. Council. Was he, or was he not, in good Health for a Year before?

Gunnell. He was frequently complaining of the Gravel and Heart-burn, which he was subject to for Years.

Pris. Council. Did he make any other Complaints?

Gunnell. He used to have little Fits of the Gout.

Pris. Council. Was there any other Complaint for seven, eight, nine, or ten Years?

Gunnell. Nothing particular, but that of the Heart-burn; which I cannot tell whether I ever heard him complain of before or not.

Pris. Council. Can you take upon you to say, that he made any particular Complaint of the Heart-burn, more than he had done at any other Time?

Gunnell. I cannot say positively; because I have not continued these Things in my Memory. He ordered me to give him some dry Oatmeal and Water for the Heart-burn.

Pris. Council. Is that good for the Heart-burn?

Gunnell. I have been told, it is very good for it.

Pris. Council. How was her Behaviour to her Father?

Gunnell. Her general Behaviour was dutiful, except upon any Passion, or a hasty Word from her Father.

Pris. Council. When did she call her Father, old Villain?

Gunnell. She would use Expressions of that kind, when she was in a Passion.

Pris. Council. Upon what Account?

Gunnell. For using her ill.

King's Council. Were these Expressions made use of before his Face, or behind his Back?

Gunnell. I have heard her before his Face, and behind his Back.

Pris. Council. When have you heard it?

Gunnell. I believe in the last twelve Months; but cannot be sure.

King's Council. Recollect on what Occasion.

Gunnell. It has been, I believe, on little Passions on both Sides, and that generally from Trifles.

Pris. Council. When did you first communicate your Suspicion to Mr. *Blandy*, about his being poisoned?

Gunnell. On the *Saturday* Morning before his Death, from what I saw on the *Wednesday* before.

Pris. Council. Why did you keep this Suspicion of yours from *Wednesday* to *Saturday*?

Gunnell. The Reason I did not tell my Suspicions to Mr. *Blandy*, sooner than *Saturday*, was, because I staid for Mr. *Stevens*, the Prisoner's Uncle, who did not come till *Friday* Night; I told him then, and he desired me to tell Mr. *Blandy* of it.

Pris. Council. Did you ever say any Thing of it to Miss *Blandy*?

Gunnell. No, I did not.

Pris. Council. Pray, what Conversation passed between her Father and her down upon her Knees, &c.?

Gunnell. She said, Sir, how do you do? he said, I am very ill.

Pris. Council. Was any Thing said about Mr. *Cranstoun's* Addreses to her?

Gunnell. Yes, there was. That Conversation was occasioned by a Message, that Mr. *Blandy* had sent to his Daughter by me on *Monday* Morning.

Pris. Council. What was that Message?

Gunnell. That he was ready to forgive her, if she would but endeavour to bring that Villain to Justice.

Pris. Council. Did she say, with what Intent the Powder was given to her?

Gunnell. She said, it was given her with another Intent.

Pris. Council. Did she say, upon what Intent?

Gunnell.

Gunnell. She did not say that. He did not ask that.

Pris. Council. Was not that explained?

Gunnell. It was no ways explained.

Pris. Council. Did he treat her, as if she herself was innocent.

Gunnell. He did, Sir.

Pris. Council. Then all he said afterwards was as thinking his Daughter very innocent.

Gunnell. It was, Sir.

Pris. Council. As to the Ruin of his Daughter; did he think it was intirely owing to *Cranstoun*?

Gunnell. Mr. *Blandy* said, he believed his Daughter intirely innocent of what had happened.

Pris. Council. By what he said to you, do you think that the Father thought his Daughter was imposed upon by *Cranstoun*, when he used that Expression, *She must hate the Man, &c.*?

Gunnell. I do think so; he said, Where is *Polly*? I answered, In her Room; he said, *Poor unfortunate Girl! that ever she should be imposed upon and led away by such a Villain to do such a Thing!*

Pris. Council. Do you imagine, from the whole Conversation that passed between her Father and her, that she was intirely innocent of the Fact, of the Powder being given?

Gunnell. I do not think so; she said, she was innocent.

Pris. Council. What was your Opinion, did the Father think her wholly unacquainted with the Effect of the Powder?

Gunnell. I believe he thought so; that is as much as I can say.

Pris. Council. When you told Miss *Blandy* that the Washerwoman was extremely ill, having eat some Water-gruel, was any Thing more said with relation to the Father's having eat some of the same Water-gruel before?

Gunnell. I don't remember there was a Word said about the Father's having eat any of it.

Pris. Council. During the Time of his Illness, was not Miss *Blandy*'s Behaviour to her Father, with as much Care and Tendernefs as any Daughter could shew?

Gunnell. She seemed to direct every Thing as she could have done for herself, or any other Person that was sick.

Pris. Council. Do you know that she was guilty of any Neglect in this Respect?

Gunnell. No, I do not, Sir.

King's Council. What did he mean when he said, *Poor unfortunate Girl! that ever she should be imposed upon, and led away by such a Villain to do such a Thing!* What do you imagine he meant by such a Thing?

Gunnell. By giving him that, which she did not know what it was.

Court. When she told you, that Water-gruel would serve for her Father on the *Wednesday*, did she know that her Father had been ill, by taking Water-gruel on the *Monday* and *Tuesday* Nights?

Gunnell. She knew he was ill, but I cannot tell whether she knew the Cause of it; and knew that the Chairwoman was ill, before she proposed my giving him the same Gruel; but did not oppose my making fresh, for any other Reason, than that it would hinder my Ironing.

Elizabeth Binfield sworn.

Binfield. I was a Servant to Mr. *Francis Blandy* at *Henley*, and had been almost three Years.

Council. When did you first discover his Ill-

ness, and hear him complain of unusual Prickings in his Stomach?

Binfield. About a Fortnight before he died.

Council. Did you ever hear Miss *Blandy* talk of something in the House, which she said presaged his Death, or something like it?

Binfield. I have often heard her talk of Walkings and Music in the House that she had heard; she said, she thought it to be her Mother; saying, the Music foretold her Father's Death.

Council. Who has she said so to?

Binfield. She has told me so.

Council. How long ago?

Binfield. For some Time before her Father's Death; I believe for three Quarters of a Year.

Council. How long did she continue talking in this Manner?

Binfield. She did till his Death; I have often heard her say, he would die before *October*.

Council. What Reasons did she give for that?

Binfield. By the Music; saying, she had been informed that Music foretels Death within a Twelve-month.

Council. Who did she say had informed her so?

Binfield. She said Mr. *Cranstoun* had been to some famous Woman who had informed him so, and named one Mrs. *Morgan*, who lived either in *Scotland*, or *London*; I cannot say which.

Council. Did she express herself glad, or sorry?

Binfield. Glad, for that then she should soon be released from all her Fatigues, and soon be happy.

Council. Did she talk of the State of Health in which he was?

Binfield. Sometimes she has said, he has been very well, sometimes ill. I remember I heard her say that my Master complained of a Ball of Fire in his Guts; I believe it was before the *Monday* he eat the Water-gruel, I cannot particularly say, I believe a Fortnight before he died; then she said, Mr. *Cranstoun* had told her of that famous Woman's Opinion about Music.

Council. Do you remember the first Time one *Ann Emmet* was taken ill?

Binfield. It was about a Month or six Weeks before.

Council. Do you know what Miss *Blandy* ordered her in that Illness?

Binfield. I do. She ordered her some White-wine Whey, and Broth several Times. I made it two or three Times, two Quarts at a Time.

Council. Do you remember a Paper being taken out of the Fire?

Binfield. I do. It was on the *Saturday* before my Master died, I took it out myself.

Council. Should you know it again, if you see it?

Binfield. I believe I should, (*she is shewn a Paper,*) I really believe this is it, which I took out of the Fire, and delivered it to *Susan Gunnell*; after which I had it again from her, and I delivered it to Dr. *Addington*, and Mr. *Norton*.

Council. Do you remember Miss *Blandy*'s saying any thing about *Susan Gunnell*'s eating the Water-gruel?

Binfield. I do. When *Susan* was ill, she asked me, how *Susan* did? I said, Very ill. Said she, Do you remember her ever drinking her Master's Water-gruel? I said, Not as I know of. She said, *If she does, she may do for herself, may I tell you.*

Council. Did she bid you tell *Susan* so?

Binfield. She did not bid me tell *Susan*, but I did tell her.

Council. What Time was this ?

Binfield. It might be about a Month or six Weeks before Mr. *Blandy's* Death.

Council. Do you remember any Expressions she made use of about her Father ?

Binfield. I heard her say, *Who would grudge to send an old Father to Hell for ten thousand Pounds ?* Exactly them Words.

Council. When was this ?

Binfield. It was about a Month before his Death, or it may be more, I cannot justly tell.

Council. How was this Conversation introduced ?

Binfield. She was speaking of young Girls being kept out of their Fortunes.

Council. Who was with you at this Time ?

Binfield. It was to me and no body else.

Council. Have you heard her use him with bad Language ?

Binfield. I have heard her curse him, call him Rascal and Villain.

Council. What was she so angry with her Father about ?

Binfield. Mr. *Cranstoun* was at our House about three Quarters of a Year before Mr. *Blandy's* Death. He came in *August* 1750, and stayed there till near *Christmas*. It was not agreeable to my Master; we used to think by his Temper, that he did not approve of his being so much with his Daughter; but I do not believe he debarred his Daughter from keeping him Company.

Council. Did you ever hear him say any Thing to her, of his having been once like to be poisoned ?

Binfield. I was in the Kitchen when my Master came in to be shaved. I stayed there till he went out again. Miss *Blandy* was there, and he said, that once he had like to have been poisoned.

Council. When was it that he said so ?

Binfield. It was on the 10th of *August*, saying, he was once at the Coffee-house, or the *Lion*, and he and two other Gentlemen had like to have been poisoned by what they had drank; Miss *Blandy* said, Sir, I remember it very well; she said, it was at one of those Places, and he said no, it was the other. He said, One of the Gentlemen died immediately, the other is dead now, and I have survived them both; but it is my Fortune to be poisoned at last. He looked very hard at her, during the Time he was talking.

Council. What did he say was put into the Wine ?

Binfield. I remember he said, it was white Arsenic.

Council. When he looked hard at her, how did she look ?

Binfield. She looked in great Confusion, and all in a Tremble.

Council. Did you sit up with Miss *Blandy* the Night after her Father died ?

Binfield. I did till Three o'Clock, she went to Bed about One. She said to me, *Betty*, will you go away with me? If you will go to the *Lion* or the *Bell*, and hire a Post-chaise, I will give you fifteen Guineas when you get into it, and ten Guineas more when we come to *London*. I said, Where will you go then, into the *North*? She said, I shall go into the *West* of *England*. I said, Shall you go by Sea? She said, I believe some Part of the Way. I said, I will not go. Then she burst into a Laughter, and said, *I was only in a Joke, did you think I was in earnest ?* Yes, said I. No, said she, *I was only joking*.

Council. Did you ever hear Miss tell Dr. *Ad-dington*, that she had given your Master some of that Powder ?

Binfield. I heard Miss *Blandy* tell the Doctor, she had given my Master some of that Powder before in a Dish of Tea, which, she said, he did not drink, and she throwed into the Street out of the Window, fearing she should be discovered, and filled the Cup again; and that *Susan Gunnell* drank it, and was ill for a Week after.

Council. When was this ?

Binfield. This was on the *Monday* before my Master died.

Council. Do you remember what happened on *Monday*, the 5th of *August* ?

Binfield. Yes. On that Day I and two Washerwomen were in the Wash-house. Miss *Blandy* came in, and said, *Betty*, I have been in the Pantry eating some of the Oatmeal out of your Master's Water-gruel. I took no Notice of it; but the same Day, in the Afternoon, I went into the Pantry, and Miss *Blandy* followed me, and took a Spoon and stirred the Water-gruel, and taking some up in the Spoon, put it between her Fingers and rubbed it.

Council. What was it in ?

Binfield. It was in a Pan. When my Master was taken ill on the *Tuesday* in the Afternoon, Miss came into the Kitchen, and said, *Betty*, if one Thing should happen, will you go with me to *Scotland*? I said, Madam, I do not know. What, says she, you are unwilling to leave your Friends? Said I, If I should go there, and not like it, it will be expensive travelling back again.

Council. Did she say, If one Thing should happen? What Thing ?

Binfield. I took no farther Notice of it then; but those were the Words. On the *Monday* Morning, before he died, she said to me, *Betty*, go up to your Master, and give my Duty to him, and tell him, I beg to speak one Word with him. I did; she went up; I met her when she came out of the Room from him; she clasped me round the Neck, and burst out a crying, and said, *Susan* and you are the two honestest Servants in the World; you ought to be imaged in Gold for your Honesty; half my Fortune will not make you amends for your Honesty to my Father.

Cross-examined.

Prisoner's Council. Had Mr. *Blandy* at any Time, and when, previous to the 5th of *August*, been ill ?

Binfield. About a Twelvemonth before, he had been ill some Time; but I cannot tell how long.

Pris. Council. What was his Illness ?

Binfield. He had a great Cold.

Pris. Council. Did he take any Physic ?

Binfield. I believe he did once or twice.

Pris. Council. Can you tell the Time ?

Binfield. I believe it was the latter End of *July*, or Beginning of *August*.

Pris. Council. Who made the Whey and Broth, that were sent to the Washerwoman ?

Binfield. My Fellow-Servant made the Whey, I made the Broth.

Pris. Council. Was she a kind Mistress to the Washerwoman ?

Binfield. She was; she had a greater Regard for her than any other Woman that came about the House.

Pris.

Pris. Council. About this Music, Who did she say heard it?

Binfield. She mostly mentioned herself hearing that.

Pris. Council. Was this Talk when *Cranstoun* was there?

Binfield. I heard her talk so, when he was there, and in his Absence.

Pris. Council. Was it when she was in an angry Temper only, that she used those Words to her Father?

Binfield. I have heard her in the best of Times curse her Father.

Pris. Council. Was *Susan Gunnell* very ill after drinking that Tea?

Binfield. She was, and continued so for a Week.

King's Council. Was it at the Time *Susan* was ill, from drinking of the Tea, that Miss *Blandy* asked you about her taking the Gruel, and said, It would do for her? And did she say any Thing else?

Binfield. Miss *Blandy* said, she poured it out for my Master; but he went to Church, and left it.

Pris. Council. Have you had any ill Will against her?

Binfield. I always told her, I wished her very well.

Pris. Council. Did you ever say, *Damn her for a black Bitch, I should be glad to see her go up the Ladder, and be hanged?*

Binfield. No, Sir, I never did in my Life.

King's Council. Did you and the rest of the Family observe, that Mr. *Blandy's* Looks were as well the last six Months as before?

Binfield. Miss *Blandy* has said to me, Don't you think my Father looks faint? Sometimes I have said, He is; sometimes not. I never observed any Alteration at all.

Here Dr. *Addington* is appealed to by the Council for the Prisoner.

Prisoner's Council. Do you, Dr. *Addington*; remember Miss *Blandy's* telling you on *Monday Night, August* the 12th, that she had on a *Sunday Morning*, about six Weeks before, when her Father was absent from the Parlour, mixed a Powder with his Tea; and that *Susan Gunnell* had drank that Tea?

Dr. *Addington.* I remember her telling me that *Monday Night*, that she had on a *Sunday Morning*, about six Weeks before, when her Father was absent from the Parlour, mixed a Powder with his Tea; but do not remember her saying, that *Susan Gunnell* had drank that Tea. I have several times heard *Susan Gunnell* say, that she was sure she had been poisoned by drinking Tea out of Mr. *Blandy's* Cup that *Sunday Morning*.

Pris. Council. Did not Miss *Blandy* declare to you, that she had always thought the Powder innocent?

Dr. *Addington.* Yes.

Pris. Council. Did she not always declare the same?

Dr. *Addington.* Yes.

The King's Council then interposed, and said, that he had not intended to mention what had passed in Discourse between the Prisoner and Dr. *Addington*; but that now, as her own Council had been pleased to call for Part of it, he desired the Whole might be laid before the Court.

Dr. *Addington.* On *Monday Night, August* the

12th, after Miss *Blandy* had been secured, and her Papers, Keys, &c. taken from her, she threw herself on the Bed and groaned; then raised herself; and wrung her Hands, and said, That it was impossible for any Words to describe the Horrors and Agonies in her Breast; that Mr *Cranstoun* had ruined her; that she had ever, till now, believed him a Man of the strictest Honour; that she had mixed a Powder with the Gruel, which her Father had drank on the foregoing *Monday* and *Tuesday* Nights; that she was the Cause of his Death, and that she desired Life for no End, but to go through a painful Penance for her Sin. She protested at the same Time, that she had never mixed the Powder with any Thing else that he had swallowed; and that she did not know it to be Poison, till she had seen its Effects. She said, that she had received the Powder from Mr. *Cranstoun*, with a Present of *Scotch* Pebbles; that he had wrote on the Paper that held it, *The Powder to clean the Pebbles with*; that he had assured her it was harmless; that he had often taken it himself; that if she would give her Father some of it now and then, *a little and a little at a Time*, in any Liquid, it would make him kind to him and her; that accordingly about six Weeks before, at Breakfast-time, her Father being out of the Room, she had put a little of it into his Cup of Tea, but that he never drank it; that Part of the Powder swimming at Top of the Tea, and Part sinking to the Bottom, she had poured it out of the Window, and filled up the Cup with fresh Tea; that then she wrote to Mr. *Cranstoun*, to let him know, that she could not give it in Tea without being discovered; and that, in his Answer, he had advised her to give it in Water-gruel for the future, or in any other thickish Fluid. I asked her, whether she would endeavour to bring Mr. *Cranstoun* to Justice? After a short Pause, she answered, that she was fully conscious of her own Guilt, and was unwilling to add Guilt to Guilt; which she thought she should do, if she took any Step to the Prejudice of Mr. *Cranstoun*, whom she considered as her Husband, tho' the Ceremony had not passed between them.

King's Council. Was any Thing more said by the Prisoner or you?

Dr. *Addington.* I asked her, whether she had been so weak as to believe the Powder, that she had put into her Father's Tea and Gruel, so harmless as Mr. *Cranstoun* had represented it? Why Mr. *Cranstoun* had called it a Powder to clean Pebbles, if it was intended only to make Mr. *Blandy* kind? Why she had not tried it on herself; before she ventured to try it on her Father? Why she had flung it into the Fire? Why, if she had really thought it innocent, she had been fearful of a Discovery, when Part of it swam on the Top of the Tea? Why, when she had found it hurtful to her Father, she had neglected, so many Days, to call proper Assistance to him? And why, when I was called at last, she had endeavoured to keep me in the dark, and hide the true Cause of his Illness?

Council. What Answers did she make to these Questions?

Dr. *Addington.* I cannot justly say; but very well remember; that they were not such as gave me any Satisfaction.

Pris. Council. She said then, that she was entirely ignorant of the Effects of the Powder?

Dr. *Addington.* She said, that she did not know it to be Poison, 'till she had seen its Effects.

Pris.

Pris. Council. Let me ask you, Dr. *Addington*, this single Question: Whether the Horrors and Agonies, which Miss *Blandy* was in at this Time, were not, in your Opinion, owing solely to an hearty Concern for her Father?

Dr. *Addington.* I beg, Sir, that you will excuse my giving an Answer to this Question. It is not easy, you know, to form a true Judgment of the Heart; and I hope a Witness need not deliver his Opinion of it.

Pris. Council. I do not speak of the Heart: You are only desired to say, whether those Agitations of Body and Mind, which Miss *Blandy* shewed at this Time, did not seem to you to arise intirely from a tender Concern for her Father?

Dr. *Addington.* Since you oblige me, Sir, to speak to this Particular, I must say, that all the Agitations of Body and Mind, which Miss *Blandy* shewed at this Time, or any other, when I was with her, seemed to me to arise more from the Apprehension of unhappy Consequences to herself, than from a tender and hearty Concern for her Father.

Pris. Council. Did you never then observe in her any evident Tokens of Grief for her Father?

Dr. *Addington.* I never thought I did.

Pris. Council. Did she never wish for his Recovery?

Dr. *Addington.* Often.

Pris. Council. Did not you think that those Wishes implied a Concern for him?

Dr. *Addington.* I did not; because I had before told her, that if he died soon, she would inevitably be ruined.

Pris. Council. When did you tell her this?

Dr. *Addington.* On Sunday Morning, August the 11th, just before I left *Henley*.

Pris. Council. Did not she desire you that Morning, before you quitted his Room, to visit him again the next Day?

Dr. *Addington.* Yes.

Pris. Council. And was she not very solicitous that you should do him all the Service in your Power?

Dr. *Addington.* I cannot say that I discovered any Sollicitude in her on this Score, 'till Monday Night, August the 12th, after she was confined, and her Keys, and other Things, had been taken from her.

King's Council. Did you, Dr. *Addington*, attend *Susan Gunnell* in her Illness?

Dr. *Addington.* Yes, Sir; but I took no Minutes of her Case.

King's Council. Did her Symptoms agree with Mr. *Blandy's*?

Dr. *Addington.* They differed from his in some Respects; but the most material were manifestly of the same Kind with his, though in a much less Degree.

King's Council. Did you think them owing to Poison?

Dr. *Addington.* Yes.

King's Council. Did you attend *Ann Emmet*?

Dr. *Addington.* Yes, Sir.

King's Council. To what Cause did you ascribe her Disorder?

Dr. *Addington.* To Poison: For she told me, that on Wednesday Morning, August the 7th, very soon after drinking some Gruel at Mr. *Blandy's*, she had been seized with Prickings and Burnings in her Tongue, Throat, and Stomach, which had been followed by severe Fits of Vomiting and

Purging. And I observed that she had many other Symptoms, which agreed with Mr. *Blandy's*.

King's Council. Did she say, that she thought she had ever taken Poison before?

Dr. *Addington.* On my telling her that I ascribed her Complaints to Poison, which she had taken in Gruel at Mr. *Blandy's*, August the 7th, she said, that if she had been poisoned by drinking that Gruel at Mr. *Blandy's*, she was sure that she had been poisoned there the Hay-time before by drinking something else.

Alice Emmet sworn.

My Mother is now very ill, and cannot attend; she was Chairwoman at Mr. *Blandy's* in June last, she was taken very ill in the Night, with a Vomiting and Reaching, upwards and downwards. I went to Miss *Blandy* in the Morning by her Desire, to see if she would send her something, as she wanted something to drink, saying she was very dry; Miss said, she would send something, which she did in about two Hours.

Council. Did you tell her what your Mother had eat or drank?

Emmet. No, I did not; only said, my Mother was very ill, and very dry, and desired something to drink.

Mr. *Robert Littleton* sworn.

I was Clerk to Mr. *Blandy* almost two Years; the latter End of July last I went to my Father's in *Warwickshire*, and returned again August the 9th, and breakfasted with Mr. *Blandy* and his Daughter the next Morning, which was on a Saturday; he was in great Agony, and complained very much; he had a particular Dish to drink his Tea in; he tasted his Tea, and did not drink it; saying, it had a gritty bad Taste, and asked Miss, whether she had not put too much of the black Stuff in it? meaning Bohea Tea. She answered, it was as usual; he tasted it again and said, it had a bad Taste; she seemed to be in some Sort of a Tremor; he looked particular at her, and she looked very much confused and hurried, and went out of the Room. Soon after, my Master poured it out into the Cat's Basin, and set it to be filled again; after this, when he was not there, Miss asked me, what he did with the Tea? I said, he had not drank it, but put it into the Cat's Basin in the Window; then she looked a good deal confused and hurried. The next Day Mr. *Blandy* of *Kingston* came about half an Hour after Nine in the Morning; they walked into the Parlour, and left me to breakfast by myself in the Kitchen; I went to Church; when I returned, the Prisoner desired me to walk with her Cousin into the Garden; she delivered a Letter to me, and desired me to seal and direct it as usual, and put it into the Post.

Council. Had you ever directed any Letter for her before?

Littleton. I have a great many; I used to direct her Letters to Mr. *Cranstoun*.

He is shewn a Letter.

Littleton. This is one.

Council. Did you put it into the Post?

Littleton. I did not; I opened it, having just before heard Mr. *Blandy* was poisoned by his own Daughter; I transcribed it, and took it to Mr. *Norton's* the Apothecary at *Henley*, and after that I shewed it, and read it to Mr. *Blandy*.

Council.

Council. What did he say?

Littleton. He said very little; he smiled and said, *Poor Love-sick Girl! What won't a Girl do for a Man she loves?* (or to that Effect.)

Council. Have you ever seen her write?

Littleton. I have very often.

Council. Look at this Letter, is it her own Hand-writing?

Littleton. I cannot tell; it is wrote worse than she used to write, but it is the same she gave me.

Council. Do you remember Mr. *Cranstoun* coming there in *August* 1750?

Littleton. I do. It was either the latter End of *July*, or the Beginning of *August*.

Council. Did you hear any Talk about Music about that Time?

Littleton. After he was gone, I heard the Prisoner say, she heard Music in the House; this I heard her say very often, and that it denoted a Death in the Family; sometimes she said, she believed it would be herself; at other Times, it might be her Father, by reason of his being so much broken; I heard her say once, she thought she heard her Mother.

Council. Did she say when that Death would happen?

Littleton. She said that Death would happen before *October*, meaning the Death of her Father, seeming to me.

Council. Have you heard her curse her Father?

Littleton. I have heard her several Times, for a Rogue, a Villain, a toothless old Dog.

Council. How long was this before her Father's Death?

Littleton. I cannot justly tell that, but I have heard her a great many Times within two Months of his Death, and a great while before; I had used to tell her he was much broken latterly, and would not live long; she would say, she thought so too, and that the Music portended his Death.

Cross-examined.

Prisoner's Council. When you breakfasted with them in the Parlour, who was there first?

Littleton. She was.

Pris. Council. Did you see the Tea made?

Littleton. No, Sir.

Pris. Council. Did you see it poured out?

Littleton. No; but he desired me to taste the Tea; I did mine, and said, I fancied his Mouth was out of Taste.

Pris. Council. Did not this Hurry, you say Miss *Blandy* was in, arise from the Displeasure of her Father, because the Tea was not made to his Mind?

Littleton. I cannot say that, or what it was from.

Pris. Council. What became of that he throwed into the Cat's Basin?

Littleton. He left it there.

Robert Harman sworn.

I was Servant to Mr. *Blandy* at the Time of his Death; that Night he died, the Prisoner asked me, where I should live next? I said, I did not know; she asked me to go with her; I asked her, where she was going? she said, It would be 500 *l.* in my Way, and no Hurt to me, if I would; I told her, I did not chuse to go.

Council. Did she tell you to what Place she was going?

Harman. She did not.

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Council. Did she want to go away at that Time of Night?

Harman. Then, immediately.

Cross-examined.

Prisoner's Council. Did she give any Reason why she desired to go away?

Harman. No, she gave none.

Pris. Council. How long had you lived there?

Harman. A Twelve-month.

Pris. Council. What has been her general Behaviour to her Father, during the Time you was there?

Harman. She behaved very well, so far as ever I saw, and to all the Family.

King's Council. Did you ever hear her swear about her Father?

Harman. No, I never did.

Mr. Richard Fisher sworn.

I was one of the Jury on the Coroner's Inquest, that sat on Mr. *Blandy's* Body on *Thursday, August* the 15th. As I was going up Street to go to Market, I was told, Miss *Blandy* was gone over the Bridge. I went, and found her at the Sign of the *Angel*, on the other Side the Bridge; I told her, I was very sorry for her Misfortune, and asked her what she could think of herself to come from Home, and if she would be glad to go Home again? She said, "Yes; but what must I do to get there for the Mob?" I said, I would endeavour to get a close Post-Chaise, and carry her Home; I went out through the Mob, and got one, and carried her Home; she asked me, whether she was to go to *Oxford* that Night or not? I said, I believed not; when I came to her Father's House, I delivered her up to the Constables; when we were upon the Enquiry before the Coroner, a Gentleman was asking for some Letters, which came in the Time of Mr. *Blandy's* Illness; I went to her Uncle *Stevens* to see for them; she then asked me again, what the Gentlemen intended to do with her, or how it would go? I said, I was afraid very hard, unless she could produce some Letters to bring Mr. *Cranstoun* to Justice. She said, "Dear Mr. *Fisher*, I am afraid I have burnt some that would have brought him to Justice." She took a Key out of her Pocket, and said, "Take this Key, and see if you can find such Letters in such a Drawer." There was one Mrs. *Minn* stood by, I desired her to go with the Key, which she did; but no Letters were found there; then Miss *Blandy* said, *My Honour to him will prove my Ruin.*

Council. What did she mean by the Word *him*?

Fisher. Mr. *Cranstoun*: When she found there was no Letters of Consequence to be found.

Mrs. Lane sworn.

I was with my Husband at *Henley*, at the Sign of the *Angel* on the other Side the Bridge; there was Miss *Blandy*. The first Word I heard Mr. *Lane* my Husband say, was, if she was found guilty, she would suffer according to Law; upon which she stamp't her Foot upon the Ground, and said, *O! that damn'd Villain!* then paused a little, and said, *But why should I blame him? for I am more to blame than he, for I gave it him, and knew the Consequence.*

Council. Did she say, *I knew*, or *I know*?

Mrs. Lane. I really cannot say, Sir; for I did not expect to be called for to be examined here,

and will not take upon me to swear positively to a Word; she was in a Sort of an Agony, in a very great Fright.

Mr. Lane sworn.

I went into the Room where the Prisoner was before my Wife the Day after Mr. *Blandy's* Death; she arose from her Chair, and met me, and looked hard at me; she said, Sir, I have not the Pleasure of knowing you. Said I, No, I am a Stranger to you. She said, Sir, you look like a Gentleman, what do you think they will do with me? Said I, you will be committed to the County-Gaol, and be tried at the Assizes, and if your Innocence appears, you will be acquitted; if not, you will suffer accordingly. She stamped with her Foot, and said, *O! that damn'd Villain! but why do I blame him? I am more to blame.* Then Mr. *Littleton* came in, which took off my Attention from her, that I did not hear so as to give an Account of the whole.

(The Letter which *Littleton* opened, read in Court.) Directed to the Honourable *William Henry Cranston*, Esq;

Dear Willy,

My Father is so bad, that I have only Time to tell you, that if you do not hear from me soon again, do not be frightened; I am better myself; and lest any Accident should happen to your Letters, take Care what you write. My sincere Compliments. I am ever

Yours.

The Prisoner's Defence.

My Lords,

IT is morally impossible for me to lay down the Hardships I have received—I have been aspersed in my Character. In the first Place, it has been said, that I have spoke ill of my Father; that *I have cursed him, and wished him at Hell*; which is extremely false.—Sometimes little Family Affairs have happened, and he did not speak to me so kind as I could wish.—I own I am passionate, My Lords, and in those Passions some hasty Expressions might have dropt: But great Care has been taken to recollect every Word I have spoken at different Times, and to apply them to such particular Purposes, as my Enemies knew would do me the greatest Injury. These are Hardships, My Lords, extreme Hardships! such as You yourselves must allow to be so.—It is said too, My Lords, that I endeavoured to make my Escape. Your Lordships will judge, from the Difficulties I laboured under. I had lost my Father—I was accused of being his Murderer—I was not permitted to go near him—I was forsaken by my Friends—affronted by the Mob—insulted by my Servants.—Although I begged to have the Liberty to listen at the Door where he died, I was not allowed it. My Keys were taken from me, my Shoe-buckles and Garters too,—to prevent me from making away with myself, as though I was the most abandoned Creature.—What could I do, My Lords? I verily believe I must have been out of my Senses.—When I heard my Father was dead, and the Door open, I ran out of the House, and over the Bridge, and had nothing on but an Half-Sack and Petticoat, without a Hoop,—my Petticoats hanging about me.—The Mob gathered about me.—Was this a Condition, My Lords, to make my Escape in?—A good Woman beyond the Bridge seeing me in this Di-

stress, desired me to walk in till the Mob was dispersed; the Town-Serjeant was there, I begged he would take me under his Protection to have me Home; the Woman said, it was not proper, the Mob was very great, and that I had better stay a little. When I came Home, they said I used the Constable ill.—I was locked up for fifteen Hours, with only an old Servant of the Family to attend me.—I was not allowed a Maid for the common Decencies of my Sex. I was sent to Gaol, and was in Hopes, there, at least, this Usage would have ended. But was told, it was reported I was frequently drunk;—that I attempted to make my Escape;—that I never attended the Chapel. A more abstemious Woman, My Lords, I believe, does not live.

Upon the Report of my making my Escape, the Gentleman who was High Sheriff last Year, (not the present) came and told me, by Order of the higher Powers, he must put an Iron on me; I submitted, as I always do to the higher Powers. Some Time after he came again, and said he must put an heavier upon me, which I have worn, My Lords, till I came hither. I asked the Sheriff, Why I was so ironed? He said, he did it by the Command of some Noble Peer, on his hearing that I intended to make my Escape. I told them, I never had such a Thought, and I would bear it with the other cruel Usage I had received on my Character. The Reverend Mr. *Swinton*, the worthy Clergyman who attended me in Prison, can testify that I was very regular at the Chapel, whenever I was well; sometimes I really was not able to come out, and then he attended me in my Room.—They likewise have published Papers and Depositions, which ought not to have been published, in order to represent me as the most abandoned of my Sex, and to prejudice the World against me. I submit myself to your Lordships, and to the worthy Jury.—I can assure your Lordships, as I am to answer it before that Grand Tribunal, where I must appear, I am as innocent as the Child unborn of the Death of my Father.—I would not endeavour to save my Life at the Expence of Truth.—I really thought the Powder an innocent, inoffensive Thing, and I gave it to procure his Love.—It has been mentioned, I should say I was RUINED: My Lords, when a young Woman loses her Character, is not that her RUIN? Why, then, should this Expression be construed in so wide a Sense? Is it not ruining my Character to have such a Thing laid to my Charge? And whatever may be the Event of this Trial, I am RUINED most effectually.

For the Prisoner. *Ann James* sworn.

I live at *Henley*, and had use to wash for Mr. *Blandy*; I remember the Time Mr. *Blandy* grew ill; before he was ill, there was a Difference between *Elizabeth Binfield* and Miss *Blandy*, and *Binfield* was to go away.

Council. How long before Mr. *Blandy's* Death?

Ann James. It might be pretty near a Quarter of a Year before: I have heard her curse Miss *Blandy*, and *damn her for a Bitch*; and said, she would not stay. Since this Affair happened, I heard her say, *Damn her for a black Bitch, I shall be glad to see her go up the-Ladder, and swing.*

Council. How long after?

Ann James. It was after Miss was sent away to Gaol.

Cress.

Cross-examined.

King's Council. What was this Quarrel about?

Ann James. I do not know; I heard her say she had a Quarrel, and was to go away, several Times.

King's Council. Who was by at this Time?

Ann James. *Mary Banks* was by, and Nurse *Edwards*, and *Mary Seymour*; and I am not sure whether *Robert Harman* was there, or not.

King's Council. How was it introduced?

Ann James. It happened in Mr. *Blandy's* Kitchen, she was always talking about Miss.

King's Council. Was you there on the 5th of August?

Ann James. I cannot say I was.

King's Council. Do you remember the Prisoner's coming into the Wash-house, and saying, she had been doing something with her Father's Water-gruel?

Ann James. No, I do not remember it.

Elizabeth Binfield was called up again.

King's Council. Did you, *Elizabeth Binfield*, ever make use of such an Expression as this Witness has mentioned?

Elizabeth Binfield. I never said such Words.

King's Council. Did you ever tell this Witness, Miss and you had quarrelled?

Elizabeth Binfield. To the best of my Knowledge, I never told her about a Quarrel.

King's Council. Have you ever had a Quarrel?

Elizabeth Binfield. We had a little Quarrel some Time before.

King's Council. Did you ever declare you was to go away?

Elizabeth Binfield. I did.

Mary Banks sworn.

I remember being in Mr. *Blandy's* Kitchen in Company with *Ann James*.

Council. Who was in Company?

Mary Banks. I do not remember.

Council. Do you remember a Conversation between *Elizabeth Binfield* and *Ann James*?

Mary Banks. I do not remember any Thing of it.

Council. Do you remember her aspersing Miss *Blandy's* Character?

Mary Banks. I do not recollect.

Council. Did you hear her say, she should be glad to see the black Bitch go up the Ladder to be hanged?

Mary Banks. She did say, she should be glad to see the black Bitch go up the Ladder to be hanged.

Council. When was this?

Mary Banks. It was the Night Mr. *Blandy* was opened.

Council. Are you sure it was that Day?

Mary Banks. I am sure it was.

Council. Where was Miss *Blandy* then?

Mary Banks. She was then in the House.

Edward Herne sworn.

I formerly was a Servant in Mr. *Blandy's* Family; I went there eighteen Years ago, and left them about twelve Years ago last *November*, but have been frequently at the House ever since; that is, may be once, twice, thrice, or four Times in a Week.

Council. What was Miss's general Behaviour to her Father, and in the Family?

Herne. She behaved, according to what I always observed, as well to her Father and the Family, as any body could do, an affectionate, dutiful Daughter.

Council. Did you see her during the Time of Mr. *Blandy's* Illness?

Herne. I did. The first Time I went into the Room, she was not able to speak to me, nor I to her, for ten Minutes.

Council. What was that owing to?

Herne. It was owing to the Greatness of her Grief.

Council. When was this?

Herne. It was the 12th of *August* at Night.

Council. How did her Father seem to be satisfied with her Behaviour and Conduct?

Herne. She was put into my Custody that Night; when I went into the Room, (upon hearing the Groans of her Father) she said, at my Return, Pray, *Ned*, how does he do?

Council. Did you ever hear her speak ill of her Father?

Herne. I never heard her swear an Oath all the Time I have known her, or speak a disrespectful Word of her Father.

Cross-examined.

King's Council. What are you?

Herne. I am Sexton of the Parish.

King's Council. On what Night did Mr. *Blandy* die?

Herne. On the *Wednesday* Night?

King's Council. How came you, as she was put under your Care, to let her get away?

Herne. I was gone to dig a Grave, and was sent for home; they told me, she was gone over the Bridge.

King's Council. Had you any Talk with her about this Affair?

Herne. She declared to me, that Captain *Cranstoun* put some Powder into Tea one Morning for Mr. *Blandy*, and she turned herself about when he was stirring of it in the Cup.

King's Council. When did she tell you this?

Herne. In *August* 1750.

King's Council. Have you seen her since she has been in *Oxford* Gaol?

Herne. I have. When the Report was spread, that the Captain was taken, I was with her in the Gaol; a Gentleman came in, and said, he was taken; she wrung her Hands, and said, *I hope in God it is true, that he may be brought to Justice, as well as I, and that he may suffer the Punishment due to his Crime, as she should do for hers.*

Prisoner. Give me Leave to ask the last Witness some Questions.

Court. You had better tell your Questions to your Council; for you may do yourself Harm by asking Questions.

Pris. Council. Did not the Prisoner, at the same Time, declare, that as to herself, she was totally innocent, and had no Design to hurt her Father?

Herne. At that Time she declared, that when *Cranstoun* put the Powder into the Tea, upon which no Damage at all came, and when she put Powder afterwards herself, she apprehended no Damage could come to her Father.

Pris. Council. When she spoke of her own Suffering, did she not mean the same Misfortune that she then laboured under?

Herne. She said, she should be glad *Cranstoun* should be taken, and brought to Justice; she thought it would bring the whole to Light, he being

being the Occasion of it all; for she suffered (by being in Prison) and was innocent, and knew nothing that it was Poison, no more than I, or any one Person in the House.

Thomas Cawley sworn.

I have known Miss *Blandy* twenty Years, and upwards, and her Father likewise; I was intimate in the Family, and have frequently drank Tea there.

Council. What was her Behaviour to her Father, during your Knowledge of her?

Cawley. I never saw any other than dutiful.

Thomas Staverton sworn.

Thomas Staverton. I have lived near them five or six and twenty Years, and upwards, and was always intimate with them; I always thought they were two happy People, he happy in a Daughter, and she in a Father, as any in the World; the last Time she was at our House, she expressed, her Father had had many Wives laid out for him, but she was satisfied, he never would marry till she was settled.

Cross-examined.

King's Council. Did you observe, for the last three or four Months before his Death, that he declined in his Health?

Staverton. I observed he did; I do not say as to his Health; but he seemed to shrink, and I have often told my Wife, my old Friend *Blandy* was going.

King's Council. Had he lost any Teeth latterly?

Staverton. I do not know as to that, he was a good looking Man.

Pris. Council. How old was he?

Staverton. I think he was Sixty-two.

Mary Davis sworn.

I live at the *Angel* at *Henley-Bridge*; I remember Miss *Blandy* coming over the Bridge the Day that Mr. *Blandy* was opened; she was walking along, and a great Croud of People after her. I seeing that, went and asked what was the Matter; I asked her, where she was going? She said, to take a Walk for a little Air, for they were going to open her Father, and she could not bear the House. The Mob followed her so fast, was the Reason I asked her to go to my House, which she accepted.

Council. Did she walk fast, or slowly?

Mary Davis. She was walking as softly as Foot could be laid to the Ground; it had not the least Appearance of her going to make her Escape.

Robert Stoke sworn.

Robert Stoke. I saw the Prisoner with Mrs. *Davis* the Day her Father was opened; I told her, I had Orders from the Mayor to detain her; she said, she was very glad, because the Mob was about.

Council. Did you think, from her Dress and Behaviour, she was about an Attempt to make her Escape?

Stoke. No, it did not appear to me at all.

Cross-examined.

King's Council. Was you there when Mr. and Mrs. *Lane* came in?

Stoke. I was.

King's Council. Did you hear the Words she said to Mr. *Lane*?

Stoke. I heard nothing at all.

Mr. Ford. As very unjustifiable and illegal Methods have been used to prejudice the World against Miss *Blandy*; such as, it is to be hoped, no Man will have the Boldness to repeat, I mean the printing and publishing the Examination of Witnesses before her Trial; and as very scandalous Reports have been spread concerning her Behaviour, even since her Imprisonment; it is desired, that the Reverend Gentleman who has attended her as a Clergyman, may give an Account of her Conduct whilst in Gaol, that she may at least be delivered of some of the Infamy she at present lies under.

To which he was answered by the Court, that it was needless to call a Witness to that, as the Jury was only to regard what was deposed in Court, and entirely to disregard what Papers had been printed, and spread about, or any Report whatsoever.

The Honourable Mr. Bathurst's Reply.

Your Lordships will, I hope, indulge me in a very few Words by way of Reply; and after the Length of Evidence which has been laid before the Jury, I will take up but little of your Lordships Time.

Gentlemen, you observe it has been proved to a Demonstration, that Mr. Francis Blandy did die of Poison. It is as clearly proved, that he died of the Poison put into his Water-gruel upon the 5th of August; and that the Prisoner at the Bar put it in: For so much appears, not only from her own Confession, but from a Variety of other Evidence.—The single Question therefore for your Consideration is, *Whether she did it knowingly or ignorantly?*

I admit, that in some of the Conversations, which she has had at different Times with different Persons, she has said she did it without knowing it to be Poison, or believing it to be so.—At the same Time I beg leave to observe, (as you will find when their Lordships sum up the Evidence to you) that she did not always make the same Pretence.

Examine then, Gentlemen, whether it is possible she could do it ignorantly.

It has appeared in Evidence, that she owned she saw Mr. *Cranstoun* put some Powder into her Father's Tea in the Month of August preceding; that she had herself afterwards done the same; but she said she saw no ill Effect from it, and therefore concluded it was not hurtful.—Her own Witness, *Thomas Staverton*, says, that for a Year past Mr. Blandy used to shrink in his Cloaths; that he made the Observation to his Wife, and told her, his Friend *Blandy* was going.—Our Witnesses have said, that she herself made the same Observation; told them, her Father looked very ill, as though he would not live; and said, he would not live till October.

And here let me observe one Thing. She says she gave her Father this Powder to make him love her.—After having heard the great Affection with which the poor dying Man behaved towards her, can you think she wanted any Charm for that Purpose? After having heard what her own Witnesses have said of the Father's Fondness for the Daughter, can you believe she had Occasion for any Love-powder?

But one Thing more. She knew her Father had taken this Powder in his Water-gruel upon the *Monday* Night, and upon the *Tuesday* Night; saw how violently he was affected by it; and yet would have had more of the same Gruel given to him upon the *Wednesday*.

Yet one Thing more. When she must have been fully satisfied that it was Poison, and that it would probably be the Occasion of his Death; she endeavoured to burn the Paper in which the rest of the Powder was contained, without ever acquainting the Physicians what she had given him, which might have been the Means for them to have prescribed what was proper for his Relief.

Still one Thing more. She is accused upon the *Saturday*; she attempts to burn the Powder upon the *Saturday*; and yet, upon the *Sunday* she stays from Church, in order to write a Letter to Mr. *Cranstoun*.—In that Letter she styles him her *Dear Willy*;—acquaints him, her Father is so bad, that he must not be frightened, if he does not soon hear from her again;—says, she is herself better;—then cautions him to take Care what he writes, lest his Letters should fall into a wrong Hand. Was this such a Letter as she would have wrote, if she had been innocent? if she had not known the Quality of the Powder? if she had been imposed upon by Mr. *Cranstoun*?

I will only make one other Observation, which is, that of all our Witnesses she has attempted to discredit only one. She called two Persons to contradict *Elizabeth Binfield* in regard to a scandalous Expression, (which she was charged with, but which she positively denied ever to have made use of,) in saying, *She should be glad to see the Prisoner go up the Ladder, and swing*.—They first called *Ann James*; she swore to the Expression, and said, *It was after Miss Blandy was sent to Oxford Gaol*. The next Witness, *Mary Banks*, who, at first, did not remember the Conversation, and, at last, did not remember who were present, said, (upon being asked about the Time) that she was sure the Conversation happened upon the *Thursday* Night on which Mr. *Blandy* was opened, and during the Time that *Miss Blandy* was in the House. These two Witnesses, therefore, grossly contradict one another; consequently ought not to take away the Credit of *Elizabeth Binfield*. And let me observe, that *Elizabeth Binfield* proved nothing, (besides some few Expressions used by *Miss Blandy*;) but what was confirmed by the other Maid-Servant, *Susan Gunnell*.

I will, in Justice to the Prisoner, add, (what has already been observed by Mr. *Ford*;) that the printing what was given in Evidence before the Coroner, drawing odious Comparisons between her and former Parricides, and spreading scandalous Reports in regard to her Manner of demeaning herself in Prison, was a shameful Behaviour towards her, and a gross Offence against public Justice. But you, Gentlemen, are Men of Sense, and upon your Oaths; you will therefore totally disregard whatever you have heard out of this Place. You are sworn to give a true Verdict between the King and the Prisoner at the Bar, according to the Evidence now laid before you: It is upon that we (who appear for the Public) rest our Cause.—If, upon that Evidence, she appears to be innocent, in God's Name let her be acquitted: But if, upon that Evidence, she appears to be guilty, I am sure you will do Justice to the Public, and acquit your own Consciences.

Prisoner. It is said, I gave it my Father to make him fond of me.—There was no Occasion for that,—but to make him fond of *Cranstoun*.

Mr. Baron LEGGE.

GENTLEMEN of the Jury —— *Mary Blandy*, the Prisoner at the Bar, stands indicted before you for the Murder of *Francis Blandy*, her late Father, by mixing Poison in Tea and Water-gruel, which she had prepared for him. To which she has pleaded that she is Not guilty.

In the first Place, Gentlemen, I would take Notice to you of a very improper and a very scandalous Behaviour towards the Prisoner, by certain People, who have taken upon themselves, very unjustifiably, to publish in Print, what they call Depositions, taken before the Coroner, in relation to this very Affair, which is now brought before you to determine. I hope you have not seen them; but if you have, I must tell you, as you are Men of Sense and Probity, that you must divest yourselves of every Prejudice that can arise from thence, and attend merely to the Evidence that has now been given before you in Court, which I shall endeavour to repeat to you, as exactly as I am able, after so great a Length of Examination.

In Support of the Indictment, the Council for the Crown have called a great Number of Witnesses. In order to establish, in the first Place, the Fact, that Mr. *Blandy* died of Poison, they begin with Dr. *Addington*; who tells you, that he did attend Mr. *Blandy* in his last Illness; that he was first called in upon *Saturday* Evening, the 10th of *August* last; that the Deceased complained, that after drinking some Water-gruel on *Monday* Night, the 5th of *August*, he perceived a Grittiness in his Mouth, attended with a pricking Burning, especially about his Tongue and Throat; that he had a Pricking and Burning in his Stomach, accompanied with Sickness; a Pricking and Gripping in his Bowels; but that afterwards he purged and vomited a good deal, which had lessened those Symptoms he had complained of; that on *Tuesday* Night, the 6th of *August*, he took more Gruel, and had immediately a Return of the same Symptoms, but more aggravated; that he had besides Hiccups, cold Sweats, great Anxieties, Prickings in every external as well as internal Part of his Body, which he compared to so many Needles, darting at the same Time into all Parts of him; but the Doctor tells you, at the Time he saw him, he said he was easy, except in his Mouth, his Nose, Lips, Eyes, and Fundament, and some transient Pinchings in his Bowels, which the Doctor then imputed to the Purgings and Vomitings, for he had had some bloody Stools; that he imputed the Sensations upwards to the Fumes of something he had taken the *Monday* and *Tuesday* before; that he inspected the Parts affected, and found his Tongue swelled, his Throat excoriated and a little swelled, his Lips dry, and Pimples on them, Pimples on the Inside of his Nostrils, and his Eyes blood-shot; (that next Morning he examined his Fundament, which he found surrounded with Ulcers) his Pulse trembled and intermitted, his Breath was interrupted and laborious, his Complexion yellowish, and he could not with the greatest Difficulty swallow a Tea-spoonful of the thinnest Liquid; that he then asked him, if he had

had given Offence to any Person whatever. His Daughter the Prisoner was then present, and she made Answer, that her Father was at Peace with all the World, and all the World with him. He then asked, if he had been subject to this kind of Complaint before: The Prisoner said, that he was subject to the Heart-burn and Cholic, and she supposed this would go off as it used to do; that he then told them, that he suspected that by some means or other he had taken Poison: To which the Deceased replied, he did not know but he might, or Words to that Effect; but the Prisoner said, it was *impossible*: He returned to visit him on *Sunday* Morning, and found him something relieved; that he had had some Stools, but none bloody, which he took for a Spasm; that afterwards *Norton* the Apothecary gave him some Powder, which he said had been taken out of Gruel, which the Deceased had drank on *Monday* and *Tuesday*; this Powder he examined at Leisure, and believes it to be white Arsenic; that the same Morning a Paper was put into his Hands by one of the Maids, which she said had been taken out of the Fire, and which she saw Miss *Blandy* throw in; there was a Supercription on the Paper, *Powder to clean the Pebbles*; there was so little of it, that he can't say positively what it was, but suspects it to be Arsenic, for he put it on his Tongue, and it felt like Arsenic, but some burnt Paper mixed with it had discoloured and softened it. He tells you, that on *Monday* Morning the Deceased was worse; all the Symptoms returned, and he complained more of his Fundament than before: He then desired the Assistance of some skilful Physician, because he looked upon him to be in the utmost Danger, and apprehended this Affair might come before a Court of Judicature: He asked the Deceased, if he really thought he was poisoned; to which he answered, that he really believed so, and thought he had taken it often, because his Teeth rotted faster than usual; he had frequent Prickings and Burnings in his Tongue and Throat, violent Heart-burn and frequent Stools, that carried it off again by unaccountable Fits of Vomiting and Purging; that he had had these Symptoms, especially after his Daughter had received a Present of *Scotch* Pebbles from Mr. *Cranstoun*. He then asked the Deceased who he suspected had given the Poison to him; the Tears then stood in his Eyes, but he forced a Smile, and said, *A poor Love-sick Girl, I forgive her: I always thought there was Mischief in those cursed Scotch Pebbles.*

Dr. *Lewis* came that Evening, and Miss *Blandy* was sent into her Chamber, under a Guard, and all Papers in her Pocket, and all Instruments with which she might hurt herself, or any other Person, and her Keys, were taken from her, that nothing might be secreted; for it was not then publicly known that Mr. *Blandy* was poisoned, and they thought themselves accountable for her forth-coming. On *Monday* Night the Deceased mended again, and grew better and worse, unaccountably, as long as he lived. On *Tuesday* Morning every Thing growing worse, he became excessively weak, rambled in his Discourse, and grew delirious, had cold clammy Sweats, short Cough, and a deep Way of fetching his Breath; and he observed, upon those Occasions, that an ulcerous Matter issued from his Fundament. In the midst of all this, whenever he recovered his Senses, he said he was better, and seemed quite

ferene, and told him he thought himself like a Man bit by a mad Dog, *I should be glad to drink, but I can't swallow.* About Noon his Speech faltered more than before; he grew ghastly; was a shocking Sight; and had a very bad Night. On *Wednesday* Morning he recovered his Senses a little, and said he would make his Will in a few Days; but soon grew delirious again, sunk every Minute, and about Two in the Afternoon he died.

The Doctor tells you, he then thought, and still thinks, that he died of Poison; that he had no Symptoms while he lived, nor after he was dead, but what are common in People who have taken white Arsenic. He then read some Observations which he had made on the Appearances of his Body after he was dead; that his Back, and the Parts he lay on, were livid; the Fat on the Muscles of his Belly was loose in Texture, and approached Fluidity; the Muscles of the Belly were pale and flaccid; the Cawl yellower than natural; the Side next the Stomach and Intestines brownish; the Heart variegated with purple Spots; there was no Water in the Pericardium; the Lungs resembled Bladders filled with Air, blotted with black, like Ink; the Liver and Spleen were discoloured, and the former looked as if it had been boiled; a Stone was found in the Gall-bladder; the Bile was very fluid, and of a dirty yellow Colour, inclining to red; the Kidneys were stained with livid Spots; the Stomach and Bowels were inflated, and looked as if they had been pinched, and Blood stagnated in the Membranes; they contained slimy bloody Froth; their Coats were thin, smooth and flabby; the Inside of the Stomach was quite smooth, and, about the Orifices, inflamed, and appeared stabbed and wounded, like the White of an Eye just brushed by the Beards of Barley; that there was no Appearance of any natural Decay at all in him, and therefore he has no Doubt of his dying by Poison; and believes that Poison to have been white Arsenic; that the Deceased never gave him any Reason why he took the same Sort of Gruel a second Time, nor did he ask him. He tells you, as to the Powder that was given him by *Norton*, he made some Experiments with it the next Day, and some Part of it he gave to Mr. *King*, an experienced Chemist in *Reading*, who, upon Trial, found it to be Arsenic, as he told him; that he twice had Powder from *Norton*; and that what he had the second Time he kept entirely in his own Custody, and made Experiments with it a Month afterwards; that he never was out of the Room, while those Experiments were making, and he observed them to tally exactly with other Arsenic which he tried at the same Time. I need not mispend your Time in repeating the several Experiments which the Doctor has told you he made of it; he has been very minute and particular in his Account of them; and, upon the whole, concludes the same to have been Arsenic.

Dr. *Lewis*, the other Physician, who has likewise been sworn, stood by all the while, and confirms Dr. *Addington's* Evidence, tells you he observed the same Symptoms, and gives it absolutely as his Opinion, that Mr. *Blandy* died by Poison, of which he has not the least Doubt.

The next Witness that is called on the Part of the Crown is *Benjamin Norton*, who is an Apothecary at *Henley*: He tells you, he was sent for to Mrs. *Mounteney's* in *Henley*, on *Thursday* Morning, the 8th of *August*; that there was a Pan brought thither by *Susan Gunnell*, Mr. *Blandy's* Maid-Servant,

vant, with some Water-gruel in it; that he was asked, what that Powder was in the Bottom of the Pan; to which he replied, that it was impossible to say, whilst it was wet in the Gruel, but that he would take it out; that accordingly he did take it out, and laid it upon Paper, and gave it to Mrs. Mounteney to keep, which she did till the Sunday following, when it was delivered to him, and he shewed it to Doctor Addington, to whom he gave some of it twice, and, by the Experiment made upon it with a hot Poker, he apprehended it to be of the Arsenic-kind; that the Powder he gave Doctor Addington was the same that he received from Mrs. Mounteney; that he has some of it still by him, which he now produces in Court: He tells you, that he was sent for to Mr. Blandy on Tuesday the 6th of August; that he was very ill, as he imagined, of the Cholic, and complained of a violent Pain in his Stomach, attended with Reaching and Purging, and Swelling of the Bowels; that he took Physic on Wednesday Morning, for which he found himself better; that on Thursday he went there in the Morning, but did not then see him, but went again about Twelve o'Clock, and then saw him; he desired to have more Physic, which he sent him to take on the Friday Morning; that he has been used to attend Mr. Blandy, but that he never saw him thus out of Order; that the last Illness he had had, was thirteen Months before. He tells you, that he has heard the Prisoner say, that she had heard Music in the House, which portended something; and that Cranstoun had seen her Father's Apparition; and this was some Months before her Father's Death; he says, that he can't tell who it was sent for him, but that, when he came, he found Mr. Blandy and the Prisoner together; that he asked, if he had eat any Thing that had disagreed with him; to which the Prisoner made Answer, nothing that she knew of, except some Peas on the Saturday Night before: That, at that Time, he did not apprehend any Thing of Poison, nor did Mr. Blandy mention any Thing of taking the Gruel to him: That on Saturday the Prisoner desired he would take Care of her Father, and, if there were any Danger, call for Help; he told her, he thought he was in great Danger; and then she begged Dr. Addington might be sent for. Mr. Blandy himself would have deferred it till the next Day, but she, notwithstanding, sent for him immediately: He tells you, that as to the Powder he found it to be gritty, and had no Smell; at first he could not tell what it was, till he took Notice of the old Woman's Symptoms to be the same as Mr. Blandy's; then he suspected foul Play, and, from what he heard in the Family, suspected Miss Blandy.

Mrs. Mounteney is then called; who tells you, that she remembers Susan Gunnell bringing a Pan to her House, with Water-gruel, and Powder at the Bottom of it, on Thursday; that she sent for Norton the Apothecary, who took the Powder out, and laid it on white Paper, which he gave to her to keep till it was called for; that she locked it up, and delivered the same to Norton on the Sunday following: She tells you, that the Prisoner always behaved dutifully to her Father, as far as ever she saw, *when in his Presence*; that she did not mention the Paper left with her to any body, till it was fetched away on Sunday Morning, the 11th of August; that she was not at Mr. Blandy's in that Time, and neither saw him, nor

the Prisoner; but she was there on the Sunday Afternoon, though she did not then mention any Thing of it.

The next Witness is Susan Gunnell, who tells you, that she carried the Pan of Water-gruel to Mrs. Mounteney's, from Mr. Blandy's, which had been made at his House, the Sunday Se'nnight before his Death, by herself; that she set it in the common Pantry, where all the Family used to go, and observed no body to be busy there afterwards; but on Monday the Prisoner told her she had been stirring her Papa's Water-gruel, and eating the Oatmeal-out-of-the-Bottom; that she gave him a half-pint Mug of it that Monday Night, before he went to Bed; that she saw the Prisoner take the Tea-spoon that was in the Mug, stir it about, and then put her Fingers to the Spoon, and rub them together, and then he drank some Part of it; that on Tuesday Morning she did not see him when first he came down Stairs, and the first Time she saw him was between Nine and Ten o'Clock, when Miss Blandy and he were together; that he then said he was not well, and going to lie down; that on Tuesday Evening Robert Harman bid her warm her Master some Water-gruel, for he was in Haste for Supper; that she warmed him some of the same, which Miss Blandy carried into the Parlour, and she believes he eat of it, for there was about half left in the Morning; that she met him that Night, after the Water-gruel, as he was going up to Bed; as soon as he got into the Room, he called for a Bason to reach, and seemed to be very sick, by reaching several Times; the next Morning, about Six o'Clock, she carried him up his Physic, when he told her he had had a pretty good Night, and was better; but he had vomited in the Night, as she judges by the Bason, which she had left clean, and was then about half full; that on Wednesday the Prisoner came into the Kitchen, and said to her, that as her Master had taken Physic, he might want Water-gruel, therefore she might give him the same again, and not leave her Work to make fresh, as she was busy ironing; to which she answered, that it was stale, if there was enough of it; that it would not take much Time, and she would make fresh, and accordingly did so; that she had the Evening before taken up the Pan, and disliked the Taste, and thought it stale, but was now willing to taste it again; that she put the Pan to her Mouth, and drank some of it, and then observed some Whiteness at the Bottom, and told Betty Binfield, that she never saw any Oatmeal Settlement so white before; whereupon Betty Binfield looked at it, and said, Oatmeal this! I think it looks as white as Flour; she then took it out of Doors, where there was more Light, and putting her Finger to the Bottom of the Pan, found it gritty; upon which she recollected, that she had heard that Poison was white and gritty, which made her fear this might be Poison; she therefore locked it up in a Closet, and on Thursday Morning carried it to Mrs. Mounteney's, where Mr. Norton saw it. She tells you, that about six Weeks before Mr. Blandy's Death, she was not very well herself, and Miss Blandy then asked her what was the Matter with her, and what she had eat or drank; to which she answered, that she knew not what ailed her, but she had taken nothing more than the rest of the Family; upon which the Prisoner said to her, Susan, have you eat any Water-gruel? for I am told it hurts me, and may hurt you. To which she

she answered, Madam, it cannot affect me, for I have eat none. She then mentions a Conversation, that *Betty Binfield* told her she had with the Prisoner on the same Subject; but that you will hear from *Betty Binfield* herself. She then tells you, that on the *Wednesday* Morning, after she had given her Master his Physic; she saw *Ann Emmet* the Chairwoman; and said to her, Dame, you used to be fond of Water-gruel, here's a fine Mess for you, which my Master left last Night; and thereupon warmed it, and gave it her; that the Woman sat down on a Bench in the Kitchen, and drank some of it, but not all; and said, the House smelt of Physic, and every Thing tasted of Physic, and she must go out and reach before she could finish it; that she went out to the Wash-house, as she believes; that in about half an Hour she followed her, and then found her in the Necessary-house, reaching, and, as she said, purging; that the old Woman staid there an Hour and an half; during which Time she went frequently to her, and carried her Surfeit-water; she said she was no better, and desired some fair Water; upon that she persuaded her to come into the House; but she said, she was not able without Help; that then she led her in, and put her in a Chair by the Fire, where the Coughing and Reaching continued; that she staid in the House about half an Hour, and grew worse; and she thought her in a Fit, or seized with Death; that about Nine of the Clock that Morning, she went up to Miss *Blandy*, and acquainted her, that her Dame had been very ill, and complained that the Smell of Physic had made her sick, and at the same Time told her, that she had eat nothing but a little of her Master's Water-gruel, which could not hurt her; to which the Prisoner said, *that she was glad she was not below Stairs, for she should have been shocked to have seen her poor Dame so ill.* She tells you, that sometimes the Prisoner talked affectionately of her Father, and at other Times but middling, and called him an *old Villain* for using an only Child so. Sometimes she wished for his long Life, and sometimes for his Death; and would often say, *that she was very unkind; and that if her Father was dead, she would go to Scotland, and live with Lady Cranstoun.* That by her Father's Constitution he might live twenty Years; but sometimes would say, she did not think he looked so well. She remembers Dr. *Addington* being sent for on *Saturday* Evening; and tells you, that the Prisoner was not debarred going into her Father's Room till *Sunday* Night, when Mr. *Norton* brought her down with him, and told this Witness not to suffer any Person to go into her Master's Room, except herself, who looked after him. That about Ten of the Clock, on *Monday* Morning, the Prisoner came into the Room after Mr. *Norton*; that she then fell on her Knees to her Father, and said, *Sir, Banish me where you please, do with me what you please, so you do but forgive me; and as for Cranstoun, I will never see him, speak to him, or write to him more, as long as I live, if you will forgive me:* To which the Deceased made Answer, *I forgive thee, my Dear, and I hope God will forgive thee; but thee shouldst have considered better, before thee attemptedst any Thing against thy Father; thee shouldst have considered I was thy own Father:* That the Prisoner then said, *Sir, as to your Illness I am intirely innocent:* To which the Witness replied, Madam, I believe you must not say you are intirely innocent, for

the Powder left in the Water-gruel, and the Paper of Powder taken out of the Fire, are now in such Hands, that they must be publickly produced. The Witness then told her, that she believed she had herself taken, about six Weeks before, a Dose in Tea, that was prepared for her Master: To which the Prisoner answered, *I have put no Powder in Tea, I have put Powder in Water-gruel; if you have received any Injury, I am entirely innocent; it was given me with another Intent:* The Deceased hearing this, turned himself in his Bed, and said, *Oh, such a Villain! Come to my House, eat of the best, and drink of the best; my House could afford, should take away my Life, and ruin my Daughter. Oh! my Dear, thee must hate that Man; thee must hate the Ground he goes on; thee canst not help it:* That the Prisoner replied, *Sir, your Tenderness to me is like a Sword to my Heart; every Word you say is like Swords piercing my Heart, much worse than if you were to be ever so angry; I must down on my Knees, and beg you will not curse me.* To which her Father answered, *I curse thee, my Dear! how shouldst think I could curse thee! No; I bless thee, and hope God will bless thee, and amend thy Life. Do, my Dear, go out of the Room; say no more, lest thee shouldst say any Thing to thy own Prejudice: Go to thy Uncle Stevens, take him for thy Friend: Poor Man! I am sorry for him.* And that then the Prisoner went directly out of the Room. This Witness further tells you, that on the *Saturday* before, she was in the Kitchen about Twelve of the Clock at Noon, when the Prisoner having wrote the Direction of a Letter to her Uncle *Stevens*, and going to the Fire to dry it, she observed her put a Paper or two into the Fire, and saw her thrust them down with a Stick; that *Elizabeth Binfield* then putting some fresh Coals on, she believes kept the Paper from being consumed; soon after which the Prisoner left the Kitchen, and she herself acquainted *Betty Binfield* that the Prisoner had been burning something; that *Betty Binfield* asked where; and the Witness pointed to the Corner of the Grate; whereupon *Betty Binfield* moved a large Coal, and took out a Paper, and gave it to her; that it was a small Piece of Paper, with Writing upon it, *viz. The Powder to clean the Pebbles,* to the best of her Remembrance. She did not read it herself, but *Betty Binfield* did, and told her what it was; that about Eleven or Twelve of the Clock that Night she delivered this Paper to *Betty Binfield* again, but it had never been out of her Pocket till that Time. She tells you, that before this, upon the same *Saturday* Morning, she had been in her Master's Room about Seven of the Clock, to carry him something to drink, and when he had drank it, she said to him, *Sir, I have something to communicate to you, which nearly concerns your Health and your Family; I believe you have got something in your Water-gruel that I am afraid has hurt you, and I believe Miss Blandy put it in, by her coming into the Wash-house on Monday; and saying, that she had been stirring her Papa's Water-gruel, and eating the Oatmeal out of it:* Upon which he said, *I find I have something not right, my Head is not right as it used to be, nor has been for some Time:* This Witness told him, that she had found a Powder in the Pan; upon which he said to her, *Doft thee know any Thing of this Powder, didst thee ever see any of it?* To which she answered, *No, none but what she saw in the Water-gruel; he then asked her, Doft know where she had this Powder, or canst guess?*

guess? To which she replied, *I cannot guess any where, except from Mr. Cranstoun; my Reason to suspect that is, Miss Blandy has lately had Letters oftener than usual: Her Master then said, Now you mention it, I remember, when he was at my House, he talked of a particular Poison they had in his Country: Oh! that Villain! that ever he came into my House.* She likewise told him, that she had shewn the Powder to Mr. Norton, but he could not tell what it was, as it was wet; but whatever it was, it ought not to be there; her Master expressed some Surprize, and said, *Mr. Norton not know! that's strange, a Person so much used to Drugs!* She told him, *Mr. Norton* thought it would be proper for him (her Father) to seize her Pockets, with her Keys and Papers: To which he said, *I cannot do it; I cannot shock her so much.—But canst not thee take out a Letter or two, which she may think she has dropped by Chance?* The Witness told him, No, Sir, I have no Right, she is your Daughter; you may do it, and no body else. She tells you, she cannot say how long before this it was, that *Ann Emmet* had been sick with the Tea; that *Miss Blandy* then sent her Whey and Broth, a Quart or three Pints at a Time, once a Day, or every other Day; that she herself once drank a Dish of Tea on a *Sunday* Morning, out of her Master's Dish, which was not well relished, and she thought somebody had been taking Salts in that Cup; and this was about six Weeks and three Days before her Master's Death; that she found no ill Effect from it till after Dinner that Day; she had then a Hardness at her Stomach, which she apprehended was from eating plentifully of Beans at Dinner; that afterwards she seemed to have some Indigestion, and had a remarkable Trembling upon her; that she had no other Symptoms for three Days, but afterwards, for about three Days more, she was troubled with a Reaching every Morning. She says, she tasted the Water-gruel twice; once on the *Tuesday*, when she was mixing it for her Master; and again on the *Wednesday*, but found no remarkable Disorder till about Two o'Clock on the *Wednesday* Morning before her Master's Death, when she was seized with Convulsions. She says, that her Throat continued troublesome for six or seven Weeks after she had drank the Tea, and continued ill for three Weeks after her Master's Death; she remembers once that the Prisoner had a large Box of Linnen and some Pebbles from Mr. *Cranstoun*, in the Spring, before her Master's Death, and a small Box of *Scotch* Pebbles afterwards, about three Months before his Death; that the Prisoner shewed the Pebbles to many of her Acquaintance, but the Witness never heard of Powder to clean them; she tells you, that about a Year before his Death, her Master had a Cold, but she does not remember he was so ill as to send for the Apothecary; that he used to be equally complaining of the Gravel, Gout, and Heart-burn for twelve Years; knows nothing particular of any Complaint but the Heart-burn, and that he may have complained of all the Time she has lived in the House, but she is not positive.

She says, the Prisoner's Behaviour to her Father, in general, seemed to be dutiful, but she used undutiful Expressions in her Passions; that there had been no Conversation between her Master and the Prisoner, before her asking Forgiveness, but a Message sent by him to her, that he was willing to forgive her, if she would bring

that Villain to Justice; in all he said afterwards, he seemed to speak of his Daughter, as if he believed her innocent of any Intention to hurt him; and looked on *Cranstoun* as the first Mover and Contriver of all, and had said, *Poor unfortunate Girl! that ever she should be led away by such a Villain to do such a Thing!* She believes he thought his Daughter unacquainted with the Effects of the Powder; that the Prisoner, during his Illness, kept him Company, and directed every Thing for him as for herself; the Prisoner knew her Father was ill on *Monday* and *Tuesday* Nights, but won't take upon her to say, that she knew what was the Cause of it; but she knew that the Chairwoman had been ill on the *Wednesday* Morning; before she told the Witness that the old Water-gruel would serve for her Father.

The next Witness is *Elizabeth Binfield*, who tells you, that she was a Servant to the Deceased almost three Years before his Death; that he first complained of unusual Pains and Prickings, about a Fortnight before his Death; that she has often heard the Prisoner mention Walkings, and Music; that she had heard in the House; that she thought it to be her Mother, and three Quarters of a Year before her Master's Death, the Prisoner told her that the Music presaged his Death, and continued talking in the same Way to the Time of it; that she has often heard her say, he would die before *October*; that the Prisoner told her, that Mr. *Cranstoun* had informed her, that a famous Woman, one Mrs. *Morgan*, who lived in *Scotland*, or *London*, but which the Witness cannot say, had said so; that the Prisoner used to appear glad when she spoke of the Prospect of her Father's Death, for that then she should be released from all her Fatigues, and be happy. She tells you, she heard the Prisoner say, that her Father complained of a Ball of Fire in his Guts, before the *Monday* on which he took the Water-gruel; she tells you, that she remembers that *Ann Emmet*, the Chairwoman, was ill about five or six Weeks before this Time, and that the Prisoner ordered her White-wine Whey and Broth; that she herself made the Broth two or three Times, two Quarts at a Time; she says, that on *Saturday*, the 10th of *August*, the Paper was taken out of the Fire by herself, which she looks upon, and says, she really believes it to be the same which she gave to *Susan Gunnell*, had again from her, and then delivered to Dr. *Addington* and Mr. *Norton*. She tells you, that when *Susan Gunnell* was ill, the Prisoner asked this Witness, *if Susan had taken any of her Father's Water-gruel*; and upon her answering, Not that I know, the Prisoner said, *If she does, she may do for herself, may I tell you:* With this Conversation she acquainted *Susan Gunnell*, about a Month or six Weeks before her Master's Death, in which Particular she is confirmed by *Susan Gunnell*. She says further, that she heard the Prisoner say, *Who would grudge to send an old Father to Hell for 10,000 l.?* And this she introduced by talking of young Girls being kept out of their Fortunes. She has heard the Prisoner often curse her Father, and call him *Rascal* and *Villain*; she says, that Mr. *Cranstoun* had been at her Master's about three Quarters of a Year before his Death, and she believes her Master did not approve of his being so much with his Daughter, as she judged by his Temper; but she does not believe he debarred his Daughter from keeping him Company. She says, that upon *Saturday*, the 10th of *August*, she

was in the Kitchen when her Master was shaving, and the Prisoner was there; and her Master said he had once like to have been poisoned at a Public-house; to which the Prisoner answered, that she remembered it very well: Her Master said, that one of the Company died immediately, the other is now dead, but it is my Fortune to be poisoned at last; and then looked hard at the Prisoner, who appeared in great Confusion, and seemed all in a Tremble; her Master said further, that it was white Arsenic that was put into their Wine. This Witness then tells you, that she sat up with the Prisoner the Night her Father died, till Three o'Clock, but the Prisoner went to Bed about One; that they had no Discourse at all of her Father, but the Prisoner asked her if she would go away with her, and offered, if she would go to the *Bell*, or the *Lion*, and hire a Post-chaise, she would give her fifteen Guineas at getting into the Chaise, and ten Guineas more when they got to *London*; that on the Witness refusing to comply with this Request, the Prisoner burst into a Laughter, and said she was only joking; she tells you further, that she heard the Prisoner tell Dr. *Addington* that she had given the Powder to her Father before, and then it was in Tea; that she was afraid of a Discovery, so flung it away, and filled the Cup up again, which *Susan Gunnell* drank, and was ill for a Week after. She says, that upon *Monday*, the 5th of *August*, the Prisoner came into the Wash-house, and said that she had been in the Pantry, eating Oatmeal out of her Father's Gruel, which she little regarded then, but the same Day in the Afternoon she saw the Prisoner in the Pantry take a Tea-spoon, and stir the Water-gruel which was in a Pan, and then rubbed it between her Fingers; that on the *Tuesday* Evening the Prisoner came into the Kitchen to her, and said, Betty, *if one Thing should happen, will you go into Scotland with me?* To which she said, *Madam, I do not know. What, says the Prisoner, you are unwilling to leave your Friends.* To which the Witness replied, that if she should go there, and not like it, it would be expensive travelling. She says, that on *Monday* Morning, the 12th of *August*, she went on a Message from the Prisoner, to beg of her Father that she might speak one Word with him, which being granted, the Prisoner went up; and that she afterwards met the Prisoner coming out of her Father's Room, when she clasped the Witness round the Neck, burst out a crying, and said to her, *Susan and you are the two honestest Servants in the World; you deserve to be imaged in Gold for your Honesty; half my Fortune will not make you Amends for your Honesty to my Father.* She tells you, that her Master had been out of order about twelve Months before this Time; and that it was at the Time when *Susan Gunnell* was ill by drinking the Tea, that the Prisoner cautioned her about *Susan's* drinking her Father's Water-gruel.

Dr. *Addington* having been appealed to by the last Witness, in the Course of her Evidence, is again called up, and confirms all that this Witness has said, except, he does not remember the Circumstance of *Susan Gunnell's* being ill with the Tea.

He says, that the Prisoner always told him she thought it an innocent Powder, but said, *it was impossible to express her Horror*, that she was the Cause of her Father's Death; tho' she protested

that she thought it innocent when she gave it; for Mr. *Cranstoun* had assured her that he used to take it himself, and called it a Love-Powder; that she had a Letter from him, directing her to give it in Gruel, as she had informed him it did not mix in Tea; that *for her own Part she desired Life for no other Purpose, than only to go thro' a severe Penance for her Sins*; that on her being pressed by him to discover all she knew relating to *Cranstoun*, her Answer was, that *she was fully conscious of her own Guilt, and would not add Guilt to Guilt, for she looked on Cranstoun as her Husband, tho' the Ceremony had not passed between them.* He tells you further, that he does not remember that she gave him any satisfactory Answer to any of the Questions which he put to her, which he has repeated to you, and which are very material ones, but always persisted that she was intirely ignorant of the Effects of the Powder, till she saw them on her Father; and often said, Pray God send it may not kill him, after he had told her, and her Father too, the Danger of her Father, and that he apprehended her to be undone: He then tells you he attended *Susan Gunnell*, who had the same Symptoms with the Deceased, but in a less Degree; he also attended *Ann Emmet*, who had the same Symptoms, and told her that she was poisoned.

Alice Emmet is then called, who is Daughter to *Ann Emmet* the old Chairwoman, who gives you an Account that her Mother was Chairwoman at Mr. *Blandy's* in *June* last, in the Time of *May*-harvest; that she was then taken sick, was seized in the Night-time with a Vomiting and Purgings, and this Witness went in the Morning to the Prisoner, by her Mother's Desire, and acquainted her with the Condition she was in; that the Prisoner said she was sorry, and would send her something to drink, which she did in about an Hour or two afterwards.

The next Witness is Mr. *Littleton*, who had been Clerk to the Deceased about two Years, and tells you he came Home from his Father's in *Warwickshire*, upon the 9th of *August* last; that the next Morning the Prisoner, her Father, and himself, were at Breakfast together; that they stayed for the Deceased some Time; that when he came, he appeared to be ill and in great Agony; that he had always a particular Cup to himself; that he tasted his Tea, and did not like it, but said it had a gritty bad Taste, and asked the Prisoner if she had not put too much of the black Stuff in it (meaning Bohea Tea); the Prisoner said, it was as usual; he then tasted it again, and said it had a bad Taste, and looked very particularly at her; she seemed in a Hurry, and walk'd out of the Room; the Deceased then poured the Tea into the Cat's Basin, and went away. Soon after the Prisoner came into the Room again, when he told her that he thought the Deceased was very ill, for that he could not eat his Breakfast; on which she asked what he had done with it, and upon his acquainting her that it was poured into the Cat's Basin, she seemed a good deal confused. That the next Day, being *Sunday* Morning, Mr. *Blandy* of *Kingston* came to their House, and went to Church along with him; that after they returned from Church, the Prisoner desired this Witness to walk with her and Mr. *Blandy* in the Garden, when she put a Letter into his Hand, and bid him direct it as usual, which he understood

understood to be to Mr. *Cranstoun*, (having been used to direct others before) to seal it, and put it in the Post. He tells you, he had then heard so much, that he opened the Letter, transcribed it, carried it to Mr. *Norton*, and read it to the Deceased, who only said, *Poor Love-sick Girl! what won't a Girl do for a Man she loves?* This Letter he has now looked at; tells you, that it is wrote worse than usual, therefore he cannot swear whether 'tis her Hand or no, but he can swear 'tis the same she gave him; the Letter itself has been read to you, and I will make no Remarks upon it. He tells you, that after Mr. *Cranstoun* was gone from *Henley* in August 1750, he has often heard the Prisoner say, that she heard Music, which portended Death in the Family, and sometimes thought it might be herself, sometimes her Father, because he was so much broken; that he has heard her say, Death would happen before *October*; that he has often heard her curse her Father, damn him for a *Rogue* and a *toothless old Dog*, within two Months of his Death, and a great while before; that he has told her himself, that he thought Mr. *Blandy* seemed broken; upon which she said she thought so too, and that the Music portended his Death.

Robert Harman is called next, who tells you that he was Servant to Mr. *Blandy* at the Time of his Death; that the Night his Master died, the Prisoner asked him where he should live next; on which he told her he did not know, and she then asked him if he would go away with her; and upon his saying he did not care to do so, she told him no Hurt would come to him, but it would be 500*l.* in his way, and wanted him to go away then immediately. He says, the Prisoner behaved well to her Father, and all the Family, as far as he knows, and never heard her swear about her Father.

The next Witness is *Richard Fisher*, who was one of the Jury on Inspection of the Body of the Deceased. On *Thursday*, the 15th of *August*, he was informed that Miss *Blandy* was gone over *Henley-Bridge*, and went to her at the *Angel*; when he came into the Room, he told her he was sorry for her Misfortune, and asked her if she would not be glad to go Home again: She said she should, but could not get through the Mob; upon which he got a covered Post-chaise, and carried her Home. As they were going, she asked him if she was to go to *Oxford* that Night; that he told her he believed not; when he brought her to her Father's House, he delivered her up to the Constable; that after this he was upon the Jury, and when he went to her again, she asked him how it was likely to go with her; upon which he told her he was afraid very hardly, unless she could produce Letters or Papers of Consequence to bring *Cranstoun* to Justice. Upon which she said, *Dear Mr. Fisher, I have burnt those Letters that would have brought him to Justice*, and gave a Key out of her Pocket to search a Drawer for Letters; but none being found, she said, *My Honour to him (meaning Cranstoun) will prove my Ruin*.

Mrs. *Lane* is then called, who says, she went to the *Angel* along with her Husband, when the Prisoner was there; the first Word she heard her Husband say was, if she was guilty, she would suffer according to Law; upon which the Prisoner stamp'd on the Ground, and the first Thing she heard her say was, *O that damned Villain!* then paused a little, and went on again, *But why do I*

blame him? I am more to blame myself, for it was I gave it him, and knew the Consequence. Upon being asked, whether she said *I knew* or *I know*, the Witness tells you that she will not be positive which, but the Prisoner was in a Sort of Agony; whichever way it was, it may make some little Difference, but nothing material.

Mr. *Lane*, the Husband of the last Witness, is then called, and tells you, that he went into the Room before his Wife; that the Prisoner rose and met him, told him he was a Stranger to her, but as he appeared like a Gentleman, she asked him what they would do with her; that he told her she would be committed to the County Gaol, and tried at the Assizes; if her Innocence appeared, she would be acquitted; if not, she would suffer accordingly. Upon which she stamp'd with her Foot, and said, *O that damned Villain! but why do I blame him? I am more to blame.*—That then Mr. *Littleton* came in, which took off his Attention; that he did not hear what followed, so as to be able to give an Account of it.

The Letter from the Prisoner to Captain *Cranstoun*, without any Date to it, which was opened by *Littleton*, has then been read to you, and with that the Council for the Crown conclude their Evidence.

The Prisoner in her Defence complains of hard Usage she has met with, denies her ever speaking ill of her Father, owns herself to be passionate, and complains that Words of Heat, upon Family-Affairs, have been misconstrued and applied to an ill Intention in her; that she was not in her Senses when she lost her Father, nor in a proper Dress to have made her Escape when she went over *Henley-Bridge*; that she was taken in at the *Angel* by the Woman of the House out of mere Compassion, and was then desirous to put herself under the Protection of the Town-Serjeant; that, during her Confinement, she was not suffered to have decent Attendance for a Woman; that she was affronted by her own Servants, cruelly traduced, and heavily ironed, without any reasonable Cause; that she thought the Powder innocent, and never had a Thought of hurting her Father; but her own Ruin is effected by such an Imputation upon her, and her Appearance here, without her being convicted. She then calls her Witnesses, and the first is,

Ann James, who tells you she lives at *Henley*, and used to wash at Mr. *Blandy's* House; that she remembers that, some Time before Mr. *Blandy's* Illness, there was a Difference between the Prisoner and *Elizabeth Binfield*, and that the latter was to go away; and that she has heard *Elizabeth Binfield* curse the Prisoner, and damn her for a Bitch, and say, she would not stay; that since this Affair happened, she heard her say (speaking of the Prisoner) Damn her for a black Bitch, she should be glad to see her go up the Ladder, and swing. She tells you, that when this Conversation happened, the Prisoner was gone to Gaol; that it was in Mr. *Blandy's* Kitchen; and that Nurse *Edwards*, *Mary Seymour*, and *Mary Banks* were present.

Elizabeth Binfield is then called up again, and absolutely denies the Words she is charged with: She says, she never acquainted the Witness with any Quarrel she had had, to the best of her Remembrance, but that she had some few Words of Difference with the Prisoner, and had said, that she was to go away.

Mary Banks is then called, who says, that she was in Mr. Blandy's Kitchen while he was dead in the House, but she does not remember who was in Company, nor any Conversation that passed between Elizabeth Binfield and Ann James, till the Words are directly put into her Mouth, and then she recollects that Elizabeth Binfield said she should be glad to see Miss Blandy, that black Bitch, go up the Ladder to be hanged; but she tells you this was on the Night that Mr. Blandy was opened, and that the Prisoner was then in the House.

These two Witnesses are called to impeach the Credit of Elizabeth Binfield, as having a Prejudice against the Prisoner; but I see no great Strefs to be laid on their Evidence, for they manifestly contradict one another, but do not falsify her in any one Thing she has said.

The next Witness that she calls is Edward Herne, who was a Servant to Mr. Blandy eighteen Years ago, and has left his Place about twelve Years, but he has been very seldom without going three or four Days a Week to his House ever since; that the Prisoner's general Behaviour to her Father and the Family was as well as any body could do, with Affection and Duty, as far as ever he saw; that on the Monday Night before Mr. Blandy died, he went to the House, and that neither the Prisoner nor he could speak for some Minutes, which he attributed to her great Concern; that she was put into his Custody that Night; that on hearing the Groans of her Father, he went in to him, at her Desire, to enquire how he did; that he never heard her swear, or speak disrespectfully of her Father: He says, he was not in the way when she went over Henley-Bridge, (being sent for to dig a Grave, he being the Sexton); that he has seen her since her Confinement at Oxford, and she told him that Captain Cranstoun had before put some Powder in her Father's Tea; that she turned about, and when she turned again he was stirring it in; that on a Report that Captain Cranstoun was taken, she wrung her Hands, and said, *She hoped in God it was true, that he might be brought to Justice as well as herself; that as she was to suffer the Punishment due to her Crime, he might do so too;* but at the same Time she declared, that when Cranstoun put the Powder into the Tea, and she herself did so afterwards, she knew no ill Effects of it, or saw any Harm from it; but if he were taken, it would bring the whole to Light; for she was innocent, and knew no more of its being Poison than any Person there.

Thomas Cawley, the next Witness, says, that he has known the Prisoner twenty Years and upwards; that he was intimate in the Family, and never saw any other than the Behaviour of a dutiful Daughter from her.

Thomas Staverton, that he has known the Prisoner five or six and twenty Years; that he has lived near the Family, and always thought that her Father and she were very happy in each other. He has observed that Mr. Blandy was declining in his Health; for four Years or more he seemed to shrink, and believes he was about Sixty-two Years of Age.

Mary Davis is the next Witness; she lives at the Angel by Henley-Bridge, and remembers the Prisoner coming over, the Day her Father was opened; that she was walking along, with a great Crowd after her; that she went to her, and asked her what was the Matter, and where she was going? The Prisoner said, she was going to walk

for the Air, for that they were going to open her Father, and that she could not bear the House; the Mob followed so close, that she invited the Prisoner into her House, which she accepted, and was walking gently, and had not the Appearance of making an Escape.

Robert Stokes tells you, he knows the last Witness Mrs. Davis, and saw the Prisoner with her, in her House, the Day her Father was opened; that he was ordered by the Mayor to take Care of the Prisoner, which she said she was very glad of, because the Mob was about; and he did not observe any Inclination or Attempt whatsoever to make an Escape.

This, Gentlemen, is the Substance of the Evidence on both Sides, as nearly as I can recollect it. I have not wilfully omitted or mistated any Part of it; but, if I have, I hope the Gentlemen, who are of Council on either Side, will be so kind as to set me right.

A very tragical Story it is, Gentlemen, that you have heard, and upon which you are now to form your Judgment, and give your Verdict.

The Crime with which the Prisoner stands charged, is of the most heinous Nature and blackest Dye, attended with Considerations that shock human Nature, being not only Murder, but Parricide—the Murder of her own Father—But the more atrocious, the more flagrant the Crime is, the more clearly and satisfactorily you will expect that it should be made out to you.

In all Cases of Murder, it is of Necessity, that there should be Malice aforethought, which is the Essence of, and constitutes the Offence: But that Malice may be either express, or implied by the Law: Express Malice must arise from the previous Acts or Declarations of the Party offending; but implied Malice may arise from Numbers of Circumstances, relating either to the Nature of the Act itself, the Manner of executing it, the Person killing, or the Person killed, from which the Law will as certainly infer Malice, as where it is express.

Poison, in particular, is in its Nature so secret, and withal so deliberate, that wherever that is knowingly given, and Death ensues, the so putting to Death can be no other than wilful and malicious.

In the present Case, which is to be made out by Circumstances, great Part of the Evidence must rest upon Presumption, in which the Law makes a Distinction: A slight or probable Presumption only has little or no Weight; but a violent Presumption amounts in Law to full Proof, that is, where Circumstances speak so strongly, that to suppose the contrary, would be absurd: I mention this to you, that you may fix your Attention on the several Circumstances that have been laid before you, and consider, whether you can collect from them such a Presumption, as the Law calls a violent Presumption, and from which you must conclude the Prisoner to be guilty: I would observe further, that where that Presumption necessarily arises from Circumstances, they are more convincing and satisfactory, than any other kind of Evidence, because Facts cannot lye.

I cannot now go through the Evidence again, but you will consider the whole together, and from thence determine, what you think it amounts to. Thus far is undeniably true, and agreed on all Sides, that Mr. Blandy died by Poison; and that that Poison was administered to him by his Daughter,

Daughter, the Prisoner at the Bar. What you are to try, is reduced to this single Question, Whether the Prisoner, at the Time she gave it to her Father, knew that it was Poison, and what Effect it would have?

If you believe, that she knew it to be Poison, the other Part, *viz.* that she knew the Effect, is consequential, and you must find her guilty: On the other Hand, if you are satisfied, from her general Character, from what has been said by the Evidence on her Part, and from what she has said herself, that she did not know it to be Poison, nor had any malicious Intention against her Father, you ought to acquit her. But if you think she knowingly gave Poison to her Father, you can do no other than find her guilty.

The Jury consulted together about five Minutes, and then turned to the Court.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *Mary Blandy*, hold up thy Hand, (*which she did.*) Gentlemen of the Jury, look upon the Prisoner: How say you, is *Mary Blandy* guilty of the Felony and Murder whereof she stands indicted, or not guilty?

Jury. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had she at the Time of the same Felony and Murder committed, or at any Time since, to your Knowledge?

Jury. None.

Cl. of Arr. Harken to your Verdict as the Court hath recorded it. You say that *Mary Blandy* is guilty of the Felony and Murder whereof she stands indicted; and that she had not any Goods or Chattels, Lands or Tenements, at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge; and so you say all.

Cl. of Arr. *Mary Blandy*, hold up thy Hand. You have been indicted of Felony and Murder. You have been thereupon arraigned, and pleaded thereto not guilty, and for your Trial you have put yourself upon God and your Country, which Country have found you guilty. What have you now to say for yourself, why the Court should not proceed to give Judgment of Death upon you according to Law?

Cryer. Oyez; My Lords the King's Justices do strictly charge and command all Manner of Persons to keep silence, whilst Sentence of Death is passing on the Prisoner at the Bar, upon Pain of Imprisonment.

Mr. Baron LEGGE.

Mary Blandy, you have been indicted for the Murder of your Father, and for your Trial have put yourself upon God and your Country: That Country has found you guilty.

You have had a long and a fair Trial, and sorry I am, that it falls to my Lot, to acquaint you, that I am now no more at Liberty to suppose you innocent, than I was before to presume you guilty.

You are convicted of a Crime, so dreadful, so horrid in itself, that human Nature shudders at it:—*The wilful Murder of your own Father!*—A Father, by all Accounts, the most fond, the most tender, the most indulgent that ever lived:—

That Father with his dying Breath forgave you:—May your heavenly Father do so too.

It is hard to conceive, that any Thing could induce you to perpetrate an Act so shocking, so impossible to reconcile to Nature or Reason. One should have thought, your own Sense, your Education, and even the natural Softness of your Sex, might have secured you from an Attempt so barbarous and so wicked.

What Views you had, or what was your Intention, is best known to yourself: With God and your own Conscience be it. At this Bar, we can judge only from Appearances, and from the Evidence produced to us: But do not deceive yourself; remember you are very shortly to appear before a much more awful Tribunal, where no Subterfuge can avail; no Art, no Disguise can screen you from the Searcher of all Hearts: *He revealeth the deep and secret Things, he knoweth what is in the Darkness, and the Light dwelleth with him.*

Let me advise you, to make the best and wisest Use of the little Time you are likely to continue in this World: Apply to the Throne of Grace, and endeavour to make your Peace with that Power, whose Justice and Mercy are both infinite.

Nothing now remains, but to pronounce the Sentence of the Law upon you, which is,

That you are to be carried to the Place of Execution, and there hanged by the Neck until you are dead: And may God of his infinite Mercy receive your Soul.

The Prisoner then addressed herself to the Judge in this Manner.

“ My Lord, as your Lordship has been so good to shew so much Candour and Impartiality in the Course of my Trial, I have one Favour more to beg, which is, that your Lordship would please to allow me a little Time, till I can settle my Affairs, and make my Peace with God.”

To which his Lordship replied,

“ To be sure you shall have a proper Time allowed you.”

Miss Blandy having received Sentence of Death, was re-conducted to the Castle from whence she came. Many People believed, that she behaved not only through the whole Course of her Trial, but afterwards, with such a decent Resolution, as does not often attend a Consciousness of Guilt; tho' great Part of Mankind (it must be owned,) seem fully convinced of even her Intention to destroy her Father. Be that as it will, her Conduct before the Judges was not only uncensured, but even applauded, by a Majority of the Spectators who were Witnesses of it. Nor did any material Alteration discover itself in the Tenour of her Behaviour, tho' her Spirits sometimes a little failed her, betwixt the Day of her Trial and that of her Execution.

It would be endless, however, notwithstanding this undoubted Truth, to recite the palpable Falsehoods, and inhuman Calumnies, industriously propagated of her, and dispersed throughout the Nation, in almost every Part of that Interval. Sometimes it was reported, that she had poisoned herself, and sometimes that she had laid upon herself violent Hands in a different Manner; tho' she discovered, on all Occasions, to the Minister who attended her, the most perfect Abhorrence of Suicide,

cide, and of every Thing that had but even the least Tendency to it. Several Persons affirmed, that she was so perfectly hardened, that she would not acknowledge herself guilty of any Crime; the Reverse of which is true, as can be attested both by the aforesaid Minister, and other Persons of Character and Reputation. She has frequently said, that she deserved Death for destroying her Father, tho' she did not think herself so guilty as if she had *designedly* and *intentionally* perpetrated so black a Crime. This Declaration she constantly persisted in; tho' that Point of Conduct gave uncommon Offence to vast Numbers of People.

During the aforesaid Interval, Miss *Blandy* attended Divine Service in the Chapel as often as her Health would permit, and the Crowds of People, who flocked thither to gaze upon her, did not drive her from thence; and when any thing of that Kind happened, as well as at all other proper Seasons, the Minister of the Castle attended her in her own Apartment. She often professed herself a sincere Penitent, and said she was covered with Contrition for every Sin she had committed, and particularly that which occasioned the Loss of her dear Father's Life.—When such Professions as these were made, she pretty frequently shed Tears, and discovered the most apparent Emotions of Grief. This can be attested by several, as well as the aforesaid Minister, whose Testimony will be deemed authentic in all other Cases. Notwithstanding which, the contrary to this has been asserted by many Persons; but then some of them have been such as have not only had little Regard to Truth, but been incapable of all tender Sentiments.

She always professed a full Persuasion of the Truth and Excellency of the Christian Religion in general, and a close Attachment to the Tenets, Doctrines, and Usages of the Church of *England* in particular. Nor did any Thing, during the whole Course of her Confinement, so extremely shock her as the Charge of Infidelity, which some uncharitable Persons a little before her Death brought against her, on Account of her Intimacy with *Cranstoun*. That *Cranstoun* was an Infidel, there may be Reason enough to believe; but that she was so, because she had placed her Affections upon him, will by no Means follow. It appears, that he was a Man of infinite Art and Design; and therefore may very naturally be supposed to have adapted himself intirely to her Genius and Disposition, in order the more effectually to carry into Execution his wicked Designs: And that this was really the Case, with her dying Breath she positively affirmed. He never, as to the Minister attending her a little before her Death she declared, uttered any Thing in her Company, thro' the whole Course of her Acquaintance with him, that could be deemed shocking to pious Ears, or that in the least favoured of Infidelity. On the contrary, if she may be credited, in some of her last Moments, he gave her many instructive Lessons, and talked perfectly in the Style of a Christian. And this he might do, because he found it agreeable to her. 'Tis but charitable, therefore, considering her Education, to believe, that she never openly professed any Dislike to the Principles of Christianity.

She could discourse pertinently and clearly upon all the common, and some other theological Topics: From whence it may be rationally inferred, that she had not only been in a tolerable Degree

conversant with the Scriptures; but likewise read, with some Attention, the Works of several of our most celebrated Divines. And this she owned herself to have done. This Point would not have been so copiously insisted upon here, had she not desired it might be cleared up in a particular Manner; and had not the Imputation of Infidelity, in some of her last Moments, given her infinite Uneasiness and Concern.

She was visited by several Clergymen, besides the Minister of the Castle who constantly attended her, one of whom was a Person of superior Rank and Character in the University. To all of these she expressed herself much in the same Manner, and constantly persisted in her first Declaration. She was pressed by them in the strongest Terms to confess the Truth, and not go out of the World with a Lie in her Mouth. But this she said she should do, if she affirmed that she had a Design to destroy her Father when she gave him the fatal Powder, or that she then knew there was any poisonous Quality lodged in it. She talked in such a plausible, or rather pathetic Strain, and gave such convincing Reasons for the Truth of what she affirmed, that some of her Enemies themselves, after one or two Visits, became greatly prejudiced in her Favour.

Some Attempts were made to procure her a short Respite; for it was never believed, that a Pardon could be obtained, at least before the Apprehension of the Villain *Cranstoun*. But all the Avenues to the Royal Clemency were shut up; so that every Measure pursued on this Occasion proved ineffectual. Nor did she ever entertain any Hopes of Success, tho' a Lady of great Interest and Distinction, whose innate Goodness renders her one of the brightest Ornaments of the present Age, made several Efforts in her Favour. The Prejudices she had to struggle with had taken too deep Root in some Men's Minds, to be effaced by any Sentiments of Tenderness and Compassion.

She herself observed, and spoke with great Commendation of them, that the Judges, as well as the worthy Sheriff and his Deputy, behaved towards her with great Candour and Moderation.

On *Monday, April* the 6th, 1752, the Day destined for her Execution, the Under-Sheriff, attended by one of Miss *Blandy's* Friends, visited her a little after Eight o'Clock in the Morning. She then discovered some Anxiety and Apprehensions, in relation to her future State, that had never before appeared. She said, that many Sins, both of Omission and Commission, which she had formerly considered as Trifles, seemed at that Time to be very black and enormous to her. The Minister, who was then also present, took a fresh Opportunity from hence to press her once more to declare the Truth, in relation to her Intention and Knowledge of the noxious Quality of the fatal Powder, by urging that a Failure herein would be a Crime of a much deeper Dye, than those which filled her with such terrible Apprehensions. But to this she immediately replied, that she should persist in her former Declaration to the Moment of her Death; and that this she would impart to the People attending her Execution. The Under-Sheriff, and the Gentleman attending him, also begged, that she would not impose upon herself, as well as upon the World, in these her last Moments. To which she answered much in the same Terms as she had done before. She likewise appeared

appeared after this to be something more calm and composed. And the Minister, in order still more to comfort her, told her, that the Devil frequently presented former Sins as much more heinous than they really were, to even some of the best Christians themselves, when they were upon the Confines of Eternity, in order to ruffle and discompose them; and that therefore probably the Scene that at present seemed to disturb her, was nothing more than one of his Illusions: But however that might be, she had no Reason to be afraid of any of her Sins, if she sincerely repented of them, as she had always assured him she did, and placed an unshaken Confidence in the Mercy of God, through the Merits of Christ; and neither those Merits, nor that Mercy, to sincere Penitents, would admit of any Limits. This gave her great Consolation, inasmuch that she soon resumed her former Calmness, and declared herself not only willing, but even inclinable to die.

About Nine o'Clock she came out of her Bed-chamber, and was attended by the Minister to the Place of Execution. Here he read some of the Commendatory Forms of Prayer, and she joined most fervently with him. After this was ended, he said to her, "Madam, you may now, if you think proper, and have a sufficient Flow of Spirits, speak to the People." She then addressed herself to them, with a clear and audible Voice, in the following Terms: "Good People, give me Leave to declare to you, that I am perfectly innocent, as to any Intention to destroy, or even hurt my dear Father; that I did not know, or even suspect, that there was any poisonous Quality in the fatal Powder I gave him; tho' I can never be too much punished for being even the innocent Cause of his Death. As to my Mother's and Mrs. Pocock's Deaths, that have been unjustly laid to my Charge, I am not even the innocent Cause of them, nor did I in the least contribute to them. So help me God in these my last Moments. And may I not meet with eternal Salvation, nor be acquitted by Almighty God, in whose awful Presence I am instantly to appear, if the whole of what is here asserted, be not true. I from the Bottom of my Soul forgive all those concerned in my Prosecution; and particularly the Jury, notwithstanding their fatal Verdict." She then ascended the Ladder, and spoke again to the following Effect: "Good People, take Warning by me to be on your Guard against the Sallies of any irregular Passion; and pray for me, that I may be accepted at the Throne of Grace."

After which, she was turned off; and, in about half an Hour's Time, cut down. The Body was

then carried to a neighbouring House, and put into a Coffin; from thence it was conducted about Five o'Clock in the Afternoon, in a Hearse, to Henley; and interred about Eleven o'Clock in the Chancel of the Church there, where the Bodies of her Father and Mother had been deposited. Miss Blandy suffered in a black Bombazine short Sack and Petticoat, with a clean white Handkerchief drawn over her Face. Her Hands were tied together with a strong black Ribband, and her Feet, at her own Request, almost touched the Ground. The Number of People attending her Execution was computed at about 5000; many of whom, and particularly several Gentlemen of the University, were observed to shed Tears. She behaved with such Serenity and Composure, and with such a decent Resolution, as greatly surprised many of the Spectators; and such as some there present thought nothing but a Consciousness of the Truth of what she had asserted, and a well-grounded Hope of future Felicity, could inspire. Contrary to what is observed at other Executions, there was almost a profound Silence during the Time of this. In fine, the whole was so well conducted, and made such a deep Impression upon the Minds of the People present, that the Circumstances attending Miss Blandy's Execution will not soon be forgotten at Oxford.

Copy of Miss Blandy's Declaration delivered at the Place of Execution in Oxford, April 6th, 1752.

I Mary Blandy do declare that I die in a full Persuasion of the Truth and Excellency of the Christian Religion, and a sincere, tho' unworthy Member of the Church of England. I do likewise hope for a Pardon and Remission of my Sins by the Mercy of God, through the Merits and Mediation of our most blessed Lord and Saviour Jesus Christ. I do also farther declare, that I did not know or believe that the Powder, to which the Death of my dear Father has been ascribed, had any noxious or poisonous Quality lodged in it; and that I had no Intention to hurt, and much less to destroy him, by giving him that Powder. All this is true, as I hope for eternal Salvation, and Mercy from Almighty God, in whose most awful and immediate Presence I must soon appear. I die in perfect Peace and Charity with all Mankind, and do from the Bottom of my Soul forgive all my Enemies, as also those Persons who have in any Manner contributed to, or been instrumental in bringing me to the ignominious Death I am soon to suffer. This is my last Declaration, as to the Points contained in it; and I do most earnestly desire that it may be published after my Death. Witness my Hand,

MARY BLANDY.

XLV. *The CASE of John Swan and Elizabeth Jefferys,
for the Murder of Joseph Jefferys.*

Q. *W*HETHER the Prisoners should be tried on the first or second Indictment, found against them?

The CASE.

John Swan, Servant to Mr. *Joseph Jefferys*, of *Walthamstow* in *Essex*, and *Elizabeth Jefferys* his Niece, were indicted at the Assizes held at *Chelmsford* in *Essex*, in the Summer 1751, for the Murder of the said *Joseph Jefferys*; *Swan* for giving the mortal Wound, and *Elizabeth Jefferys* for aiding and assisting, &c. therein. To which Indictment they both pleaded Not Guilty: But their Trial was then put off to the following Assizes.

In *March* 1752, at the following Assizes held at *Chelmsford*, before the Hon. Sir *Martin Wright* and Sir *Michael Foster*, the following Indictment was found against *Swan* for Petty Treason, and *Elizabeth Jefferys* for Murder, viz.

‘ *John Swan*, late of the Parish of *Walthamstow*,
‘ in the County of *Essex*, Labourer, late Servant
‘ to *Joseph Jefferys* in his Life-time, now deceased,
‘ was indicted, for that he, not having the Fear of
‘ God before his Eyes, but being moved and se-
‘ duced by the Instigation of the Devil, on the 3d
‘ Day of *July*, in the 25th Year of the Reign of
‘ our Sovereign Lord *George* the Second, King of
‘ *Great-Britain*, &c. with Force and Arms at the
‘ Parish aforesaid, in the County aforesaid, in and
‘ upon the said *Joseph Jefferys*, then the Master of
‘ the said *John Swan*, in the Peace of God, and
‘ of our said Lord the King, then and there be-
‘ ing, feloniously, traiterously, wilfully, and of
‘ his Malice aforethought, did make an Assault;
‘ and that the said *John Swan* a certain Pistol, of
‘ the Value of Six-pence, then and there charged
‘ with Gunpowder and leaden Bullets, (which
‘ he the said *John Swan* in his Hand then and
‘ there had and held) to, against, and upon the
‘ said *Joseph Jefferys*, his then Master, then and
‘ there feloniously, traiterously, wilfully, and of
‘ his Malice aforethought, did shoot and dis-
‘ charge; and that he the said *John Swan*, with
‘ the leaden Bullets aforesaid, out of the Pistol
‘ aforesaid, then and there by Force of the Gun-
‘ powder aforesaid, shot and sent forth, as afore-
‘ said, him the said *Joseph Jefferys*, his then
‘ Master, in and upon the left Side of his Head,
‘ then and there feloniously, traiterously, wilfully,
‘ and of his Malice aforethought, did strike, pe-
‘ netrate, and wound, giving to the said *Joseph
‘ Jefferys* then and there, with the leaden Bullets
‘ aforesaid, so as aforesaid shot, discharged, and sent
‘ forth out of the Pistol aforesaid, by the said *John
‘ Swan*, in and upon the said left Side of the Head
‘ of him the said *Joseph Jefferys*, one mortal Wound
‘ of the Width of half an Inch, and of the Depth

‘ of four Inches; of which said mortal Wound
‘ the aforesaid *Joseph Jefferys* then and there in-
‘ stantly died. And *Elizabeth Jefferys*, late of the
‘ said Parish, Spinster, was indicted, for that she,
‘ then and there feloniously, wilfully, and of her
‘ Malice aforethought, was present, aiding, help-
‘ ing, abetting, comforting, assisting, and main-
‘ taining the said *John Swan*, the Felony and
‘ Murder aforesaid, in Manner and Form afore-
‘ said, to do and commit; and that he the said
‘ *John Swan*, then and there, in Manner and
‘ Form aforesaid, feloniously, traiterously, wil-
‘ fully, and of his Malice aforethought; and that
‘ she the said *Elizabeth Jefferys*, then and there,
‘ in Manner and Form aforesaid, feloniously,
‘ wilfully, and of her Malice aforethought, did
‘ kill and murder the said *Joseph Jefferys*, against
‘ the Peace of our said Lord the King, his Crown
‘ and Dignity.’

When they were arraigned upon this Indictment, an Objection was taken by the Council for the Prisoners to their being tried on the above Indictment, as another had been found against them at the last Assizes; against *Swan* for the Murder of the said *Joseph Jefferys*, and *Elizabeth Jefferys* for aiding, assisting, &c. the said *Swan* in the said Murder; and to which Indictment they had both pleaded Not Guilty: That if they were tried on this Indictment, and were acquitted, they must be a second Time tried for their Lives on the former Indictment for the same Offence, which was contrary to Law.—After near three Hours Debate between the Council on both Sides, the Court were of Opinion, that the Prisoners must be tried on the last Indictment found against them, and the former Indictment quashed: Whereupon they both pleaded Not Guilty. The Fact was plainly proved against them; and they making little or no Defence, *Swan* was found guilty of Petty Treason, and *Jefferys* of Murder.—The printed Trial contains nothing remarkable in it, no Arguments of the Council on either Side on the Point of Law, on which of the two Indictments the Prisoners should be tried, nor any Speeches or Arguments, only the examining the Witnesses, and is a plain Narrative of the Evidence, and how the Murder happened: The Substance of which is acknowledged, and contained in the Confession of *Elizabeth Jefferys* and *John Swan*, as followeth.

*The Confession of Elizabeth Jefferys, concerning the
Murder of her Uncle Joseph Jefferys.*

I *Elizabeth Jefferys* do freely and voluntarily confess, That I first enticed and persuaded *John Swan* and *Thomas Mathews*, to undertake and perpetrate the Murder of my deceased Uncle; which they both consented to do the first Opportunity:

tunity: That, on the 3d Day of July 1751, myself and *John Swan* (*Mathews*, to my Knowledge, not being in the House) agreed to kill my said Uncle; and accordingly, after the Maid was gone to Bed, I went into *John Swan's* Room, and called him, and we went down together into the Kitchen; and, having assisted *Swan* in putting some Pewter and other Things into a Sack, I said I could do no more: And then I went up into my Room; and afterwards *Swan* came up, as I believe, and went into my Uncle's Room, and shot him; which done, he came to my Door, and rapped. Accordingly I went out in my Shift, and *John Swan* opened the Street-Door, and let me out: That done, I alarmed the Neighbourhood. And I do solemnly declare, That I do not know that any Person was concerned in the Murder of my deceased Uncle, but myself, and *John Swan*; for that *Mathews* did not come to my Uncle's House the Day before, or Night in which the Murder was committed, as I know of.

Elizabeth Jefferys.

Miss *Jefferys* further confessed, That her Uncle took her from her Father when she was five Years old; and that, when she was sixteen, her said Uncle debauched her: That she lived in a continual State of Incest with him (having had two Miscarriages by him,) till about a Year before his Death, when he slighted her in Favour of another Woman. His repeated Neglects of her, and his threatening to alter his Will, which she knew had been made entirely in her Favour, were the Motives that induced her to perpetrate the Murder, for which she is sentenced to die.

Swan confessed, That he alone murdered his Master Mr. *Jefferys*, by shooting him with a Pistol loaded with Pieces of Bullets: That there was no Stab given; but that the several Wounds were given by the Pieces of the Bullets, and by the Splinters of the Pistol, that burst when it was fired off: And that *Mathews* was not at the House for five Days before the Murder was committed: But owned, That both he and Miss *Jefferys* had offered *Mathews* five or six hundred Pounds to shoot Mr. *Jefferys*, but that he refused to do it; and that they called him Villain for declining to commit the Murder: Upon which he resolved to do it himself, and agreed with Miss *Jefferys* what Time to commit it.

Thus much is inserted to let the Reader into the Case, and as an Introduction to Mr. Justice *Foster's* Opinion, upon which of the two Indictments the Prisoners should be tried; with the Determination of the Court thereon, and his Lordship's Observations on Indictments for Murder and Petty Treason.

The Case of John Swan and Elizabeth Jefferys *.

“ AT *Chelmsford* Assizes, in the Summer 1751, *John Swan* and *Elizabeth Jefferys* were indicted for the Murder of *Joseph Jefferys*; *Swan* for giving the mortal Wound, and *Jefferys* for being present, aiding and abetting; and they both pleaded Not Guilty: But their Trial was postponed to the next Assizes.

“ In the mean time the Attorney-General, who had received Orders to prosecute at the Expence of the Crown, was satisfied from the Evidence laid before him, that *Swan* was in the actual Ser-

vice of the Deceased at the Time the Murder was committed, or at least when the Design was first laid. He therefore thought it adviseable to prefer another Bill against them for the Parts they respectively took in the same Murder, charging *Swan* with Petty Treason, and *Jefferys* with Murder. Accordingly at the next Assizes such Bill was preferred and found, and the Prisoners were arraigned upon it.

“ The Prisoners pleaded in Abatement *Ore tenus*, that another Indictment was depending for the same Offence; and pleaded over to the Treason and Felony. The Council for the Crown did not insist upon drawing up the Plea in Form (as was done in *Layer's Case*, Vol. VI. p. 237.) but demurred *Ore tenus*; and the Council for the Prisoners joined in Demurrer.

“ Mr. Justice *Wright*, who sat on the Crown Side, desiring the Company of Mr. Justice *Foster*, who went that Circuit with him, at the arguing the Plea, he went into Court, and sat there 'till that Matter was determined and the Jury sworn.

“ The Prisoners Council insisted, that they ought not to have been arraigned on this new Bill, pending the former Indictment, on which Issue is already joined: Because, if they plead to Issue on this Indictment, they may be liable to be tried twice for one and the same Fact. It will be in the Option of the Crown, after Issue is joined upon both Indictments, to proceed to Trial upon either of them; and if the Prisoners should be acquitted upon one, they may still be tried upon the other. For though *Auterfoits acquit* of Murder may be a good Bar to an Indictment of Petty Treason for the same Fact, or *Auterfoits acquit* of Petty Treason, to an Indictment of Murder; yet the Prisoners having pleaded to Issue on both Indictments, they may be told they come too late with their Plea in Bar, Issue being already joined on the Fact.

“ They therefore pressed that the Trial on the first Indictment might go on, before the Prisoners should be called upon to plead to the second; for said they, if the Prisoners should be found guilty on that Indictment, the Ends of public Justice will be fully answered. And if they should be acquitted, and the Council for the Crown should think proper to proceed on this new Bill, the Prisoners ought to be left at Liberty to avail themselves of that Acquittal, as they shall be advised.

“ The Court was of Opinion, that the Charge in the Bill last found must be answered, notwithstanding the Pendency of the former; for *Auterfoits Arraign* is no Plea in this Case. Perhaps the Bill last found is better adapted to the Nature of the Case than the former, and the King's Council must be at liberty to prosecute in such Manner as may best answer the Ends of public Justice. But at the same Time the Court must take Care, that the Prisoners be not exposed to the Inconvenience of undergoing two Trials for one and the same Fact.

“ With regard to the Prisoner *Jefferys*, the Offence charged in both Indictments is exactly the same, as well in Consideration of Law as in Point of Fact; with regard to *Swan*, the Fact in both is the same; and so is the substantial Part of the Charge, *Wilful Murder of Malice Prepense*: But falling under a different Consideration in the second Indictment, merely from the Relation the

* From Mr. Justice *Foster's* Reports, p. 104—107. and 326—328.

Prisoner is supposed to stand in to the Deceased. And if that Relation should not be made out in Proof, yet still he may be found guilty of Murder upon that Indictment.

“ And therefore, as the Ends of public Justice would be fully answered with regard to both the Prisoners, by trying them on the Indictment for Petty Treason and Murder, the Court proposed to the King’s Council that the first Indictment should be quashed by Consent, to which they agreed; which was accordingly done, and the Court proceeded to the Trial of the Prisoners on the second Indictment on the Issue of Not Guilty.

“ The Court in this Case followed the Precedent in *Cro. Car.* 147. Sir *William Withypole’s* Case. Only they took in the Consent of the King’s Council, which I think they needed not to have asked; the Justice of the Case was sufficient Warrant for what they did.

“ Before the Jury was called, the Judges agreed between themselves, that if the Prisoners should not think fit to challenge at all, they might be tried together; but if they should insist on their Challenges, they must be tried separately: * Because they cannot join in their Challenges, the Number of their peremptory Challenges being differently limited, *Swan’s* to 35, and *Jefferys’s* to 20.

“ The Court informed them of this; and the Prisoner *Swan* declaring that for his Part he waved all Benefit of Challenging, the Prisoner *Jefferys* challenged (*one*) two or three, and a Jury was sworn. The Prisoners were found guilty, *Swan* of Petty Treason, and *Jefferys* of Murder.

“ While the Case of the King against *Swan* was depending, and before the second Bill was preferred, a Question was made, whether *Swan* could be convicted on the Indictment for Murder, if it should come out in Evidence that he was Servant to the Deceased at the Time the Fact was contrived or committed; and consequently that his Offence was Petit Treason.

“ There is a Case cited in the printed Trial of *Coke* and *Woodburne*, 6 *St. Tri.* 224. which, if such Case there ever was, hath, as far as the Authority of it goeth, determined that Question.

“ At the Summer Assizes at *Dorchester* 1712, a Woman was indicted before Mr. Justice *Eyre*† for the Murder of another Woman; upon Evidence it appeared that the Person murdered was her Mistress, which made the Crime Petit Treason. The Judge directed this Matter to be specially found; and upon Conference with all the Judges it was held she ought to be acquitted upon this Indictment, as she accordingly was, and was afterwards indicted for Petit Treason, and convicted and executed.” This Case is not to be found in any Report printed or MS. that I have met with, or heard of. Nor have I upon a strict Inquiry met with any Footsteps of such Case among the Minutes of Proceedings on the Crown Side in the County where the Case is supposed to have arisen; though the Minutes from 1708 to 1722 have been carefully searched. For these Reasons, and what is suggested in the Note, I conclude that no such Case ever existed.

“ Lord Chief Justice *Hale*, 1 *Hale* 378. is very full and express on the other Side of the Question.

* Vide *Noble’s* Trial, Vol. IX. p. 11. for a different Opinion.

† Justice *Eyre* did not go the Western Circuit in the Summer 1712. *Ward* and *Pricé* went at that Time. This Information I (Mr. Justice *Foster*) have from Mr. *Maddock*, Clerk of Assize of the Western Circuit.

“ A Person who is guilty of Petit Treason may be indicted of Murder, for it is a Species of Murder, and a Pardon of Murder pardoneth Petit Treason.”

“ Lord Chief Justice *Coke* having cited the Opinion in *Dyer* 235. saith, “ That Petit Treason is Murder and more.” 6 *Co.* 13. b. And from thence it hath been inferred that Petit Treason and Murder are in Consideration of Law different Offences, or that the Crime of Murder is merged in Petit Treason. But this Inference will not hold, however true the Chief Justice’s Doctrine may be. There is undoubtedly in Consideration of Law a greater Degree of Malignity in the one than in the other, arising from that Degree of Allegiance, however low, which the Murderer owed to the Deceased at the Time the Fact was committed or conceived in his Heart. But certainly the Difference in Point of Malignity between Murder and Manslaughter is infinitely greater; and consequently in that Respect it may with equal Propriety be said that *Murder is Manslaughter and more*. And yet in Judgment of Law they are the same Offence, differing only in the Degree of Malignity, 4 *R.* 46. *Keil.* 103, 104. when considered in relation to one and the same Fact. And by a Parity of Reason Lord Chief Justice *Hale*, 2 *Hale* 251. concludeth, that Petit Treason and Murder are to be considered in the same Light, as one Offence, differing only in Degree.

“ But though I am satisfied that the Law considereth Petit Treason and Murder as one Offence, differing only in Circumstance and Degree; yet whether it may be adviseable to proceed upon an Indictment for Murder against a Person plainly appearing to be guilty of Petit Treason, is a Matter that deserveth great Consideration; and probably determined the Attorney-General to prefer a fresh Bill for Petit Treason in *Swan’s* Case. For though the Offences are to most Purposes considered as substantially the same, yet as there is some Difference between them with regard to the Judgment that is to be pronounced upon a Conviction, and a very material one with regard to the Trial, a Person indicted for Petit Treason being intitled to a peremptory Challenge of 35, I think if the Prosecutor be apprized of the true State of the Case, as he may be if he useth due Diligence, he ought to adapt the Indictment to the Truth of the Fact.

“ But if, through a Mistake on the Part of the Prosecutor, or through the Ignorance or Inattention of the Officer, a Bill be preferred as for Murder, and it should come out in Evidence that the Prisoner stood in that Sort of Relation to the Deceased which rendereth the Offence Petit Treason, I do not think it by any Means adviseable to direct the Jury to give a Verdict of Acquittal. For a Person charged with a Crime of so heinous a Nature ought not to have the Chance given him by the Court of availing himself of a Plea of *Auterfoits Acquit*. In such a Case I should make no Sort of Difficulty of discharging the Jury of that Indictment, and ordering a fresh Indictment for Petit Treason. In this Method the Prisoner will have Advantage of his peremptory Challenges, and the public Justice will not suffer. And on the other Hand, in Case of an Indictment for Petit Treason, if it be proved that the Defendant

killed the Deceased with such Circumstances of Malice as amount to Murder, but the Relation of Servant, &c. is not proved, I have no Sort of Doubt that on such an Indictment the Defendant may be found guilty of Murder, and acquitted of the Treason. For Murder, 1 *Hale* 378. 2 *Hale* 184. is included in every Charge of Petit Treason, *Felonice, Proditorie, & ex Malitiâ præcogitatâ* MURDRAVIT.

“ The Treason is a Circumstance of Aggravation, of which the Defendant may be acquitted, and yet found guilty of the substantial Part of the Charge; just as a Man upon an Indictment of Murder may be acquitted of that, and found guilty of Manslaughter. “ Because,” say the Books, “ Manslaughter is included in the Charge “ of Murder.”

“ I will go one Step further, I offer it as my private Opinion, which is submitted to the Judgment of the Learned. Put the Case that a Person is brought to his Trial upon an Indictment for Petit Treason, and that one Witness only can be produced, or that the Prosecutor is not furnished with any Evidence except the Depositions taken before the Coroner, or Informations taken on Oath before Justices of the Peace pursuant to the Statutes; and let it be supposed that those Witnesses are living, but unable to travel, or kept out of the Way by the Procurement of the Defendant. 1, 2 *Phil.* and *M.* 13. 2, 3 *Pb.* and *M.* 10. *Vid. Keil.* 55. 1 *Hale* 305. 2 *Hale* 284. What is to be done in this Case? Is the Defendant to be acquitted of the whole Charge? I think not. I think this Evidence, though not sufficient to convict of

Petit Treason, is still admissible Evidence, and proper to be left to the Jury as upon a Charge of Murder; and the Jury, if they are satisfied, may find the Defendant guilty of the Murder, and acquit him of the Treason, for the Reasons just now given, 2 *Hale* 184. *Interest Reipublicæ ne Maleficia remaneant Impunita.*”

The Prisoners were both executed *March* 28, 1752, at *Bucket's-Hill*, near the *Bald-faced Stag* on *Epping-Forest*, near the Place where the Fact was committed; and *Swan* was hanged in Chains.

“ At a Meeting of the Judges at the Lord Chief Justice *Lee's* Chambers in *June* 1752, to consider of the Act of the last Session, for the better preventing the horrid Crime of Murder, it was agreed by much the greater Part of the Judges, that the Judgment for Dissecting and Anatomizing, and touching the Time of Execution, ought to be pronounced in Cases of Petty Treason, though Murder is only mentioned, except in the Case of Women.* And in that Case too, the Time of Execution may be a Part of the Judgment.

“ There was some Doubt whether Hanging in Chains might ever be made Part of the Judgment; but on Debate it was agreed by nine Judges, that in all Cases within the Act, the Judgment for Dissection and Anatomizing only should be Part of the Sentence: And if it should be thought advisable, the Judge might afterwards direct the Hanging in Chains by special Order to the Sheriff, pursuant to the Power given for that Purpose in the Proviso.†

* Though the 1 *E. 6. c. 12.* enacteth that wilful Poisoning shall be deemed Murder of Malice prepened, and that the Offender shall suffer and forfeit as in other Cases of wilful Murder; yet if the Wife or Servant poison Husband or Master, they are constantly indicted for Petty Treason, and suffer the Pains peculiar to that Offence. Petty Treason is considered in no other Light than as an aggravated Murder.

† Before this Time, there was some Difficulty about Hanging in Chains.

For in the Year 1741, when *James Hall* pleaded Guilty to the Indictment of Petty Treason, for the Murder of his Master *John Penny*, of *Clement's-Inn*, Gent. the Rev. Dr. *Penny*, Dean of *Litchfield*, his Brother, and the Relations, applied to the Court at the *Old-Bailey*, before Sentence was passed, that they would be pleased to make an Order, That *James Hall* might be hung in Chains.—Sir *Daniel Lambert*, then Lord Mayor, spoke to Sir *John Strange*, the Recorder of *London*, about it; when the Recorder told the Relations, “ The Court never made any Order in such Cases; that they must apply to the King, the “ Body being at his Majesty's Disposal.”—The King was then at *Hanover*; and the Relations applied by Petition to the Regency, at their first Sitting (at *Whitehall*) after the Sessions about it, when they were told by Mr. *Sharpe*, Clerk to the Council, “ That the Regency, or the Council, never made any Order in such Cases; and that the Court who tried the Prisoner should have done it.” Under this Difficulty, Dean *Penny*, who was acquainted with the Archbishop of *Canterbury*, and with his Grace the Duke of *Newcastle* (to whom he had been Chaplain) sent in to the Regency, and begged as a Favour to speak to those two Noble Lords, who were pleased to come out to the Dean, who then told them what the Court at the *Old-Bailey* had said; whereupon their Graces went in, and acquainted the Regency with the Difficulty the Relations were in; upon which an Order was made for hanging him in Chains, and Mr. *Sharpe* came out and told them of it; but said, it was inserted therein, That it was on the Petition of the Relations of the Deceased: And *Hall* was executed at the End of *Catherine-Street* in the *Strand*, on *Monday Sept. 14, 1741*, and hanged in Chains at *Sheppard's-Bush*, just beyond *Kensington Gravel-pits*, on the *Aston Road*, in *Middlesex*.

XLVI. *The TRIAL of James Stewart, in Aucharn in Duror of Appin, for the Murder of Colin Campbell of Glenure, Esq; Factor for his Majesty on the forfeited Estate of Ardsbiel; before the Circuit Court of Justiciary held at Inverary in Scotland, on Thursday the 21st, Friday the 22^d, Saturday the 23^d, and Monday the 25th of September, 1752, by his Grace Archibald Duke of Argyll, Lord Justice-General, and the Lords Elchies and Kilkerran, Commissioners of Justiciary.*

The Criminal Letters, Libel or Indictment.

GEORGE, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith: To our Lovits,——Macers of our Court of Justiciary, Messengers at Arms, our Sheriffs in that Part, conjunctly and severally, specially constitute, greeting: Forasmuch it is humbly meant and complained to us, by our Right Trusty *William Grant of Prestongrange, Esq;* our Advocate, for our Interest, and also by our Lovit *Janet Mackay, Daughter to the Honourable Hugh Mackay of Bighouse, Esq;* and Relict of the deceased *Colin Campbell of Glenure*, for herself, and on Behalf of *Elizabeth and Lucy Campbells*, her infant Children, with Concourse of our said Advocate, for our Interest, upon *James Stewart* in *Aucharn in Duror of Appin*, commonly known or reputed to be the natural Brother of *Charles Stewart of Ardsbiel*, attainted, and present Prisoner in *Fort-William*; and upon *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean. Vic Allister*, sometime in *Inverchomrie in Rannoch*; and since, or sometime after the eighteenth Day of *April, 1746*, a Cadet or Soldier in the *French King's Service*, or reputed in this Country to have been such.

That whereas, by the Law of God, and the Laws of this and all other well-governed Realms, Murder is a most heinous Crime, and severely punishable, especially when the same is committed deliberately, and by lying in wait, and from a Malice conceived against the Person so murdered, on Account of the faithful Discharge of the Duty of his Office.

Yet true it is, and of verity, that the said *James Stewart* and *Allan Stewart*, commonly called *Allan Breck Stewart*, complained upon, are guilty, Actors, or Art and Part of the said heinous Crime of Murder, aggravated as aforesaid, in so far as the Barons of our Court of Exchequer in *Scotland* having, by Commission dated the Twenty-third Day of *February, 1748-9* Years, appointed the said *Colin Campbell of Glenure* to be Factor upon the Lands and Estate of *Ardsbiel*, forfeited to us by the Attainder of the said *Charles Stewart*, and

lying within the Shire of *Argyll*, and in the Neighbourhood of *Glenure*, the House of the said *Colin Campbell*, and also appointed him Factor on that Part of the forfeited Estate of *Lochiel*, called *Mammore*, lying in the Shire of *Inverness*, and in the Neighbourhood of *Fort-William*, and upon the forfeited Estate of *Allan Cameron of Callart*, in the Shire of *Inverness*, adjoining to the said Lands of *Mammore*, and lying betwixt *Fort-William* and *Appin*; he, the said *Colin*, entered upon the said Office, and proceeding in the faithful Execution thereof, did, among other Things, at *Whitsunday 1751*, cause to be removed the said *James Stewart* from *Glenduror*, a Farm or Possession that had been held by him on the said Estate of *Ardsbiel*: And in the Month of *April*, in this present Year 1752, the said *Colin Campbell* had taken Measures for causing to be removed at the Term of *Whitsunday*, or fifteenth Day of *May*; now last bypast, certain other Persons who were Tenants or Possessors of Farms upon the said Lands or Estate of *Ardsbiel*; which Proceeding was by the said *James Stewart*, for Reasons known to himself, so much resented, that, without any Warrant or Authority from the Tenants, or Persons themselves, so intended to be removed, he, the said *James Stewart*, in the Month of *April* last, came in Person to *Edinburgh*, and caused to be presented, in Name of the said Tenants, to our Lords of Session, a Bill of Suspension of the said intended Removing, upon divers affected Reasons, that were either false or frivolous; and having procured an Order for answering the said Bill, and a Sift of Execution in the mean Time, he returned into the Country, and caused the Tenants intimate the Sift to the said *Colin Campbell*; who thereupon repaired to *Edinburgh*, where an Answer having been made to the said Bill, the same was refused by the Lord Ordinary, and the said *Colin Campbell* returned to his own House at *Glenure*, where he might be in the Way to attend the Duty of his Office, and to cause the said Removing to be put in Execution, and the new Tenants introduced to the Lands on the said fifteenth Day of *May* last.—And on Account of the said *Colin Campbell's* accepting of the said Office, and of the above-mentioned and other

other his Proceedings in the faithful Discharge of the Duty thereof, the said *James Stewart*, and *Allan Breck Stewart*, conceived a most groundless and unjust Repentment, Malice, and Enmity against him, and at length entered into a wicked Conspiracy, barbarously to murder the said *Colin Campbell*, and to bereave him of his Life by the Hands of the said *Allan Breck Stewart*, who had but then lately come back from foreign Parts into that Country, and intended soon to go again beyond Sea; and, during his said last Abode in the Country, had chiefly frequented the House and Company of the said *James Stewart*.—And, in Prosecution of this wicked Conspiracy, upon Monday the eleventh Day of May last, on the Morning of which Day the said *Colin Campbell* left his own House of *Glenure*, to go to *Fort-William*, in the Country of *Lochaber*, about the Distance of sixteen computed Miles Northward, in order to transact some Business relating to his Factory on the Estate of *Lochiel*, and from whence he was certainly expected to return to the Lands of *Ardshiel* before Friday in the same Week, being the fifteenth Day of the said Month, when certain Tenants on the Lands of *Ardshiel* were to be removed, as above-mentioned, and others introduced in their Room; the said *Allan Breck Stewart* went from the House of *John Stewart* of *Fasnacloch*, which lies near to *Glenure*, to the House of the said *James Stewart* at *Aucharn*, lying in the same Neighbourhood, at the Distance of about four Miles Northward; and there the said *James Stewart* was informed, either by the said *Allan Breck Stewart*, or by his own Son *Charles Stewart*, or by *Stewart*, Daughter to the said *John Stewart* of *Fasnacloch*, that they heard, or were informed, that the said *Colin Campbell* of *Glenure* was to go to *Lochaber* that Day, and that he was to persist or proceed in the intended Removing of the Tenants of *Ardshiel*, (as the said *James Stewart* has, among other Things, acknowledged in his judicial Declaration taken before the Sheriff-substitute of *Inverness*;) and there, after receiving such Advice, in the Evening of the same Day, the said *Allan Breck Stewart* laid aside his own Cloaths, which he had brought with him, being a blue Coat, scarlet Vest, and black Breeches of Shag or Velvet, which were believed to have been brought by him from *France*, and which was a remarkable or distinguishing Dress in that Part of the Country; and then and there the said *James Stewart* furnished him, the said *Allan Breck Stewart*, with a Suit of his, the said *James's*, own Cloaths, being a dark coloured short Coat, with silver Buttons, Trowsers, and a blue Bonnet, in which the said *Allan* dressed himself that Evening.—And also next Morning of Tuesday the twelfth of May last, when he left the said *James Stewart's* House, where the said *Allan* left behind him his own French Cloaths aforesaid, together with his Hat, and then set out, in order to lie in wait for the said *Colin Campbell* on his Way, when he should return from *Fort-William* to the Lands of *Ardshiel*, which Lands are bordered on the North-east with the Lands belonging to *Alexander Stewart* of *Ballachelish*, whose House stands near to the Ferry of *Ballachelish*, upon a narrow Arm of the Sea called *Lochlevin*, that separates the Country of *Appin* on the South, from that of *Mamore*, Part of *Lochiel's* Estate, on the North Side of it, and by which Ferry of *Ballachelish* it was known or expected, that the said *Colin Campbell* would pass, in

his Return from *Fort-William*; and, to the said Place of *Ballachelish*, the said *Allan Breck Stewart* directly went, from the House of the said *James Stewart* at *Aucharn*, on this Tuesday the twelfth of May last; and, from thence, the same Day, accompanied by *James Stewart* the younger of *Fasnacloch*, went to *Glenco's* House in *Carnoch*, about three Miles farther Eastward, where the Dowager Lady of the House is Sister to the said *Charles Stewart* late of *Ardshiel*, and to her the said *James Stewart* is natural Brother; and, from thence, he went that same Day to the House of *Callart*, which sometime belonged to *Allan Cameron* of *Callart*, attainted, and was still inhabited by *Helen Stewart* his Widow, and also Sister to the said *Charles Stewart* of *Ardshiel*, and to the said *James Stewart*, at which House he lodged all that Tuesday Night;—and, next Day, being Wednesday, the thirteenth of May last, the said *Allan Breck Stewart* came back, after calling again at *Carnoch*, to the House of *Alexander Stewart* of *Ballachelish*, near the Ferry aforesaid, where he remained the Night following;—and, upon Thursday the fourteenth of the said Month of May last, when it might be certainly expected, that the said *Colin Campbell* would return from *Fort-William* to the Lands of *Ardshiel*, and Country of *Appin*, by the said Ferry of *Ballachelish*, the said *Allan Breck Stewart* waited about the said House, till about Twelve of the Clock that Day; and then, under Pretence of going a fishing, walked up along a Burn or Rivulet near to the said House to the higher Grounds, from whence he had a Prospect of the high Road leading from *Fort-William* to the Lands of *Ardshiel*, and Access by a short Passage into the Wood of *Lettermore*, standing upon the Lands of *Ardshiel*, and adjoining to the said Road on the South Side, about a Mile distant from the House and Ferry of *Ballachelish*; and, having posted himself in the said Wood, near to the high Road, by which the said *Colin Campbell* was to pass, at a convenient Station for his wicked Purpose, where he had brought, or caused to be brought and placed, one or two Guns, or Muskets, loaded, with which he continued some Time concealed in the Wood; and, at length, about Five or Six o'Clock in the Afternoon of the said fourteenth Day of May last, the said *Colin Campbell* having passed the Ferry of *Ballachelish*, and been conveyed by the said *Alexander Stewart* of *Ballachelish* from the Ferry to the Entrance of the Wood of *Lettermore*, as he continued his Journey, passing on Horseback along, or through the said Wood, accompanied by *Donald Kennedy*, a Sheriff's Officer of *Argyll-shire*, who was on Foot, and had got some Space before him, the Road being bad for Horses, and by *Mungo Campbell*, Writer in *Edinburgh*, a young Man, who was then riding a little Way before him; and behind him, at some Distance, was *John Mackenzie*, Servant to the said *Colin*, and also on Horseback.

And then and there the said *Allan Breck Stewart* fired upon the said *Colin Campbell* from behind his Back, and shot him through the Body with two Balls, of which Wounds the said *Colin Campbell* died upon the Spot, in less than an Hour after.

Whereupon the said *Allan Breck Stewart* absconded, and, from that Time, appeared no longer openly in the Country; but, during the Night following, or about Three o'Clock in the Morning of Friday the fifteenth Day of May last, he came to *Carnoch*, the House of *John Macdonald*

of *Glenco* above-mentioned, where he knocked at a Window when the Family were all in Bed; and the said *John Macdonald* of *Glenco*, and *Isobel Stewart* his Stepmother, got up, and went to the Door to the said *Allan*, who then told them, that the said *Colin Campbell* had been shot dead the Evening preceding, in the Wood of *Lettermore*, and that he, the said *Allan*, was leaving the Country, and going the Moor-road, and was come to take Leave of them, the said Lady, and *Glenco* her Son-in-law, which he immediately did, and went away, without entering the House, tho' he was invited by the Lady to come in, and take some Refreshment there.

That, in the mean Time, the said *James Stewart*, complained upon, remained at his own House at *Aucharn*, from which, on the Morning of *Thursday*, the fourteenth of *May* last, he sent a Letter, by *John Maccol* his Servant, to *Charles Stewart*, Writer in *Auchintour*, in which, *inter alia*, he writes, "As I have no Time to write to *William*, let him send down immediately 8 *l. Sterling*, to pay four Milk Cows I bought for his Use at *Ard-skiel*." And as he, the said *James*, hath judicially declared, (when examined at *Fort-William*, on the second of *June* last, in Presence of *George Douglas*, Sheriff-substitute of *Inverness-shire*,) he did not see the said *Allan Breck Stewart* after the Murder; but upon Notice being brought to the said *James Stewart*, complained on, at his own House at *Aucharn*, immediately after it happened, on the said *Thursday* Evening, by the said *John Mackenzie*, Servant to the said now deceased *Colin Campbell*, who, having left the said *Mungo Campbell* to attend the Corpse where it lay, rode away to get Help or Assistance for transporting the same to some fit House or Place; the said *James Stewart*, complained upon, appeared no ways surpris'd or concerned at the News of the Murder; and neither he, nor any of his Family, went to look after the Corpse, or to assist in the carrying it, as others of the Neighbourhood did. And, upon the Morning, or about Noon of the Day following the Murder, being *Friday* the fifteenth of *May* last, the said *James Stewart*, complained upon, sent *Alexander Stewart*, travelling Packman in *Appin*, to *William Stewart*, Merchant in *Maryburgh*, with Directions to get from the said *William* five Pounds *Sterling*, or five *Guineas*; and then told the said Packman, that his Friend *Allan Breck Stewart* was going to leave the Country; and that it was incumbent on him the said *James*, to supply him with Money; whereupon, the said Packman, that same Day, repaired to *Fort-William*, and delivered his said Message from the said *James Stewart*, to the said *William Stewart*, who immediately caused his Wife bring the Packman three *Guineas*,—with which the Packman returned the next Day, being *Saturday*, the sixteenth of *May* last, back to the said *James Stewart*'s House at *Aucharn*; and, upon his Arrival there, found the said *James Stewart* Prisoner, in the Custody of a Party of Soldiers; and the said Packman being allowed to converse privately with the said *James Stewart* and his Wife; and having informed him, that he had only received three *Guineas* from *William Stewart* at *Maryburgh*, the said *James Stewart* took out of his Purse two *Guineas*, which he gave to his Wife, desiring her to give the same to the Packman; to go with these, and the three *Guineas* he already had, and also with *Allan Breck Stewart*'s Cloaths, to him, the said

Allan: And, accordingly, on the Evening of that same *Saturday*, after the said *James Stewart* had been carried off Prisoner to *Fort-William*, his Wife brought the said *Allan Breck Stewart*'s Cloaths above-mentioned, to the Packman, and delivered the same tied up in a Bundle to him, containing a Pair of red Breeches, besides the black Breeches above-mentioned, that were the Property of the said *Allan* himself; and, at the same time, delivered to the Packman the two *Guineas* above-mentioned, which she had received from her said Husband, for that Purpose, and directed the Packman to go with the Cloaths and the five *Guineas*, and deliver the same to the said *Allan Breck Stewart*, whom he would find or hear of at the House of *John Maccol*, Bouman, having the Charge of Milk Cows upon a Farm or Shealing belonging to *Dougal Stewart* of *Appin*, at a remote or solitary Place called *Koalishnacooan*; and the said Packman, after getting his Supper at *Aucharn*, set out on this Errand accordingly that same Night:—That, in the mean Time, in the Afternoon of the said *Saturday*, the sixteenth of *May* last, the said *Allan Breck Stewart* was seen by the said *John Maccol*, *Appin*'s Bouman, in the Heugh of *Corrynakegh*, a Part of the Farm of *Koalishnacooan*; where, as the Bouman was cutting Fire-wood, he heard a Whistle, and, looking about, observed a Man, at a considerable Distance, beckon to him, whom, upon his going up to him, he found to be the said *Allan Breck Stewart*, who saluted him, by asking him how he did? And the Bouman returned the Salute, and told the said *Allan*, he was afraid it was no good Action occasioned his being in such a solitary Place; upon which the said *Allan* asked him, what he meant by that? And the Bouman answered, that he would, without doubt, be suspected of *Glenure*'s Murder, who, he heard, was shot in the Wood of *Lettermore*; and that there were two Men seen go from the Place where the Action was committed; to which the said *Allan* replied, that, if he was rightly informed, there was but one Person concerned in the Murder; and, talking further of the Matter, said, he did not doubt the Family of *Ard-skiel* would be suspected of the Murder; and that he believed *James Stewart* and his Son would be taken up, in consequence of their Difference with *Glenure* about the Lands; but that their being taken up, would not be of any Consequence to them, as there would be no Proof, unless their own Tongues betrayed them: And, upon the Bouman's saying, that he wished he, the said *Allan*, would leave his Neighbourhood, *Allan* told him he could not, till he was supplied with Money and Victuals; and insisted with the Bouman, that he should go to the Strath of *Duror*, (where the said *James Stewart*'s House of *Aucharn* lies) for Money, and to the Lady *Glenco* for a Peck of Meal; both which the Bouman appearing to decline, the said *Allan* added, that he, the Bouman, must go to *Fort-William* with a Letter, (which the said *Allan* then wrote with a Wood-pigeon's Quill he had gathered among the Trees,) to *William Stewart*, Merchant in *Maryburgh*, who, he said, would give him Money upon Receipt of the Letter; and the Bouman having also refused to comply with this Proposition, giving for his Excuse, that he heard that all that went to *Fort-William* at that Time were taken into Custody, the said *Allan* further told him, that unless he should be supplied, from some other Quarter, before next Day, that he, the Bouman, must go to *Fort-William*, notwithstanding

notwithstanding these Difficulties, and that he, *Allan*, was surprised there was no Money sent him, though it was promised to be sent him to that Place.—That very early in the Morning of Sunday, the seventeenth of May last, the said *John Maccol*, Bouman, went out of his House, to look after some Cattle that he apprehended were amongst his Corns, and then observed, coming towards him from the Westward, a Man whom, at a Distance, he took to be *Allan Breck Stewart*, but, upon his nearer Approach, found him to be the said *Alexander Stewart*, Packman, who, upon his coming up to him, after the ordinary Salutations, asked the Bouman if he had seen *Allan Breck Stewart*? which the Bouman having denied, the said Packman told him, that he had Money and Cloaths for the said *Allan*, which he (*Allan*) had trusted, (or agreed with some other Person) to receive at that Place from any one who should be sent after him with it; and then the Bouman owned he had seen him, the said *Allan*, and that he was then in the Heugh of *Corrynakiagh*, and told the Packman, that if he went to an Eminence, which he pointed out to him, and whistled, that the said *Allan Breck* would probably appear to him; but this the Packman declined, complaining that he was so fatigued with travelling the whole Night, that he would not go, having been lately upon his own Business at *Fort-William*, and having been obliged to go there again on the said *James Stewart's* Errand above-mentioned; and therefore desired the said Bouman to deliver the five Guineas, which he then gave him, to the said *Allan Breck Stewart*, together with a Bundle of Cloaths, which he, the Packman, had left at the Root of a Fir-tree then in their View, which he pointed out to the said Bouman, who promised to deliver both to the said *Allan* as desired; whereupon the Packman, being much fatigued, went to Sleep in the Bouman's House;—and in the Evening of the same Sunday, the seventeenth of May last, after the said *John Maccol*, Bouman to *Appin*, was gone to Bed, he was awaked by the said *Allan Breck Stewart* his knocking at the Window of his, the said Bouman's, House; whereby the Board or Shutter of his said Window fell in; whereupon the said Bouman got up from his Bed, and went out, when he found the said *Allan Breck Stewart* retired at some Distance from his House, who, first of all, told him he stood in great need of a Drink; upon which the Bouman went into his House, and returned with a Noggan or Dish full of Milk and Water that had been boiled, which Noggan the Bouman carried in his Hand, in Company with the said *Allan*, till they came together to the Brink of a Burn or Rivulet not far from the Bouman's House; and, at this Meeting, the said *Allan Breck* asked the Bouman, whether there had any body come to that Place with a Message for him? which the Bouman answered in the Affirmative, and then gave the said *Allan* the five Guineas he had received from *Alexander Stewart*, the Packman; upon which the said *Allan Breck Stewart* said, he hoped that would do without his sending to *William Stewart* at *Fort-William*, and inquired if any Thing else had been brought for him? whereupon the Bouman delivered to him the Bundle of Cloaths above-mentioned, that had been left by *Alexander Stewart*, the Packman, for that Purpose, at the Fir-tree; and then the said *Allan* requested

and intreated the Bouman to meet him at that Place next Morning early, that he might deliver to him the dark coloured Coat mounted with Silver Buttons, and a Pair of Trowsers, which the said *Allan* then wore and had upon him, and which he told the Bouman were the Property of the said *James Stewart* in *Aucharn*, to the End that the Bouman might restore and deliver these Cloaths to the said *James*, or to *Margaret Stewart* his Wife; and the said Bouman promised to meet the said *Allan* next Morning, as he desired;—and accordingly the Bouman repaired, next Morning before Sun-rise, to the Place appointed, at the Side of the Rivulet, for their Meeting, where he did not find or see the said *Allan* himself, but found there the black or dark coloured Coat and Trowsers before described, together with his own Noggan or Dish, in which he had brought the Milk and Water to the said *Allan*; and, in one of the Pockets of the said short Coat, the said Bouman found a small Powder-horn, of a flat Make, with some Carving upon the Horn, and red Wax on the Inside thereof, for mending a Slit or Hole:—That from this Place the said *Allan Breck Stewart* withdrew from that Country a-cross the Moors, as he proposed, by going a-cross Mountains and Defarts, where there was no Dwelling-house for the Space of about eighteen computed Miles Eastward, to the Country called *Rannoch*, in the North-west Corner of *Pert-shire*, where the Mother of the said *Allan Breck Stewart*, and other Friends or Relations of his, live; amongst whom he kept himself concealed for a few Days, and was there seen with the aforefaid French Dress, and a Pair of red Breeches; after which he withdrew from that Country, and has not been since seen or heard of, in this Kingdom, that the Complainers have been able to learn.—And in a Letter, wrote by the said *James Stewart*, since he was taken into Custody on Account of the said Murder, bearing Date at *Fort-William* the nineteenth Day of May last, and addressed to *Mr. John Macfarlane*, Writer to the Signet; wherein the said *James* professes great Detestation of the Murder, and great Desire that the said *Allan Breck Stewart* might be apprehended, and, for that Purpose, describes the Person and Dress of the said *Allan*; he, *inter alia*, says, that he, the said *Allan*, wore a Pair of red Breeches.

From all which, and other Facts and Circumstances, that will be proved against the said Persons complained upon, and particularly the Threatenings of Death and Destruction, which the said *James Stewart*, and the said *Allan Breck Stewart*, above complained upon, have been heard to utter against the said *Colin Campbell* of *Glenure*, now bereaved of his Life, by the horrid Murder and Assassination aforefaid, it will be made evident and proved, that the said *James Stewart*, and *Allan Breck Stewart*, complained upon, and each of them, are guilty, Actors, or Art and Part of the said horrid Murder.

And, as a Part of this Proof, there will be produced certain Documents in Writing, and other Particulars enumerated and contained in an Inventory or List thereof, signed by the Complainers or either of them, Copies of which List or Inventory will be delivered to, or served upon the Persons complained upon, at the Time of executing this Libel; and the said written Documents and other

Particulars themselves will, before Trial, be lodged in the Hands of the Clerk to the Circuit Court of Justiciary, before which the Persons complained upon are to be tried, that they may see the same.

At least, at the Time and Place aforesaid, the said *Colin Campbell of Glenure* was barbarously murdered, and the said *James Stewart* and *Allan Breck Stewart*, above complained upon, are guilty, Actors, or Art and Part of the said Murder.

All which, or Part thereof, being found proven by the Verdict of an Assize, before our Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, in a Circuit Court of Justiciary, to be holden by them, or any one or more of their Number, within the Burgh of *Inverary*, upon the twenty-first Day of *September*, next to come, N. S. the said *James Stewart* and *Allan Breck Stewart*, complained upon, both, or one or other of them, who shall be so convicted, ought to be punished with the Pains of Law, to the Terror of others to commit the like execrable Crime in Time coming. Our Will is, &c.

Ex deliberatione dominorum commissioneriorum justiciariorum.

ROBERT LEITH.

LIST of the Persons Names and Designations, that are to pass upon the Assize of the said *James Stewart*, and the said *Allan Breck Stewart*.

ARGYLL-SHIRE.

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| | <i>Donald Campbell of Airds.</i> | |
| | <i>Dugald Stewart of Appin.</i> | |
| | <i>Colin Campbell of Carquhin.</i> | |
| | <i>John Maclean of Lochbuie.</i> | 1 |
| 5 | <i>Donald Campbell younger, of Scammadale.</i> | |
| | <i>Duncan Campbell in Oban.</i> | |
| | <i>Duncan Campbell at Arofs.</i> | |
| | <i>Archibald Campbell of Knockbuie.</i> | |
| | <i>Dugald Macdugal of Gallanach.</i> | 2 |
| 10 | <i>Donald Campbell, Bailie of Lochimmel.</i> | |
| | <i>James Fisher of Duren.</i> | |
| | <i>Alexander Duncanson of Kills.</i> | 3 |
| | <i>Archibald Campbell of Ormsary.</i> | |
| | <i>John Richardson, Merchant at Inverary.</i> | |
| 15 | <i>Duncan Campbell of South-hall.</i> | 4 |
| | <i>Heſtor Macniel of Ardmeanish.</i> | 5 |
| | <i>Archibald Campbell of Clackanfeil.</i> | |
| | <i>James Campbell, late Bailie of Inverary.</i> | 6 |
| | <i>James Campbell of Rascheilly.</i> | 7 |
| 20 | <i>James Campbell of Rudale.</i> | 8 |
| | <i>Angus Campbell of Ardlarich.</i> | |
| | <i>Colin Gillespie of Baillienoir.</i> | 9 |
| | <i>Colin Campbell of Skipnish.</i> | 10 |
| | <i>Duncan Campbell of Glendaraul.</i> | 11 |
| 25 | <i>Hugh Campbell of Lix.</i> | |
| | <i>Alexander Campbell of Ballochiel.</i> | |
| | <i>Colin Campbell of Kildalwin.</i> | |
| | <i>Colin Campbell of Ederlin.</i> | 12 |
| | <i>Niel Campbell of Duntroun.</i> | 13 |
| 30 | <i>Archibald Campbell of Fura.</i> | |
| | <i>Duncan Maclauchlan of Croich.</i> | |
| | <i>John Campbell younger, of Ottir.</i> | |
| | <i>Archibald Campbell of Daill in Craignish.</i> | 14 |
| | <i>Niel Campbell of Dunstaffinsh.</i> | 15 |

BUTE-SHIRE.

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| 35 | <i>Archibald Davie in Glenrossie in Arran;</i> |
| | <i>John Brown in Glensheroig.</i> |

Donald Brown there.

Alexander Fullertoun in *Brodick.*

Thomas Macninch in *Clacklands.*

40 *Duncan Macmaster* in *Lamblash.*

William Hunter in *Letter.*

Andrew Macbryde in *Monimore.*

John Macbryde in *Achincairn.*

James Stewart in *Mid-Kiskidale.*

45 *Alexander Stewart* in *South-Kiskidale.*

CH. ARESKINE.

ALEX. FRASER.

HEW DALRYMPLE.

N. B. The Execution of the Criminal Letters, against *James Stewart* personally, was upon the 21st Day of *August*, 1752, and the Executions against *Allan Breck Stewart*, at *Aucharn* was upon the 24th Day of the said Month of *August*, and at the Market-cross of *Inverary* the 25th Day of the said Month of *August*.

Curia itineris justiciariorum, S. D. N. Regis, tenta apud burgum de Inverarii, vicesimo primo die mensis Septembris, anno Domini millesimo septingentesimo quinquagesimo secundo, N. S. per nobilem et potentem Principem Archibaldum Ducem de Argyll, Dominum Justiciariorum Generalem, et Patricium Grant de Elchies, armigerum, et Dominum Jacobum Ferguson de Kilkerran, Dominos Commissionarios Justiciariorum diei, S. D. N. Regis.

Curia legitime affirmata.

HIS Majesty's Advocate moved, that the Criminal Letters at his Instance, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay of Bighouse*, Esq; and Relict of the deceased *Colin Campbell of Glenure*, for herself, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his said Majesty's Advocate, for his Majesty's Interest; against *James Stewart* in *Aucharn* in *Duror of Appin*, commonly known or reputed to be the natural Brother of *Charles Stewart*, late of *Ardshiel*, attainted; and *Allan Stewart*, commonly called *Allan Breck Stewart*, son to *Donald Stewart*, alias *Vic Ean Vic Allister*, sometime in *Inverchomrie* in *Rannoch*, and since, or sometime after the eighteenth Day of *April*, 1746, a Cadet or Soldier in the *French King's Service*, or reputed in this Country to have been such, might be called. And the same being accordingly done, and the above *Allan Stewart*, commonly called *Allan Breck Stewart*, being oft and diverse Times called publickly by the Macer of Court, and thrice called at the outer Door of the Court-house, to have compeared and underlyen the Law for the Crime of Murder committed by him upon the said deceased *Colin Campbell of Glenure*, in Manner at Length mentioned in the said Criminal Letters, he having been lawfully cited for that Effect, but not compearing,—the Lord Justice-General, and Lords Commissioners of Justiciary, Decern and Adjudge *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean Vic Allister*, sometime in *Inverchomrie* in *Rannoch*, and since, or sometime after the eighteenth Day of *April*, 1746, a Cadet or Soldier in the *French King's Service*, or reputed in this Country to have been such, to be an Outlaw and Fugitive from his Majesty's Laws; and ordain him to be put to the Horn, and all his moveable

moveable Goods and Gear to be escheat and in-brought to his Majesty's Use, for his not compearing this Day and Place, to underly the Law for the Crime of Murder committed by him upon the deceased *Colin Campbell* of *Glenure*, as is more fully mentioned in the Criminal Letters raised against him thereanent, at the Instance of *William Grant* of *Prestongrange*, Esq; his Majesty's Advocate, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouse*, Esq; and Relict of the said deceased *Colin Campbell* of *Glenure*, for herself, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his Majesty's Advocate, for his Majesty's Interest; the said *Allan Stewart*, commonly called *Allan Breck Stewart*, having been lawfully cited for that Effect, oft times called, and not compearing.

ARGYLL, I. P. D.

Intrat. *James Stewart* indicted and accused at the Instance of his Majesty's Advocate, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouse*, Esq; and Relict of the said deceased *Colin Campbell* of *Glenure*, for herself, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his Majesty's Advocate, for his Majesty's Interest, as guilty, Actor, or Art and Part of the Crime of Murder, committed in the Manner mentioned in the Criminal Letters raised thereanent, against him, and *Allan Stewart*, commonly called *Allan Breck Stewart*, Son to *Donald Stewart*, alias *Vic Ean Vic Allister*, sometime in *Inverchomrie* in *Rannoch*, and since, or sometime after the eighteenth Day of *April*, 1746, a Cadet or Soldier in the *French King's* Service, or reputed in this Country to have been such.

Procurators for the Prosecutors.

The Right Honourable *William Grant* of *Prestongrange*, Esq; his Majesty's Advocate.
Mr. *James Erskine*, Advocate, Sheriff-depute of *Perth-shire*.
Mr. *John Campbell* younger, of *Levenside*, Advocate.
Mr. *Robert Campbell* of *Afnick*, Advocate.
Simon Frazer, Esq; Advocate.

Procurators for the Pannel.

Mr. *George Brown* of *Colstoun*, Advocate, Sheriff-depute of the Shire of *Forfar*.
Mr. *Thomas Millar*, Advocate, Sheriff-depute of the Stewarty of *Kirkcudbright*.
Mr. *Walter Stewart* younger, of *Stewart-Hall*, Advocate.
Mr. *Robert Macintosh*, Advocate.

His Majesty's Advocate moved, that the Criminal Letters against the Pannel, and the before-named *Allan Breck Stewart*, might be read. And the same was accordingly done.

Lord Justice-General. "James Stewart, you have heard the Criminal Letters against you read. What have you to say to them?"

James Stewart. "My Lords, I am not guilty of the Crime of which I am accused, and I refer to my Lawyers to make my Defence."

VOL. X.

Mr. WALTER STEWART for the Pannel.

My Lord Justice-General,

I Appear as Council for this Prisoner *James Stewart*, who now stands at your Lordship's Bar, charged as being accessary to one of the foulest and most barbarous Murders that has occurred in any Country; the Murder not only of an innocent Gentleman, but, as will be proved, the Pannel's own intimate Friend; and that without the smallest Provocation, save what greatly enhances his Guilt, viz. *Glenure's* being in the faithful Discharge of his Duty in an Office entrusted to him by the Public. He is charged with causing *Allan Breck Stewart* lie in wait for this unhappy Gentleman, and take him off by a base and inhuman Assassination. I am sensible, my Lord, that the Pannel, accused of a Murder attended with so many aggravating Circumstances; must appear before your Lordship, his Jury, and the World, in a very unfavourable View. A certain Indignation naturally arises in every humane Breast against one suspected of so horrid a Crime; and this must not be a little increased by the malicious Stories and Insinuations industriously spread, which the Pannel, from his close Confinement, has had no Opportunity of contradicting. But now, as he has put himself for his Trial upon God and his Country, by pleading not guilty, until that Country finds him guilty, the Presumption is for Innocence. This he has a Title to demand.—All I shall ask, however, is, that as I know his Judges, so I hope his Jury, and all who now hear me, will lay aside any Prejudice against him, and will form no Opinion, until the Circumstances of the Libel, the Defences which I am now to offer against it, and the Proof of both, be attentively considered. For myself, my Lord, I must say (and I believe I may say the same for all the Gentlemen on the same Side with me), did I, after the strictest Inquiry, suspect the Pannel to be accessary to this Murder, it would be the last Action in my Life to stand up in his Defence: But, my Lord, we have gone thro' this Libel with the greatest Attention, and have taken a View of the several Facts, which, after a Precognition of above a thousand Witnesses, are set forth to support the Charge against the Pannel; we have heard from the Pannel's own Mouth his Defences against this Charge, which he avers he can prove; we have heard, from the Unprejudiced, the general Character he bears in the World, and, from the whole, cannot help concluding, that he is not guilty. We look upon ourselves as standing up for Innocence, when defending this Pannel. It is therefore our Duty to defend him with that Warmth which Innocence claims as its Due.

In the Entry of this Trial, my Lord, I cannot help complaining of most intolerable Hardships; which this Pannel has undergone since *May* last, when he was first incarcerated. My Lord Advocate's Humanity, his Tenderness to Pannels, I can, from my own little Experience in Trials, subscribe to. The unjustifiable Steps I am now to complain of, I must therefore lay to the Charge of the private Prosecutors. I dare say my Lord Advocate as little knew of them, as he will now, when he hears, approve of them. The Pannel, since the Month of *May* last, has been kept in the closest Confinement. For the first six Weeks, no Mortal was allowed Access to him: After that in-

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deed,

deed; for some short Time, Admittance was given to his Wife and one or two more; but any who could be thought proper Persons to prepare Defences for his Trial, were carefully denied Access to him: And again, for a considerable Time before his Trial, he was close confined, and all Admittance refused. When his Council came to this Place, and wanted to see him, we were told that none were to be admitted without a Warrant from the Duke of *Argyll*; and a Petition was actually drawn, to be presented to your Grace, when a Message came allowing us Access. His Sons and his Servants too have suffered the same close Imprisonment. And all this not only contrary to Humanity, but directly in the Face of the Act of Parliament 1701, which discharges close Imprisonment after eight Days, under the severest Penalties. By the Precaution of this private Prosecutor too, the Bar has been in a Manner shut up against this Pannel; all the old experienced Council, tho' not brought to maintain the Charge against him, have been retained from giving him their Assistance; otherways, in all Probability, I had not now been employed to open his Defence. The Pannel's House and his Repositories have been three several Times searched, and Papers carried off by near Relations of the Prosecutors, attended by a military Force, and without any Warrant. His Wife and his Sons, who by the Laws of God and Man cannot be called as Witnesses against him, have been examined upon Oath; some of them five different Times, to catch at any Discordance, had there been any, in their Declarations; and these very Declarations are now proposed to be brought in Proof against the Pannel, while the Declarants themselves are alive, and ought, by the fundamental Laws of this Kingdom, to be examined in Presence of the Pannel and Jury. These are Hardships, my Lord, which, Thanks be to God, meet with no Encouragement in this now a free Country. The Time was indeed, when the feeble Law was unable to protect the Innocent, when the Rules of Justice were broke to pieces by the ruffian Hands of Power; then our unhappy Country groaned under the intolerable Yoke of arbitrary Power; then was scarce the Form of a Trial; the Best, the Greatest of our Country, even an *Argyll*, fell a Sacrifice to the Will of Tyranny. But now, my Lord, the Days which our Fathers wished to see, and did not see, we have the Happiness to enjoy. A fair Trial, which the Noblest could not obtain, the Meanest are now intitled to, under the Protection of Laws, guarded by a Government ever watchful for the Good of its Subjects, under which the Keeness of private Prosecutors will meet with no Countenance or Encouragement. The Pannel enjoying the Privileges of every free-born *Briton*, is now to stand Trial before the Judges and Jury of his Country; and as his Judges will shew the greatest Impartiality, he expects the same from the Gentlemen of the Jury. They will judge of the Proof brought before them, having in their Eye the Example of Almighty God, by whose holy Name they have sworn to do justly, before whose awful Tribunal there is no Judgment formed from Names or personal Prejudices, but every Man is judged according to his Works. They will consider, that as they are to answer to God, so they have to answer to the World, who will make a narrow and impartial Scrutiny into their Verdict. At the same

Time I cannot help saying, that, amid all the Hardships this Pannel has suffered, I hope it is one Piece of good Fortune; that he is to be tried by Gentlemen of the same County with himself; who, from their more particular Knowledge of the Pannel and his Character in the World, should be best Judges what Proof is necessary to fix upon him so black a Crime.

In order that your Lordships may more fully understand the Defences now to be offered for the Pannel, I will beg leave to lay before the Court an Account of the Facts, which have given rise to this Prosecution, as they really happened; and as we have got them from the Pannel's own Mouth, at a Time when it was little his Interest to hide the Truth from us. The Pannel, my Lord, was in Possession of a Farm in the Estate of *Ardshiel* called *Glenduror*, and was Tacksman of another called *Lettermore*, which he had sublet for about 70*l.* Scots a Year, when *Glenure* was appointed Factor on the Estate of *Ardshiel* in February 1749. That Gentleman continued the Friendship which he had before entertained for the Pannel in a very particular Manner. He gave him the Management of the whole Estate of *Ardshiel*, Power to put in and remove Tenants, and to raise the Rents as he should think proper, and took yearly from the Pannel his Bill for the Rent of the Estate, at which it had been surveyed by the Barons of Exchequer, leaving him to apply the Overplus to the Use of *Ardshiel's* Children. This Agreement will be instructed by Discharges and Letters under *Glenure's* own Hand. Sometime before *Whitsunday* 1751, *Glenure* applied to the Pannel to yield the Farm of *Glenduror*, which he then possessed, to Mr. *Campbell* of *Bolaveolan*, a particular Friend of his, who offered an additional Rent. This the Pannel immediately complied with, without waiting a Warning, and took the Farm of *Aucharn*, where he now lives, from Mr. *Campbell* of *Airds*, but still continued to uplift the Rents of *Ardshiel*, in Terms of his Agreement with *Glenure*. Sometime in April last, *Glenure* executed a Warning against the Subtenant in *Lettermore* to remove from that Farm at *Whitsunday* 1752; and likewise against several other Tenants of the Lands of *Ardshiel*. The Pannel does acknowledge, that he did expostulate with *Glenure* upon this, telling him, he thought it hard to turn them out, since they offered to give more additional Rent than any others would, and likewise to take the Oaths to the Government. But *Glenure* still persisted in his Resolution; upon which, the Pannel being occasionally in *Edinburgh*, at the Desire of the Tenants, made out a short Memorial of the Fact, and presented it to one of the Barons of Exchequer, who disapproved greatly of *Glenure's* Procedure; but could do nothing towards putting a Stop to the Removing, as a Quorum of the Barons was not to be had until the next Exchequer Term. But he kept the Memorial, promising to represent the Case to the whole Barons; and added, that he had no Doubt but they would give an Order to the Factor to continue the Tenants in their Possessions. The Pannel upon this advised with Council, how the Tenants might be kept in Possession until the Exchequer Term; and, by their Advice, applied for a Suspension of the Removing to the Court of Session: And a Bill of Suspension being accordingly presented, a Sift was obtained, and the Bill ordered to be answered; which Sift was intimated to

Glenure upon the Pannel's returning into the Country; and he, not knowing the Forms, having carried with him the principal Bill of Suspension, and *Glenure* immediately giving in Answers, the same were advised without the Bill, and it was refused. This Scheme of a Suspension having failed, and *Glenure* persisting in his Resolution of ejecting the Tenants upon the Term-day at which they were warned to remove, the Pannel, upon a second Application from the Tenants, wrote to *Alexander Stewart*, Notary Public, to come, upon the 15th of *May*, that they might protest, and take an Instrument against *Glenure*, if he proceeded to Ejection; and when *Alexander Stewart* excused himself, the Pannel sent a Letter, by Express, on the 14th of *May*, to *Charles Stewart*, Notary in *Auchintour*, to come on the same Errand, and, in a Postscript, bid him tell *William Stewart* to send down *8 l. Sterling*, to pay four Milk Cows which he had bought for his Use at *Ardshiel*, and which the Tenants had refused to deliver until they got the Price, tho' *William Stewart* had wrote for them. This Postscript is laid hold of by the Prosecutors, as a Circumstance to fix this Murder upon the Pannel. But this, my Lord, I am not surpris'd at; other Letters of his share the same Fate, tho', if possible, less criminal than this one: By what Conjunction, or what mighty Magic they can be made so, I own I cannot conjecture.

The Pannel, in further Prosecution of this Plan of taking a Protest, on *Thursday* the 14th, had engaged *James Stewart* younger of *Fasnaclloch*, and *John Stewart* younger of *Ballachelish*, to be present on the 15th, and witness his Protest. But, on the *Thursday* Evening, the Pannel received the melancholy Accounts of *Glenure's* being murdered in the Wood of *Lettermore*. These are the Facts which gave rise to that inveterate Malice, which the Libel says induced the Pannel to conspire the Death of *Glenure*. The Words are: "And, on Account of the said *Colin Campbell's* accepting the said Office, and of the above-mentioned and other his Proceedings in the faithful Discharge of the Duty thereof, the said *James* conceived Resentment, &c." How unjust this Conclusion is, I do humbly submit to your Lordships. After *Glenure* was made Factor, your Lordship sees, they continued in the greatest Friendship: You see the Pannel managing the Estate of *Ardshiel* under *Glenure*, removing from his Possession of *Glenduror*, at *Glenure's* Desire, without putting him to the Trouble of a Warning, and going and residing under Mr. *Campbell* of *Airds*. He had no Possession in *Ardshiel* Estate, as *Lettermore* was sublet; his Management of the Estate was not taken from him, and he was still allowed to remit Part of the Rents to *Ardshiel's* Family. He has no Connexion by Blood, or otherways, with the Tenants warned to remove; there is not so much as one of them of his Name. The Estate was annexed for ever to the Crown, and was in a few Months to fall into the Hands of Commissioners, appointed by his Majesty, who would probably restore the Tenants, as they offered more Rent than those put in by *Glenure*. Can any Mortal believe, that the Pannel, because *Glenure* was to execute a Removing against these Tenants, should enter into so execrable a Design, as to assassinate that Gentleman, by the Hands of *Allan Breck*, on the 14th, when we see him pursuing quite another Scheme, sending for a Notary and Witnesses to take a Protest against him on the 15th? In all Cases

of Murder, I do humbly apprehend, it is of Necessity, that there should be Malice aforethought, which is the Essence of, and constitutes the Crime; and all Passions, particularly one of so extraordinary a Nature as this Malice, must have had some Cause. I do submit to your Lordships, if there is the smallest Appearance of that Malice, or any Thing like a Cause assigned for it. But, even taking the Story as it stands in the Libel, it is a Tale that can gain Credit with no Mortal. What earthly Purpose could the Pannel serve by such a desperate Piece of Villainy? Would the Murder of *Glenure* prevent the Removal of the Tenants? Would not the Murder of *Glenure* deprive him of the Liberty which that Gentleman had given him to uplift the Rents? Would it not put it out of his Power to help his Brother *Ardshiel's* Family? The Pannel is allowed to be a judicious Man, prudent in his Actions beyond most Men of his Rank in the World. Can it be believed he would do a Thing so directly contrary to his Interest? Suppose him capable of the Crime, we must suppose him the greatest Fool, as well as the greatest Monster that ever disgraced Humanity. But, is this his Character? No, my Lord, as he is a sensible Man, so all who know him will say, he is a humane, peaceable, good-natured Man, looked upon as a Father where he lives; Strangers were happy to get their Children under his Care, as in Fact he is Tutor and Curator at this very Time to several Orphans, who have not the smallest Relation to him.

Here, my Lord, I will for a little leave the Pannel, and give an Account of *Allan Breck Stewart*, who is charged as the Committer of this Murder, having entered into a wicked Conspiracy with the Pannel for that Purpose. Whether he was the actual Murderer or not, the Pannel knows not; neither is it my Business to say. I shall only point out what Connexions was betwixt the Pannel and *Allan Breck*, leaving it to your Lordship, and the Jury, to judge, if the Circumstances of these Connexions, as I shall now open them, or even as they are laid in the Libel, are sufficient to fix upon the Pannel his being a Conspirator in this execrable Plot. At the same Time there is no Question but the Prosecutors must fix the actual Murder upon *Allan Breck*, otherwise the Charge against the Pannel entirely flies off.

This *Allan Breck Stewart*, my Lord, was the Son of one *Donald Stewart*, a particular Friend, and distant Relation of the Pannel's. He died while his Children were Infants, and, upon his Death-bed, committed them to the Care of his Friend, naming him Tutor and Curator to them. The Pannel faithfully executed this Trust, took Care of the Childrens Education, and managed their Effects to the best Advantage. *Allan* turning extravagant, when he grew up to Man's Estate, and having spent what was left him by his Father, enlisted in his Majesty's Service, without clearing Accounts with the Pannel, who used to supply him with Money, and pay little Debts for him, even after he became a Soldier, though he knew he had already given him more than his Patrimony. This the Pannel thought he owed to the Memory of his deceased Friend. *Breck* continued in his Majesty's Service until the Battle of *Preston*, where being taken Prisoner by the Rebels, he enlisted with them, continued with them during the Rebellion, and afterwards made his Escape into *France*, and enlisted in the *French* Service, where he still continues. Since he first
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went over, he has been in use, now and then, of coming back to *Scotland*, and staying a few Months with his Relations; he commonly landed first at *Edinburgh*, and lodged in the House of one *Hugh Stewart*. There he seldom went out but in the Night; and more than once narrowly escaped being apprehended as a Defenter. When he came up to *Rannoch* or *Appin* among his Relations; he used to stroll about without any settled Residence; and where-ever he came, he generally threw off his *French* Cloaths, as they were remarkable and improper for that hilly Country, and borrowed from any Acquaintance, where-ever he happened to be at the Time. Among others, he used to visit at the Pannel's House; though he came seldomer there than to other Places in the Neighbourhood, as the Pannel used to take a good deal of Freedom in blaming his Conduct and Extravagance. About the Beginning of *March* last; he came over from *France*, was at the Houses of *Balachallan* and *Annat*, and went from thence to *Glenbucky's* House, where he continued until the End of *March*, and while there, he threw aside his *French* Cloaths; and wore Cloaths belonging to *Glenbucky*, or his Brother. In the Beginning of *April*, he came to the Pannel's House, immediately before the Pannel went to *Edinburgh*, and staying a Day or two, went off with a dark coloured short Coat with clear Buttons, and other Parts of the Country Dress, which he had picked up about the Pannel's House, and continued strolling about the Country in that Dress, until the latter End of *April*, when he returned to the Pannel's House, and staid a single Night. On the 11th of *May*, about One o'Clock Afternoon, he returned, and found the Pannel upon a Field, where his Servants were covering Potatoes. They continued there about a Quarter of an Hour in the hearing of the Servants, when an Express came from Mr. *Campbell* of *Airds* to the Pannel, desiring him to come to him at *Keil* upon Business; upon which the Pannel walked with *Breck* from the Field to the House, at about fifty Yards Distance, and leaving him there, without going in, went directly to *Keil*; continued there until betwixt Ten and Eleven at Night, when returning home, he found there several Strangers beside *Allan Breck*. They supped all together, and continued in one Room until they went to Bed. *Breck* lay in the Barn with the Pannel's Sons, and one *Archibald Cameron*. The Pannel had no private Conferences with him; they were not one Moment by themselves, nor ever in Company, but before the Family and the Strangers. Early in the Morning of *Tuesday* the 12th, before *Breck* was out of Bed, and without seeing or speaking with him, the Pannel went to *Appin's* House, and *Breck* was gone before he returned, and the Pannel has never seen him since. What Cloaths he carried off, he does not know; but he has authorised me to say, that what is laid in the Indictment may be true, that he went off in the short Coat which he used before. That he went to *Ballachelish*, from that to *Glenco's* House, and then to *Callart*, and, on *Wednesday*, came back to *Ballachelish*, where he staid all Night. On the *Thursday*, in the Forenoon, he assisted *Ballachelish's* Servants in carrying out Dung, and, after Dinner, he got a Rod, and went a fishing, continued some Time in Sight of *Ballachelish* and his Servants, who were carrying out the Dung; but going a little up the Water, a

rising Ground intercepted their View, and they saw no more of him.

This, my Lord, is a true Account of the Connexion betwixt the Pannel and *Allan Breck* preceding the Murder, as it will come out upon Proof. I will draw this Conclusion, that this horrid Conspiracy must have been laid and concerted between them in a few Seconds, while the Pannel was walking from his Potatoe Ground to his House at fifty Yards Distance; for at no other Time had they any private Conference. The changing the Cloaths, your Lordship sees, was altogether unknown to the Pannel, and what *Breck* was in use to do at the Pannel's House, and over the whole Country. But taking the Story as it stands in the Libel, who can possibly believe that the Pannel would have given *Breck* his own Cloaths to disguise himself for committing this Murder; or that *Breck* would have put on this Disguise four Days before the Murder happened? The Libel says, *Glenure* was certainly expected on the *Thursday* to return from *Fort-William* to *Ardshiel*. Would *Breck* then have put on his Disguise on the *Monday*, and gone about publicly in it? No surely, my Lord; Children would have conducted a Plot better than this; and yet, upon this Circumstance of changing Cloaths, as incredible as it is falsely represented, stands one half of the Prosecutor's Hopes (if the Libel contains them all) of fixing this Crime upon the Prisoner.

I proceed to lay before your Lordship the Sequel to *Glenure's* Murder. Betwixt Six and Seven on *Thursday* Evening, *Mackenzie*, *Glenure's* Servant, called at the Pannel's House, and informed him, that his Master was shot dead in the Wood of *Lettermore*. The Libel says, that the Pannel appeared nowise surpris'd or concerned at the News; and that neither he, or any of his Servants, went to look after the Corpse. *Mackenzie* will not, dare not, say so. The Pannel shewed that Surprize, that deep Concern, which every innocent Man must feel at so unexpected and melancholy an Accident. He directed *Mackenzie* the nearest Road to *Glenduror*, to call Mr. *Campbell* of *Bolaveolan*, *Glenure's* Friend, and, in the mean Time, sent such of his Family as could be spared, and several of his Neighbours, to take Care of the Corpse. On *Friday* Morning, the Day after the Murder, the Pannel received a Message from *Allan Breck*, by *Donald Stewart*, Nephew to *Ballachelish*, who had seen him in the Fields about Nine o'Clock the Evening before, when *Breck* told him, that as *Glenure* was killed, there would be a strict Search for his Murderer; and he being a Defenter, it was proper for him to keep out of the Way; he was therefore resolved to leave the Country immediately; that he would hide himself for a Day or two in the Desert of *Koalisnacoan*; and as he had no Money, he begged of *Donald Stewart* to go to the Pannel, and inform him of this, and intreat him to send a little Money to him at *Koalisnacoan*. *Donald Stewart* then said to him, that he hoped he had no Hand in *Glenure's* Murder himself: Upon which he took God to Witness he had none, but his being a Defenter to the Highland Army, was the only Cause of his absconding, as he was sure he would be hanged, without Mercy, if he was seized. Upon receiving this Message, the Pannel sent *Alexander Stewart*, Packman, to *Fort-William*, to one *William Stewart*, a Merchant there, to get five Guineas from him,

him, telling him, at the same time, that it was for the Use of *Allan Breck Stewart*, who was going off the Country, as he was a Defenter, to shun the Search which would be made for the Murderer of *Glenure*. Upon the Packman's Return, he found the Pannel in the Custody of a Party of Soldiers; and as he had got but three Guineas from *William Stewart* at *Fort-William*, the Pannel gave him other two, and bid him go to *Koalisnacoan*, where he would find *Allan Breck*, and give him the five Guineas. Upon which the Packman went home with the Pannel's Wife, who, he is since informed, gave him *Breck's French Cloaths*, which he had left at the Pannel's House the *Monday* before, but which the Pannel knew nothing of. As to the long Episode in the Indictment, narrating the Conversations betwixt *Allan Breck* and the Bouman, as the Pannel knows nothing of them, they shall pass unnoticed by me. Only I beg leave to make this single Observation to the Gentlemen of the Jury, that when this Part of the Libel comes under their Consideration, they will observe, that it can be proven by the Oath of but one Witness, and that Witness swearing only to what he heard *Allan Breck* say; consequently the mistaking one Word must be of the most fatal Consequence, for this Reason, hearsay Evidence is altogether rejected in Law. They will likewise consider, that what *Allan Breck* says, is said by one who wanted to clear himself to the Bouman of the Murder of *Glenure*, which the Bouman charged him with; for which Reason he might be tempted to throw out Insinuations against others. Let the Jury keep these Hints in their Eye, and then let them give what Weight to this Part of the Libel their Consciencés can allow them. The Pannel was taken into Custody on the 16th; on the 19th it was rumoured in *Fort-William*, where he was incarcerated, that *Allan Breck* was the Murderer of *Glenure*. No sooner does the Pannel hear this; but he writes a Letter to Mr. *Macfarlane*, Writer to the Signet, expressing the greatest Abhorrence and Detestation at the Murder; tells him that *Allan Breck* was suspected to be the Committer of it, as he was that Day seen near the Place where *Glenure* was killed, and immediately disappeared. He expresses his Desire of having him brought to Justice, gives a particular Description of his Looks and Dress; and further says, he was probably gone South, to take the first Opportunity of going abroad; and that he commonly lodged in the House of *Hugh Stewart* at the Back of the *Fountain-well*, when he came to *Edinburgh*. This Letter too is brought as a Point of Ditty against the Pannel. What strange and unaccountable Torturing of the most upright Actions must there be, to make this criminal? This Pupil, this Relation, this Friend's Son of his, whom he had supplied with a little Money, to keep him out of the Hands of the military Law as a Defenter, no sooner does he hear him named as being guilty of this horrid Murder, but he does all in his Power to have him brought to Justice: Strange it is indeed to make this a Crime! What should the Pannel have done? Should he have concealed the suspected Murderer? No, my Lord, he acted a more honourable Part, such a Part as this Court will approve of, such a Part as every Member of it would have acted himself.

As I have taken up too much of your Lordship's Time already, I shall but just mention such

Defences as occur in Point of Law, leaving them to be insisted on by the Gentlemen who are to support me.

And, in the first Place, however willing the Pannel may be to stand the Issue of his Trial; it is our Business, as Council for him, to lay hold of every Handle against it. I therefore submit to the Court, whether this Pannel, who is only charged as Accessary, can be tried before the Principal *Allan Breck* be first discussed. I do most humbly contend, he cannot; *1mo*, because, if the contrary Practice were allowed, Probation might be led against the Principal, tho' absent, contrary to the fundamental Law of this Nation; and it must first be proven he, the Principal, committed the Crime, *primo debet constare de corpore delicti*, before the Accessary can be convicted. *2do*, If the Accessary must defend the absent Principal, it may be of the most fatal Consequence to both, tho' innocent. The Principal's greatest Enemies may be led as Witnesses, and such Defences as would have been sufficient to exculpate him entirely, may be omitted. *3tio*, These Principles are followed by the Opinions of all Lawyers who write upon the criminal Law, and likewise by the Practice of neighbouring Nations, particularly that of *England*; where the Principal must be attainted after Verdict or Confession, before any Judgment can be given against the Accessary. But, *4to*, what I now plead, I humbly apprehend to be the Law of *Scotland*; for so it is expressly said, *Reg. Maj. ch. 26. b. 4. Quon. Attach. ch. 83. and 29 stat. David. II.* And, agreeable to these, is the Opinion of our great criminal Lawyer *Sir George Mackenzie*, laid down in the strongest Terms in his *Title Art. Part. Paragraph 9th. 2do*, I must object for the Pannel to the Relevancy of this Libel, that the Facts and Circumstances mentioned in it, tho' they should be fully proven, are not sufficient to infer his being accessary to this Murder. Every Libel is a Syllogism: The major Proposition contains the Crime, and the Laws against that Crime; the minor contains the Facts charged against the Pannel; and the Conclusion is, that, from these Facts, he is guilty of the Crime; and deserves to suffer the Pains of Law. Now, if the Facts charged do not amount to the Crime, the Conclusion must be false, and the Libel irrelevant. This, I humbly apprehend, is the present Case. From the above Narration of the Facts, and what Observations I have already made upon them, I hope your Lordships will be of Opinion, that the Circumstances charged in the Libel are so extremely vague and trivial, that they are not sufficient to bring the Pannel under so much as a Suspicion of being guilty of this horrid Crime laid to his Charge.

If your Lordships shall think proper to repel these Defences, and to remit the Pannel on this Indictment to the Knowledge of an Assize, we humbly hope you will allow us a Proof of all Facts and Circumstances that can tend to his Exculpation; particularly of his Friendship with *Glenure*; of *Allan Breck's* being a Defenter, and being in use to put off his *French Cloaths*, and put on Cloaths belonging to the Family where he happened to be at the Time; of the Pannel's having no private Conference with him preceding the Murder; of the Message which the Pannel got from him after the Murder, bidding him send him a little Money to *Koalisnacoan*, where he was going; and, in general, of all other Defences that may occur as necessary to the Pannel

in the Course of his Trial. I will conclude, my Lords, with a single Word to the Gentlemen of the Jury, that the more flagrant, the more atrocious any Crime is, the more clearly and distinctly they will require it to be made out to them: That as the Crime is proposed to be fixed upon the Pannel by presumptive Evidence alone, they will be cautious in distinguishing betwixt such Presumptions as are conclusive, and such as are not so; between such Presumptions as can arise from no other Cause but the Pannel's being in a Conspiracy to murder *Glenure*, and such as are more naturally construed to have arisen from other Causes. If they find such Presumptions, as that they can, before Almighty God, bring in a Verdict *guilty*, it is their Duty to do so, and the Law will have its Vengeance. But let them have this always in their Eye, that better twenty guilty escape, than that one innocent Man should suffer Death by their Verdict.

Mr. ROBERT MACINTOSH for the Pannel.

My Lord Justice-General, and Lords Commissioners of Justice;

I Appear also, to contribute my small Mite towards the Defence of this Pannel, who has the Misfortune to be accused of a Crime, which every body must admit to be of the deepest Dye; and, as laid in the Indictment, attended with the most aggravating Circumstances; and I do it, my Lords, not out of an Opinion of my being in any Degree equal to the Task, a Share of which I have undertaken; but rather that a poor Man, standing Trial for his Life, may not be absolutely destitute of Assistance, when uncommon Endeavours have been used to deprive him of abler Help.

My Lords, I dare say, every one who speaks in this Cause, on whatever Side, will begin with expressing a Detestation of the Crime now charged against the Pannel; if not in accusing the Pannel, yet in this we shall all agree, to condemn the miserable Person, whose Conscience accuses himself of it; whether he now stands at the Bar, or whether he flies from the avenging Sword of Justice. I must acknowledge, that if the Pannel has been guilty of, or accessory to this Murder, beyond all Controversy it constitutes him one of the greatest Criminals that this or any other Country can afford. Murder is a heinous Crime, whether it is the Fate of the Eminent or the Obscure. But this Murder seems to be a Complication of all Guilt; and as my Duty calls me to plead in Defence of one labouring under such an Accusation, I cannot do it but with the utmost Concern. The very Mention of such Barbarity and Iniquity, as was just now rehearsed, could not fail to move every humane Breast; but the Reading of an Indictment, such as we have a little while ago heard, is enough to inspire Horror even in the Innocent. It is still harder upon me, when I consider the unhappy Sufferer in that dreadful Scene, which is now to be the Subject of Trial; one, against whose Life I should be the last Man to excuse the smallest Attempt; one whom I knew, whom I regarded, whom I had the Honour to be in Friendship with: His Death, had it been common, would have affected me; but his Murder afflicts me. I sincerely regret it, for his own sake, for the sake of his Friends, for the sake of the poor disconsolate Lady, who now weeps over her own Widowity, and the orphan State of her infant

Children; I regret it for the sake of the whole Land, that stands polluted by the cruel Shedding of innocent Blood; and in a particular Manner do I regret it for the sake of the Highlands of *Scotland*, for which I own, from private Connexions, I cannot help having a Regard, and which I am afraid have, by this unlucky Accident, suffered a deep political Wound, that it may take Time to rub off the Effects of; as being able to furnish so eminent an Instance of Barbarism, in spite of the noble Attempt of the Legislature, and of all in the Administration, to polish and civilize them, to reduce them to the righteous Plan of the Government of this Country, and to a constitutional Equality with the rest of the united Kingdom.

My Lords, for these Reasons do I most heartily join in deploring this fatal Catastrophe. At the same Time, my Lords, the Defence I am now to plead, fixes my Attention upon a more agreeable Prospect; that of Innocence, and not of Guilt; and the Importance of the Issue justly challenges my most sanguine Efforts. We have before us the Life and Fortune of a Man, a Countryman, I believe an innocent, tho' accused one: I must believe him innocent, not only as I am yet ignorant of any Proof that I think should convict him, but more as I have not been able, in a very strict Investigation, to discover from himself any Symptom of Guilt; and as the Persuasion of Innocence may give Courage to defend, so I persuade myself I need make no Apology, if I am able to speak with that Earnestness and Freedom that becomes the Consequence of what is at Stake. And, on the other hand, I hope to be excused, if I fail in that Accuracy and Distinctness, which I could wish to observe, from a just Regard to the Dignity of this high Court, and to the Presence of a crowded, and, I dare say, an interested Audience, who are ready to swallow with Greediness every Word that shall be spoke on this Subject.

My Lords, before I go farther, I cannot omit observing, what I am extremely sensible of, and that is, the Disadvantages under which this Pannel enters upon a Trial for himself, and all that is dear to him in this World, for what concerns all that is precious to him in another; Disadvantages which we share in, who appear as his Council. But when I say so, I would not be understood as meaning to insinuate any Reflexion upon the Conduct of the honourable Gentleman who prosecutes for his Majesty: He does the Duty of his Office, the Duty which he owes to his King and Country; and gave an early Proof in this Matter of that Candor for which he is remarkable on all Occasions, by turning a general Indictment into a special and circumstantiated Charge. But, to use his own Words, when hindered from doing what his humane Inclination equally led him to, his Lordship is here but half a Pursuer: There are others concerned in carrying on this Prosecution; and I am afraid their just Resentment of a Murder, which they had all the Reason in the World to be zealous in searching out the Committers of, has made them unguarded to Measures which I should be sorry to see retaliate; and pushed them beyond the Bounds of what I would call Humanity, perhaps think Justice; and yet, while I cannot approve of their Conduct, I am loth, if I could avoid it, to be severe against it, not knowing, whatever I now think, how far Rage might have got the ascendant of Reason with myself, if in their Place.

One Thing is obvious, that tho' it is true, that the Justice of our Law agrees with the common Law of Reason, in presuming every Man innocent till he is proved guilty, yet we have Reason to fear we come here oppressed with Prejudice, to create and propagate which, against this unfortunate Pannel, no Pains, no Expence has been spared, with manifest Intent to prejudge him in his Trial; and in this have some People been wise in their Generation; well knowing, that as presumed Innocence is a great Advantage in a Trial, so believed Guilt is no small Step to Conviction, and often anticipates the just Foundations of it, which can arise only in Proof. When I see and am sorry for this, my Lords, in one View, yet do I most rejoice at it in another, as it shews the Weakness of the Cause that has needed such artificial Feet to support it, even in the Beginning, and which being removed, as I hope they soon will be, the Superstructure built upon the false Basis will also fail. There are other Things too, which the Law of the Land would intitle us to complain of, and which a few Years more Experience might make it better become me to exclaim against: A close Confinement of the Pannel, contrary to the sacred Charter of Liberty, which this Nation boasts of; and which illegal Proceeding was only removed of late by the Interposition of this Court; Imprisonment of Witnesses to be adduced against him, where none had Access to them but the private Prosecutors, or their Agents, removed at a Distance from the Check of my Lord Advocate's Superintendance, whose Office, though it intitles him to investigate the Proof of public Offences, yet renders a Privilege, dangerous to be indulged to every injured Party, safe in his Hands. The Pannel has had but short Warning to prepare for his Trial, tho' he was at great Distance from the Capital, from which only he could have Council and Assistance: And it is but very lately since his Council had Access to see himself; not for some Time after we were in this Place. These Things I only mention, as my Brother has already fully opened them; and I mention them, my Lords, as what may have some Weight with the Jury, who are to try the Pannel, (and whom I now consider myself as addressing) to remove the Prejudices that are so naturally, tho' insensibly, imbibed without Doors, and which especially arise in the Mind from the unavoidable, tho' inconvenient Situation, in which a supposed Criminal must appear, even when as yet the Law presumes him not guilty, loaded with Irons and surrounded with Guards.

My Lords, I do not mention, as a Disadvantage to the Pannel, the Place of his Trial. I think it can be none: There are Reasons why this Place may be more proper for the Trial than any other, whether the Pannel be guilty or innocent; that he may be either acquitted or condemned, and Justice may take Place where the Crime was committed. And one Advantage the Pannel most surely profits of by the Trial being here, *viz.* the Presence of the Prince who presides in it, and who, in a special Manner, is the Father of his own Country, as he justly appears to be of this Part of the Kingdom. This of itself is more than sufficient to balance a Disadvantage, were it possible to suppose any could arise from the Opportunity that affords it: At the same Time, I would, with great Deference, observe (and I hope I may do it without giving Offence, which I am sure I do not

mean to do,) that there may be something in this; which calls upon the Jury to be cautious; and I hope an Attention to it will have the Effect to make them rather lean to the favourable Side, than be disposed to make any Stretch against the Pannel. It is the Privilege of the Subjects of this Country to be tried by one another: Yet, when we have this Advantage, and it is an inestimable one, still it is to be tried by Men of like Passions, *i. e.* like Infirmities with ourselves; and all Men are more or less susceptible of Prejudice. I hope, however, I may safely trust to the Honour of such a Jury as will be put upon the Pannel's Trial, that they will, if any such there are, lay aside all Regard to Country Alliances or Connexions, divest themselves of all Prejudices, and sit down to the Trial with a candid Resolution to yield only to the Force of Truth; desiring rather to see Innocence thereby vindicated, than Guilt, unwished-for Guilt condemned, and inclined to give the Cast of Favour on the favourable Side, unless the Proof shall come out very clear and convincing. Trials in this Country are open and public, and the Eyes of the World are a Check both upon Judges and Jury; and as this Murder has been, and justly, the Subject of an extended Speculation, so will the Trial for it: I hope, be the Issue of it what it will, it shall be so conducted, as to reflect nothing on any concerned in it; and I shall only add, that, could I suspect that the Law of my Country, or the Court, could put any on the Pannel's Jury, who would overlook their Obligations to Impartiality, which I dare say is impossible in this present Case, I would put such in Mind, that, if they have no Regard to the Pannel, they should regard themselves; for, as the old Philosopher said, No body is happy before he die; what is the Pannel's Fate To-day, may be ours To-morrow, and what is Proof against him, may be against another long after this. Every Trial, therefore, tho' it presently affects only those who are under it, is in a material Sense the Cause of those who do try, of the Public, and of Posterity.

My Lords, having said so much in general, (and I think I could say no less) it should be my Province now to state what has occurred to me for the Defence of the Pannel against this Indictment.

And here, my Lords, we have a most barbarous, indeed a shocking Murder, charged against two Persons; but with this material Distinction between the two, that the one is by the Indictment charged as the actual Murderer, by himself; no Mortal along with him at the Perpetration of it; and the other is only alledged accessory thereto, as having been in a previous Conspiracy with the Murderer: And the Pannel now to be tried, is this Conspirator.

My Lords, I do not distinctly see, from the Indictment as laid against *Breck*, what Proof there will be of his being the actual Murderer. I should at present imagine, from the Way in which the Story is told, that there can be no Proof, at least no direct, no satisfying Proof. But, be that as it will, one Thing I am sure of, from the Nature of the Thing; it is impossible there can be any direct Proof of a Conspiracy, to which only the two Persons accused were privy: And therefore it is, we see my Lord Advocate has very properly, and, I think, very candidly, as I said before, specified his Charge of Accession against the Pannel, into these Circumstances, from which his Lordship infers the Accession or Conspiracy. And it is
upon

upon the Relevancy, or Import of these Circumstances, that I fall to speak to your Lordships. For, it is not to be imagined, that, by disputing the Relevancy of the Indictment, we mean to call in Question that Murder is a Crime: And, for my own Part, I as little contest, that, as the Law now stands, the Charge against the Pannel in the general Proposition of the Libel is relevant, that he is guilty, Actor, Art and Part of the Murder of *Glenure*. And I do farther admit, that, if the Pannel has been accessary to, or the Former or Contriver of a Conspiracy for perpetrating this horrid Murder, he is truly as much Art and Part thereof, as the actual Murderer: Nay, were that the Case, I should not hesitate to pronounce him, if possible, a greater Criminal than the Miscreant by whose Hands he accomplished the wicked Assassination. But it is my Business now to endeavour to shew, that the Circumstances condescended upon in the Libel, and on which I must suppose the Proof is to rest, are not tantamount to the general Charge; or, in other Words, that the Premises of the Indictment, supposing them true, do not infer the Conclusion, much less will they support it, when they appear in that Light which I hope the Proof will place them in, divested of the romantic Dress of Exaggeration, in which Fancy has dressed them. And when I attempt this, I own, my Lords, it is not with Design to influence your Lordships Interlocutor; for, as I have already admitted the general Proposition of the Libel to be a relevant Charge, I suppose the Interlocutor of the Court will be confined to that. It was the Custom, not many Years ago, for the Court to pronounce special Interlocutors upon such Indictments as the one now under Consideration, finding what Facts or Circumstances, if proven, would infer the Charge: But your Lordships later, and, I think, better Practice, has been to evade that, as what, if it had any Effect to influence the Judgment of the Jury, did in so far deprive the Pannel of his rightful Privilege to be tried by the Jury, and not by the Court; or as, what indeed was more likely to happen, being a Thing that had no Effect at all, as the Jury would judge over again for themselves, what the Court had ineptly judged of for them. I say, therefore, my Lords, I do not speak so much for your Lordships, as for the Jury; willing, so far as I can, to guide their Attention to where I apprehend it ought chiefly to be fixed, in the Proof they are to hear; and to help them, if I can, to judge on what Part of it they ought to lay Strefs in forming an Opinion of this Cause.

There is only one Thing which I must submit to your Lordships, and which I shall but mention, as my Brother, who opened the Defence, has already offered it, and your Lordships may hear more of it in the Reply to my Lord Advocate; and that is, the prejudicial Question how far the Pannel, charged with an Accession to the Crime of another, can be tried for it, till the Principal is first discussed. Your Lordships well know, that an Accessary does of its own Nature follow a Principal; till, then, there be a Principal, there can be no Accessary, and the Principal being removed, the Accessary is also taken away; and therefore, till the one is convicted, there is no Room for trying the other, in like manner as the Principal being acquit, the Accomplices cannot be condemned. That the Law stood formerly so, is most certain; as appears from many Authorities, which I forbear

citing. How far this is altered by the Act of Parliament, introducing the Law of Art and Part, will be subject to the Judgment of the Court, where I leave it. But I must at least inform the Jury, that, however the Law stands in this Matter, it is undoubtedly certain, that they, or any Jury, cannot convict an Accessary, but upon this Supposition, that, if the Principal were under Trial before them, they would convict him, *Quando proceditur contra aliquem tanquam quod prestiterit auxilium, debet constare principalem deliquisse*. And the Gentlemen of the Jury will take heed to this, that if they shall find Cause to convict the Pannel upon the Evidence that shall be brought before them; they do, in the most express Manner, declare their Opinion, that *Breck*, and no other, was the Murderer of *Glenure*. Nor must they hold sufficient for this Purpose the presumptive Conviction, which arises from his flying Justice, and being fugitate and outlawed by the Sentence we heard this Day pronounced. The Law says expressly, That no Fugitation of a Principal is to be held for a Conviction against an Accessary; and indeed, why should it? For the Confession of the Principal, were he now here, would not be Evidence against the Pannel, and much less must his Absence or Run-away have that Effect. So that the Jury must here consider, that, before they can convict the Pannel, they must have such Evidence against *Breck*, as would condemn him, were he on Trial. And so, leaving Mr. *Breck* till we see what Proof comes out against him, the Question is at present, Upon what is the Charge of the Pannel's Guilt founded? or, Are the Circumstances alledged in the Indictment, sufficient to support the Accusation of Art and Part against the Pannel?

And here, my Lords, I do not propose to entertain your Lordships with a nice Disquisition on the Law of Art and Part; suffer me only, in three Words, to mention that, so far as I can comprehend by the Law of *Scotland*, Art and Part is inferred from Circumstances antecedent to, concomitant with, or subsequent upon the actual Commission of a Crime. Now, my Lords, when I look to the Indictment before me, I am able only to perceive two Facts condescended upon, from which the Pannel's Accession to this Murder is to be inferred; the Cloaths alledged to be furnished by the Pannel to *Breck* before the Murder, as a Disguise to commit it in, and the Money sent him after the Action, to enable him to go off the Country. These, I say, my Lords, are, so far as appears to me, the only two considerable Circumstances to infer Accession: For your Lordships will observe, there is an absolute Blank as to the principal Period in which Guilt ought to appear, the actual Commission of the Crime; at least, so far as I can gather, there is not one concomitant Circumstance alledged against the Pannel, which connects with the actual Murder. And, as for the Circumstance of the Pannel's sending the Money to a certain Place, where, as would appear from the Indictment, he had no Access to know that *Breck* was; as to that, I say, and some other ones of lesser Moment, which I likewise take Notice of, I take them to be designed as a Key to explain into a Connexion with the Murder, the two Facts already mentioned, by shewing a previous Knowledge of the Murder, which the Facts themselves do not import, and yet without which they have no Weight. Upon these two

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cardinal Facts, then, attempted to be supported by the other lesser Circumstances, in my Apprehension, lies the Burden of the Prosecutors Charge. And I will beg leave to say a few Words to each of them.

But, before Particulars, give me leave, my Lords, as shortly as I can, to make an Observation or two upon the Nature of Proof in general.

And, my Lords, I think it is a common, but a well-founded Maxim, derived from better Authority than mine, that, in Proportion to the Greatness of a Crime, ought the Strength of the Proof of it to be. The higher a Crime is, and the deeper it draws in its Consequences, so much the clearer and stronger ought the Evidence of it to be: And indeed justly; for, I hope, bad as Men are, corrupted as human Nature is, it is not come that Length, that Vice is natural to Mankind. I rather persuade myself, that it costs some Pains, by rooted Habits, to extinguish the Sparks of Reason, which are the Seeds of Virtue: Here then, my Lords; is a Crime of so enormous a Size, that it is almost too big to believe; Murder, deliberate Murder; Assassination in Face of the Sun, in Defiance of all Law and Government. What Proof should then be expected of so monstrous an Offence? That one should sit down deliberately and coolly to form a Conspiracy of be-reaving another of his Life, in so horrid and barbarous a Manner; what Degree of Flagitiosity must not be proved to suppose one capable of it? Sure, tho' many Circumstances be brought to establish a Presumption of Guilt, yet to believe it is no easy Matter. Must it then depend upon Guess-work? Is it to be tried upon questionable Evidence? Or, is a Jury to be persuaded into it by Art? No, there must be the most palpable and incontestable Proof; and, unless the Evidence is full and plain, no Credit, I will venture to say, can be given to so black, so detestable, and so unnatural a Charge. It would almost require to see the Blood of the Innocent reeking on the Hands of the Guilty. But what have we here? Presumptions built upon Presumptions; Suspicions, and these Suspicions supported by others; Suspicions without Proof, nay disproved. We have first to get over the Belly of a good fair Character, which this Pannel had the Happiness to possess, a blameless moral Life in private. And, should he all at once have deviated so far from the Paths of Virtue? Could he so suddenly shake off a Regard to all that is sacred? I should have expected to have heard urged against this Pannel, the abandoned Dissoluteness of his Manners, the Barbarity of his Nature, that his Life was one continued Course of Wickedness; in short, every Part of his Character devoted to Murder; that he was one inured to the Practice of it, and distinguished by the most consummated Guilt: Yet not one of these Circumstances so much as alledged in all this aggravated Charge; and for a good Reason, *viz.* That the contrary is well known to be true by the Prosecutors themselves. Next, my Lords, when we seek for a Cause of such a Malice as could produce this Crime, we find a Cause that never subsisted; a Cause noways adequate to the Effect: Resentment; for what? For accepting an Office which somebody must have got; and none could have made a more favourable Use of, for the Friends of the Pannel, than this Gentleman did: (For

which Reason they will be proved to have been in good Friendship long after that) Resentment for turning out some Tenants from an Estate forfeit to the Crown; irrecoverably lost to the Family with which the Pannel was connected. This is the Foundation; and what is the Superstructure? Of a Piece with it truly. Why, the Murderer had on a Coat of the Pannel's, when he committed the brutal Action, and got Money from him after it. Here is the Proof; a circumstantiate Proof it is called.

My Lords, I have no Objection to circumstantiate Proof; what the Law calls argumentative Evidence. I do admit, that it is a legal and proper Sort of Evidence, as much as direct Proof by Witnesses. Every thing is legal Evidence; that is such real and certain Proof as ought, in natural Justice and Equity, to be received: For what is Evidence of a Fact, but such Testimony as the Nature of the Case requires to induce a moral Certainty of the Thing testified? And an Argument is nothing else than what gives Faith or Credit to a Thing in itself doubtful, which perfectly agrees with the Law-Definition of Proof or Proving, which is *fidem facere*. I will admit further, that circumstantiate Evidence, when clear, is perhaps the most satisfying and convincing Proof of any. Circumstances are inflexible Proofs: They will not bend to the Inclination of Parties: Witnesses may be mistaken, may be corrupted: Things can be neither; and therefore, so far as they go, deserve unlimited, unreserved Faith.

But then, my Lords, the Circumstances must be clear, certain, and well connected: No Blank in the Chain, else all goes for nothing: The Arguments must be perspicuous, nervous, and conclusive. The same Law that has said, *crimina posse probari, vel testibus, vel documentis aut indiciis*, as it requires *idonei testes*, so does it *documenta aper-tissima, indicia indubitata, lucē meridiana clariora*. We must therefore, my Lords, carefully distinguish between circumstantiate or argumentative Evidence, and bare Presumption, or even Probability; much more Suspicion and Conjecture, with all which it has a near Affinity, and is therefore apt to be confounded with them; for they all depend on Facts or Circumstances. But, says our great Criminal Lawyer Sir George Mackenzie, Crimes cannot be proved by Presumptions; for Presumptions are only founded on Verisimilitude, and what may be, may not be; whereas all Probations, especially in Criminals, should be infallible and certain; *conclusio semper debet sequi debiliorem partem*: If otherways, says he, Judges (or Juries now) would be arbitrary. Probabilities, again, says a good Reasoner, twenty of them allowed to be such, are not equal to one Matter of Fact well attested: They may strengthen the Fact, but cannot supply it: They cannot be Evidence themselves, because one Probability may be set against another, and so mutually destroy the Force of each other: And as for Suspicions and Conjectures, who will pretend a Right to indulge them, where Life and Fortune are concerned?

Guarding then, my Lords, against these Things which are ready to mislead, let us, and let the Jury, my Lords, examine cautiously and candidly the Circumstances I mentioned, on which the Burden of the Indictment lies: Let us see if they approach a Proof; if they do not more participate of the Nature hardly of Presumption, not at all Probability, rather Suspicion and Conjecture;

or if they amount to a solid and substantial circumstance or argumentative Evidence.

My Lords, I mentioned first the Cloaths: And permit me, my Lords, once more in general to observe upon this Circumstance, as well as the others that follow, That I do, with great Submission, apprehend they derive their whole Weight from a Belief of the Pannel's Guilt, which it is indeed very natural to entertain from such Circumstances as he now appears in. The Indictment sets out with laying down this Crime in the most ugly Colours, as indeed it justly does deserve; and then subsumes, that the Pannel is guilty of it; and I venture to say, that, take away the Influence which too easy a Credit to this first Position gives to what comes after, all the Circumstances brought to support the Charge will in a great Measure lose their Force; so that the Assertion of the Charge is the very Thing which supports the Circumstances adduced to prove it, than which nothing can be a more false Circle of Probation. Prejudice, my Lords, is like a jaundiced Eye, or a magnifying Glass. To the first every Thing it looks at appears yellow; and the last to Appearance increases the Bulk of every Object to which it is applied. Just so Prejudice discolours every Circumstance, turns the most trivial into something of Importance, and makes what is in itself indifferent, a Proof of Guilt. Can the Truth of this appear more verified in any, than it is in the present Case?

My Lords, I will not repeat the true Fact, as your Lordships have already heard it opened, with respect to the Cloaths: Had it been that *Breck* had really received them from the Pannel, sure that of itself would not have proved the Pannel's Accession to a Murder committed by *Breck* at the Distance of so many Days. But has it any Weight at all, this Circumstance, as it has been told your Lordships, and as it will be proved to have in Fact happened? A Man comes to my House, and, without my Knowledge, puts on, and goes away with my Cloaths; and when wearing these, a Murder is committed: Must I be accessory to this Murder? Or must I be presumed accessory to it? *Breck*, your Lordships hear, was in use of changing his Dress: He had been six Weeks at one Time in *Rannoch* with these very Cloaths; and because he has them upon him again at the unlucky Period, must the Pannel for that be guilty with him? My Lords, we have heard of Villains borrowing, stealing Cloaths, assuming Characters, feigning Voices, and such like Things, when about to commit Crimes, of purpose to deceive, and to throw the Suspicion of Guilt off from themselves upon the Innocent. But surely these are dangerous Circumstances, and would need to be supported by better Proof, before the Life of any Man was taken away upon them; or indeed what Man is safe? It will not avail that we keep ourselves safe, so long as it is in the Power of others thus to bring us into Danger. Every Man must so be at the Mercy of others, and those of the vilest of Mankind. The Libel indeed says, the Pannel furnished *Breck* with his Cloaths; but how is that to be proved? Did the Pannel give him them? No, my Lords, we shall prove he took them, and went with them from the Pannel's House, when he was not there, when he knew nothing of it. But tho' he had known, as he did on former Occasions, or tho' he had with his own Hands given them to *Breck*, would it have been

Proof against the Pannel? I cannot imagine it. I might admit, that had *Breck* never before changed his Dress at the Pannel's House, had this been the first Time, it might have been a Circumstance, and but a weak one too, from which to presume Guilt against the Pannel: But when he had been in use of doing it, does there from thence arise so much as a distant Suspicion against the Pannel? Whatever Effect it may have against *Breck* to presume that wicked Design, which I shall at present take for granted he soon thereafter executed, (to presume it, I say, against him) that he changed, at so critical a Conjunction, his Dress; yet sure it can have no Influence against the Pannel, who, till 'tis better proved, cannot be supposed privy to so horrid an Undertaking in *Breck*. And this, my Lords, puts me in mind to make a Distinction, which I should have made sooner, that is, betwixt *Breck* and the Pannel. And I must call upon the Jury carefully to separate the Parts of this Indictment, which refer to the one and to the other; for, when they are confounded together, one, in reading or hearing it, is extremely apt equally to apply the Effect of all the Circumstances to both. The Indictment has so chequered them thro' other, that it costs some Pains to distinguish them, and lay to the Door of *Breck*, and of the Pannel, what separately applies to each, and seems to support the different Charges against them. To shew the Necessity of this, I will but mention one Paragraph of the Libel, where this Confusion manifestly prevails. It is there first said, that *Breck* having come to the Pannel's House on the Monday Evening, James Stewart the Pannel was informed by him, (*Breck*) or by his Son *Charles Stewart*, or by *Fasnacloch's* Daughter, of *Glenure's* Motions and Resolutions. And then it immediately follows, "And there, after receiving such Advice, in the Evening of the same Day, the said *Allan Breck* Stewart laid aside his own Cloaths, &c." So your Lordships see, that first *Breck* is said to inform the Pannel, and then *Breck's* receiving such Advice or Information from the Pannel, (just inverting the Thing) is laid down as the Spring of *Breck's* Actions, with a Design, as is plain, to extract Guilt against the Pannel, from his giving Information to *Breck*, which produced his Action, when it was truly *Breck* himself that informed the Pannel, as the Indictment first asserts. This, my Lords, may be an Inaccuracy in wording the Indictment; but it is not for that, I observe it: I mention it that the Jury may see how carefully they must consider and weigh every Branch of this complex Charge, as being heedless to one Branch or Circumstance may have bad Effect. And surely it is evident in this Particular, that the Weight of the Circumstance as laid against the Pannel, wholly flies off by a just Attention to the erroneous Connexion of the Fact as narrated.

There is another Circumstance of the Indictment, which, tho' it does not fall so directly within my present View, I cannot omit taking Notice of it, as it comes a-cross my Thought; it is as to the Pannel's Behaviour when the Murder of *Glenure* was first notified to him by *Glenure's* Servant. It is said the Pannel appeared noways surpris'd or concerned. Alas, my Lords, what such Proof of Guilt is this? We have seen doubtful Actions by the Help of Innuendoes construed criminally; but to give that in Evidence which was neither said nor done, to construe Silence into Guilt, is entirely new; and the Author of this Invention

Invention will deserve the Glory of the Discovery. This is indeed to conjure one into a Crime. My Lords, I could venture to invert the Proposition, if the Gentlemen please, and maintain, that a contrary Behaviour, to any remarkable Degree, would have been more suspicious, *Tremor est signum cædis*, or in the Words of the Proverb of our own Country, *The greatest Thief cries first, &c.* But, my Lords, the Fact is different from what is in the Libel. It will be proved to your Lordships and the Jury, that the Pannel, upon receiving this Piece of, I must call it melancholy News, expressed to the Messenger a decent Concern and Regret, tho' little did he think at that Time, that his Behaviour then, would now be brought into Judgment against him.

Of the same Kind with this, my Lords, is another Circumstance, which I remember in the Indictment, (for I cannot go thro' them all); and that is a Letter of the Pannel's to one *Charles Stewart*, relating to the Price of Milk Cows.—I confess, my Lords, it is to me mysterious yet, what Import this Letter is of as Proof against the Pannel. If it is, that the Subject of it is suspected to be fictitious, that we shall be able to prove real. But what Connexion has it with the Charge? I own I cannot find it out. It would appear to me that this Letter must suffer Torture, and not a little of it, before any thing can be squeezed out of it against the Pannel. It puts me in Mind of a Saying of a great but very wicked Politician, Cardinal *Mazarine*, who is said to have boasted, that, if he had but two Lines of a Man's Writing, with a few Circumstances attested by Witnesses, he would cut off any Man's Head when he pleased. Thank God, we breathe in a Climate different from the one that Pontiff ruled in: And I hope we do not delight in Blood so much as to adopt his cruel Scheme.

These Things, my Lords, I have thrown out by the Way; but as to what I was upon, the Circumstance of the Cloaths, I shall only add, that as it is in Truth, it appears of no Weight at all; and had it been as in the Indictment, I should have thought it a Circumstance greatly too thin and slender to build any thing upon.

There only then remains the other Circumstance of the Money, which is posterior to the Murder: For, as I have already had occasion to observe, I do not discover a concomitant Circumstance alleged, unless the Arms be pointed at for this Purpose; as I observe, there are two Guns mentioned in the List of Evidence, as found concealed near the Pannel's House, and which possibly the Prosecutors will attempt to prove to have been those which the Indictment says *Breck* had brought, or caused to be brought to the Place of the Murder. Were any thing of this to be proved, I shall fairly admit it would be a strong Circumstance, as it is one of these very Things which the Law points out; *Opem fert qui, cum crimini patrato non interfuerit, ferramenta tamen, tela, venena commodaverit, sciens cujus rei causa commodaret.* But I cannot see where the Proof of any thing like this can arise. It does not appear, that any Guns were found at the Place of Murder. I think 'tis presumable the Murderer would carry his Arms with him, after using them to his wicked Purpose. And as for these found concealed near the Pannel's House, we are instructed to say, they were in the Pannel's House at the Time of the Murder, and were hid after it for fear of an ap-

prehended Search for Arms, by the Military that was expected to come into the Country.

This therefore I leave upon the Proof, and shall now, in a Word or two, take Notice of the Money sent by the Pannel to *Breck* after the Murder. And here, my Lords, I must be allowed to observe, in the first Place, what Sir *George Mackenzie's* Doctrine upon this Point is. His Words are, sect. 7. (*Tit. Art and Part*) "Assistance given after the Crime is committed, scarce deserves the Name of Assistance." And cites an Authority for this Opinion. I will admit, my Lords, that, if this Pannel did, knowing *Breck* to be the Murderer of *Glenure*, administer Help to his Escape, by furnishing him with Money, he did a very wrong Thing; perhaps was guilty of an Offence, which the Law would punish.—But it is an Offence quite different from that of Accession to the Murder. It is a Species of Crime by itself; and, as my Lord Advocate has not laid his Prosecution for that, we have nothing to do with it. At the same Time, my Lords, however wrong such a Conduct might have been, yet it could admit of an Excuse. Your Lordships have heard this *Breck* was the Pannel's Relation. He had been his Pupil, brought up in his Family till he went into the King's Service as a Soldier; and we all know, my Lords, the Strength of Compassion on such Occasions, especially to our Friends, it would perhaps be hard to punish for it. The Worthlessness of our Relations does not at once dissolve the Ties of Nature; none of us can be sure, but we may have a wicked Son or a Brother; and, in a Case of this Sort, it would be natural to wish to help him out of the Way; perhaps it would be wrong, but such is the known Force of natural Ties, and it, at least, lessens the Crime. However, here, my Lords, the Case does not apply; for we absolutely deny, that the Pannel knew any thing of *Breck's* Guilt; and such Knowledge can never be presumed; he knew the Situation he was in as a Defenter, and the Hazard of it, when the Military were coming into the Country to make a Search; and to be sure, had he been caught by the Military, they would have saved your Lordships the Trouble of trying him, supposing him to be guilty: A Court Martial would have made short Work with him, unless it had been (as likely it might) thought more for the End of public Justice, to make him suffer for so flagrant an Offence as this, than to hang him as a Defenter. It was for this Reason, my Lords, and not from any Knowledge of his Guilt, that the Pannel, upon *Breck's* Message to that Purpose, as your Lordships have heard, sent him the Money to enable him to get off the Country, and go where his Business called him; his Business, I say, my Lords; but at the same Time I call it his illegal, his unnatural Business, as an Enemy to his Country, and a Traitor to his King. And as to the Circumstance which I formerly noticed, as tending to point out the Pannel's previous Knowledge of *Breck's* Motions, by his knowing where to send the Money, tho' he had no Access to see *Breck* after the Murder; as to this, I say, my Lords, your Lordships see no Strefs can be laid upon it, when you have heard that it was by a Message from *Breck* that the Pannel learned his Motions: So that still something is desiderate here, whereon to fix that Circumstance, upon which alone depends the Pannel's Accession, to wit, his Foreknowledge of the Murder.

My Lords, I have finished what occurred to me on the Circumstances of the Indictment; and I am unwilling to weary your Lordships.

I forbear entering upon the Bouman's Conversation with *Breck*; that is but one Man's Story of what another said. It is but hearing a Hearsay, or rather less; and I know no Law, no Rule, it rather seems contrary to all Rule of Evidence, that one should suffer for what another said of him; and that the very guilty Person, as is here supposed. If he did say so, it might be to throw the Suspicion off himself with the better Grace: But, be it as it will, it can be no Evidence against the Pannel.

There is but one other Thing in the Indictment, which we have to finish this doubtful Evidence, if it can be called so much, and that is, the Threatnings; but, as they are libelled in general, I cannot argue upon them; nor has the Pannel any Opportunity to disprove them: They must therefore be left, till the Evidence is concluded.

My Lords, I have said what I could, from such Helps as were in my Way, upon the Nature and Import of this Sort of Evidence which is now before us. I shall only say further on it, that this Sort of Evidence, when imprudently handled, may be resembled to the monstrous Machine for making havock of Enemies, which, when invented by a Subject, was wisely smothered in the Birth by the Governor, lest, however convenient it might be when used for him, he might come one Day to regret the Invention, when he found it applied against himself. And as to this particular Case, I take it, that every individual Circumstance, as laid in the Indictment, so far as we know of it, will be unsupported with Evidence; that all put together do not amount to the Charge. I think there are no Grounds for any private Opinion of the Pannel's Guilt, but what arise from Prejudice only. I think Prejudice, or even Opinion, has nothing to do with judicial Proceedings. It is the Judgment that must acquit or condemn; and that must, can only be founded on Evidence, on Proof, not on Suspicion or Presumption.

I shall now take the Liberty to read to your Lordships, and the Jury, the Words of a great Criminal Writer on the Common Law, when treating on the Subject of argumentative Evidence. *Math. de Crim. ad Tit. 15. Cap. 6.* He is speaking of Arguments, and says, *Argumentum est necessarium, cujus consequentia est necessaria, veluti corvisse eam quæ peperit; contingens, cujus consequentia est probabilis, veluti cædem fecisse qui cruentatus est.* Then he adds, *Contingentia argumenta, quamvis singula fidem non faciant, plura tamen conjuncta crimen manifestare possunt. Hæc appellantur præsumptiones; præsumptio enim nihil aliud est, quam argumentum verisimile communi sensu perceptum, ex eo quod plerumque fit aut fieri intelligitur:* And he gives the following Example of an argumentative Evidence which may condemn, which I beg the Jury will attend to, *Occisus est kallendis Mævius; Titius peremti inimicus fuit eidem sæpius non solum interminatus, sed & infidiatus est: cum deprehenderetur iisdem kallendis in loco cædis cruentatus cum gladio cruento, ad mensuram vulneris facto, toto vultu expalluit, interrogatus, nil respondit, trepide fugit. Hic singula* (says our Author) *quidem argumenta*

infirmiora sunt, universa tamen cædis auctorem Titium evidenter designant. And I most heartily agree with the Doctrine, and shall leave it to the Jury to judge, how far the Proof brought against the Pannel comes up to this Standard.

I shall conclude with laying before the Jury the Words of a great Judge and Lawyer of our own Country, on an Occasion somewhat similar to this. It is Part of my Lord *Cowper's* Speech upon the Bishop of *Rocheſter's* Trial, where the Evidence depended on Circumstances, as it does here. His Lordship says, "The Wisdom and Goodness of our Law appears in nothing more remarkably, than in the Perspicuity, Certainty, and Clearness of the Evidence it requires to fix a Crime upon any Man, whereby his Life, his Liberty, or his Property, can be concerned: Herein we glory and pride ourselves, and are justly the Envy of all our neighbour Nations. Our Law, in such Cases, requires Evidence so clear and convincing, that every By-stander, the Instant he hears it, must be fully satisfied of the Truth (and Certainty) of it. It admits of no Surmises, Innuendoes, forced Consequences, or harsh Constructions,* nor any Thing else to be offered as Evidence, but what is real and substantial, according to the Rules of natural Justice and Equity."

These are my Lord *Cowper's* Words as we have them given us, (*It is very true, the Judgment of the House of Lords went against his Lordship's Opinion in that Question; but I must presume that the Judgment of that august Assembly, tho' against his Opinion, proceeded upon the Principles established by himself; and tho' it had been otherwise, the Argument would still be good, as Reasoning is not always bad, when it fails in Success.*) I think I may with great Propriety adopt what that same Noble Lord farther said on that Occasion, as follows: "In the Case before you, the whole Charge is built upon Circumstances, and these are said to be supported by other Circumstances; but all of them are so remote, so general, and I may say so offensive, that they might suit any Lord here." I think the Circumstances charged against the Pannel might suit any one here.

My Lords, I beg Pardon for saying so much; I hope your Lordships will excuse it, for the Reasons I gave in the Entry. I shall only further add, that the Pannel is now on Trial for his Life; he asserts his own Innocence; he pleads Not guilty to the Charge. I hope it is the Answer of every one present, God give him a good Deliverance. And if he falls, let it be as a Sacrifice to Justice, to expiate Guilt, and purge the Land of Blood, not as a Victim to the blind Fury of his Enemies, or the Rage of the Deceased's Friends, to appease popular Prejudices, or ill-founded Clamour and Outcry.

Mr. FRASER, against the Pannel.

My Lord Justice-General,

I Appear as Council for Mrs. *Campbell* of *Glenure*, and her infant Children, against *James Stewart*, now in the Pannel, accused as guilty, Actor, Art and Part of the Murder of *Colin Campbell* of *Glenure*; a Murder aggravated by its being committed from a malicious Hatred and Resent-

* Lord *Bacon* says, "Judges must beware of hard Constructions and strained Inferences; for there is no worse Torture than the Torture of Laws." Fo. Edit. Vol. I. p. 440, 441.

ment conceived against Mr. *Campbell*, on account of the faithful Discharge of his Duty in an Office intrusted to him by his Majesty.

This Crime, my Lord, is in itself so horrid, and in the present Instance is attended with aggravating Circumstances of such an extraordinary Nature, as must rouse the Indignation of every worthy Member of Society, and call loudly for the most severe and exemplary Punishment. Murder has always been looked upon as one of the most heinous Crimes; but in all civilized Countries, at all Times, that base, that treacherous Species of Murder, Assassination, has been held in still greater, as more deserved Abhorrence:—What then must be the Degree of that Man's Guilt, who deliberately, unprovoked, in cold Blood, during Times of full Peace, and in the most contemptuous Despite of Government, commits this most treacherous and most abhorred of all Murders! Heavy as that Load of Guilt is, I am sorry to say, my Lord, it lies with its utmost Weight upon the Prisoner now before you; which renders this Trial of great Importance to every Individual, but of still greater to this Country in general. If Assassins, capable, my Lord, of lying in wait with premeditated Malice, with Malice concealed in their Hearts, for Hours, for Days; if such are suffered to go unpunished, who of us all is safe, what Individual, however innocent, however brave, however particularly intitled to the public Protection! But what, I hope, my Lord, we all hold of greater Importance than the Safety of Individuals, the Interest, the Honour of this Country is very nearly concerned, not to suffer the most daring and bare-faced Insult to be offered to his Majesty's Authority and Government; and offered at a Time when we, in common with his Majesty's other Subjects, are reaping the Fruits of his most benign Reign: I say, my Lord, our Interest, our Honour is concerned, not to suffer this, without endeavouring to wipe off the Stain from the Country, to shew the King, and to shew the World, that this is the bloody Deed of one or two wicked and desperate Men; a Deed which the Country abhors, and which it will not suffer to go unpunished.

The Gentleman who opened the Defence, my Lord, has been as good as his Word, and has given indeed a plausible Account of this Affair; which makes me think it necessary to lay before the Court, as distinctly and as concisely as I can, that State of the Facts which there is the greatest Reason to believe the Proof will establish. And, in doing so, I hope to give your Lordships a more just View of this extraordinary Case; and, at the same Time, to be of some Use in leading the Gentlemen of the Jury to those Parts of the Proof which deserve most their Attention.

The Pannel, *James Stewart*, my Lord, is natural Brother to Mr. *Stewart* of *Ardshiel*, who commanded the Men of that Name that were engaged in the late Rebellion, and, by means of that, he acquired their Affections and Attachment. When *Ardshiel* was obliged to leave the Country, his Brother (the Pannel) set himself at the Head of the Family Interest; and it not appearing in that Part of the World a forced Transition, he was allowed to take this Authority upon him. In a short time, therefore, he came to be a leading Man, and to have the chief Influence over the common People. Such, my Lord, was the State of that Corner of the Country in the Year 1749, when

Mr. *Campbell* of *Glenure* was appointed Factor for his Majesty upon the Estate of *Ardshiel*, and some other forfeited Estates in that Neighbourhood. *James Stewart* soon foresaw how much this Factory must interfere with the Plan which he had laid, and with the Interest which he wanted to establish; *Glenure*, therefore, very early became the Object of his Ill-will. But it did not long rest there; for, in the Year 1751, *Glenure* having, in Consequence of Orders from the Barons of Exchequer, caused Mr. *Stewart* to be removed from the Farm which he possessed upon the *Ardshiel* Estate, what was before but Ill-will, was now turned into Hatred and Resentment. This led him to oppose all *Glenure's* Measures, and particularly to play the Volunteer in the Service of some other Tenants upon the same Estate, whom *Glenure* was about to remove at the ensuing Term: For this Purpose, he repaired in Person to *Edinburgh*, and, in Name of those Tenants, tho' without the smallest Commission or Authority from them, made be presented to the Lords of Session, a Bill of Suspension of the intended Removal, and obtained a Sift of Execution; this Sift he prevailed upon the Tenants to intimate to *Glenure*, who was put to the Trouble and Expence of a Journey to *Edinburgh*, before he could have the groundless Bill of Suspension answered; which was indeed all that was necessary in order to make it be refused.

Mr. *Stewart*, my Lord, little satisfied with this unsuccessful Attempt, which confirmed *Glenure's* Influence at the Expence of his own, and finding himself forced to quit the Country, and to abandon his favourite Plan of Popularity, formed a most desperate Scheme of Revenge, no less than a Plot to take away the Life of *Glenure* in the basest Manner. In Pursuance of this Scheme, he was at Pains, over all the Country, to represent *Glenure's* Conduct in the most disadvantageous Light; and, when he thought there was a general Odium raised, he had Recourse, in a more particular Manner, to those in whom he could most certainly confide, to those who were most easy to be stirred up, and most inclined to any desperate Deed. Different Sets of such Men, my Lord, he assembled at different Times, and, after expatiating against *Glenure's* ill Conduct, he used all his Art to convince them, that it was their Duty to free the Country of what he was pleased to call *Glenure's* Oppression; telling them, that he had once seen *Commoners* in *Appin*, who would, long ere then, have stopped his Career; and that he could assure any of them, who was hardy enough to undertake it, a certain Escape to *France*, and a handsome Pension afterwards! By those Methods, my Lord, Mr. *Stewart* used his utmost Endeavours to stir up some hot-headed Ruffian to the Execution of his Plot; but his Endeavours were long used in vain, till at length *Allan Breck Stewart* was thrown in his Way, a Man marked out for such a Purpose; a Deserter from our Service to that of the *French*; one who, in both Countries, was a Man of desperate Fortune, but who, in this, had not only lost all Title to the Protection of the Law, but was become obnoxious to its severest Penalties. This Man *James Stewart* immediately laid hold of and cherished. It was easy to stir him up to Resentment. To him therefore he communicated the whole of his Design, and with him he concerted the Execution of it. *Allan* had nothing to lose; therefore it was deter-

mined he should be the Actor, whilst *James* should lie by to protect him, and to turn the Mischief as much as possible to his own Advantage. Happily, my Lord, Keeness and Resentment, as usual in Crimes, got here the better of Caution, not only with *Allan*, but even with the more sagacious *James*; for, in the midst of their most cunning Contrivances, they could not refrain from uttering such strong and particular Threats against *Glenure*, as immediately pointed them out for the Objects of general Suspicion. Both of them have many Times threatened him with Death, and both of them have even gone beyond general Terms; for *Allan* declared *he would, on the first Occasion, shoot him as he would a black Cock*; an Expression very applicable to the base Manner which he afterwards made use of: And *James*, still more inveterate, swore, in the Fulness of his Heart, *That he would shoot Glenure, even if he himself was so disabled, as to be obliged to go upon his Knees to a Window in order to do it.* These are Instances of the Threats which they made use of, which first pointed them out, and which must still go a great way in convincing every thinking Man that they, and they only, were his Murderers.

In Consequence of their last Resolution, that *Allan* should act whilst *James* stood at the Helm, *Allan* laid himself out to get particular Information of *Glenure's* Motions; and, for that Purpose, he contrived to make a Visit at *Fasnacloch*, the very next House to *Glenure*, and within a Mile of it; there he remained upon the Look-out till *Monday* the 11th, when *Glenure* set out from his own House for *Fort-William*. Upon which *Allan* immediately repaired to his Associate *James*, to communicate the Intelligence he had got, viz. That *Glenure* was gone to *Lochaber*; that he was resolved to persist in removing the Tenants of *Ardshiel*, and was certainly to return for that Purpose before the Term-Day, the 15th. Having upon this Information consulted together, and settled the Plan of Operations, the Pannel furnished his Friend with a Dress more proper for what he was going about, giving him a Suit of his own Cloaths, a black short Coat, Trowsers, and a blue Bonnet; and, thus equipped, he set out the next Morning, *Tuesday* the 12th; but, knowing that *Glenure* might possibly not return for a Day or two, in order to avoid Suspicion, he made a Tour among his Relations, going first to *Ballachelish*, from thence to *Glenco*, from thence to *Callart*, where he staid *Tuesday* Night, and on *Wednesday* the 13th he went back, by the same Rout, to *Ballachelish*; in all which Circuit, he was at hand to lay wait for *Glenure*, at whatever Time he should return from *Lochaber*. On *Thursday* the 14th, when there was a moral Certainty that *Glenure* would return, (he having appointed a Meeting with several Gentlemen in the Country of *Appin* that Evening) *Allan* left *Ballachelish's* House under Pretence of fishing, and, very soon after, appeared at the Ferry of *Ballachelish*, by which *Glenure* must necessarily pass, in his Way from *Lochaber* to *Appin*: There he met the Ferryman, and, hastily calling him aside, inquired, with more than ordinary Earnestness and Anxiety, if *Glenure* had passed there that Day; and, being answered that he had not, *Allan* immediately ran up the Hill, towards the high Grounds above the House; from whence he had a View of the Country around, on both Sides of the Loch, and a short Passage into the Wood of *Lettermore*. In this

Wood, my Lord, it was, that he marked out a most proper Station for the Execution of his desperate Design; a little Thicket, on a rising Ground, within a few Paces of the High-way, along which every Traveller must necessarily pass; from whence, himself unseen, he could distinctly see the Road leading to the Ferry of *Ballachelish* on the *Lochaber* Side, and the Road on the *Appin* Side, leading from thence to the Wood of *Lettermore*. Here, my Lord, he posted himself with one or two loaded Guns provided for the Purpose; and here he lay in wait till Mr. *Campbell* of *Glenure* had passed the Ferry, and was riding along the Road thro' the Wood. It was then, my Lord, that *Allan Breck* seized this long wish'd-for Opportunity, and when *Glenure* was come within convenient Distance, this abandoned Assassin shot him dead with two Balls from behind: A Deed as cowardly, as it was barbarous and inhuman! A Deed of which there is hardly an Example in this Part of the Kingdom, whose Inhabitants, however rash they may be to brave Dangers in an open Manner, have never, till this atrocious Crime of their unworthy Countrymen, been branded with the Ignominy of base and cowardly Assassination!

Allan having thus executed his deadly Purpose, immediately disappeared, in order to betake himself to the Concealment provided for him, calling in his Way, after a hidden Manner and at Midnight, at *Glenco's* House, where he informed the Lady and her Son that *Glenure* was murdered, and, without any more Conversation of either Side, added, as a Consequence of what he supposed known, that he himself was immediately to leave the Country. Soon after this, he arrived at his allotted Retreat, the Shealing of *Koalisnacoon*, the Habitation of the trusty Bouman; and, in a Conversation which he and the Bouman had there, he talked of the Murder in a more remarkable Manner than he had even done to *Lady Glenco*; for, after faintly enough denying his own Concern in it, he told his Friend that he was sure the Family of *Ardshiel* would be suspected, particularly *James Stewart* and his Son *Allan*; using this remarkable Expression, That there would be no Fear of them, if their own Tongues did not betray them, especially *Allan's*, who, he feared, was more open-mouthed than his Father.

All this while, my Lord, the Pannel remained at Home undisturbed, and when the Accounts came of *Glenure's* Murder, and every body else in the Neighbourhood was hastening to go to look after the Corpse, he never offered to stir, nay, he would not suffer any one of his Family to go near it. He, my Lord, had other Things to mind; not the unhappy Murdered, but the barbarous Murderer was the Object of his Attention; his own Preservation was so closely linked with *Allan Breck's*, that there was a Necessity for *Allan's* being kept out of the Way at any Rate; *James* therefore immediately dispatched *Alexander Stewart* Packman, his Relation, and a Person in whom he had entire Confidence, to *Fort-William*, with a most pressing Demand, as he himself acknowledges, for Money to supply his Friend *Allan*, and to enable him to make his Escape from Justice; and when the Packman returned with a less Sum than was expected, *James*, in the most critical Juncture of his own Affairs, added two Thirds of the Money which he had for his own Support, to the Sum brought from *Fort-William*, and sent away the faithful Packman, with this Money and his *French* Cloaths,

Cloaths, to *Allan Breck*, giving particular Directions with regard to the Place of his Concealment; a Circumstance no one can well be supposed to have known who was not in the Secret, who was not originally privy to the Crime for which he was obliged to have Recourse to that Concealment.

These, my Lord, are the Facts which, I have Reason to believe, will soon be proved to your Lordship. The Gentleman has been pleased to express his Surprize, that, after so strict an Inquiry, this should be all that is made appear; and to say that these Facts are trivial, and not relevant to infer the Crime: But I cannot think any impartial Man who has read the Indictment now in my Hand, will join in the Gentleman's Surprize; on the contrary, I believe, every such Person must join with me, in thinking no small Praise due to the very proper Encouragement and Assistance of the Crown, and to the very uncommon Diligence and Activity of the private Prosecutors, which together have been able to throw so much Light upon so dark a Scene. Your Lordship has been told, that the Facts mentioned are not sufficient to infer the Crime libelled. I need hardly observe, my Lord, that such Crimes are particularly villainous and destructive, from the hidden and concealed Manner in which they are committed, which allows of no Defence, and too often screens from Punishment: Their very Nature does not admit of such a Proof as may be expected in other Cases; a Proof by Circumstances is all that can be looked for; indeed, when that is conclusive, it is of all others the most convincing. Witnesses may be partial, they may be perjured; but a closely connected Chain of Circumstances is liable to none of those Objections. Now, my Lord, I humbly apprehend, no Chain of Circumstances can be stronger, nor more closely connected, than that which I have just laid before your Lordship. You see a Discontent rationally, nay probably accounted for; the strongest and most particular Threats following that Discontent, and the Commission of the Crime as immediately following these Threats; the clearest Instance of the *malum minatum, et damnum secutum*. But it does not rest here; you see, my Lord, the Murderer traced from Day to Day, from Hour to Hour, from Place to Place, to the very Day, the very Hour, almost to the very Spot in which the Murder was committed; and you see his Associate in the strictest Connexion and Intimacy with him, caballing in private, and furnishing him with a proper Dress, before the Murder, and, after it, furnishing him with Cloaths and Money, to enable him to fly from Justice; and, what deserves particular Attention, you see his Associate minutely acquainted with the Place of his Concealment, the Place previously pointed out for his Retreat, and the Murderer, in that Retreat, where he thought himself in Safety, expressing his Concern for his Friend in very remarkable Terms; in Terms which carry a strong Conviction of their guilty Conspiracy, but, at the same Time, shew the Cunning with which they were conscious of having contrived it. I cannot doubt, but your Lordship will think this a Chain of Circumstances, more than sufficient to infer the Crime libelled: At the same Time, I must beg leave to observe, that, in such an Indictment as this, there was no Necessity of mentioning any one Circumstance; it would have been sufficient in Law, and the Gentlemen acknow-

ledge it, to have libelled Art and Part in general Terms; that is, that, Time and Place libelled, the Crime was committed, and that the Pannel was guilty Art or Part of that Crime. Now, if my Lord Advocate, from the Humanity of his Disposition, from a Desire that every Offender, however heinous his Offence, should have the fairest Trial, and every Opportunity of making his Defence; if, from these Motives, he has given a very long and particular Indictment, when only a very short and general one was necessary, 'tis somewhat invidious in the Gentlemen of the other Side, to turn this into an Objection to the Relevancy. But let them, my Lord; the Point is fixed, as well by Law, as by uniform Practice; and therefore, whilst we contend, that the Circumstances, as particularized in the Indictment, are fully relevant, we at the same Time humbly hope, from your Lordship, an Interlocutor upon the general Point of Art and Part, independent of these Circumstances.

It has been objected to this Indictment, that an Accessary is here brought to Trial before the Principal is convicted, which is attended with these bad Consequences; that Proof must be led against the Principal in Absence; that his greatest Enemies may be produced as Witnesses, and the proper exculpatory Defences may be omitted. And further your Lordship has been told, that this is contrary to the Laws of neighbouring Nations, particularly that of *England*, and contrary to the Law of *Scotland*, as handed down to us in the Books of *Reg. Maj. Quon. Attach. stat. Dav. II.* and *Sir Geo. Macken*. There might, my Lord, have been some Room for such an Objection, if no formal Notice had been taken of the Principal; but I can hardly think any Objection will be admitted in the present Case; when the Principal is indicted, when every legal Step is taken by the Prosecutors for bringing him to Justice, and when the only Conviction which our Law admits of in such Cases, is gone against him. The Inconveniencies which it was said might follow from the present Practice, are trifling, compared to those which must be the necessary Consequence, if the Laws allowed not an Accessary to be tried, whilst the Principal, conscious of his own Guilt, dared not to appear. 'Tis but finding out some desperate Fellow for the Execution, who can afterwards be easily kept out of the Way; and the most inhuman Acts must go unpunished, the most abandoned Villains may laugh at Justice. The Authorities produced in Point of Law are, no doubt, great; but Times and Circumstances derogate from the greatest Authorities. If what *Sir Geo. Mackenzie* has given us as his Opinion was once Law, it is beyond all Doubt by later Practice no longer held as such; and it signifies as little what is the Law of neighbouring Nations, as what was once our own Law, if Custom, the justest of all Legislators, directed by common Sense and Equity, has now enacted the contrary.

The Hardships, my Lord, which it is pretended the Pannel underwent, can never be admitted as Objections to this Indictment. That they may not, however, leave any Impression upon the Gentlemen of the Jury, or even upon this Audience, I shall give your Lordship the true Account of what are called Hardships; and they will no longer appear to be such. That upon which most Strefs seems to be laid is, that the Pannel's Wife and his Children, who, by Law, cannot be called as

Witnesses

Witnesses against him, have been precognosced, or judicially examined, and that their Declarations are proposed to be produced in this Trial. The Fact is true; and nothing is more easily accounted for. When this Murder was committed, all was Confusion and Ignorance; and every Method that could be imagined was found necessary, in order to get to the Bottom of the deep-laid Plot. It was at that Time that *James Stewart's* Family, in common with all in that Neighbourhood, were called before a Judge, and examined upon what they knew of *Glenure's* Murder: It was more than probable, that some one of that Country committed the Murder, and that many in that Country were in the Secret of it: But when these People were examined, neither of these Acts of Guilt was charged upon any particular Person: *Allan Breck* was not then accused of the actual Murder, nor *James Stewart* of being accessory to it. So that his Wife and Children were really not examined with any View to him; they were examined, to discover the Truth in general, before it was known upon what particular Person the Accusation would fall. Whether their Declarations will be produced in this Trial, may be a Question afterwards; but, in the mean while, it appears not contrary to Law or Equity, that they should be produced: It is confounding Things to say that this is making the Pannel's Wife and Children Witnesses against him: The Declarations will not be produced to prove the Truth of any Thing contained in them, of which they would not be legal Evidence; they are only to prove, that the Persons who emitted the Declarations, averred these Things; and if any Words of theirs could give Cause of Suspicion against the Pannel, it would be surely competent to prove such Words by the Testimony of third Parties. Does it not then come altogether to the same Purpose, to prove them by Production of the Words themselves judicially committed to Writing? The close Confinement of the Pannel, as well as that of some others, who were then taken up upon Suspicion of Guilt, but are now to be produced as Witnesses, was owing to the Rules of the Place where they were confined. His Majesty's Garrisons have been used as Prisons more for the Custody of State Prisoners than of common Criminals: It is not to be wondered at, then, if military Officers, unacquainted with the Distinctions of Law, applied to the latter the Orders which they were in use to receive for the former: As soon as the Law was explained, it was obeyed; nor is it pretended, that the Pannel, or any other, was closely confined one Hour after the commanding Officer was informed that the Law forbid it. 'Tis true, a new commanding Officer came, to whom the Law was not immediately explained, which occasioned the second close Confinement complained of; but he, as well as his Predecessor, paid Obedience to the Law, as soon as it was made known to him. That it was not therefore made known to both, as soon as might have been, the Pannel's Council must account for. That was altogether their Business; and the Consequence, whatever it be, which may arise from the Neglect of it, ought not to fall upon the Prosecutors, far less upon the Gentlemen of the Army, who, the Pannel himself acknowledges, have all, in any Charge they had of him, done their Duty with the utmost Humanity, always like Soldiers, and like Men. It is surprising, the Gentlemen should mention, as a Hardship, their being refused

Access to the Pannel, after they came to *Inverary*; they must be conscious, that this was a Hardship of not an Hour's Duration. They required Admittance from the chief Magistrate, who not caring, as the Duke of *Argyll* was upon the Spot, to take any Step without his Grace's Approbation, sent directly to acquaint him of the Demand; and his Grace gave immediate Orders for their Admittance. The Gentleman who spoke first, mentioned one Thing, which, I dare to say, he alone will think a Hardship upon the Pannel; I mean, my Lord, its having fallen to that Gentleman's Share to open his Defence; and I cannot help thinking the Complaint of the Pannel's Want of able Assistance, coming from that Side to this, looks like Banter: For, setting aside my Lord Advocate, whose Office obliges him to assist the Prosecutors; I need only beg your Lordship will cast your Eye, first to the one Side of this Table, and then to the other, in order to judge where the Advantage lies in Age and Experience.

Upon the whole, my Lord, I cannot doubt but your Lordship will find this Libel relevant to infer the most severe Pains of Law, as the Crime libelled is of the most heinous Nature; and that you will remit the Pannel to the Knowledge of an Assize, who, I find, from the List in my Hand, must be Men above the Imputation of any other Prejudice, but what every good Man must feel against so horrid a Crime; a Prejudice, which, I am sure, they will carefully distinguish, as I hope we all do, from any personal Prejudice against the Pannel, who has an undoubted Right to demand their most impartial Attention to the Proof, by which alone his Innocence must stand confessed, or his Guilt meet with its deserved Punishment.

MR. ERSKINE against the Pannel.

My Lords,

I HAVE likewise the Honour to be of Council for the Prosecutors in this Trial, and, as such, it is my Duty to support the Charge exhibited in the Libel; which has been just now very fully and distinctly opened.

The Importance of the Trial, the Respect I have for the Honourable Court, and this Audience, were alone sufficient to have laid me under great Uneasiness: But that Uneasiness is greatly increased, when I find myself engaged in a Task, which I am at present but ill prepared to execute.

Tho' I early and willingly engaged to take a Part in this Trial, an unexpected Distress, which has, for some Days, dissipated my Attention to Business, made me hope the Prosecutors would have relieved me of an Engagement which I was unfit to perform, and dispensed with my Attendance, which, I apprehended, could not be material to them; but in this I have been disappointed by the Indisposition of a Gentleman of great Abilities and Experience, which has unhappily deprived them of his abler Assistance.

For this Reason I will beg leave to confine myself entirely to make the proper Answers to the Arguments which have been urged by the learned Gentlemen in Defence of the Prisoner.

I shall forbear to enlarge upon the many aggravating Circumstances that appear in the horrid Scene just now opened to your Lordships.

I will not attempt to inflame the Jury, by giving loose Reins to an Imagination, warmed by a real Regard for the Gentleman deceased, Com-

passion

passion for the Widow and the Fatherless, under peculiar Circumstances of Distress, a high Concern for the Interest of this Country, and the Preservation of our present happy Constitution; all which appear to have been struck at by the Hand that gave this Wound.

These Considerations cannot fail to kindle Indignation in every Breast; and I am confident they have already had the Effect to rouse the Attention of the Court, and balance a misplaced Compassion, not unnatural to humane Minds, which sometimes blunts even the Sword of Justice: But the Prosecutors do not expect to obtain a Judgment against the Prisoner in this Court, upon any other Foundation than a real Conviction of his Guilt, arising from Evidence clear, unexceptionable, and agreeable to the Laws of this Country.

The Laws of this Country are favourable, particularly favourable to Persons under Trial for their Life; and the Prosecutors are willing to allow the Prisoner the full Benefit of every Advantage that these Laws, or the Practice of the Court, can give him a Title to.

This being the Case, I cannot omit observing how improperly the Prisoner has rested the greatest Weight of his Defence upon clamorous Assertions of unfair Advantages, and unlawful Oppression upon the Part of the Prosecutors.

For, *1mo*, tho' they were founded on Truth, they would not amount to a Defence against the Libel: One Crime cannot compensate another, nor an Injury received from the Prosecutor, wipe away the Guilt of the Prisoner.

But, *2do*, these are Measures so inconsistent with that glorious Spirit of Liberty that reigns even among the Rulers in this Age and Nation, so inconsistent with the known Mildness and Clemency of his Majesty's Government, and the unfortunate Circumstances of the private Prosecutors in this Trial, that I can hardly persuade myself it would be necessary to make a more particular Answer to these Complaints.

Nevertheless, as I am sensible that nothing is more inseparable from noble and generous Minds, than a Desire to throw every Atom into the Balance on the Side of the Distressed, while there remains a Possibility of their Innocence; and that a simple Suspicion that the Prisoner had suffered any unnecessary Hardship, or been deprived of any Means of defending himself, might avail him more in the Event of this Trial, than the best Defence in the Mouth of the ablest Advocate; for that Reason, I will beg leave, in a few Words, to shew the Court what Foundation there is for such Complaints.

The first was, that the Prosecutors had deprived him of the Benefit of Council, by retaining most of the ablest Lawyers at the Bar.

To this I can make no stronger Answer, than what the Court has just now heard from the very Gentlemen who make the Complaint, and will be confirmed by these who are to support them. I am confident they will convince the Court, and all who hear them, of the Absurdity of such a Complaint, when urged by four Gentlemen of such Abilities.

In the second Place, it has been said, that the Prisoner had been deprived of his Liberty, and kept in close Confinement contrary to Law, debarred the Conversation of his Family and Friends,

and denied Access to speak either to his Agents or Witnesses.

To all which it may be answered in the general, that the Laws of every well-governed Realm certainly allow the Confinement of Persons charged with capital Offences, in such Manner as they may be secured, till they can be brought to Trial: That no Limitation of this Rule has been introduced, either by Law or Practice in *Scotland*, other than what is contained in that valuable and salutary Statute of Parl. 1. Sess. 9. of King *William*, for preventing *wrongous Imprisonment*. No Part of which has been infringed in the present Case.— That the Prisoner has been, since he came to this Place, strictly confined, cannot appear unreasonable or oppressive to those who know that of late, in spite of the Vigilance of the Magistrates, several Criminals have escaped from their Gaol, whose Cases were less desperate than his, and who had no formidable Tribe of Friends or Accomplices to assist their Escape.

It will not appear surprising or unjust, that the Magistrates were cautious to give Access to any Persons, under the Colour of their being Agents or Witnesses, without a proper Warrant, when it appears from the Proof to be brought in the Trial, that, during the Prisoner's Confinement in the Garrison at *Fort-William*, he found Means to tamper with the principal Evidences, (tho' also in Custody, in order to prevent such undue Influence) by Emissaries who carried repeated Messages in his Name.

This, I think, might likewise appear to be a good Reason for the Officer commanding at *Fort-William*, to be particularly careful to interrupt and prevent these Practices, by denying Access to the Persons by whose Means they were known to be carried on.

But, as the Prisoner's Complaint has been loud upon this Head, I must beg leave to recal the Attention of your Lordships and the Jury to one of the Facts libelled, from which the Accession to the Murder is inferred; it is the supplying the Murderer with Money to enable him to fly from Justice; let it be remembered in what Manner it was executed; the Prisoner was indulged by the Officer commanding the Party that apprehended him, to speak with his Wife apart, before he was carried off: The Use he made of that Indulgence, was to give her the greatest Part of the Money in his Pocket, with Instructions to send it, and the Murderer's Cloaths, to the Place where it had been concerted he should wait for them.

The Indulgence upon the Part of the Officer was natural and humane; from the Circumstances that were then known, there was no Reason to suspect, that such Use would have been made of it; and by God's good Providence it is become a material Circumstance in the Investigation of the Source of the horrid Scene of Iniquity before the Court.

Now, as this Fact is admitted to be true, I must submit, what Foundation there is to complain of Severity: Whether the commanding Officer had Reason to repeat such Indulgences, or to give unlimited Access to his Family and Relations? Nevertheless, I am well authorised to say, that, at *Fort-William*, the Prisoner had many and great Indulgences of this Kind; that he was allowed to take the Air in the Garrison, and to converse with his Friends and Relations, in such Manner as was

consistent with the safe Custody of his Person, and the Inquiries which were then carrying on by the proper Officers: And, both before and since he was brought to this Place, his Agent and Lawyers have had Access to be with him as often as applied for in a proper Way. He was not indeed allowed Access to some of his Servants and Dependents, from whom material Evidence was expected; with whom he had been tampering, and who had declared, they were overawed by his Authority: But, for that, I apprehend, no Apology is necessary.

In the last Place, your Lordships have heard much from the Council for the Prisoner, of unfair Means that have been used to traduce his Character in the Country, and to prepossess the World with an Opinion of his Guilt, by which he is said to be, in some Measure, condemned before he is brought to Trial.

I must beg your Lordships and the Jury to consider the Circumstances of the Prosecutors who are charged with these Practices. Has the disconsolate Widow, who has no Relation, and scarce an Acquaintance in this Corner of the Island, been so successful in prepossessing the Country with an Opinion of the Prisoner's Guilt? Or, are her Children, as yet incapable of Speech, fit to assist her in traducing his Character?

If the Relations of the Deceased had attempted it without Foundation, they would have gained no Credit with the impartial World; or would have been counterbalanced by the numerous Relations of the Prisoner, at least in this Country. Nevertheless, my Lords, I will admit that he labours under great Disadvantages upon this Head; a general Opinion of his Guilt has prevailed; and I am sorry to say, that he has many and strong Adversaries, who have been busy to establish it. *Magna est veritas et prevalebit.* The Horror of the Crime with which he is charged, has raised the Attention of every impartial Person, and made them industrious to discover the Authors of it.

The Blood of the Innocent has called aloud to Heaven for Justice; and, by a remarkable Concurrence of many Circumstances, brought to light by the Declarations of a Cloud of Witnesses, the Prisoner is clearly pointed out, not indeed as the Executioner, but the Contriver of the Murder, and the Aider and Abettor of the Murderer.

I will not say, that his Character in private Life concurs against him; I have no Authority from my Employers to assert it; nor will I assert what is not supported by Evidence. But I must say, that his Family and Connexions, his Character and Conduct in public Life, are so many Circumstances forming a Presumption almost equal to a Proof, in Support of the Charge brought against him. These are the most powerful Adversaries he has to struggle with, and from them that general Opinion of his Guilt has taken its rise, which is unjustly ascribed to the Prosecutors.

What has been said, my Lords, would naturally lead me, in the next Place, to lay open, to the Consideration of the Court, the particular Circumstances set forth in the Libel, from which the Prisoner's Guilt is inferred; and to take Notice of what has been said in his Defence upon that Head: But in this I have been well prevented by the Gentleman who spoke last; and therefore I shall only beg leave to add a few Observations to what has been said by him.

The Court has been informed, that Mr. *Campbell* of *Glenure* was appointed Factor on the forfeited Estate of *Ardshiel*; that the Prisoner is natural Brother to the forfeiting Person, in whose Absence he fell to have the Leading of his Dependents, and the Protection of his Family: Under that Character, as he had an Interest, so he had Opportunities of opposing the Factor in the Execution of his Office: That this Opposition grew by Degrees to the Height of premeditated Malice, which soon after broke out in repeated Threatnings, and at last ended in Assassination and Murder.

On the other Hand, the Council for the Prisoner have asserted, that there was no Enmity or Malice between *Glenure* and him; but contrarywise, a Confidence and Friendship, which they offer to support by Letters written by *Glenure* to him. Now, as this must appear to be inconsistent with the Charge in the Libel, I must beg leave, in a few Words, to reconcile them.

When *Glenure* was appointed Factor on the Estate of *Ardshiel*, he was so far from shewing any Disposition to be severe upon the Tenants, or to put Hardships on the Family and Friends of the forfeiting Person, that he treated them with the utmost Humanity: And the Prisoner in particular had the Address to insinuate himself so far into his Confidence, as to be employed in collecting the Rents, and advised with in the letting of the Farms; and, during this Period, the Letters referred to were written. But, as the Prisoner undoubtedly took Advantage of this Confidence to bring Tenants into the Estate that were entirely under his Influence, and to make separate Agreements with them in Favour of the forfeited Person and his Family, in Defraud of his Majesty and the Public; the Barons of Exchequer justly took Exception against this Part of *Glenure's* Conduct; and, to prevent such Abuses for the future, gave him particular Instructions in Writing, to remove the Prisoner from a beneficial Farm which he possessed, and also any other of the Tenants who were connected with, or under the Influence of the forfeiting Person and his Family.

These Instructions were executed in Part at *Whitsunday* 1751, by the Removal of the Prisoner from his Farm; but as he easily procured another in the Neighbourhood, and retained his Influence over the Estate by the Means of the Tenants he had placed there, he discovered no Resentment at that Time.

But so soon as the Factor, in the further Execution of his Instructions, began to take the proper Measures for removing, at *Whitsunday* 1752, some of these Tenants, he then took the Alarm: That was to pluck up his Interest by the Root, and entirely to put an End to his Influence. He therefore made the Cause of the Tenants his own, and every Method of Opposition was tried to prevent their Removal.

He no longer affected any Intimacy or Friendship with *Glenure*, but took every Occasion to raise Discontent and Jealousies against him, and represent him as an Oppressor in the Country. At last, without any Authority from the Tenants who were to be removed, he took a Journey to *Edinburgh*, on his own Expence, and applied, by a Bill of Suspension, to the Court of Session in their Names; in which the Factor's Conduct was set forth in such false and odious Colours, as procured a Sift or Stop of Execution of the Decree of removing, pronounced

pronounced by the Sheriff, at the Factor's Suit; and, by the same false Suggestions, he so far imposed upon such of the Barons, as were then in Town, as to make them listen to his Complaints against *Glenure*.

When *Glenure* was informed of all this, he went directly to *Edinburgh* by great Journies; and, as soon as he had an Opportunity of being heard, he obtained a Removal of the Sift from the Court of Session; and satisfied the Barons, that he had conducted himself entirely by their Instructions. And, having been only two Days in Town, he returned with Expedition to the Country, *Whit-sunday* being then near at Hand.

This Scheme being frustrated by the Diligence and Activity of the Factor, Measures of a different Nature became necessary.

The Prisoner had no Hopes of being able to keep up his Influence and Interest in the Estate, while *Glenure* continued to have the Management of it; and if he should be able to get the better of him, he had Reason to think no other would be so hardy as to undertake it. It was therefore resolved to take him off, and that before he should remove the Tenants.

For the Execution of this Scheme, a very proper Assistant was at Hand; *Allan Breck Stewart*, a Person in desperate Circumstances, who had already forfeited his Life to the Laws, and inlisted himself an Enemy to the Liberties of his Country; a Dependent of the Family of *Ardshiel*; brought up from his Infancy under the Care and Authority of the Prisoner.

With this Assistance, no Method was left unattempted to stir up the Populace, or some of the hardiest among them, to cut off *Glenure* by Violence. Their Attachment to their Chief was made Use of for that Purpose. The Preservation of his Family, the Welfare of their Country, and even the very Being of the Clan, were represented as inconsistent with allowing *Glenure* to live. Reproaches were used to some, Rewards offered to others, and strong Insinuations made by the Prisoner to his own domestic Servants: But all this had not the desired Effect.

Wherefore, on *Monday* the 11th of *May*, *Allan Breck*, who had no other Occupation but wandering from House to House amongst his Friends, and was thereby well able to trace all *Glenure's* Motions, came to the Prisoner's House, when the Resolution appears to have been taken, that *Allan* himself should set out early next Morning to way-lay *Glenure*, and take the first Opportunity to perpetrate the Murder.

This was no difficult Task to one who knew the Country. There were but three Days to run to the Term for the Removing. In that Period, it was known that *Glenure* was to go from his own House, to the Sheriff's Court at *Fort-William*, and return to the Lands from whence the Tenants were to be removed. The Nature of the Country, and the several Ferries which he could not avoid, made it certain what Road he must take, and a Wood near the Lands afforded a proper Place for the bloody Deed. But *Allan's* Dress, being the *French* Uniform, was too remarkable for an Executioner of the Works of Darkness: He was therefore supplied with another, of the usual Colour and Fashion of the Country, by the Prisoner. The Court has heard how he then took his Station at a Place within Sight of *Glenure's* House, till he saw him set out for *Fort-William*, and then how he

retired towards a Ferry, where it was known *Glenure* must pass in his Return.

In the mean Time, Messenger after Messenger is sent to *Fort-William* by the Prisoner, to get more particular Intelligence of *Glenure's* Motions. On the Night of the 13th, *Allan* came to a Place adjacent to the Ferry, and retired in the Morning into the Wood, from which he only came out to inquire if *Glenure* was past. About this very Time a Gun, belonging to the Prisoner, was amissing; and, in the Evening, *Glenure* was shot in the Wood.

When the Horror of the Murder threw all the Neighbourhood into Confusion and Consternation, no Surprise appeared upon the Prisoner, or in his Family. Their Attention was entirely fixed upon the Execution of the Measures that had been concerted for facilitating the Murderer's Escape: For that Purpose, a Messenger was dispatched to procure Money: Upon the Return of that Messenger (tho' the Prisoner was then in Custody) the Money he brought, with what more the Prisoner could afford, and also the *French* Cloaths, were, by the Prisoner's Direction, carried to a remote Place in the Mountains, where *Allan Breck* had for some Time waited in Expectation of them. At the same Time the Prisoner's Arms, which had been concealed near his House, were discovered; and the very Gun, which had been missing on the Day of the Murder, was found amongst them, with such Marks as showed that it had been lately discharged.

Thus, my Lords, as I had Occasion to mention some of the Facts to be proved, I could not resist shortly running over the whole, in order to lay them in one View before your Lordships and the Jury.

And, from this View, I apprehend it will now appear, *imo*, That the Friendship mentioned by the Council for the Prisoner, does not derogate from the Probability of his Guilt. It is a natural, and even a necessary Link of the Chain upon which the whole depends.

2do, It must occur to every one who hears these Facts, that tho' it is possible, barely possible, that several of them might have happened, tho' the Prisoner had been innocent of the Crime that is charged upon him; yet it is impossible to conceive, that such a long Series of Circumstances, connected and corresponding with one another, all concurring to answer the same End, should be the mere Effect of Chance, and not the Consequence of Intention and Design.

To take an Instance, it is very easy to believe, that *Allan Breck* might have changed his Cloaths, tho' he had not intended to murder *Glenure*; and that he might have lodged for some Nights near *Glenure's* House, tho' he had not intended to lie in wait for his Life: But when we find the same *Allan Breck* himself threatening to murder *Glenure*, and instigating others to do it; afterwards changing his Cloaths, lying in wait at different Times and in secret Places, appearing and *anxiously inquiring* for *Glenure* near the Time and Place of the Murder, and, as soon as it was committed, flying with Terror and Precipitation; who can doubt that he was the Murderer?

In the same Manner it may be well supposed, that the Prisoner might have lent *Allan Breck* a Suit of Cloaths, or given him Entertainment in his House, tho' he had not instigated him to commit the Murder. But if it is considered, that

Allan Breck had no Quarrel with *Glenure*, other than what he was engaged in by the Influence and Authority of the Prisoner; that he carried the Resentment, on the Prisoner's Account, to such a Height, as to threaten to shoot *Glenure*, and joined the Prisoner in prompting others to do it; that when *Glenure* returned unexpectedly from *Edinburgh*, *Allan Breck* went immediately with the Intelligence to the Prisoner; that when he set out to lie in wait for *Glenure*, it was after a Consultation with, and being accoutred, for that Purpose, by the Prisoner; that the Gun with which he shot *Glenure*, appears to have been the Property of the Prisoner; that, after the Murder was committed, the Murderer relied for Money and Cloaths for his Escape, and actually did receive them from the Prisoner; I say, let all these concurring Circumstances be laid together, and who will doubt that he was instigated, aided and abetted by the Prisoner?

It is therefore in vain to urge, that one or more of these Facts, when taken separately, are not relevant to infer the Conclusion of his Guilt. It is from the Connexion and Concurrence of the whole, that the Conviction of his Guilt does arise: And it is only from a Proof of the whole, that the Prosecutors expect a Judgment against him.

In the last Place, the Council for the Prisoner have urged a Point of Law in his Defence, *viz.* That supposing the Facts which have been set forth, to be relevant to infer his Guilt; as he is only charged as an Accessary, he cannot be brought to Trial for the Crime, until the Principal be first convicted. In supporting of this, Texts have been quoted from the old Law-Books, *Quoniam Attachiamenta* and *Regiam Majestatem*. It has been said that this is the Law of *England* at this Day, and that *Sir Geo. Mackenzie*, in his Treatise of Crimes, has laid it down to be the Law of this Country.

As the Word *Accessary* is a Relative, which cannot be without a Principal to which it relates; it must be admitted, that no Evidence will be sufficient to convict an Accessary; which does not prove that the Crime was committed by the Principal, who is thereby convicted, to the Effect that Justice may be executed against the Accessary.

In this Sense the Maxim is just; but in the Sense in which it is pleaded for the Prisoner, I will take upon me to say, it is not supported by the Law of this Country: It is inconsistent with the Principles of public Policy, and subversive of all civil Society.

It is indeed a Maxim, and a good one, in the Law of *Scotland*, That no Person can be condemned, so as to suffer the Punishment appointed by Law for any Crime, unless he be present in Court, and have Opportunity to object to the Evidence by which it is to be proved against him. But, in the present Case, it is not alledged, that *Allan Breck* could be condemned, and brought to Justice, upon the Evidence that is to be brought in his Absence against the Prisoner. If he shall afterwards appear, and stand his Trial, the Proof, in so far as it relates to him, must again be repeated in his Presence, and it will be competent to him to object to every Part of it. But at present, as the Evidence is brought only to the Effect that the Prisoner may be punished, it is he only that can plead the Benefit of this Maxim; and it is competent to him to object, as well to that Part of the Evidence which fixes the Crime upon the Principal, as to that which proves his Accession.

As to the Law of *England*, I will not take upon me to argue from it; I do not pretend to be versant in it; nor do I apprehend it will be decisive in this Case. Nevertheless I have Reason to believe, that it is the Practice in that Part of the Kingdom to proceed to the Trial of the Accessary, after the Outlawry of the Principal; from which I would infer, that, in our Practice, either the Fugitation has the Effect of the Outlawry, or there is no Argument to be drawn from the one Law to the other.

With regard to the old Law-Books mentioned, it is well known to your Lordships, that they are generally believed to have been transcribed from the Laws of *England*, at a Time, indeed, when many salutary Alterations are thought to have been introduced into our Practice from thence; but that it is by no Means admitted, that they were ever ingrossed into the Body of our Laws, or that every Part of them has been confirmed by our Practice; many Instances of the contrary might be mentioned. But I forbear to consume the Time of the Court upon this Question, because the only Ground I can find to suspect, that it ever was held to be a Doubt in our Practice, is the 153 Act, 12 Parl. Ja. VI. which appears to have been made with a View to take away all Doubt for the future. The Words of this Statute are, *That, in all Time cumming, all criminal Libeles shall containe, that Persones compleined on are Airt and Pairt of the Crimes libelled; quibilk shall be relevant to accuse them thereof; swa that na Exception or Objection take awaie that Part of the Libell in Time cumming.* Which, in more modern Language, imports, that, for the future, no Objection shall be sustained against a Libel, which charges the Person accused of being Contriver, Adviser, Aiding, Abetting or Assisting, in a Crime that is otherwise relevant.

And *Sir Geo. Mackenzie*, in that very Passage of his Treatise on Crimes, which has been quoted in behalf of the Prisoner, tho' he lays down the Arguments which have been suggested on both Sides by the Authors who have treated this Question, he concludes with observing, that, in *Robertson's Case*, the Court found upon this Act, that an Accomplice might be tried, tho' the Principal had not been convicted nor fugitated.

Upon these Principles, the Practice has been uniform for many Years; and the present Circumstances of the Case do not seem to afford any Reason to deviate from it. For your Lordships and the Jury must be convinced, from the Facts which have been opened, that as the Murder was committed with the Advice, and at the Instigation of the Prisoner; so, but for his Aiding, Abetting and Assisting, the Murderer had been now also Prisoner at your Bar.

LORD ADVOCATE.

My Lord Justice-General,

I Stand up at this Time, to support the Reply that hath been made by the learned and ingenious Gentlemen on the same Side with me, to the Defences that have been offered for this Pannel; but, as it hath not been frequently practised by my Predecessors in Office to attend in Person at Circuit Courts of Justiciary, I beg leave, first of all, to say a few Words for myself, to give the Reason of my being now here: And I am persuaded that every one who now hears me, will believe me, when I declare, that, negatively, that hath not proceeded from

from any particular Animosity against this unhappy Man in the Pannel, whom I never saw until this Day when he appeared there; neither is it singly because it is a horrid and atrocious Murder that is to be now tried; or that the Trial is to proceed upon indirect and circumstantial Evidence, because such Cases have often occurred. But the Truth is, that upon my first hearing of this Murder, in the Month of *May* last, of a Gentleman of this Country, the King's Factor upon certain of the forfeited Estates that had been but a few Weeks before annexed to the Crown unalienably, and the Produce of them appropriated by Law to the most salutary and beneficial Purposes, for the future Tranquillity of the united Kingdom in general, and for the immediate Advantage and Improvement of these Highland Parts of *Scotland* in particular; I was greatly shocked, and considered the Murderers, whoever they were, as having been guilty not only of a most horrid Crime against the Laws of God and Humanity, but, together with this, of a most audacious Insult against the most gracious and beneficent Acts of the King's Government, and of the whole Legislature; and, as far as in them lay, had endeavoured to make the World or the Public believe, that the civilizing of the Highlands of *Scotland* was a vain and impracticable Attempt; and, under this Impression, I then resolved, whenever a Discovery should be made of any Persons concerned in this Wickedness, to attend at the Trial where-ever it should be, and to do all that in me lay, consistently with Law and Justice, to convince the disaffected Part of the Highlands of *Scotland*, that they must submit to this Government, which they have several Times in vain endeavoured to subvert.

And now, as to this Trial itself, your Lordships have heard the Libel read, and some Parts of the Evidence which we expect to bring in Support of it, more particularly opened by the Gentlemen who spoke of the same Side with me; and none of these Things shall I now repeat; but only make a few Observations upon what hath been offered by the Council for the Pannel by Way of Defence.

And, first of all, in order to lay out of the Case what is foreign to the Merits of the Trial, the Pannel's Council have been pleased to take Notice of certain Hardships, or Grievances, that he has laid under, during his Confinement in the Garrison of *Fort-William*; and that, by the Precaution of the private Prosecutor, all the old experienced Council have been retained from giving him their Assistance. As to the former of which supposed Grievances, I am truly ignorant of the particular Facts upon which the Complaint is founded; but if it be true, that the Pannel was longer kept in close Confinement than he should have been, or until the commanding Officer was informed how the Law stood, the Pannel can be under no real Disadvantage on that Account in his present Trial; because he was first taken into Custody on *Saturday* the 16th of *May*, that is, about four Months ago: And supposing it true, that, for some few Days of so long a Period, People had not Access to him whom he had a mind to see, he has had full Time, when all these are deducted, to make the necessary Provision for his Defence.

As for the other alledged Grievance, I myself know certainly the Foundation of that; and so far is true, that after I had expected, for some Time, to receive from the Sheriff-depute of this County the Result of his Inquiries concerning the

Murder of *Glenure*, and the Examinations he had taken on that Subject; these were, at length, brought to me at *Edinburgh* by certain of the Family of the Deceased, who had taken upon them, as it was very just and natural, to be Managers and Conductors of the Inquiry, and to cause to be brought before the Sheriff to be examined, all Persons who, according to their Information, could give any Light in the Affair; and, with the Examinations so taken, they brought along with them to me three learned Council, which was also very reasonable and usual, and, as in all other Cases, was to myself most acceptable, that we might jointly consult and deliberate, whether from these Examinations, and the Discoveries thereby made, there was Matter sufficient for bringing this Pannel to Trial; upon which Question we all agreed in the Affirmative: But these three Gentlemen, tho' very able in their Profession, were not all the experienced Council. And, as it is my constant Wish to see every Pannel as ably defended as his Cause will bear, it is with Pleasure that I now see this Pannel attended by four of my Brethren, who I am sure will omit nothing material for his Service.

Upon the Cause itself, there is, in reality, no Place for a Debate on the Relevancy of the Libel; nor does there appear to me to be any Difference betwixt us concerning the Interlocutor that we desire or expect to receive from your Lordships; for the Gentlemen of Council for the Pannel have admitted the Atrocity of the Crime charged upon him as strongly as I am able to express it: And they farther admitted, as they must have done, that the charging the Pannel as being guilty, or Art and Part of that Crime, is relevant to infer the Conclusion, and necessarily requires his being remitted to the Knowledge of an Assize, whether he is so guilty or not.

And, on the other Hand, I readily admit to them, that the laudable and just Practice of this Court, of later Years, hath been, not to find or determine a particular Relevancy upon certain Facts or Circumstances set forth in the Subsumption, or minor Proposition of the Libel, which is indeed, in some Measure, to pre-occupy the Province of the Jury, who are the Judges of the Fact, and is also dangerous to the Course of Justice; because, when a Number of Facts and Circumstances were found jointly relevant to infer the Pannel's Guilt, if the least material of these should not be proved, altho' a more pregnant Circumstance, that was not specially libelled or expressed in the Interlocutor, should come out upon the Evidence, if the Jury followed the Directions of that Interlocutor, and adapted their Verdict to it, the Pannel behoved to be acquitted, tho' in Reality, and in their Opinion, he was guilty.

It was not, therefore, with Intent that your Lordships should give your Opinion upon the Relevancy and Sufficiency of the Facts and Circumstances set forth in this Libel, that these were so particularly there inserted; but this was done agreeably to some of the best Precedents in the Records of this Court, for the Furtherance of Justice, both in respect of the Prosecutors and of the Pannel: For the former, that as the Evidence to be brought is circumstantial, the Jury may be the better enabled to ponder the several Circumstances, and connect them together, and attend to the Evidence that shall be brought for Proof of them; and for the sake of the Pannel, that he, knowing the principal

pal Facts that were to be proved in Support of the Charge against him, might prepare the Evidence for his Vindication, and for explaining those Appearances of Guilt with which he was loaded, in the best Manner he should be able.

Another Thing concerning the Interlocutor to be pronounced by your Lordships, in which I most readily agree with the Pannel's Council, is, that he should be allowed to prove the several Facts alledged for his Defence, and every pertinent Fact or Circumstance, that he, or his Council think, may be available for proving his Innocence.

And thus far we seem to be agreed on the Terms of the Interlocutor, if the Trial is at all to proceed; against which one previous Objection hath been made, namely, That this Pannel, who is only said to be charged as Accessary, cannot be tried before the Principal, *Allan Breck*, be first discussed: In Support of which Objection, they have alledged certain Passages in the old Books of the Law, and Sir *Geo. Mackenzie* in his *Criminals*, Title *Art and Part*. Parag. 9.

But to this I answer, first of all, that Sir *George Mackenzie* himself, in the Passage referred to, furnishes an Answer to the Objection; for, after stating the Question, whether Accessaries can be sued till the chief Actors be first discussed, and quoting the Passages in the *Regiam Majestatem*, and other old Books that favour the Negative, he adds a Decision of that Question in this Court in these Words: "Notwithstanding all which, *Charles Robertson* being pursued as Accessary to the casting down of a House, which was libelled to have been cast down by his Sons and Servants at his Command, the Justices found, that he might be put to the Knowledge of an Inquest, altho' the Children and Servants were not first discussed; because the Act appointing a Libel to be relevant, bearing Art and Part, did abrogate the foresaid; 4th Verse, 26th Chap. L. 4. R. M. since such as are pursued, as Art and Part, are all Principals." This was the Decision of the Court and the Reason of it, founded on the Act 1592. Chap. 153. which enacts, "That, in Time coming, all criminal Libels shall contain, that Persons complained on are *Art and Part* of the Crimes libelled; which shall be relevant to accuse them thereof; so that no Exception or Objection take away that Part of the Libel in Time coming."

The Author proceeds in the same Passage to recite some Part of the Argument previous to this Decision; and says, "That the Advocate alledged, it were absurd, that the King should be judged by the Absence of the Principal Party; to which it was answered, that the King was not prejudged, seeing, if the Principal Party were discussed and denounced fugitive, the Accessary might be proceeded against."

Now, this is what hath been done in the present Case: *Allan Breck Stewart* hath been called upon to stand Trial for his Part in the same Offence, and hath been denounced fugitive for not appearing to abide his Trial; which is discussing him as far as the Laws of this Land admit of, when his Person is not in Custody.

But further, it is to be observed, that *Allan Breck* is not charged in this Libel with being the Principal, and this Pannel as only Accessary to the Murder of the deceased *Glenure*; they are both charged in the same Words with being guilty, Actors, or Art and Part of the said heinous Crime;

that is, in the Terms of the Statute of K. *Ja. VI.* just mentioned: And, tho' it be true, that, in the Subsumption or Recital of the Facts, it is said, that the actual Murder, or Firing upon the Deceased, was committed by *Allan Breck*, it is also said, that this was done in Revenge of the Quarrel which this Pannel took up against the Deceased, and in Pursuance of a Concert or Conspiracy betwixt the Pannel and *Allan Breck*, to take away the Life of *Glenure*; and such being the Case, they are in reality both Principals. By the Law itself (L. 15. *ad legem Corneliam de sicariis*) *mandator cædis pro homicida habetur*: And the learned *Matheus, de criminibus*, in his *prolegomena*, c. 1. § 12. *qui mandant scelus, quique mandatum exequentur, utrique rei sunt, & ordinariæ quidem pœnæ subjugandi*; and, for Proof of this, brings many Arguments and Authorities; and, *inter alia, cum quis alicui mandat scelus, mandantem quidem caput esse; mandatarium vero manum, & instrumentum mandantis. Hinc sacro quoque oraculo cædes Uriæ Davidi impingitur, 2 Sam. xii. 9.* in which Text the Words of *Nathan* the Prophet to *David* are, *Thou hast killed Uriah the Hittite with the Sword.*

And indeed it seems not to be agreeable to Reason or natural Justice, to hold, that, if this *Allan Breck*, for Instance, the actual Manslayer in the present Case, instead of making his Escape beyond Sea, as probably he hath, had died a natural Death, and so become out of the Reach of all human Laws, before this Trial could be brought on, and supposing the most direct and positive Evidence could be brought, that *Breck* committed the Murder libelled, by the Counsel, Command, or Direction of this Pannel, or, as our old Laws express it, *out-bounded* by him, that yet this Pannel could not be brought to Justice, because truly, tho' the Author, he was not the very *actor cædis*.

But, that such is not the Law of *Scotland* at this Day, besides the Case mentioned by Sir *George Mackenzie*, I need only remind your Lordships of the very last Trial in the Court of Justiciary at *Edinburgh*, of *James Drummond Macgregor*, for being guilty, or Art and Part of the Crimes of Hamesucken, forcible Marriage, and Rape: For all which the Trial proceeded against him; and tho', in the Crime of Hamesucken, he and his Accomplices might be all equally Principals; yet, in the forcible Marriage and Rape, *Robert* his younger Brother, to provide whom with a Wife and a Fortune that Wickedness was committed, was no doubt the principal Party and Actor; and yet *Robert* had been no otherwise discussed than *Allan Breck* has been in the present Case, that is, called upon to abide his Trial for these Offences, and pronounced a Fugitive for not so doing.

As for the Argument which the Council for the Pannel have chiefly insisted upon, and which they have professedly, and I think not improperly, calculated for the Jurors who now hear us, namely, to impugn the Relevancy or Sufficiency of the several Facts and Circumstances libelled to infer the Pannel's being guilty, or Art and Part of the Murder in Question; I do not chuse at present to enter particularly into that Argument, but to reserve that till we come to sum up the Evidence to the Jury, such as it shall come out in their Presence; which may possibly in some Articles be weaker, and in others stronger, than what is set forth in the Libel from the Materials that we then had before us; but, in order to shorten our Work at the End of a long Trial, and to engage the Attention of the Jury

Jury to the Evidence that shall be brought before them, in Support of this Libel, I beg Leave now to make a general Observation or two for their sake.

It hath been admitted by the Council for the Pannel, that, even in the Trial of Crimes, circumstantial Evidence, when clear, is not only competent, but perhaps the most satisfying and convincing Proof of any; and it was well said, 'that Circumstances are inflexible Proofs, that Witnesses may be mistaken or corrupted; but Things can be neither:' To which I will add, that the Competency of such Evidence, for inferring the ordinary capital Punishment for Murder, was solemnly decided in the Court of Justiciary at *Edinburgh*, in *February 1718*, in the Trial of *Stewart Abercrombie*, for the Murder of *Alexander Hay*, Son to Mr. *Robert Hay of Naughton*; in which the Argument was treated with great Learning, and full Informations on the Debate written by the now Lord President of the Court of Session, who was the Profecutor, and by the now Lord Justice-Clerk, who was of Council for the Pannel. And I mention that Case, which I have lately perused in the Record, to give your Lordships and the Jury a Specimen of a circumstantial Evidence of Murder, that, in its general Nature or Complexion, was very similar to the present: The Case there, in short, was, that some Days before the Murder, Mr. *Hay* the Deceased, and *Stewart Abercrombie* the Pannel, had been in Company, when *Hay* complained of an Affront given him by *Abercrombie*; upon which nothing then ensued: But, just before the Murder, which happened about Nine at Night of the 6th of *December 1717*, *Abercrombie* was drinking in a Tavern near the Head of *Black-Friers Wynd*, when Mr. *Hay* came into the House, and made one of the Servants call him out into another Room; *Abercrombie* went to *Hay*, leaving his Hat in the Room where his Company were; they went out together near to a Lamp at the Head of the Wynd, where a Scuffle ensued betwixt them, without either of them drawing, tho' they had both Swords; and, during this Scuffle, *Abercrombie* drew his Sword, and run *Hay* through the Body, who was heard cry; he was murdered, and had got foul Play, his Sword not having been drawn; and soon after dropt down dead: *Abercrombie* was still without his Hat, and was seen by no Person who knew him during the Scuffle; they only saw the Man without the Hat stab the other who had one; and, after he had given the Wound, instead of returning to his Company where he had left his Hat, called at another Tavern, where he borrowed a Hat, and went directly to his own House, and to Bed, where he was, that same Night, apprehended.

In the Libel against him, all the Circumstances are particularly set forth, and, in the Information for the Profecutor, there is the following Passage, which I have extracted, and beg Leave here to read. "The Pannel trusted to the Darknes of
" the Night, and Secrecy in which he had committed this Crime, as sufficient to cover him
" from the Eye of Justice, and prevent his Punishment; but that same wise Providence, which
" sometimes leaves Men to execute their wicked
" Designs in such a Manner, and under such Circumstances, as emboldens them to go on with
" Hopes of Impunity, frequently brings those
" very Crimes to Light, by a wonderful Discovery
" of unforeseen Incidents and Circumstances con-
" curring to fix the Guilt upon the Criminal, with

" more Force of Conviction and Strength of Evidence, than two concurring Witnesses could
" give, on Purpose to convince the World how
" little Darknes or Secrecy are to be relied on,
" either as Covers or Encouragements to Wick-
" edness.

" Such is the Case of this Pannel: Had it not
" been by the small Chance of his leaving his Hat
" in the Room with the Company where he was,
" when he came forth to perpetrate this Crime,
" he might have gone off undiscovered.—But
" that small Accident, first indeed taken Notice
" of by a Child, who observed the Hat in the
" Cellar, and knew it to be Mr. *Abercrombie's*,
" led those concerned to a full Discovery of such
" other concurring Circumstances, as supposing
" no positive Proof of the Fact should appear,
" are more than sufficient to condemn the Pannel
" in the Eyes of every Judge and Jury, and of
" every Person else who will lay himself open to
" receive Impressions from Truth."

The Jury in his Case were of that Disposition; he was convicted of the Murder, and suffered for it.

Another remarkable Instance of this Nature, was the Case of *Alexander Maccowan*, who was tried by two of your Lordships here present, at the Circuit held at *Perth* in *May 1750*, for the most horrid Murder of *Margaret Maclean*, and of *Margaret* his own Child by her, an Infant of about three or four Years of Age, committed in *August 1749*, not far from *Crief*, in the Shire of *Perth*, in a Thicket of Wood, where he left their Bodies, after having carried away the Money and Cloaths which the said *Margaret* had along with her in a Bundle. Before the Bodies were discovered, they were so mangled, that they could not be known, otherwise than by the Cloaths which were on the Body of the Woman, which her Relations could swear to: The Evidence against the Pannel was wholly circumstantial, and consisted chiefly of there being found in his Possession, after the Murder, a Pair of Stockings, a linnen Shirt, and a muslin Stock, that were proved to have been in Possession of the Deceased when she set out for *Edinburgh*; where she had told her Relations, she had been invited by the Pannel to go along with him, in order to their being married together; and, upon this Evidence, he was convicted of this double Murder and Robbery; and, upon your Lordships Sentence, suffered the Punishment that he so well deserved.

My Lords, it appears to me, that the present Case affords a fresh Instance, similar to these I have mentioned, of a providential Discovery of Circumstances, serving to fix the Guilt of Accession to this Murder upon the now Pannel, notwithstanding all the Precautions by him used to conceal it: His Enmity against *Glenure*, for removing him from his own Possession in *May 1751*, and discontinuing to employ him in the Management of the *Ardshiel* Estate, was well known, as likewise the various Efforts he made to prevent the Removing of certain Tenants of *Ardshiel* in the Month of *May* last; and also his Intimacy and close Connexion with *Allan Breck Stewart*, who disappeared abruptly immediately after the Murder, and to whom the Voice of the whole Country imputed the actual Murder itself: But as, when that happened, this Pannel was at his own House, at the Distance of one Mile from the Place of the Murder, the more direct and immediate Evidence
of

of his Accession to it was long concealed: His Wife and his Daughter being examined upon Oath before the Sheriff-depute of this County, on the 22d and 25th of *May* last, touching what they knew concerning the Murder, deposed, That *Breck Stewart* left the Pannel's House on the Morning of *Tuesday* the 13th of *May*, dressed in his *French* Cloaths, and that the Pannel had no such black or dark coloured short Coat, as *Breck* had truly left his House dressed in, for three Quarters of a Year before that Time; but at length, above a Month after this Examination, namely, on the 30th of *June* last, *Alexander Stewart* the Packman, being examined before the Sheriff-substitute at *Fort-William*, and after being confronted with a Friend of his own, to whom he had been muttering some Part of the Truth, spoke out the whole Truth, as it is set forth in the Libel; and particularly, that from this very Wife of the Pannel he received, on the Evening of *Saturday* the 16th, at the Pannel's House, *Allan Breck's French* Cloaths, to be carried to him at the Place of his Retreat, together with the five Guineas, which the Pannel had been at great Pains to scrape together, after sending the Packman Express, for that Purpose, to his Friend *William Stewart* at *Fort-William*, and which he sent to *Breck* at the Place of his Retreat, with a declared Intent to put him in Condition to make his Escape, for that he must be suspected of the Murder: This Discovery was the first Thread which the Kindred of the Deceased got hold of to lead them to a more full Detection; and was afterwards confirmed by the Examination of the Bouman, who told the Particulars in the Libel recited, and about whose House the very Cloaths were found, the Property of the Pannel, which *Breck* had brought from the Pannel's, and left with the Bouman.

And as for the Importance of these particular Discoveries, which the Pannel's Council have endeavoured to diminish in the Manner that circumstantial Evidence is always impugned, by observing that each Article taken by itself is inconclusive; I may readily admit this, and yet, from the Result of the whole Circumstances, there may be convincing and irresistible Evidence. And to mention, at present, only these two material ones, of the Cloaths furnished, and the Money sent to *Breck Stewart*, before and after the Murder respectively; I do not say, that if a Man lends his Neighbour a Coat, in which the Borrower being dressed, two or three Days after commits a Murder of a Person who was his own Enemy in Time past, that this will afford any Evidence of Privity or Accession to that Murder in the Lender of the Coat; neither do I say, that if a Man's Friend or Relation has unfortunately committed a Murder, and one shall aid him, by Money, or otherwise, to make his Escape, that this will render such Friend accessory to, or chargeable with the Crime of Murder, tho' he is doubtless guilty of an Offence or Misdemeanor in its own Kind; but the Force of these united Circumstances in the present Case, with the others charged in the Libel against this Pannel, consists in the Connexion of the whole together; it was the Pannel's proper Quarrel that rendered the Deceased obnoxious to *Breck Stewart*; the Pannel had discovered and expressed his Enmity against the Deceased, and had uttered Threatnings against his Life; *Breck Stewart*, his intimate Friend, was a fit Instrument for such wicked Purpose; he had espoused all the Pannel's Opi-

nions and Dispositions towards *Glenure*; he was, himself, not in Condition to remain in this Country, and was already provided with the Means of Subsistence in foreign Service; and to this Man it was, in the very Heat of a Contest with the Deceased about removing certain Tenants which this Pannel had put in, that he furnished the Dress, and, as we likewise believe, the Arms wherewith he perpetrated this foul Murder; immediately after which he retires to a desert Place, not far off, there to wait for a Supply of Money that was to be sent him; and it is especially to be remarked by your Lordships, and the Jury, that, as the Libel bears, at this Place, *Breck* told the Bouman, that he must go to *Fort-William* with a Letter to *William Stewart*, Merchant there, who he said would give him Money upon Receipt of the Letter; and this *William Stewart* was another intimate Friend of the Pannel's, and the very Person to whom, the Day after the Murder, the Pannel sent the Packman Express to get five Guineas for the Use of *Breck*, who was about to leave the Country; this Circumstance affords a Demonstration of a Concert betwixt the Pannel and *Breck* before they last parted at the Pannel's House on the *Monday* Night or *Tuesday* Morning preceding; after which the Pannel allows he never saw *Breck*; for how otherwise could *Breck* have known, that, for such a small Sum as he wanted, the Pannel was to have Recourse to this *William Stewart*, who lived twenty Miles distant from him? and *this Circumstance* serves to connect the *Facts* which immediately preceded the Murder, with those which immediately ensued it.

But I am going too far at present, on the Considerations that will be proper for the Jury after the Proof shall have been brought before them; and shall now conclude, hoping it will appear to your Lordships that no sufficient Objection hath been offered on the Part of the Pannel, why his Trial should not proceed, and that you will make such Interlocutor as, upon that Supposition, the Council on both Sides appear to be agreed in.

Mr. MILLAR for the Pannel.

My Lord Justice-General,

I Appear as Council for the Prisoner at the Bar: And, as I am sensible this Trial must draw out to a very great Length, and occasion a great deal of necessary Trouble to your Lordships, and the Jury, I shall endeavour, in what I am to offer, to avoid Repetition; and I shall confine myself to such Observations as most affected my own Mind upon reading the Indictment, which is the only Rule by which I can judge of their Importance. And, *2dly*, I shall offer a few Considerations by Way of Reply to what has been said by my Lord Advocate and his Assistants, in Support of the Indictment.

The Prisoner is charged before your Lordships as Accessary, Art and Part of the Murder of the late Mr. *Campbell* of *Glenure*; a Crime of so foul and black a Nature, and attended with such particular Circumstances, as has not only justly excited the Attention of the Public, but also a more than ordinary Keeness and Ardour in the numerous Friends and Relations of the Deceased, in carrying on this Prosecution.

I would not chuse to make any Reflections upon their Conduct. I sincerely sympathize with them for their Loss, and feel the full Force of their just Revenge

Revenge against the guilty Person, whoever he is. But, my Lord, in such a Case, the Passion which we at first cherish as just and honourable, may get the better of us; and if the Restraints of Reason and strict Honour are not applied, will insensibly rise into Rage, and precipitate us into Measures inconsistent with Law, and the Dictates of cool Humanity.

My Lord, it is in such Circumstances as these, that even the Innocent may sometimes be brought into Danger. And in such Circumstances it becomes the Duty, and an honourable Part of the Duty of one of my Profession, to appear for the Accused, to assist him in his just Defence, and to obviate, by all the Remedies which the Law has provided for the Security of Innocence, any Disadvantage he may be brought under, by public Prejudice, or by the Number, Power, or superior Address of his private Prosecutors.

This Consideration determined me to appear in this Trial, and to give my poor Assistance in the Defence of the Prisoner; to which I was further prompted by my Lord Advocate himself, who had the Generosity so far to interest himself for the Pannel, as to recommend it to me, amongst others, to appear in his Defence.

And first, I observe, that it is admitted by the Prosecutors in their Indictment, that the barbarous Murder therein charged was perpetrated by one Person, to wit, by *Allan Breck Stewart*: And taking him to be the guilty Person, his Life is, no doubt, justly forfeited to public Justice, tho' in the mean Time he may have escaped from the Execution of the Law. The first Question therefore that must naturally occur, is, what are the Circumstances in this Case, which should lead your Lordships or the Jury to believe, that any other Person than *Allan Breck*, and particularly the Prisoner at the Bar, was also guilty of this foul and detestable Murder?

It is a Rule in Philosophy, in all our Inquiries into natural Causes and Effects, to rest satisfied so soon as one Cause or Principle is discovered, sufficient for answering and solving all Appearances in the Effect. This Rule, I am sure, with great Propriety, may, and ought to be applied to any moral or judicial Inquiry, such as the present. If a Crime is committed, there must, no doubt, be a Criminal; and if the Crime itself, or the Circumstances which attended the Commission of it, are of such a Nature, as must necessarily infer the Aid and Assistance of others towards the Commission of it; as the Appearances in such Case will not be answered by the Discovery of one guilty Person, the Mind will remain unsatisfied till further Discovery is made of the supposed Partners of the Crime.

But, my Lord, where the Guilt of one will account for the whole Appearances, for every Circumstance connected with the Crime, I apprehend it is a Rule in Morals, it is a Rule in Law, and in sound Reason, to presume, that no other but that one Person was concerned in the Commission of the Crime.

This Presumption is founded in the Respect which we owe to human Nature. For, my Lord, wicked and corrupted as Mankind are, thank God, a Murderer, a wilful deliberate Murderer is still a Monster in the Species; and it is undutiful in us, and against all the Rules of right Reason, to carry our Suspicions, far more our Prejudices,

further than the *corpus delicti*, and the Circumstances attending it, do necessarily point out.

From this Consideration, I hope, the Prisoner comes to your Lordships Bar, attended and aided, not only by the general, legal Presumption of Innocence, but with this other more special Presumption, that no other Person was concerned in this horrid Murder but that one Person, whoever he was, who gave the fatal Shot by which *Glenure* died. And this Presumption, I flatter myself, will be present with your Lordships, and in the Mind of every Juryman, till contrary Proof and Evidence shall beat it out: Which we flatter ourselves will be so far from happening, that, on the contrary, in the Course of the Evidence, it will gather Strength, and at last terminate in that Issue, which, from the holy Providence of God, the Innocent may with Confidence expect.

My Lord, it is not my Intention to anticipate, or to argue upon Evidence which has not yet been brought: But, as my Lord Advocate has set forth, in his printed Indictment, a Variety of Circumstances, from which he would infer the Prisoner's Accession to this Murder; I must beg leave to take Notice of some of them, in order, if possible, to dispel that popular and illegal Prejudice, which I observe in most Cases, especially in the more atrocious Crimes, does attend the unhappy Person who is brought to your Lordships Bar.

When the Mind is enraged to a high Degree, it naturally seeks after, and is impatient to find, an Object for its Resentment. The Prisoner first occurs, and *there* we are too apt to fix our Opinion of Guilt, and alongst with it our Resentment; especially when our Confidence in the public Prosecutor is so great, as it justly is at present in the honourable Gentleman who fills that Office.

This, if I mistake not, is the Source of popular Prejudice against the unhappy Prisoner. All of us are subject to it, because it arises from, or at least is incident to human Nature; but however innocent it may be in the Crowd that surrounds us, it is dangerous, it is criminal, if received and entertained in the Mind of a Juryman. For their sakes therefore, I will beg leave to make a few Observations upon the Facts charged in the Indictment, that so the Jury, who for some Time have had the printed Indictment in their Hands, may, before they proceed to Trial, be also possessed of such Facts and Observations for the Pannel, as will, if attended to, entirely take off the Force of the Circumstances which are charged against him.

And first, it will be observed, that the Murder is not said to have been committed from sudden Passion, or *chaud mella*, as the Law expresses it, but to have been premeditated and resolved upon for some Days before it was committed. Now, to render Malice of so high a Nature probable, some very strong Ground or Cause ought to have been assigned for it; and what Cause is here mentioned? Why, *1st*, because *Glenure* had accepted of a Factory from the Crown upon the forfeited Estate of *Ardshiel*. *2dly*, Because *Glenure* had removed the Pannel from the Farm of *Glenduror* at *Whitsunday* 1751. And *lastly*, Because he was proceeding to remove certain other of the Tenants of *Ardshiel*, at the *Whitsunday* 1752.

The first of these could not be the Ground of the Resentment which gave Occasion to the Murder; because *Glenure* had been in that Office

for more than three Years before the Murder; during the greatest Part of which Time, the Pannel and he lived in Friendship and Intimacy together; as will be clearly proved by a long Course of Letters which passed betwixt them. The Pannel's own Removal from *Glenduror* could as little be the Cause of such prepense Malice; for the Removal was voluntary, and the Possession yielded to the succeeding Tenant, in Consequence of a previous Concert between the Pannel and *Glenure*. And far less could the intended Removal of the other Tenants at *Whitsunday* last, give Occasion to the Conspiracy and Murder charged against the Pannel. Such deep Resentment could not have arisen from so trifling a Cause in the Mind even of a wicked Man, much less one of the Pannel's Disposition and Character.

2dly, The Circumstance of *Allan Breck's* having changed his Cloaths at the Pannel's House before the Murder, tho' it has been chiefly insisted on for inferring the Pannel's Accession to the Murder, is equally inconclusive. *Allan Breck's* Situation, as a Defserter from his Majesty's Service to the Rebels, and afterwards to the Service of *France*, made it necessary, so often as he came into this Country, to sculk amongst his Friends, of which the Pannel unfortunately happened to be one. It will be proven, that for this Purpose, he used to lay aside his *French* Dress, and borrow the Dress of the Country, such as is described in the Indictment, from any of his Friends, where he happened to visit or reside; and that he had gone about from House to House, changing his Dress in this Manner, since the Beginning of *March* last, and particularly had been furnished with such Change of Dress at the Pannel's House, about the Beginning of *April*, where he happened to be for a Night or two, in the Course of his Visits through the Country.

My Lord, if these Facts are proven, it is impossible any Weight can be laid upon the Circumstance of his having also changed his Dress at the Pannel's House, upon the *Monday* and *Tuesday* before the Murder happened. If a Disguise had been intended, would the Pannel, who is admitted to be a Man of more than ordinary Discernment, have furnished his own Cloaths, which were known to the whole Neighbourhood, and by which, if the Murderer was apprehended, he himself behaved infallibly to be discovered? Would he have dressed up the Assassin before his numerous Family and Servants, in the very Dress which was to serve for his Disguise, two different Days before the Plot was to be executed? Or would he have allowed him to traverse the Country for some Miles round, from *Tuesday*, when he left the Pannel's, till *Thursday* when the Murder was committed, in the very Dress which was intended to disguise and conceal him? Such a Conduct is unaccountable, and cannot be ascribed to the Pannel, whom the Prosecutors themselves represent as a Man of the deepest Design and Artifice.

My Lord, the next material Circumstance in the Indictment, which I would beg leave to take Notice of for the sake of the Jury, is the Correspondence which passed betwixt the Pannel and *Allan Breck* the supposed Murderer, after his Retreat to *Koalisnacoan*.

This Circumstance, I own, at first Sight, seems to carry great Weight against the Pannel, because it imports not only Aid and Assistance given by the Pannel to the supposed Murderer in order to

enable him to make his Escape, but also a previous Knowledge of the Place to which he retired immediately after committing the Murder. But your Lordships and the Jury have heard how the Force of this Circumstance is taken off. The Pannel knew nothing of the Place of *Allan Breck's* Retreat till the Day after the Murder, when he received a Message from him by *Donald Stewart*, giving him Notice of the Place to which he had retired, and beseeching the Pannel to send him a small Supply of Money, in order to carry him off the Country. This Message the Pannel has undertaken, and hopes to prove by a Train of unquestionable Evidence; and if he shall be able to bring a satisfying Proof of the Fact, it will at once strip the Indictment of the only Circumstance in it which points at a previous Conspiracy betwixt the Pannel and *Allan Breck* the supposed Murderer.

And indeed, my Lord, independent of the Proof which is proposed to be brought by the Pannel, it cannot but appear unaccountable to your Lordships and the Jury, that a Person of the Pannel's Sagacity, if he had been in Concert with *Allan Breck* for several Days before the Commission of the Murder, should not have provided the necessary Means of *Breck's* Escape till after the Crime was committed, when he could no longer correspond with him, without the Interposition of others, and consequently without the Hazard of a Discovery. The Pannel could have had no Difficulty to have furnished *Allan Breck* with a little Money before the Commission of the Murder, in order to make his Escape immediately. He knew *Breck's* Circumstances, and that he had nothing to carry him off the Country, and *Breck* would not have engaged in such a Service without receiving from his Employer the necessary Supplies for his own Safety; and supposing the Pannel had not been in Cash upon the *Monday*, when they last parted, yet he would have taken care before the *Friday* to have been sufficiently provided for answering *Breck's* Demands. And yet, upon the *Friday* after the Murder, when the Message came from *Breck*, we find from the Indictment, that the Pannel was obliged to send in to *Fort-William*, at a considerable Distance from his own House, in order to borrow the Trifle of Money which was wanted, and sent the Day following to *Allan Breck*.

How far the Pannel was to blame in sending Money to *Allan Breck*, who was his Relation and had been his Ward, in order to enable him to make his Escape, depends upon the Opinion he then had of his being guilty or innocent of the Murder. If he believed him guilty, it was no doubt a very great Crime in the Eye of Law; but such Assistance furnished for the Escape of a Murderer, tho' knowingly, will not, in Law, or in the Nature of the Thing, infer Accession to the Murder, unless it had been previously promised as an Encouragement to the Commission of the Murder, which, from what has been said, appears could not have been the Case.

With regard to the Threatenings, which is the only remaining Branch of the Indictment of any Weight against the Pannel, I could have wished my Lord Advocate had been so good, as to have condescended upon the particular Expressions, and upon the Times and Places when and where these were uttered. As that is not done, it is impossible the Pannel can make any other Answer but a general Denial of this Part of the Charge: And

as he is conscious he never entertained the barbarous Resolution, he hopes, and is persuaded, no Proof will be brought of any Expression uttered by him, which could import a deliberate Threatening to take away the Life of an innocent Gentleman.

My Lord, having touched upon a few of the most material Circumstances in the Indictment, which I thought material for the Jury to have in their View, in order to direct their Attention, during the Course of the Evidence, to the Plan of the Pannel's Defence, I shall next proceed to what at present falls more immediately under your Lordships Consideration, and that is, the Objection which has been moved to the Competency of this Prosecution.

It has been objected, that the Indictment does not charge the Pannel as a Principal in the Murder of *Glenure*, but only as a remote Accessary, by previous Counsel, and subsequent Aid and Assistance given to the Murderer in his Escape; and that tho' such Accessary is equally criminal and punishable with the Principal, yet that he cannot be brought to Trial, till the Principal be first tried and convicted.

This Objection was stated to your Lordships upon the Authority of the old Books of our Law, of Sir *George Mackenzie*, our only Author upon Crimes, and of several of the foreign Doctors who treat of this Subject; and, with your Lordships Permission, I will read some of the Passages upon which the Objection is founded, as I have taken them down from the Books.

Reg. Maj. lib. 4. cap. 26. de ordine cognitionis in criminibus.

Si duo homines fuerint implacitati, unus de principali furto, et alter de præcepto, primò debet ille qui defamatur de facto, quam ille qui factum illud committi præcepit, implacitari.

To which the learned Sir *John Skeene* subjoins the following Annotation, *Complices criminis non possunt accusari ante principalem malefactorem, nam sicut remoto principali removetur accessorium, ita absoluto malefactore absolvuntur complices et consentientes.*

Quoniam attachiamenta, cap. 83. de receptatione latrocinii.

Nullus defamatus tanquam receptator latrocinii debet puniri, antequam malefactor fuerit convictus vel attayntus de latrocinio illo; et hinc fiet ut dicitur, consentientes et agentes pari pœna puniuntur.

Statuta Davidis 2di, cap. 19. Complices non debent puniri ante principalem malefactorem.

Ordinatum fuit coram rege in pleno parlamento apud Sconam per regem et communitatem regni, quod supersedendum est de receptatore alicujus malefactoris judicandi sive appellandi, quosque receptatus judicetur. Et si receptatus quietus fuerit, receptator quietus sit sine aliqua alia assisa. Si autem receptatus damnatus fuerit, receptator habet assisam.

And, agreeable to the Doctrine laid down in these old Statutes, Sir *George Mackenzie*, in his *Criminals, Tit. Art and Part, § 9.* gives it as his Opinion, "That the chief Actor must be first discussed, and either found guilty or assolized, before such as are accessary can be pursued." Which he supports not only by the Authority of the old Books of our Law, already quoted, but also of many of the foreign Doctors.

'Tis true, he adds, that notwithstanding what is there laid down, *Charles Robertson* was tried before the Justices, as Accessary to the casting down a

House, tho' his Sons and Servants, who cast down the same, escaped, and were not tried. But Sir *George* is far from approving of that Decision, and urges many strong Reasons against it, and in Support of the Doctrine he had formerly laid down.

The foreign Doctors also have generally gone into this Distinction, with respect to the Order of trying the Principal and Accessary. I shall only quote the Words of *Julius Clarus, quæst. 90. n. 6.* who lays it down as a Rule, *Quando proceditur contra aliquem tanquam quod præstiterit auxilium delicto, debet primo in processu constare principalem deliquisse.*

To all these allow me to add the Authority of the Law of *England*, which, upon a Point of this Nature, supposing it not fixed by any Statute or Custom of our own, will, no doubt, have greater Weight with your Lordships than the Opinions of any private Lawyers.

Thus Sir *Matthew Hale*, in his Pleas of the Crown, ch. 57. concerning the Order of Proceeding against Accessaries, lays down the following Propositions, as fixed Rules in the Law of *England*:

"The Accessary may be indicted in the same Indictment with the Principal, and that is the best and most usual Way.

"The Accessary shall not be constrained to answer to his Indictment, till the Principal be tried, unless he wave that Benefit; in which Case, his Acquittal or Conviction upon such Trial is good. But it seems necessary in such Case to respite Judgment, till the Principal be convicted and attainted: For if the Principal be afterwards acquitted, that Conviction of the Accessary is annulled.

"If *A* be indicted as Principal, and *B* as Accessary, they may be both arraigned together, and plead together, and tried by the same Jury; and the Jury shall be charged first to inquire of the Principal; and if they find him not guilty, then to acquit the Accessary; and if they find him guilty, then to inquire of the Accessary."

The Reason of this Distinction in the Order of trying Principals and Accessaries, is very well laid down by Sir *George Mackenzie*, in the Place above quoted, and will no doubt occur to your Lordships: For Guilt in the Accessary necessarily presupposes, that the Crime was committed by the Principal, which can only be made appear by the Trial and Conviction of the Principal. Neither is it sufficient to say, that, in the Trial of the Accessary, such Evidence may be brought of the Guiltiness of the Principal, as would be sufficient to convict him, if he were present. For, as no Man can, by the Law of *Scotland*, be convicted of any Felony in Absence, it is impossible to say or determine from Evidence, adduced in Absence of the supposed Criminal, what would have been sufficient to have convicted him, if he had been present. He might have had Defences against the Indictment, Objections against the Witnesses adduced for the Prosecutor, and Witnesses to adduce for his own Exculpation, which the Accessary doth not know, or cannot prove.

The Answers made by my Lord Advocate to this preliminary Objection to the Order of the Trial, have been three. First, That it is against the Interest of Society, that Crimes should pass unpunished; which often must be the Case, if the Escape or Death of the principal Actor shall be understood to be a perpetual Bar to the Trial and Punishment

Punishment of those who are accessary, and no less guilty in the Commission of the Crime. 2dly, That *Allan Breck Stewart* hath been called upon to stand Trial for this Crime, and hath been denounced a Fugitive and Outlaw for not appearing to abide his Trial, which is discussing him, as far as the Laws of the Land admit. And, 3dly, That both *Allan Breck* and the Pannel are charged by the Indictment in the same Words, as being guilty, Actors, or Art and Part of the same heinous Crimes; which being in the precise Terms of the Act 153, Parl. 12th of *James VI.* nothing can be objected to the Relevancy of that Part of the Libel.

To these I will offer but a Word or two in Reply. As to the first, founded upon the public Expediency, and the dangerous Consequences which may result from this Distinction in the Order of Trial of Principals and Accessaries; it is sufficient for me to say, *Incommodum non solvit argumentum.* The Law has been more anxious in providing for the Defence and Safety of the Lives of the Subjects, in the Trial of Crimes, than for the Conviction and Punishment of the Guilty. And hence it has become an Axiom in the Law, Better that ten guilty Persons should escape, than that one innocent Person should suffer.

To the second, with regard to the Fugitation of *Allan Breck*, I answer, That such Fugitation does not imply a Conviction of the Crime, which, by the Law of *Scotland*, can only proceed upon Evidence brought against the Criminal present in Court upon his Trial. An Act of Fugitation is no more than a Judgment of the Court, awarding the Escheat of Moveables against the Defender, for his Contempt in not appearing to stand Trial upon his Indictment; and neither proceeds upon, nor implies the absent Person's Guiltiness of the Crimes charged against him. If he were present, his voluntary Confession would be no Probation of his having committed the Crime, so far as concerned the Accessary; and far less can his Absence imply or amount to such Conviction. And this is agreeable to the Opinion of *Sir George Mackenzie* and *Julius Clarus*, in the Places above quoted.

As to the third Answer to the Objection, founded upon the Statute of *James VI.* it will occur to your Lordships, as it did to *Sir John Skeene* and *Sir George Mackenzie*, who both wrote after the Date of that Act, That it could not be the Intention of that Law to abolish the Distinction betwixt Principals and Accessaries, and the Order of Proceeding in their Trials: All that was meant by that Statute was, to allow a Defender, whether Principal or Accessary in a Crime, to be charged under the general Words of *Art and Part*, without obliging the Prosecutor to condescend upon the whole particular Acts from which the Crime was to be inferred. But if a Prosecutor, as in the present Case, has brought a special Indictment, charging a Pannel, not as *actor cædis*, but as a remote Accessary thereto, the general Words of *Art and Part*, subjoined to the minor Proposition of the Libel, can never be understood to imply a Charge against the Pannel, as principal Actor, in Contradiction to the special Facts charged in the Indictment, but only as Accessary; and consequently, in the Sense of Law, *Actor, Art and Part* in the Commission of the Crime.

What is laid down by the learned *Sir Matthew Hales* in his fifty-fifth Chapter of Principals and Accessaries in Felony, is applicable to the present

Subject. "In Treason, says he, all are Principals; but yet, as to the Course of Proceeding, it hath been, and indeed ought to be the Course, that those who did actually commit the very Fact of Treason should be first tried, before those that are Principals in the second Degree; because otherwise, this Inconvenience might follow, that the Principals in the second Degree might be convicted, and yet the Principals in the first Degree might be acquitted, which would be absurd." And it is humbly thought, that this Absurdity would be much greater in the Case of a remote Accessary.

Nor does the Decision in the Case of *James Drummond Macgregor* apply to the Point in Hand; for though the Crime was, in that Case, committed with a View to procure a Marriage for *Robert* the younger Brother; yet, as *James* was present, and aiding and assisting in the Hame-sucken and forcible Abduction, consequently he was a Principal in the first Degree, being an immediate Actor in the whole Crimes libelled; and, therefore, could not be intitled to plead the Defence which has been offered for this Pannel.

What we therefore humbly submit to your Lordships Consideration is, that tho' an Accessary is equally guilty and punishable with the Principal, yet, as the Law hath laid down a certain Order, in Point of Time, as to the Trials of Principals and Accessaries in Crimes, and as this Order is not abolished by the Statute of *James VI.* therefore the Trial of this Pannel cannot proceed, until *Allan Breck Stewart*, the sole Actor in the Commission of the Murder, is first tried and convicted.

But, if your Lordships shall find Reason for over-ruling this Objection, the Pannel hopes and expects, from your Lordships Justice, that he will be allowed, by the Interlocutor, a Proof, at large, of all Facts and Circumstances that may tend to exculpate him from the Charge exhibited against him in this Indictment.

The Lords, upon hearing the Criminal Letters read, and the Debate thereupon, pronounced the following Interlocutor.

"— The Lord Justice-General, and Lords Commissioners of Justiciary, having considered the criminal Libel, pursued at the Instance of *William Grant* of *Prestongrange*, Esq; his Majesty's Advocate, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bigbouse*, Esq; and Relict of the deceased *Colin Campbell* of *Glenure*, for herself, and on Behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his Majesty's Advocate, for his Majesty's Interest, against *James Stewart* Pannel, with the foregoing Debate thereupon, repel the Objections to the Libel, and find the Libel relevant to infer the Pains of Law: That, Time and Place libelled, the deceased *Colin Campbell* of *Glenure* was murdered, and that the Pannel *James Stewart* was guilty, Actor, or Art and Part thereof; but allow the Pannel to prove all Facts and Circumstances that may tend to exculpate him; and remit the Pannel, with the Libel as found relevant, to the Knowledge of an Assize."

ARGYLL, I. P. D.

Thereafter the Lords continued the Diet against the above *James Stewart* Pannel till To-morrow Morning

Morning at Six o'Clock precisely, and ordained the Parties, Witnesses, Assizers, and others concerned, to attend at that Time, and the Pannel to be carried back to Prison.

Curia itineris justiciarii, S. D. N. Regis, tenta apud burgum de Inverarii, vicefimo secundo die mensis Septembris, anno Domini millesimo septingentesimo quinquagesimo secundo, N. S. per nobilem et præpotentem Principem Archibaldum Ducem de Argyll, Dominum Justiciarium Generalem, et Patricium Grant de Elcbies, armigerum, et Dominum Jacobum Ferguson de Kilkerran, Dominos Commissionarios Justiciarii dicti, S. D. N. Regis.

Curia legitime affirmata.

Intrat. James Stewart Pannel, indicted and accused as in the former Sederunt.

Thereafter the Lords proceeded to make Choice of the following Persons, to pass upon the Assize of the said James Stewart Pannel :

- 1 Colin Campbell of Carwhin.
- 2 Dougal Macdougall of Gallanab.
- 3 Alexander Duncanson of Kiles.
- 4 Duncan Campbell of South-hall.
- 5 Hector Macneil of Ardmearish.
- 6 James Campbell, late Bailie of Inverary.
- 7 James Campbell of Rasbeilly.
- 8 James Campbell of Rudale.
- 9 Colin Gillespie of Balimore.
- 10 Colin Campbell of Skipniff.
- 11 Duncan Campbell of Glendarouh.
- 12 Colin Campbell of Ederline.
- 13 Niel Campbell of Duntroon.
- 14 Archibald Campbell of Dale in Craignish.
- 15 Niel Campbell of Dunstaffniff. *

The above Assize all lawfully sworn, and no Objection to the contrary.

Thereafter the Prosecutors, for proving the criminal Libel, called the Witnesses cited by them ; and the Pannel, for proving his Defences, called the Witnesses cited by him ; and the Prosecutors caused to be read, in Presence of the Jury, the Writings produced by way of Evidence for them ; and the Pannel's Council caused to be read, in Presence of the Jury, the Writings produced for him ; all which Depositions and Writings are as follows.

The whole Proof brought both on the Part of the Prosecutors, and on the Part of the Pannel.

JAMES STEWART, Pannel, does admit the Truth of all the Writings contained in the Inventory of Writings subjoined to the Criminal Letters, and which Inventory was delivered to him at executing the said Letters against him, excepting two of the said Writings which he does not admit, viz. the Writing, Number 7, intituled, Principal Holograph Letter by Allan Stewart, Son to the said James Stewart, addressed to Duncan Stewart of Glenbuckie, dated at Aucharn the 1st of April 1752; and the Writing, Number 12, intituled, Draught, Letter by the said James Stewart, and of an Instrument of Protest at the Tenants Instance, relative to the said Decreet of Removing and Suspension thereof: But the said Draught Letter and Instrument being again shown to the Pannel in Court, the Pannel admits the Truth and

Authenticity of these also ; and therefore admits the Truth of the whole Writings, except the Writing before-mentioned, Number 7 ; but does not admit the Writings subjoined to the said Inventory, being two principal Declarations by Allan Stewart, Son to the said James Stewart, five principal Declarations by Charles Stewart, also Son to the said James Stewart, three principal Declarations by Margaret Stewart, Spouse to the said James Stewart, and two by Elizabeth Stewart, his Daughter.

(Signed) JAMES STEWART. P. GRANT.

Thereafter the Prosecutors, for proving the above criminal Libel, adduced the following Witnesses :

Mr. Archibald Campbell of Stonefield, Sheriff-depute of the Shire of Argyll, aged fifty-six Years, married, being solemnly sworn, purged of Malice, partial Counsel, examined and interrogate, and being shown the Writings following, viz. four principal Declarations by Charles Stewart, Son to the Pannel, bearing to have been emitted in the Deponent's Presence, and dated the 22d, 23d, and 25th Days of May last, and three Declarations by Margaret Stewart, Spouse to the Pannel, and two Declarations by Elizabeth Stewart, his Daughter, all of them bearing to have been emitted in the Deponent's Presence, as Sheriff of Argyll-shire, and dated the 22d and 25th Days of May last ; depones, That all these Declarations were emitted by the respective Persons therein mentioned, in Presence of the Deponent, and of the respective Dates therein contained, and were all subscribed by the respective Declarants in the Deponent's Presence, excepting only that the Declarations by the said Margaret Stewart and Elizabeth Stewart were not signed by them, but were signed by the Deponent for them, because they declared they could not write. And there being also shown to the Deponent two Declarations by Allan Stewart, Son to the Pannel, bearing to have been emitted in Presence of George Douglas, Sheriff-substitute of Inverness, dated the 3d of June last, and a Declaration bearing to be emitted by the said Charles Stewart, Son to the Pannel, in Presence of the said George Douglas, Sheriff-substitute, dated the 4th of June last, depones, That the Deponent was present, and saw and heard the said Declarations by the said Allan and Charles Stewarts, emitted in Presence of, and taken down in Writing by the said Sheriff-substitute ; and they were, at the Sheriff-substitute's Desire, dictated by the Deponent to the Clerk ; and the Deponent saw the said Declarations subscribed by the said Allan and Charles Stewarts respective, of the several Dates therein contained, voluntarily and freely, without any Compulsion or Coaction. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) ARCH. CAMPBELL. P. GRANT.

After emitting of the above Deposition by Mr. Archibald Campbell of Stonefield, to save the Time of the Court, in bringing further Proof of the Declarations therein mentioned, the Pannel judicially declared, that he admitted the Truth of all the several Declarations contained in the said Oath, that is, that these Declarations were emitted by

* What is something remarkable in this Trial, is, that the Prisoner was tried by a CAMPBELL, had Eleven Campbells out of Fifteen upon his Jury, and for the Murder of a Campbell.

the respective Persons therein mentioned, and in Presence of the respective Judges, and at the respective Times therein contained, voluntarily and freely; but does not admit the Truth of the Facts as declared by the said Declarants.

(Signed) JAMES STEWART. P. GRANT.

Mungo Campbell, Writer in *Edinburgh*, aged twenty-four Years, unmarried, sworn, purged and examined *ut supra*, depones, That, in the Beginning of *May* last, the deceased *Colin Campbell* of *Glenure* applied to the Deponent, to go with him to *Lochaber*, to assist him in conducting the Ejecting of some of the Tenants of the Estate of *Stewart* of *Ardkiel*, and of the Tenants of *Mamore*, Part of the Estate of *Lockiel*, over which the said *Colin Campbell* was Factor, and which Tenants, he apprehended, would not voluntarily remove, without being legally ejected: That they set out from *Edinburgh* together, upon the 7th of *May* last, and arrived at *Glenure* upon *Saturday* the 9th of that Month: That they set out together for *Fort-William* upon *Monday* the 11th, about Ten o'Clock Forenoon, and remained at *Fort-William* till *Thursday* the 14th, when they returned, in order to execute the next Day the Ejection against some of the Tenants of *Ardkiel*: That, when they came to the Ferry of *Ballachelish*, the Defunct waited there about an Hour, communing with some of the Tenants, and crossed the Ferry betwixt Four and Five in the Afternoon: That, after crossing the Ferry, *Alexander Stewart* of *Ballachelish*, elder, met with the Defunct, and they travelled together on Foot about the Space of Half a Mile, till they came to the Skirts of the Wood of *Lettermore*: That, while they were communing together on Foot, the Deponent was at some little Distance before them on Horseback, and the Sheriff-officer *Donald Kennedy* was on Foot before the Deponent, and *Glenure's* Servant *John Mackenzie* was on Horseback a little before *Glenure*; and, the Servant happening to drop a Coat, *Ballachelish* called to him, and the Servant returned, and thereby fell behind *Glenure* and *Ballachelish*: That *Ballachelish* parted from *Glenure* at their entering into the Wood of *Lettermore*, or the Wood of *Ballachelish*, a Part of the Wood being called by that Name; and *Glenure* mounted his Horse, and came up to the Deponent: That the Deponent asked *Glenure*, whether *Ballachelish* had said any thing to him touching removing the Tenants? And *Glenure* said, that nothing passed betwixt them on that Subject: That, coming to a Part of the Road that was rough and narrow, so as they could not ride conveniently two Horses a-breast, the Deponent and *Glenure* separated, and the Deponent went before, and might have been about twice the Length of the Room where the Court now sits before *Glenure*, when the Deponent heard a Shot behind him, and heard *Glenure* several Times repeat these Words, *Oh! I am dead*. Depones, That the Deponent thereupon returned to *Glenure*, and heard him repeat the same Words; and thinks, but is not positive, that he added, *Take care of yourself, for he's going to shoot you*: That the Deponent immediately lighted, and run up the Hill from the Road, to see who had shot *Glenure*, and saw, at some Distance from him, a Man, with a short dark-coloured Coat, and a Gun in his Hand, going away from him; and, as the Deponent came nearer him, he mended his Pace, and disappeared by high Ground interjected betwixt him

and the Deponent; and he was at so great a Distance, that the Deponent thinks he could not have known him, tho' he had seen his Face: That the Deponent thereupon returned to *Glenure*; and, either at that Time, or before, the Deponent run up the Hill as above deponed, (the Deponent cannot be positive which) he took *Glenure* from off his Horse. Depones, That, after taking *Glenure* from his Horse, he leaned a little upon the Deponent's Shoulder, and endeavoured to have opened his Breast, to see where the Bullets, wherewith he was shot, came out of his Body, but was not able; but saw, in his Waistcoat, two Holes in his Belly where the Bullets had come out. Depones, That *Glenure* intended to have been that Night at *Kintalline*, where he expected Mr. *Campbell* of *Ballieveolan* was to meet him; wherefore the Deponent sent *Mackenzie*, the Servant above-mentioned, forward to *Kintalline*, to acquaint *Ballieveolan* what had happened, and to bring him to his Assistance: That *Glenure* continued in Agonies for about Half an Hour or a little more, after sending off *Mackenzie*, and then died; and Night coming on, and no Appearance of *Mackenzie's* Returning, the Deponent sent back the Sheriff-officer above-named to *Ballachelish*, to desire Mr. *Stewart's* Assistance, and some of his People: That, in little more than an Hour, *Ballachelish*, and some of his People, with the Sheriff-officer, came to the Deponent's Assistance, and carried *Glenure's* Corpse that Night to *Kintalline*, by Sea; and next Day carried it to *Glenure*, where some Surgeons came, and inspected his Body; and the Deponent saw there the two Wounds in his Belly made by the Balls coming out of his Body. Depones, That when the Deponent laid *Glenure* upon the Ground, a great deal of Blood issued from his Body, and his Cloaths were all stained with Blood, particularly the Small of his Back, having been laid on his Back upon the Ground: That *Mackenzie* the Servant also returned, before they carried the Corpse off the Ground, and some People with him, particularly *Ballieveolan's* Sons; and, being shown a Coat and Waistcoat, and a Shirt, depones, That these are the Coat and Vest that *Glenure* had on when he was murdered; and believes also, it is the same Shirt. Depones, That, at the Place where *Glenure* was shot, the Wood is pretty thick on both Sides, and, on the Side from which he was shot, very rugged and stony, and Bushes in which the Murderer could have easily hid and concealed himself: That the Ground there rises up-hill towards the South, tho' there are Places in it where the Murderer might be pretty nearly upon a Level with *Glenure*; and there are also Places there so situate, as a Person standing there might see the most Part of the Road from the Ferry to the Wood, and even a Part of the Road betwixt *Fort-William* and the Ferry; and which Place is not a Musket-shot from the Spot where *Glenure* was murdered. Depones, That, neither the Defunct, nor the Deponent, nor any of their Company, had any Sort of Arms with them. Depones, That it was betwixt Five and Six o'Clock in the Afternoon, as he thinks, when *Glenure* was murdered as aforesaid; and remembers, when *Glenure* was dying, the Deponent looked at his own Watch, and found it was then about Six o'Clock. And depones, That, upon Recollection, he cannot be positive whether he observed both the Wounds in the Defunct's Belly, or only one of them; and being interrogate for the

the Pannel, depones, That, some Days after the Murder, the Deponent sent a Serjeant and a Party of Soldiers to the Pannel's House at *Aucharn*, with Orders to search, and particularly to search for Writings: That the Serjeant reported to the Deponent, that he had searched, and delivered to the Deponent one Paper which he found there; being a Scroll of a Letter by the Pannel; and of an Instrument of Protest, being the Number 12. of the Inventory subjoined to the Libel, and which is now in the Clerk's Hands; and being shown to the Deponent, depones, That it is the same Writing that was delivered to him by the Serjeant. Depones, That the Serjeant gave him no more Papers but that one; and said that he had brought away no more. *Causa scientie patet*. And this is Truth, as he shall answer to God.

(Signed) MUNGO CAMPBELL. P. GRANT.

John Mackenzie, late Servant to *Glenure*, unmarried, aged nineteen Years, Witness cited, sworn, purged and examined *ut supra*; depones, That, upon the 14th of *May* last, he came, with his Master the deceased *Colin Campbell* of *Glenure*, from *Fort-William*, by the Horse-Road leading to the Ferry of *Ballachelish*, which Road coincides, a little Way next to *Fort-William*, with the new Road commonly called the King's Road: That they passed the Ferry of *Ballachelish*, and came along the high Road; which leads to *Kintalline* thro' the Wood of *Lettermore*: That, coming up with *Alexander Stewart* elder of *Ballachelish*, who was on Foot, *Glenure* alighted from his Horse to walk a little with *Ballachelish*; and desired *Mungo Campbell*, Writer in *Edinburgh*, who was in Company with *Glenure*, as also the Deponent, to step on, which accordingly they did; but coming up to a Place where they were stopt by the Tide; they were obliged to alight, and lead their Horses across a Rock; and, upon that Occasion, and by which Means it happened that the Deponent dropt a great Coat belonging to *Donald Kennedy*, Sheriff-officer, who was also along on Foot, and which he had got from him to carry when they passed the Ferry of *Ballachelish*; and *Glenure* and *Ballachelish* coming up, and finding the great Coat lying on the Road, one or other of them cried out, To whom this Coat belonged? Which the Deponent, being within Distance to hear, said, it belonged to *Donald Kennedy*, and that he had been carrying it, and had dropt it; whereupon he returned to fetch the Coat, by which Means *Glenure*, who had parted with *Ballachelish* at the Rock that has been just mentioned, got before the Deponent, and, when about a Musket-shot before him in the Wood of *Lettermore*, he heard a Shot which he took to be from a Firelock, which he did not much mind, nor know from what Quarter it had come; but when he came up, he saw *Mungo Campbell* wringing his Hands, and his Master lying on the Ground with a great deal of Blood about him, just breathing, and not able to speak; and *Donald Kennedy*, the Sheriff-officer, was at that Time standing by him; and, as near as the Deponent could guess, this was about Five o'Clock in the Afternoon. Depones, That *Mungo Campbell* directed the Deponent to ride forward with all Speed to *Kintalline*, and to see if *John Campbell* of *Ballieveolan*, or his Sons, were there; and, if they were, to acquaint them what had happened, and to come up immediately; accordingly he went, but found neither *Ballieveolan* nor his Sons there:

But being told by one of the Tenants of *Aucharn*, that probably *James Stewart* in *Aucharn*, who is now the Pannel, might give him some Account of *Ballieveolan*; that accordingly he went to *James Stewart's* House in *Duror*; and *James* seeing him weeping, asked what the Matter was? The Deponent told him, his Master was killed; whereupon *James Stewart* asked him, by whom and how it was done? To which he, the Deponent, answered, that he did not know by whom, and believed it to be by a Shot from a Gun or Pistol: That the Deponent then asked him, what was the nearest Road to *Glenduror*, where he expected to find *Ballieveolan*? Which accordingly *James Stewart* having pointed out to him; he followed; and meeting with one *Allan Dow*, whom he had seen several Times before; he prevailed with him to go to *Glenduror*, and acquaint *Ballieveolan* of what had happened, and to desire him to come up where his Master was; and which the said *Allan Dow* could do more expeditiously on Foot, than the Deponent could do in that Cross-way on Horseback; and the Deponent immediately returned where his Master lay, and brought no Person along with him: That his Master was then dead, and that the People of *Ballachelish* were at this Time come up, and were standing about him. Depones, That he was then sent off a second Time with a Horse by the Road *Ballieveolan* was expected to come, in order to hasten him; and having accordingly met *Ballieveolan*, he, at *Ballieveolan's* Desire; went and acquainted *Captain Campbell* younger of *Barcaldine*, of what had happened. Depones, That when his Master and he came, as has been said; from *Fort-William*, on the 14th of *May* last, they met the foresaid *John Maccoll* going to *Fort-William* at the Foot of the three-mile Water; which is about three Miles from *Fort-William*; and that the said *Maccoll* came to the Ferry of *Ballachelish* much about the same Time with the Deponent; but before *Glenure*, who had stayed sometime talking with the Tenants of *Ballachelish*; and further adds, that his Master had stayed at *Corryborrachan*, which is about five Miles from *Fort-William*, about an Hour and a Half or two Hours. Depones, That, when *Maccoll* desired the Ferryman to carry him over; the Ferryman begged to be excused till *Glenure's* Horses should go over; and that he was then employed in gathering Wreck: But *Maccoll* would not delay; and accordingly was ferried over, as he thinks, about Half an Hour before *Glenure*; whose Horses were first ferried over, and along with them the Sheriff-officer, and afterwards *Glenure* and *Mungo Campbell*. And depones, That neither *Glenure*, nor any in his Company, had Arms of any Sort along with them; and a Coat, Waistcoat, and bloody Shirt, referred to in the List of Evidence, being shown to the Deponent, depones, That they were the very Cloaths and Shirt *Glenure* had on when he was killed as aforesaid. And further depones, That, when he saw the Pannel at his House in *Aucharn* as aforesaid, the Pannel wrung his Hands, expressed great Concern at what had happened, as what might bring innocent People to Trouble, and prayed that innocent People might not be brought to Trouble; and being interrogate for the Pannel, depones, That beside that Road by which he and his Master came from *Fort-William* to *Ballachelish*, there is another Road by which People travel, both by Horseback and on Foot, which is computed to be the shortest
by

by a Mile, and by which he supposes *Maccoll* came. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) JOHN MACKENZIE. JA. FERGUSON.

Donald Kennedy, Sheriff-officer in *Inverary*, married, aged forty-eight Years, Witness cited, sworn, purged, and examined *ut supra*, depones, That, upon the 11th Day of *May* last, he was employed by *James Campbell*, Writer in *Inverary*, to carry a Pacquet to *Glenure*, then at *Fort-William*; and when he delivered the Pacquet to him, told him, that it contained a Warrant for ejecting certain Possessors of the Lands of *Ardshiel*: That, upon the 13th Day of *May*, he came to *Maryburgh* or *Fort-William*, where he found the deceased *Glenure*, and delivered the Pacquet to him, who told him, as *James Campbell* had before done, what the Pacquet contained; and that he, the Deponent, was to be employed in executing the Ejection: That, upon the 14th Day of *May*, *Glenure*, as also the Deponent, left *Fort-William*, and, at *Glenure's* Desire, the Deponent went before, being on Foot, and waited at the Ferry of *Ballachelish* till *Glenure* came up to him: That *Glenure* crossed the Ferry from the North to the South of *Appin* Side, and along with him a young Gentleman *Mungo Campbell*, said to be a Writer in *Edinburgh*, and his own Servant *John Mackenzie*: That *Mackenzie* and the Horses went first over: That the Boat again returned, and brought over *Glenure*, *Mungo Campbell*, and the Deponent: That the Deponent being on Foot, as has been said, went on the high Road leading to *Kintalline*, where he understood *Glenure* intended to quarter that Night; but was past on the Road by *Glenure*, *Mungo Campbell*, and *Glenure's* Servant, whom the Deponent could not keep up with; but as *Glenure* happened to find, upon the Road, *Alexander Stewart* elder of *Ballachelish* on Foot, he lighted from his Horse, and walked a little on the Way with *Ballachelish*, whereby the Deponent got the Start of *Glenure*, and the two Riders that were in Company with him; and the Deponent walking on thro' the Wood of *Lettermore*, and after he was about half a Mile or so within the Wood, he heard a Shot, and at the same Time heard the aforesaid *Mungo Campbell* make a great Noise as of one weeping, the Deponent being at that Time but about twopenny Stone-cast before the said *Mungo*, who was riding foremost, as he afterwards told the Deponent; the Deponent immediately upon hearing the Noise returned, for he had gone a little without minding the Shot, till once he heard the Noise, and when he came back to *Mungo Campbell*, *Mungo* said to him, The Villain has killed my dear Uncle, adding, that he had only seen one Man; and that he, the Deponent, asked no Questions, being in Confusion, and dreading for the same Fate himself. Depones, That he saw *Glenure* lying upon the Ground, with great Plenty of Blood about him, and, as the Breast of his Waistcoat had been opened before the Deponent came up, he saw a Hole in his Shirt, thro' which he supposed a Bullet had come; and that the Deponent stayed at the Place till *Glenure* expired. Depones, That *John Mackenzie*, *Glenure's* Servant, was dispatched by *Mungo Campbell* to the House of *Kintalline*, where *Glenure* was to lodge that Night, and *Ballieveolan* along with him, with Orders to bring *Ballieveolan*, and some other Gentlemen that were expected to be there; *Mungo*

Campbell also desired the Deponent to go for other People, which the Deponent at first declined, giving this Reason for it, that he would stay and run the same Risque with *Mungo Campbell*; but at last was prevailed upon to go by *Mungo Campbell*, whom he left alone with the Corpse, and the Deponent brought *Alexander Stewart* elder of *Ballachelish*, and several other People of the Town of *Ballachelish*. Depones, That while *Glenure* and his Company were at the Ferry of *Ballachelish*, as aforesaid, he saw a Man, who seemed to be in a Hurry to get over the Ferry, who proved to be *John Maccoll*, Servant to the Pannel; to whom *Glenure* said, in the Deponent's Hearing, *Sir, you travel better than I do.* To which he answered, *I am in a Haste*, and so went over the Ferry about an Hour before *Glenure* passed it, who had some Business to do with Tenants there. Depones, That, when the People were gathered about the Corpse, as aforesaid, the said *John Maccoll* was among them. And *Mungo Campbell* then told the Deponent, that when *Glenure* and he were come three Miles from *Fort-William*, they met the said *John Maccoll* going to *Fort-William*, and that he was back at the Ferry of *Ballachelish*, tho' on Foot, as soon as they. Depones, That *Glenure* was shot about Half an Hour after Five in the Evening, and died, as he thinks, about Six, *Mungo Campbell* having then looked at his Watch. Depones, That this *John Maccoll* was none of the People that this Deponent had called upon: That the Corpse was carried that Night to *Kintalline* by Water, the Place where they lay being but a short Distance down thro' a rugged Part of the Road towards the Loch. And being interrogate for the Pannel, depones, That there are two Roads leading from *Fort-William* to the Ferry of *Ballachelish*, one of them being a Horse-Road, by which *Glenure* came, the other a Foot-Road, which is the shortest of the two by about a Mile. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God. And being further interrogate for the Pursuers, depones, That neither *Glenure*, nor any in his Company, had Arms along with them of any Kind. And being also further interrogate for the Pannel, depones, That *John Maccoll* was at the Ferry before *Glenure* came up. And this is Truth, as he shall answer to God.

(Signed) DONALD KENNEDY. JA. FERGUSON.

John Roy Livingstone, alias *Macanura*, in *Ballachelish*, married, aged forty, who being sworn by *Archibald Campbell*, Sheriff-substitute of *Argyll-shire*, sworn Interpreter, purged of Malice and partial Counsel, depones, That, upon *Thursday* the 14th Day of *May* last, he saw *Allan Breck Stewart* in *Ballachelish*, in the Forenoon, dressed in a dunnish big Coat; but had no Conversation with him: That, upon the Evening of the said Day, he saw *John Beg Maccoll*, Servant to the Pannel, travelling at a good Rate from the Ferry of *Ballachelish*, towards his Master's House. The Deponent joined him upon the high Road, and asked him where he had been? To which *John Maccoll* replied, that he had been at *Maryburgh* for *Charles Stewart*, Notary Public, but did not find him at home: That, during this Conversation, the Deponent travelled the Road along with the said *John Maccoll*, and only stopped for a very short Time; and that the said *John Maccoll* told the Deponent, that *Glenure* that Night was to be at *Kintalline*. Depones, That, about an Hour and a Half, or two Hours

Hours thereafter, the Deponent went to the Wood of *Ballachelish*, adjoining to *Lettermore*, to cut some Sticks he wanted: That, while he was in the Wood, he saw *Donald Kennedy*, Sheriff-officer at *Inverary*, passing along the high Road below him, and a little after him *Mungo Campbell*, and *John Mackenzie*, *Glenure's* Servant, and a little after them *Glenure* on Horseback, and *Alexander Stewart* elder of *Ballachelish* along with him; and, as the Deponent observed *Glenure* and *Ballachelish*, they found a big Coat upon the high Road, and called to the said *John Mackenzie* the Servant, and the Servant came back for the big Coat, and *Glenure* and *Ballachelish* parted: That the Deponent came down to the Road, and entered into Conversation with the said *John Mackenzie*, and, after a few Questions, the said *John Mackenzie* went on after his Master; and immediately thereafter the Deponent heard a Noise, which he imagined to be a Shot, but was not sure. Depones, That, some Time thereafter, he went along with *Ballachelish* to the Wood of *Lettermore*, where he found *Glenure* dead, and was one of the People that assisted to carry the Corpse to *Kintalline*. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God. And depones he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Alexander Campbell, Surgeon in *Lorn*, aged fifty Years, unmarried, sworn, purged and examined *ut supra*, depones, That he was called to the House of *Glenure*, upon the 15th Day of *May* last, to inspect the Body of the then deceased *Colin Campbell* of *Glenure*, who, the Deponent was informed, had been shot the Day before; and, having accordingly inspected the Body, he found, that he had been shot by two Bullets entering at his Back, one on each Side of the Back-bone; one of which had come out about Half an Inch below the Navel, and the other about two Inches from it, towards the right Side. And depones, That they were mortal Wounds, of which the Deponent believes *Glenure* died. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALEX. CAMPBELL. JA. FERGUSON.

Angus Macdonald, Walk-miller in *Auchsofragan*, married, aged sixty-three, Witness cited, sworn, purged and examined *ut supra*, depones, That, in *April* last, *Allan Breck Stewart*, and *John Stewart* in *Auchnacooan*, came into the Deponent's House, and sat down; and, at the same Time, *Duncan Campbell* (the succeeding Witness) came in, and sat down also; and which *Allan* asked *John Stewart*, who that was? And *John* answered, that he was an honest Man in the Neighbourhood, *Duncan Campbell* naming him; to which *Allan* answered, that he did not like any of the Sort or Name: For that *Glenure* had wrote to Colonel *Crawfurd*, that he had come from *France*, and to take him up as a Defenter; but that he was not in his Reverence; for he had General *Churchill's* Pass: That *John Stewart* said, that he did not so much blame *Glenure* for turning out the Possessors of *Ardshiel*; for that he was but doing the King's Service; and that, if he had not the Factory, another would, who would do the same Thing; to which *Allan* answered, that he rather the meikle Devil had it than *Glenure*; and, being interrogate for the Panel, depones, That *Allan* was then dressed in a blue side Coat, a red Vest, and feathered Hat. Depones, That the Deponent saw him again about

the 8th of *May* in the same Dress: That, at that Time, the Deponent, and the foresaid *Duncan Campbell* and *Malcolm Maccoll*, were travelling together, and met *Allan* on the Road: That *Allan* gave *Duncan* the common Salutation; and said, that the last Time he had been in *Duncan's* House, he was bad Company, tho' it was not he that was so much the bad Company, as the Drink. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) ANGUS MACDONALD. P. GRANT.

Duncan Campbell, Change-keeper at *Annat*, aged thirty-five Years, married, Witness cited, sworn, purged and examined *ut supra*, depones, That, in the Month of *April* last, the Deponent met with *Allan Breck Stewart*, with whom he was not before acquainted, and *John Stewart* in *Auchnacooan*, at the House of the Walk-miller of *Auchsofragan*, and went on with them to the House: That *Allan Breck Stewart* said, that he hated all the Name of *Campbell*; and the Deponent said, he had no Reason for doing so; but *Allan* said, he had very good Reason for it: That thereafter they left that House; and, after drinking a Dram at another House, came to the Deponent's House, where they went in, and drunk some Drams, and *Allan Breck* renewed the former Conversation; and the Deponent making the same Answer, *Allan* said, that, if the Deponent had any Respect for his Friends, he would tell them, that if they offered to turn out the Possessors of *Ardshiel's* Estate, he would make black Cocks of them before they entered into Possession, by which the Deponent understood shooting them, it being a common Phrase in the Country: That *John Stewart* said, he did not blame *Glenure* so much as *Balliveolan* for taking these Possessions, whereas *Glenure* was doing the King's Service; and *Allan Breck* replied, that besides that, he had another Ground of Quarrel against *Glenure*, for his writing to Colonel *Crawfurd*, that he, *Allan*, was come home from *France*; but that he was too cunning for him; for that, when at *Edinburgh*, he had made up his Peace with General *Churchill*, and had got his Pass, which he had in his Pocket-book: That the Deponent asked a Sight of it: That he searched his Pocket-book, but could not find it; upon which he tore a Leaf out of the Book, and said, there it was. And depones, That he said twenty Times over he would be fit-sides with *Glenure*, wherever he met him; and wanted nothing more than to meet him at a convenient Place. Depones, That, at this Time, *Allan Breck* was not drunk, for he could walk and talk as well as any Man; but it could easily be observed, he had been drinking. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) DUNCAN CAMPBELL. F. GRANT.

Anne Maclaren, Servitrix to *Duncan Campbell*, Change-keeper at *Annat*, unmarried, aged twenty-one, Witness cited, sworn, purged and examined by the sworn Interpreter above-named, depones, That, some Time after the 17th Day of *March* last, before the 1st of *May*, she saw *Allan Breck Stewart* in Company with *John Breck Stewart* in *Auchnacooan*, and *Robert Stewart*, in the Mill of *Duror*, in her Master's House; and that she heard *Allan Breck* then say, that he would not shun *Glenure* wherever he met him; by which she understood that he was to do Hurt or Harm to *Glenure* wherever he saw him.

him. *Causa scientiæ patet.* And this is the Truth, as she shall answer to God; and declares she cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Robert Stewart, Son to *Robert Stewart*, Miller in *Cuil*, aged about twenty, unmarried, Witness cited, sworn, purged and examined *ut supra*, by the sworn Interpreter, depones, That, some Time in *April* last, the Deponent was in Company with *Allan Breck Stewart*, *John Stewart* in *Auchnacooan*, *Duncan Campbell*, Change-keeper in *Annat*, in the said *Duncan Campbell's* House: That *Allan Breck* complained of *Colin Roy*, meaning *Glenure*, and *Mr. Campbell* of *Ballieveolan*; and said particularly of *Glenure*, that he had sent Notice to *Fort-William*, that he was in the Country, that he might be apprehended: But said, he was not in his Reverence, as he had the King of *France's* Commission in his Pocket; and said, he would be even with him; and that he would take his Opportunity to dispatch or murder either *Glenure* or *Ballieveolan*, before he left the Country. Depones, That *Allan Breck* was much in Drink at the Time of uttering the above Expressions; and was then dressed in his long blue Coat. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God; and declares he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Malcolm Bane Maccoll, Change-keeper at *Port-nacrosh*, aged fifty Years, married, Witness cited, sworn, purged and examined by the Interpreter *ut supra*, depones, That, some Time in *April* last, *Allan Breck Stewart* and *John Stewart* in *Auchnacooan* came to the Deponent's House after Night-fall, and sat up all Night drinking: That, next Morning, *John Maccoll*, then Servant to the Deponent, now in *Shuna*, came into the Company, in a shabby Condition: That *Allan Breck* asked who he was? That the said *John Stewart* answered, that he was an honest poor Man, with a numerous Family of small Children; and that it would be great Charity in any Body to assist him: Upon which *Allan Breck* desired the said *John Stewart* to give the said *John Maccoll* a Stone of Meal, and he would pay for it; which the said *John Stewart* promised to do: That the said *Allan* then gave the said *John Maccoll* a Dram, and told him, if he would fetch him the Red Fox's Skin, he would give him what was much better; to which the said *John Maccoll* answered, that he was no Sportsman; and that he was much better skilled in Ploughing or Delving. Depones, That the Deponent gave no great Notice to these Expressions at the Time; but, after he heard of *Glenure's* Murder, believed he meant *Glenure*, as he was commonly called *Colin Roy*, which Means *Red Colin*, in the Country. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God; and declares he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Anne Maccoll, Spouse to *Malcolm Bane Maccoll*, the preceding Witness, aged about forty, Witness cited, sworn, purged and examined *ut supra*, by the Interpreter, depones, conform to the said *Malcolm Bane Maccoll*, the preceding Witness, *in omnibus*, except that the said *Allan Breck* and *John Stewart* in *Auchnacooan* went to Bed for a short Time; but, whether they slept, or not, the Deponent knows not. *Causa scientiæ patet.* And this

is the Truth, as she shall answer to God; and declares she cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Stewart elder of *Fasnacloch*, aged sixty-five Years, married, sworn, purged and examined *ut supra*, depones, That, upon the *Monday* before the Murder of *Glenure* was committed, *Allan Breck Stewart* was then at the Deponent's House, having been three Nights there, accompanied by *Charles Stewart*, Son to the Pannel: That he told *Allan Breck*, that *Glenure* was come from *Edinburgh* with a Warrant to remove the Tenants; to which *Allan Breck* said, that, if there was a Warrant, there was no more to be said; but that, if he had no Warrant, he would not be allowed to remove them: That the Deponent told *Allan Breck*, that a Plea with *Glenure*, concerning the Removing of these Tenants, would be costly for *James Stewart* in *Aucharn* to support: That the Reason he named *James Stewart*, was, that he was the Person who acted in Behalf of the Tenants: That the Distance between the Deponent's House and the late *Glenure's* is about a Mile: That he heard, on *Sunday* the 10th of *May*, that *Glenure* was going to *Fort-William*; and *Allan Breck* left his House about Nine o'Clock *Monday* Morning. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) JO. STEWART. ARGYLL.

James Stewart younger of *Fasnacloch*, aged twenty-nine Years, unmarried, sworn, purged and examined *ut supra*, depones, That *Allan Breck Stewart* came to *Fasnacloch* about the 8th of *May*, and stayed three Days: That he went away on *Monday* the 11th, about Nine in the Morning: That he was going to leave the Country soon, but would see them again at *Fasnacloch* before he went away: That he was then dressed in a long blue Coat, red Waistcoat, black Breeches, and a feathered Hat: That he saw *Allan Breck* the next Day, being *Tuesday* the 12th, at *Ballachelish*: That he was then dressed in a black short Coat with round white Buttons, and a dark great Coat over it, with Trowsers on, and a blue Bonnet: That the Deponent took Notice to *Allan Breck* that he had changed his Dress, who answered, that he did it because the Day was warm: That the Deponent was informed at *Ballachelish*, in Company with *Allan Breck*, that *Glenure* was gone to *Fort-William*: That when he parted with *Allan Breck* at *Glenco's* House, *Allan Breck* told the Deponent that he was going to *Callart*, and would return the next Day, and did not see him since: That on *Sunday* the 10th of *May*, he heard, being in Company with *Allan Breck*, that *Glenure* had got an Order from *Edinburgh* to remove the Tenants, and was gone to *Fort-William*; and that this was at *Fasnacloch*. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) JAMES STEWART. ARGYLL.

John Stewart younger of *Ballachelish*, aged twenty-six Years, unmarried, sworn, purged and examined *ut supra*, depones, That, upon *Tuesday* the 12th of *May* last, he saw *Allan Breck Stewart* at his Father's House of *Ballachelish*, and heard him ask Questions about *Glenure's* travelling to *Lochaber*: That, on *Thursday* the 14th, late at Night, *Donald Macintyre*, a Servant of the Pannel's, told the Deponent of the Murder; and that he

he was going with a Message to *Appin* from *James Stewart* his Master, to give him an Account of the Murder: That he arrived at *Appin's* House before the said Servant came there: That he returned to *Appin's* House; instead of going to the Pannel's House, where he had intended to be: That he told *Appin* of the Murder, at which he expressed great Surprize and Concern. Depones; That, in the Time of the Spring Circuit in this Place in *May* last, he was summoned to be of the Jury; but, at the earnest Request of the Pannel, that he, the Deponent, should be present with a Notary at the removing of the Tenants from the Estate of *Ardspiel*, he was a-going on that Errand to the Pannel's House, but returned to *Appin*, upon hearing of the Murder committed that Day. *Causa scientie patet.* And this is Truth, as he shall answer to God.

(Signed) JOHN STEWART. ARGYLL.

Katharine Maccoll, Servant to the Pannel, aged sixteen Years and upwards, who being solemnly sworn, by the forenamed sworn Interpreter, purged of Malice and partial Counsel, and examined and interrogate, depones, That she saw *Allan Breck Stewart* at the Pannel's House, upon *Monday* the 11th Day of *May* last, in the Afternoon, dressed in a blue side Coat, red Waistcoat, and black Breeches; and does not remember to have seen him in any other Dress that Day. Depones, That the Pannel went, in the Afternoon of that Day, to *Keels*, to meet Mr. *Campbell* of *Airds*, and that it was late at Night before he came Home; but that the Family had not supped when the Pannel came Home; and that the Pannel supped in Company with *Allan Breck Stewart*, *Fasnacloch's* Daughter, and *Archibald Cameron*, Nephew to *Fasnacloch*, and the Pannel's Family. Depones, That she saw the said *Allan Breck Stewart*; on the Morning of *Tuesday* the 12th of *May* last, dressed in a dunnish-coloured great Coat, in the Pannel's House; and that she saw him go out at the Door dressed in the said dunnish-coloured great Coat. Depones, That, upon the Evening of *Friday* the 15th of *May* last, as the Deponent came in at the Door, *Margaret Stewart*, Spouse to the Pannel, being then in the Cellar, called upon the Deponent, who then saw the said *Margaret Stewart* put a side blue Coat, a red Waistcoat, with something else that the Deponent did not observe, into a Sack, and delivered them to the Deponent, desiring her to hide them some way without. Depones, That the said *Margaret Stewart* did not tell the Deponent to whom the Cloaths belonged; but that the Deponent thought the said Coat and Waistcoat were *Allan Breck's*. Depones, That she went away with the said Sack, containing the said Cloaths; and, as she was going up the Brae, in order to hide them, was overtaken by *Dugald* and *John Beg Maccoll*, Servants to the Pannel, who had some Guns and Swords; and the said *Dugald Maccoll* asked the Deponent, what she had got in the Sack? The Deponent answered, it was *Allan Breck's* Cloaths; and that she was going to hide them; and that accordingly the said Sack, containing the above Cloaths, was hid in the Moor above the Pannel's House, by the said *Dugald Maccoll*, in Presence of the Deponent. Depones, That upon *Saturday* the 16th of *May* last, in the Evening, the said Mrs. *Stewart*, Spouse to the Pannel, desired the Deponent to carry back what she had hid, and leave it at the Back of the Brew-house; which the

Deponent accordingly did; and has not seen them since. Depones, That *Alexander Bane Stewart* was seen by the Deponent about the House that Evening. Depones; That some Time in Summer last, after the above Period, *Solomon Bane Maccoll*, Servant to the Pannel, told the Deponent; that the said Mrs. *Stewart*, Spouse to the Pannel, desired her to conceal what she knew about the above Cloaths, in Case she should be asked or examined about them. And, being interrogate for the Pannel, depones, That *Allan Breck Stewart* did not lie in the Pannel's House upon *Monday* Night, the 11th Day of *May* last, but lay in the Barn, as the Deponent thinks. *Causa scientie patet.* And this is the Truth; as she shall answer to God; and depones she cannot write.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

Archibald Cameron, Son to *Allan Dow Cameron*, some time Change-keeper in *Maryburgh*, aged twenty-two Years, unmarried; sworn, purged and examined *ut supra*, by Mr. *Archibald Campbell*, Sheriff-substitute of *Argyll-shire*, depones, being interrogate for the Pannel, That, upon *Monday* the 11th Day of *May* last; the Deponent came from *Fasnacloch's* House to the Pannel's House after Mid-day: That, some little Time after he came there, he saw *Allan Breck Stewart* there: That the Pannel was not at Home when the Deponent came first there, but came Home before Night-fall: That the Deponent, Pannel, *Allan Breck*, and the Family, sat in one Room, and supped together: That he did not observe *Allan Breck* and the Pannel speak in private that Night: That the Deponent and *Allan Stewart*, the Pannel's Son, lay in one Bed, *Allan Breck* and *Charles Stewart*, Son to the Pannel, in another Bed, in the same Barn: That, to the best of his Remembrance, they all went to Bed much about one Time, and got up together next Morning: That the Deponent did not observe the Pannel about the House next Morning when he got up. *Causa scientie patet.* And this is Truth, as he shall answer to God.

(Signed) ARCHIBALD CAMERON.

ARCH. CAMPBELL:
ARGYLL.

John Breck Maccombich, Change-keeper at *Kintalline*, aged about forty, married, Witness cited, sworn and purged by the forenamed sworn Interpreter, *ut supra*; depones, That, in the Beginning of Summer last, before *Whitsunday*; *Duncan Campbell*, Sheriff-substitute of *Killin*, told the Deponent; that if he could, with Truth and Honesty; make any Discovery, tending to discover the Murderers of *Glenure*, it was probable he would not be turned out of his Possession. Depones, That, upon the 14th Day of *May* last; *John Beg Maccoll*, Servant to the Pannel, came to the Deponent's House about Seven o'Clock in the Morning, and told; that the Pannel had desired the Deponent and *John More Maccoll*, another Servant of the Pannel's, to ferry the said *John Beg Maccoll* from his House to *Lochaber*, that being the shortest Road from *Aucharn* to *Fort-William*: That the Deponent at the first declined it; but upon *John Beg's* telling, that it was the Pannel's Desire that he should be ferried there; they carried him over accordingly. Depones, That, in the Afternoon of the same Day, before Sun-set, the said *John Beg Maccoll* came back to the Deponent's House, and called for half a Mutchkin of *Aquavitæ*, but did not

not sit down: That, during the Drinking of the Dram, the Deponent asked the said *John Beg Maccoll*, if he had been at *Fort William*? and if he had got *Charles Stewart*, Notary? (which he told in the Morning was his Errand to *Fort-William*), *John Beg Maccoll* answered, that he had been at *Maryburgh*, but *Charles Stewart* was not at Home. Depones, That, upon *Tuesday* the 12th of *May* last, *Glenure* sent Notice to the Deponent, that he and some other Company was to be at his House upon *Thursday* then next, and desired that he might be prepared for entertaining them; and that he accordingly made Provision for them. Depones, That he told that *Glenure* was to be at his House that Night; and that the whole Neighbourhood knew of it; and, upon the Pannel's Interrogatory, depones, That *Glenure* frequently went to *Lochaber* by *Mamuckie*, being a shorter Road to the Ferry of *Ballachelish* than the Strath of *Appin*; and he once coming from *Lochaber*, landed at *Kintalline*; and that a Person passing from *Glencrearan* to the Ferry of *Ballachelish* by *Mamuckie*, does not go through the Wood of *Lettermore*, nor by *Kintalline*. Depones, That he was warned to remove from his Possession, being a Part of *Ardshiel* Estate, at *Whitsunday* last, and employed no Person to keep him in Possession. Depones, That, some Time after he had got his Citation of Warning, the Pannel pass'd by his House on Horseback, and asked if he had his Copy of Citation in the Removing? The Deponent answered he had; the Pannel called for a Sight of it; and, upon the Deponent's producing it, the Pannel said he would keep it. And being interrogate if the Pannel informed him that he was going to *Edinburgh*, and was to produce his Copy of Citation there? depones, not; but only that he was going Southward. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God; and declares he cannot write.

(Signed) ARCHIBALD CAMPBELL. P. GRANT.

Alexander Stewart of *Ballachelish* elder, aged sixty-eight Years, Widower, sworn, purged and examined *ut supra*, depones, That *Allan Breck Stewart* called at the Deponent's House upon the 12th of *May* last, and that *James Stewart* younger of *Fasnacloich* was then at the Deponent's House: That, upon the 13th, about Seven or Eight in the Afternoon, he came again to the Deponent's House, and lodged with him all Night, stayed the next Day, being *Thursday* the 14th, till Eleven or Twelve, when he went out with a Fishing-rod in his Hand, and was fishing in the Burn near the Deponent's House, but he did not see him take any: That he did not take leave of the Deponent; and did not return; and he knows nothing of him since: That the said *Allan Breck Stewart* was dressed in a great Coat, and under it a short black Coat with white Buttons: That, when the said *Allan Breck Stewart* was fishing, he saw a great Coat lying upon the Bank, which he took to be *Allan Breck Stewart's*: That, that Evening on the 14th, he was in Company with *Glenure*, and left him very near the Wood of *Lettermore*: That, the Morning after the Murder was committed, the Deponent really thought, that *Allan Breck Stewart* might be the Actor in this Murder, because he did not return to this Deponent again. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALEX. STEWART. ARGYLL.

Donald Rankine, Herd to *Ballachelish*, unmarried, aged about eighteen, Witness cited, sworn, purged and examined *ut supra*, by the said *Archibald Campbell*, sworn Interpreter, depones, That, on the 14th Day of *May* last, he saw *Allan Breck Stewart* at the House of *Ballachelish*, his Master; and that the said *Allan Breck* was dressed in a great dun Coat, under which he had on a black short Coat, with silver or white Buttons on it: That before Mid-day he went up with a Fishing-rod to the Water-side, where he saw him fishing up the Water: That he has not seen him since. *Causa scientiæ patet*. And this is Truth, as he shall answer to God; and declares he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Archibald Macinnes, Ferryman at *Ballachelish*, Witness cited, aged sixty-five Years, married, sworn, purged and examined *ut supra*, depones, That he met *Allan Breck Stewart* near the Ferry of *Ballachelish*, upon the Evening of *Wednesday* the 13th of *May* last, as the said *Allan* returned from *Glenco*. Depones, That, after Mid-day, upon *Thursday* the 14th Day of *May* last, as the Deponent was sitting near the Ferry of *Ballachelish*, with the Son of *John Campbell* in *Stromellachan* in *Glenorchie*, *Allan Breck* came behind them and hoasted, and, upon the Deponent's looking about, desired him to come to him; which the Deponent did; and the said *Allan* inquired of him, if *Glenure* had cross'd the Ferry from *Lochaber* to *Appin*? The Deponent told him, he was sure he did not: That, upon this, *Allan Breck* went away towards the high Road; had on a dun-coloured big Coat, and had no Fishing-rod; and the Deponent has not seen him since. Depones, That he is Ferryer upon the *Appin* Side, where this Conversation happened. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God; and declares he cannot write. And further depones, That he heard no body suspected for the Murder of *Glenure*, but the said *Allan Breck*. Depones, That *Glenure* was expected back upon the *Wednesday*; and the Deponent was sure he must be back the *Thursday*, as it was currently reported in the Country, he was to have a Meeting with some Gentlemen at *Kintalline*, *Thursday* Night. And this is also Truth, as he shall answer to God.

(Signed) ARCH. CAMPBELL. P. GRANT.

Donald Stewart in *Ballachelish*, aged about thirty, married, solemnly sworn by *Archibald Campbell*, Writer in *Inverary*, sworn Interpreter, who, being purged of Malice and partial Counsel, examined and interrogate, depones, That, upon the 15th Day of *May* last, he met the Pannel in *Duror*, upon the Marches of *Auchindarroch*, opposite to the Pannel's House. Upon the Deponent's regretting that such an Accident as *Glenure's* Murder should happen in the Country, the Pannel joined with him, and said, that he was informed that one Serjeant *More*, alias *John Cameron*, had been threatening Harm to *Glenure* in *France*, but did not inform the Deponent who told him so. Depones, That, to his Knowledge, Serjeant *More* has not been in *Appin* these ten Years past. Depones, That, upon the Evening of *Thursday* the 14th of *May* last, about Night-fall, *Katharine Macinish*, then in *Ballachelish*, now in *Larich*, came to the Deponent, and told him that one without wanted to speak with him: That this Message came to him in

Ballachelish's

Ballachelish's own House: That, when he went out, the said *Katharine Macinish* informed him, that it was *Allan Breck* that wanted him; and that he was a little above the House in the Brae: That the Deponent went up the Brae, and met *Allan Breck*, who was then dressed in a great Coat, and a dark short Coat under it with white metal Buttons; the Deponent told him of the Murder, and said it could not be but that he, *Allan Breck*, was about it; to which *Allan Breck* answered, that he heard of the Murder, but had no Hand in it; to which the Deponent replied, he did not believe him. Depones, That the said *Allan Breck Stewart* told the Deponent, he was going immediately to leave the Kingdom, was very scarce of Money, and was going then for *Koalisnacooan*; and desired the Deponent to acquaint the Pannel, that he was gone to *Koalisnacooan*; and desired him, if possible, to send him Money there; and the Deponent then promised to acquaint *James Stewart* of the above Message. Depones, That the said *Allan Breck* said, he believed he would be suspected of the Murder, and upon that Account, and as he was a Deserter formerly from the Army, it was necessary for him to leave the Kingdom. Depones, That, before he had the above Conversation with *Allan Breck*, he assisted in carrying the Corpse of *Glenure* to the Boat. Depones, That, after the Conversation with the Pannel about Serjeant *More*, he delivered the above Message from *Allan Breck* to the Pannel; and that the Pannel did not say whether he was to send the Money or not: That this Conversation happened about Ten o'Clock in the Forenoon of *Friday* the 15th of *May* last; and that there was no body present. Depones, That, upon *Sunday* the 17th of *May* last, he met *Alexander Bane Stewart*, Packman in *Appin*, near the Houses of *Larich* in *Glenco*, who told the Deponent, that he had been at *John Breck Maccoll*, Bouman to *Appin* in *Koalisnacooan*, with either three or five Guineas, the Deponent is not positive which, that he had got at *Aucharn*, to be left with the said *John Breck* for the said *Allan Breck's* Use, if he called there; and told the Deponent, that he left the Money with the said *John Breck Maccoll*, but did not see the said *Allan Breck*. And, upon an Interrogatory put for the Pannel, depones, That, upon the Deponent's delivering the above Message from *Allan Breck* to the Pannel, the Pannel asked why *Allan Breck* himself did not come for Money, if he wanted it? To which the Deponent, to the best of his Remembrance, replied, that *Allan* told him he would be suspected for the Murder, and was a Deserter; to which the Pannel answered, that he hoped in God *Allan Breck* was not guilty of the Murder. Depones, That, during the above Conversation with the Pannel, *Alexander Stewart*, *Duncan Maccombich*, and several other Possessors of *Auchindarroch*, were in the adjoining Field delving, but at such a Distance that the Deponent cannot think they could hear the above Conversation. And, being shewn the short black Coat, with clear white Buttons on the Breast and Pockets, and the blue striped Trowsers, now lying in the Clerk's Hands, depones, That the said *Allan Breck* wore such a Coat and Trowsers upon *Thursday* the 14th of *May* last; and saw him in it the Forenoon of that Day at *Ballachelish*. And further depones, That he, the Deponent, is married to a Daughter of *Stewart* of *Ballachelish*, and stays in the House with him: That her Mother was Daughter to *Stewart* of *Annat* in *Perthshire*. *Causa scientiæ patet.*

And this is the Truth, as he shall answer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Macdonald of *Glenco*, aged twenty-six Years, unmarried, sworn, purged and examined *ut supra*, depones, That, on the 12th of *May* last, *Allan Breck Stewart* came to *Carnock*, the House of the Deponent: That he staid there but a very little Time, *viz.* not above a Quarter of an Hour: That the Deponent had no Conversation with him; and the said *Allan Breck Stewart* went away: That, on *Friday* the 15th of *May* last, the said *Allan Breck Stewart* came again to the said House at Three or Four o'Clock in the Morning, and knocked at the Window of the said House, when the Family were all in Bed: That the Deponent went to the Door of his House, and there saw *Allan Breck Stewart*, who gave him the first Notice he had of *Glenure's* being murdered the Evening before in the Wood of *Lettermore*; and told him, that he was to leave the Country; and came to take leave of the Deponent and his Step-mother, who is a Sister of *Ardshiel's*: That his Cloaths were then a dun or brown great Jockey-coat: That the Deponent did not ask *Allan Breck Stewart* any Questions about the said Murder; nor did he say any thing upon the Subject to *Allan Breck Stewart*, as far as the Deponent can remember: *Allan Breck Stewart* told him he was to go the Moor-road leading to *Rannoch*: That, upon the *Tuesday* above-mentioned, *James Stewart* of *Fasnacloch* was along with the said *Allan Breck Stewart*; and that he was dress'd in a black short Coat with white Buttons. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) JOHN MACDONALD. ARGYLL.

Isobel Stewart, Relict of *Alexander Macdonald* of *Glenco*, aged forty-two Years, sworn, purged and examined *ut supra*, depones, That, upon *Tuesday* the 12th Day of *May* last, *Allan Breck Stewart*, described in the Libel, came to her House at *Carnock*, in the Afternoon, accompanied by young *Fasnacloch*, dressed in a black short Coat with white clear Buttons: That he staid about an Hour; and then went away to the Deponent's Sister's House at *Callart*: That *Allan Breck Stewart* came again to the Deponent's House on *Wednesday* the 13th of *May* last, in the Afternoon, and staid about a Quarter of an Hour; and then went to *Ballachelish*: That, on *Friday* the 15th of *May*, the said *Allan Breck Stewart* came again to the said House, at Four o'Clock in the Morning, and knocked at the Window of the House, and all the Family was in Bed; upon which the Deponent went out with her Step-son; and she asked him, what News up the Country? To which he answered, a good deal of News, that *Glenure* was killed the Evening before in the Wood of *Lettermore*; that he was come to take farewell of the Deponent; for he was to leave the Country: That she asked him no more Questions about the Murder: That she asked him to come into the House; but he answered he would not stay: That, to the best of her Remembrance, *Allan Breck Stewart* told her, that *Glenure* was killed or shot: That, when he knocked at the Window, one of the Deponent's Children told her, that he heard *Allan Breck Stewart's* Voice. *Causa scientiæ patet.* And this is the Truth, as she shall answer to God.

(Signed) ISOBEL STEWART. ARGYLL.

Mary Macdonald, Spouse to *Donald Macinnes* in *Leckintium*, aged about forty, Witness cited, solemnly sworn by *Archibald Campbell* of *Knockbuy*, sworn Interpreter, purged of Malice and partial Counsel, examined and interrogate, depones, That a little before Sun-setting, on *Sunday* the 17th of *May* last, she saw *Allan Breck Stewart* sitting in the Wood of *Koalisnacooan*, less than a Mile's Distance from the Houses: That, upon her Approach, he started to his Feet: That she gave and received the common Salutation from him; and then she passed away on her own Business: That he was dressed in a long dun Jockey-coat and Bonnet. And depones, she was alarmed at meeting a Man in a Place so remote. *Causa scientiæ patet*. And this is the Truth, as she shall answer to God; and declares she cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Duncan Stewart, travelling Packman in *Arlarich* in *Rannoch*, aged thirty-two Years, married, sworn, purged and examined *ut supra*, depones, That he met with *Allan Breck Stewart* upon a *Monday* or *Tuesday*, about the 18th or 20th of *May* last, at a Place in *Rannoch* called *Leckinstrensmeir*; and, having asked *Allan* whence he had come, and whither he was going? he answered, he had come from *Ballachelish* or *Callart*, he does not remember which; and that he was going to a Shealing, where his Uncle *Allan Cameron* lived; and, as the Deponent had at that time heard nothing of the Murder of *Glenure*, he said nothing to him about it: That, two or three Days thereafter, the Deponent's Sister told him, there were two Gentlemen wanting him out-by: And, after he had got his Breakfast, he went out, and first saw *Allan Breck*, and afterwards *Allan Breck* and *Allan Cameron* together at a Know; and that, how soon the Deponent went up to the two, *Allan Cameron* went back, and the Deponent proceeded with *Allan Breck* down the Country, about six Miles, where he had occasion to be going about his own Business; and parted with him at a Place called *Inching*; and, after he parted with the said *Allan Breck*, he was apprehended by a Gentleman called *Alexander Campbell*, who supposed the Deponent to be *Allan Breck Stewart*; and, having asked the Deponent, if he had seen *Allan Breck*? he then denied his having seen him. Depones, That *Allan Breck* was, at this Time, dressed in a long blue Coat, and blue Bonnet. *Causa scientiæ patet*. And this is Truth, as he shall answer to God; and depones he cannot write.

(Signed) JA. FERGUSON.

Allan Oig Cameron, in *Arlarich* in *Rannoch*, aged thirty-eight, Widower, sworn, purged and examined *ut supra*, depones, That, on a *Monday*, he thinks the 18th of *May* last, *Allan Breck Stewart*, the Deponent's Nephew, came to the Deponent's House in *Rannoch*, who having told the Deponent, he had come from *Appin* or *Glenco*, the Deponent, who by that Time had heard a Rumour of *Glenure's* Murder, said to the said *Allan*, that he doubted not he might be suspected of it, as he was a loose idle Man in the Country; to which the said *Allan* answered, that he made no doubt himself that he would be suspected of it: And the Deponent having pressed him earnestly to make a clean Breast, and tell him all he knew of the Matter, he declared with an Oath, he had never seen *Glenure*, dead or alive; and the said *Allan* having staid with

the Deponent till the *Wednesday* thereafter, the Deponent frequently repeated his Instances, to tell him what he knew of the Murder; at which *Allan Breck* became angry; and the Deponent desisted further Inquiry: That the said *Allan Breck* left the Deponent's House upon the *Wednesday*, whom the Deponent conveyed little more than two Gunshots from his own House; but *Duncan Stewart*, Chapman, the preceding Witness, who had come to the Deponent's House that Morning, went along with them; and he saw them take a little bye Road through Corn, which might have led them to the high Road; but what Road they afterwards took, he does not know: And depones, That, at this Time, *Allan Breck Stewart* was dressed in a big Coat of a brownish Colour, and had under it a long blue Coat lined with red, red Waistcoat, and a Bonnet: That, upon the 24th of *May*, as the Deponent thinks, having occasion to go to his Master *Sir Robert Menzies*, when about fourteen Miles from his own House, and at the Side of a Wood, he heard a Whistle from the Wood, and, looking about, saw it to be the said *Allan Breck*; and the Conversation he then had with him, was to the following Purpose: That *Allan Breck* having told him, his only Fear was to be apprehended by the Military, which might prove very fatal to him, as he had been a Defenter; which led the Deponent to say, that he was very sure, the Friends of the Deceased would procure him his Discharge, if he could discover the Murderer; to which *Breck* answered, that they were at this time in such Fury and Rage, he was very sure, were he apprehended, he would be hanged. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALLAN CAMERON. JA. FERGUSON.

James Man, Change-keeper at *Innerhadden*, aged thirty-two, married, sworn, purged and examined *ut supra*, by the above Mr. *Archibald Campbell* of *Stonefield*, sworn Interpreter, depones, That *Allan Breck Stewart* came to the Door of the Deponent's House at *Innerhadden*, the lower Part of *Rannoch*, about Twilight, towards the End of *May* last, and asked the Deponent, who was then standing at his own Door, if that was his House? which the Deponent answered it was; and then *Allan Breck* told him, that he was directed by *John Stewart* in *Bohallie* to come there for some Supply of Provisions: That the Deponent desired him to come into his House, and that he would give him Part of such Fare as he had; but that *Allan Breck* declined to come in, being in a Hurry, and stood in need of some Provision; whereupon the Deponent brought him some Bread and Cheese, and after he gave him the same, conveyed him as far as his Barn, where the said *Allan Breck* desired the Deponent to return; and that he, the said *Allan Breck*, intended to go farther down the Country that Night: That the said *Allan Breck* was dressed in a great dun Coat and Bonnet, and short Hose; what Cloaths he had under the great Coat, he did not see; that he saw a Holster under his left Arm: That he asked him whence he had come, but he did not tell him. Depones, That before *Allan Breck* came, as aforesaid, it was reported in that Country, that he was concerned in *Glenure's* Murder; and that he himself suspected him at the Time, as he came unseasonably, and was wanting Provisions. *Causa scientiæ patet*. And this is Truth, as he shall answer to God. And further depones, That he has been acquainted with *Allan Breck* these

these twelve Years. And this is also Truth, as he shall answer to God.

(Signed) JAMES MAN.
ARCH. CAMPBELL.
JA. FERGUSON.

John Crawford, Esq; Lieutenant-Colonel of General *Pulteney's* Regiment of Foot, aged thirty Years, unmarried, sworn, purged and examined *ut supra*, depones, That he knows the Paper now put in his Hands, being Number 11. of the Inventory of Writings in the Clerk's Hands: That it was sent open to him, before it was sent away. Being asked, whether the Deponent had any preceding Conversation with the Pannel on the Subject of this Letter? he answers, he does not remember he had any. And being asked, whether the deceased *Colin Campbell* of *Glenure* ever told the Deponent, that *Allan Breck Stewart* was a Defenter, and in this Country? the Deponent answers *negativè*. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) JOHN CRAWFURD. ARGYLL.

Alexander Stewart of *Innernabyle*, aged forty-four Years, married, sworn, purged and examined *ut supra*, depones, That the Pannel was a great many Years ago Tenant to his Brother *Ardshiel* in the Farm of *Glenduror*, and was removed also several Years ago, the Deponent does not remember how many, by his Brother: That he again became Tenant in the same Lands in 1749, or perhaps 1748, and was again removed by the deceased *Glenure*, the Factor, at *Whitsunday* 1751, and the Lands set to Mr. *Campbell* of *Ballieveolan*. Depones, That, as the Pannel is the Deponent's near Neighbour, the Deponent had frequent Opportunities of conversing with him touching his said Removal: That the Pannel did not expect to have been removed, and seemed dissatisfied that he was; and said, he believed *Glenure* would not have removed him, if *Ballieveolan* had not sought these Lands from him. Depones, That the Pannel further said, that the Tenants generally allowed some Gratuity to *Ardshiel's* Children; and that these Lands were the best Farms on the Estate, and most of the Benefits accresced from them; and though he himself could be provided of a Farm elsewhere, yet the Children would be deprived of that Benefit. Depones, That, about the End of *April*, or Beginning of *May* last, the Deponent thinks about the Beginning of *May*, he casually met on the Highway with *Allan Breck Stewart*, and quarrelled with him for not making him, the Deponent, a Visit, and *Allan Breck Stewart* promised to see the Deponent before he left the Country; but the Deponent has never seen him since that Time. Depones, That, upon the *Saturday* and *Sunday* after *Glenure's* Murder, it was the general Opinion of the People in the Country, that he had been murdered by *Allan Breck Stewart*. Depones, That the Place where *Glenure* was said to be murdered, and where the Deponent observed Marks and Symptoms of the Murder, is a very bad Road through a Wood, interspersed with Rocks and Stones upon a hanging Brae, from which a Person may descry the Road on the North Side of the Ferry of *Ballachelish*, and where a Person may easily conceal himself, so as not to be seen from the Road. Depones, That the Deponent is acquainted with the Hand-writing of *Allan Stewart*, Son to the Pannel, and has frequently seen him write. And being shown a Letter

signed *Allan Stewart*, and addressed to *Duncan Stewart* of *Glenbuckie*, dated at *Aucharn* the 1st of *April* 1751, being the Writing Number 7. in the Inventory of Writings subjoined to the Libel, depones, That it is like *Allan Stewart's* Hand-writing, and the Deponent would take it to be his, but cannot be positive that it is his. Depones, That, after the Attainder of *Stewart* of *Ardshiel*, the Factor gave the Pannel the Opportunity of having the greatest Influence with the Tenants of *Ardshiel* more than any other Person, by allowing the Pannel to set the Lands, which he continued down to *Whitsunday* 1751, if not at that Term also; but depones, That the Pannel's Connexion with the Family of *Ardshiel* gave him also a natural Influence over the Tenants, even before *Glenure's* Factory. Depones, That, before that Time, the Tenants, the Deponent believes, paid their Rent to the Lady of *Ardshiel*, and she again employed the Pannel to deal with them. And being interrogate for the Pannel, whether he, the Pannel, removed voluntarily from *Glenduror* without any Warning, depones, That he did not hear of any Warning, but that he removed voluntarily. Depones, That *Allan Breck Stewart*, as the Deponent has been informed, was a Soldier in the King's Army, and was taken Prisoner by the Rebels at the Battle of *Preston*; and that he was told so by a Man who took him from among the Prisoners. And depones, that he afterwards joined with the Rebels, where the Deponent saw him. Depones, That, after the Battle of *Culloden*, he left this Country, and, as he told the Deponent, went over to *France*, and entered into the *French* King's Service. Depones, That the Deponent had no Occasion of seeing *Allan Breck Stewart* last Time he was in the Country, but at the Time before deponed upon, and one Time before that; and both these Times he was dressed in a blue long Coat, a red Vest, and a feathered Hat, and black Breeches. Depones, That he remembers that *Allan Breck Stewart* came over to this Country a Year or two ago, and staid some Weeks among his Friends; but neither at that Time, nor the last Time, did he seem, so far as the Deponent observed, to be in any Apprehension of being taken; only, as he had been once in the Army, he did not chuse to meet with any of the King's Troops. Depones, That, at the Time the Pannel removed from *Glenduror*, he told the Deponent, that he had had a Meeting with *Ballieveolan*; and that there was a Compromise betwixt them, but does not remember the Particulars. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALEX. STEWART. P. GRANT.

Donald Campbell of *Airds*, aged forty-seven Years, married, sworn, purged and examined *ut supra*, depones, That the Pannel was employed by the deceased *Glenure* for some Time as his Subfactor in levying the Rents of *Ardshiel*, and setting the Lands; and the Pannel told the Deponent, that whatever was made of these Rents over what was paid into the Exchequer, was accounted for to the Children of *Ardshiel*: And when he removed from *Glenduror*, he told the Deponent that he had Reason to believe, that the said Excrease of the Rents of that Farm would still be accounted for to them; and, in that Case, he would be easy as to his own Removal. And depones, That *Ardshiel's* Children, at the Time of the Rebellion, were all young; his eldest Son being now, as the Deponent

Deponent believes, about eighteen. Depones, That, in Spring last, the Deponent had a Letter from Colonel *Crawfurd*, telling him that he heard *Allan Breck Stewart* was come to the Country, and inlisting Men for the *French* King's Service, and desired the Deponent to inquire if it was so: That the Deponent did inquire, and wrote the Colonel for Answer, that he heard he had been in the Country, but that he was then gone away: That this was in the Month of *April*, to the best of the Deponent's Remembrance; and it seems about that Time *Allan Breck Stewart* had gone to *Rannoch*, which gave Occasion to the Deponent's being informed that he was gone away; and did not hear of his having returned to the Country till after *Glenure's* Murder; and thinks he wrote also to Colonel *Crawfurd*, according to the Information he had got, that *Allan Breck Stewart* was in use of coming every Year to the Country, since *Ardshiel* went to *France*. Depones, That, upon the Afternoon of *Monday* the 11th of *May* last, the Deponent sent to the Pannel, desiring him to come to him to *Keills*, a Farm belonging to the Deponent, at about a Mile's Distance from the Pannel's House: That the Pannel accordingly came there to him that Afternoon, as soon as he expected him: That the Deponent's Business with him was for his Assistance in setting that Farm: That the Farm was accordingly set; and the Pannel himself took Part of it, and conveyed the Deponent a Part of of his Way home; and then they parted: That, before parting, he desired the Pannel to go next Morning to *Appin's* House: That the Pannel accordingly did so; and the Deponent had a Letter from him, from that Place. *Causa scientie patet*. And this is Truth, as he shall answer to God.

(Signed) DONALD CAMPBELL. P. GRANT.

Charles Stewart, Writer and Notar at *Bannavie*, aged thirty-eight Years, married, sworn, purged and examined *ut supra*, depones, That *James Stewart* the Pannel wrote a Letter to the Deponent, desiring him to go with the Tenants of the Lands of *Ardshiel* to intimate to *Glenure* a Sift on a Bill of Suspension: That accordingly the Deponent went to *Aucharn* that Night; and the next Morning the Tenants came there; and he then went along with the Tenants to *Glenure's* House, and there intimated the Sift; and a Protest was also taken against the said *Glenure*: That this was on the 1st of *May*. Depones, That the Pannel told the Tenants at the Pannel's House, that there was a Sift come of the Removing; that he did not desire them to go with the Sift, unless they had a Mind themselves; and they chose to go, but the Pannel himself did not go along. Depones, That he received a second Letter from the Pannel of Date the 14th of *May*, desiring him to attend next Day at the Ejection; but that he declined the same, because he did not care to disoblige *Glenure*. Depones, That he saw *Allan Breck Stewart* at *Aucharn* the 1st of *May*; and when the Deponent left *Aucharn* next Day, he left him there: That he heard *Allan Breck* say, that he thought it hard that *Glenure* should remove the Tenants upon the Estate of *Ardshiel*, when he did not remove those of *Mamore*. Depones, That, in the Beginning of *April* having met *Allan Breck Stewart*, he told the Deponent, That he heard that Colonel *Crawfurd* was endeavouring to take him up as a Deserter; but that he, *Allan Breck*, had surrendered himself in 1746 to Sir *Robert Menzies*, as a Justice of Peace. De-

pones, That, in the Beginning of *April*, the Deponent saw *Allan Breck Stewart* at *Callart*: That he did not appear to be sculking: That when he saw him first, he was dressed in a *French* Habit: That on the 1st Day of *May*, when he saw him at *Aucharn*, he was in a short black Highland Coat with white Buttons and Trowfers, and said he had come from *Rannoch*. *Causa scientie patet*. And this is Truth, as he shall answer to God.

(Signed) CHARLES STEWART. ARGYLL.

Duncan Maccoll in *Ardshiel*, aged thirty Years and upwards, married, being sworn, purged and examined *ut supra*, by Mr. *Alexander Campbell*, Minister at *Inverary*, sworn Interpreter, depones, That, on his and others being warned to remove from the Lands of *Ardshiel*, as at *Whitsunday* last, he, for his Part, had no Intention other than to submit to the Warning, till a Paper was procured from *Edinburgh*, which he heard read by *Charles Stewart*, Notar at *Aucharn*, as on a Day he was there, being along with his Neighbours advertised to meet there: That, when the Notice was given for this Meeting, he was not at his own House; but, on his Return, his Wife told him, such a Message was sent, and that Advice was come from *Edinburgh* to direct those who were warned to remove, to continue in their Possession: That, on his coming to *Aucharn*, he does not remember whether the Paper was read in his Presence, but is positive he and his Neighbours were told by *Charles Stewart*, Notar, and the Pannel, that the Paper contained Advice, as above, on which they should go to ask the Lands from *Glenure*; and to be cautious in their Conduct, as they were to swear about their being faithful and peaceable Tenants. Depones, That he gave no Allowance or Mandate to the Pannel to make any Application at *Edinburgh* against the Removing: That, before he heard any thing of this Paper from *Edinburgh*, he had engaged to serve as Bouman to the Tenants *Glenure* was to introduce; but that, on hearing of the Paper from *Edinburgh*, he preferred keeping by his Neighbours, as he considered the being continued in Possession, did the Law support him in it, more beneficial to him. Depones, That the procuring the Paper at *Edinburgh* cost him no Money. *Causa scientie patet*. And this is Truth, as he shall answer to God. And, being interrogate for the Pannel, depones, That it was in Company with the rest of his Neighbours, he went to *Aucharn*, and went along with them likewise in Company from *Aucharn* to *Glenure*, along with the Notar; and that he remembers, before they left *Aucharn*, the Pannel, in general, told them, they might follow the Advice given them, or not, as they should see Cause; and that, upon their Arrival at *Glenure*, all that he remembers was, that they took Protests with Money, in the Notar's Hands, against *Glenure*. And this is also Truth, as he shall answer to God.

(Signed) ALEX. CAMPBELL. JA. FERGUSON.

John Maccombich in *Ardshiel*, aged forty-three Years, married, sworn, purged and examined *ut supra*, by the above Mr. *Alexander Campbell*, sworn Interpreter, depones, That he was warned with the rest of the Tenants to remove, as at last *Whitsunday*, and meant to submit to it, and therefore agreed with the Tenants to be introduced to serve them as Bouman; but on his being called to *Aucharn*, by a Message in *Charles Stewart* the Notary's Name, and hearing the Advice from *Edinburgh* explained

plained there, and that there were some Hopes the Government would allow them to sit still, if they continued peaceable, he chused to keep by this Chance with his Neighbours; upon which he went along with them to *Glenure*, and asked to be continued, and got for Answer, that the Application was too late, the Lands being set to others; upon which he joined with his Neighbours in taking a Protest in the Hands of the Notary. Depones, That, as to the Agreement betwixt him and the incoming Tenants, when he undertook to be their Bouman, he heard both *Glenure* and these Tenants say, that it was by *Glenure's* Advice that this was done. Depones, That, as *Duncan Maccoll* and he agreed at the same Time to be Boumen to the incoming Tenants, so he heard *Glenure* say, that it was his Advice to the Person who was to employ *Duncan Maccoll*, to take him as his Bouman. Depones, That, on his being warned, he advised with the Pannel how to behave: That he did not pretend to direct: That an Advice in Law should be asked: That he hoped the King, and those employed by him, would continue the former Possessors, they behaving dutifully; and that, on his being advised by the Pannel to have Patience, he resolved to wait the Issue: That likewise the Pannel advised him, if better could not be made of it, to endeavour to get a Subset from the incoming Tenant; and that the Pannel advised him, and others concerned, to qualify to the Government. Depones, That he told the Pannel, that if the Law countenanced the continuing them in their Possession, he would rather chuse it. Depones, That, on the Day he and his Neighbours went to *Glenure*, the Pannel left them to the Freedom of their own Choice, whether to follow the Purpose of the Advice from *Edinburgh*, or not; only it was his Opinion, that they had a Chance of being continued in their Possessions, they behaving themselves in all Respects dutifully, and go and ask the Lands of *Glenure*. Depones, That he does not remember that the Advice from *Edinburgh* cost him any Money, or that any was asked of him; but that some Accompts were at that Time betwixt him and the Pannel. Depones, That he continued with the rest of the Tenants about the Pannel, till they were desired by him to leave him, as he could take care of himself, and was to go Home; and that he does not remember to have heard *Glenure's* Name mentioned all the while; and that this happened on Occasion of *Glenure* and the Pannel's meeting at *Kintalline*: That he is not positive as to the Time; but thinks it was the last Night of the old Year. Depones, That he heard *Glenure* went next Day to the Pannel's House, and dined there. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALEX. CAMPBELL. P. GRANT.

John Maccorquodale, late in *Lettermore*, now in *Ballachelish*, aged twenty and upwards, married, sworn, purged and examined *ut supra*, by the said Mr. *Alexander Campbell*, sworn Interpreter, depones, That the last Night of *December* last, he was present at *Kintalline*, as *Glenure* and the Pannel, with some other Company, met; when, after drinking a while, from loud Words it was apprehended a Quarrel would ensue; to prevent which, the Deponent, with some others, carried out the Pannel, who seemed unwilling to part with *Glenure*, as he expected *Glenure* would go that Night to his House: That the Deponent heard that *Glenure*, though he

declined to go with the Pannel that Night, yet he proposed to breakfast with him next Morning: That the Deponent was in Company with the Pannel, and followed him at some Distance from the House of *Kintalline*; and that all the while he was in the Pannel's Company, he heard nothing of *Glenure*; only the Pannel was disobliged at being separated from him, and said, that if they about him had kept off, *Glenure* and he would be good Friends before they would part. Depones, That, when he was warned, and consequently like to want Lands, he was talking of his Situation to the Pannel, being poor, and, in his own Apprehension, unable to bear the Expence of a Law-suit, did not propose to follow the Matter in that Way: That being asked a Sight of the Warning, he gave it to the Pannel, but did not desire any Advice in Law should be asked about it, having some Dependence on his Innocence, and not being concerned in any of the Troubles in that Country. And being interrogate for the Pannel, whether the Pannel had advised him; the Deponent, to engage as Bouman in *Lettermore*, if better could not be provided for him, depones *negativè*. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALEX. CAMPBELL. P. GRANT.

Ewan Macintyre in *Duchelly*, late Herd in *Glenduror*, aged twenty Years and upwards, unmarried, sworn, purged and examined *ut supra*, by Mr. *Archibald Campbell* of *Stonefield*, sworn Interpreter, depones, that he engaged to be Herd to Mr. *Campbell* of *Ballicveolan*, in the Farm of *Glenduror*, for the Year 1751; and that the Day after he entered into his Service there, the Pannel challenged him for accepting thereof, and told him, that he would be fit-sides with him, sooner or later, for doing it; and that if he did not meet with Resentment himself in his Life-time, others, such as his Friends, might meet with it after his Death. Depones, He never was in the Pannel's Service. *Causa scientiæ patet*. And this is Truth, as he shall answer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. ARGYLL.

Alexander Campbell in *Teynaluib*, aged fifty Years, married, sworn, purged and examined *ut supra*, depones, That, in the End of *April* last, the Pannel called at the Deponent's House in the Morning, to have his Horse corn'd; and having called for, and got a Dram, which was afterwards set down upon the Table, one *Maclaren*, a Merchant in *Stirling*, who had lodged with the Deponent the Night before; being present, asked the Pannel, if he would not help the Deponent to a Dram? And the Pannel answered; he did not know any thing that he would help the Deponent, or any of his Name to, if it was not to the Gibbet. The Deponent answered, that that was not a comfortable Expression to him, that it seems if any of them were at the Gibbet, the Pannel would draw down their Feet; and the Pannel replied, that of some of them he would, and some of them he would not: That then the Deponent said, that *Glenure*, as he supposed, was the Man of the Name with whom the Pannel had the greatest Quarrel, and the Deponent did not know any good Cause the Pannel had for it: Upon which the Pannel answered, that if *Glenure* had used the Deponent as ill as he had used him, the Pannel, by turning him out of his Possession, he would have no less Quarrel with him

him than he had: And the Deponent replied, that that was no just Cause of Quarrel; for that if the Pannel had a Tack of his Farm, *Glenure* could not turn him out; and the Deponent's Wife was also present at this Conversation. And being interrogate for the Pannel, whether the Deponent then thought him serious, and in earnest, or that it was only a Joke? depones, That, at that Time, he thought it proceeded from Malice. And being further interrogate for the Pannel, depones, he was at that Time perfectly sober. Depones, That all they drank was a Gill of *Aquavitæ*, of which the Deponent got a Part. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) ALEX. CAMPBELL. P. GRANT.

Ewan Murray, Vintner, at West End of *Lochearn*, aged thirty-four Years, married, sworn, purged and examined *ut supra*, depones, That, in April last, the Pannel and *Colin Maclaren*, Merchant in *Stirling*, came to the Deponent's House, and the Pannel told the Deponent, that *Glenure* had warned away several Families in *Ardshiel's* Estate to remove; and that he was informed, that none of the Factors on the forfeited Estates had Power to remove the Tenants; and that he was going to *Edinburgh* to take Advice of Lawyers about it; and, if he had not that Power, that the Pannel would apply for Suspension in his own Name, and in Name of the rest of the Tenants; and, the Conversation turning upon an Officer of the Army, that was branded with Cowardice, and had been broke on that Account, the Pannel said, that he had Reason to say that *Glenure* was as great a Coward as that Officer; for that he, the Pannel, had challenged him to fight him, which *Glenure* declined; and desired the Deponent to tell *Glenure*, that he had told him so; but the Deponent answered, that he would not carry any such Message from one Gentleman to another; and, from the Conversation, the Deponent understood, that the Arms with which the Pannel had challenged *Glenure* to fight, was with Pistols. And being interrogate for the Pannel, depones, That he thought the Pannel was a little concerned with Drink. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) EWAN MURRAY. P. GRANT.

Colin Maclaren, Merchant in *Stirling*, aged twenty-two Years, unmarried, sworn, purged and examined *ut supra*, depones, That, in the Month of April last, the Deponent happened to lodge in the House of *Alexander Campbell* in *Teynaluib* a Night, and in the Morning about Nine o'Clock the Pannel alighted there; and having breakfasted and got a Dram, the Deponent understanding that the Pannel was going the same Road with him towards *Sterling*, desired the Pannel to give the Landlord a Dram, that they might go on their Journey; that the Pannel answered, that he did not think he should help the Landlord, or any of his Name, to a Dram or any thing else, if it was not to the Gibbet: That he had mentioned to the Landlord, that *Glenure* had warned him to remove from his Possession in *Ardshiel*; therefore the Landlord answered, that it seemed, if they were on the Gibbet, the Pannel would draw down their Feet; and he supposed it was on *Glenure's* Account; to which the Pannel answered, he could not say but it was; upon which the Pannel and Landlord entered into an Altercation, together

touching the Justice of that Removing; and, as the Deponent had no Concern in the Matter, he took little Notice to what passed. Depones, That, upon the Landlord's using the above Expression, that, if they were on the Gibbet, the Pannel would draw down their Feet, the Pannel's Answer was in these Words, that he did not chuse to be an Executioner, but he could draw down some of them. Depones, That from *Teynaluib* the Pannel and Deponent proceeded on their Journey, and about Eleven o'Clock, or Mid-day, came to the House of *Ewan Murray*, the preceding Witness: That there the Pannel again complained of *Glenure's* removing him; told him it was one *Campbell* that was to succeed in his Room: That he did not know any Reason for *Glenure's* using him so; for that they were Cousins: And, upon the Deponent's saying, that possibly it was none of *Glenure's* Fault, and that he could not help it, the Pannel said, he did not know any Business that either the Exchequer or the Factors had to turn out Tenants, while they paid their Rent; and said, that he was going to *Edinburgh* to get a Suspension of the Decreet of Removing. Depones, That, having left *Ewan Murray's* House together, and the said *Ewan* in Company with them, the Conversation turned upon an Officer in the Army, who had been broke for Cowardice; and the Deponent said, he was surpris'd with it; for that that Officer, as the Deponent heard, had not declined to accept of a Challenge to fight from *Glenure*; that thereupon the Pannel said, that he esteemed that Officer a better Man than *Glenure*: And *Ewan Murray* having contradicted his being so good a Man as *Glenure*, the Pannel said, that he knew the contrary; for that he himself had given *Glenure* a Challenge to fight him, which *Glenure* declined; and desired *Ewan Murray* to tell *Glenure*, that he would fight him when he would; but *Ewan Murray* declined to carry such a Message. Depones, That, after parting with *Ewan Murray*, in the Course of their Journey the Deponent found that the Removing was much at the Pannel's Heart; and the Deponent endeavoured all he could to divert the Conversation to another Subject: That the Pannel told him, that, if he failed in his Suspension at *Edinburgh*, he would carry it to the *British* Parliament; and, if he failed there, told him, after a little Pause, and with an Emphasis, that he behoved to take the only other Remedy that remained: And, being interrogate for the Pannel, depones, That, during the Conversation in *Campbell's* House, above deponed upon, the Deponent at first thought, that the Pannel had been in Joke; but afterwards it was like to become very serious; for the Landlord and he came to pretty high Words together: And, being further interrogate for the Pannel, depones, That he did not think the Pannel drunk, either in *Campbell's* House, or in *Ewan Murray's* House; but, after leaving *Murray's* House, they drank two or three Drams at a Dram-House; and, after that, the Deponent thought him much concerned with Liquor; and it was after taking these Drams that the Conversation between *Murray* and the Pannel, with respect to challenging *Glenure*, happened. And depones, That they had rode several Miles together, before the Conversation about the *British* Parliament; and the Deponent thought him even then still concerned with Drink. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) COLIN MACLAREN. P. GRANT.

John

John More Maccoll, late Servant to the Pannel, aged thirty-seven, married, Witness cited, solemnly sworn, purged and examined by the sworn Interpreter above-named, depones, That he was present at a Conversation that happened betwixt the Pannel, *John Beg* and *Dugald Maccolls*, both Servants to the Pannel, in the Pannel's Brew-house at *Aucharn*, before Day-light upon a Morning, about *Yule* last, as the Deponent best remembers: That the Deponent was then employed in distilling the second Draught of a Brewing of *Aquavitæ*; and the Pannel ordered the Deponent to give him and the People present a Dram, which the Deponent did: That the Pannel said, *Glenure* would not take the Rent from the Tenants of *Aucharn*, Part of the *Ardshiel* Estate, because they had given the Pannel some Bear, which *Glenure* alledged they ought to have paid him: That the Pannel complained it was hard to refuse the Rent in Money from the Tenants in a scarce Year; and observed, that it would be of no great Consequence to him, the Pannel, though he should pay back the Bear, in Comparison to what it would be to the Tenants for subsequent Years, in case they were obliged to pay their Farm Bear and Meal; and said, the Tenants or Commoners were likely to be very ill off; for, if *Glenure* went on in the Way he then did, it was likely he would be Laird of *Appin* in a very short Time; and that he knew once a Set of Commoners in *Appin*, who would not allow *Glenure* to go on at such a Rate: To which the Deponent and the rest answered, that they knew no Commoners in the Country that could strive or contend with *Glenure* in that Manner. Depones, That he had no Conversation with the said *John* or *Dugald Maccolls* that Day, nor any Time thereafter, about the Import of the above Communing. Depones, That in Seed-Time last, when they were harrowing the Tath-field in *Aucharn*, being the very Day that *James Stewart* went for *Edinburgh*, *Allan Breck Stewart* came to the Deponent, and the said *Dugald Maccoll*, as they were yoking the Horses; and the Deponent, having asked him some Questions about *France*, said, he did not see any of the People that went over there, come back in so good a Way as they went over: To which *Allan Breck* replied, that they came back better than they went; and that they, meaning the People of *Appin*, might be much better, if they were worth themselves: Upon the Deponent's answering, that he did not see how that could happen, *Allan Breck* answered, if they, the Commoners, were worth themselves, they could keep out *Glenure*, and hinder him from oppressing them; in which Case, they would not be banished from their natural Possessions; and, upon the Deponent's answering, he did not see how any body could pretend to strive or struggle with *Glenure* in that Way, as he had the Laws of the King and Country for him, and no body to support or take them by the Hand, after their so doing, *Allan* said, he had it in his Power to save or protect any body that would put *Glenure* from trampling upon the Country in the Manner he then did: And, being interrogate for the Pannel, what Dress the said *Allan Breck* used to wear, when he saw him at *Aucharn*? depones, That he always saw him wear a blue side Coat, red Waistcoat, and black Breeches, with a Hat and Feather, except twice that he saw him in a black short Coat, with white metal Buttons. The first Time he saw him with the said short Coat, was, when the Pannel was at

Edinburgh; and the said *Allan Breck* told, he was going to *Rannoch*, and actually went away, and staid several Days; and the other was upon *Monday* the 11th Day of *May* last, when he saw the said *Allan Breck* come to *Aucharn* dressed in his long Cloaths, and came directly where the Pannel, *Allan* his Son, *John Beg Maccoll*, and the Deponent, were covering Potatoes: That, when *Allan* came up, they were resting themselves, and sitting by one another: That *Allan Breck* sat with them; and all the Conversation that the Deponent noticed was, some Questions about the Welfare of the People of *Glencrearan*: And that he did not observe the Pannel have any private Conversation with the said *Allan Breck*; for that, a very little Time after *Allan Breck's* Arrival, the Pannel had a Message to meet Mr. *Campbell* of *Airds* at *Keel*; and that this happened after Mid-day: That the Pannel immediately, upon receiving the above Message, went away in order to meet *Airds*: And that no body went along with the Pannel, *Allan Breck* having staid with them: That a little thereafter, the Deponent, *Allan Stewart* the Pannel's Son, and *John Beg Maccoll*, went to cover Potatoes at a greater Distance from the Pannel's House; that *Allan Breck* staid behind; and, some Time thereafter, *Allan Breck* came where they were working, dressed in a black short Coat with white metal Buttons and black Breeches, and wrought with them in covering Potatoes. Depones, That the Deponent came very early upon *Tuesday* Morning to the Pannel's Son, and found the Servants getting up: That the Deponent went to *Aucharn*, at about a Quarter of a Mile's Distance, for a Slaughter-spade; and, as he was returning from thence, he met the Pannel going for *Appin's* House; and, when he came to the Pannel's House, he saw *Allan Breck* sitting in a Room, dressed in the black short Coat, combing his Hair. Depones, he never saw the said *Allan Breck* at Work any of the Times he saw him at *Aucharn*, except covering the Potatoes upon the *Monday* Evening as aforesaid. *Causa scientie patet*. And this is the Truth, as he shall answer to God.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

Dugald Maccoll, Servant to the Pannel, unmarried, aged twenty-four Years, Witness cited, sworn, purged and examined *ut supra*, by the forenamed sworn Interpreter, depones, That, in the latter End of Winter last, about Day-break, the Deponent was alongst with the Pannel, in his Brew-house at *Aucharn*, in Company with *John More Maccoll*, and *John Beg Maccoll*, both Servants to the Pannel: That, after taking a Dram of Whisky, the Conversation fell upon the Tenants of *Aucharn*, a Part of the forfeited Estate of *Ardshiel*; and that it was then mentioned, that they were in use to pay some Bear and Meal as Part of their Rent: That the Tenants of the said Town of *Aucharn* had paid the Bear to the Pannel they were in use to pay, and made Offer of Money for that and the rest of the Rent to *Glenure*, the Factor; and that *Glenure* refused to take the Money, insisting to have the Victual paid in Kind as formerly: Upon which the Pannel said, that *Glenure* was like to hurt him, the said *James Stewart*, as much as was in his Power; for, as the Tenants had paid him the Bear in use to be paid out of that Farm, and turned it to his own Use, he would be obliged to answer to *Glenure* for that Article of the Rent; but added, that that was not the worst of

of it, and that, if he, *Glenure*, went on in the same Way, it was likely he would in five Years be Laird of *Appin*; and, upon the Deponent and the said *John More* and *John Beg Maccoll's* saying, that that was likely to happen, the said *James Stewart*, the Pannel, answered, that that was the Fault of the Commoners or Followers; for however he, or People in Circumstances like him, would shift for themselves, they, the Commoners, would be very badly off: And added, that he knew Commoners once in *Appin*, who would not allow *Glenure* to go on at such a Rate; to which the Deponent and the others present answered, that they believed that there might be Commoners once in *Appin* who would do so. Depones, That he does not remember that he and *John Beg Maccoll* had, at any Time that Day or thereafter, any Communing about the Sense or Meaning of this Conversation that happened in the Brew-house. Depones, That, upon the last Night of *December* last, *Glenure* and *John Campbell* of *Ballievolan* were in Company with the Pannel, *John Stewart* younger of *Ballachelish*, and *James Stewart* in *Ardnamurchan*, Uncle to the Pannel, in the House of *John Breck Maccombie*, Change-keeper at *Kintalline*; and, after Night-fall, by the Desire of his Mistress, the Deponent went there to attend his Master Home; that, after he came there, *Glenure*, the Pannel, and his Company, drank till it was late at Night, and the Deponent heard them speaking together, but, as it was in *English*, he did not understand what they said: That at last they began to speak very loud, and got up upon their Feet: That the Deponent, and several other Commoners, who happened to be at the House at the Time, apprehending they were going to quarrel, went into the Room in order to prevent it: That they still spoke loud, and in *English*; and the Deponent, with the Assistance of *John Maccombie*, alias *John* the Son of *Duncan* and Grandson of *Malcolm*, and another *John Maccombie*, alias the Son of *Duncan* and Grandson of *Duncan*, both then Tenants in *Ardshiel*, and *John Roy Maccorquodale*, then in *Lettermore*, now in *Ballachelish*; carried the Pannel, and the said *James Stewart* his Uncle, out of the Room: That they insisted for being back to the Company, but that young *Ballachelish* came to them, and told them that they must not go back, and that they ought to be good Friends: Upon which the Pannel said, he would not stir from the Place, till he was told by *Glenure* if he would go to his House next Day; that *Ballachelish* said he would go and get Notice, and accordingly went into the Room, and returned back in a little Time, and told the Pannel that *Glenure* promised to see him at his House next Day: That the Pannel asked if *Glenure* had promised so upon his Honour; and, upon *Ballachelish* answering he did, the Deponent and the said *John Roy Maccorquodale* carried the Pannel over a Burn adjoining to the said House of *Kintalline* in the Road to *Aucharn*; upon which the Pannel told them, they were better at that than in doing what they ought to do, and that it was to side with *Glenure*, not with him, that they were there; and asked the Tenants then present, what kept them there so late, and why they did not go Home in proper Time of Night? And, they answering that they were there waiting upon him, the Pannel replied, that it was not waiting upon him they were, but upon *Glenure*, to see what they could get by him: That he continued at such Conversation as this, till they came to the Fields

of *Auchindarroch*, hard by *Aucharn*, when the said *John Maccombie*, alias the Son of *Duncan Macilchallum*, said, that he was told that *Glenure* had a drawn Hanger in the Room where they had been drinking, after the Pannel and his Uncle were carried out, declaring that he would not allow them to return to his Company any more that Night; upon which the Pannel asked them, why he did not tell him that before he came away from the House, that he might see if it was true, and what *Glenure* meant by it? And insisted then on going back to know the Truth of it; but, the Deponent and the other Tenants declaring they would not allow him to go back, he bid them go about their Business and leave him, which they accordingly did; and the Pannel, and the said *James Stewart* his Uncle, went to *Aucharn*, attended only, as he remembers, by the Deponent and a Boy-herd named *Duncan Maccannanich*: That, when this happened, the Pannel *James Stewart* and his Uncle were very drunk. Depones, That, some Time in *March* last, when the Deponent and *John More Maccoll* were harrowing the Tath-field at *Aucharn*, being the same Day, or the Day after the Pannel went for *Edinburgh*, *Allan Breck Stewart* walked for a good Time about the Field; and, as they were loosing their Horses, the said *Allan Breck* and they entered into Conversation about *France*, and People from this Country there; and *John More Maccoll* asked if there was any Prospect of any of them's coming back? Upon *Allan Breck's* answering he was afraid they would not, *John More* said, he wished that none had ever come from that Country; in which the said *Allan* joined him, saying, it had dispersed the Friends he most regarded; and that it was a particular Misfortune that the Management of any Concerns they left behind them, fell into the Hands of one that was about to shew them no manner of Favour; and declared that he meant *Glenure*; and told that the Commoners of *Appin* were little worth, when they did not take him out of the Way before now; and, upon their saying no body would run that Risque, not knowing who would stand by them, *Allan* answered, that he knew a Way to convey out of the Way any Person that would do so, in a Way that he would never be caught; and also said, that they, and the Tribe they were of, (meaning the *Maccolls*) were not like to be the least Sufferers by *Glenure's* Proceedings. Depones, That the first Time he saw *Allan Breck Stewart* at *Aucharn*, was about the Beginning of the Oat-sowing, which was pretty far advanced in the Month of *March*: That he was then dressed in a side blue Coat, red Waistcoat, and black Breeches, with a Hat and Feather: That, while he was in the Country of *Appin*, he was for the most Part at the Pannel's House; but that he was absent once for a considerable Time, when he said he was at *Rannoch*: That the Deponent saw him when he said he was going to *Rannoch*: That he was then dressed in a black short Coat with silver Buttons belonging to the Pannel, blue Trowsers striped with white, and a dun great Coat, which the Deponent thinks belonged to *Allan Stewart*, the Pannel's Son; and, being now shown the two black short Coats in the Clerk's Hands, depones, That the Coat with the silver Buttons on the Pockets belonged to the Pannel, and is the same the said *Allan Breck* had on when he said he was going to *Rannoch* as afore-said; and the other Coat with no Buttons upon the Pocket belonged to *Allan Stewart*, the Pannel's Son.

Son. Depones, That he saw him have on the same Dress when he came back from *Rannoch*. Depones, That he does not mind to have seen the said *Allan Breck* wear the said short Coat at any other Time, except upon *Monday* and *Tuesday* the 11th and 12th of *May* last. Depones, That upon *Monday* the 11th Day of *May* last; he went to the Wood for Fire-Wood, and, upon his coming Home in the Afternoon; he found the said *Allan Breck* dressed in the said black short Coat, working at Potatoes along with *John More Maccoll* and *John Beg Maccoll*, two of the Pannel's Servants, having on his own black Breeches. Depones, That he saw the said *Allan Breck*, upon *Tuesday* Morning the 12th of *May* last, in the Pannel's House, dressed in the said black Coat belonging to the Pannel, and blue Trowfers striped with white, such as now shown to him in the Clerk's Hands, and a blue Bonnet. Depones, That the Deponent was told the said *Allan Breck* left *Aucharn* early upon the said *Tuesday*, and the Deponent has not seen him since. Depones, That upon *Friday* Evening the 15th of *May* last, the Deponent and *John Beg Maccoll* overtook *Katharine Maccoll*, Servant to the Pannel, in the Brae above the House of *Aucharn*, with a Pock or Sack, and something in it, under her Arm; the Deponent asked her; what she had got in the Sack? To which she answered, that it was *Allan Breck's* Cloaths, and that she was going to hide them; and the Deponent and the said *John Beg Maccoll* saw her hide the Sack in which the said Cloaths were; and that this happened about Four o'Clock in the said Afternoon. Depones; That upon *Thursday* Evening the 14th Day of *May* last, after Notice of *Glenure's* Murder came to *Aucharn*, *Allan Stewart*, Son to the Pannel, desired the Deponent and *John Beg Maccoll* to hide a large *Spanish* Gun that used to stand in the Brew-house; and told them, that he himself had concealed a lesser Gun; that used to stand at the End of the Girnel in the Barn, under the said Girnel, where he thought it would be safe. Depones; That the Deponent, and the said *John Beg Maccoll*, on the said *Thursday* Evening, hid the large or *Spanish* Gun, that used to stand in the Brew-house, under the Thatch of the Sheep-house, and three Swords they took out of the Barn, and a fourth that was brought by *John Beg Maccoll*; the Deponent does not know from whence, under the Thatch of the Back of the Barn. Depones; That about Four o'Clock, *Friday* the 15th of *May* last; the Pannel desired the Deponent to carry the above Arms from the Houses; and hid them in the Moor: That accordingly the Deponent; and *John Beg Maccoll*, took the aforesaid large Gun from the Back of the Sheep-house under the Thatch, and the said four Swords from under the Thatch of the Barn, and found the Gun that used to stand in the Barn under the Girnel, where the said *Allan Stewart*; the Pannel's Son, said he hid it, and carried them to the Moor, and hid them in the Hole of a Rock; above the Peat-Moss: And that it was told at *Aucharn*, that there were Soldiers coming to the Country, before these Arms were hid in the Hill as above. Depones, That the said *John Beg Maccoll*, and the Deponent, had the above Arms, when they overtook *Katharine Maccoll* as aforesaid with the Cloaths. Depones, That the large or *Spanish* Gun; that stood in the Brew-house, was charged with Powder and small Drops; and that there was no Shot in the small or lesser Gun, that used to stand at the End of the Girnel in the Barn; but *Allan*

Stewart, the Pannel's Son, carried out the said Gun two or three Mornings, in order to shoot black Cocks in the latter End of *March*, or Beginning of *April* last. Depones, That *Allan Breck Stewart* was also in use to carry out the said large or *Spanish* Gun two or three Mornings, in order to shoot black Cocks; and about that Time saw him endeavour to help the Lock of the said Gun with a File: And, being interrogate for the Pannel, depones, That he, the Deponent, has no Skill about Guns; but heard the said *Allan Breck*, and *Allan Stewart*, the Pannel's Son, more than once complain, that the Guns were in bad Order. Depones, That, when the Deponent came Home from the Wood upon *Monday* the 11th Day of *May* last, the Pannel was not at Home; and the Deponent was told, he was gone to *Keels* to meet the Laird of *Airds*: And that the Deponent had gone to Bed before the Pannel came Home that Night: And that, early upon *Tuesday* Morning, when the Deponent got up, he saw the Pannel without, who told him, that he was going to *Appin's* House: And that, to the Deponent's Knowledge, *Allan Breck*; or the Pannel's Sons, were not then up: That he saw the Pannel go towards *Lettershuna*, where *Appin* lives. Depones, That *Allan Breck Stewart* left *Aucharn* before the Pannel returned from *Lettershuna*: And, upon an Interrogatory put for the Pannel, if the Pannel had given the short black Coat the Deponent saw the said *Allan Breck* wear, and which he has deponed belonged to the Pannel, was given by the Pannel to the Deponent or any other of his Servants before the said 11th of *May*, depones, That the said black Coat was not given to him; the Deponent, nor to any other of the Servants; to his Knowledge: And, being interrogate for the Pursuers, after showing him the Powder-Horn; now in the Clerk's Hands, and which had been formerly shown him when he was examined upon the Precognition, whether he had ever seen it before the Time of taking the said Precognition? depones, he never did: And, being interrogate for the Pannel, depones, That *Glenure* and *Ballieveolan* dined at the Pannel's House, in Company with the Pannel, the Day after they were like to have quarrelled at *Kintalline* as aforesaid. Depones, That it was ordinary for the Pannel to give a Dram to his Servants every Time he distilled a double Draught of Whisky. Depones, That the double Draught was a distilling; when the Deponent and the other Servants got the Dram mentioned in the first Part of this Deposition: *Causa scientie patet*. And this is the Truth, as he shall answer to God; and declares he cannot write:

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

John Beg Maccoll, Servant to *James Stewart* Pannel, aged twenty-seven Years; unmarried, sworn, purged and examined *ut supra*; by the sworn Interpreter, depones, That, the latter End of Winter, or Beginning of Spring last, early in a Morning, the Pannel gave a Dram to the Deponent, *Dougal Maccoll*, and *John More Maccoll*, both Servants to the Pannel; in the Pannel's Brew-house: That, the Conversation falling upon *Glenure*, the Pannel complained that *Glenure* was no Friend of his; but that that was not the worst of it; but that, if he was to go on as he did; it was likely in five Years he would be Laird of *Appin*; and the Deponent and the other two *Maccolls* answering; that that was likely to happen; the Pannel replied, that he knew once a Set of Commoners in *Appin*, who would not allow *Glenure* to carry Matters with such

such a high Hand; and to which the Deponent and the other two *Maccolls* answered, that they did not believe there was any Commoner in *Appin*, that durst contend or strive with *Glenure* in such a Way: That, immediately thereafter, the Deponent and *Dougal Maccoll* went out of the Brew-house, leaving the Pannel and *John More Maccoll* there. Depones, That, after they went out of the Brew-house, either that Day, or some Time thereafter, the Deponent and *Dougal Maccoll* talked together, what the Import of this Conversation might be; and that the Deponent was at a Loss whether to consider it as an Encouragement to destroy *Glenure*, or as a Complaint against the Commoners of *Appin*, as not being so faithful to the Pannel as he expected them to be. Depones, That, in *March* last, *Allan Breck Stewart* came to the Pannel's House, late in the Evening, dressed in a blue side Coat, red Waistcoat, and black Shag Breeches, and a feathered Hat: That he looked into the Kitchen, and went immediately to the Room where the Pannel and his Family were: That afterwards he used to go to the Country to different Places, and come frequently back to the Pannel's House: That once he remained there a Week, which is the longest Time he staid there at one Time. Depones, That the said *Allan Breck Stewart* came to the Pannel's House from *Fasnaclioich* upon *Monday* the 11th of *May* last, about Mid-day, dressed as above: That, upon the Evening of the said Day, the Deponent saw the said *Allan Breck* dressed in a black short Coat with silver Buttons. Depones, That there was two short black Coats with silver Buttons in the Pannel's House; the one belonging to the Pannel, and the other to *Allan Stewart*, his Son; the Deponent does not know which of them the said *Allan Breck* had on. And depones, That the Coats were so like, that he could not distinguish the one from the other. And depones, That it was one of these black Coats he had on, the Deponent having seen him, the said *Allan Breck*, near the Houses, in his side Cloaths; and, some Time thereafter, coming from the House, dressed in the said short Coat, in the Evening of the said *Monday* the 11th of *May*, and came where the Deponent and *John More Maccoll* were covering Potatoes, and wrought with them for some Time. Depones, That, some Time thereafter, a young Lad, Brother to *Glenco*, by Name *Donald*, as the Deponent thinks, came to them, and told that *Glenure* was come Home from *Edinburgh*, and was to go to *Lochaber*; upon which, some Conversation happening about removing the Tenants, *Allan Breck* said, Devil a bit of the new Tenants would get Possession, unless they had a Warrant to show, or come in by Force. Depones, That, when the said *Allan Breck* came, upon the 11th of *May* last, to *Aucharn*, the Pannel was seeing the Deponent, *John More Maccoll*, and *Dougal Maccoll*, working at Potatoes; and that *Allan Stewart*, the Pannel's Son, was likewise there: That, when *Allan Breck* came, they were sitting all together; and that he seated himself by the Pannel, and had some Conversation in *English*, which the Deponent does not understand. Depones, That *Charles Stewart*, Son to the Pannel, and *Stewart*, Daughter to *Fasnaclioich*, came to *Aucharn* from *Fasnaclioich*, a little after the said *Allan Breck*. Depones, That, upon *Thursday* the 14th of *May* last, the Pannel gave a Letter to the Deponent, to be delivered to *Charles Stewart*, Notary Public at *Maryburgh*; and told the De-

ponent, that the Letter was to make or cause the said *Charles Stewart* come to the Country of *Appin* to protest against *Glenure*, in case he had not a sufficient Warrant to remove the Tenants of *Ardshiel*. Depones, That the Pannel desired the Deponent to make all possible Dispatch, and desire *John Breck Maccombie* at *Kintalline*, and the said *John More Maccoll*, Servant to the Pannel, who was then at *Kintalline*, to ferry the Deponent from *Kintalline* to *Onich*, being much shorter than the Ferry of *Ballachelish*. Depones, That the Pannel also told him, that he was to get some Money from *William Stewart*, Merchant at *Maryburgh*, to pay for Milk Cows that were bought for him in the Country; and that, if the Money was not sent, he would not get the Cows. Depones, That he was ferried from *Kintalline* to *Onich*, and went on to *Fort-William*, and met *Glenure* at the Three-mile Water, who asked the Deponent from whence he came? To which the Deponent answered, that he had come over *Keilis*. Depones, That, being acquainted with *Glenure's* Servant, he had some Conversation with him, and told him he was going to *Fort-William*. Depones, That he set out from *Aucharn* about Seven or Eight o'Clock in the Morning, and made all the Dispatch he could to *Fort-William*, where he arrived about Twelve o'Clock. Depones, That, when he came to *Fort-William*, he delivered the Letter he got from the Pannel to *William Stewart*, Merchant in *Maryburgh*, who told him, that *Charles Stewart*, the Notary, was not at Home, he having gone to the Braes of *Lochaber* in the Morning; and told the Deponent, that he, the said *William*, had wrote to the Pannel in the Morning; and that there was a Notary along with *Glenure*, who would serve the Pannel as well as *Glenure*. Depones, That he does not remember that he asked for any Money from *William Stewart*, nor did he give him any, but said, he would send Servants for the Cattle. Depones, That he staid a very short Time at *Fort-William*: That the said *William Stewart* asked him, if he wanted Victuals? Upon the Deponent's answering he did not, the said *William* brought him into his House, and gave him a Dram; and the Deponent immediately returned back by the short Road to the Ferry of *Ballachelish*, and found *Glenure* at the Ferry before him: That the Deponent required of the Ferry-man to ferry him immediately, and the Ferry-man desired him to stay till he would be ferried with *Glenure's* Horses; but the Deponent observed to him that the Stream was rapid, and might draw some time before they would ferry the Horses, he ought to ferry him immediately, which he accordingly did; and that this might be about Four o'Clock: That, upon his crossing the Ferry, he met *Archibald Macinish*, Ferryer upon the *Appin* Side, to whom he told where he had been, and his Errand; and that the said Ferryer told the Deponent, that he was informed by a Man, that he was going to meet *Glenure*: That the new Tenants, that were to come to *Ardshiel*, had come to *Glenduror* with their Cattle; and were to take Possession next Day; and the Deponent told him, that he did not believe they would get Possession till their Warrants were seen. Depones, That, a little thereafter, he met *Alexander Stewart* elder of *Ballachelish*, to whom he told where he had been, and his Errand, and the Conversation he had with the Ferry-man; and *Ballachelish* desired him to tell his Master, if he would send for him, he would go along with him to see *Glenure's* Warrant. Depones, That

That he passed through the Wood of *Lettermore*, and met or saw no body there : That he went then Home, and gave the Pannel an Account of his Errand : That he was hardly an Hour there, when *John Mackenzie*, *Glenure's* Servant, came to the Door calling for the Pannel : That the Pannel went immediately to the Door, and asked the Servant, what was the Matter; and what News he had? To which the Servant replied, The worst I ever had; my Master is murdered in the Wood of *Lettermore* : Upon which *James Stewart* said, Lord blefs me, was he shot? To which the Servant answered, that he was shot, and said the Pannel ought to go and take Care of his Corpse: That the Servant immediately went off, but neither the Pannel nor any of his Family went near the Corpse; and the Pannel said, that, as he and *Glenure* were not in good Terms, and some of the People that were to meet *Glenure* had Arms, he did not care to go near them, not knowing what might happen. Depones, That his Master said, that it was a dreadful Accident, and was afraid would bring Trouble on the Country; and appeared to be sorry for what had happened. Depones, That, upon the Evening of *Friday* the 15th of *May* last, the Deponent and the said *Dougal Maccoll* overtook *Katharine Maccoll*, Servant to the Pannel, going up the Brae above the House with a Sack, and something in it, under her Arm; and the said *Dougal Maccoll* asked her, what she had got there? To which she answered, that it was *Allan Breck's* Cloaths, which she was going to hide; and she hid them accordingly in the Deponent's Presence. Depones, That, when the said *Allan Breck* came first to *Aucharn*, he used to lie in a Room in the lower End of the House; but afterwards he, and the Pannel's Sons, and any young People that came about the House, when the Season was more advanced, used to lie in the Barn. Depones, That, upon the said *Friday* Evening the 15th of *May* last, *Margaret Stewart*, the Pannel's Wife, desired the Deponent and the said *Dougal Maccoll* to hide all the Arms that were about the House, as there was a Party of Soldiers coming to the Country : That accordingly they took two Guns and three Swords, and a fourth Sword was delivered to the Deponent by *Allan Stewart*, Son to the Pannel; which two Guns and four Swords the Deponent and the said *Dougal Maccoll* hid in the Brae a good Way above the Pannel's House; and the two Guns in the Clerk's Hands being shown to the Deponent, depones, That these were the same two Guns that were hid as above. Depones, That the largest of the Guns, now shown the Deponent, was loaded, and lay in the Brew-house; and the Deponent believes, that either *Allan Stewart*, the Pannel's Son, or *Allan Breck Stewart*, charged the said Gun; for the Deponent saw *Allan Breck Stewart* have the said Gun some time before, and go with it in order to shoot black Cocks : That, late on *Thursday* Evening the 14th of *May* last, after Notice came of *Glenure's* Murder, the said *Dougal Maccoll* told the Deponent, that the Pannel's Wife had desired to hide all the Arms about the House, not knowing but that some Soldiers might come to the Country; upon which the Deponent and the said *Dougal* carried the said loaded Gun from the Brew-house, and hid it under the Thatch upon the Out-side of the Sheep-house, and carried three Swords out of the Barn, and hid them under the Thatch upon the Out-side of the said Barn, being that Barn where the Pannel's Children and *Allan Breck* used to lie : That, upon their being desired by the said *Margaret Stewart* next Day to hide the Arms better, they took

the foresaid loaded Gun and three Swords out of the Places where they had hid them; and upon their inquiring for the other Gun that used to lie in the said Barn, *Allan Stewart*, the Pannel's Son, told them, he had hid it under the large Girnel in the Barn, and told them they need not stir it, as it was safe enough there; but they answered, as they were hiding the rest, they would hide that likewise; and accordingly the Deponent went and took the said Gun from the Girnel, where the said *Allan* told him he had hid it, and concealed them all together as above: Upon Recollection depones, That it was upon the *Thursday* Evening the Deponent and the said *Dougal Maccoll* inquired about the little Gun which lay at the End of the Girnel in the Barn, and that the said *Allan Stewart*, Son to the Pannel, told them he had hid it, as above, under the Girnel. Depones, so far as he can remember, he did not see the said little Gun upon *Thursday*, but saw it stand as above, either upon *Tuesday* or *Wednesday* preceding, and used for some Time preceding to see it stand in the same Place. Depones, That it was upon *Friday* Evening the Deponent took the said Gun from under the Girnel, where the said *Allan* had hid it; and adds, that the Reason he did not see it on the *Thursday* was, that he was from Home almost all that Day. Depones, That he did not see the said little Gun loaded since *March* last, when the black Cocks were crouding; that then there was a Shot of Drops in it, and the said *Allan Breck* carried it out one Morning, and told that it misgave with him thrice at a black Cock, and shot with it the fourth Time without killing the black Cock. Depones, That the Brew-house, where the said large Gun used to lie, was always locked, but when People were in it : That the Barn, where the said little Gun stood, had a Lock and Key, but was not in use to be locked since the Crop was removed out of it, which was at the Time they were done with their Oat-feed, which was some Time before *May*-Day. And, being interrogate for the Pannel, depones, That neither of the Guns were in good Order : That the large or loaded Gun was in use, when going to be snapped, to stand at Half-cock, and the little Gun was in use to snap or misfire. Depones, That the little Gun had an old wore Flint in it; and that he observed this Flint in the said Gun, when he was in use to see it stand at the End of the Girnel as above; but did not observe whether it had a Flint or no, when he took it from under the Girnel as above. Depones, That he knows no Fault the Lock of the little Gun had, but its being in use to misfire; and that the Lock was on the said Gun when he hid it the *Friday* Evening as above. Depones, That when *Allan Breck* came, upon *Monday* the 11th of *May* last, to the Place where the Pannel, Deponent, and others, were covering Potatoes as above, they had sit together but for about a Quarter of an Hour; the Deponent went to work at Potatoes at a greater Distance, and, before he went away, heard a Message had come for his Master, to meet *Airds* at *Keil*, and heard his Master speak of going there; but when he went, or who went along with him, the Deponent does not know : That the Deponent continued working at the Potatoes till the Evening, and the Pannel was not come Home when he came from his Work : That the Pannel came Home at Bed-time, accompanied with *John More Macilichattan*, who lay with the Deponent that Night. Depones, That it was a while after (the Deponent cannot say how long) the Pannel parted from the Deponent,

and

and the other People that wrought at the Potatoe-Ground: That *Allan Breck* came dressed in the black short Coat as above, and wrought with them at the Potatoes. Depones, That they all got up together, after the said *Allan Breck* came to them, and sat with them as above; and he thinks the Pannel went then towards the House. Depones, That *Allan Breck* and the Pannel were in use to converse together, sometimes in *English*, and sometimes in the *Irish* Language. Depones, That, when he went to *Fort-William*, with the above Letter, to *Charles Stewart*, the Notary, he had no Orders from his Master to inquire after the Motions of *Glenure*, or to acquaint any body thereof. Depones, That he never saw the said *Allan Breck Stewart* change his Cloaths, and put on short Cloaths, at any Time, at the said *James Stewart's* House, before the said 11th of *May*; but that, as the Deponent best remembers, at the Time the said *James Stewart* was at *Edinburgh*, he saw the said *Allan Breck* dressed in a black short Coat, a dun big Coat which the Deponent thinks belonged to *Allan Stewart*, the Pannel's Son; and he heard the said *Allan Breck*, or others about the House say, that he was then going to *Rannoch*. *Causa scientiæ patet*. And this is Truth, as he shall answer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Captain *David Chapeau*, in General *Pulteney's* Regiment of Foot, married, aged fifty-two, Witness cited, sworn, purged and examined *ut supra*, depones, That, upon the 23d of *May* last, he was informed by Mr. *Campbell* of *Barcaldine*, that there were some Arms hid among the Rocks near the Pannel's House; and was, at the same Time, shown the Paragraph of a Letter from Colonel *Crawfurd*, who commands the Regiment to which the Deponent belongs, addressed to *Barcaldine*, wherein the Colonel desired the Deponent to go in Search of such Arms. Accordingly the Deponent went that Day with a Party, and took along with him Mr. *Patrick Campbell* of *Auchincallan*, to direct him the Road; and, when they came to a Hill above the Pannel's House, Mr. *Campbell* found concealed in a Hill above the Pannel's House two Muskets and four broad Swords, whereof having informed the Deponent, the Deponent went and saw them taken out. And the Muskets or Fuzees, now in the Clerk's Hands, being shown to the Deponent, depones, That they are the very same Fuzees he saw taken out as aforesaid: And depones, That the largest of the two Fuzees was loaded, and the other not; and that, having drawn the Shot of the loaded Piece, found it to be loaded with small Shot, by which he means Drops and small Slug mixed together: And it appeared to the Deponent, that the said unloaded Piece had been lately fired, having put his Finger in the Muzzle, which he brought out black. And, being interrogate for the Pannel, whether a Piece which is laid by foul, will not, after a Month's Time, file one's Finger, when put in the Muzzle of it, as well as when it has been lately fired? depones, He cannot tell, not being accustomed to see Arms used so. And depones, That the said unloaded Piece had a Lock upon it at the Time; but which had only one Screw-nail in it. But depones, That a Gun, having a Lock with one Screw-nail, may be fit enough to be fired with; and adds, That that End of the Lock wanting the Nail, was tied to the Stock by a String. Depones, That the Pieces,

or Fuzees, were carried along to *Fort-William*, where the Deponent delivered them over to the Adjutant at *Fort-William*; and does not know by what Means the said Lock upon the small Piece, now amissing, was lost; but believes it to have been by Accident. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) D. CHAPEAU. JA. FERGUSON.

Patrick Campbell in *Auchincallan*, married, aged thirty-three Years, Witness cited, sworn, purged and examined *ut supra*, depones, That some Time in *May* last, he thinks on the 23d, he was called by Captain *Chapeau* to go along with him to *Aucharn* in Search of Arms; and, having come to a Moss, above the Pannel's House of *Aucharn*, the Deponent discovered two Guns in a Cove; whereupon he immediately called to the Captain, who was with him, when they were taken out of the Cove; as also, there was also there three or four broad Swords. Depones, That one of the Guns was heavier than the other; and the lightest Gun had a Stick laid along the Lock tied by a String about the Stock: But, whether the said Lock had any Screw-nail, or not, he does not remember; and that these Arms were carried away by Captain *Chapeau*. Depones, That the lightest of the said two Guns was unloaded, and the heaviest loaded: That he saw the Shot of the loaded Gun drawn, which consisted of Drops; with some small Slug among them. Depones, That, in order to know whether the unloaded Piece had been lately fired, several put their Finger in the Muzzle of it; and particularly the Deponent; and the Finger coming out black, he, and the rest with him, from thence concluded, that it had been lately fired. And, being interrogate for the Pannel, whether a Musket that has been laid by foul, after firing, will not, in like Manner, file a Man's Finger put in the Muzzle of it, after it has been fired a Month or longer before? depones, that he never made that Trial upon a Gun that he knew to have been so long before fired. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) PAT. CAMPBELL. JA. FERGUSON.

William Stewart, Merchant in *Maryburgh*, aged thirty-six Years, married, sworn, purged and examined *ut supra*; and, being shown a Letter, dated at *Maryburgh* the 14th of *May* last, signed *William Stewart*, and addressed on the Back to the Pannel, being the Writing Number 10. in the Inventory subjoined to the Libel; depones, That the Letter is of his Hand-writing, and was subscribed by him, and sent to the Pannel, of the Date it bears, by *Ewan Mackenzie*, a common Carrier in *Maryburgh*. And, being also shown a Letter dated at *Aucharn* the 14th of *May* last, Eight o'Clock in the Morning, signed *James Stewart*, and addressed on the Back to Mr. *Charles Stewart*, Writer at *Auchintour* depones, That the said Letter was wrote by the Pannel, and sent, of the Date it bears, by *John Beg Maccoll*, and in Absence of the said *Charles Stewart*, who was not then at *Maryburgh*, was delivered by the said *Maccoll* to the Deponent, who broke it open, and told *Maccoll*, that *Charles Stewart* was not then in *Maryburgh*, but that he expected him that Night, but thought that he could not go along with *Maccoll*: That *Maccoll* asked the Deponent, if he should wait for him, or go after him? The Deponent answered, it was needless; for, if *Charles Stewart* could

could go, he would take a Boat. And, being interrogate whether he wrote any Answer by *John Maccoll*, or if he gave him any verbal Answer to the Postscript, wherein the Pannel wrote to *Charles Stewart*, to tell the Deponent to send him eight Pounds Sterling? depones, he gave no Answer in Writing; and thinks he did not give any verbal Answer, if it was not, that he bid him tell his Master he was not in Cash, which was the Case. And depones, That the Deponent was himself intended by the *William* in the Postscript. Depones, That *Maccoll* did not stay three Minutes with the Deponent, when he went away. Depones, that the next Day, being *Friday*, or the Day thereafter, the Deponent had a Message from the Pannel about Ten o'Clock Forenoon, or betwixt Ten and Twelve, by *Alexander Stewart*, Packman, who told the Deponent, that he was sent by the Pannel to *Glenevis*, and was ordered in his Way to call at the Deponent to send the Pannel five Pounds Sterling; and that his Errand to *Glenevis* was, to desire him to send for a Horse that he had bought from the Pannel: That the Deponent told the Packman, that he was not in Cash, and could not send the five Pounds; upon which the Packman said, that the five Pounds was to relieve some Cows that the Pannel had bought for the Deponent at *Ardshiel*; and, if the Deponent did not send the Money, he could not get the Cows: That the Deponent said, he was indifferent, but had not the Money to send; upon which the Deponent's Wife desired the Packman to go forward to *Glenevis*, and to call there in his Return, and he would get the Money, because they could not conveniently want the Cows: That the Packman accordingly went away; and the Deponent's Wife, as she afterwards told him, for he was not present, gave him three Guineas: That the Deponent is sure the Money was not given on a *Sunday*, and thinks it was on a *Saturday*; and therefore believes it was upon *Friday* the 15th that the Packman first called the Deponent, being certain that a Night intervened betwixt his calling and getting the Money. Depones, That he had no Conversation with the Packman touching *Allan Breck Stewart*, whose Name was not mentioned by either of them; but the Deponent asked him, if he had come by the Road where that unlucky Murder of *Glenure* had happened? And the Packman told him, he did; but the Deponent did not ask him who was suspected for it; nor had any other Conversation on that Subject, there being a great many People present in the Shop at the Time. Depones, That the Deponent received two of the Cows about eight or ten Days after, and other two he did not get at all. And being interrogate for the Pannel, depones, That, upon *Allan Breck Stewart's* first coming to this Country, which was in the Month of *February* or *March* last, the Deponent saw him at *Edinburgh*: That thereafter, upon the 1st of *May* last, the Deponent happening to be at the Pannel's House, *Allan Breck Stewart* came there from *Rannoch*, and was dressed in a short black Coat with clear Buttons, such as these now lying in the Court. Depones, That when the Deponent saw *Allan Breck Stewart* at *Edinburgh*, which, he thinks, was in *February*, he told the Deponent, that it was then but three or four Days since he arrived from *France*. Depones, That, at that Time, *Allan Breck Stewart* was dressed in long Cloaths, a blue Coat, and, as the Deponent thinks, a red Vest, a Hat

feathered in the Inside. Depones, That, when the Deponent was at the Pannel's, the 1st of *May*, *Charles Stewart* was there also, in order to go to *Glenure*, and intimate a Sift that had been obtained in Name of the Tenants of *Ardshiel*, upon a Bill of Suspension of a Removing against them. Depones, That *Allan Breck Stewart* told the Deponent, that he had been a Soldier in the King's Troops at the Battle of *Preston*; and he thinks, he said, it was in *Lascelles'* Regiment, but is not positive, whether it was *Lascelles'* or *Murray's*. And depones, That thereafter he was in the Rebellion. Depones, That, when he was at the Pannel's House, the 1st of *May*, as aforesaid, he did not sleep within the Pannel's House, and seemed to be on the Watch, lest he should be searched for; and, being interrogate, whether *Allan Breck Stewart* did not then lie in the Barn, and some of the Pannel's Children with him? he says, it is very probable he might; but the Deponent knows nothing of it; for the Deponent saw him next Morning, and, he thinks, breakfasted with him at the Pannel's House. Depones, That the Deponent is first Cousin to the Pannel, and also his Brother-in-law. Depones, That, before *Charles Stewart* went with the Tenants to *Glenure's* House, upon the 1st of *May*, the Deponent heard the Pannel say to the Tenants, that they might go, or not, as they thought proper; but he would be far from advising them, *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) WILLIAM STEWART. P. GRANT.

Barbara Watt, Spouse to *William Stewart*, Merchant in *Maryburgh*, aged twenty-eight Years, sworn, purged and examined *ut supra*, depones, That the Day immediately after the Murder of *Glenure*, about Mid-day, *Alexander Stewart*, Packman, brought the Deponent's Husband, the preceding Witness, a Message from the Pannel, to send him five Pounds Sterling to pay for some Cows that the Pannel had bought for him: That the Deponent's Husband was angry at the Message, and said, that he had not then the Money to give, having given away some Money that Morning; but that tho' he had it, he would not send it; and the Packman answered, that he was a sufficient *but* himself for all the Sum, tho' the Pannel had not sent for it: That the Packman told at the same Time, that he was going to *Glenevis* on some Message from the Pannel touching a Horse; therefore the Deponent interposed, and desired the Packman to call there in his Return from *Glenevis*, and he would get the Money; for that they behoved to have the Cows to stock a Farm they had: That this Conversation happened in the Deponent's Shop, where several other Persons were present. Depones, That, next Day in the Afternoon, the Deponent's Husband not being then at Home, the Deponent met the Packman in the Street of *Maryburgh*, and happening to have three Guineas then in her Purse, she gave them to him there in the Street, and called her Servant-Maid to be Witness, because there was no Letter from the Pannel, nor Receipt to be given by the Packman. *Causa scientiæ patet*. And this is Truth, as she shall answer to God.

(Signed) BARBARA WATT. P. GRANT.

Alexander Stewart, travelling Packman in *Appin*, aged thirty, unmarried, Witness cited, sworn,

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purged,

purged and examined *ut supra*, by *Archibald Campbell*, Writer in *Inverary*, sworn Interpreter foresaid, depones, That, upon *Friday* the 15th Day of *May* last, about Twelve o'Clock, the Pannel desired the Deponent to go to *Fort-William* to *William Stewart*, Merchant there, and get from him five Pounds, or five Guineas; and told the Deponent, that his Friend *Allan Breck* was about to leave the Country, as there were Troops coming into it, and that he might be suspected of *Glennure's* Murder; and that it was incumbent upon him, the Pannel, to supply the said *Allan Breck* in Money; and the Pannel desired the Deponent to tell the said *William Stewart*, that he must send him Money, tho' he should borrow it from twenty Purfes; and desired him also to tell the said *William* to give Credit in five Pounds Sterling to *John Breck Maccoll*, Bouman to *Appin* at *Koalisnacooan*, in case he came to demand such a Sum; and the Pannel desired the Deponent to demand four Pounds Sterling more from the said *William*, as the Price of a Couple of Milk Cows bought for him. Depones, That, in Consequence of the above Message, he went to *Fort-William*, where he arrived early in the Evening: That he met the said *William Stewart*, and demanded from him for the Use of the Pannel the two Sums above-mentioned: That the said *William* told him he had not Money, but desired the Deponent to go to *Glenevis*, and that he, the said *William*, had Business to *Glenevis*, would meet the Deponent there in the Morning, and give him his Errand. Depones, That the Pannel desired the Deponent to tell the said *William Stewart* to send Notice to *Glenevis*, that he should send for a stoned Horse *Glenevis* had bought from the Pannel. Depones, That he went to *Glenevis*, where he arrived about Sun-set, and staid there the said *Friday's* Night: That, as the said *William* did not come there *Saturday* Morning, the 16th Day of *May* last, the Deponent went back to *Fort-William*, and met the said *William Stewart* upon the Street, and asked him if his Answer was ready? That the said *William* said, that he would let him go immediately, and went into his own House, and immediately thereafter *Mrs. Stewart*, Spouse to the said *William*, came to the Door, and gave the Deponent three Guineas, with which the Deponent went back immediately to *Aucharn*, and arrived there in the Evening of the said *Saturday* the 16th of *May*: That when he came to *Aucharn*, the Pannel was not at Home; but soon after the Deponent's Arrival, Notice came, that the Pannel, and *Allan Stewart* his Son, were made Prisoners at *Inshaig*, a Place of about a Quarter of a Mile from *Aucharn*: That, immediately upon this Notice, *Mrs. Stewart* the Pannel's Wife, and the Deponent, went to *Inshaig*, and by the Way the Deponent offered the three Guineas he had brought from *Fort-William* to *Mrs. Stewart*, but she desired him to keep them: That, upon their Arrival at *Inshaig*, they found the Pannel a Prisoner; but *Mrs. Stewart* and the Deponent having had Access to converse with the Pannel apart, the Pannel asked the Deponent, what Money he brought from *Fort-William*? And upon the Deponent's telling him, that he brought three Guineas, the Pannel pulled a green Purse out of his Pocket, out of which he took two Guineas, and gave them to *Mrs. Stewart*, and *Mrs. Stewart* delivered the two Guineas immediately to the Deponent; and the Pannel desired, that the five Guineas should be sent to that

unhappy Man, meaning *Allan Breck*, to see if he could make his Escape; and pitched upon the Deponent as a Person that should go with the Money; and does not remember positively, that the Pannel spoke about *Allan Breck's* Cloaths: That soon thereafter the Pannel was carried off by a Party to *Fort-William*, and the Deponent returned to *Aucharn* with the Pannel's Wife: That the Party and Pannel called at *Aucharn*, and took a Dram; and upon their going off, *Mrs. Stewart*, the Pannel's Wife, told the Deponent, that he must go to *Allan Breck* with the five Guineas and his Cloaths; and upon the Deponent's inquiring where he would find him? *Mrs. Stewart* told him, that he would cast up in *Koalisnacooan*. Depones, That, some Time after Night-fall, the Deponent got his Supper at *Aucharn*, and how soon he was done eating, *Mrs. Stewart*, the Pannel's Wife, carried the Deponent to the Back of the Brew-house, where there lay a Sack, out of which the said *Mrs. Stewart* took a blue side Coat, red Waistcoat, black Breeches, a Hat, and some Shirts, all which she delivered to the Deponent, ordering him to go with the Cloaths and Money to *Koalisnacooan* immediately, and deliver them to *John Breck Maccoll*, Bouman to *Appin*, if he did not meet *Allan Breck* himself. Depones, That the said *Mrs. Stewart* directed the Deponent not to carry the Cloaths to *John Breck Maccoll's* House, lest any body might see them. Depones, That he declined going, and told *Mrs. Stewart* that she might send some other Person, and that, at any rate, he did not chuse to go alone in the Night-time; but that *Mrs. Stewart* insisted upon his going, telling there was no other Body she could send, as both her Servants were gone to *Fort-William*, and desired the Deponent to carry his Sister *Margaret Stewart* a Part of the Way with him: That accordingly the said *Margaret* his Sister went along with the Deponent as far as *Larich* in *Glenco*, where she parted with him about Day-light *Sunday* Morning: That thereafter the Deponent travelled alone to *Koalisnacooan*, and left the Cloaths, as directed, at the Root of a Fir-tree, at some Distance from the Houses; and as the Deponent was going to the House, he met said *John Breck Maccoll*, and asked him if *Allan Breck* was there? And upon his denying that he was there, the Deponent expressed some Surprize, and told that he was sent with Money and Cloaths to him; told from whence he came; and how he got the Money and Cloaths above-mentioned; upon which the said *John Breck Maccoll* told the Deponent, that *Allan Breck* was in the Heugh of *Corrynakeigh*, above the House of *Koalisnacooan*; and if the Deponent inclined to see, the said *John Breck Maccoll* directed him to go to a Hill above the Houses and whistle, and that the said *Allan Breck* would come to him: That the Deponent answered, he had gone far enough after the said *Allan Breck* already, pointed out to *John Breck* where he had left the Cloaths, and gave him the five Guineas to be given *Allan Breck*. Depones, That he went to the said *John Breck's* House, where he slept for some Time, and thereafter dined with the said *John Breck* at his House. Depones, That the said *John Breck Maccoll* told the Deponent, he did not know how the said *Allan Breck* could leave the Country, as he had no Victuals, and he, the said *John*, had none to give him, and desired the Deponent to go to *Mrs. Macdonald* of *Glenco's* House at *Inver*, and get a Peck.

Peck of Meal for *Allan Breck's* Use, which the Deponent refused. Depones, That the said *John Breck Maccoll* told the Deponent, that, unless he had come with the Money and Cloaths, he, the said *John Breck*, would hence been obliged to go to *Fort-William* for Money to the said *Allan Breck*. Depones, That he, the Deponent, came back to *Aucharn* upon the Evening of the *Sunday* the 17th Day of *May* last, and the Pannel's Wife asked him if he had seen *Allan Breck*? And upon his answering he had not, and telling that *Allan Breck* was at *Koalisnacoan*, tho' he had not seen him, and that he had given the Cloaths and Money to *John Breck*, she appeared satisfied. Depones, That the said *John Breck Maccoll* desired the Deponent to conceal his carrying the Cloaths and Money to *Koalisnacoan*, as above; told him, that he could not prove it against him, and that he could safely depone he did not deliver the Cloaths to him, since he only pointed out where they were. *Causa scientie patet*. And this is the Truth, as he shall answer to God. And declares he cannot write. And further depones, That he is a distant Relation of the Pannel's, tho' he cannot tell the Degree: That his Father lives at a Quarter of a Mile's Distance from *Aucharn*; and that he, the Deponent, used to be often in the Pannel's House. And this is also Truth, as he shall answer to God.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Breck Maccoll, Bouman to *Appin* in *Koalisnacoan*, aged forty Years, married, sworn, purged and examined *ut supra*, by the above Mr. *Archibald Campbell*, sworn Interpreter, depones, That, upon the Afternoon of *Saturday* the 16th Day of *May* last, as the Deponent was in a Fir-bush near *Aldavoim*, at the Foot of the Heugh of *Corrynakeigh* in *Koalisnacoan*, he heard a Whistle; and, upon looking up, saw *Allan Breck Stewart*, at a little Distance, beckoning to the Deponent to come towards him; which he did: That after Salutations, the Deponent told him, he was afraid it was no good Action that occasioned his being in such a remote Place, and at such a Distance from any common Road: That *Allan Breck* answered, the Place was not very far from a common Road: That the Deponent, having heard the Day before of *Glenure's* Murder, charged *Allan Breck* with being guilty of it: That *Allan Breck* asked the Deponent, what he had heard about the Murder? That the Deponent answered, that he had seen no Person from the Strath of *Appin*; but that two poor Women, that had come up *Glenco*, were telling, that *Glenure* was murdered *Thursday* Evening in the Wood of *Lettermore*; and that two People were seen going from the Place where he was murdered; and that he, *Allan Breck*, was said to be one of them: That *Allan Breck* answered, he had no Concern in it; and that, if his Information was right, there was but one Person about the Murder; and that, as he was idle in the Country, he was sure he would be suspected of it; but that that would give him little Concern, if he had not been a Deserter, which would bear harder upon him, in case he was apprehended, than any Thing could be proved against him about the Murder: That the Deponent did not believe him, when he said he had no Hand in the Murder of *Glenure*; and not caring to press it much upon him, told him, that, as he was already suspected, it was dangerous to have any Intercourse with him, and pressed him to leave the Place, lest he should bring the Deponent

and his Family to Trouble: That *Allan Breck* said, he did not doubt but the Family of *Ardshiel* would be suspected of the Murder, and it was probable the Pannel, and *Allan Stewart* his Son, might be taken into Custody about it; and that he, *Allan Breck*, was afraid *Allan Stewart* the Pannel's Son's Tongue was not so good as his Father's; by which Words the Deponent understood, that *Allan* was easier entrapped than the Pannel; and the Deponent still insisting upon *Allan Breck's* leaving that Neighbourhood, the said *Allan Breck* told him, he would not leave the Town for eight Days, unless some Necessaries he expected came to him; and told the Deponent, unless some Money came for him before next Morning, he, the Deponent, must go to *Fort-William* with a Letter: That tho' the Deponent refused to go, *Allan Breck* looked about among the Trees, and finding a Wood-pigeon's Quill, made a Pen of it, and having made Ink of some Powder he took out of a Powder-horn that was in his Pocket, he wrote a Letter, which he told the Deponent he must deliver to *William Stewart*, Merchant at *Maryburgh*; and, upon the Deponent's telling him that he would by no Means undertake that, as he was informed that every body that went to *Fort-William* was searched, *Allan Breck* said it was an easy Matter to hide a Letter; the Deponent answered, if he was caught upon the Streets, what would he do with it? *Allan Breck* told him, that the Letter must not be found upon him by any Means, and, if he was caught with the Letter, he must eat it before it was found: That the Deponent then told the said *Allan Breck*, that he did not know but he would be obliged to go for some Beer next Day to *Fort-William*, in which Case he might possibly carry the Letter; but at the same Time told the said *Allan Breck*, if he was caught with the Letter, he would tell all he knew about him: That the said *Allan Breck* desired the Deponent to go to *Callart* or *Glenco's* House for a Peck of Meal to him, which the Deponent refused; and at parting, the said *Allan Breck* told the Deponent, he would see him next Day. Depones, That, at the Time of the above Conversation, the said *Allan Breck Stewart* was dressed in a dun-coloured great Coat, black short Coat, and blue Trowsers striped with white. And the Deponent having seen in Court the black short Coat with the Buttons on the Pockets, and the Trowsers, depones, That they are the short Coat and Trowsers he saw the said *Allan Breck* wear, or exactly like them. Depones, That early upon *Sunday* Morning the 17th Day of *May* last, as the Deponent got up to look about his Corns, he saw a Man, which he at first imagined to be the said *Allan Breck Stewart*, travelling towards him up the Glen; but, upon his coming near, the Deponent knew him to be *Alexander Stewart*, travelling Packman in *Appin* (the immediate preceding Witness) who is Cousin-german by the Father's Side to *Allan Breck*; and after Salutation, and the Deponent's expressing his Surprise at seeing him so early, the said *Alexander Stewart* asked the Deponent, if he had seen *Allan Breck*? And the Deponent refusing his having seen him, *Alexander Stewart* seemed surprized, and told that he was informed he would meet *Allan Breck* there; and that he had brought some Necessaries for him: And the Deponent inquiring what he had brought, the said *Alexander Stewart* informed him, that he had brought five Guineas and some Cloaths; and told that he had a great

great deal of Trouble in getting the Money: That he had been sent by the Pannel to *William Stewart*, Merchant at *Fort-William*, from whose Wife he got three Guineas; and that the Pannel, or his Wife, gave him the other two Guineas; and that the Pannel's Wife gave him the Cloaths, and informed him, that *Allan Breck* was to meet him at *Koalisnacoan*; but that now he would leave the Money and Cloaths with the Deponent: Upon this the Deponent told the said *Alexander Stewart*, that he had seen *Allan Breck* the Day before, and that he expected these Things; and told him that he believed *Allan Breck* was then in the Heugh of *Corrynakeigh*, and, if he would go to a Hill that the Deponent pointed out to him, and whistle once or twice, he believed *Allan Breck* would come to him: The said *Alexander Stewart* declined going, alledging he was very much fatigued: That the Deponent told the said *Alexander Stewart*, that he wondered he would not go that Length to see his Uncle's Son; the said *Alexander Stewart* answered, that he had slept none for two Nights, and was very much fatigued; and upon this he delivered to the Deponent the five Guineas, and told he had left the Cloaths at some Distance, and would show them to the Deponent when he was going away: That the Deponent told the said *Alexander Stewart*, that *Allan Breck* wanted a Peck of Meal from *Glenco* or *Callart's* House; and that he, the said *Alexander Stewart*, ought to get it for him; but the said *Alexander Stewart* refused to go for it: That, afterwards, the said *Alexander Stewart* slept in the Deponent's House. Depones, That the said *Alexander Stewart* told him, that the Pannel, and *Allan* his Son, were made Prisoners the Evening before, and sent to *Fort-William*; and, upon the Deponent's inquiring, who was suspected of *Glenure's* Murder? the said *Alexander* answered, that it was *Allan Breck*, and that it was likely that the Pannel, and *Allan* his Son, would stand the first Trial for it. Depones, That the said *Alexander Stewart* and the Deponent dined together; and as the said *Alexander Stewart* was going away, about Twelve o'Clock, he pointed out a Fir-tree, at the Root of which he said he had hid *Allan Breck's* Cloaths. Depones, That, after the Deponent had gone to Bed, upon the said *Sunday* Evening, he heard one knocking at the Window, and imagined it might be *Allan Breck*; the Deponent got up, and went out in his Shirt, and saw the said *Allan Breck* at a little Distance from the House; and, upon the Deponent's coming up to him, the said *Allan Breck* asked him if any Message had come for him? The Deponent told him, that his Uncle's Son had come with five Guineas, and some Cloaths: That *Allan Breck* complained there was but little Money, but hoped it would do his Business: That the Deponent told the said *Allan Breck*, he was afraid he would starve among the Heather; and that he was not able to help him: That *Allan Breck* answered, he had no Occasion for Victuals, but wanted a Drink very much: Upon which the Deponent went back to his House, and carried out some Whey, or some Milk and Water, in a Noggin, and the five Guineas, and gave both to *Allan Breck*: That the Deponent then went for the Cloaths, which he also gave the said *Allan Breck*, which consisted of a blue long Coat, red Waistcoat, black Breeches, a Hat, some Stockings and Shirts: That the Deponent told the said *Allan Breck*, that the Pannel, and his Son *Allan*, were apprehended upon Account of *Glenure's* Murder; to which

Allan Breck answered, that that was no more than he expected; but it would not signify much, as there could be no Proof against them; but expressed some Apprehension, lest *Allan Stewart*, Son to the Pannel, might be betrayed by his own Tongue: That the Deponent desired the said *Allan*, now that he had got all the Necessaries he expected, to go about his Business; and the said *Allan Breck* promised to do so, but told the Deponent, that he must meet him, the said *Allan Breck*, next Morning; that he must deliver the Deponent the Cloaths he, the said *Allan Breck*, had then on, to wit, the black short Coat and Trowsers shown to the Deponent in the Clerk's Hands, in order to be kept by the Deponent till he delivered them to the Pannel's Wife: That the Deponent promised to meet the said *Allan Breck* next Morning, but did not see him; and when the Deponent went out next Morning, he found the said short black Coat, Trowsers, and the Noggin in which the Deponent carried the Drink to the said *Allan Breck*, lying together in the Place where the Deponent parted with the said *Allan Breck* the Night before; and found in one of the Pockets of the said short Coat the Powder-horn now shown him in the Clerk's Hands; and depones, that he has not seen the said *Allan Breck* since. Depones, That, in a Conversation the Deponent had with the Pannel, as the Deponent best remembers, about two Years ago, Mention being made of *Glenure's* being about to take on the Management of the Estate of *Ardshiel* from the said Pannel, and thereby disabling the Pannel from being of any Service to *Ardshiel's* Children, he heard the Pannel say, he would be willing to spend a Shot upon *Glenure*, though he went upon his Knees to his Window to fire it. Depones, That he heard a waif Report in the Country, that *Ardshiel* (attainted) had sent Home a Message, that he believed all his Friends were dead, when *Glenure* was allowed to go on at the Rate he did. Depones, That, upon the Evening of the said *Saturday* the 16th Day of *May* last, *Katharine Maccoll*, Spouse to *Hugh Maccoll* in *Koalisnacoan*, told the Deponent, that she had seen a Man in the Heugh of *Corrynakeigh* that Day, at some Distance, and was greatly frightened: That the Deponent told her, there used to be Bogles seen in that Place, but she must take no Notice of what she had seen, for Fear of frightening the Women of the Town, and prevent them from attending their Cattle in that Part; and that the Reason of telling her so, was for Fear it would be known it was *Allan Breck* she saw. Depones, That, when he found the black short Coat and Trowsers he saw *Allan Breck* wear, upon *Monday* Morning the 18th of *May* last, he hid them; and that, after he, the Deponent, had been some time Prisoner at *Fort-William*, he came along with a Party of Soldiers, to whom he shewed the Place he hid the said Cloaths; and the said Party took the said Cloaths out of the Place he had hid them in, in the Deponent's Presence, and carried them to *Fort-William*. *Causa scientiæ patet*. And this is Truth, as he shall answer to God; and depones he cannot write.

(Signed) ARCH. CAMPBELL. JA. FERGUSON.

Hugh Macclean, Barber in *Maryburgh*, aged twenty-seven Years, married, sworn, purged and examined *ut supra*, depones, That being a Barber to his Trade, and one Day being called by the Pannel to the Prison to shave him, which he thinks was upon a *Saturday*, the Pannel asked him, what

News he heard in the Town? To which the Deponent answered, that he heard that he, the Pannel, was to be carried to *Edinburgh* on the *Monday* following: Whereupon the Pannel said, that that was a Matter gave him no Concern, and wished it had happened sooner, and was afraid of nothing but that his Servants might be enticed to take Money, and turn against him; and desired the Deponent, as from him, to tell his Servants to say nothing but Truth, to keep their Minds to themselves, and he would take Care of them; and accordingly the Deponent delivered the Pannel's Message, in his own Words, to two of his Servants, who were then in separate Custody in the same Prison; and that they were both of the Name of *Maccoll*. Depones, That at this Time the Pannel gave the Deponent a Shilling, and said; when he came again to shave him, he would give him more; but that he never got more from him than the said Shilling. Depones, That from the Pannel he went to his Son *Allan* also to shave him, to whom he told the Commission his Father had given to be delivered to the Servants; and the said *Allan* gave him Half a Crown. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God; and depones he cannot write.

(Signed) J. A. FERGUSON.

Thomas Baird, Serjeant in General *Pulteney's* Regiment of Foot, aged thirty-two Years, married, Witness cited, solemnly sworn, purged of Malice and partial Counsel; and having been called into Court, before closing of a former Deposition, in order to open a Bundle containing two short Coats and a Pair of Trowsers, to be shown to a preceding Witness during his Examination; and, after opening the said Bundle, was removed, and called in again; and being solemnly sworn and interrogate, depones, That, about the Beginning of *July* last, to the best of the Deponent's Remembrance, he was sent with a Party of Soldiers, and a Guide along with him, whose Name, he thinks, was *John Breck Maccoll*, to a Place computed of above ten Miles Distance from *Fort-William* over *Lochleven*; but after passing the Loch, their Guide carried them two Miles down the Side of the Loch, and up to the Top of a Rock, and, out of a Clift in the Rock, the Guide took a short black Coat with silver Buttons, and a Powder-horn in the Pocket, and a Pair of Trowsers, and gave them to the Deponent; and the Deponent carried them to *Fort-William*, and delivered them to Colonel *Crawford*. Depones, That one of the black Coats, with the Powder-horn and Trowsers, that the Deponent took out of the Pocket as above-mentioned, are the same that his Guide delivered to him, and which he delivered to Colonel *Crawford*, as above deponed. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) THOMAS BAIRD. P. GRANT.

The Prosecutors Proof being concluded, the Pannel, for his Exculpation, adduced the following Witnesses.

HUGH STEWART, Residenter in *Edinburgh*, aged thirty and upwards, married, being sworn, purged and examined *ut supra*, depones, That he knows *Allan Breck Stewart* to have several Times gone to *France*, and returned again to this Country; particularly that he went to *France* in 1747, and returned to *Scotland* in *December* 1749; returned to *France* in *May* 1751, and came back

in *February* 1752; and when in this Country, he was in use to lodge at the Deponent's House in *Edinburgh*: That he observed him to be afraid to be seen abroad, and kept at Home in the Day-time, and went abroad under Cloud of Night; for which he gave this Reason to the Deponent, that he had been a Soldier in Colonel *Lee's* Regiment, from which he had deserted, and was afraid to be discovered. And being interrogate, depones, That, when *Allan Breck* went abroad, as has been said, in *May* 1750, he owed the Deponent a Guinea, and, being run short of Money, he drew a Bill on the Pannel for that Sum, whereof he acquainted the Pannel some time he thinks in *July*, and some time in *August* he received the Money by *Maccoll*, the *Appin* Carrier; and by the same Carrier sent the Pannel the Bill upon him. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) HUGH STEWART. J. A. FERGUSON.

Duncan Stewart of *Glenbuckie*, aged twenty-seven Years, unmarried, sworn, purged and examined *ut supra*, depones, That he was acquainted with *Allan Breck Stewart*; and that, at any Time, when he came from *France* to this Country, he had no fixed Residence to the Deponent known, but went about among his Friends and Acquaintances: That, when he came last to *Scotland*, his Dress was a long blue Coat, a red Waistcoat, black Breeches, and a feathered Hat: That, in *March* last, when he was at the Deponent's House, he was in that Dress; but, at other Times, he has seen him in a different Dress, particularly in *April* last at *Glenenty*, which was the last Time he saw him; his Dress was, a black short Coat with clear Buttons, a Tartan Waistcoat, Trowsers, and a Bonnet, and, above all, a dun-coloured great Coat. Depones, That he remembers, that upon one Occasion, while *Allan Breck* was at his House, being the first Time he came, he for two Days, to the Deponent's certain Knowledge, wore a short blue Coat of the Deponent's, which the Deponent, at his Desire, lent him; and whether he wore it any more than two Days, of the ten Days he at that Time staid at the Deponent's House, the Deponent does not know, not having been at Home all the Time. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) DUN. STEWART. J. A. FERGUSON.

Duncan Ferguson, Servant to *Duncan Stewart* of *Glenbuckie*, aged twenty-nine, unmarried, sworn, purged and examined *ut supra*, depones, That, about the 20th of *April* last, he saw *Allan Breck Stewart* at the House of *Branachile*, the House of the former Witness; at which Time he was dressed in a short black Coat with clear white Buttons, a Tartan Vest, Trowsers, Tartan Hose, and Bonnet. Depones, That he staid there two Nights, and went from thence, as the Deponent was informed, to *Glenfinlas*, and staid a Night there. Depones, That the Deponent also saw him at *Glenbuckie's* House in *March* last, at which Time he was dressed in a blue Coat, red Vest, and feathered Hat. *Causa scientiæ patet*. And this is Truth, as he shall answer to God; and depones he cannot write.

(Signed) P. GRANT.

Duncan Stewart in *Glenfinlas*, aged thirty-two Years, married, sworn, purged and examined *ut supra*, depones, That one Night, between the 20th

and 23d of *April*, the Deponent saw *Allan Breck Stewart* at *Glenfulas*, and was dressed in a black short Coat and white clear Buttons, Trowsers, and a Bonnet, and had on a dun big Coat above the short Coat. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) DUNCAN STEWART. P. GRANT.

Katharine Macinnes, late Servant to *Alexander Stewart* of *Ballachelish*, aged twenty-two Years, sworn, purged and examined *ut supra*, by Mr. *Archibald Campbell* of *Stonesfield*, sworn Interpreter, depones, That in the Evening of the 14th of *May* last, the Deponent saw *Allan Breck Stewart* at a Goat-house in the Moor of *Ballachelish* after *Glenure* was killed; and that *Allan Breck* then asked her, what was the Occasion of the Stir in the Town? And that she told him, *Glenure* was murdered; and further asked her, who might have committed the Murder? And that she told him, she did not know; and that the said *Allan* further desired the Deponent to tell *Donald Stewart* in *Ballachelish* to go to the Pannel, and desire him to send the said *Allan* Money; and that she delivered this Message to *Donald Stewart* that same Night. Depones, That she told the said *Donald Stewart* where she saw *Allan Breck*; but that she did not tell him to go to the said *Allan*, nor did he desire her. *Causa scientiæ patet.* And this is Truth, as she shall answer to God; and depones she cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

John Stewart younger of *Ballachelish*, aged twenty-six, unmarried, sworn, purged and examined *ut supra*, depones, That, the Day after the Murder of *Glenure*, the Deponent was at the Pannel's House, who, after Twelve o'Clock of the Day, told the Deponent, that he had had a Message that Morning from *Allan Breck* by *Donald Stewart*, to send him Money; but does not remember, whether the Pannel told him the Place where he was directed to send it; and the Pannel told the Deponent, that he was resolved to send him Money. Depones, That the last Day of *December* last, the Deponent was in Company with the deceased *Glenure*, an Uncle of *Ardshiel's*, and the Pannel, and Mr. *Campbell* of *Ballieveolan*, when, after the Company had drunk very hard, and were all drunk, some high Words arose between *Glenure* and *Ardshiel's* Uncle, and they were like to come to Blows, which both of them attempted; but the Deponent once and again separated them: That *Ardshiel's* Uncle happened to go out of the House, as did also the Pannel, and the Deponent called to the People without not to let them in again, because they were drunk: That the Pannel had invited *Glenure* next Day to his House, which *Glenure* had accepted of, and therefore the Pannel pressed to come in again to the House to renew the Invitation, and take his Leave of *Glenure*; but the Deponent would not allow him to come in, and undertook to make his Excuse to *Glenure*: That the Deponent, coming into the House, found *Glenure* standing with a drawn Hanger in his Hand; and the Deponent asked, what he meant by that? and *Glenure* answered, that he should not allow him to be mobbed there; upon which the Deponent assured him he should not be mobbed there; and then *Glenure* threw the Hanger upon the Bed: That the Deponent went Home with the Pannel, and next Day *Glenure* came there before Dinner,

and dined, and made Apologies mutually for what passed the Night before; and that Mr. *Campbell* of *Ballieveolan* dined there also. And being interrogate for the Pursuers, depones, That the Deponent was in *Edinburgh* in *August* last, and was present at Consultations of the Pannel his Lawyers and Agents, touching his Defence. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) JOHN STEWART. P. GRANT.

Alexander Stewart in *Auchindarroch*, aged about eighteen, unmarried, Witness cited, sworn, purged and examined *ut supra*, by Mr. *Archibald Campbell* of *Stonesfield*, sworn Interpreter, depones, That, to the best of his Knowledge, he saw *Donald Stewart* in *Ballachelish* and the Pannel together, upon the Marches between *Aucharn* and *Auchindarroch*, in the Morning of the 15th of *May*; and that he himself was at the Time digging Ground, with the other Tenants of the Town. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) ALEX. STEWART.
ARCH. CAMPBELL.
P. GRANT.

Alexander Stewart of *Ballachelish* elder, Witness cited, sworn, purged and examined *ut supra*, depones, That the Deponent was with *Allan Breck Stewart's* Father a considerable Time before his Death; but, after he had contracted the Indisposition whereof he died, he told the Deponent, that he intended to leave the Care of his Children, and of his Affairs, to *Ardshiel* and the Pannel: That the Deponent knows they accordingly took upon them the Management, tho' he believes the Nomination was only verbal, and not in Writing. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) ALEX. STEWART. P. GRANT.

John Stewart, Tenant in *Auchnacooan*, aged fifty-two Years, married, Witness cited, sworn, purged and examined *ut supra*, depones, That *Allan Breck's* Father, as he believes, named the Pannel to be Tutor to his Children, and no other Tutor; and the Cause of the Deponent's Belief is, because he saw the Pannel take the Management of their Affairs upon him. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) JOHN STEWART. P. GRANT.

John Flockhart, Writer in *Edinburgh*, aged thirty and upwards, married, Witness cited, sworn, purged and examined *ut supra*, depones, That being shown a Letter by the Pannel to Mr. *John Macfarlane*, Writer to the Signet, dated the 19th of *May* last, depones, That that Letter came to the Deponent's Hands at *Edinburgh* by Course of Post the 24th of *May* last, and the Deponent being to go for *Pertb* next Day, he gave the Letter to *Alexander Hart*, Clerk to Mr. *Macfarlane*, to be delivered to his Master; and knows not whether any Thing was done by Mr. *Macfarlane* pursuant to that Letter. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) JO. FLOCKHART.

And, after closing the Oath, being further interrogate for the Pannel, depones, That there was no other Letter accompanying the one before-mentioned.

mentioned. And this is also Truth, as he shall answer to God.

(Signed) JO. FLOCKHART. P. GRANT.

John Camron of *Strone*, aged twenty-five, married, Witness cited, and sworn *ut supra*, depones, That, about a Year ago, being in Company with some of the Tenants of *Rannoch*, in a House in *Rannoch*, a Man came unto them, whom they called *Serjeant More Cameron*, whom the Deponent never saw before, nor since: That the Tenants were complaining of *Glenure* for his hard Usage of the Tenants of *Ardshiel*; and the said *Serjeant More* said, that if he met him in the Highway, he would shoot him. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) JOHN CAMERON. P. GRANT.

Ewan Camron, Servant to *John Camron* of *Strone*, aged twenty Years, unmarried, Witness cited, sworn, purged and examined *ut supra*, by *Archibald Campbell*, Writer in *Inverary*, sworn Interpreter forefaid, depones, That he had Occasion to be in *Rannoch* Harvest last: That he saw there a Man that was called *Serjeant More Cameron*, whom he never saw before, or since. Depones, That he saw the Man called *Serjeant More* in a House; but does not know the Name of the Town, or the Name of the Man to whom the House belonged, the Deponent having never been in *Rannoch* but that one Time. Depones, That he heard the said *Serjeant More* say, That, if he, the said *Serjeant More*, met with *Glenure*, he did not care tho' he should be up-sides with him; but had no Reason for saying so, he having heard no more of his Discourse. Depones, that the Deponent was then Servant to the former Witness, and was then in *Rannoch* attending him. *Causa scientiæ patet*. And this is the Truth, as he shall answer to God; and declares he cannot write.

(Signed) ARCH. CAMPBELL. P. GRANT.

Then the Procurators for the Pannel declared their Probation to be concluded.

Follows the Writings produced in Evidence for the Prosecutors.

The judicial Declarations of the Pannel, his Wife, and Children.

AT *Fort-William*, the 2d Day of *June* 1752 Years, in Presence of *George Douglas*, Sheriff-substitute of the Sheriffdom of *Inverness*, sitting in Judgment, compeared *James Stewart* in *Aucharn*, now Prisoner at this Place; who being judicially examined anent the Matter under-written, declares judicially, that *Allan Breck Stewart* came to his House in the latter End of *March*, upon his coming from *France*; that he staid two Nights there, when the Declarant went to *Edinburgh*, leaving the said *Allan* at his House: That the said *Allan* came to the Declarant's House in the Month of *April*, after being at *Glenbuckie's* and *Rannoch*; and that, upon *Monday* the 11th Day of *May* last, the said *Allan* came to the Declarant's House from *Fasnacloch*; and the Declarant being called upon by *Mr. Campbell* of *Airds* to go to *Keil*, had little Conversation with the said *Allan* till his Return, and no other after his Return, than what was in the Presence of the Family; nor does the Declarant remember, whether he supped with the said *Allan*

that Night or not; but rather thinks he did; or whether the said *Allan* was dressed in a long blue Coat and Hat, or in a black short Coat with silver Buttons: That the Declarant thought himself concerned in Drink that Night, having drunk at the Miller of *Keil's* House with the old Piper, the young Piper, the said Miller, and old *Duncan Maccombich*, and his Son *Archibald*: The Declarant went away to *Appin's* House early upon *Tuesday* the 12th Day of *May* last, and did not see *Allan* that Day or since: That when the Declarant was at *Edinburgh*, the said *Allan* carried a short black Coat with silver Buttons, belonging to the Declarant, with him to *Glenbuckie's* and *Rannoch*, and wore it upon his Return; when the Declarant told the said *Allan*, that he wondered how his short Coat fitted him, as *Allan* was a large Man, and the Declarant a little Man; to which he answered, that it served him well enough: That, upon *Monday* Night the 11th Day of *May* last, the Declarant's Son *Charles* told him, he was to go to *Glenco*, *Callart*, and *Fort-William*; and that he did not see his said Son from that Night, till he saw him in this Place, after that he, the Declarant, was made Prisoner; nor is the Declarant sure if his said Son went to *Glenco* or *Callart* till *Wednesday* the 13th Day of *May* last. Declares also, That his Son *Allan* was at Home on *Sunday's* Night the 10th Day of *May* last; but is not sure whether he was at Home all that Day or not. That there were no Strangers at the Declarant's House upon the said *Sunday's* Night, or on the following *Monday* or *Monday's* Night, nor yet on the *Tuesday* or *Tuesday's* Night following, except the said *Allan Breck* and *Fasnacloch's* Daughter upon the said *Monday's* Night. Declares, That *John Stewart* younger of *Ballachelish* was at his House upon *Wednesday's* Night, and is sure that *Ewan Roy Maccoll*, Brother to *Appin's* Bouman at *Koalisnacooan*, supped at his, the Declarant's House, either upon the *Wednesday* or *Thursday's* Night the 13th or 14th Days of *May* last; and that the said *Ewan Roy Maccoll* was also at the Declarant's House upon *Saturday* thereafter, in the Forenoon, along with his Sister, Spouse to *Ewan Maccombich*, Padler in *Cuil*, and then paid the Declarant ten Pounds Scots, except seven Shillings and two Pence, for which the said *Ewan Maccombich*, Padler, became Debtor; which ten Pounds Scots was in Payment of the Grasmal of Cattle; and that the said *Ewan Roy Maccoll* did then give to the Declarant a List of Debts due to him in the Country, whereof twenty Pounds Scots was to be applied towards Payment of a Debt due by the said *Ewan* to his said Sister, as the Declarant had the Management of her Effects in the Country of *Appin*; and which Sister's Name is *Christian Maccoll*, and was last Winter Servitrix to *Mr. Stewart* of *Ballachallan*: That the Declarant delivered some Cattle to *Duncan Stewart*, Servitor to *Glenbuckie*, and *Solomon Maccoll*, Servitor to the Declarant's Son *Allan Stewart*, and *John Maccoll*, now Prisoner at *Fort-William*, at the Marches betwixt *Aucharn* and *Sallackan*; and that the said *Ewan Roy Maccoll* was to meet them at *Glenduror* with Cattle of his own that were to be sent South along with the Declarant's; and that the said *John Maccoll* parted with them at a Shealing called the *Immerin*; and that the Declarant did not see the said *Ewan Roy Maccoll* since. And being interrogate, if he had any Arms in his House? declares, That when he was made Prisoner, he had a small Fowling-Piece and a broad Sword, which broad Sword was to be kept for the Children of the deceased

deceased *Allan Stewart* of *Cuil*, till they were of Age. Declares also, That the said *Solomon Mac-coll*, formerly Servant to *Donald Stewart* at *Tay-harnan*, came Home to his Service on the 15th or 16th Days of *May* last : That *John Stewart* in *Auchnacooan* came to the Declarant's House upon the Evening of the 14th Day of *May* last, and staid there that Night ; and declares, that he did not send him any Message, either that Day or the preceding Day, nor had he any Business that the Declarant knows of. Declares also, That, the Afternoon of *Glenure's* Murder, several of the Tenants in the Neighbourhood, particularly the Tenants of *Auchindarroch*, and *Duncan Stewart* at *Inshaig*, and *Robert Stewart* the Miller, came to the Declarant, to know what they should do, or whether they should go near the Corpse ; and that he advised them to go ; but that neither he nor his Son *Allan* went there, because he understood that *Ballieveolan* and his Sons were to be there ; and that there were some Chagrine betwixt him and them, they having taken the Declarant's Possession the Year before, wherewith he had a Stock of Cattle, viz. *Glenduror*, a Part of the Estate of *Ardshiel* : That when young *Bal-lachelish* was over-night at the Declarant's House as aforesaid, they had a Conversation about the Removal of the Tenants from the Estate of *Ardshiel* ; the Result of which was, that they should continue their Possession, and take the Hazard of the violent Profits, unless they were forced out ; and that he had Conversations with old *Bal-lachelish* to the same Purpose ; and that he gave the same Opinion to such of the said Tenants as applied to him, but recommended to them to use no Force in keeping their Possessions : That the Declarant had no written, but a verbal Commission from the said Tenants, to negotiate for them at Law ; nor did he receive any Money from them ; but that the Tenants of *Lettermore* and *Ardshiel* and the Miller promised to refund his Expence for representing their Case, particularly *Dugald* and *John Maccombichs* in *Ardshiel*. And being interrogate, if he had any Conversation with the said *Allan Breck* concerning *Glenure* ? the said *Allan* asked the Declarant, if he heard that *Serjeant More* was come from France, or if he was in the Country of *Appin* ? To which the Declarant answered, that he did not hear he was in *Appin*, but heard he was in *Glenlive* last Year ; whereupon the said *Allan* told the Declarant, that *Serjeant More* swore he would kill *Glenure*, because of the Treatment he gave the Tenants on the Estate of *Mamore*, Part of *Lochiel* Estate. Declares also, That the said *Allan Breck* threatened, that he would challenge *Ballieveolan* and his Sons to fight, whenever he met them, because of his removing the Declarant last Year from *Glenduror*, and being about to remove the other Tenants this Year from some other Parts of the Estate of *Ardshiel* ; and that the Declarant told him then, they would not fight him, as they would not consider him as their Equal ; and if he had come to the Country to fight, he had better staid in France. And being interrogate, if he had any Conversation with *William Stewart*, Merchant in *Maryburgh* ? declares he had, about the Expediency of the said Tenants their keeping their Possessions ; and that it was the said *William's* Opinion, that they should keep their Possessions ; and that their Case should be represented to the Barons of Exchequer ; and that it was hard they should be turned out, until their Case was stated. And being asked, if he had any Conversation with *Callart* anent the Removing ? declares, he does not remember ; but that

commonly every body he saw asked him, what should become of the Tenants of the Estate of *Ardshiel* ? To which he answered, he did not know till the Term-day. This Declaration is emitted before the said Sheriff-substitute, Place and Date aforesaid, before these Witnesses, Colonel *Howard*, Colonel *Crawford*, *Donald Campbell* of *Airds*, and *Colin Campbell* of *Carquhin*, Esqrs.

(Signed) JAMES STEWART.

GEORGE DOUGLAS, S.S.

G. HOWARD, Witness.

DONALD CAMPBELL, Witness.

CO. CAMPBELL, Witness.

Eodem die, The said *James Stewart*, being re-examined, judicially declares, upon Recollection, That it was upon *Thursday* the 14th Day of *May* last, that his said Son *Charles* went to *Glenco*, and not on *Wednesdays*, as before-mentioned ; and that *Callart* was at the Declarant's House upon *Sunday's* Night the 10th Day of *May* last. Declares, That, before *Glenure* served the Warnings against the Tenants of the Estate of *Ardshiel*, the Laird of *Appin* proposed to accommodate some of them in Land : That how soon the Declarant heard of *Glenure's* Murder, it came in his Mind, that *Serjeant More* had done it, because *Allan Breck* told him, that the said *Serjeant* swore bloody Revenge against *Glenure* before the *Serjeant* came from France, upon Account of *Glenure's* Treatment of *Lochiel's* Tenants, and his differing with *John Cameron* of *Fassafarn*, Brother to *Lochiel* : That the Declarant's Reason for suspecting *Allan Breck* afterwards, was, because he left the Country abruptly, without taking Leave of him, as he expected ; and if the said *Allan* was guilty of the said Murder, he believes it behoved to be on Account of the Disturbance given to the Tenants of the Estate of *Ardshiel*, and knows no other. Declares, That he did set out for *Edinburgh* on *Friday* the 3d Day of *April* last, was at *Glenco* that Night, the 4th at *Innerkenvie*, the 5th at *Lanerick*, the 6th at *Annat*, and called next Day at *Newton*, and was that Night at *Mr. Wordie* of *Cambusbaron's* House at *St. Ninian's*, called at *Touch* on the 8th, and got a Letter from *Mr. Seaton* to *Mr. David Moncrief*, Secretary to the Barons of Exchequer ; called at *Mr. Wilson's* House of *Murray's-hall*, and was that Night at *Mr. Foster* of *Dunivan's* House, and got a Letter from him to *Mr. Patrick Haldane*, the Solicitor ; but did not deliver it, or the other Letter, as he was told they would be of no Consequence ; and went to *Edinburgh* upon *Thursday* the 9th Day of *April* last, where he continued for eleven Days : That he left *Edinburgh* upon *Sunday* the 19th, was that Night at *Dunivan*, called at *Mr. Wilson's* and *Mr. Wordie's*, and was at *Stirling* at Night ; which Place he left on the 21st ; called at *Mr. Dundas* of *Manner's* House, *Dunblain* and *Newton*, and was at *Annat's* at Night ; upon the 22d came to *Ballachallan's*, and staid there that Night ; came to *Glenbuckie's* the 23d, and staid there two Nights ; on the 25th came to *Tayindrom* ; on the 26th came to *Duncan Stewart's* House in *Glenco* ; and upon the 27th came Home ; that, upon the 25th, he called at *Mr. Murray* of *Glenkernock* : That, soon after the Declarant came Home, he gave Notice to the Tenants of *Ardshiel*, that he had procured a Sift for them against the Decret of Removing ; and that, if they had a Mind to continue their Possessions, they were advised to go to *Glenure* and seek their Possessions, and if he did not grant their

their Desire, they should send for a Notary; and go with him to protest against Glenure; and if they pleased, he would send for a Notary; to which they agreed: That accordingly the Declarant sent for Charles Stewart, Notary, and writ him a Letter, signifying they had obtained a Sift for the Tenants of the Estate of Ardsziel, and desired him to come to intimate the same to Glenure to the Purpose above-mentioned; and that the said Charles did accordingly come to the Declarant's House at Night, and the Tenants came also next Morning; and that the Declarant told them, in Presence of the said Charles, that, if it was not their Mind to proceed in that Method, he would not desire them to do it, because he could not assure them of Success; and that now they had the Advice as it was given to him; and particularly remembers, that three of the Tenants of Ardsziel met the Notary at the Declarant's House, but is not sure if old John Colquhoun, the fourth Tenant in Ardsziel, was there, but rather believes he was: That he was informed on Monday the 11th Day of May last, by his Son Charles, Allan Breck, and Fafnacloich's Daughter, that they heard Glenure was to go to Lochaber that Day. Declares also, That he saw James Stewart younger of Fafnacloich at Glenco's House upon the 5th Day of May last, who asking him what he had done at Edinburgh? the Declarant told him, he had procured a Sift for the Tenants of Ardsziel's Estate; and that he did not know what Service it might be of, but that some People thought they might sit, and take the Hazard of the violent Profits, till they had an Opportunity of laying their Case before the Barons of Exchequer: That at this Time the Declarant told the said James Stewart, that he wished some Persons of Understanding were present on the Term-day, to see if there was Law for ejecting them; and asked the said James, if he was to be in Duroor about that Time? who said he did not know: That when the said John Stewart of Ballachelish was at the Declarant's House, he asked him, if he would be present with the Tenants, to see if there was Law for turning them out? who said he would, if he did not go to Inverary. Declares also, That, in general, he recommended to every body not to make any Disturbance, and particularly recommended to his own Servants not to be present, not knowing what might happen if a Mob of People gathered; nor did he intend to be present himself. This Declaration is emitted judicially, Place and Date foresaid, before these Witnesses, Colonel Howard, Donald Campbell of Airds, and Colin Campbell of Carwhin, Esqrs.

(Signed) JAMES STEWART.

GEORGE DOUGLAS, S. S.

G. HOWARD, Witness.

DONALD CAMPBELL, Witness.

CO. CAMPBELL, Witness.

At Maryburgh, the 3d Day of June, 1752 Years, in Presence of the said Sheriff-substitute, compeared the said James Stewart, who, after having his former Declarations fully read, recollects, that he was not a Night at Annat, but called there on his Way to Edinburgh, and so was a Day sooner there than what's mentioned in his former Declaration; and being interrogate, if Allan Breck, the Declarant's Son Charles, or Fafnacloich's Daughter told him, when she came to his House upon Monday the 11th of May last, that Glenure had got the said Sift removed? declares, they did not; but that one of them told him, he heard Glenure was to remove the Tenants of Ardsziel, but which of them

said so, he does not remember. This Declaration emitted, Place and Date foresaid, before the said Donald Campbell of Airds, and Colin Campbell of Carwhin, Esqrs.

(Signed) JAMES STEWART.

GEORGE DOUGLAS, S. S.

DONALD CAMPBELL, Witness.

CO. CAMPBELL, Witness.

At Maryburgh, the 3d Day of June, 1752 Years, in Presence of the said George Douglas, Sheriff-substitute of the Shire of Inverness, compeared Allan Stewart, Son to James Stewart in Aucharn; who, being examined judicially, declares, That Allan Breck Stewart came to the Declarant's Father's House on Monday's Afternoon the 11th Day of May last, dressed in a long blue Coat, red Waistcoat, black Breeches, Tartan Hose, and a Hat; and after being some Time there, did put off his blue Coat and Waistcoat, and put on a black sport Coat with silver Buttons, belonging to the Declarant's Father; and went that Afternoon to work with the Declarant's Father's Servants in covering Potatoes: That the said Allan Breck staid that Night, and was dressed next Morning in his blue Coat and red Waistcoat, as the Day before: That the Declarant did not see him go away from Aucharn upon the 12th, the Declarant being in the Fields from the Time he rose in the Morning till Twelve of the Clock that Forenoon, sowing Barley, except once that he made a Start Home for more Bear. Declares, That, upon the Afternoon that the said Allan Breck came to Aucharn, as aforesaid, he told the Declarant, that he heard in Glencrearen, that the Tenants who had taken the Lands of Ardsziel were to be at Glenduroor on Thursday's Night, in order to enter to the Possession on Friday the 15th Day of May last; and told him likewise, that he heard Glenure had come Home, and had Orders to remove the former Possessors: That Archibald Cameron, Cousin to Drumnasailly, came along with Fafnacloich's Daughter, and the Declarant's Brother Charles, to his Father's House, upon the said 11th Day of May last, and staid all Night; the said Allan Breck having come by himself about Two of the Clock in the Afternoon that Day: That the DECLARANT'S FATHER CONVERSED WITH THE SAID ALLAN BRECK ASIDE, UPON HIS FIRST ARRIVAL AT AUCHARN UPON THE said 11th DAY of MAY; but that the Conversation did not last above five Minutes, or thereabouts; nor did the Declarant hear what passed: That the Declarant's Father did not appear to be the least in Drink upon his coming Home upon the Evening the Monday aforesaid, but told that Mr. Campbell of Airds had given the Declarant's Father and the Tenants of Keil three or four Bottles of Whisky; and that the Declarant's Father supped at Home along with the said Allan Breck that Night: That, upon Tuesday Afternoon the 12th of May last, the Declarant, and the said Archibald Cameron, and Donald Macdonald, Brother to Glenco, went to the Isle of Ballienagowan; and the Declarant and the said Donald Macdonald returned in the Evening to Aucharn; but the said Archibald Cameron went to his Aunt's at Cuil: That, in the Morning of the 13th of May last, the Declarant went to Sallachan, where he saw John More Macilichatten, and delivered them a Mare and a Filly, and then returned Home; and in the Afternoon of that Day went to Kintalline, in order to go to Tayphinst; but being informed by Donald Mackendrick, the old Piper at Keil, whom

he met there, that young *Ballachelish* was to be at *Aucharn* that Night, the Declarant returned with the said Piper, and went along with him to the Moss: That accordingly *Ballachelish* younger came to, and staid at the Declarant's Father's House that Night, and went next Day to *Appin's* House: That the said *Ewan Roy Maccoll*, Brother to *Appin's* Bouman at *Koalisnacooan*, wrought at the Declarant's Father's Peat-moss upon the said 13th of *May* last, and supped at the Declarant's Father's House that Night, and believes he took his Bed with *Duncan Maccoll*, his Uncle's Son, at *Auchindarroch* that Night: That, upon the 14th of *May* in the Morning, the Declarant went up to *Freichie*, and returned by the Houses of *Glenduror*, where he saw two Women, and spoke with one of them, to hinder the Cattle to trespass on his Father's Grounds; and whilst the Declarant was speaking to that Woman, he saw a Man passing at a little Distance, who was inquiring for *Glenure*, as the said Woman told the Declarant, which Man the Declarant thereafter observed travelling on the Road towards *Auchindarroch*: That the Declarant came straight Home from *Glenduror*, and continued at Home till he went to *Insbaig*, along with his Brother *Charles* and *Fasnacloch's* Daughter, and continued there till the News of *Glenure's* Murder reached his Father's House, where he heard the first Accounts of it, *Glenure's* Servant being just gone, as the Declarant was informed: That the Declarant was at Home all Day the 15th of said *May*; only that he made a Start to *Cuil*, where he was in Company with *Duncan Stewart* senior, and *Duncan Stewart* younger, his Son, and *Duncan Stewart* at *Insbaig*. And being interrogate, what Conversation passed betwixt him and his Father, on his return Home from *Insbaig*? his Father told him, that *Glenure's* Servant was there; and, upon the Declarant's Father's asking his News, he told him, the worst that ever he had; that his Master was killed at *Lettermore*; and that his Father asked, if it was by a Shot? and that the Servant answered, that it was; and that the said Servant also desired his Father to go and take Care of the Corpse; which he proposed to do, but that his Wife would not let him; but that he sent for the Tenants of *Auchindarroch*, and desired them to go to take Care of the Corpse; and that the Reason that he, the Declarant, did not go to take Care of the Corpse, was, because it did not at first occur to him; and that it was too late, and the rest of the People gone; yet it was clear Day-light, but thinks the Sun was set; and that the Declarant's Mother also hindered his going, and assigned for a Reason, that if the Friends of the Deceased were there, and had Arms, they might, in their Passion, do hurt to him and his Father; and that he was but a little Time at Home after his Return from *Insbaig*, when he saw *Glenure's* Servant returning from *Glenduror*, and passing towards *Kintalline*: That the Declarant thinks his Brother *Charles* went in the Afternoon of the 14th of *May* last with *Fasnacloch's* Daughter, and the said *Archibald Cameron*, and the Declarant's Sister, to *Lagnaba*, where they dined in *Alexander Stewart* senior his House, and afterwards came back to *Aucharn*, and then went to *Insbaig* as aforesaid. Declares, That he heard the said *Ewan Roy Maccoll* say, upon the 13th, two several Times, that it was hard in *Glenure* to turn out the honest Tenants of the *Ardshiel* Estate, as they paid their Rents well, and offered an Augmentation of Rent, and were willing to give Obedience to the Government; and that one of the Times was after Breakfast,

when the People were together at the End of the Declarant's Father's House, going to the Moss; but that his Father was not present: That some of the Tenants of the Neighbourhood were there, as well as his Father's Servants; and that they generally talked in the same Strain with the said *Ewan Maccoll*; and that the other Time was after their returning from their Work that Evening at the Declarant's Father's House: That the Declarant does not know what became of the said *Ewan Roy Maccoll* all *Thursday* said 14th of *May* last; but is positive that he came into the Barn where the Declarant was lying, that same Night, about Twelve of the Clock, asking for a Bed; which was refused him, but ordered to go and lie with the Servants in another Barn in *Aucharn*, meaning *Dougal* and *John Maccolls*, now Prisoners at *Fort-William*: That the Declarant saw the said *Ewan Roy Maccoll* at *Aucharn* upon the 15th of *May* in the Morning, and saw him again at *Cuil* about Twelve of the Clock that Day; and that they came together from thence to *Aucharn*, where they parted; and that the Declarant does not remember if they had any Conversation all that Time about *Glenure's* Murder. This emitted judicially, Place and Date foresaid, before these Witnesses, *Donald Campbell* of *Aird.*, and *Colin Campbell* of *Carwhin*.

(Signed) ALLAN STEWART.

GEORGE DOUGLAS, J. S.

DONALD CAMPBELL, Witness.

CO. CAMPBELL, Witness.

Eodem die, The said *Allan Stewart* being re-examined judicially, and being interrogate whom he suspected guilty of *Glenure's* Murder? declares, That he thought, if *Allan Breck* did not soon cast up in the Country, he was the most likely Man to have done it: And further declares, that, in a Conversation between him and his Father; and others, they were of Opinion, that the People of *Ballachelish* and *Lettermore* must have known who committed the Murder at the Time it happened: That, upon the Friday after the Murder happened, he heard his Father say, he did not doubt but he would be taken up upon Suspicion of the said Murder: That when the Declarant's Father was at *Edinburgh*, he expected a Letter from him about what he was doing about the Removings; which Letter came to *Aucharn* in the Declarant's Absence, and was opened by *James Stewart* younger of *Fasnacloch*, and contained an Account of what the Declarant's Father had done about the Removings; and that he was about buying a Bargain of Meal. Declares also, That he heard his Father express his Desire to young *Ballachelish* to be present when the new Tenants came to take Possession of the Estate of *Ardshiel*; and that *Donald Macintyre* in *Aucharn* told him, that young *Ballachelish* had come back from *Appin* to *Keil*, in order to attend; but, upon hearing of *Glenure's* Murder, returned to *Appin*: That the Declarant's Father told him he would not be present at the Entering of the said new Tenants; nor was the Declarant resolved to be present himself; nor did his Father desire him to go, or suspect him such a Fool as to go: That he knows that the said *Allan Breck Stewart* lay with the Declarant's Brother *Charles* in a Barn in *Aucharn*, upon Monday's Night the 11th Day of *May* last: That the Declarant has a black short Coat, with nine round silver Buttons in the Breast, two upon each Haunch, whereof one is small, and it has no Buttons on the Sleeves or Pockets; and that his Father has also a black short Coat, with silver Buttons

on the Breast and Pockets; and has none upon the Haunches or Sleeves, to the Declarant's Remembrance: That the said Allan Breck had no big Coat on upon the 11th Day of May last, when he came to Aucharn, nor had he any big Coat of his own that the Declarant knows of; for the said Allan borrowed the Declarant's big Coat, when he came to Rannoch: That, in a Conversation the Declarant had with old Ballachelish on the Sunday before Glenure's Murder, Ballachelish then told the Declarant, that the Man that had taken the Ferry of North Ballachelish, came there with his Boat, and was refused to enter to the Possession by the Tenants, who thought they had as good a Right to the Ferry as to the Land: That thereupon the Ferry-man drew his Boat, and went to Glenure, the Tenants being resolved to keep their Possessions for the Year; and that Ballachelish said, that the Tenants of the Ardsbiel Estate had as good a Title to sit, as the Tenants of Ballachelish, if the Suspension was not discussed; and that it was a cant Word through the Country, That the Tenants might sit, since the worst of it would be paying the violent Profits. Declares also, That he has a Gun and broad Sword: That he left the Gun in his Father's Brew-house, and the Sword he gave to John Maccoll, his Father's Servant, that is Prisoner at Fort-William: That John Roy Stewart, Nephew to Fasnacloich, lay in the Barn with the Declarant upon Thursday's Night the 14th Day of May last; and that John Stewart in Auchnacooan lay in the same Barn with the Declarant's Brother Charles, being the Night that the said Ewan Roy Maccoll came to look for a Bed there. This judicial Declaration emitted in Presence of the said Sheriff-substitute, Place and Date foresaid, before these Witnesses, the Right Honourable the Lord Bury, Colonels Howard and Crawford, Donald Campbell of Airds, and Colin Campbell of Carwhin.

(Signed) ALLAN STEWART.

GEORGE DOUGLAS, S. S.

DONALD CAMPBELL, Witness.

CO. CAMPBELL, Witness.

At Maryburgh, the 4th Day of June, 1752 Years, in Presence of the said George Douglas, Sheriff-substitute aforesaid, compared Charles Stewart, Son to James Stewart in Aucharn; who being examined judicially, declares, That he was at Home all Day of the 14th Day of May last, and that he dined with his Father, Mother, Brother, Sister, and Fasnacloich's Daughter, and after Dinner went to Auchindarroch, and there conversed with Duncan Maccombie, Duncan and John Maccolls, and others that were covering Potatoes, and desired Solomon Maccoll to go with Fasnacloich's Daughter to Ardnamurchan, but he would not go: That Fasnacloich's Daughter and the Declarant's Sister went along with him to Auchindarroch, and returned before him to Aucharn, the Declarant having staid a Quarter of an Hour after them, to persuade the said Solomon to go to Ardnamurchan, and then followed them directly to Aucharn; and did not go nearer Lettermore that Day, than the Place where the People of Auchindarroch were covering Potatoes; and, in an Hour thereafter, went with Fasnacloich's Daughter, and the Declarant's Brother Allan, and Sister, to Inshaig, where he received the News of Glenure's Murder, from John Maccoll, now Prisoner at Fort-William; being sent there, by the Declarant's Father, to desire him and his Brother Allan to come Home; but that his said Brother was

gone a little before the said John Maccoll came. Declares also, That he saw Ewan Roy Maccoll, Brother to Appin's Bouman at Kealishnacooan, at the Declarant's Father's House, upon the Evening of the 14th Day of May last before they lighted Candles, and told he had come from Glenure that Day; that he afterwards, that Night, came into the Barn where the Declarant was lying with his Uncle John Stewart, looking for a Bed, and was directed to lie with the Servants in the other Barn in Aucharn. Declares, that upon his Return from Inshaig with the said John Maccoll Prisoner, That the Declarant asked him where Glenure was murdered, what Way it was done, and if any Person was seen by the Place? and that the said John answered, that it was done in the Wood of Lettermore; whether it was South or North of the Houses, he could not tell; that it was by a Shot, and that there was a Man or two seen near the Place; and this is all the Declarant remembers of the Conversation upon that Head; and that upon his coming Home, he heard his Father desire the People of Auchindarroch to go and take Care of the Corpse; and that his Father proposed to go himself, but that his Wife would not let him; and, at the same Time, heard his Father say that he would be suspected of the Murder, as he was taking so much Part with the Tenants against Glenure the Factor: That he heard Ewan Roy Maccoll say, upon the 13th Day of May last, that he wondered that Glenure was removing the Tenants that paid their Rent well, and were willing to qualify to the Government: That he observed his Father and the said Ewan Roy Maccoll have several Conversations aside about that Time. This Declaration emitted judicially, Place and Date foresaid, before these Witnesses, Donald Campbell of Airds, and Colin Campbell of Carwhin, Esqrs.

(Signed) CHARLES STEWART.

GEORGE DOUGLAS, S. S.

DONALD CAMPBELL, Witness.

CO. CAMPBELL, Witness.

Charles Stewart, Son to the said James Stewart in Aucharn, being solemnly sworn and examined, depones, That, upon Tuesday the 5th Day of May current, the Deponent and the said Allan Breck Stewart went from the Deponent's Father's House, where the said Allan had been on and from the 1st current, (except that he was Saturday's Night at Cuil) and staid at Appin's House on Tuesday's Night, were Wednesday's Night at Auchnacooan's, Thursday's Night at Auchacouran's, Friday, Saturday, and Sunday's Night at Fasnacloich's, and came on Monday the 11th current to his Father's House: That the Dress the said Allan wore all this while, was a long-bodied blue Coat, red Waistcoat, black Breeches, a Hat with a black Feather, and Tartan Hose, with a big Coat dun-coloured; in which very Dress, and with which big Coat, he came along with the Deponent to his Father's House upon the 11th current, continued there that Night, and the Deponent and he lay together: That he rose before the Deponent on Tuesday the 12th current, but that the Deponent was up before he left his Father's; and that as he was going away, which was about Eight or Nine of the Clock in the Morning, was told by him he was going for Glenure: THAT THEN HE HAD ON THE WHOLE OF THE SAME DRESS AS ABOVE DESCRIBED: That the Deponent accompanied him to Kintalline, and did not part with him any where on the Road: That they passed through Auchindarroch

Rarroch and Lagnala, and spoke with some People as they went along, particularly Alexander Stewart in Lagnaba, and Alexander Stewart his Son: That the blue Coat Allan wore had yellow metal Buttons: That the Deponent and he parted at Kintalline, after the Deponent asked John Breck Maccombie for Ale there. And this is Truth, as he shall answer to God.

(Signed) CHARLES STEWART.
ARCH. CAMPBELL, S. D.

Margaret Stewart, Spouse to James Stewart in Aucharn, being solemnly sworn and examined, depones, That Allan Breck Stewart came to her House upon Monday immediately before Glenure's Murder, dressed as mentioned in the last Deposition, and with a big Coat of the same Colour; that he staid all Night, and went away next Day about Eight or Nine of the Clock in the Forenoon, dressed in the same Habit; and at his taking Leave of the Deponent, asked her, if she had any Commands for Rannoch? That, to the best of her Knowledge, he came by himself, and went away by himself. And this is the Truth, as she shall answer to God; and declares she cannot write.

(Signed) ARCH. CAMPBELL, S. D.

Elizabeth Stewart, Daughter of the said James Stewart in Aucharn, being solemnly sworn and examined, depones, conform to her Mother's Deposition in every Thing, only that she is positive that Allan Breck Stewart came all alone to Aucharn, upon Monday immediately before Glenure's Murder, she having seen him come there. And this is Truth, as she shall answer to God; and declares she cannot write; and adds, that Solomon Maccoll, her Father's Servant, went off for the South Country upon Saturday the 16th current.

(Signed) ARCH. CAMPBELL, S. D.

Charles Stewart, Son of the said James Stewart in Aucharn, being re-examined, judicially acknowledges, That Dugald Maccoll, former Declarant, told the said Charles Stewart, that there were Arms in his Father's House, which he had hid; and this judicial Acknowledgement is signed this 23d Day of May, 1752 Years, before these Witnesses, Donald Campbell of Airds, and James Campbell, Writer in Inverary, Writer hereof.

(Signed) CHARLES STEWART.
DONALD CAMPBELL, Witness.
JA. CAMPBELL, Witness.

Thereafter the said Charles Stewart judicially owns, That, upon the 12th Day of May current, the black short Coat with silver Buttons, then wore by Allan Breck Stewart, was given to him by the Declarant's Father; and that he had got the plaiden Trowsers, then wore by him, from the Declarant's Father, or Brother Allan; and this is also signed, Place and Date aforesaid.

(Signed) CHARLES STEWART.
ARCH. CAMPBELL, S. D.
DONALD CAMPBELL, Witness.
JA. CAMPBELL, Witness.

The said Margaret Stewart, Spouse to James Stewart in Aucharn, being re-examined, judicially declares, That her Husband James Stewart was at Home, and lay in the same Bed with her, on Monday's Night the 11th of May current. And this is also Truth, as she shall answer to God; and declares she cannot write.

(Signed) ARCH. CAMPBELL, S. D.

The said Elizabeth Stewart, her Daughter, re-examined, judicially owns, That her Father was at Home on Monday's Night the 11th Day of May current. And this is also Truth, as she shall answer to God; and declares she cannot write.

(Signed) ARCH. CAMPBELL, S. D.

At Taynabeinsalg, the 25th Day of May, 1752 Years, the said Charles Stewart, being re-examined by the said Sheriff-depute, judicially declares, That the said Allan Breck Stewart had on a black short Coat with round silver Buttons, upon the 30th Day of April last, when he came to the Declarant's Father's House in Aucharn from Rannoch: That the Declarant left the said Allan Breck at his Father's House, he himself having, upon the first Day of May current, gone to Glenure along with the Tenants of Ardshiel and Charles Stewart, Notary, to be a Witness to the Intimation of the Sift they had obtained against the Decreet of Removing; and that, upon his Return that Evening, he found the said Allan Breck at his Father's, and was then dressed in a black short Coat and round silver Buttons, and then observed, that the said Coat was lined with red in the Breast and Skirts; and that the said Allan told him, that he had got the said short Coat from the Declarant's Father; but does not remember when it was he told him so. Declares also, That the said Allan Breck Stewart had on blue and white Trowsers, when he came from Rannoch to his Father's House, on the 30th Day of April; and had them likewise on, on the 2d Day of May current, when he went to Cuil in Appin; and that he wore the same Dress upon the 3d and 4th Days of May current: That the said Allan did put on his side blue Coat on the 5th Day of May current, when he went to Appin's House: And likewise declares, that he saw Allan Breck's blue Coat, upon the 13th current, lying upon a Trunk in the Room upon the right Hand of the Entry of his Father's House: That the said Allan had on the said black short Coat, when at Breakfast at the Declarant's Father's House, upon the 12th Day of May current, but had on no Jockey-Coat then. This Declaration is judicially signed, Place and Date foresaid, before these Witnesses, Donald Campbell of Airds, and Colin Campbell of Carwhin.

(Signed) CHARLES STEWART.
ARCH. CAMPBELL, S. D.
DONALD CAMPBELL, Witness.
CO. CAMPBELL, Witness.

The said Margaret Stewart, Spouse to the said James Stewart in Aucharn, being re-examined, declares, That the black short Coat now shown to her, is the same which was brought from her House upon Saturday's Evening the 23d current, and belongs to Allan Stewart, her Son: That her Husband has had no black Coat for three Quarters of a Year past; and that the last black short Coat he had, was given by him to John More Maccoll; and that the round silver Buttons, which are upon the Coat now produced, were formerly upon the Coat given to the said John More Maccoll. This judicial Declaration is emitted this 25th Day of May, 1752 Years, before these Witnesses, Colin Campbell of Carwhin, and Donald Campbell of Airds; and the Declarant declares she cannot write.

(Signed) ARCH. CAMPBELL, S. D.
CO. CAMPBELL, Witness.
DONALD CAMPBELL, Witness.

The said Margaret Stewart also owns, That there was a Gun in her Husband's House this Spring, which

which she saw her Son *Allan* go out with once or twice to kill black Cocks. This judicial Declaration is also signed, Place and Date aforesaid, and before the Witnesses above named and designed.

(Signed) ARCH. CAMPBELL, S. D.
DONALD CAMPBELL, Witnesses:

Letter addressed to Duncan Stewart of Glenbuckie:

NOW I am sorry to acquaint you, Affairs is going quite wrong upon this Estate of your Cousin's: *Glenure* wants *Ardshiel* and *Lettermore* in his own Hands, and more Rents for our Tenement, and the Carriages to himself. How far these Things will take Place, God knows! The Man that makes the whole Noise, is *Ballieveolan*, upon Account of our keeping *John More*; for he does not deny but what he offers more Rents for *Glenduror*, and gives this as his Reasons. However, it shall be A DEAR GLEN TO THEM OR THEY SHALL HAVE IT. All you heard about the Country is true: I go, in a few Days, to *Kingailoch* for the Stallion, which stands us eight Guineas; he wants to harrow him this Spring, and to get him broke for the Saddle again Harvest. *Fasnacloich* has made the Purchase for himself. You'll not neglect to send all the Money you can in a very short Time, as Money never was scarcer in this Country. *Kingailoch* has got Money; so that we are sure of his Cows. *Malcolm Livingston* has sent for more Money; for he employed what he got. I shall refer the whole History of the Country till I have the Pleasure of seeing you. I beg you'll not neglect sending a Servant soon, with as much as possible; let nothing stop him. Neglect not about your Brother. No more, but my Compliments to Miss *Jeany*, *Sandy*, and little *Donald*, is all from, dear Cousin, I am your affectionate Cousin,

(Signed) ALLAN STEWART.
Dated *Aucharn*, April the 1st, 1751.

Maryburgh, 4th June, 1752 Years. This Letter was found among *James Stewart* in *Aucharn's* Papers, and shown this Day to *Allan Stewart* his Son, who refuses it to be his Hand-writing; in Presence of *Colin Campbell* of *Carwhin*, and *Donald Campbell* of *Airds*, Esqrs. two of his Majesty's Justices of Peace for *Argyllshire*.

(Signed) ARCH. CAMPBELL, S. D.
DONALD CAMPBELL, Witnesses.
CO. CAMPBELL, Witness.

The above Letter was addressed on the Back, To *Duncan Stewart* of *Glenbuckie*, at *Brenchyle*.

Letter, *James Stewart* to *Charles Stewart*, Notary.

Dear *Charles*,

NOT knowing of your Return from *Mudart*, sent for your Father *Tuesday's* Afternoon; but the Rascal I sent, went not by *Glencrearan* that Night, by which he missed the old Man, who went a fishing, as you'll see by the inclosed, early that Morning; which I reckon a very great Misfortune. The next best I can think of, is, that you be here without fail this Night, if you should hire a Horse, as every Thing must go wrong without a Person can act, and that I can trust. This is such a Tie upon all the Members of our Family, that I'll press you no further, but do depend on seeing you once this Night; and am your own, &c. dear Cousin,

(Signed) JAMES STEWART.
Aucharn, May 14th, Eight o'Clock Morning, 1752.

VOL. X.

P. S. As I have not Time to write to *William*, let him send down immediately 8 l. Sterling; to pay four Milk Cows I bought for his Wife at *Ardshiel*:

Addressed on the Back thus: To *Mr. Charles Stewart* at *Auchintour*. Per *Exprcs.*

Letter, *William Stewart* to *James Stewart*:

Dear Sir, *Maryburgh*, 14th May, 1752.

I Send the Bearer for the best Mare, and my young Beasts in *Salachan*; unless you keep by it (which I think you ought) and send some other Body up with him, and let them carry the Milk Cows you bought for me. Let the Filly be grazed thereabouts, waiting Market.

I find *Glenure* has a Mind to eject the Tenants; but they ought to be deaf to it, and, at all Risques, keep Possession, as they are in good Hands, as it must end in *Exchequer*; so that I beg they keep Possession; as there will be no Troops, they ought to repel Force by Force, and take their Hazard of the Consequence; as it can be no more than violent Profits, which is often modified in inferior Courts, besides the *Exchequer*, who will insist for no such; their chief Design being to have a Set of peaceable Tenantry, and a well-paid Rent; so that the People ought to be assured they shall be supported as far as Law will, which no Doubt must determine in their Favours; and am, dear Sir, your own, &c.

(Signed) WILLIAM STEWART.

Addressed on the Back thus: To *Mr. James Stewart* in *Aucharn*.

Wrote on the Back thus:

Maryburgh, the 5th Day of June, 1752. This is the Letter relative to the Declaration emitted this Day before me, by *William Stewart*, Merchant in *Maryburgh*.

(Signed) GEORGE DOUGLAS, S. S.

Letter, *James Stewart* to *Mr. John Macfarlane*.

Sir,

JUST now had your Favour, and am sorry these poor Tenants should have made use of me for representing their Grievance, as, in all Appearance, it has brought a great deal of Trouble upon me; being carried here, and my Son upon *Sunday* last, suspected to be knowing to the barbarous Murder of *Glenure*, who was shot dead upon *Thursday* the 14th current, in a Wood within two Miles of my House. It is not pretended that I or my Son were Actors in this horrid Action, as we both can be well attested; but alledges, it was a premeditated Thing, to which I must have been knowing: But so far otherwise, that no Man (I thank God) abhors the Fact more, and would, if at Liberty, do all in my Power to bring it to Light. There is one *Allan Stewart*, a distant Friend of the late *Ardshiel's*, who is in the French Service, and came over in March last, as he said to some, in order to settle at Home; to others, that he was to go soon back; and was, as I hear, the Day the Murder was committed, seen not far from the Place where it happened, and is not now to be seen; by which it is believed he was the Actor; he is a desperate foolish Fellow; and, if he is guilty, came to the Country for that very Purpose. He is a tall pock-pitted Lad, very black Hair, and wore a blue Coat and metal Buttons, an old red Vest, and Breeches of the same Colour. I would own myself under many Obligations to any Friend would discover him;

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him; am persuaded he is gone South, in order to embrace the first Opportunity of going abroad. When at *Edinburgh*, he staid in Mr. *Hugh Stewart's* at the Back of the *Fountain-Well*; so begs, as you have any Regard for my Interest, recommend all that wish the Country well to be in search of him. What makes my Confinement very uneasy to me is, that this is the Time of the Year that my Business would require my Presence most; having bought Cattle (wherein I yearly deal) in different Countries, and taken Grasings South for the Cattle, which I must pay if I should never send a Beast upon it; which I am afraid will be the Case, if either my Son or self be not admitted to bail, to put our Affairs in Order: So hopes you'll spare no Pains in this, as *Airds* and *Appin* will bail me in any Sum whatever.

Your Return I'll expect in Course of Post; and am, with Compliments to your Lady and self, dear Sir, your most humble Servant,

(Signed) JAMES STEWART.

Fort-William, May 19,
1752.

Addressed thus: *To Mr. John Macfarlane, Writer to the Signet; in his Absence, to Mr. John Flockhart, his principal Clerk, at his House in the Mint, Edinburgh.*

Inverary, 22d September, 1752.

This is the Letter referred to in Colonel *Crawfurd's* Oath of this Date.

Follows the Writings produced for the Pannel,

BEING

Five Letters wrote to him by Colin Campbell of Glenure.

Sir, Glenure, 8th November, 1748.

I Think I can now, with some Certainty, tell you, that I am appointed Factor over the Lands you possess, and other Lands that belonged to your Brother *Ardshiel*; and as the Term is now at Hand, will beg the Favour, you desire the Tenants and Possessors to be preparing the Rents. I am, Sir, your most obedient humble Servant,

(Signed) COLIN CAMPBELL.

Addressed thus: *To James Stewart in Auchindarroch in Duror.*

Sir, Glenure, 14th October, 1749.

AS I intend *Monday* next to be in *Duror*, to hold a Baron-Balie-Court on the Estate of *Ardshiel*, and call for bygone Rents, have sent you this, to beg the Favour you would let the Tenants know of it, that they may be prepared to make Payments, and not be out of the Way; and I shall be glad to have the Pleasure of seeing you at *Taynabeinsaig Monday* Afternoon. I am, Sir, your most obedient humble Servant,

(Signed) COLIN CAMPBELL.

Addressed on the Back, *To Mr. James Stewart, Brother to Ardshiel.*

Sir, Glenure, December 11, 1749.

THIS Moment I had yours by your Servant, with the twenty Pounds, eighteen Shillings,

and five Pence Sterling, and the Warrant I formerly gave you. Receive inclosed your Note: Your Payments are very good, for which I am obliged to you. I intend, God will, to be at *Edinburgh* on, or a Day or two before the 25th current; that is, I intend to set out from this Place this Day, or To-morrow eight Days, and will go by *Glasgow*, and make no Stop by the Way. Remember Lady *Ardshiel's* Discharges, and all your other Tackling. I heartily wish you a good Journey.

(Signed) COLIN CAMPBELL.

My Wife, who, I find, is your sincere Well-wisher, returns you her hearty Thanks, and is sorry you have had such bad Weather to travel, when you are so weak.

Addressed on the Back thus: *To James Stewart in Auchindarroch in Duror.*

Sir, Glenure, 6th April, 1750.

I Have yours, and think it's quite right to have Burliemen: They are frequently very necessary, and can't well be wanted. You will therefore appoint two discreet honest Men for that Purpose of the Tenants; and, to prevent any Complaints or Objections, be sure you swear them to Fidelity in their Office. My Wife returns you her Thanks for your good Wishes. I am, Sir, your most obedient,

(Signed) COLIN CAMPBELL.

Addressed on the Back thus: *To Mr. James Stewart in Auchindarroch.*

Sir, Glenure, 14th March, 1751.

AFTER you left this, something has occurred that makes it necessary that you do not set any Part of *Ardshiel, Auchindarroch, or Aucharn*, till I see you after my Return from *Inverary*; which is the Reason I run you this Express. I am, Sir, your affectionate humble Servant,

(Signed) COLIN CAMPBELL.

Addressed thus: *To James Stewart of Aucharn, Duror.*

Then, the Proof on both Sides being concluded, the Lord *Elchies* said to the Lord Advocate, that now was his Time to proceed to give his Charge to the Jury; which his Lordship did as follows.

LORD ADVOCATE.

Gentlemen of the Jury,

IT now becomes my Duty, to be assisting to you in the Discharge of yours, by stating to you this Case, and summing up the Evidence that hath been given in your Presence; which I shall now proceed to do as well as I am able, after so long an Attendance.

That Attendance, I am sensible, must have been very heavy upon you, and hath been such, as the like hath not happened since the Circuit-Courts of Justiciary were brought to be held in this County: But I hope you will not repine at the great Fatigue of this Trial, in a Case, whereof the Importance is as unusual as the Length of it; and in which your giving a just Verdict will be highly for the Service and Credit of your Country.

N. B. By the sixteenth Act *Anno 1672*, concerning the Regulation of Judicatories, Article tenth, on the Justiciary Court, it is provided in these Words: "That, in all criminal Pursuits, the Defender, or his Advocate, be always the last Speaker, except in Cases of Treason or Rebellion against the King."

I need not resume to you, Gentlemen, the Libel or Indictment, whereof I presume you have been furnished with printed Copies before you came here; that, being thereby informed of the principal Circumstances which have been discovered concerning the Murder of Mr. *Campbell* of *Glenure*, you might have Leisure to weigh the Import of these, and be the better enabled to attend to the Evidence that should be brought before you; and, on the other Hand, the Pannel *James Stewart*, who is now standing his Trial, was, by that Libel, fairly informed of the principal Facts and Circumstances that were then discovered against him, so as he might have Opportunity to account for these, and clear himself, if, notwithstanding such strong Appearances, he was truly innocent.

The Crime itself, which gives Occasion to this Trial, was of its Nature the most horrid and atrocious that can well be conceived. Wilful Murder, at any Rate, is a Crime most heinous; and concerning the first Murder, God Almighty himself said to *Cain*, *The Voice of thy Brother's Blood crieth unto me from the Ground*. And the Murder now in Question, as to this Pannel's Accession to it, was one of the most causeless and unprovoked that ever happened. Poor Mr. *Campbell* of *Glenure* was cut off in the Vigour of his Life, in the very Road of his Duty in the King's Service, and for no other Cause or Provocation than his doing that Duty; and then was he basely assassinated by a Ruffian, who lay in wait for him, and shot him from behind his Back, so as he died upon the Spot, leaving two infant Children, and his Widow pregnant.

And to this horrid Violation of the Laws of God and of Humanity, is to be added in the present Case, that the sole Offence taken at *Glenure*, was his acting in the Quality of Factor on the forfeited Estate of *Ardshiel*, agreeably to his Powers and Instructions from the Barons of Exchequer, as being Administrators for the King, whose Property that Estate was; and it was resented as a capital Injury, that the King's Factor should venture to exercise his Majesty's Property as freely, as every Subject may do his own.

And last of all, That this Murder was committed on the 14th Day of *May* last, just seven Weeks after his Majesty had given his Royal Assent, and passed into a Law, the Bill for annexing this and other forfeited Estates to the Crown unalienably, and for applying the Rents and Profits thereof for the better civilizing and improving the Highlands of *Scotland*.

The Clemency of the King had been extended early after the last Rebellion, by the Act of Grace of the 20th Year of his Reign, of which the Pannel *James Stewart*, among many others, had the Benefit; and other beneficial Laws were then made, to secure and promote Freedom, Property, and good Order in all Parts of *Scotland*. And, to crown all, this last most beneficent Act was made, for the more immediate Benefit of the Highlands of *Scotland*, out of which three Rebellions have been raised, since the Accession of the Royal Family now happily reigning; an Act of Beneficence not to be paralleled in History, and calculated to render all the Inhabitants of the Highlands good and useful Subjects under this Government, by making them feel their own Interest in being such, and rendering the meanest of them, who will be honest and industrious, free and happy: And at such a Juncture, the Murder you are now inquiring

into received no small Aggravation; as it was flying in the Face of the Legislature itself, and endeavouring, as much as in these Criminals lay, to defeat or discourage the Prosecution of a Measure of Government, so highly gracious and beneficial to this Country.

The Truth is, Gentlemen, that though, God be praised, the Highlands of *Scotland* are in this Age less barbarous than they have been in former Times; yet, in our own Time, there have been such Instances of remaining Barbarism, as serve to prove but too strongly, that these Countries stand yet in need of being better civilized. I think it was in the Year 1724, that, for an Offence of the same Nature with what was here taken, an Attempt to remove certain *Macphersons* living on the Estate of the Duke of *Gordon* in *Badenoch*, the late *Gordon* of *Glenbucket*, his Factor or Tacksmen, was invaded, and received many Wounds, given with Intent to bereave him of his Life, though he chanced to recover.

You must all remember, how basely Captain *Monro* of *Culcairn* was assassinated, by lying in wait, when he was acting in his Duty in the King's Service, soon after the Defeat of the late Rebellion.

And you must have all heard of the late barbarous Enterprize of *Robert Macgregor* and his Accomplices, in carrying off from her own House the unfortunate *Jean Kay*, a young Widow and an Heiress, in the Depth of Winter, and Middle of the Night, into remote Parts of the Highlands, and causing her to be married to that *Robert*, a Person of no Fortune, and an Outlaw for Murder; for being a Conductor in which Attempt, *James Drummond*, alias *Macgregor*, a Brother of *Robert*, has been lately convicted.

The Excuse offered for *James Macgregor*, was the same mistaken Principle that appears to have misled the unhappy Prisoner at the Bar. It was said, that *James Macgregor* was actuated by one of the best Affections; he was seeking no personal Advantage to himself by that Enterprize, but only to make the Fortune of *Robert* his Brother.

And the now Pannel *James Stewart* conceived a mortal Enmity against Mr. *Campbell* of *Glenure*, for disabling him to provide for the Children of his Brother, *Charles Stewart* late of *Ardshiel*, attainted, by Contributions levied from the Tenants on that Estate, who had been under his Influence.

But alas! what a Delusion is it, from such Principle to be led to commit or justify the most heinous and abominable Crimes! The Care of the Interest of one's Kindred is doubtless a laudable Affection; and even when that Good-will is extended to the remoter Degrees, and enlarges the Circle of Benevolence, there is no Harm in it; provided in both Cases it be conducted with Justice, and Men exert themselves to serve their Friends, without violating the Rights of other Individuals, or the Laws of Society and civil Government; but he who robs or defrauds his Neighbour, to provide for his own Household, or the immediate Children of his own Body, is not the less criminal in the Sight of God and Man, that he was moved by an Affection, in itself natural and just, but which he pursued in a wicked Manner.

And, in the present Case of the Murder of *Glenure*, there appears to have been no reasonable or probable Scheme of Advantage to the Family of the late *Ardshiel*, or any Body; but that it proceeded from mere Wickedness, Malice, and Repentment,

ment, the most groundless that ever was: It affords a recent and shameful Instance of that Spirit of Revenge, which was the Characteristic of the barbarous Highlanders in former Times; and a Pity it is, Gentlemen, and a Reproach to the present Age, that it should be yet capable of furnishing such an Example.

I am far from meaning by this; that the Crimes of a few wicked Persons can justly bring a general Imputation on the whole Country where these were committed; we daily hear of most horrid and unnatural Crimes perpetrated in the Parts of the Kingdom the most wealthy, populous, and civilized; but the Part incumbent on the Country where such Things happen, is, to purify the Land of the innocent Blood with which it is polluted, by bringing the Guilty to condign Punishment; and this is what you are now employed in; and as you have attended to the Evidence patiently, I desire nothing more, than, as an impartial and intelligent Jury, you may consider it carefully, in order to discern the Truth, and then to follow that resolutely according to the Conviction of your own Minds; which, if it lead you to believe the Pannel guilty, you will do Justice to your Country by saying so; and if you are not convinced of his Guilt, in God's Name, let him be acquitted; for better that this Murder, atrocious and scandalous as it is, should go altogether unpunished, than that one innocent Man should suffer for it.

In order to lay before you distinctly the Evidence that you have heard of this Pannel's Accession to the Murder of *Glenure*, I shall first of all recite the State or Situation in which the Deceased and the Pannel stood towards each other, previous to the Murder, and also that of *Allan Breck Stewart* in respect of both the others. 2dly, I shall point out to you the Evidence that *Allan Breck* was the actual Murderer, which I admit to be a Fact that was incumbent on us to prove, in order to convict this Pannel of wilful Accession to it: And, lastly, I shall sum up the Evidence that has been brought of that Accession, and examine the Force of the Defences or Excuses which the Pannel has endeavoured to prove.

As to the first of these, the Situation of the Pannel himself; That, Gentlemen, you partly know, and have heard proved: He is a bastard Brother of *Charles Stewart* late of *Ardshiel*, attainted, who, out of his own Tenants, and those of *Dougal Stewart* of *Appin*, his Chieftain, levied a Regiment or Battalion, at the Head of which he went into the late Rebellion, accompanied, among others, by this Pannel, who had the Benefit of his Majesty's Act of Grace or Indemnity; whereby he was left at Liberty to remain with his Family in the Country, whilst *Ardshiel* himself, the attainted Person, made his Escape into foreign Parts, leaving at Home his Wife and a Family of Children, who, as Mr. *Campbell* of *Airds* has deposed, were all young, his eldest Son being now, as he thinks, about eighteen Years of Age, and consequently, at the breaking out of the late Rebellion, must have been about eleven.

The late Rebellion, as you all know, was finally suppressed by his Royal Highness the Duke, in the Spring and Summer 1746: In the Year following, the Act vesting the forfeited Estates in the King was passed; and, in 1748, the Lands of *Ardshiel*, among others, were surveyed by Order of the Barons of the Exchequer; to the Property whereof a Claim was entered on Behalf of *Alexander*, the

eldest Son of *Charles Stewart*, the attainted Person; which Claim, upon Answers made for the King, was dismissed by the Court of Session: And thus it happened, that there was no Factor appointed by the Barons on the Estate of *Ardshiel*, until *Colin Campbell* of *Glenure* was made Factor, by Commission, bearing Date the 23d February 1749, upon that Estate; and also upon the neighbouring Lands of *Allan Cameron* of *Callart*, attainted, and, adjoining to these, that Part of the Estate of *Lochiel* which lies in the Shire of *Inverness*, to the Southward of *Fort-William*, and betwixt that Fort and the Ferry of *Ballachelish*, of which you have heard so much, upon that Loch or Arm of the Sea, which separates *Lochaber* in *Invernessshire*, from the Country or District of *Appin* in this Shire.

Now, as this Factory was granted full three Years after the Rebellion, it is to be observed how the Estate of *Ardshiel* was possessed and managed in this Interval; and this appears by the Oath of *Alexander Stewart* of *Innernakyle*, who hath deposed, "That, before the Factory; as he believes, the Tenants paid their Rents to the Lady of *Ardshiel*, and that she again employed the Pannel to deal with them."

It was during this Period, that the Pannel, as the same *Alexander Stewart* deposes, who had been a great many Years ago Tenant to his Brother *Ardshiel* in the Farm of *Glenduror*, and had been removed also several Years ago by his Brother, again took Possession of the same Farm; and that *Ardshiel's* Lady and the Pannel, jointly, introduced certain new Tenants of their own Choice, into different Parcels of the Land, which *Ardshiel*, the attainted Person, had himself occupied before the Rebellion.

Again, when *Glenure* had obtained this Factory, after he had been for some time abroad with the Regiment to which he belonged, in *Flanders*; and being now come Home, was occupied with the Treaty for his Marriage with the young Lady who is now his Widow; he did, as Mr. *Campbell* of *Airds* hath deposed, for some Time employ the now Pannel, as his Sub-factor, in levying the Rents of *Ardshiel*, and setting the Lands; and, to the same Purpose, the said *Alexander Stewart* deposes, "That the Factor gave the Pannel the Opportunity of having the greatest Influence with the Tenants of *Ardshiel*, more than any other Person, by allowing the Pannel to set the Lands, which he continued doing to *Whitsunday* 1751, if not at that Time also: But adds, that the Pannel's Connexion with the Family of *Ardshiel*, gave him also a natural Influence over the Tenants, even before *Glenure's* Factory."

The Use which the Pannel made of this Influence, natural or acquired, appears partly from the Evidence of the same two Gentlemen: For, upon this Article, Mr. *Campbell* of *Airds* hath deposed, "That the Pannel told him, that whatever was made of these Rents, over what was paid into the Exchequer, was accounted for to the Children of *Ardshiel*; and, when he removed from *Glenduror*, he told the Deponent, that he had Reason to believe, that the said *Excess* of the Rents would still be accounted for to them; and, in that Case, he would be easy as to his own Removal."

And Mr. *Stewart* of *Innernakyle* deposes upon this Article, "That the Pannel was again removed by the deceased *Glenure* the Factor from the Farm of *Glenduror* at *Whitsunday* 1751, and

"the

“ the Lands let to Mr. Campbell of Balliveolan :
 “ That as the Pannel is the Deponent's near Neigh-
 “ bour, the Deponent had frequent Opportunities
 “ of conversing with him touching his said Re-
 “ moval : That the Pannel did not expect to have
 “ been removed, and seemed dissatisfied that he
 “ was ; and said, he believed, that *Glenure* would
 “ not have removed him, if (Mr. Campbell of)
 “ *Balliveolan* had not sought those Lands from
 “ him : That the Pannel further said, that the
 “ Tenants generally allowed, some *Gratuity* to
 “ *Ardshiel's* Children, and that these Lands were
 “ the best Farms on the Estate, and most of the
 “ Benefits accresced from them ; and tho' he
 “ himself could be provided of a Farm elsewhere ;
 “ yet the Children would be deprived of that
 “ Benefit.”

In what Manner this Removal of the Pannel, from this beneficial Farm of *Glenduror*, to which he had last entered since the Rebellion, without any lawful Title whatever, was brought about, appears from the Instructions to *Glenure* from the Barons of Exchequer; produced and proved before you ; the last of which is in these Words : “ You are, on no Condition whatever, to let a Farm to any of the Friends (*i. e.* the Relations) of the forfeiting Person.” And tho' it be true, that these Instructions bear Date the 25th July 1751, about two Months after the actual Removal of the Pannel from *Glenduror*, these were nevertheless the true Cause of that Removal ; for it was known or expected by the Factor, that he would receive such Instructions, there having been Notice given to the Lords Commissioners of the Treasury, of a considerable Possession of the Estate of *Lochiel* having been let to, or for the Use of one of the Brothers of the attainted Person ; upon which their Lordships had directed the Barons of the Exchequer to provide against the like being done for the future, in order to avoid the Occasions of continuing that Leading or Influence over the Vulgar inhabiting those Estates, that had produced so much Disturbance and Mischief to the Public.

And thus it was thro' Necessity, and in order to the faithful Discharge of the Duty of his Office, that Mr. Campbell of *Glenure*, at *Whitsunday*, or in *May* 1751, removed the Pannel from his Possession of the Farm of *Glenduror*, to the Continuance whereof he had no legal Title or Claim whatsoever ; and also resolved to employ the Pannel no longer as his Sub-factor or Assistant, in managing the Estate of *Ardshiel*.

It is not easy to conceive, that there was any Reason or just Cause given by this Conduct of *Glenure*, for Resentment or Hatred from this Pannel, even if it had been true, which the Pannel expressed to *Stewart* of *Innernabyle*, that, as he believed, *Glenure* would not have removed himself, if *Balliveolan* had not sought or solicited this Possession of *Glenduror* from him ; and yet, that the Pannel conceived and expressed, and prosecuted such Disposition in the most outrageous Manner, hath been now fully proved before you. But, before I mention the particular Evidence of this, I must proceed to recite the fresh Cause of Difference betwixt these Persons, and of Animosity conceived by this Pannel, from the After-proceedings of *Glenure* in the Spring of this present Year ; when he having taken the Resolution to remove a few of those Tenants, who had been introduced to their Possessions, as I have mentioned, by *Ardshiel's* Lady and this Pannel, in the Interval betwixt the Rebellion

and the Date of the Factory, it appears, that the Pannel being apprehensive, that this would lessen his Interest and influence among the People, if he should not be able to protect those Persons in the Possessions, which he himself had bestowed or procured, took the Resolution to oppose these Removings ; which he prosecuted, by representing and complaining of it in the Country as a mighty Act of Oppression, because the King's Factor thought fit to remove four or five Tenants lately introduced upon this Estate, who had neither standing Leases nor old Possessions, to intitle them in Point of Right, or in Point of Favour, to be continued ; and this groundless Opposition to those Removings the Pannel set about and conducted at his own Expence, and gave himself great Agitation and Trouble in the Prosecution of it, having gone to *Edinburgh* in *April* last, on purpose to present the Bill of Suspension of those Removings, which you have heard, setting forth most frivolous Grounds ; and all this without the Knowledge, Application, or Contribution for the Expence by the Tenants themselves, in whose Names he took upon him to offer that Bill of Suspension, until he had obtained at *Edinburgh* an Order upon the Bill from the Lord *Dun* Ordinary, that Answers should be put in to the same, and sisting or staying Execution in the *interim* ; with which Sift, and certain Advices he had received at *Edinburgh*, for making Application for those Tenants to the Barons of Exchequer, when they should meet in the Beginning of *June*, the Pannel returned to his own House on the 27th *April* ; and then sent for those Tenants, and gave them Notice of his Proceedings at *Edinburgh* on their Account ; and that if they had a Mind to continue their Possessions, they were advised to go to *Glenure*, and seek their Possessions (or demand such Continuance) ; and if he did not grant their Desire, they should send for a Notary, and go with him to protest against *Glenure* ; and if they pleased, he would send for a Notary, to which they agreed : And accordingly the Pannel sent for *Charles Stewart*, who hath been examined on this Fact, and sent him along with the Tenants to *Glenure's* House, where he intimated the Sift, and took a Protest against him on the 1st of *May* last.

It was upon receiving this Notice of a Suspension presented, and a Sift granted, that *Glenure* repaired to *Edinburgh*, and put in his Answer to the Bill ; upon Consideration of which, the Bill was refused or dismissed by the Lord *Haining* Ordinary ; and then *Glenure* returned to his own House on *Saturday* the 9th *May* last, in order to take the necessary Measures for executing the Removings that had been thus opposed.

This Part of the Pannel's Proceedings is proved by the Oath of *Charles Stewart*, his Notary, by the Pannel's own Examinations, which you have heard read, and by *Duncan Maccoll* in *Ardshiel*, one of those Tenants, who hath now deposed, “ That, upon himself and others being warned to re-
 “ move from the Lands of *Ardshiel*, as at *Whit-*
 “ *sunday* last, he for his Part had no Intention
 “ other than to submit to the Warning, till a
 “ Paper was procured from *Edinburgh*, which he
 “ heard read by *Charles Stewart*, Notary at *Aucharn*,
 “ as on a Day he was there, being along with
 “ his Neighbours advertised to meet there,—
 “ where he and his Neighbours were told by the
 “ Pannel and *Charles Stewart*, the Notary, that
 “ the Paper brought from *Edinburgh*, contained
 “ Advice for those who had been warned to re-

“ move, to continue in their Possessions; and
 “ that they should go to *Glenure*, and ask the same
 “ from him. And deposes, that he gave no Al-
 “ lowance or Mandate to the Pannel to make any
 “ Application at *Edinburgh* against the Removing:
 “ That, before he heard any thing of this Paper
 “ from *Edinburgh*, he had engaged to serve as
 “ *Bouman* to the Tenants *Glenure* was to introduce;
 “ but that, on hearing of this Paper, he preferred
 “ keeping by his Neighbours, as he considered
 “ the being continued in his Possession, did the
 “ Law support him in it, as more beneficial to
 “ him: And adds, that the procuring the Paper
 “ at *Edinburgh* cost him no Money.”

To the same Purpose, *John Maccombich*, another of those Tenants in *Ardshiel*, hath deposed, and adds this farther Circumstance, “ That as to his agreeing with the incoming Tenants to be their *Bouman*, he heard both *Glenure* and these Tenants say, that it was by *Glenure*'s Advice that this was done;” which is, by the way, an Instance of the Humanity, with which *Glenure* acted on this Occasion, in being at Pains to provide Bread for those Persons whom he did not think fit to continue as Tenants on this Estate of *Ardshiel*, where they had been so lately introduced by the Pannel.

These then were all the Causes of Offence, that, after the strictest Inquiry, can be discovered to have been ever given by *Glenure* to this Pannel, namely, that *Glenure*, as Factor upon this Estate of *Ardshiel*, removed the Pannel himself from the Farm or Possession of *Glenduror* at *Whitsunday* last Year, and gave over employing or entrusting the Pannel to act under him in the Management of the Lands of *Ardshiel*; and that he was taking Measures for removing the few Tenants lately introduced by the Pannel, at *Whitsunday* this Year; which Measure he persisted in, the Opposition that the Pannel was pleased to make, notwithstanding. Very strange Causes, it must be confessed, for the Pannel's conceiving a violent, and even a mortal Enmity against *Glenure*! And yet nothing is more certain, than that violent Offence may be taken, where no just, or even plausible Cause for it hath been given: And, from the first Murder recorded in sacred History, down to this now in Question, often hath it happened, that wicked Men have hated their Brothers without a Cause, that is, without a Reason or just Cause, tho' there was always an Occasion, or a Motive, such as it was, for that Hatred being conceived.

Again, it is to be considered, that Occasions of Offence operate differently, according to the Education, Temper, and Character of the Party who meets with them; and we have now heard from the Evidence in this Trial, what a wrong Way of thinking this unfortunate Pannel is possessed of, in holding it to be a Cause of mortal Enmity, that a Man should be removed by another from his Farm or Possession which he hath no manner of Title to hold or retain; which is a Prejudice or Delusion, that, in a lower Degree, prevails elsewhere, but seems to be in a particular Manner prevalent in the Highlands, and was the Cause of the Attempt made by the *Macphersons* to assassinate *Glenbucket* some Years ago, as well as the Cause of the horrid Murder into which you are now inquiring.

And, for one Proof that this Pannel is deeply poisoned with this most erroneous Opinion, you heard, Gentlemen, a little while ago the Objection that was by him made to *Alexander Stewart* senior in *Lagnabaw*, one of the Witnesses in the List

served upon him, and called up to give Evidence against him, to whom the Pannel objected, that this Witness bore Enmity against him; for that the Witness was formerly in Possession of the Lands of *Aucharn*, which the Pannel now holds under Mr. *Campbell of Airds*; and that the Pannel had caused the Witness to be removed from that Possession, and succeeded him in it: An Objection in itself insufficient in Point of Law, which cannot suppose Men to be so wicked as to entertain mortal Enmity for such a Cause; and therefore, as you heard, it was over-ruled by the Court; notwithstanding which we freely passed from the Witness, being satisfied that we had Evidence enough besides, and unwilling to leave any Room for the Pannel to complain, or for you, Gentlemen of the Jury, to apprehend that any one Witness was used against him, of whose Credibility there could be the smallest Suspicion; but the very moving of such Objection on the Part of the Pannel, affords one Proof of his own Sense of the Nature and Degree of such Offence.

Another signal Proof of this appears from the Oath of *Ewan Macintyre*, late Herd in *Glenduror*, who hath deposed, “ That he engaged to be Herd “ to Mr. *Campbell of Balliveolan* in the Farm of “ *Glenduror*, for the Year 1751; and that, the “ Day after he entered into his Service there, the “ Pannel challenged him for accepting thereof, “ and told him, that he would be *fit-fides* with “ him sooner or later for doing it; and that, if “ he did not meet with Resentment himself in “ his Life-time, others, such as his Friends, might “ meet with it after his Death.” And adds, “ That he himself was never in the Pannel's Ser- “ vice.” This was surely carrying this Delusion to a most extravagant Pitch, and such as, to any Stranger to this odd Way of thinking, must have appeared incredible, till he heard the Proof of a Fact, which demonstrates how deeply that Opinion is rooted in the Mind of this Pannel.

And, accordingly, we have heard how that was farther displayed by his Words and by his Actions on other Occasions, in respect of the deceased *Glenure*, for the Causes of Offence I have mentioned, by the Evidence I shall now point out.

And first of all, *John Breck Maccoll*, the *Bouman* to *Appin* (who, tho' he lives in a Desert, appeared, to me, to have given his Evidence in a most natural ingenuous Manner; and, by his own Words and Behaviour related in it, discovers a Degree of Sagacity which, in a Person of his Situation, surprised me; and,) upon the Article I am now speaking of, he deposes, “ That, in a Con- “ versation the Deponent had with the Pannel, “ as the Deponent best remembers, about two “ Years ago,” (whether he was herein accurate in the Chronology, is not essential to the Question in Issue) “ Mention being made of *Glenure*'s being “ about to take on himself the Management of the “ Estate of *Ardshiel* from the said Pannel, and “ thereby disable the Pannel from being of any “ Service to *Ardshiel*'s Children, he heard the Pan- “ nel say, he would be willing to spend a Shot “ upon *Glenure*, tho' he went upon his Knees to “ his Window to fire it: And farther deposes, “ That he heard a *waif* (that is a flying or uncer- “ tain Rumour or) Report in the Country, that “ *Ardshiel* (the attainted Person) had sent Home “ a Message, that he believed all his Friends were “ dead, when *Glenure* was allowed to go on at the “ Rate he did.”

Again,

Again, another remarkable Conversation of the Pannel's, in the same Spirit, but carried a good deal farther, is proved to have happened about *Christmas* last 1751, within the Pannel's own Brew-house at *Aucharn*, betwixt him and three of his own Servants, who all concur in proving it, namely, *John More Maccoll*, *Dougal Maccoll*, and *John Beg Maccoll*; of whom the first hath deposed, "That he was present at a Conversation that happened betwixt the Pannel, *John Beg* and *Dougal Maccolls*, both Servants to the Pannel, in his Brew-house at *Aucharn*, before Day-light, upon a Morning about *Yule* (or *Christmas*) last, as the Deponent best remembers: That the Deponent was then employed in distilling the second Draught of a Brewing of *Aquavitæ*, and the Pannel ordered the Deponent to give him, and People present, a Dram; which the Deponent did: That the Pannel said, *Glenure* would not take the Rent from the Tenants of *Aucharn*, Part of the *Ardshiel* Estate, because they had given the Pannel some Barley, which *Glenure* alledged they ought to have paid him: That the Pannel complained, it was hard to refuse the Rent in Money from the Tenants in a scarce Year; and observed, that it would be of no great Consequence to him, the Pannel, tho' he should pay back the Barley, in Comparison of what it would be to the Tenants for subsequent Years, in case they were obliged to pay their Farm, Bear and Meal," (to-wit, in Kind according to their Leases) "and said the Tenants or Commoners were likely to be very ill off; for, if *Glenure* went on in the Way he then did, it was likely he would be Laird of *Appin* in a very short Time; and that he knew once a Set of Commoners in *Appin*, who would not allow *Glenure* to go on at such a Rate: To which the Deponent and the rest answered, that they knew no Commoners in the Country who could strive or contend with *Glenure* in that Manner."

This Conversation in the Brew-house is further proved or explained by the other two Servants present: And *John Beg Maccoll* adds this Circumstance, "That after he and *Dugald Maccoll* went out of the Brew-house, either that Day, or some time thereafter, they talked together what the Import of this Conversation might be; and that the Deponent was at a Loss, whether to consider it as an Encouragement to destroy *Glenure*, or as a Complaint against the Commoners of *Appin*, as not being so faithful to the Pannel, as he expected them to be."

It must be left to your Consideration, Gentlemen, whether this *John Beg Maccoll* was not in the right in his Conjecture; and that this Conversation can receive no other Construction, than that the Pannel took that Occasion to instigate these Servants of his own, who were all of one Tribe, to resent against *Glenure* the supposed Injuries to the common People of that Country, which the Pannel had thus represented and exaggerated to them; or at least to feel their Pulses, and try how they would relish such a Proposal or Insinuation.

But farther still, the Pannel continued to discover the Rancour with which his own Heart was filled against *Glenure*; the next Instance of which that hath appeared upon the Evidence, happened in *April* last, when he was on his Road to *Edinburgh*, with Intent to offer a Bill of Suspension of the Removing of the Tenants that hath been mentioned: And here three Circumstances are proved

by the Testimonies of *Alexander Campbell* and *Ewan Murray*, two of his Landlords or Innkeepers by the Way, and *Colin Maclaren*, Merchant in *Stirling*, who fell into Company with the Pannel at both these Houses, and travelled in the Pannel's Company some Miles on the Road towards *Stirling*.

Alexander Campbell in *Teynaluib* hath deposed, "That in *April* last the Pannel called at the Deponent's House in the Morning, to have his Horse corned; and having called for, and got a Dram, which was afterwards set down upon the Table, one *Maclaren*, a Merchant in *Stirling*, who had lodged with the Deponent the Night before, being present, asked the Pannel, if he would not help the Deponent to a Dram? and the Pannel answered, he did not know any Thing that he would help the Deponent, or any of his Name to, if it was not to the Gibbet: And after some farther Conversation, the Deponent said, that *Glenure*, as he supposed, was the Person of the (Deponent's) Name, with whom the Pannel had the greatest Quarrel; and the Deponent did not know any good Cause the Pannel had for it. To which the Pannel answered, that if *Glenure* had used the Deponent as ill as he had used him (the Pannel,) by turning him out of his Possession, he would have no less Quarrel with him than he had. And, upon the Pannel's Interrogatories, the Witnesses added, "That at that Time he thought what the Pannel said proceeded from Malice, and that the Pannel was then perfectly sober."

This Conversation was confirmed by *Colin Maclaren*, the Merchant, who had lodged in that House all Night, who adds, "That the Pannel then said (speaking of the *Campbells*) that he did not chuse to be an Executioner, but he could draw down some of their Feet;—and that at first, during this Conversation in *Campbell's* House, he thought that the Pannel had been in Joke, but afterwards it was like to become very serious; for the Landlord and he came to pretty high Words together."

The next Landlord, *Ewan Murray*, at the West End of *Lochern*, hath deposed, "That in *April* last, the Pannel, and *Colin Maclaren*, Merchant in *Stirling*, came to the Deponent's House, and the Pannel told the Deponent, that *Glenure* had warned away several Families in *Ardshiel's* Estate to remove; and that he was informed, that none of the Factors on the forfeited Estates had Power to remove the Tenants; and that he was going to *Edinburgh* to take Advice of Lawyers about it; and if he had not that Power, that the Pannel would apply for Suspension in his own Name, and in Name of the rest of the Tenants: And the Conversation turning upon an Officer in the Army that was branded with Cowardice, and had been broke on that Account, the Pannel said, that he had Reason to say, that *Glenure* was as great a Coward as that Officer; for that he, the Pannel, had challenged him to fight him, which *Glenure* declined; and desired the Deponent to tell *Glenure*, that he had told him so: But the Deponent answered, that he would not carry any such Message from one Gentleman to another: And from the Conversation, the Deponent understood, that the Arms with which the Pannel had challenged *Glenure* to fight, was with Pistols."

And it is true, Gentlemen, that this Witness adds, upon the Pannel's Interrogatory, "That he thought

“ thought the Pannel was a little concerned with
“ Drink; but if it was so, *tum veræ voces.*”

This Conversation is again confirmed by Mr. *Maclaren*, the Pannel’s Fellow-Traveller, in both the Parts of it; who adds this Circumstance, that the latter Part of the Conversation happened upon the Road after they left that House, and *Murray* the Landlord rode some Part of the Way along with them: And then Mr. *Maclaren* deposes to a third Conversation betwixt himself and the Pannel, in these Words, “ That, after parting with *Ewan Murray*, in the Course of their Journey, the Deponent found, *that the Removing was much at the Pannel’s Heart*, and the Deponent endeavoured all he could to divert the Conversation to another Subject: That the Pannel told him, that if he failed in a Suspension at *Edinburgh*, he would carry it to the *British* Parliament; and if he failed there, told him, after a little Pause, and with an Emphasis, that he behoved to take the *only other Remedy* that remained.”

These last Words, Gentlemen, need no Explanation; for surely, after the Judgment of the *British* Parliament, no other legal or lawful Remedy could remain.

And, as to the Condition of the Pannel during these Conversations, Mr. *Maclaren* farther deposes, “ That he did not think the Pannel drunk either in *Campbell’s* House, or in *Ewan Murray’s* House; but, after leaving *Murray’s* House, they drank two or three Drams at a Dram-house, and after that the Deponent thought him much concerned with Liquor; and it was after taking these Drams that the Conversation between *Murray* and the Pannel, with respect to challenging *Glenure*, happened; and that the Deponent and the Pannel had rode several Miles together before the Conversation about the *British* Parliament; and the Deponent thought him even then still concerned with Drink:” And very likely it was this that threw the Pannel so much off his Guard as to speak out, to his Landlord and his Fellow-Traveller, so much of what lay deeply at his own Heart, and to tell upon himself this Matter of Fact about the Challenge he had given *Glenure* to fight him with Pistols.

Such appearing to have been the Temper and Disposition of the Pannel towards *Glenure* in the Month of *April* last, and before that Time; I shall next point out to you, Gentlemen, the Evidence concerning that of his Friend *Allan Breck*, who himself does not appear ever to have had any Acquaintance of, or Intercourse with *Glenure* in his Life, but, by the Pannel’s own showing, was his Kinsman, and had been his Ward or Pupil; and, by *Breck’s* Character, and his then Situation, as being engaged in foreign Service, and not at Liberty to live openly in this Kingdom for any long Time, though he went about among his Highland Friends without any Scruple, he was a fitter Instrument of the Vengeance meditated against *Glenure*, than the *Maccolls* the Pannel’s own Servants, or any of the common People of *Appin*, could be.

And, concerning this *Allan Breck*, *John Beg Maccoll*, one of the Pannel’s Servants, hath deposed, “ That, in *March* last, he came to the Pannel’s House, late in the Evening, dressed in a blue Coat, red Waistcoat, black shag Breeches, and a feathered Hat,” (that is in his *French* Dress, which the Witnesses call a side or long Coat, in Opposition to the black short Coat with silver

Buttons belonging to the Pannel, which he was afterwards seen in; and, upon this his first Arrival, the Witness proceeds to depose,) “ That he looked into the Kitchen, and went immediately to the Room where the Pannel and his Family were; that afterwards he used to go through the Country to different Places, and came frequently back to the Pannel’s House: That once he remained there a Week, which was the longest Time that he staid there at one Time.”

Here is then the Intimacy still subsisting betwixt the Pannel and *Breck*, that naturally arose from the acknowledged Connexion betwixt them; the Pannel’s House was his Head-Quarters in the Country of *Appin*, from whence he made his Excursions to visit his other Friends in those Parts; and, during the Pannel’s Absence on his Journey to *Edinburgh*, *Breck* went over to see his Relations in *Rannoch*. And it hath appeared upon the Evidence, how thoroughly Mr. *Breck* espoused, and entered into the Notions and Sentiments of his old Guardian and Friend, the now Pannel, with respect to *Glenure*.

And on this Head *Duncan Campbell*, Change-keeper at *Annat*, deposes, “ That, in the Month of *April* last, the Deponent met with *Allan Breck Stewart*, with whom he was not before acquainted, and *John Stewart* of *Auchnacooan*, at the House of the Walk-miller of *Achofragan*, and went on with them to the House; that *Allan Breck* said, that he hated all the Name of *Campbell*; and the Deponent said, he had no Reason for doing so; but *Allan* said, he had very good Reason for it: That thereafter they left that House; and, after drinking a Dram at another House, came to the Deponent’s House, where they went in, drunk some Drams, and *Allan Breck* renewed the former Conversation; and the Deponent making the same Answer, *Allan* said, that if the Deponent had any Respect for his Friends, he would tell them, that if they offered to turn out the Possessors of *Ardshiel’s* Estate, he would make *black Cocks* of them before they entered into Possession, by which the Deponent understood shooting them, it being a common Phrase in the Country:—That *John Stewart* said he did not blame *Glenure* so much as *Ballieveolan*, for taking those Possessions; whereas *Glenure* was doing the King’s Service: And *Allan Breck* replied, that besides that, he had another Ground of Quarrel against *Glenure*, for writing to Colonel *Crawfurd*, that he, *Allan*, was come Home from *France*; but that he was too cunning for him; for that, when at *Edinburgh*, he had made up his Peace with General *Churchill*, and had got his Pass, which he had in his Pocket-Book: That the Deponent asked a Sight of it; that he searched his Pocket-Book, but could not find it; upon which he tore a Leaf out of the Book, and said, there it was. And deposes, that he said twenty Times over, he would be *fit-sides* with *Glenure* where-ever he met him, and wanted nothing more, than to meet him at a convenient Place.”

This Conversation is confirmed by *Anne Maclaren*, Servant to the said *Duncan Campbell*, who deposes, “ That she heard *Allan Breck* then say, “ That he would *not shun* *Glenure*, where-ever he met him; by which she understood, that he was to do Hurt or Harm to *Glenure*, where-ever he saw him.”

And it is farther confirmed by *Angus Macdonald*,
the

the Walk-miller mentioned by *Duncan Campbell*, and by *Robert Stewart*, a fourth Person present in the Company, who adds indeed, that *Allan Breck* was much in Drink at the Time of uttering the above Expressions; but they are not the less to be regarded in this Trial, when the *Occasion* of these *Threats*, the *Repetition* of them, and, last of all, the fatal *Execution* hath been at the same Time proved before you.

Another like Conversation of *Allan Breck's* was proved to have happened at the House of *Malcolm Maccoll*, Change-keeper at *Portnacross*, by the Landlord, and by *Anne* his Wife, who depose, "That, one Morning in *April* last, *Allan Breck* being in his House with *John Stewart*, *John Maccoll*, then Servant to the Deponent, came into the Company in a shabby Condition; that *Allan Breck* asked who he was? that the said *John Stewart* answered, that he was an honest poor Man, with a numerous Family of small Children, and that it would be great Charity in any body to assist him; upon which *Allan Breck* desired the said *John Stewart* to give the said *John Maccoll* a Stone of Meal, and he would pay for it, which the said *John Stewart* promised to do: That the said *Allan* then gave the said *John Maccoll* a Dram, and told him, if he would fetch him *the Red Fox's Skin*, he would give him what was much better.—And depose, that they gave no great Notice to these Expressions at the Time; but, after they heard of *Glenure's* Murder, believed he meant *Glenure*, as he was commonly called *Colin Roy*, which means *Red Colin*, in the Country."

A third and very remarkable Instance of *Allan Breck's* Conversations on this Subject, was one which he held with two of the Pannel's Servants above-mentioned, *Dugald* and *John More Maccolls*; whereof the former deposes, "That as he and *John Maccoll* were harrowing in a Field belonging to the Pannel at *Aucharn*, being the same Day, or the Day after the Pannel went for *Edinburgh*, (that is, on the 3d or 4th of *April*) *Allan Breck Stewart* walked for a good Time about the Field; and as they were loosing their Horses, the said *Allan Breck* and they entered into Conversation about *France*, and People from this Country there; and *John More Maccoll* asked, if there was any Prospect of any of them coming back? upon *Allan Breck's* answering, he was afraid they would not, *John More* said, he wished that none had ever come from that Country; in which the said *Allan* joined him, saying, it had dispersed the Friends he most regarded; and (then added) that it was a particular Misfortune, that the Management of any Concerns they left behind them, fell into the Hands of one that was about to show them no Manner of Favour; and declared, that he meant *Glenure*; and told, that the Commoners of *Appin* were little worth, when they did not take him out of the Way before now; and upon their saying, no body would run that Risk, not knowing who would stand by them, *Allan Breck* answered, that he knew how to convey out of the Way any Person that would do so, that he would never be caught; and also said, that they, and the Tribe they were of, (meaning the *Maccolls*) were not like to be the least Sufferers by *Glenure's* Proceedings."

John More Maccoll swears to the same Conversation at the harrowing, and deposes, that *Allan*

Breck then said, "If they, the Commoners of *Appin*, were worth themselves, they could keep out *Glenure*, and hinder him from oppressing them; in which Case they would not be banished from their natural Possessions; and, upon the Deponent's answering, he did not see how any body could pretend to strive or struggle with *Glenure* in that Way, as he had the Laws of the King and Country for him, and no body to support or take them by the Hand after their so doing; *Allan* said, he had it in his Power to save or protect any body that would put *Glenure* from trampling upon the Country in the Manner he then did."

Here then was *Allan Breck* the Pupil, in Spring last, a few Weeks before the Murder happened, speaking the very same Language, and using the same Arguments with two of these *Maccolls*, the Servants of the Pannel, with which the Pannel himself had been practising upon them in his own *Brew-house* about *Christmas* last; and this Conversation of *Breck's* was not like the former, after drinking Drams in Change-houses, but when he was sober and cool, walking in the Fields about the Pannel's House, which was in Effect his Home.

And, to the Evidence on this Article, may be added, what the Pannel himself hath declared at his first Examination before the Sheriff-substitute, which has been proved and read in your Presence, when, being interrogated, "If he had any Conversation with *Allan Breck* concerning *Glenure*?" answered, that the said *Allan* asked the Declarant, "if he heard that Serjeant *More* (*Cameron*) was come from *France*, or if he was in the Country of *Appin*?" To which the Declarant answered, "that he did not hear he was in *Appin*, but he heard he was in *Glenetive* last Year; whereupon the said *Allan* told the Declarant, that Serjeant *More* swore he would kill *Glenure*, because of the Treatment he gave the Tenants on the Estate of *Mamore*, Part of *Lockiel* Estate. Declared also, That the said *Allan Breck* threatened that he would challenge *Ballieveolan* and his Sons to fight, because of his removing the Declarant last Year from *Glenduror*, and being about to remove the other Tenants this Year from some other Parts of the Estate of *Ardshiel*."

Now, as to the Mention here made by the Pannel of Serjeant *More Cameron*, I shall hereafter have Occasion to take Notice of the Use the Pannel made of it; but have here only to observe, that the Causes of Offence, for which the Pannel says *Breck* threatened to fight *Ballieveolan*, were the very same which the Pannel himself, as well as *Breck*, resented so highly against *Glenure*, namely, the removing the Pannel himself from *Glenduror* the last Year, and being about to remove other Tenants of *Ardshiel* this Year: And though the Pannel carefully avoids saying any thing of *Breck's* Threatenings against *Glenure*, after he had been actually murdered, and had attempted to throw the Suspicion of that upon Serjeant *More*; yet here, by the Pannel's own showing, *Breck* had entered thoroughly into those Quarrels of his for the actual Removal of himself, and the intended Removal of others, and threatened to challenge and fight *Ballieveolan* upon that Account.

And as to the other Ground of Quarrel against *Glenure*, which *Allan Breck* mentions in one of the above Conversations, namely, for his supposed writing to Colonel *Crawfurd*, that he, *Allan*, was come Home from *France*, I shall not take upon

me to explain, or to guess in what Manner *Allan Breck* came to be possessed with such a Conceit; because we have heard no Evidence concerning the Manner in which he received such Piece of false Information or Intelligence; for that it was false hath been fully proved before you. First of all, Colonel *Crawfurd* himself "being asked whether " the deceased *Colin Campbell* of *Glenure* ever told " him, that *Allan Breck Stewart* was a Deserter, " and in this Country? hath answered, upon Oath, " in the negative."

And next, Mr. *Campbell* of *Airds* hath deposed, " That, in Spring last, he had a Letter from " Colonel *Crawfurd*, telling him that he heard " *Allan Breck Stewart* was come to the Country, " and inlisting Men for the *French King's* Service, " and desired the Deponent to inquire if it was so: " That the Deponent did inquire, and wrote the " Colonel for Answer, that he heard he had been " in the Country, but that he was then gone " away: That this was in the Month of *April*, " to the best of the Deponent's Remembrance; " and it seems about that Time *Allan Breck Stewart* " had gone to *Rannoch*, which gave Occasion to " the Deponent's being informed that he was " gone away, and did not hear of his having re- " turned to the Country till after *Glenure's* Murder; " and thinks he wrote also to Colonel *Crawfurd*, " according to the Information he had got, that " *Allan Breck Stewart* was in use of coming every " Year to the Country since *Ardshiel* went to " *France*."

And *Alexander Stewart* of *Innernabyle* deposes, " That he remembers that *Allan Breck Stewart* " came over to this Country a Year or two ago, " and staid some Weeks among his Friends; but " neither at that Time, nor the last Time, did he " seem, so far as the Deponent observed, to be " in any Apprehension of being taken; only, as " he had been once in the Army, he did not " chuse to meet with any of the King's Troops."

And besides all this, it hath appeared in the Proof before you, that *Breck Stewart* remained in the Country, as usual, a full Month or more, after he had mentioned the supposed Notice given concerning him by *Glenure* to Colonel *Crawfurd*; and it hath not been proved, or even alledged, that in pursuance of that Notice, whoever gave it, there was any Search made for *Breck*, or the smallest Disquiet given to him, or any Alarm or Precautions taken by him, till after the Murder of *Glenure*: To say nothing therefore of the Injustice of that Cause of Offence, had it been true, that *Glenure*, a good Subject to his Majesty, formerly a military, and still a civil Officer in his Service, had given Notice to the commanding Officer in a neighbouring Garrison, of such a Person as *Breck Stewart*, a late Rebel, a Deserter, or a *French* Emisary, possibly for raising Recruits, being then lately come into that Country; I have only to observe on this Occasion, that in Fact it is incredible, that *Breck Stewart* himself, upon a bare Surmise, which was not true, that *Glenure* had given such Notice to Colonel *Crawfurd*, and upon which no Molestation followed to himself, should have conceived or prosecuted a deadly Hatred against *Glenure*; and therefore the true Cause of that Enmity must have been the other main Quarrel or Cause of Offence, which was first taken up by the now Pannel, and thereafter adopted and espoused by *Breck* in the Manner that you have heard.

And, for the Truth of this Observation, we

have the Authority of the Pannel himself, who had the best Opportunity to be thoroughly acquainted with *Allan Breck's* Sentiments; for, in the Pannel's Examination that hath been read before you, he says, " That how soon the Declarant heard of " *Glenure's* Murder, it came into his Mind, that " Serjeant *More* had done it, because *Allan Breck* " had told him, that the said Serjeant swore " bloody Revenge against *Glenure*, before the Ser- " jeant came from *France*, upon Account of *Gle- " nure's* Treatment of *Lochiel's* Tenants, and his " differing with *John Cameron* of *Fassaferru*, Brother " to *Lochiel*: That the Declarant's Reason for " suspecting *Allan Breck* afterwards was, because " he left the Country abruptly, without taking " Leave of him, as he expected; and, if the said " *Allan* was guilty of the said Murder, he believes " it behoved to be on Account of the Disturbance " given to the Tenants of the Estate of *Ardshiel*, " and he knows no other."

Thus, Gentlemen, stands the Evidence you have heard of the Causes of Offence, such as they were, that were taken by the Pannel and his Friend *Breck Stewart* against the late *Glenure*, and of the Manner in which their Resentment against him had been expressed and displayed in and before the Month of *April* last, when the Pannel went to *Edinburgh* to obtain a Suspension for staying the Removings. And we must now proceed to examine the Evidence of the Sequel of these Animosities and Threatenings, and of the fatal Execution thereof by the actual Murder of *Glenure*, upon the very Eve of *Whitsunday*, or the 15th of *May*, when he was to have proceeded to the removing of the Tenants of *Ardshiel*, after he had, upon Answers made, obtained the Bill of Suspension offered by the Pannel to be refused or dismissed; whereby the Pannel's last Effort, to prevent those Removings, and to preserve his own Authority or Influence with the Tenants of *Ardshiel*, had been frustrated.

On the 27th *April* last, by the Pannel's own Account, he returned to his own House from *Edinburgh*, with the Order he had obtained on his Bill of Suspension, that the same should be answered, and a Sift or Stay of Proceeding in the Interim; soon after which, he called the Tenants, and gave them Notice what he had been doing for them, and sent them with his Notary to intimate the Sift to *Glenure*; which was accordingly done on the 1st of *May*, as *Charles Stewart*, the Notary, hath deposed.

On *Saturday* the 9th of *May*, *Glenure* returned to his own House from *Edinburgh*, whither he had gone to make an Answer to that Bill of Suspension that had been intimated to him; and, upon that Answer, had got the same refused or dismissed; and gave out, in his Family, his Resolution, after reposing himself that *Sunday* at Home, to set out on *Monday* the 11th for *Fort-William*, in order to settle the Affairs of his Factory on the *Lochiel* Estate, and to return to *Appin* or *Ardshiel* before the 15th.

At this Time *Allan Breck Stewart* is proved to have been at the House of *John Stewart* of *Fasnacloch*, distant but one Mile from *Glenure's* House, which, in that Country, is near Neighbourhood; and there, accompanied by *Charles*, one of the Pannel's Sons, where *Allan Breck* had Opportunity to get Intelligence of the Motions of *Glenure*; which accordingly he received from his Landlord *John Stewart* the elder of *Fasnacloch*, who hath deposed, " That he told *Allan Breck*, that *Glenure*

" was

“ was come from *Edinburgh*, with a Warrant to remove the Tenants; to which *Allan Breck* said, that if there was a Warrant, there was no more to be said; but that if he had no Warrant, he would not be allowed to remove them: And the Witness adds, that he heard, on *Sunday* the 10th of *May*, that *Glenure* was going to *Fort-William*; and *Allan Breck* left his House about Nine o’Clock *Monday* Morning.”

This is confirmed by *James Stewart* the younger of *Fasnaclloch*, who adds, “ That *Breck* was then in his *French* Dreſs, and that, when he went away on *Monday* the 11th, about Nine in the Morning, he told the Family that he was going to leave the Country ſoon, but would ſee them again at *Fasnaclloch* before he went away: And further ſays, that, on *Sunday* the 10th, he heard, being in Company with *Allan Breck*, that *Glenure* had got an Order from *Edinburgh* to remove the Tenants, and was gone to *Fort-William*.”

From *Fasnaclloch*, *Allan Breck* came directly the ſame Day to the Pannel’s Houſe at *Aucharn*, where, ſoon after, he put off his *French* Cloaths, and put on the black or dark-coloured ſhort Coat belonging to the Pannel with ſilver Buttons, with a Bonnet and Trowſers, being, as ſeveral of the Pannel’s Servants have depoſed, the ſecond Time they ever ſaw him in that Dreſs; the only former Time having been, when *Breck* went in theſe Cloaths for ſome Days to *Rannoch* in *April* preceding, whiſt the Pannel was at *Edinburgh*.

And now the Pannel himſelf hath declared, “ That he was informed on *Monday* the 11th of *May*, by his Son *Charles*, *Allan Breck*, and *Fasnaclloch*’s Daughter, that they heard *Glenure* was to go to *Lochaber* that Day; and that one or other of them told him, that *Glenure* was to remove the Tenants of *Ardſhiel*.”

By the Communication of this Intelligence, it appeared, that the Matter in Diſpute was coming to a *Criſis*; the laborious Efforts made by the Pannel, in going to *Edinburgh*, of his own Accord, to get a Stop put to the Removing, he now ſaw were rendered ineffectual, by means of *Glenure*’s having gone thither after him: And it is preſumeable from the *Facts* that preceded, and that followed this Day, that this was the Time when the Pannel and *Breck*, at his own Houſe, concerted, that *Glenure* ſhould be cut off by the Hands of *Breck*, upon his Return from *Fort-William* into that Country of *Appin*; and, as it appears from the Evidence, that the Pannel at this Time was low in Caſh, the *Facts* that have been proved, ſerve to evince, or to render it farther preſumeable, that at this Time it was concerted, betwixt the Pannel and *Breck*, that the latter, as ſoon as his Work was done, ſhould retire to the Deſert of *Koaliſnacooan*, and there wait, till either the Pannel ſent him a Supply of Money to carry him off, or cauſed the Money to be furniſhed by his Friend and Correſpondent, *William Stewart*, Merchant in *Maryburgh*.

It is true, that, for ſome Hours of this *Monday* the 11th, the Pannel went from his own Houſe, upon a Meſſage from Mr. *Campbell* of *Airds*; but he returned Home in the Evening; and in the Diſpoſition that both he and *Breck Stewart* had long been in towards *Glenure*, which was now more inflamed by this freſh Intelligence they had received, that *Glenure* had got the better of them at Law, and was about to proceed in the Removings, a very ſhort Conſultation betwixt them might ſerve to make all this Concert; the Evidence of which

ariſes from the enſuing *Facts*, joined with thoſe preceding this 11th of *May*.

For it hath been proved; that, on the Morning of *Tueſday* the 12th, *Allan Breck* ſet out from the Pannel’s Houſe, dreſſed in his ſhort Cloaths, and went directly to the Houſe belonging to *Stewart* of *Ballacheliſh*, adjoining to the Ferry of that Name, upon the Road by which *Glenure* was to come from *Fort-William* into *Appin*; and there *Breck* met his Friend *Stewart* the younger of *Fasnaclloch*, who hath depoſed, “ That he took Notice to *Allan Breck*, that he had changed his Dreſs; who answered, that he did it, becauſe the Day was warm:” And adds, “ That the Deponent was informed at *Ballacheliſh*, in Company with *Allan Breck*, that *Glenure* was gone to *Fort-William*.”

The ſame Day *Allan Breck* went, accompanied by *Fasnaclloch* the younger, to the Houſe of *Macdonald* of *Glenco*, where his Mother-in-law, the Pannel and *Ardſhiel*’s Siſter, alſo lived; and from thence, after ſtaying about an Hour, went a-croſs the Ferry to the Houſe of *Cameron* of *Callart*, where another Siſter of the Pannel and of *Ardſhiel* lives, and where he lodged all that Night; and next Day, being *Wedneſday* the 13th, came back; after calling again by the Way at *Glenco*’s Houſe of *Carnoch*, to *Ballacheliſh*, where he remained the Night following.

And now, Gentlemen, we are come to the fatal Day, which was *Thuſday* the 14th of *May* laſt, of which, and the Days immediately following, the various Events and Incidents that have been proved before you, merit your particular Attention, as I endeavour to put you in Mind of them, as nearly as poſſible in their Order.

On the Morning of this *Thuſday* the 14th, about Seven or Eight, as *John Beg Maccoll*, the Pannel’s Servant, hath depoſed, “ the Pannel ſent him off with a Letter to *Charles Stewart*, Notary Public at *Maryburgh*, and told the Deponent, that the Letter was to make, or cauſe the ſaid *Charles Stewart* come to the Country of *Appin*, to proceſs againſt *Glenure*, in caſe he had not a ſufficient Warrant to remove the Tenants of *Ardſhiel*;—and alſo told the Deponent, he was to get ſome Money from *William Stewart*, Merchant at *Maryburgh*, to pay four Milk Cows that were bought for him in the Country; and that if the Money was not ſent, he would not get the Cows; and that the Pannel deſired the Deponent to make all poſſible Diſpatch:—That accordingly he made all the Diſpatch he could to *Fort-William*, where he arrived about Twelve o’Clock, delivered the Pannel’s Letter to *William Stewart*, Merchant; who told him, that *Charles Stewart*, the Notary, was not at Home; but that there was a Notary along with *Glenure*, who would ſerve the Pannel as well as *Glenure*; and further told the Deponent, that he, the ſaid *William*, had wrote to the Pannel in the Morning; that the ſaid *William* did not give him any Money, but ſaid he would ſend Servants for the Cattle.”

The Reaſon why he got no Money at this Time, is explained by *William Stewart* himſelf, who depoſes, “ That he gave no Answer in Writing, and thinks he did not give any verbal Answer, if it was not, that he bid him tell his Maſter, that he was not in Caſh, which (he ſays) was the Caſe.”

The Letter itſelf, ſent from the Pannel by this Witneſs, hath been produced, and proved before you;

you; and the Postscript of it is in these Words, which I will now repeat, tho' they are inserted in the Libel: "As I have no Time to write to *William*, let him send down immediately 8 l. Sterling, to pay four Milk Cows I bought for his Use at *Ardshiel*."—The Pannel must have had a very pressing Use for Money, when he was thus urging the Payment of the Price before the Buyer received the Cattle; and let it be observed, that *this first Express* sent with this Demand of Money from *William Stewart*, was dispatched by the Pannel on the Morning of the Day on which the Murder happened in the Evening.

Again, you are here to observe the Connexion betwixt the Pannel and this *William Stewart* at *Maryburgh*, who appears, by the Letter which he mentioned to the Messenger as having been sent by him that Morning to the Pannel, to have entered with great Zeal into the Pannel's Scheme for opposing the Removing of the Tenants; for that Letter also hath been proved before you, and contains these Words: "I find *Glenure* has a mind to eject the Tenants; but they ought to be deaf to it, and, at all Risques, keep Possession, as they are in good Hands, and it must end in Exchequer; so that I beg they keep Possession; as there will be no Troops, they ought to repel Force by Force, and take their Hazard of the Consequence, as it can be no more than violent Profits."

About Noon on this *Thursday* the 14th, as *Bal-lackelish* elder hath deposed, "his Guest *Allan Breck* went out with a Fishing-rod in his Hand, and was fishing in a Burn near the Deponent's House; but he did not see him take any: That he did not take Leave of the Deponent, and did not return, and he knows nothing of him since."

Archibald Macinnish, the Ferry-man at *Ballackelish*, deposes, "That, after Mid-day upon *Thursday* the 14th of *May* last, as the Deponent was sitting near the said Ferry with another Man, *Allan Breck* came behind him, and hoasted (or hemmed,) and, upon the Deponent's looking about, desired him to come to him; which the Deponent did, and the said *Allan* inquired of him, if *Glenure* had crossed the Ferry from *Lochaber* to *Appin*? The Deponent told him he was sure he had not: That upon this *Allan Breck* went away towards the high Road, had on a dun-coloured big Coat, and had no Fishing-rod; and further deposes, that *Glenure* was expected back upon the *Wednesday*, and the Deponent was sure he must be back the *Thursday*, as it was currently reported in the Country, he was to have a Meeting with some Gentlemen at *Kintalline* (on the *Ardshiel* Estate) *Thursday* Night."

These Ferry-men have Opportunity to learn all the News in the Country; and that his Intelligence upon this last Article was just concerning the Motions of *Glenure*, and that the same were well known, is further proved by *John Maccombich*, Change-keeper at *Kintalline*, who hath deposed, "That upon *Tuesday* the 12th of *May*, *Glenure* sent Notice to the Deponent, that he and some other Company were to be at his House upon *Thursday* then next, and desired that he might be prepared for entertaining them: That he accordingly made Provision for them; that he told that *Glenure* was to be at his House that Night, and that the whole Neighbourhood knew of it."

And accordingly, it hath been proved by the Persons who were in Company with *Glenure*, *Mungo Campbell* who attended him as a Clerk or

Writer, *John Mackenzie* his Servant, *Donald Kennedy* one of the Sheriff's Officers, that *Glenure* and they crossed the Ferry of *Ballackelish* betwixt Four and Five in the Afternoon of this Day; that, after crossing the Ferry, *Balackelish* elder walked along with *Glenure* about half a Mile, till they came to the Skirts of the Wood of *Lettermore*, where *Glenure*, pursuing his Journey through the Wood, which stood on the Ascent of the Hill on his left Hand, was suddenly shot through the Body with two Balls, that entered behind his Back and came out at his Belly; of which Wounds he died upon the Spot about Six o'Clock that same Evening.

It is unnecessary for me to repeat the several moving Circumstances related by his Attendants; but if this base and cruel Murder was truly perpetrated by *Allan Breck Stewart*, who had expressed his Wishes to meet *Glenure* at a convenient Place, it must be confessed with Regret, that he here met him, or rather, in a base and cowardly Manner, lay in wait for him, at a Place convenient indeed for that wicked Purpose, for concealing himself whilst he went about it, and not far distant from a proper Place of Retreat, after it should be over, until he should be put in Condition to leave the Country; for which a Supply of Money was necessary.

The News of the Murder was quickly brought to the House of the Pannel, by *John Mackenzie*, the Servant of the Deceased, who went there to get Intelligence of Mr. *Campbell* of *Ballieveolan*; where the Pannel seeing him weeping, asked what the Matter was? and the Servant having told him his Master was killed, the Pannel wrung his Hands, expressed great Concern at what had happened, as what might bring innocent People to Trouble, and prayed that might not happen."

And *John Beg Maccoll*, the Pannel's Servant, who had been sent Express that Morning to *Fort-William*, and who was present at this Circumstance, relates it in these Words: "That he was hardly an Hour returned Home, when *Glenure's* Servant came to the Door, calling for the Pannel; that the Pannel went immediately to the Door, and asked the Servant, what was the Matter? and what News he had? To which the Servant replied, The worst I ever had; my Master is murdered in the Wood of *Lettermore*: Upon which the Pannel said, Lord bless me! was he shot? To which the Servant answered, that he was shot, and said, the Pannel ought to go and take care of his Corpse: That the Servant immediately went off; but neither the Pannel, nor any of his Family, went near the Corpse; and the Pannel said, that as he and *Glenure* were not in good Terms, and some of the People that were to meet *Glenure* had Arms, he did not care to go near them, not knowing what might happen. And farther said, that this was a dreadful Accident, and he was afraid, would bring Trouble on the Country; and appeared to be sorry for what had happened."

Here it is evident, that as soon as the Deed was over, the Pannel's first Reflection, from whatever Cause that sprung, was an *Apprehension*, that it might bring himself into Trouble or Danger.

That same Night, at the Pannel's House, Orders were given to the Servants by his Wife, to hide all the Arms about the House; and accordingly *John Beg Maccoll* and *Dugald Maccoll* hid a large Spanish Gun, that used to stand in the Brew-house, and four

four Swords. But here it is remarkable, that none of the Servants saw that Night the *other shorter Gun*, but of a *larger Bore*, as you have seen, both having been produced, and proved before you; concerning which *Dugald Maccoll* deposes, “ That *Allan Stewart*, Son to the Pannel, told him and his Fellow-Servant, that he himself had concealed the lesser (or shorter) Gun, that used to stand at the End of the Girdel in the Barn, under the said Girdel, where he thought it would be safe.”

That same Night, and after the Murder was over, two Witnesses have deposed, that they saw *Allan Breck Stewart* on the Hill above the House of *Ballachelish*, where he had lodged the Night before, and not far from the Spot where the Murder happened. These were *Katharine Mackinnish*, Servant to *Ballachelish*, a Witness called by the Pannel, who says, “ That in the Evening of the 14th of May, she saw *Allan Breck Stewart* at a Goat-house in the Moor of *Ballachelish*, after *Glenure* was killed; and that *Allan Breck* then asked her, what was the Occasion of the Stir in the Town? and that she told him, *Glenure* was murdered: And further asked her, who might have committed the Murder? and she told him, she did not know: And farther says, that she told *Donald Stewart*,” (who is Nephew and Son-in-law to *Ballachelish*,) “ where she saw *Allan Breck*; but that she did not tell him to go to the said *Allan*, nor did he desire her.”

And this *Donald Stewart* deposes, “ That upon the Evening of *Thursday* the 14th of May, about Night-fall, *Katharine Mackinnish* called him out of *Ballachelish*'s House, and informed him, that *Allan Breck* wanted him, and that he was a little above the House on the Brae (or Hill): That the Deponent went up the Brae, and met *Allan Breck*, who was then dressed in a great Coat, and a dark short Coat under it, with white metal Buttons: The Deponent told him of the Murder, and said, *It could not be but that he, Allan Breck, was about it*: To which *Allan Breck* answered, that he heard of the Murder, but had no Hand in it: To which the Deponent replied, *he did not believe him*:—That the said *Allan Breck* further said, he believed he would be suspected of the Murder; and upon that Account, and as he was a Deserter formerly from the Army, it was necessary for him to leave the Kingdom.”

The Events of *Friday* the 15th May last, immediately following the Murder committed on the Evening of *Thursday*, do no less merit your Attention, and these begin very early on that Day; for *John Macdonald* of *Glenco* deposes, “ That on *Friday* the 15th of May last, the said *Allan Breck Stewart* came again to the Deponent's House at *Carnock*, at Three or Four o'Clock in the Morning, and knocked at a Window when the Family were all in Bed; that the Deponent went to the Door of his House, and there saw *Allan Breck*, who gave him the first Notice he had of *Glenure*'s being murdered the Evening before in the Wood of *Lettermore*; and told him, that he was to leave the Country, and to go the Moor-road leading to *Rannoch*; and came to take Leave of the Deponent and his Step-mother, who is a Sister of *Ardshiel*'s; and that the Deponent did not ask *Allan Breck* any Questions about the said Murder.”

And with *Glenco* concurs *Isobel Stewart* his Step-mother, who also got up, and went out with her Step-

son, to receive *Allan Breck*'s nocturnal Visit at the Door: And she says, “ That she asked him, what News up the Country? To which he answered, a good deal of News, that *Glenure* was killed, or shot the Evening before, in the Wood of *Lettermore*: That he was come to take farewell of the Deponent; for he was to leave the Country; and that she asked him *no more Questions* about the Murder, tho' she asked him to come into the House; but he answered, he would not stay.”

Upon this Incident it is an obvious Reflection, that neither the Pannel's Sister, the Lady *Glenco*, nor her Son, judged it necessary to ask any Question of *Allan Breck* about the Murder, which he now related to them, as what had happened a few Hours before he came thus unseasonably and abruptly to take Leave: These Circumstances superseded the Question as *superfluous*, who it was that did it?

About Ten o'Clock in the Forenoon of this same *Friday* the 15th, *Donald Stewart*, the Nephew and Son-in-law of *Ballachelish*, deposes, “ That he met *James Stewart*, the Pannel, in *Duror*, not far from his own House; and that, upon the Deponent's regretting that such an Accident, as *Glenure*'s Murder, should happen in the Country; the Pannel joined with him, and said, that he was informed, that one Serjeant *More*, alias *John Cameron*, had been threatening Harm to *Glenure* in *France*; but did not inform the Deponent who told him so: And further deposes, that, to his Knowledge, Serjeant *More* has not been in *Appin* these ten Years past.”

Now this very *Donald Stewart*, who is a Friend and Neighbour of the Pannel's, had, as you have heard, the Night before said to *Allan Breck* himself, *that he was surely the Murderer*, which was the Sense and Opinion of the whole Country; and yet here it is very remarkable, that, when the Thing was recent, and as somebody must have done it who was likely to be capable of such an Enormity, this Pannel, for want of a better Shift, is endeavouring to start a very improbable Hypothesis, and to throw the Suspicion on this Serjeant *More Cameron*, which, as it was destitute of any Foundation in Truth, gained no Sort of Credit or Belief; and you are to consider, Gentlemen, if it could be started by the Pannel, at this Time, for any other Purpose than to divert the Attention and the Suspicions of Mankind from his Friend *Allan Breck*.

The same Day about Twelve o'Clock, *Alexander Stewart*, travelling Packman in *Appin*, and first Cousin to *Allan Breck*, deposes, “ That the Pannel desired him to go to *Fort-William* to *William Stewart*, Merchant there, and get from him five Pounds, or five Guineas; and told the Deponent, that his Friend *Allan Breck* was about to leave the Country, as there were Troops coming into it, and that he might be suspected of *Glenure*'s Murder; and that it was incumbent upon him, the Pannel, to supply the said *Allan Breck* with Money; and the Pannel desired the Deponent to tell the said *William Stewart*, that he must find him Money, tho' he should borrow it from twenty Purses; and also to tell him to give Credit in five Pounds Sterling to *John Breck Maccoll*, *Bouman* to *Appin* at *Koalisnacoan*, in case he came to demand such a Sum: That, in Consequence of this Message, he went to *Fort-William*, where he arrived early in the Evening, met *William Stewart*,

“ *Stewart*, delivered his Message; that *William Stewart* told him, he had not Money; but that next Morning he would give him his Errand.”

William Stewart himself, who received this Message, deposes, “ That it was about Ten o’Clock Forenoon, or betwixt Ten and Twelve, that he saw the Packman at *Fort-William*; and his Wife swears it was about Mid-day;” and, if they are both in the right, the Packman himself must have been mistaken, when he says, that he was dispatched by the Pannel from *Aucharn*, so late as about Noon that Day; of which Circumstance I shall hereafter have Occasion to take some Notice.

William Stewart further deposes, “ That, at this Time, he asked the Packman, if he had come by the Road where that unlucky Murder of *Glenure* had happened? and the Packman told him, he did; but the Deponent did not ask him who was suspected for it, nor had any other Conversation on that Subject, there being a great many People present in the Shop at the Time.” But this Apology notwithstanding, (for all the People in the Shop at *Maryburgh* would have been ready to listen to News about such an uncommon Event,) this *William Stewart*; who was so well acquainted with the Cause of Difference betwixt the Pannel and *Glenure*, being so little inquisitive on this Occasion of receiving a Message from the Pannel the Day after the Murder happened, seems to be no otherwise accountable, than by the Supposition that he knew so well who were *Glenure’s Enemies* at that Time; that it was improper or unnecessary for him to be inquisitive about the Authors of his Murder.

Dugald Maccoll, the Pannel’s Servant, deposes, “ That, about Four o’Clock in the Afternoon of this *Friday* the 15th of *May* last, the Pannel desired the Deponent to carry the Arms from the Houses (at *Aucharn*) and hide them in the Moor; that accordingly the Deponent, and *John Beg Maccoll*, took the foresaid large Gun from the Back of the Sheep-house under the Thatch, and the said four Swords from under the Thatch of the Barn; and found the Gun that used to stand in the Barn under the Girnel, where the said *Allan Stewart*, the Pannel’s Son, said he hid it, and carried them to the Moor, and hid them in the Hole of a Rock above the Peat-mofs: That the large or *Spanish* Gun, that stood in the Brew-house, was charged with Powder and small Drops; and that there was no Shot in the small or lesser Gun, that used to stand at the End of the Girnel in the Barn: That they overtook *Katharine Maccoll*, Servant to the Pannel, in the Brae above the House of *Aucharn*, with a Pock or Sack, and something in it, under her Arm. The Deponent asked her, what she had got in the Sack? to which she answered, that it was *Allan Breck’s Cloaths*, and that she was going to hide them; and the Deponent, and the said *John Beg Maccoll*, saw her hide the Sack in which the said Cloaths were.”

This is confirmed by the Oath of *John Beg Maccoll*, the other Servant, who says, “ they were desired by the Pannel’s Wife to hide the Arms better,” (i. e. than they had done the Night before;) and by the Oath of *Katharine Maccoll*, who says, “ That, upon the Evening of this *Friday*, her Mistress, the Pannel’s Wife, put up a blue Coat and red Waistcoat, with something else, into a Sack, and delivered them to the Deponent, desiring her to hide them some way without: That

her Mistress did not tell the Deponent to whom the Cloaths belonged, but that the Deponent thought the said Coat and Waistcoat were *Allan Breck’s*: And she adds, that, some time in Summer last, after the above Period, *Solomon Bane Maccoll*, Servant to the Pannel, told the Deponent, that the said Mrs. *Stewart*, Spouse to the Pannel, desired her to conceal what she knew about the above Cloaths, in case she should be asked or examined about them.”

On *Saturday* the 16th of *May*, as *William Stewart’s* Wife hath deposed, “ She being solicitous to have the Cows, bought for her Husband’s Use by the Pannel, towards stocking a Farm they had taken, gave the Packman, his Messenger, three Guineas out of her Purse: And the Packman deposes, that he got the Money from Mrs. *Stewart*, after he had seen *William Stewart* himself, on this *Saturday* the 16th; who told him he would let him go immediately; and that, having got the three Guineas; he forthwith returned to *Aucharn*; and arrived there in the Evening, near to which Place he found the Pannel a Prisoner; but the Pannel’s Wife, and the Deponent; having had Access to converse with the Pannel apart, the Pannel asked the Deponent, what Money he had brought from *Fort-William*? and; upon the Deponent’s telling him that he had brought three Guineas, the Pannel pulled a green Purse out of his Pocket, out of which he took two Guineas, and gave them to his Wife, who delivered them immediately to the Deponent; and the Pannel desired that the five Guineas should be sent to that unhappy Man, meaning *Allan Breck*, to see if he could make his Escape; and pitched upon the Deponent, as a Person that should go with the Money.—That soon after the Pannel was carried off by a Party to *Fort-William*; and Mrs. *Stewart* told the Deponent, that he would find *Allan Breck* in *Koalisnacoan*; and, some time after Night-fall, the Deponent got his Supper at *Aucharn*, and then the Pannel’s Wife carried the Deponent to the Back of the Brew-house, where there lay a Sack, out of which the said Mrs. *Stewart* took a blue Coat, red Waistcoat, black Breeches, a Hat and some Shirts, all which she delivered to the Deponent, ordering him to go with the Cloaths and Money to *Koalisnacoan* immediately, and deliver them to *John Breck Maccoll*, Bouman to *Appin*, if he did not meet *Allan Breck* himself; but directed the Deponent not to carry the Cloaths to the Bouman’s House, lest any body should see them; that the Deponent accordingly set out, that same Night, for *Koalisnacoan*.”

In the mean while, as *John Breck Maccoll*, Bouman to *Appin*, hath deposed, “ Upon the Afternoon of this *Saturday* the 16th of *May*, as the Deponent was in a Fir-bush (or Thicket) near *Aldavoim*, at the Foot of the Heugh (or deep hollow Place) of *Corrynakeigh* in *Koalisnacoan*, he heard a Whistle, and, upon looking up, saw *Allan Breck* at a little Distance, beckoning to the Deponent to come towards him; which he did: That, after Salutations, the Deponent told him, he was afraid it was no good Action that occasioned his being in such a remote Place, and at such a Distance from any common Road; that *Allan Breck* answered, the Place was not very far from a Road: That the Deponent, having heard the Day before of *Glenure’s* Murder,

“ der, charged Allan Breck with being guilty of it:
 “ That *Allan Breck* asked the Deponent, what he
 “ had heard about the Murder? That the De-
 “ ponent answered, that he had seen no Person
 “ from the Strath (or Vale) of *Appin*; but that
 “ two poor Women, that had come up *Glenco*;
 “ were telling that *Glenure* was murdered *Tuesday*
 “ Evening in the Wood of *Lettermore*; and that
 “ two People were seen going from the Place where
 “ he was murdered; and that he, *Allan Breck*;
 “ was said to be one of them.

“ That *Allan Breck* answered, he had no Con-
 “ cern in it; and that, if his Information was
 “ right, there was but one Person about the Mur-
 “ der; and that, as he was idle in the Country,
 “ he was sure he would be suspected of it; but
 “ that would give him little Concern; if he had
 “ not been a *Defenter*, which would bear harder
 “ upon him, in case he was apprehended, than
 “ any thing that could be proved against him
 “ about the Murder.

“ That the Deponent did not believe him; when
 “ he said he had no Hand in the Murder of
 “ *Glenure*; and, not caring to press it much upon
 “ him, told him, that, as he was already sus-
 “ pected, it was dangerous to have any Intercourse
 “ with him; and pressed him to leave the Place;
 “ lest he should bring the Deponent and his Family
 “ to Trouble.

“ That *Allan Breck* said; he did not doubt but
 “ that the Family of *Ardshiel* would be suspected
 “ of the Murder, and it was probable the Pannel,
 “ and *Allan Stewart* his Son, might be taken into
 “ Custody about it; and that he, *Allan Breck*,
 “ was afraid *Allan Stewart* the Pannel's Son's
 “ Tongue was not so good as his Father's; by
 “ which Words the Deponent understood, that
 “ *Allan* was easier intrapped than the Pannel.

“ And, the Deponent still insisting upon *Allan*
 “ *Breck*'s leaving that Neighbourhood; the said
 “ *Allan Breck* told him, he would not leave the
 “ Town (as the Witness expresses it, or the Place)
 “ for eight Days, unless some *Necessaries* he expected
 “ came to him; and told the Deponent, unless
 “ some Money came for him before next Morning;
 “ he, the Deponent, must go to *Fort-William* with
 “ a Letter; that, though the Deponent refused to
 “ go, *Allan Breck* looked about among the Trees,
 “ and finding a *Wood-pigeon's Quill*, made a Pen
 “ of it, and having made Ink of some Powder he
 “ took out of a Powder-horn that was in his
 “ Pocket, he wrote a Letter, which he told the
 “ Deponent he must deliver to *William Stewart*,
 “ Merchant at *Maryburgh*.

“ And, upon the Deponent's telling him, that
 “ he would by no Means undertake that, as he
 “ was informed that every body that went to
 “ *Fort-William* was searched, *Allan Breck* said, it
 “ was an easy Matter to hide a Letter; the De-
 “ ponent answered, if he was caught upon the
 “ Streets, what would he do with it? *Allan Breck*
 “ told him, that the Letter must not be found
 “ upon him by any Means, and, if he was caught
 “ with the Letter, he must eat it before it was
 “ found; that the Deponent then told the said
 “ *Allan Breck*, that he did not know but he would
 “ be obliged to go for some Beer next Day to
 “ *Fort-William*, in which Case he might possibly
 “ carry the Letter; but at the same Time told
 “ the said *Allan Breck*, that, if he should be
 “ taken up, he would tell all he knew about
 “ him.

“ That the said *Allan Breck* desired the De-
 “ ponent to go to *Callart*, or *Glenco's* House; for
 “ a Peck of Meal to him; which the Deponent
 “ refused; and, at parting, the said *Allan Breck*
 “ told the Deponent, he would see him next
 “ Day.”

The Bouman further deposes to the Dress in
 which he met *Allan Breck* at this Time; being the
 black short Coat and Trowsers lying upon the
 Table, and produced to him, and proved to have
 been the Property of the Pannel.

Early upon *Sunday Morning*, the 17th of *May*
 last, as both the *Packman* and the *Bouman* have
 deposed; they met near to the *Bouman's* House;
 whereof the latter at first denied to the *Packman*;
 that he had seen *Allan Breck*; and, upon the other's
 being surprized at this, and saying, he was in-
 formed he would meet *Allan Breck* there, and had
 brought some *Necessaries* for him; and the *Bouman*
 inquiring what he had brought? the *Packman*
 answered, five *Guineas* and some *Cloaths*; and told;
 that he had a great deal of Trouble in getting the
 Money; that he had been sent by the Pannel to
William Stewart at *Fort-William*, from whose Wife
 he got three *Guineas*, and that the Pannel or his
 Wife gave him the other two *Guineas*; and that
 the Pannel's Wife gave him the *Cloaths*, and in-
 formed him, that *Allan Breck* was to meet him at
 that Place; whereupon the *Bouman* owned to the
Packman, that he had seen *Breck* the Day before,
 and that he expected these Things, and directed the
Packman how he might find *Breck*, if he would
 go to a Hill he pointed out to him, near to the
 Heugh of *Corrynakeigh*, and whistle once or twice;
 he believed *Breck* would come to him: But this
 the *Packman* declined; telling, that he had slept
 none for two Nights, and was very much fatigued;
 and upon this delivered to the *Bouman* the five
Guineas, and told; he had left the *Cloaths* at some
 Distance, and would show them to the *Bouman*
 when he was going away; and then went to sleep
 in the *Bouman's* House.

After the *Packman* had slept some Hours here,
 he dined with the *Bouman* his Landlord, and told
 him, “ That the Pannel, and *Allan* his Son, were
 “ made Prisoners the Evening before, and sent
 “ to *Fort-William*; and, upon the *Bouman's* in-
 “ quiring who was suspected of *Glenure's* Murder?
 “ the *Packman* answered, that it was *Allan Breck*;
 “ and that it was likely the Pannel, and *Allan* his
 “ Son, would stand the first Trial for it.” And about
 Noon this *Sunday* the *Packman* went away, with-
 out seeing his Cousin *Breck*, after having pointed
 out to the *Bouman* a Fir-tree, at the Root of which
 he had hid *Allan Breck's* *Cloaths*.

The *Bouman* further deposes, (and indeed every
 Word of his Testimony merits your Attention, and
 was given in a most lively; natural; and credible
 Manner) “ That, after he had gone to Bed upon
 “ the same *Sunday Evening*, he heard one knocking
 “ at the Window; and, imagining it might be
 “ *Allan Breck*, he got up, and went out in his
 “ Shirt, and saw *Allan Breck* at a little Distance
 “ from the House; and upon the Deponent's
 “ coming up to him, *Breck* asked him, if any
 “ Message had come for him? The Deponent told
 “ him, that his Uncle's Son had come with five
 “ *Guineas* and some *Cloaths*: That *Allan Breck*
 “ complained there was but little Money, but
 “ hoped it would do his Business: That the De-
 “ ponent told the said *Allan Breck*, he was afraid
 “ he would starve among the Heather, and that
 “ he

“ he was not able to help him: That *Allan Breck*
 “ answered, he had no Occasion for Victuals, but
 “ wanted a *Drink* very much; upon which the
 “ Deponent went back to his House, and carried
 “ out some Whey, or some Milk and Water in a
 “ Noggin, and the *five Guineas*, and gave both to
 “ *Allan Breck*: That the Deponent then went for
 “ the *Cloaths*, which he also gave the said *Allan*
 “ *Breck*, which consisted of a blue long Coat, red
 “ Waistcoat, black Breeches, a Hat, some Stock-
 “ ings and Shirts.

“ That the Deponent told the said *Allan Breck*,
 “ that the Pannel and his Son *Allan* were appre-
 “ hended on Account of *Glenure's* Murder: To
 “ which *Allan Breck* answered, that that was no
 “ more than *he expected*; but it would not signify
 “ much, as there could be *no Proof* against him;
 “ but expressed some Apprehension, lest *Allan*
 “ *Stewart*, Son to the Pannel, might be *betrayed*
 “ *by his own Tongue*.

“ That the Deponent desired the said *Allan*,
 “ *now* that he had got all the *Necessaries* he ex-
 “ pected, to go about his Business; and the said
 “ *Allan Breck* promised to do so, but told the De-
 “ ponent, that he must meet him, the said *Allan*
 “ *Breck*, next Morning; that he must deliver the
 “ Deponent the *Cloaths* he, the said *Allan Breck*,
 “ had then on, to wit, the black short Coat and
 “ Trowsers shown to the Deponent in the Clerk's
 “ Hands, in order to be kept by the Deponent,
 “ till he delivered them *to the Pannel's Wife*: That
 “ the Deponent promised to meet the said *Allan*
 “ *Breck* next Morning, but did not see him; and
 “ when the Deponent went out next Morning,
 “ he found the said short black Coat, Trowsers,
 “ and the Noggin in which he had carried the
 “ Drink to *Allan Breck*, lying together in the
 “ Place where the Deponent parted with *Allan*
 “ *Breck* the Night before; and that he hath not
 “ seen the said *Allan Breck* since.”

On *Monday* the 18th of *May*, *Allan Breck* with-
 drew, as he had proposed, by a very unfrequented
 Road, through the Moors, and over the Moun-
 tains, to *Rannoch*; and came that same Day to the
 House of *Allan Oig Cameron* in *Rannoch*, his Uncle,
 with whom he remained till *Wednesday* following.
 The Uncle hath said, “ He pressed him earnestly
 “ to make a clean Breast, and tell him all he
 “ knew of *Glenure's* Murder. To which *Breck*
 “ answered with an Oath, that he had never seen
 “ *Glenure*, dead or alive; the Uncle however fre-
 “ quently repeated his Instances, till *Breck* became
 “ angry, and the Uncle desisted further Inquiry.”

Four Days after *Breck* left his Uncle's House,
 that is, on the 24th of *May*, “ the Uncle having
 “ Occasion to be fourteen Miles from his own
 “ House, (further down the Country) and passing
 “ by the Side of a Wood, he heard a *Whistle* from
 “ the Wood, and, looking about, saw *Allan Breck*,
 “ who then told his Uncle, that his only Fear
 “ was to be apprehended by the Military, as he
 “ had been a Deserter. The Uncle answered, he
 “ was very sure the Friends of the Deceas'd would
 “ procure him his Discharge, if he could discover
 “ the Murderer. And *Breck* replied, that they
 “ were at this Time in such Fury and Rage, that
 “ he was very sure, were he apprehended, he
 “ would be hanged.”

It is unnecessary that I should resume minutely
 what the other Witnesses said, who saw *Breck*
Stewart in *Rannoch* or *Athole*, when he passed thro'
 that Country at this Time; his Appearances be-

spoke the Situation he was truly in, that of a Male-
 factor studying to conceal himself, and making
 his Escape.

It is however material, that you should further
 observe, that after *Breck Stewart* had thus disap-
 peared from the Country of *Appin*, where this
 Murder was committed, every body in that Coun-
 try, and in that of *Rannoch*, thro' which he re-
 tired, and in both which he was well known, and
 had Relations, imputed to him the actual Murder;
 and to no other Person. You have already heard,
 that *Donald Stewart*, the Nephew of *Ballachelish*,
 charged him with it to his Face, on the Night of
Thursday the 14th, when the Blood of the Deceas'd
 was hardly yet cold, as the Bouman did on the
Saturday following; and, on the *Monday* following;
Cameron his Uncle discovered the same Belief.
 And I have now to add upon this Head of the
 Voice of the Country, or the *fama vicinia*, that
Ballachelish elder, who had been his Landlord the
 Night before the Murder, says, “ That, the
 “ Morning after the Murder was committed, the
 “ Deponent really thought, that *Allan Breck*
 “ *Stewart* might be the Actor in this Murder, be-
 “ cause he did not return to the Deponent again.”
 And *Macinnes*, the Ferry-man at *Ballachelish*, says,
 “ That he heard no body suspected for the Murder
 “ of *Glenure*, but the said *Allan Breck*.” And
James Mann, Change-keeper in *Rannoch*, says,
 “ That, before *Allan Breck* came to his House in
 “ *May* last, it was reported in that Country, that
 “ he was concerned in *Glenure's* Murder; and
 “ that he himself suspected him at the Time,
 “ as he came unseasonably, and was wanting
 “ Provisions.”

There are yet other *Circumstances* subsequent to
 the Murder, and to the Pannel's Commitment at
Fort-William, that deserve your Consideration with
 the rest of the Evidence; one of these is deposed
 by *Hugh Maclean*, Barber in *Maryburgh*, who says,
 “ That one Day being called by the Pannel to
 “ shave him, he thinks upon a *Saturday*, the
 “ Pannel asked him, what News he heard in the
 “ Town? the Deponent answered, that he, the
 “ Pannel, was to be carried to *Edinburgh* on the
 “ *Monday* following; whereupon the Pannel said,
 “ that was a Matter that gave him no Concern;
 “ and wished it had happened sooner; and was
 “ afraid of nothing; but that his Servants might
 “ be inticed to take Money, and turn against him;
 “ and desired the Deponent, as from him, to tell
 “ his Servants to say nothing but Truth, *to keep*
 “ *their Minds to themselves*, and he would take
 “ Care of them; and accordingly the Deponent
 “ delivered the Pannel's Message, in his own
 “ Words, to two of his Servants, who were then
 “ in separate Custody in the same Prison; and that
 “ they were both of the Name of *Maccoll*.”

Again, Gentlemen, you have heard read, and,
 I dare say, with much Regret, the Examination
 of the Pannel's Wife and Daughter, taken before
 the Sheriff upon Oath, wherein they say, “ That
 “ *Allan Breck Stewart* came to the Pannel's House
 “ on *Monday* the 11th, in his *French* Dress (that
 “ has been often described) and that he went away
 “ next Morning, after taking Leave of them,
 “ dressed in the same Habit;” and you have heard
 by what a Cloud of Witnesses it was proved, that,
 from the Evening of *Monday* the 11th, till the
 Morning of *Monday* the 18th, *Allan Breck* was seen
 in no other Dress, than the short Coat and Trow-
 sers belonging to the Pannel, now lying in Court;
 and,

and, by the Pannel's own Servants and the Packman, it has been proved; that *Breck's French Cloaths* were, by Mrs. *Stewart's* Order, put into a Sack, and hid in the Moor near the Pannel's House, from thence brought back by the same Servant-Maid, by Order of Mrs. *Stewart*, and by her delivered to the Packman, by him to be carried to *Breck* at *Koalisnacooan*; and that the Maid-Servant, who was employed by her Mistress to hide these *French Cloaths*, and to fetch them back again, was, by a Message from her, desired to conceal what she knew about the Cloaths, in case she should be asked or examined about them:

These, I think; Gentlemen, are the most material Facts and Circumstances that have been proved before you, which I have resumed in the Order of Time as they happened; with Intent to give you a just View of the Case of the Pannel; whom you are now trying; and I am persuaded, that the Reflections which naturally arise from these Facts, in respect of the Question before you, must have occurred to yourselves, when you heard the Evidence given, and when I have again resumed it; and therefore my Observations to you upon the Whole shall be as few and as short as possible.

I have admitted, that it is incumbent upon me in this Trial, as against *James Stewart* the Pannel; to make out, that *Allan Breck Stewart* was guilty of the actual Murder in Question; and I apprehend, that is done to full Conviction, upon these Considerations.

And, first of all, Gentlemen, here has been a very extraordinary and shocking Murder, committed within the County or District of *Appin*, in the most Northern Part of this County, of a Gentleman who had an Estate and Relations in that Neighbourhood; a Man of a fair Character; who was going about the Duty of his Office, in the King's and the Public Service, intending no Injustice to others, and apprehending no Harm to himself; for he and all his Attendants were unarmed; and yet he is bereaved of his Life, not by an open Enemy, upon a declared or a sudden Quarrel, but basely assassinated and shot behind his Back, by a Person lying in wait and lurking among Trees for that Purpose.

This, Gentlemen, is a very strange and shocking Event; and, as for every Event there must be a Cause, somebody must have done it, and upon some Reason or Temptation, such as it was: And this is not like a Murder committed on the Streets, or on the High-ways leading to a populous City, but in the Corner of a County, where the Deceas'd was himself a Gentleman of Note, and where every body of any Note is known to every body: The Deceas'd, therefore, must have had one or more Enemies fit or capable, or likely to have devised or perpetrated such an Action; and who these are, you have been now for many Hours inquiring.

And, upon the Result of that Inquiry, what Doubt can there be, in the first Place, that *Breck Stewart* was the Actor? His Character, and his Situation as a Defenter from the King's Service, and now actually listed in the *French Service*, and in this Country only as a Sojourner for a Visit to his Friends, rendered him the most likely Person then resident in that Country, for being guilty of such a Thing; nay, so much the only Person likely, that the Pannel himself, when he cast about for some other Man on whom the Suspicion of this Guilt

might be thrown; mentioned only one *Serjeant More Cameron*, who is of a Character and Situation very similar to that of *Allan Breck*; but with this very material Difference indeed; which rendered it impossible for that Solution of the Question to pass; that *Serjeant More* had not been seen in *Appin* for several Years past; and surely the absent Wanderer could not do it.

But next, and more closely; the only known Quarrel that any body had with the Deceas'd; was that of this Pannel *James Stewart*, about his own Removing the last Year, and the Removing of other Tenants of *Ardshiel* this Year; into which Quarrel his former Pupil or Ward, and his intimate Friend; *Breck Stewart*; had most vehemently entered, and discovered that on several Occasions; and that he considered it as a Cause for deadly or mortal Hatred; insomuch that the Pannel himself hath declared; "That, if *Allan* was guilty of the Murder; he believes it behoved to be on Account of the Disturbance given to the Tenants on the Estate of *Ardshiel*; and knows no other Cause."

And more closely still; you have heard the Evidence of what passed immediately before, and after this Murder; of the Behaviour and Actions of this *Breck Stewart*; who had formerly displayed his Hatred to the Deceas'd, for this very Cause, frivolous and unjust as it was. On the 10th of May; at *Fasnacloch*, within a Mile of *Glenure's* House; he gets Intelligence of *Glenure's* Motions, and Designs to proceed in removing the Tenants of *Ardshiel*, when he should return from *Fort-William*. On Monday the 11th he comes to the Pannel's House, and there lays aside his *French Dress*, and puts on a Country Dress belonging to the Pannel; and in the same Habit, next Day, sets out to *Ballachelish*, hard by the Ferry over which the Deceas'd was to return; from thence he goes to visit two Sisters of the Pannel's in the Neighbourhood; he returns to *Ballachelish* on Wednesday; remains there that Night, and till about Noon next Day; when he takes a Fishing-rod in his Hand, a fit Pretext for going out alone, and for staying some Time; but, soon after; the Fishing-rod was laid aside, and he goes in Pursuit of his real Game; he calls aside the Ferry-man, and inquires if *Glenure* had yet crossed the Ferry, and being assured he was not, he walks off; and was never again seen about that Ferry, or the House of *Ballachelish*; but a few Hours after, that same Night, and when the Murder had been committed, he is seen by *Katharine Macinnish*, the Maid-Servant of *Ballachelish*, at the Goat-house in the Moor of *Ballachelish*: And if *Donald Stewart* speaks true, there also he saw him, and charged him with the Murder. Here was then the Defenter, now a foreign Soldier, and one declared mortal Enemy of the Deceas'd, inquiring for the Deceas'd a little before he passed the Ferry; and, soon after the Murder, found in the Hill, near to the Spot where it happened, and adjoining to the House where he had lodged the Night before; but to which he never returned; but, instead of that, wanders in the Fields; beats up *Glenco* and his Mother betwixt Three and Four in the Morning; tells them *Glenure* was murdered, and he was going abroad; takes Leave of them at the Door; retires from thence to a Den in a Desert, the *Heugh* of *Corrynakeigh* in *Koalisnacooan*, where he was to wait for his Baggage and his promised Viaticum; and where he durst not even venture to approach the Bouman's House, except to come to the Door or the Window in the Night;

and when he had got these Necessaries he waited for, withdraws, as he proposed, across the Kingdom, over a Tract of Moors and Mountains uninhabited, till he came to his Uncle's House, and is by him, as well as every body else who knew him, *reputed and believed* to be the Murderer. And I have no Doubt, Gentlemen, but after the Proof of all these Things which you have heard, you must be entirely satisfied, that he was *truly such*; and, upon that Persuasion, will proceed to the *main Question* that is *directly* before you, namely, the Evidence of the Accession of this Pannel to that Murder, which may be summed up in the Articles following.

First of all, That it was *the Quarrel of this Pannel* against *Glenure*, that had been only taken up and espoused by *Breck Stewart*, for which *Breck* committed the Murder itself, as the immediate Actor; the Quarrel, as you have heard, or *the Cause of Offence* so highly resented, was, That this Pannel was himself removed from his Possession last Year by *Glenure*, who at the same Time withdrew from the Pannel, or forbore to employ him in the Office of an Assistant or Sub-factor, which had given him Interest and Influence with the Tenants of *Ardshiel*; and that this Year he was insisting to remove three or four Tenants, whom the Pannel had lately placed there; in all which *Allan Breck* had no personal Interest or Concern: A strange Cause of Offence, I admit, to be so highly taken up, and so deeply resented! but every Provocation works, according to the Temper or Turn of Mind of the Person who receives it; and what those of the Pannel were in this Respect, you have heard from the Evidence, and have seen in his Conduct before you, when he himself objected to *Stewart* in *Lagnahaw*, as an incompetent Witness against him; for that the Witness bore him capital Enmity, because he, the Pannel, had been instrumental in causing the Witness to be removed from the Possession at *Aucharn*, in which the Pannel succeeded him; nay, the Pannel carries this Madness so far, as to have threatened *Ewan Macintyre* and his Relations, or Posterity, (a poor Herd, who had never served the Pannel himself) for no other Offence, than that he engaged to be Herd to *Campbell* of *Ballieveolan*, the Tenant who succeeded the Pannel in the Farm of *Glenduror*, from which he was removed last Year.

The second Article in Proof is, that, in Consequence of the deep Resentment conceived by the Pannel for this supposed Injury of the Removings, he discovered, upon several Occasions previous to this Murder, an Intention or Desire to take away the Life of *Glenure*: This he expressed to *Appin's* Bouman in a most inveterate Manner, that he would be willing to crawl upon his Knees to a Window to shoot *Glenure*: But thereafter he proceeds farther than Expressions; his Conversation with the *Maccolls*, his own Servants, in the Brewhouse about *Christmas* last, could be intended for nothing but to instigate them, either by themselves, or by finding out proper Instruments among the common People of *Appin*, to cut off *Glenure*: And, when the late Removings came to be in Agitation last Spring, which the Pannel set himself to oppose with all his Might, it appears that his Malice and Fury against *Glenure* was increased; witness his Conversation with his two Landlords on his Way to *Edinburgh*, and with *Mr. Maclaren* of *Stirling*, his Fellow-Traveller Part of the Way; in which, among other Things,

the Pannel told them, that he had actually sent *Glenure* a Challenge to fight him with Pistols; and told *Maclaren*, (who says he found the Removing was much at the Pannel's Heart) that, if he should get Relief neither at *Edinburgh* nor at the *British* Parliament, he would take the only Remedy that remained. Now, to a Man that laboured under this Distemper of Mind, it was natural or incident, that, after he had returned from *Edinburgh* in the End of *April*, with such Degree of Success as to obtain a Sift on his Bill of Suspension; and had some Hopes given him at *Edinburgh*, that, when the Barons of Exchequer should meet, they would countermand these Removings; when he had called the Tenants together, and acquainted them with these Operations of his on their behalf, and sent them with a Notary, on the 1st of *May*, to intimate the Sift to *Glenure*; and when, after this, he learned, on the 11th of *May*, that *Glenure* had gone to *Edinburgh* in his Turn, got the Sift removed, was come back to the Country, and to proceed in the Removings; that, from this fresh Disappointment and Affront, that must lessen him in the Eyes of those Tenants whereof he had assumed to be Protector, the Resentment and Hatred which he formerly bore *Glenure* should be yet higher inflamed, and drive him on to send out *Breck* his Emissary to cut off the Gentleman whom they both looked on as their Enemy, in Hopes of Safety to *Breck*, the Actor, by his getting abroad, where he was to go however; and to himself, the Mandator and Accomplice, by his remaining in Appearance quiet at his own House.

And the Evidence, that in Fact this was the Case, consists of these further Circumstances, of which you have heard the Proof; that the actual Murderer of *Glenure*, in the Quarrel of this Pannel, and in Resentment of which this Pannel had discovered Designs or Intentions against his Life, when the Quarrel itself was wrought up to the highest Pitch, sets out from the Pannel's House, leaving his own Cloaths and Baggage there, dressed in a Suit of the Pannel's Cloaths fitter for the Purpose, as being less remarkable or distinguished than his own; goes directly and puts himself in the Way of *Glenure*; passes his Time, whilst he waited for him, visiting the Sisters of this Pannel in that Neighbourhood; and with *Stewart* of *Ballachelish*, who was also in the general Interest of the Pannel in Respect of the Removings; retires, when the bloody Deed was done, to a deep Retreat that was not far off; where he remains till this Pannel caused to be sent him his Baggage and a *Viaticum* of Money, such as he could afford or scrape together, to enable the Assassin to get off.

And that this Aid and Succour was sent in Consequence of a *Concert* betwixt them, previous to the Murder itself, appears from these Circumstances; that, on the Morning of *Thursday*, on the Evening whereof the Murder was committed, the Pannel sent an Express to *William Stewart* at *Maryburgh*, earnestly pressing him to send him eight Pounds, as the Price of Cows not yet delivered; and it hath not been explained, and far less proved, on the Part of the Pannel, who is a Man of some Credit and Substance, tho' he had then but little Cash in Hand, what other pressing Exigency he then had for an immediate Supply of Money, when he was living upon his own Farm at *Aucharn*; he has not shewed you, that he had accepted a Bill payable on *Friday* the 15th of *May*, or the

the Term of *Whitsunday* this Year, or that he was under Distress of any kind, that required such immediate Supply.

Again, as the Messenger of *Thursday* brought back no Cash, there is another sent on *Friday*, being the *Packman*, the *Cousin-german* of *Breck Stewart* himself, who carried *two Commissions* from the Pannel: *First*, That by all Means he should send him *five Guineas*, and this, tho' *William Stewart* should borrow it from *twenty Purfes*; and, *2dly*, To tell *William Stewart* to give Credit in *five Pounds Sterling* to *John Maccoll*, *Bouman* to *Appin* at *Koalifnacooan*, in case he came to demand such a Sum; the Pannel at the same Time telling the *Packman*, when he gave him this Message, that *Allan Breck* was about to leave the Country; that he might be suspected of *Glenure's Murder*; and that it was incumbent upon him, the Pannel, to supply *Allan Breck* in Money.

Now, Gentlemen, to this Message from the Pannel to his Friend *William Stewart*, by the *Cousin* of *Breck Stewart*, you are to join another corresponding Circumstance deposed by the *Bouman*, to which I must call for your particular Attention; for, in relating what passed betwixt him and *Allan Breck* on the Afternoon of *Saturday* the 16th, he swears, "That *Allan Breck* then told him, he must remain there, till some Necessaries he expected came to him; and that, unless some Money came for him before next Morning, he, the *Bouman*, must go to *Fort-William* with a Letter, which *Allan Breck* then wrote to *William Stewart*, Merchant at *Maryburgh*." Does not this as plainly speak out, *rebus ipsis & factis*, the Concert betwixt the Pannel and *Allan Breck*, before they parted, as if you had heard it from Witnesses present at their Conference? *Breck* was setting out upon an Exploit, which, if performed, it would require a little Money, of which he, it appears, was then destitute, or very scarce, to carry him off the Country; the Pannel himself was not then in Cash; but the Assurances he gave to *Breck* must have been, that, without Loss of Time, he, the Pannel, would send the Money directly to *Breck* at *Koalifnacooan*, or otherwise send him Credit upon his, the Pannel's, Friend and Correspondent, *William Stewart*, Merchant in *Maryburgh*. Their respective Actions correspond exactly with this Concert, and are unaccountable without supposing it. On *Friday* the Pannel sends to *William Stewart* for *five Guineas* in Cash, and an Order to give Credit to *Appin's* *Bouman* for *five Pounds* more, in case he should call for it. On *Saturday*, *Allan Breck* being with this *Bouman*, at a Place distant from the Pannel, tells the *Bouman*, that unless Money came for him before next Morning, he, the *Bouman*, must go to *Fort-William* with a Letter, which *Breck* then wrote to the said *William Stewart*, Merchant at *Maryburgh*; and such a Letter, that *Breck* tells the *Bouman*, if he was caught with it, he must eat it before it was found upon him.

These Circumstances are so pinching against the Pannel, upon the capital Point now in Issue, that he has made an Attempt to prove an Answer or Solution of this Difficulty, and that by bringing *Katharine Macinnish*, then Servant to *Ballachelish*, to depose, That when she met *Allan Breck* at the Goat-house upon *Thursday* Night, "the said *Allan* desired her to tell *Donald Stewart* in *Ballachelish* to go to the Pannel, and desire him to send the said *Allan* Money;" and that she deli-

vered this Message to *Donald Stewart* that same Night.

Again, this *Donald Stewart* hath deposed, not that *Katharine Macinnish* delivered him any such Message from *Allan*, but, "That she called him out, and told him that *Allan Breck* wanted him, and was a little above the House in the Brae or Hill, where the Deponent went and met *Allan Breck*, who then told the Deponent, he was going immediately to leave the Kingdom, and was going then for *Koalifnacooan*; and desired the Deponent to acquaint the Pannel that he was gone to that Place, and desired him, if possible, to send him Money there; and the Deponent then promised to acquaint *James Stewart* of the above Message." And this *Donald Stewart* further deposes, "That, after his Conversation with the Pannel about *Serjeant More*, he delivered the above Message from *Allan Breck* to the Pannel; and that the Pannel did not say whether he was to send the Money or not: That this Conversation happened about Ten o'Clock in the Forenoon of *Friday* the 15th of *May* last; and that there was no body present."

And, as I think the only plausible Thing proved for Defence of the Pannel, consists of these two Testimonies I have just repeated, I must beg your Attention, Gentlemen, to the Remarks I have to offer upon them, that you may be the better able to discern what Degree of Credit or Effect they deserve, or whether they deserve any at all.

And, first of all, this *Donald Stewart* is Nephew and Son-in-law to *Ballachelish*, and lives in Family with him; and it appears the whole Family are in the general Interest of the Pannel; for *John Stewart* the younger of *Ballachelish*, the Brother-in-Law of this *Donald*, hath deposed, "That, in the Time of the Spring-Circuit in this Place in *May* last, he was summoned to be of the Jury; but that, at the earnest Request of the Pannel, that he should be present with a Notary at the Removing of the Tenants from the Estate of *Ardshiel*, he was going on that Errand to the Pannel's House, but returned to *Appin*, upon hearing of the Murder committed that Day;" and has further deposed, "that he was in *Edinburgh* in *August* last, and was present at Consultations of the Pannel's Lawyers and Agents touching his Defence:" You are therefore to weigh the Credit due to a single Witness of that Family, swearing to a Fact or Conversation betwixt the Pannel and him when there was no body present, that they have judged material to be proved for the Pannel.

2dly, I have already observed to you, in resumming the Evidence of these two Witnesses, the Son-in-law and the Servant-Maid of *Ballachelish*, that there is a manifest Discrepancy between them, tho' it is not a long Time since the Fact they depose to happened, and it hath ever since been the Subject of Attention and Conversation in the Country where they live; for the Maid says, "She received the full Message from *Allan Breck*, and delivered it to *Donald Stewart*; and that she did not desire *Donald* to go up to *Allan* in the Hill, nor did *Allan Breck* desire her to send *Donald* to him there:" And yet *Donald* swears, "That the Maid informed him, that *Allan Breck* wanted him, and told him where *Breck* was; and that *Breck* himself gave him the Message to be delivered to the Pannel; which he delivered accordingly about Ten o'Clock next Day to

"the

“ the Pannel, whom he met alone in the Fields.” So that the Whole of *this Tale*, attempted to be proved by these two Witneffes, appears extremely fuspicious, and their Accounts hang not well together.

3dly, *Donald Stewart's Tale*, if it be true, and if it be also true, that the Packman was not sent away by the Pannel to *Fort-William*, till about Twelve o'Clock on *Friday*, might serve to account for, or to have given rise to the Packman's *Message* on *that Day*: But how will it serve to account for the *former Express* sent upon the *Morning of Thursday* by the Pannel, to the same *William Stewart* at *Maryburgh*, to send him down immediately eight Pounds Sterling by the Bearer?

4thly, If it be true, which both *William Stewart* and his Wife depose, that the Packman came to them at *Fort-William*, upon *Friday* betwixt *Ten and Twelve*, as the *Husband* says, or *about Mid-day*, as the *Wife* says, then the Packman must have been mistaken in the *Hour* that he was dispatched by the Pannel from his House, when he says, it was about *Twelve o'Clock* that Day; and if *Stewart* and his Wife are rather to be believed, that he got to *Fort-William* by Noon, he must have been dispatched by the Pannel long before *Ten o'Clock*, when, *Donald Stewart* says, he delivered *Breck's* Message to the Pannel.

And, lastly, That which affords a solid and satisfying Reply to the Defence founded on these two Testimonies, of the Son-in-law and Servant-maid of *Ballachelish*, is this Consideration, That supposing it true, for Argument's sake, which they have sworn as to the Substance, that *Breck* sent Notice by *Donald* to the Pannel, that he was going to *Koalishnacooan*, and wanted Money, how will that account for what was observed a little while ago, “ of the Pannel's writing a Letter “ upon *Saturday* Afternoon, to be sent by the Bouman to *William Stewart* at *Maryburgh*?” For though here be a *Tale*, I am afraid lately invented by the Pannel, of a *Message* from *Breck* to him after the Murder, to tell the Place of his Retreat, and that he wanted Money, he hath forgot to provide Witneffes for proving another Thing, and that is a *Message* in Return from the Pannel to *Breck*, to give *Breck* Notice how the Money was to be found or furnished, namely, by the Pannel's giving Credit to him, or the Bouman, upon *William Stewart* at *Maryburgh*; for, without such Notice, how could *Breck*, from the Bottom of his *Heugh* in *Koalishnacooan*, so exactly co-operate with what the Pannel was doing from his own House at *Aucharn*, as to write a Letter on *Saturday* to the same *William Stewart*, Merchant in *Maryburgh*, to be sent by *Appin's* Bouman, to which *William Stewart* on *Friday* the Pannel sends *Breck's* Cousin, to bid him give Credit to *Appin's* Bouman for five Pounds, if he should call for it?

This Circumstance therefore, which is quite unanswered, as well as the *Express* on *Thursday Morning* for Money, before the Murder happened, makes the Evidence before-mentioned remain in full Force, the *Tales* of the Message to the Pannel, mentioned by these two Witneffes, notwithstanding.

There hath been hardly any Thing else proved for the Pannel's Defence, that merits a Reply: It is of no Moment, that this was not the first Time that *Breck Stewart* made Use of the Pannel's Habit or Cloaths above-mentioned; he had used them once before in the Month of *April*, when he went to *Rannoch*, whilst the Pannel was at *Edinburgh*; but it was not the lefs true, that this Habit

was far more commodious for the murderous Purpose he went about, when he left the Pannel's House on *Tuesday* Morning the 12th of *May*, than his own *French* Cloaths would have been.

Again, it is true, that, on the Morning of *Thursday*, he writes a Letter for a Notary, to take Protefts against the Removings, at the same Time that he writes for the eight Pounds; and his Council have said, that this was pursuing quite another Scheme: But this is by no Means conclusive, to prove his Innocence; he was galled and incensed by these Removings, and his Protest by a Notary, after his Bill of Suspension was refused, would be of very little Avail; and yet he writes for one to attend, to be provided for all Events, as it was a possible Case, that the intended Murder of *Glenure* might have been prevented, by his going another Road than the common one, or other Accidents.

And as little can it avail the Pannel, that, after he was in Custody, he wrote a Letter to Mr. *Macfarlane* at *Edinburgh*, describing *Allan Breck*, and expressing a Desire that he might be apprehended; for this was a Letter shown to Colonel *Crawford*, the commanding Officer, and now appears to have been a manifest Dissimulation, when, by the showing of the Pannel's own Defences, he sent Money to *Allan Breck* in order to help him to escape, on Account, as he says, of his Relation, and having been formerly his Ward or Pupil.

When therefore, Gentlemen, you shall consider and duly weigh the whole Facts and Circumstances proved before you, and which I have now resumed; and when to these I have last mentioned you shall add, that, besides the Cloaths and the Money furnished to *Breck*, there is a strong presumptive Evidence, that the very lesser or shorter Gun produced before you, and proved to have been the Pannel's, and which is of the wider Bore of the two, was the very Instrument with which the Murder was committed; for none of the Servants saw it upon *Thursday* Night, when they hid the Arms; and when they saw it on *Friday* Night, when the Arms were carried up to the Hill, it was empty; and Captain *Chapeau* and others have deposed, it appeared to them to have been lately fired, when he found it on the 23d of *May*.

That the Pannel, on the first Notice he received of the Murder being over, discovered an Apprehension that he himself might be brought to Trouble on that Account.

That he made an Attempt, though a very unavailing one, to throw the Suspicion of the Murder upon *Serjeant More Cameron*, who had not been in that Country for many Years.

That the Pannel, being in Custody, sent a Message by his Barber to his Servants to keep their Minds to themselves, and he would take Care of them.

That his Wife and one of his Children have too strongly discovered their Sense of the Importance of the Article of the Cloaths furnished by the Pannel to *Breck*, by swearing, that *Breck* left their House in his own *French* Cloaths, though the Wife, at least, most certainly knew the contrary.

I say, Gentlemen, when you put all these Things together, you will form your Opinion, and pronounce accordingly, whether this Pannel is, or is not, guilty of Accession to this horrid Murder? In all circumstantial Evidence, there is a Possibility of Innocence, even without supposing any of the Witneffes perjured: For Example, in the Case of *Stewart Abercrombie*, which you heard mentioned in the Debate on the Relevancy in this Trial; it was urged

urged for him; and very truly, that some other Man without a Hat, as well as he was, might have been the Murderer of the Deceased; for there was no Witness who could swear he saw him do it: And in the other Case of *Maccowan* you heard mentioned, who was convicted, principally, upon a Shirt and Stockings being found in his Possession, which the poor Woman had carried with her from Home; it was possible that *Maccowan* might have got these Garments immediately, or by Progress, from some other Person who had robbed or murdered the poor Woman. But, in both these Cases, the Pannels were convicted, and suffered accordingly.

And, in the present Case, if, notwithstanding what you have heard, you can believe, that *Allan Breck Stewart* committed this Murder purely of his own accord, and without any Privity or previous Concert with this Pannel; and the Aid given by the Pannel to carry him off, was out of mere Compassion, and a Resolution first taken after the Pannel had heard of the Murder itself; then surely it will be your Duty to acquit the Pannel; for, better that this Murder, atrocious and scandalous as it is, should remain unavenged by human Justice, than that one innocent Man should suffer.

But, on the other hand, if, upon the whole Evidence, you cannot believe the Pannel innocent, but are convinced in your own Minds, that he has been knowingly accessary to this Murder; then, doubtless, your Duty to God and your Country requires of you to pronounce him guilty.

Mr. BROWN for the Pannel.

Gentlemen of the Jury,

I Appear for the Pannel; and, as this Trial has already taken up a great deal of Time, I shall not follow the honourable and learned Gentleman on the other Side, in some Things which I conceive to be extraneous to the Matter in Issue; but shall endeavour to sum up what I have to say, in as few Words as the Importance of the Case, and Variety of Matters to be considered, will admit of.

As I am at all Times under no small Degree of Concern, as often as I appear in any Case of this Nature; so, I must acknowledge, I am at present under greater Concern than ever I was in any former Case, when I consider the many Disadvantages which this unfortunate Pannel labours under.

In the first Place, I am under the Necessity of entering the Lists with a learned Gentleman, of great Abilities, and of much more Experience in these Matters than I can pretend to.

But, Gentlemen, if I have undertaken what I am not sufficient for, the Fault lies at the Door of the private Prosecutor, who, before the Prosecution was commenced, begun early with pre-engaging the whole Council at the Bar, who had most Experience in these Matters, not with an Intention that they should assist in carrying on the Prosecution, (for many of the Gentlemen who were engaged have not appeared at the Trial) but with an Intention that they might not have it in their Power to appear on the Side of the Pannel.

A just Prosecution scarcely stands in need of an Advocate to support it. What then shall be said of a Prosecution, where the Prosecutor despairs of prevailing otherwise than by depriving the Pannel of those who were most able to defend him?

For my own Part, I chose rather to have it said

of me, that I had imprudently undertaken what I was not sufficient for, than that I had uncharitably refused to give any poor Assistance in my Power to a Gentleman, who imagines that I can be in the smallest Degree useful to him.

I might also take Notice of many other Hardships which the Pannel has suffered from close Confinement, during more than four Months, contrary to the great Charter of Liberty in this Part of the Kingdom,—from the unwarrantable Seizure of his Papers without any legal Authority,—and from the Shortness of the Time allowed him for making his Defence: But these Things have been so fully insisted on by the Gentlemen who have spoke on the same Side, that it is unnecessary for me to repeat what has been already said. The Facts have not been denied by the Prosecutor; and as every Man must see at first Sight, what a prodigious Loss it is to a Pannel, to have Access, for so long a Time, denied to every Person who was capable of assisting him in making his Defence, so I must be forgiven to say, that if this Trial was at all proper for a Circuit-Court, (which may be doubted) it ought to have been brought on in the ordinary Form, by way of Presentment, and not summarily in the Form of Criminal Letters. By the former Method, the Pannel would have had upwards of three Months to prepare for his Defence, instead of fifteen Days, which is all the Time the Pannel has had, since the Criminal Letters were executed against him.

But, Gentlemen, there is yet another Disadvantage, which this Pannel labours under, which gives me more Uneasiness than all those I have already mentioned, and which, I must beg Leave to say, I dread more than all the Proof which has been brought against him.

What I mean is an Impression, which has been industriously raised and artfully propagated, as if it were some-how necessary that the Pannel should be found guilty; and as if his being acquitted might bring a Reflection on this Part of the Kingdom.

Gentlemen, I do not expect, nor do I desire, that you should return a Verdict contrary to Evidence: But it is my Duty to put you on your Guard, not to allow yourselves to be carried off by *Passion* or *Prejudice*: And tho' I have no Doubt of the Integrity or Honour of any of the Gentlemen to whom I now address myself; yet, upon this Occasion, it is my Duty to say, That if you find the Pannel guilty, either *without Evidence*, or upon *doubtful Evidence*, you will thereby bring the Blood of an innocent Person upon your own Heads:—I say, an *innocent Person*; for every Man is held to be *innocent*, till such time as he is convicted, not by *doubtful*, but by *legal* and *complete Evidence*.

And, if the Evidence is *insufficient*, which I am hopeful I shall be able to show, I am under no Apprehension, that your acquitting the Pannel can ever bring any Reflection either upon yourselves or upon your Country. It is the peculiar Happiness of this Part of the Island, that, in capital Cases, the Law makes it necessary, that the whole of the Evidence should be taken down in Writing; and as that has been fairly done in the present Case, the authentic Record will satisfy every *reasonable* and *thinking* Person, that the Grounds upon which you have proceeded were solid; and if you have the Approbation of *such*, you ought to disregard what others may say of you.

Having said so much in the general, I shall now proceed to consider the Crime which has been

charged against the Pannel, and the Evidence which has been brought in Support of that Charge. As to the Crime itself, I readily agree with every one of the Gentlemen who have spoke before me, that it is of so *atrocious a Nature*, that Words can hardly be found, strong enough to express, in proper Colours, its Enormity; and I shall also admit, that it is highly aggravated from the particular Circumstances which have been very properly mentioned by the honourable Gentleman on the other Side. But then, the Prosecutor would do well to observe, that the *more atrocious* the Crime is, the *more natural* it is to *presume*, that the Pannel was *not guilty* of it. And it is my Duty to put you on your Guard, that a just Indignation at the Heinousness of the Crime may not lead you to condemn without *proper Evidence*: For, however *foul* the Crime may be, it is much better that it should escape unpunished, than that an *innocent* Person should suffer for it.

The Crime charged against the Pannel is, *that he entered into a Conspiracy with Allan Breck Stewart to murder Colin Campbell of Glenure by the Hands of the said Allan, and that the Murder was accordingly so committed*. And therefore, before the Prosecutor can prevail, it behoves him to prove, not only that the Murder was committed by the Hands of *Allan Breck*; but also, that the Pannel and he were previously in a Conspiracy to commit the Murder in that Manner.

The Prosecutor pretends not to have brought any direct Evidence of either of these Facts; but the Guilt of both Pannels is inferred from a Variety of Circumstances, which it now belongs to us to consider, so far as is necessary for the Defence of this Pannel.

And here I shall not dispute the general Proposition laid down by my Lord Advocate, "That Crimes may be proved by *Circumstances*." I admit that any Crime may be so proved; but then I humbly contend, that the Circumstances ought to be such, as *necessarily infer* the Guilt of the Pannel.

In order that this Matter may appear in its proper Light, I must beg Leave to lay down one general Rule, which admits of *no Exception*, and ought to be strictly followed in judging of all circumstantiated Evidence; which is, That where any Fact proved against the Pannel, is in its own Nature such, that it will naturally admit either of a good or a bad Construction, that Construction ought always to be received, which is *favourable* for the Pannel.

This is founded upon the first Principle of natural Justice, which directs us, "To do to others, as we would have them do to us:" And as every one of you would think yourself hardly used, if a bad Construction were put upon any Action of yours, which would naturally bear a good one; the Pannel asks no more, than that you should judge of his Actions by the same Rule.

And here, Gentlemen, I do not mean, that, in a circumstantiated Evidence, it is necessary, that every Circumstance taken separately should be conclusive: If that were necessary, few Crimes could ever be proved. But what I intend is, that, in all Crimes whatever, it is necessary that the Proof should be certain and conclusive; and, as the Law justly rejects all Arguments drawn from *Conjectures* and *forced Consequences*, it is not sufficient to convict a Pannel, *that he might have been guilty* of the Crime charged; but the Proof ought to be such as

to leave no Room to *doubt*, that he *was* so: And tho' it is not necessary, in a circumstantiated Evidence, that every Circumstance, considered apart, should be conclusive; yet, I conceive, I may lay it down as a certain Principle, that, where the whole of the Circumstances are such, that they might *naturally* have happened *without inferring the Guilt* of the Pannel, such Circumstances, however numerous, ought to have no Authority against him.

To apply this Rule to the present Case, I am hopeful, I shall be able to satisfy you, Gentlemen of the Jury, that the Facts charged against the Pannel are either *not proved*, or they are such, that *all* of them might have *naturally* happened; and at the same Time the Pannel be *entirely innocent* of the Crime of which he is accused.

But, before I proceed to consider particularly the several Articles of the Proof brought against the Pannel, it will be necessary to put you in Mind of some Things which happened previous to the Murder, as these may tend to explain many Things which occur in the Proof, and which shall be afterwards particularly taken Notice of.

You have already heard, from the Gentleman who spoke first on the same Side with me, that, in the Month of *February* 1749, the deceased *Colin Campbell* of *Glenure* was appointed Factor by the Barons of Exchequer, upon the forfeited Estates of *Lochiel*, *Callart*, and *Ardshiel*; and, as the Pannel, who was then Tenant of Part of the Estate of *Ardshiel*, had always lived in great Friendship with *Glenure*, and had as fair a Character as any Gentleman in that Part of the Country, the Management of the whole Estate of *Ardshiel* was committed to him by *Glenure*, and his Bill was taken for that yearly Rent at which the Estate had been rated after Survey by the Barons of Exchequer, leaving it to the Pannel to apply the Surplus to the Use of *Ardshiel's* Children. This is proved by several Letters and Receipts produced, and in particular from *Glenure's* Letter to the Pannel, dated the 11th *December* 1749, in which he writes as follows: "This Moment I had yours by your Servant, with 20*l.* 18*s.* 5*d.* *Sterling*, and the Warrant I formerly gave you. Receive inclosed your Note. Your Payments are very good, for which I am obliged to you. I intend, God willing, to be at *Edinburgh* on, or a Day or two before the 25th current; that is, I intend to set out from this Place this Day, or To-morrow eight Days; and will go by *Glasgow*, and make no Stop by the Way. Remember Lady *Ardshiel's* Discharges, and all your other Tackling. I heartily wish you a good Journey."

About the Month of *April* 1751, *Glenure* applied to the Pannel to give up the Farm of *Glenduror*, which he then possessed, to Mr. *Campbell* of *Ballievelan*, *Glenure's* particular Friend, who, it appears, had offered an additional Rent; and, tho' the Pannel had not been legally warned, and so was not obliged to remove for that Year; yet he readily agreed with *Glenure's* Proposal, removed from the Possession, and took from Mr. *Campbell* of *Airds* the Farm of *Aucharn*, where his Family now resides; but he still continued to uplift the Rents as formerly from the Tenants of *Ardshiel*, and likewise to possess a small Farm called *Lettermore*, which he had sublet at about 6*l.* *Sterling per Annum*.

In the Month of *April* last, *Glenure* executed a Warning, and obtained a Decree of Removing, against

against no less than five or six Tenants of the Estate of *Ardshiel*, and also against as many Tenants of the neighbouring Estates of *Lockiel* and *Callart*, decerning them to remove from their respective Possessions as at the Term of *Whit Sunday* last; and, among the rest, the Pannel's two Sub-tenants in the Farm of *Lettermore* were also decerned to remove.

This was complained of as a very great Hardship in that Part of the Country, more especially as the Tenants in Possession paid their Rents regularly, and were willing to take the Oaths to the Government; and altho' the Pannel's private Interest in the Matter was not great, yet, as he foresaw that a Procedure so severe might be attended with disagreeable Consequences, he went and often expostulated with *Glenure* upon the Subject; but he having persisted in his Resolution, the Tenants upon all the three Estates transmitted Memorials of their Case, to be laid before the Barons of Exchequer; and, as the Pannel was then occasionally at *Edinburgh*, about some private Affairs of his own, he presented the Memorials to one of the Barons, who disapproved greatly of *Glenure's* Conduct, but could do nothing towards putting a Stop to the Removings; as a Quorum of the Barons could not be held till the next Exchequer Term; though at the same time, he undertook to represent the Case to the whole Barons, adding, that he made no doubt but they would give an Order to the Factor to continue the Tenants in Possession; which in Part appears from a Letter wrote by the Pannel to *Charles Stewart*, Writer, dated 27th *April* 1752, and referred to in the Inventory subjoined to the Libel, in the following Words: " Yesternight I arrived here, after a very troublesome Jaunt; and as the Barons could not be got together, put it out of my Power to procure an Order for our Factor; but Baron *Kennedy*, who I found very kind, and seemed to sympathize much with the Tenants Case, gave it as his private Opinion, that they should sit their Possessions for this Year, and that all Justice would be done them; and thought they should take a Protest against the Factor's Proceeding in a Body, I mean the *Mamore* and *Appin* Tenants. The same Advice I had from all I advised with, who were not a few, and all were of the same Mind, that the Tenants had a good Chance, once their Affair came before the Barons."

Upon this the Pannel advised with Council, how the Tenants might be kept in Possession till the Exchequer Term, and by their Advice applied to the Court of Session for a Suspension of the Removing; and, a Bill of Suspension having been accordingly presented, a Sift was obtained, and the Bill ordained to be answered; which Sift was intimated to *Glenure*, upon the Pannel's Return to the Country: But, Answers having been thereafter made to the Bill by *Glenure*, who had gone to *Edinburgh* for that Purpose, as the Pannel had, through Ignorance of the Forms, carried off with him the principal Bill with the Sift upon it, the Answers were advised without the Bill, and the Bill refused by an Interlocutor the 5th of *May* last.

Upon *Saturday* the 9th of *May*, *Glenure* returned to his own House in the Country; and so soon as it came to be publickly known, that the Bill of Suspension was refused, and that upon *Friday* the 15th of *May*, being the Term-day, *Glenure* was to execute the Warrant of Ejection against the Tenants of *Ardshiel*, it was resolved, in Consequence

of the Advice the Pannel had got from *Edinburgh*; that the Tenants should take a Protest against *Glenure*, in case he should attempt to put his Warrant of Ejection in Execution; and that they should continue in Possession notwithstanding thereof, till such Time as their Case should be fully heard before the Barons, and that their Directions should be known.

Accordingly, in Prosecution of this Plan, upon *Tuesday* the 12th of *May*, the Pannel wrote a Letter to *Alexander Stewart*, Writer in *Glenettie*, desiring him to come and act as Notary to the Protest intended to be taken against *Glenure*; and at the same Time he prevailed upon two Gentlemen of Character in the Neighbourhood, viz. *John Stewart* younger of *Ballachelish*, and *James Stewart* younger of *Fajnacloch*, to undertake to attend as Witnesses; and assist at taking the Protest; but the said *Alexander Stewart*, the Notary, having happened to be out of the Way, when the Pannel's Servant went to his House, and this having been notified to the Pannel upon the Morning of *Thursday* the 14th of *May* last, (the Day on which *Glenure* was murdered) he dispatched a Servant of his own very early, with a Letter to *Charles Stewart*, Writer at *Auchintour*, informing him of the Disappointment he had met with by the Absence of the Notary to whom he had first wrote, and desiring him (the said *Charles*) to come to his House with all possible Expedition that Night; in order to act as Notary to the Protest intended to be taken against *Glenure* next Day.

In this Situation Matters stood upon *Thursday* the 14th of *May* last, being the Day upon which this most execrable Murder was committed; and therefore, the Facts previous to the Murder being adjusted, I shall now proceed to consider the Evidence which has been brought for proving both Branches of the Libel; 1st, That the Murder was committed by the Hands of *Allan Breck*; and, 2dly, That it was committed in Consequence of a previous Conspiracy betwixt him and the Pannel.

And here it is highly necessary that you should be greatly on your Guard, to distinguish accurately between the Facts charged against the Pannel, and those charged against *Allan Breck*; which is the more necessary, as in the Libel the Facts are so intermixed, that it is no easy Matter to distinguish the one from the other. And though I must admit, that the learned Gentleman on the other Side has been very candid in summing up the Evidence; yet I could have wished he had been more careful to distinguish the Proof, so far as it relates to the different Pannels charged in the Libel.

With regard to the first Question, concerning the Guilt of *Allan Breck*, I shall not take up much of your Time; for, though it is incumbent upon the Prosecutor to prove that the Murder was committed by the Hands of *Allan Breck*, yet it is not absolutely necessary for the Pannel to maintain the Innocence of that Person; as it is of no Importance for the Prosecutor to prove that the Murder was committed by *Allan Breck*, unless he shall also prove that the Pannel was accessary to it.

And therefore I shall very shortly state the Objections against this Part of the Evidence, leaving it to your own Consciences to determine you, how far the Evidence brought by the Prosecutor is sufficient.

And the first Circumstance charged in the Libel is, " That, upon *Monday* the 11th of *May*, *Allan Breck* having been informed that *Glenure* had

" gone

“ gone that Day to *Lochaber*, and was to return
 “ by the Ferry of *Ballachelish* upon the *Thursday*
 “ after, he had laid aside his *French* Cloaths,
 “ which were remarkable, and had disguised
 “ himself in a black Coat and Trowsers belonging
 “ to the Pannel, with an Intention to commit the
 “ Murder.”

But, in the first Place, it is not proved, that, upon *Monday* the 11th of *May*, *Allan Breck* had been particularly informed of *Glenure's* Motions; for though it does indeed appear, from the Depositions of some of the Witnesses referred to by the Prosecutor, that *Allan Breck* had heard of *Glenure's* having set out that Day for *Lochaber*, yet it does not appear that he had got any Information what Road he was to take, or at what Time he was to return: None of the Witnesses have said so, and, in Cases of this Nature, no Fact ought to be presumed without proper Evidence.

2dly, Though it is proved that *Allan Breck* did change his Cloaths upon the Day libelled, yet it is not natural from thence to presume, that this was done with an Intention to commit the Murder. It clearly appears from the Depositions of the Witnesses relative to this Article, “ That, upon
 “ former Occasions, *Allan Breck* had been in use
 “ of laying aside his *French* Cloaths, and putting
 “ on the Dress of the Country.” And, in particular, it is proved by the Depositions of the three *Maccolls*, (who cannot be said to have been *partial* for the Pannel,) “ That he had on these very
 “ Cloaths belonging to the Pannel, when he went
 “ to *Rannoch* in the Month of *April* last:” And therefore, as it was no *new* Thing, but a *common* Practice of *Allan Breck's* to lay aside his *French* Cloaths, and put on the Dress of the Country, it is wrong in the Prosecutor to lay hold of this Circumstance, which is in itself *innocent*, and to wrest it into an Argument against the Pannel; especially as it appears from the Depositions of the same three Witnesses, “ That *Allan Breck* wrought
 “ with them in the Potatoe-field the greatest Part
 “ of that Afternoon upon which he came to the
 “ Pannel's House,” which was a very natural Reason for laying aside his *French* Cloaths, as not being proper for that Purpose.

The next Circumstance charged against *Allan Breck* is, “ That, for some Days before the Murder happened, he had hovered near to the Ferry
 “ of *Ballachelish*, at which it was known *Glenure*
 “ was to pass; that, during that Period, he had
 “ been twice at the House of *Ballachelish*, twice
 “ at the House of *Glenco*, and once at the House
 “ of *Callart*.”

But, in the first Place, it is not proved, that *Allan Breck* knew that *Glenure* was to pass at the Ferry of *Ballachelish*; and therefore it is ridiculous to talk of hovering or lying in wait, when it was not known at what Ferry *Glenure* was to pass.

2dly, If *Allan Breck* had known that the Defunct was to pass at *Ballachelish*, and had intended to lie in wait, he would have kept close at *Ballachelish*, and would not have gone either to *Callart* or *Glenco*, which are each of them at three Miles Distance, the first on the North Side, and the other on the South Side of the Ferry. It is much more natural to presume, that *Allan Breck* went to these Places with an Intention to visit his Friends who lived there. And this is another Instance where the Prosecutor wrests a Circumstance, which is in itself *innocent*, into an Argument against the Pannel.

The third and strongest Circumstance against

Allan Breck is, “ That he absconded that very
 “ Night upon which the Murder happened; and
 “ left the Country soon thereafter.”

But this Circumstance has been in like Manner obviated by the Proof brought in Behalf of the Pannel. It is clearly proved, that, in the Year 1745, *Breck* was a Soldier in the Regiment commanded by Colonel *Lee*; that, immediately after the Battle of *Preston*, he deserted to the Rebels; that he remained with them till they were happily defeated at the Battle of *Culloden*; and that, since that Time, he had been in the *French* Service: And therefore, as *Breck* must have foreseen, that, upon the Murder of *Glenure*, a very strict Search would be made, it was very natural for him, though *innocent*, to abscond and leave the Country; and accordingly it appears from the Proof, that he gave this Account of the Matter to every Person whom he had Occasion to converse with upon that Subject; and therefore, as this Circumstance, as well as all the rest, may naturally bear a Construction favourable for the Pannel, it is wrong in the Prosecutor to put a *bad* Construction upon an Action which will naturally bear a *good* one.

The only other material Circumstance from which the Guilt of *Allan Breck* is inferred, is, that, before the Murder, he had, upon different Occasions, used threatening or resentful Expressions against the Defunct: But, as it seemed to be admitted by the learned Gentleman on the other Side, that Expressions alone were not sufficient to infer the Crime, I shall have Occasion to consider more particularly the Effect of such Expressions, under the second Branch of my Argument, which properly relates to this Pannel.

And whatever may be your Opinion with regard to *Allan Breck*, I must humbly contend, that there is no Sort of Evidence that the Pannel, now at the Bar, was in any previous Conspiracy to commit this heinous Murder; and, as far as the Nature of the Thing could admit of it, the Pannel has proved the Improbability of his being any Way accessory to it.

In the first Place, the Character of the Pannel goes far to protect him from any Suspicion of this Kind: Though that Part of the Evidence was not taken down in Writing, yet he has proved by Witnesses, beyond all Exception, and can appeal to your own Consciences for the Truth of it, that his Character in private Life was never stained by any dishonourable Action. Is it possible then to believe, that one of such a Character can at once plunge himself into the deepest Guilt, by committing the Crime of *Assassination*, which is of all others the most shocking to human Nature?

2dly, The Pannel's Guilt is still the more improbable, as he could not possibly propose any Benefit by it. He was a Man of too good Understanding, not to see that *Glenure's* Place as Factor would soon be supplied; that the strictest Search would be made for the Authors of this enormous Crime; and that his Family, as being nearly connected with the forfeited Person, would be first suspected: Is it possible, that, in such Circumstances, it could enter into the Imagination of the Pannel, to commit a Crime of so black a Nature, when he could not only reap no Benefit by it, but when it behoved necessarily to involve his own Family in inevitable Distress and Ruin?

But, 3dly, There is another Circumstance which renders it incredible that the Pannel could have been in any previous Conspiracy to commit this Murder;

for

for it is clearly proved, that at that very Time he was pursuing quite contrary Measures; that he had provided himself, and was endeavouring to provide the other Tenants, in other Possessions; and it is further proved, not only by verbal, but also by written Evidence, *which cannot lie*, That his Intention was to proceed in a legal Way, by taking a Protest against *Glenure* upon the Term-day, in case he should attempt to put his Removing in Execution. This is clearly proved by the Pannel's Letter to *Charles Stewart*, the Notary, dated the 14th of *May*, being that very Day on which *Glenure* was murdered: Which Letter ought to have the greater Weight, as it is not produced by the Pannel, but by the Prosecutors, the same having been recovered by them out of *Charles Stewart's* Hands.

In this Letter (which greatly deserves your Attention) the Pannel writes to *Charles Stewart*, That, by the Negligence of his Servant, he had been disappointed of the Notary he first intended, "which he reckons a very great Misfortune." And then the Letter concludes in these Words: "The next best Thing I can think of is, that you be here this Night, without fail, if you should hire a Horse; as every Thing must go wrong, without a Person can act, and that I can trust. This is such a Tie upon all the Members of our Family, that I'll press you no further, but do depend on seeing you once this Night."

It is indeed true, that this Letter does not particularly mention that the Pannel's Intention was to take a Protest against *Glenure*; but then, this is fully explained by the Depositions of the Witnesses; particularly by the Oath of *Charles Stewart*, who deposes, "That he received a second Letter from the Pannel, of Date the 14th of *May*, desiring him to attend the next Day at the Ejection; but he declined the same, because he did not care to disoblige *Glenure*."

This is further confirmed by the Oath of *John Beg Maccoll*, the Person who carried the Letter, who deposes, "That, upon *Thursday* the 14th of *May* last, the Pannel gave a Letter to the Deponent, to be delivered to *Charles Stewart*, Notary Public at *Maryburgh*; and told the Deponent, that the Letter was to make or cause *Charles Stewart* come to the Country of *Appin* to protest against *Glenure*, in case he had not a sufficient Warrant to remove the Tenants of *Ardshiel*: That the Pannel desired the Deponent to make all possible Dispatch, and desire *John Breck Maccombie* at *Kintalline*, and *John More Maccoll*, Servant to the Pannel, who was then at *Kintalline*, to ferry the Deponent from *Kintalline* to *Onich*, being much shorter than the Ferry of *Ballachelish*: That he set out from *Aucharn* about Seven or Eight o'Clock in the Morning, and made all the Dispatch he could to *Fort-William*, where he arrived about Twelve o'Clock. Deposes, That, when he came to *Fort-William*, he delivered the Letter he got from the Pannel to *William Stewart*, Merchant in *Maryburgh*, who told him that *Charles Stewart*, the Notary, was not at Home, he having gone to the Braes of *Lochaber* in the Morning; and told the Deponent, that he, the said *William*, had wrote to the Pannel in the Morning, and that there was a Notary along with *Glenure*, who would serve the Pannel, as well as *Glenure*."

And it is further proved, that the Pannel had

gone so far as to provide proper Witnesses to be present at taking that Protest, as appears from the Deposition of *John Stewart* younger of *Ballachelish*, who deposes, "That, in the Time of the Spring Circuit in this Place, in *May* last, he was summoned to be of the Jury; but, at the earnest Request of the Pannel, that he, the Deponent, should be present with a Notary at the Removing of the Tenants from the Estate of *Ardshiel*, he was going, on that Errand, to the Pannel's House; but returned to *Appin*, upon hearing of the Murder of *Glenure* committed that Day."

And this Observation, that the Pannel had at this Time no Thoughts of the execrable Murder of which he is now accused, is further confirmed from *William Stewart's* Letter to the Pannel, dated the same 14th of *May*, recovered by the Prosecutors from out of the Pannel's Repositories, which concludes in the following Words: "I find *Glenure* has a mind to eject the Tenants; but they ought to be deaf to it, and, at all Risques, keep Possession, as they are in good Hands, as it must end in the Exchequer; so that I beg they keep Possession: As there will be no Troops, they ought to repel Force by Force, and take their Hazard of the Consequences; as it can be no more than violent Profits, which is often modified in inferior Courts, besides the Exchequer, who will insist for no such; their chief Design being to have a Set of peaceable Tenantry, and a well-paid Rent: So that the People ought to be assured they will be supported as far as Law will, which, no doubt, must determine in their Favours."

From the Depositions of these Witnesses, joined with the Letters which have been read in your Presence, it is incontestably proved, That the Plan concerted between the Pannel and his Friends went no further, than to take a Protest against *Glenure*, in case he should attempt to execute his Warrant of Ejection against the Tenants; or, at furthest, that the Tenants should continue in Possession notwithstanding the Warrant, and run the Risque of violent Profits. And it is of great Importance in the present Argument, that these two Letters are dated upon the Morning of *that very Day* on which the Murder happened; a Circumstance utterly inconsistent with the Libel, which has no other Footing to stand upon than this, That the Pannel and *Allan Breck* had concerted the Murder previous to the Time when *Allan Breck* changed his Cloaths; which, as has been already observed, was four Days before the Murder.

Amidst such glaring Improbabilities, it would require the strongest Evidence to convict the Pannel. And this leads me to consider the several Facts, according to the Order in which they are laid in the Indictment.

And the first Thing charged in the Libel is, that the Pannel had conceived an unjust Resentment against the Deceased, for three different Reasons: 1st, Because he had accepted the Factory of the Estate of *Ardshiel*; 2^{dly}, Because he had removed him from the Farm of *Glenduror*; and 3^{dly}, Because that, in the Month of *April* 1752, he had taken Measures for removing certain other Persons, who were Tenants and Possessors of that Estate.

The first is clearly disproved by Letters and Discharges under the Hand of the Deceased, which have been read in your Presence; and from which it appears, that, for several Years after the Date of the Factory, the Deceased and the Pannel were in

perfect good Terms; and that *Glenure* had such Confidence in the Pannel, that he had employed him to uplift the Rents from the other Tenants.

The second Ground of Resentment is disproved by the Oath of *Alexander Stewart of Innernabyle*, who deposes, "That the Time when the Pannel removed from *Glenduror*, he told the Deponent, that he had had a Meeting with *Ballicveolan*, and that there was a Compromise betwixt them: That he did not hear of any Warning, but that he removed voluntarily."

And therefore the only Ground of Resentment which remains, is, That the Defunct had taken Measures for removing some of the other Tenants of the Estate, as at the Term of *Whitsunday* last: And tho' it may be true, that the Pannel has, upon different Occasions, complained, in strong Terms, of the Hardship of removing these Tenants; yet it is impossible to believe, that so trifling a Cause of Resentment could have so strong an Effect, as to push on the Pannel to the barbarous Murder of which he is now accused; more especially, when it is considered, that he is no ways related to any of these Tenants, and that none of them are so much as of the same Name.

The Prosecutor has been pleased to lay great Stress upon certain foolish Expressions alledged to have been used by the Pannel upon the Subject of these Removings.

It must occur to every Man, how extremely dangerous a Proof of this Kind is: There are very few Witnesses who can repeat exactly the Particulars of any Conversation, and still fewer who can recollect these Particulars at any Distance of Time. In such Cases, much may depend upon the Tone of Voice, or Gesture of the Person who speaks; and the Variation of a Circumstance may alter the Meaning of the whole Expression.

Besides, there is an obvious Disadvantage which this Pannel labours under, and of which, in the present Case, he has no small Reason to complain; which is, That the particular Expressions charged against him are not taken into the Libel, neither are the Circumstances of Time and Place mentioned; by which the Pannel is deprived of the Opportunity he ought to have had of bringing a contrary Proof. If the particular Expressions were known to the Prosecutor, it was but just that they should have been taken into the Libel; and, on the other hand, if they were not known, no such Thing ought to have been at all mentioned.

And indeed, with regard to some of the Expressions, it is impossible to believe, that the Pannel used the Words deposed to by the Witnesses. Thus, in particular, the strongest Expression is that deposed to by *John Maccoll* the Bouman, who deposes, "That, about two Years ago, he heard the Pannel say, That he would spend a Shot on *Glenure*, though he went on his Knees to the Window to fire it." But as this Expression is only deposed to by one Witness, who seems to have been abundantly forward in deposing against the Pannel; so it is utterly incredible, that, at the Time deposed to by this Witness, the Pannel would have used this Expression; as it is clearly proved, by the Depositions of the other Witnesses, that the Deceased and the Pannel were then in strict Friendship together; and that at that Time the Deceased had such Confidence in the Pannel, that he was then employing him as Sub-factor upon this Estate.

It would be very tedious, and is unnecessary, for me to make particular Observations upon the

other Expressions deposed to by the several Witnesses; at the same Time, it is scarcely possible for me to recollect them, as I had no Opportunity to know them, till they were deposed to by the Witnesses themselves. It is sufficient for me, in general, to observe, that some of them may bear an innocent Meaning; that others of them appear to have been uttered when the Pannel was in Drink; and that none of them are so strong, as that deposed to by the Bouman, which has been already answered.

And though it should be admitted, that the Pannel had, upon different Occasions, expressed himself foolishly in Terms which implied Resentment against the Defunct; yet this, by itself, is by no Means sufficient to prove, that the Pannel was accessory to the Murder which afterwards happened.

And here I have only to appeal to your own Hearts, and ask, how often you have heard resentful Expressions thrown out in Conversation, where you were yourselves conscious, that nothing was seriously intended: And though it may be true, that such Expressions may serve as a Weight in the Scale, with other Circumstances, to convict the Pannel; yet this holds only where these other Circumstances cannot naturally admit of an innocent Construction, but can never apply to the present Case, where, I am hopeful, I shall be able to show, that the other Circumstances proved against the Pannel, have no Shadow of Relevancy in them.

At the same Time, it is a Circumstance of some Weight, in the present Case, to take off the Effect of these Expressions, that it is not pretended, that the Murder was committed by the Pannel; on the contrary, the Libel sets forth, that the Murder was committed by the Hands of *Allan Breck*: And however it may be true, that Expressions importing Resentment, proved against the Pannel, may go far to presume Guilt, where none other is condescended on as the Actor and Perpetrator of the Murder; yet that will no ways apply to the present Case, where the very Libel, upon which the Pannel is accused, sets forth, that the Murder was not committed by the Pannel, but by another.

The second Fact charged in the Libel, is founded on a Concert supposed to have been entered into betwixt the Pannel and *Allan Breck*, upon *Monday* the 11th of *May*; in Consequence of which Concert, it is alledged, the Murder happened. But as the Prosecutor has brought no Evidence of any such Concert, or that *Allan Breck* and the Pannel had any Conference whatever upon the Subject that Day; so it is proved, as strongly as the Nature of the Thing can admit of, by the Prosecutors own Witnesses, that no such Thing could possibly have been concerted that Day. The Sum of the Evidence relative to this Matter, is, That *Allan Breck* came to the Pannel upon *Monday* the 11th about Mid-day, the Pannel being then sitting in a Field of Potatoes, in Company with three of his Servants:—That, after they had sit for a Quarter of an Hour together, a Message came from Mr. *Campbell* of *Airds*, desiring the Pannel to come to him at *Keil*, which is about two Miles distant from the Pannel's House: That, in Consequence of this Message, he immediately went to *Keil*, leaving *Allan Breck* with his Servants: That he remained with *Airds* all that Afternoon, and did not return to his own House till late at Night, the Family being then at Supper, and several Strangers along with

with them:—That the Pannel and *Allan Breck* had no Conversation together in private that Night:—That they slept in separate Places, and that the Pannel had left his House next Morning, before *Allan Breck* got out of Bed.

As this is a very material Circumstance, in respect it is admitted upon all Hands that this was the only Occasion the Pannel and *Allan Breck* had of conversing together, between *Glenure's* Return from *Edinburgh*, upon *Saturday* the 9th, and the Murder, which happened upon the *Thursday* thereafter, I must beg Leave to resume, particularly, the Evidence on this Head.

John More Maccoll depofes, “ That, upon *Monday* the 11th of *May* last, he saw *Allan Breck* come to *Aucharn*, dressed in his long Cloaths, and came directly where the Pannel, *Allan* his Son, *John Beg Maccoll*, and the Deponent, were covering Potatoes: That, when *Allan* came up, they were resting themselves, and sitting by one another: That *Allan Breck* sat with them, and all the Conversation the Deponent observed, consisted in some Questions about the Welfare of the People of *Glencrearan*; and that he did not observe the Pannel have any private Conversation with the said *Allan Breck*; for that, a very little Time after *Allan Breck's* Arrival, the Pannel had a Message to meet Mr. *Campbell* of *Airds* at *Keil*; and that this happened after Mid-day: That the Pannel immediately, upon receiving the above Message, went away, in order to meet *Airds*; and that no body went along with the Pannel, *Allan Breck* having staid with them.”

John Beg Maccoll depofes, “ That, when *Allan Breck* came, upon the 11th of *May* last, to *Aucharn*, the Pannel was seeing the Deponent, *John More Maccoll*, and *Dougal Maccoll*, working at Potatoes; and that *Allan Stewart*, the Pannel's Son, was likewise there: That, when *Allan Breck* came, they were all sitting together; and that he seated himself by the Pannel, and had some Conversation in *English*, which the Deponent does not understand. Depofes, That *Charles Stewart*, Son to the Pannel, and *Stewart*, Daughter to *Fasnacloch*, came to *Aucharn* from *Fasnacloch* a little after the said *Allan Breck*.”—And further depofes, “ That, when *Allan Breck* came back, upon *Monday* the 11th of *May* last, to the Place where the Pannel, Deponent, and others, were covering Potatoes, as above, they had sit together but for about a Quarter of an Hour, when the Deponent went to work at Potatoes at a greater Distance; and before he went away, heard a Message had come for his Master to meet *Airds* at *Keil*, and heard his Master speak of going there; but when he went, or who went along with him, the Deponent does not know: That the Deponent continued working at the Potatoes till the Evening, and the Pannel was not come Home when he came from his Work: That the Pannel came Home at Bed-time, accompanied with *John More Macilichattan*, who lay with the Deponent that Night.”

Dougal Maccoll depones, “ That when the Deponent came Home from the Wood, upon *Monday* the 11th of *May* last, the Pannel was not at Home, and the Deponent was told, he was gone to *Keil*, to meet the Laird of *Airds*; and that the Deponent had gone to Bed before the Pannel came Home that Night; and that

“ early upon *Tuesday* Morning, when the Deponent got up, he saw the Pannel without, who told him, that he was going to *Appin's* House; and that, to the Deponent's Knowledge, *Allan Breck*, or the Pannel's Sons, were not then up: That he saw the Pannel go towards *Lettersbuna*, where *Appin* lives. Depofes, That *Allan Breck* left *Aucharn* before the Pannel returned from *Lettersbuna*.”

Katharine Maccoll depofes, “ That the Pannel went in the Afternoon of the Day (*viz.* 11th *May*) to *Keils*, to meet Mr. *Campbell* of *Airds*; and that it was late at Night before he came Home; but that the Family had not supped when the Pannel came Home; and that the Pannel supped in Company with *Allan Breck Stewart*, *Fasnacloch's* Daughter, and *Archibald Cameron*, Nephew to *Fasnacloch*, and the Pannel's Family.”

Archibald Cameron depofes, “ That, upon *Monday* the 11th of *May* last, the Deponent came from *Fasnacloch's* House to the Pannel's House, after Mid-day: That, some little Time after he came there, he saw *Allan Breck Stewart*: That the Pannel was not at Home when the Deponent came first there, but came Home before Night-fall: That the Deponent, Pannel, *Allan Breck*, and the Family, sat in one Room, and supped together: That he did not observe *Allan Breck* and the Pannel speak in private that Night: That the Deponent and *Allan Stewart*, the Pannel's Son, lay in one Bed, and *Allan Breck* and *Charles Stewart*, Son to the Pannel, in another Bed in the same Barn: That, to the best of his Remembrance, they all went to Bed much about one Time, and got up together next Morning: That the Deponent did not observe the Pannel about the House next Morning when he got up.”

And the Depositions of these Witnesses are corroborated by *Donald Campbell* of *Airds*, who depofes, “ That, upon *Monday* the 11th of *May* last, the Deponent sent to the Pannel, desiring him to come to him at *Keils*, a Farm belonging to the Deponent, at about a Mile's Distance from the Pannel's House: That the Pannel accordingly came there to him that Afternoon, as soon as he expected him: That the Deponent's Business with him was for his Assistance in setting that Farm: That the Farm was accordingly set, and the Pannel himself took Part of it, and conducted the Deponent a Part of his Way Home, and then they parted: That, before parting, he desired the Pannel to go next Morning to *Appin's* House: That the Pannel accordingly did so, and the Deponent had a Letter from him from that Place.”

From what has been said, therefore, it appears, that the Prosecutor has not only *not proved*, that upon the 11th of *May* there was any thing concerted with regard to the Murder betwixt the Pannel and *Allan Breck*, but, on the contrary, *it is proved*, as strongly as the Nature of the Thing can admit of, that no such Thing was or could be concerted betwixt them at that Time; and if this is once established, it saps the Foundation upon which the whole Libel stands, as it is not pretended, that the Pannel and *Allan Breck* had ever any other Opportunity of conversing together, betwixt *Glenure's* Return from *Edinburgh* and the Time of the Murder.

The third Article charged in the Indictment is,
That,

That, in pursuance of the Concert entered into upon the 11th of *May*, the Pannel had furnished *Allan Breck* with a Suit of his own Cloaths, in order to serve as a Disguise, that he might be enabled to commit the Crime with the greater Safety.

But, in the *first* Place, it must occur to every Man who hears me, that this is a most improbable Tale; for, if it had been intended that *Allan Breck* should be disguised at the Time of committing the Crime, it is impossible it could be seriously intended, that he should be disguised in a Coat belonging to the Pannel; for, however this might have served for a Disguise to *Allan Breck*, it might serve equally for a Point of Evidence against the Pannel: And therefore this improbable Position can gain Credit with no Mortal, unless it shall first be supposed, that the Pannel is not only the most wicked, but also the most foolish among Men; which will not be easily credited by you, who have been Witnesses to the decent Appearance he has made at this Trial.

2dly, As the Story is improbable, so it is equally destitute of all Foundation in Truth; for it is not proved by any of the Witnesses, that the Pannel furnished or gave the Cloaths to *Allan Breck*: And though it is proved, that he laid aside his *French* Cloaths, and put on a Suit of Cloaths belonging to the Pannel, or his own Son, upon the *Monday* before the Murder; yet it would be ridiculous to say, that a Party could be convicted as accessory to a Murder, because that the Murderer had on his Cloaths at the Time when the Crime was committed.

And, lastly upon this Head, the Circumstance of changing the Cloaths has been fully accounted for in the former Part of the Argument; and as it has been clearly proved, that *Allan Breck* had been formerly in use of wearing these very Cloaths, the Accident of his having them on at the Time when the Murder was committed, can have no Weight against the Pannel.

The fourth Article charged in the Libel is, That, upon the Morning of that Day upon which the Murder happened, the Pannel had sent *John Beg Maccoll*, a Servant of his own, to *Fort-William*, in order to watch, and give Intelligence concerning the Motions of the Deceased; and great Pains have been taken to prove this Article.

But, unluckily for the Prosecutor, this Fact happens to be contradicted by every Part of the Evidence.

In the *first* Place, it appears, from the Oath of *John Beg Maccombich*, "That it was known over the whole Country, that *Glenure* was to have been that Evening at *Kintalline*, which lies on this Side the Ferry of *Ballachelish*:" And therefore, if the Pannel's Intention had been to watch *Glenure's* Motions, it is natural to ask, what good Reason there could be to order his Servant to cross the Ferry, and go on to *Fort-William*, when, by waiting at the Ferry, he was sure to get Intelligence of *Glenure's* Motions?

2dly, The Fact is contradicted by the Depositions of *Fergus Kennedy* and *John Mackenzie*, two Witnesses also adduced for the Prosecutor, who concur in deposing, "That *John Maccoll* met *Glenure* and his Company in their Way Southward, about three Miles from *Fort-William*."—If his Errand had been to watch and give Intelligence concerning *Glenure's* Motions, he would have certainly returned immediately, and have given Intelligence accordingly. But, instead of

this, it appears, from the Depositions of these Witnesses, compared with the Oaths of *William Stewart* and his Wife, that *John Maccoll* did not return, but went on to *Fort-William*; which is utterly *inconsistent* with what the Prosecutor supposes.

And, lastly, this Circumstance is flatly contradicted by the Oath of *John Beg Maccoll* himself, who expressly deposes, "That, when he went to *Fort-William* with the above Letter to *Charles Stewart*, the Notary, he had no Orders from his Master to enquire after the Motions of *Glenure*, or to acquaint any body thereof;" but had been sent to *Fort-William*, in order to bring a Notary from thence, to take a Protest against *Glenure* upon the Day following: And as that Part of his Evidence is confirmed by the Pannel's Letter to *Charles Stewart*, produced by the Prosecutor; so the remarkable Haste with which *John Beg Maccoll* went to and returned from *Fort-William*, clearly shows, that it was no sham Errand, but that the Pannel's real Intention was to proceed in a legal Way, by taking a Protest against *Glenure*, in case he should attempt to execute the Ejection.

The next Circumstance charged in the Libel is, that when *John Mackenzie* informed the Pannel of the Murder, he appeared no ways concerned nor surprized; and that neither he, nor his Family, went to look after the dead Body.

But as this Circumstance is extremely trifling, so the first Part of it is clearly disproved by the Oath of *John Mackenzie*, *Glenure's* Servant, who deposes, "That, immediately after the Murder, he went to *James Stewart's* House in *Duror*; and *James* seeing him weeping, asked what the Matter was? and the Deponent told him, his Master was killed: Whereupon *James Stewart* asked him, by whom, and how it was done? To which he, the Deponent, answered, that he did not know by whom; and believed it to be a Shot from a Gun or Pistol." And further deposes, "That, when he saw the Pannel at his House in *Aucharn*, as aforesaid, the Pannel wrung his Hands, expressed great Concern at what had happened, as what might bring innocent People to Trouble, and prayed that innocent People might not be brought to Trouble." And, to the same Purpose, the said *John Beg Maccoll* deposes, "That, when *John Mackenzie* informed the Pannel of the Murder, he said, *It was a dreadful Accident, and he was afraid it might bring Trouble on the Country*; and appeared sorry for what had happened."

It is indeed true, that the same Witness has deposed, "That neither the Pannel, nor any of his Family, went near the dead Body:" But as this is a Circumstance of no Manner of Weight; so the Witness has accounted for it in a very natural Way, viz. That as the Deceased and the Pannel had not been in good Terms together, the Pannel did not chuse to go to the Place where the Body lay; and more especially as he knew that some of those who were to meet *Glenure* had Arms, and it was impossible to know what unreasonable Lengths their Resentment might carry them: At any Rate, it shows how much the Prosecutors are pinched in point of Argument, when they are obliged to found upon it, as a Circumstance against the Pannel, that he did not go from his own House, which is about two Miles distant from the Place where the Murder was committed, merely to assist at the Funeral of a Person to whom he was no Way related.

The fifth Article charged in the Libel is, That, upon the second Day after the Murder, the Pannel had sent five Guineas by the Packman to *Allan Breck*, in order to enable him to make his Escape. As to which, Gentlemen, I do admit, that, if at this Time the Pannel had been in the Knowledge that *Allan Breck* was the Murderer of *Glenure*, his furnishing him with Money, in order to enable him to make his Escape, might have been considered as an Offence deserving Punishment. At the same Time, however wrong this would have been, it might have admitted of an Excuse, from the Connexion and Relation which the Pannel had to *Allan Breck*. And it is now proved, by the concurring Testimonies of two Witnesses, that the Pannel had been left his Tutor; and therefore it is much doubted, how far the Pannel's sending Money to *Allan Breck*, though he had known him to be the Murderer, would have been punishable.

But however the Law might have stood upon that Supposition, it will not apply to the present Case. The Pannel denies he knew any Thing of *Breck's* being the Murderer: And as he was well acquainted with his particular Circumstances, of which he has now brought full Evidence, by the concurring Testimonies of many Witnesses, that he had been first a Defenter, next a Rebel, and was then in the *French* Service; I conceive it was no ways criminal in the Pannel to advance this trifling Sum, in order to enable him to make his Escape; it was doing no more than what any good-natured Man would have done to his Friend in the like Circumstances: And hard will be the Case of the Pannel, if he should be condemned merely for doing a good-natured Deed, which had nothing criminal in it; more especially as he had Reason to believe the Message which was sent him from *Allan Breck*, importing, that he had no Accession to the Murder, but judged it prudent for him to leave the Country, in respect of his particular Circumstances, explained as above.

And indeed his Majesty's Advocate does not seem to lay much Strefs upon this Circumstance by itself; but then has attempted to rear up certain Arguments, tending to show that the sending of this Money must have been in Consequence of a previous Concert with *Breck*. And, in the first Place, it has been said, that the Pannel could not have known to have sent the Money to *Koalisnacooan*, if it had not been in Consequence of such previous Concert.

But, with Submission, there is a very satisfying Answer to this Objection, viz. That, upon the Day after the Murder, the Pannel had received a Message from *Allan Breck*, informing him where he was, and desiring him to send what Money he could spare, to enable him to make his Escape. This is distinctly proved by the concurring Testimonies of no less than four Witnesses, whose Depositions, as they connect with one another, fall now to be attentively considered.

Katharine Macinnes deposes, "That, in the Evening of the 14th of *May* last, the Deponent saw *Allan Breck Stewart* at a Goat-house in the Moor of *Ballachelish*, after *Glenure* was killed: That *Allan Breck* then asked her, what was the Occasion of the Stir in the Town? and that she told him, *Glenure* was murdered: And further asked her, who might have committed the Murder? and that she told him, she did not know: And that the said *Allan* further desired the Deponent to tell *Donald Stewart* in *Ballachelish*

to go to the Pannel, and desire him to send the said *Allan Money*; and that she delivered this Message to *Donald Stewart* that same Night; and that she told the said *Donald Stewart* where she saw *Allan Breck*."

And *Donald Stewart*, the next Witness, deposes, "That, upon the Evening of *Thursday* the 14th of *May* last, about Night-fall, *Katharine Macinnes* came to the Deponent, and told him, that one without wanted to speak to him: That this Message came to him in *Ballachelish's* own House: That, when he went out, the said *Katharine Macinnes* told him, that it was *Allan Breck* that wanted him, and that he was a little above the House in the Brae: That the Deponent went up to the Brae, and met *Allan Breck*, who was then dressed in a great Coat, and a dark short Coat under it, with white metal Buttons: The Deponent told him of the Murder, and said, it could not be but that he, *Allan Breck*, was about it: To which *Allan Breck* answered, that he had heard of the Murder, but had no Hand in it: To which the Deponent replied, he did not believe him: That the said *Allan Breck Stewart* told the Deponent, he was going immediately to leave the Kingdom, was very scarce of Money, and was going then for *Koalisnacooan*; and desired the Deponent to acquaint the Pannel, that he was gone to *Koalisnacooan*, and desired him, if possible, to send him Money there; and the Deponent then promised to acquaint *James Stewart* of the above Message: That *Allan Breck* said, he believed he would be suspected of the Murder; and upon that Account, and as he was a Defenter formerly from the Army, it was necessary for him to leave the Kingdom: That, after the Conversation with the Pannel about Serjeant *More*, he delivered the above Message from *Allan Breck* to the Pannel; and that the Pannel did not say whether or not he was to send the Money; and this Conversation happened about Ten o'Clock in the Forenoon of *Friday* the 15th of *May* last; and that there was no body present." And further deposes, "That, upon the Deponent's delivering the above Message from *Allan Breck* to the Pannel, the Pannel asked why *Allan Breck* himself did not come for Money, if he wanted it? To which the Deponent, to the best of his Remembrance, replied, that *Allan Breck* told him, he would be suspected for the Murder, and was a Defenter: To which the Pannel answered, that he hoped in God *Allan Breck* was not guilty of the Murder: That, during the above Conversation with the Pannel, *Alexander Stewart*, *Duncan Maccombich*, and several other Possessors of *Auchindarroch*, were in the adjoining Field delving, but at such a Distance, that the Deponent cannot think they could hear the above Conversation."

From the Depositions of these two Witnesses, which connect exactly together, it is distinctly proved in what Manner the Pannel came to the Knowledge of the Place where *Allan Breck* was: And their Depositions are further supported by the Deposition of *John Stewart* younger of *Ballachelish*, who deposes, "That, the Day after the Murder, the Deponent was at the Pannel's House, who, after Twelve o'Clock of the Day, told the Deponent, that he had a Message that Morning from *Allan Breck* by *Donald Stewart*, to send him Money; but does not remember whether

“ the Pannel told him the Place where he was directed to send it; and the Pannel told the Deponent, that he was resolved to send him Money.”

And also by the Deposition of *Alexander Stewart* in *Auchindarroch*, who deposes, “ That, to the best of his Knowledge, he saw *Donald Stewart* in *Ballachelish* and the Pannel together, upon the Marches between *Aucharn* and *Auchindarroch*, in the Morning of the 15th of *May*; and that he himself was at the Time digging Ground with the other Tenants of the Town.”

The learned Gentleman on the other Side has been pleased to except against this Part of the Evidence; that the two material Witnessess are both connected with the Family of *Ballachelish*; that, as to some of the Facts, they are single Witnessess; and that they do not entirely agree as to the Import of the Message sent to *Donald Stewart* by *Allan Breck*.

I must acknowledge, I am under no small Difficulty to find out any Foundation for the first Part of the Objection. It is neither pretended nor proved, that *Ballachelish* is at all related to the Pannel; and as it cannot be said that any valid Objection could have been made against *Ballachelish* himself, if he had been produced as a Witness for the Pannel, far less does any Objection lie against the Son-in-law or Servant of *Ballachelish*, upon Account of his being in the Interest of the Pannel, of which, however, no Sort of Evidence has been brought. And as to the second Part of the Objection, that there are not two Witnessess concurring as to the whole of the Facts relative to the Message sent by *Allan Breck* to *Donald Stewart*;—the learned Gentleman would do well to observe, how much of his own Proof is founded only upon single Testimony; and then let him show Cause, why his *Packman* and *Bouman*, tho’ single Witnessess, should be credited, and the like Indulgence should not be given to the Pannel.

At the same Time it must be observed, that the two Witnessess who have deposed with regard to this Message, are not single; they concur as to the material Part, that *Allan Breck* had sent a Message to the Pannel, desiring him to send him a present Supply: And tho’ the two Witnessess differ with regard to the precise Words used by the Maid in delivering *Allan Breck*’s Message to *Donald Stewart*; yet, as they agree in every material Circumstance, no Regard ought to be had to trifling Variations; and it is believed the Gentleman on the other Side will admit, that the Objection would have been full as strong (if not stronger) if the two Witnessess had both used the same Words.

And lastly, As to the Observation that the Witnessess differ among themselves, as to the precise Hour when the *Packman* arrived at *Fort-William*, and demanded the Money from *William Stewart*, it is no ways surprising, that, at so great a Distance of Time, Witnessess should not be altogether exact as to Hours and Minutes. What appears most probable is, that *William Stewart* and his Wife have both mistaken the Hour, as, from their Oaths, neither of them seem to be positive with regard to that Matter: And *Stewart* the *Packman* seems to have been more attentive to this Particular, since he not only swears as to the Time when he received his Message from the Pannel, which he says was about Twelve at Noon, but also as to the Time when he delivered it to *William Stewart*, which, as the *Packman* says, was early in the Evening:

And as this agrees intirely with the Account which *Donald Stewart* gives of the Matter, when he says, “ That he delivered *Allan Breck*’s Message to the Pannel about Ten o’Clock Forenoon;” so it is plain there could be no Concert betwixt these two, not only as *Donald Stewart* is above all Suspicion of that Kind, but also as the *Packman* has been kept under close Confinement by the Prosecutor, and had no Opportunity of conversing with *Donald Stewart* from the Time of the Murder till he was produced as a Witness: And I cannot help thinking, that it would sound strangely to say, that the Prosecutors should be allowed to give Credit to this *Packman* where he swears for them, and, at the same Time, to reject his Testimony where it happens to make against them.

The Prosecutor has been pleased to lay great Stress upon the Oath of *John Breck Maccoll*, *Bouman*; and in particular upon that Part of it, where he says, that *Allan Breck* had desired him to go into *Fort-William* with a Letter to *William Stewart*, in case some Money did not come to him before next Morning; and this, it has been said, agrees exactly with the Message sent by the Pannel to *William Stewart*, desiring him to give Credit in five Pounds *Sterling* to *John Breck Maccoll*, *Bouman* in *Koalishnacoon*, in case he came to demand it; and it is pretended, that this is a clear Proof of a private Concert betwixt the Pannel and *Allan Breck*, settling the Manner in which he was to be supplied with Money.

But as the whole of this Argument is founded upon the Oath of the *Bouman*, deposing to a long romantic Story, in which he is altogether unsupported, I am intitled in Law to plead, that his Oath is not to be held as legal Evidence against the Pannel; more especially as it appears, from what has been already said, that his Evidence is disproved in one very material Article, in which he deposes to a very strong Expression, as applied by the Pannel against *Glenure*, at a Time when it is proved they were in perfect Friendship together.

2dly, The Oath of the *Packman* relative to this Article is as little to be relied on; for, though he has now deposed, that the Pannel had desired him to tell *William Stewart*, not only to send him five Pounds, but also to give Credit for the like Sum to *John Breck Maccoll* in *Koalishnacoon*, in case he came to demand it; yet it is remarkable, that, in the Libel, which it must be presumed was taken from his own Mouth, no Mention is made of the five Pounds, for which Credit was to be given to the *Bouman*; and therefore this must have been a new Discovery made by the *Packman* since printing the Libel. And it is further remarkable, that this Part of the *Packman*’s Evidence is contradicted by the Oath of *William Stewart*, who expressly deposes, That, at the Time when the *Packman* delivered his Message from the Pannel, no Mention was made of the Name of *Allan Breck*; and therefore no Argument can be drawn from any Thing either the *Packman* or *Bouman* have said upon this Matter.

But, 3tio, supposing all the *Bouman* has said to be true, viz. That *Allan Breck* had desired him to carry a Letter to *William Stewart*, it will not follow, that he and the Pannel were under any previous Concert relative to that Matter; for as *Allan Breck* was acquainted with *William Stewart*, and as nearly related to him as he was to the Pannel, it was natural for him to have Recourse to *William Stewart* to supply him in his Necessity; and therefore

fore his doing so, will not prove that it was done upon any previous Concert with the Pannel. From the Commission *Allan Breck* had given to *Donald Stewart* upon the *Thursday* Evening, he had Reason to expect that the Pannel would have sent him a Supply with the first Opportunity; and as that had not happened, it was natural for him to apply to *William Stewart*, who was his Acquaintance, and as nearly related to him as the Pannel.

The learned Gentleman has been pleased also to found upon the Postscript subjoined to the Pannel's Letter of the 14th of *May*, to *Charles Stewart*; in which he desires, "That *William* may send immediately eight Pounds *Sterling*, to pay for four Milk Cows he had bought for his Use at *Ardshiel*:" From which it is inferred, that, before the Murder, the Pannel was preparing Money to give *Allan Breck*, in order to enable him to make his Escape. But as that Letter and Postscript do not mention the Name of *Allan Breck*, nor to what Purpose the Money was intended to be applied, the Observation does not deserve any Answer; tho' at the same Time it clearly proves, that the most innocent Circumstances have been laid hold of, and reared up into Arguments against the Pannel.

Thus it appears, that no Argument can be drawn from the Circumstance of the Pannel's sending Money to *Allan Breck*; as it is not proved, that the Pannel then knew that the Murder had been committed by him; and far less is it proved, that there had been any previous Concert betwixt them concerning the sending of that Money before the Murder was committed. And indeed, Gentlemen, it appears to me, that the Circumstances which attended the sending of this Money, and in particular the Difficulty there was in obtaining it, cannot fail to convince every unprejudiced Person, that this horrid Murder had not been committed in Consequence of any previous Concert betwixt the Pannel and *Allan Breck*; for, if that had been the Case, it is impossible to believe, that the Money would not have been more early provided. It behoved to occur to both Parties, that Money would be necessary to enable the Murderer to make his Escape; and as it clearly appears, that neither the one nor the other was in Cash upon *Monday* the 11th, when the Time and Manner of committing the Murder is supposed to have been concerted, it is impossible, that this important Matter of providing the Money would not have been instantly set about, or that it would have been delayed till the Hour when the execrable Act was to be committed.

The learned Gentleman has been pleased also to lay Weight upon another Circumstance, *viz.* That, some Days after the Murder, two Guns were found concealed near the Pannel's House, one of them loaded, and the other unloaded; and it has been insinuated, as if the unloaded Gun was that, with which *Allan Breck* committed the Murder. But this Circumstance is really so trifling, that it scarcely deserves a serious Answer. It is well known, that the Part of the Country where the Pannel lives, fell under the *disarming Act*; and therefore it was no ways surprising, that the Guns were found hid, and that Orders were given to hide them, at a Time when it was foreseen, that a strict Search was to be made by the *Military*; and, though one of the Guns was unloaded, it is a strange Flight of Imagination, from thence to infer, without Evidence, that this was the Gun with which the Murder was committed.

Besides, it appears from the Oaths of *John Beg* and *Dougal Maccolls*, both Witnesses produced for the *Prosecutor*, that the little Gun, which was found unloaded, was in such miserable bad Order at the Time when the Murder happened, that it is impossible it could have entered into the Head of any Mortal to use it for the Purpose supposed by the *Prosecutor*. *Dougal Maccoll* deposes, "That he, the Deponent, has no Skill about Guns; but heard *Allan Breck*, and *Allan Stewart* the Pannel's Son, complain more than once, that the Guns were in bad Order."

John Beg Maccoll deposes, "That neither of the Guns were in good Order; that the large or loaded Gun was in use, when going to be snapped, to stand at *Half-cock*; and that the little Gun was in use to snap or misfire: That the little Gun had an old wore Flint in it, and that he observed this Flint in the said Gun, when he was in use to see it stand at the End of the *Girnel* as above; but did not observe whether it had a Flint or not, when he took it from under the *Girnel*: That he knows no Fault the Lock of the little Gun had, but its being in use to misfire; and that the Lock was on the said Gun when he hid it on the *Friday* Evening: That *Allan Breck* carried it out one Morning, and told, that it misgave with him thrice at a black Cock, and shot with it the fourth Time, without killing the Cock."

And, in like Manner, Captain *David Chapeau* and *Patrick Campbell* concur in deposing, That this little Gun, at the Time when it was found, was in such bad Order, that, for want of a *Screw-nail*, the Lock was tied to the *Stock* by a *String*:—And therefore, upon the whole, I leave it to you to judge, how far it is possible that a Gun in such Order would have been used for the Purpose supposed by the *Prosecutor*; or that it would have been carried back so quickly, as it must have been, to the Pannel's House, at a Time when every Person was on the Watch inquiring about the Murder.

And it is of no Importance, that neither *John Beg* nor *Dougal Maccoll* saw this Gun, at the Time when the other Arms were hid upon the *Thursday* Evening; for as neither of these two Witnesses say that they looked for it, so they have both deposed, "That *Allan Stewart*, the Pannel's Son, had then told them, that he had hid it below the *Girnel*;" and as they accordingly found it so hid upon the Day following, it removes all Ground of Suspicion, which might otherwise arise from the Circumstance, that this Gun was not hid with the rest of the Arms on the *Thursday* Evening. At the same Time, the Pannel must beg Leave to say, that it would require some Explanation how it has happened, that the Lock of this little Gun comes to be now missing, when such Care has been taken to preserve every other Particular, which could possibly furnish any Handle for an Argument against the Pannel. A good deal of Weight has been also laid upon another Circumstance of the like Nature with the former, *viz.* That, upon the Day after the Murder, *Allan Breck's* Cloaths were hid, in Consequence of an Order by the Pannel's Wife: But as it is not easy to figure how an Order given by the Pannel's Wife should have any Effect against the Pannel; so it is humbly thought that this Circumstance may be easily accounted for.—It was foreseen, that, as *Allan Breck* was about to leave the Country, he would be immediately suspected as guilty

guilty of the Murder; and; as there was great Reason to believe that a *Search* would be forthwith made in every Place where *Breck* was in use to visit; it was natural for the Pannel's *Wife* to put his Cloaths out of the Way, that they might not be the Occasion of *Suspicion* against the Pannel or his Family.

His Majesty's Advocate was pleased to found upon the Oath of *John Maccoll*, Bouman, who deposes, "That *Allan Breck* had said to him, that "the apprehending of the Pannel and his Son "would not signify much; but expressed some "Concern, lest *Allan Stewart*, Son to the Pannel, "might be betrayed by his own Tongue." But, as the *Bouman* is only *here* deposing to an Expression of *Allan Breck's*, when he was endeavouring to free himself from Suspicion; as the *Bouman* is at best only a single Witness; and as the Expression supposed to have been used by *Allan Breck* does not imply, that either the Pannel, or his Son, had been guilty of the Murder; this Circumstance, supposing it true, ought not to be regarded.

And here I cannot omit putting you in mind of one Circumstance deposed by *Alexander Stewart*, the Packman, which shows pretty clearly, that no Regard ought to be had to the Oath of the *Bouman*; and besides it is single, and not supported by other Evidence. The Packman deposes, "That "the Bouman had desired him to conceal his carrying the Cloaths and Money to *Koalisnacooan*; "told him that he could not prove it against him; "and that he could safely depose he did not deliver "the Cloaths to him, since he only pointed out where "they were." I leave to you, Gentlemen, to judge, what Credit can be given to a Witness, whose Principles were such, as to suppose that Perjury might be avoided by so poor an Evasion.

It has been also said, "That the Pannel's Wife, "his two Sons, and his Daughter, have, in some "Things, contradicted each other, in the Declarations made by them severally at *Fort-William*."

The Pannel cannot help thinking it hard, that *extrajudicial Declarations* made by his own Family should have been received as Evidence against him; more especially as it has been hitherto held to be an *established Principle* in our Law, not only that *extrajudicial Declarations* by third Parties cannot be taken, or received as Evidence against any Pannel, but also that those who stand in the Relation of *Wife* or *Children* to the Pannel, cannot be received as Witnesses against him.

However, as these Declarations have been allowed to be read in Court, though objected to by the Council for the Pannel, he must acquiesce in the Judgment given; but, at the same Time, I am fully persuaded, that, upon perusing these Declarations, the Jury will be of Opinion, that the Differences (if there are any) are so trifling, that they can have no Weight against the Pannel: And though it should be supposed that the *Wife* or *Daughter* of the Pannel, from a mistaken Notion of *Duty* to a *Parent* and *Husband*, who had been always *indulgent* to them, have endeavoured to conceal that *Allan Breck* went from the Pannel's House on *Tuesday* Morning, dressed in a *Coat* belonging to the Pannel; yet, as it has been demonstrated, it is hoped to your Conviction, that there is no Sort of *Relevancy* in this Circumstance, it can have no other Effect, but to show how extremely improper it is, that so *near* Relations should be examined against any Man upon Trial; but can

never be used as an Argument against the Pannel. On the contrary, Gentlemen, I cannot help thinking, that these Declarations afford a very strong Argument for the Pannel; for as no less than sixteen different *Declarations* appear to have been taken from the Pannel himself, his Wife, and Children, (one of his Sons having been examined no less than five different Times) it is really surprising that so great a Number of *Declarations*; signed by different Parties, all relative to the same Matter, should agree so *exactly* together; and, as all the *Attention* of the *Prosecutor* has not been able to draw from these *Declarations* any thing which can fix the most distant *Suspicion* of Guilt against the Pannel, it tends strongly to fortify the legal Presumption of his Innocence.

As to the Letter wrote by the Pannel to *John Macfarlane*, referred to in the Libel, I am still at a Loss to discover what Argument can be drawn from it; for as that Letter (which was wrote soon after the Murder, and before any Advertisement had been published by the Friends of the Deceased for apprehending *Allan Breck*) contains an exact Description of *Breck's* Person and Dress, and also of the Place where he was most likely to be found; it rather proves for, than against the Pannel; and it was but natural, at this Period, for the Pannel to express an Anxiety to have *Allan Breck* apprehended; as it appears from the Proof, that before this Time it was the *common Report* of the Country, that the Murder had been committed by *Allan Breck*; and therefore it behoved *naturally* to occur to the Pannel, that the easiest and shortest Way to obtain his own *Liberty*, was to find out and secure the Person by whom the Murder was supposed to have been committed.

The learned Gentleman on the other Side still insists, that it is not proved, that any other Person, besides the Pannel, had any Quarrel or Resentment against the Deceased; and it has been further said, "That if *Allan Breck* was the Actor "in the Murder, he was only revenging the "Quarrel of the Pannel."

But the Weight of this Observation is fully taken off by the Evidence produced for the Pannel. It is clearly proved by the Depositions of *Angus Macdonald*, *Duncan Campbell*, *Robert Stewart*, and *Charles Stewart*, "That *Allan Breck* had sworn "Revenge against *Glenure*, upon a Belief, that he "had given Information against him as a Deserter." And though *Colonel Crawford* has deposed, "That "the Deceased had never given him any such "Information;" yet this does not at all vary the Argument, as it is undeniably proved, that *Allan Breck* still believed, that such *Information* had been given, and upon that Account bore deep Resentment against the Deceased: And therefore, supposing that the Murder had been committed by *Allan Breck*, (which is not admitted) it will not follow, that it was done with a View to resent any Quarrel the Pannel might have had with the Deceased; since it might have been done with a wicked Purpose of avenging his own private Quarrel: And, at the same Time, it is very proper to be here observed, that the Deceased had executed a *Warning*, and obtained a Decree of *Removing*, against a great many of the Tenants of *Ardshiel* and *Lochiel*; and if it is true, that in that Part of the Country a Step of this Sort is considered as a Cause of mortal Hatred, it was, at least, as much so to the Tenants removed, as it could possibly be to the Pannel: And therefore it is wrong in the Prosecutor

o say, that there was no other Person who had any Cause of *Resentment* against the Deceased, but only the *Pannel*; whereas it is plain, that every one of the *Tenants* who had been decerned to remove from their respective Possessions, had at least as strong a Cause of *Resentment* against the Deceased, as that which is libelled against the *Pannel*; and besides, I might also observe, that it is proved, by the Depositions of the two last Witnesses produced for the *Pannel*, that one *Serjeant More Cameron* (who in that Part of the Country is known to be of a most abandoned Character) had threatened to shoot *Glenure*, or to be upsides with him, in case he should happen to meet him.

Upon the whole, Gentlemen, I flatter myself, I have shown to your Conviction, that all and each of the Circumstances proved against the *Pannel* are such, that they can easily bear a good Construction, and might have happened naturally, though he had been innocent of the Crime laid to his Charge: And when to this it is added, that the Character of the *Pannel* in private Life, renders it highly improbable that he could have been accessory to so vile a Crime; that he could not possibly reap any Benefit by it; and that it is proved by incontestable Evidence, that, at the very Time when the Murder was committed, he was anxiously pursuing another Measure, which was utterly inconsistent with the Supposition of his being any way accessory to the Murder; I persuade myself that you will be careful to divest yourselves of any Impressions you may have received without Doors; that you will judge upon the Evidence impartially as it lies before you; and that, upon the whole, you will find the *Pannel* not guilty of the Crime laid to his Charge.

At the same Time, in case you shall have any Difficulty in finding the *Pannel* not guilty, or in case you shall be of Opinion, that there is a Shadow of *Relevancy* in any of the Circumstances proved against the *Pannel*, it is your Duty to return a *special Verdict* upon the Facts proved for and against the *Pannel*; and in that Case you ought to be particularly careful to omit no Circumstance which may have any Tendency to exculpate the *Pannel*.

Sunday, 24 September 1752, betwixt Seven and Eight o'Clock in the Morning.

“ The Lords ordain the Assize instantly to inclose in this Place, and to return their Verdict upon Monday next, the 25th current, at Eleven o'Clock before Noon; and adjourn the Court and hail Diets thereof, till that Time; and ordain the hail fifteen Assizers there to attend, and the *Pannel* to be carried back to Prison.”

Curia itineris justiciarii, S. D. N. Regis, tenta apud burgum de Inverarii, vicesimo quinto die mensis Septembris, anno Domini millesimo septingentesimo quinquagesimo secundo, N. S. per nobilem et prepotentem Principem Archibaldum ducem de Argyll, Dominum Justiciarium Generalem, et Patricium Grant de Elchies, armigerum, et Dominum Jacobum Ferguson de Kilkerran, Dominos Commissionarios Justiciarii dicti, S. D. N. Regis.

Curia legitime affirmata.

Intrat. The above *James Stewart*, *Pannel*.

The Persons, who passed upon the Assize of the said *James Stewart*, returned the following Verdict:

“ At Inverary, the 24th Day of September, 1752 Years, New Style, The above Assize, having

“ inclosed, did make Choice of the said *Colin Campbell* of *Skipnish* to be their Chancellor; and *James Campbell*, late Bailie of *Inverary*, to be their Clerk; and, having considered the criminal Letters pursued at the Instance of *William Grant* of *Prestongrange*, Esq; his Majesty's Advocate, for his Majesty's Interest, and also at the Instance of *Janet Mackay*, Daughter to the Honourable *Hugh Mackay* of *Bighouse*, Esq; and Relict of the deceased *Colin Campbell* of *Glenure*, for herself, and on behalf of *Elizabeth* and *Lucy Campbells*, her infant Children, with Concourse of his Majesty's Advocate, for his Majesty's Interest; against *James Stewart*, *Pannel*; the Lord Justice-General, and Lords Commissioners of Justiciary their Interlocutor thereupon, with the Depositions of the Witnesses adduced for proving thereof, and Depositions of the Witnesses adduced for the *Pannel*, together with the Writings, and other Particulars contained in the Inventory subjoined to the Libel, and the Writings produced for the *Pannel*; find unanimously the *Pannel James Stewart* GUILTY, Art and Part, of the Murder of *Colin Campbell* of *Glenure*. In Witness whereof, our said Chancellor and Clerk have subscribed these Presents in our Names, and in our Presence, Place and Date above-written.”

(Signed) COLIN CAMPBELL, Chantellor.
JA. CAMPBELL, Clerk.

After reading this Verdict, the Court proceeded to give Judgment; which, being written down in the Book, and signed by the whole Judges, was read by the Clerk, and, in the usual Manner, repeated pronounced by the Dempster to the *Pannel*, as follows:

“ The Lord Justice-General, and Lords Commissioners of Justiciary, having considered the Verdict of Assize, of Date the 24th current, according to the present Style, returned this Day against *James Stewart*, *Pannel*, whereby he is found guilty, Art and Part, of the Murder of *Colin Campbell* of *Glenure*; they, in respect thereof, by the Mouth of *John Mackenzie*, Dempster of Court, decern and adjudge the said *James Stewart* to be carried back to the Prison of *Inverary*, and therein to remain till the 5th Day of *October* next, according to the present Style; and then to be delivered over by the Magistrates of *Inverary*, and Keeper of the said Prison, to the Sheriff-depute of *Argyllshire*, or his Substitutes; and to be by them transported to the Shire of *Inverness*, and delivered over to the Sheriff-depute of *Inverness*, or his Substitutes; and to be by them transported to *Fort-William*, and delivered over to the Governor, Deputy-Governor, or Commander in Chief, for the Time, of the said Garrison, to be by them committed to Prison in the said Fort, therein to remain till the 7th Day of *November* next, according to the present Style; and then again to be delivered over to the Sheriff-depute of *Invernessshire*, or his Substitutes; and to be by them transported over the Ferry of *Ballachelish*; and delivered over to the Sheriff-depute of *Argyllshire*, or his Substitutes, to be by them carried to a Gibbet to be erected by the said Sheriff on a conspicuous Eminence upon the South Side of, and near to the said Ferry: And decern and adjudge the said *James Stewart*, upon *Wednesday* the 8th Day of *November* next, according to the present Style, betwixt the

“ Hours of Twelve at Noon and Two Afternoon,
 “ to be hanged by the Neck upon the said Gibbet,
 “ by the Hands of an Executioner, until he be
 “ dead; and thereafter to be hung in Chains upon
 “ the said Gibbet; and ordain all his moveable
 “ Goods and Gear to be escheat and inbrought
 “ to his Majesty's Use; which is pronounced for
 “ Doom.”

(Signed) ARGYLL.
 P. GRANT.
 JA. FERGUSON.

After which the Lord Justice-General spoke to the Pannel to the following Effect:

JAMES STEWART, you have had a very long and most impartial Trial: You have been prosecuted with all the Moderation consistent with the Crime you stood accused of; and your Council have defended you with great Ability, and with Decency. The Jury have unanimously found you guilty of having been accessory to this horrid Murder, which, upon due Consideration of all Circumstances, seems to be according to the Evidence.

My Brethren, in delivering their Opinions, have endeavoured to make you sensible, how heinous the Crime is of which you stand convicted; a base and most infamous Murder and Assassination, in Defiance of the Laws of God and Man, and the common Principles of Humanity! I must add one Circumstance more, which aggravates your Guilt; and that is, your Ingratitude to that Gentleman, who, by your Means, is now no more. You had, by your Artifices, got into his Confidence, before he had Time to be well informed of the Circumstances of the Estate of which he was appointed Steward. This Confidence you abused so much, as to raise Sums of Money from the Tenants for your own Purposes: But when, in Obedience to the Orders of his Superiors, he was removing you and others from the Farms they did possess, then, according to the Malice always prevailing in uncivilized Parts of the Highlands, your inveterate Hatred began: So that it may be said of you, That you first eat his Bread, and then shed his Blood.

To trace your Crime from its true original Source, I will use the Words of our Statute-Book, *Those barbarous Cruelties and lawless Oppressions* practised in the Highlands during several Centuries, against which the Laws made so long ago as the Year 1587, and enforced in 1690, were so severe, that the Clans were bound to deliver Hostages, as Securities for the Peace, who were even to be put to Death, if no Redress was made. To this I must add that obstinate and almost incurable Disaffection and Aversion to the Government in several Highland Clans, and in particular your own, ever since the happy Revolution, and the Establishment of the Crown in the Protestant Line.

In the Year 1715, there broke out a most unnatural and unprovoked Rebellion, soon after the Accession of his late Majesty to the Throne; in which the Part your Clan acted is well known, so many being here present that were Witnesses of their composing Part of the Rebel Army, which

besieged this Town. This I myself have Reason to know. A Royal Indemnity soon followed after those Treasons then committed: But, in the Year 1719, your Clan, unmindful of their Lives and Fortunes having been granted them only two Years before, did again rise in Rebellion, and assisted a foreign Enemy in an Invasion: In this you are said to have acted a Part, though at that Time very young.

In the Year 1745, the restless Spirits of the disaffected Highlanders again prompted them to raise a third Rebellion, in which you and your Clan formed a Regiment in that impious Service, and in which you persevered to the last. The divine Providence at first permitted you to obtain some Advantages, which has possibly been to give you Time to repent of your Crimes. But who can dive into the Secrets of the Almighty! At last Heaven raised up a great Prince, the Son of our gracious King, who, with Courage equal to that of his Ancestors, and with Conduct superior to his Years, did, at one Blow, put an End to all your wicked Attempts.

If you had been successful in that Rebellion, you had been now triumphant with your Confederates, trampling upon the Laws of your Country, the Liberties of your Fellow-Subjects, and on the Protestant Religion: You might have been giving the Law, where you now have received the Judgment of it; and we, who are this Day your Judges, might have been tried before one of your mock Courts of Judicature, and then you might have been satiated with the Blood of any Name or Clan to which you had an Aversion.

I have thought it my Duty to put you in mind of these Facts, only to mark out those wicked Paths which have led you to Destruction: And though you don't now stand accused as a Rebel, nor am I permitted to call you a Traitor, because his Majesty's undeserved Mercy to you did several Years ago restore you to the State of an innocent Man; yet I may say, with great Force of Truth, that this Murder has been visibly the Effect and Consequence of the late Rebellion.

You may yet, during the short Time you have to live, be of great Service to your Friends and Neighbours, by warning them against those Principles and Practices which have brought you to this untimely End; and may the Lord have Mercy upon your Soul.

Immediately after Sentence of Death had passed upon *James Stewart*, and the Lord Justice-General had ended his Speech, the Pannel said,

MY Lords, I tamely submit to my hard Sentence. I forgive the Jury, and the Witnesses, who have sworn several Things falsely against me: And I declare, before the great God, and this Auditory, that I had no previous Knowledge of the Murder of Colin Campbell of Glenure, and am as innocent of it as a Child unborn. I am not afraid to die; but what grieves me, is my Character, that After-ages should think me capable of such a horrid and barbarous Murder.

Thereafter the Pannel was ordered back to Prison, and executed according to his Sentence.

N. B. When the Sentence was pronounced against *James Stewart* at *Inverary*, the Gentlemen who attended the Trial the preceding Days, having been all tired with it, did not take Notes the last Day: But, as far as they can recollect, the Substance of what the Lord Justice General then said to the Pannel, was as is above set down.

XLVII. *The TRIAL of John Barbot, Attorney at Law, for the Murder of Matthew Mills, * Esq; at a Court of Oyer and Terminer and General Gaol-Delivery, held at the Town of Basseterre, in and for the Island of St. Christopher, on Friday the 5th Day of January, 1753, before the Honourable William Matthew Burt, Esq; President of his Majesty's Council of the said Island, and others, his Majesty's Justices of Gaol-Delivery.*

[Published by Permission of the Judges.]

ON Thursday the 4th of January, 1753, a Bill of Indictment was found by the Grand Inquest for the Island of *St. Christopher*, against *John Barbot*, Gentleman, for the Murder of *Matthew Mills*, late of the said Island, Esq;

On Friday the 5th of January, 1753, the Court being met, the Prisoner *John Barbot* was set to the Bar, when the Court proceeded thus:

Clerk of Arraigns. *John Barbot*, hold up thy Hand; (which he did.) You stand indicted by the Name of *John Barbot*, late of the Parish of *St. George Basseterre*, in the Island of *St. Christopher*, Gentleman; for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 19th Day of *November*, in the 26th Year of the Reign of our Sovereign Lord the King that now is, about the Hour of Five of the Clock in the Morning of the said Day, with Force and Arms, at a certain Place called *Frigate-Bay*, in the Parish of *St. George Basseterre* aforesaid, in the Island aforesaid, in and upon one *Matthew Mills*, Esq; in the Peace of God, and of our Sovereign Lord the King that now is, then and there being, feloniously, voluntarily, and of your Malice aforethought, did make an Assault; and that you the said *John Barbot*, with a Pistol of the Value of five Shillings, then and there charged and loaded with Gunpowder and leaden Bullets, which said Pistol you the said *John Barbot* in your right Hand then and there had and held, into and against the aforesaid *Matthew Mills*, then and there feloniously, wilfully, and of your Malice aforethought, did shoot off and discharge; and that you the said *John Barbot*, with leaden Bullets aforesaid, issuing and shot off out of the Pistol aforesaid, then and there, by the Force of the said Gunpowder, the said *Matthew Mills*, in and upon the right Side of the Body of the said *Matthew Mills*, and between the two last false Ribs, and near the Back of the said *Matthew Mills*, then and there feloniously, voluntarily, and of your Malice aforethought, struck, penetrated, and wounded; and that you the said *John Barbot*, then and there feloniously, voluntarily, and of your

Malice aforethought, gave to the said *Matthew Mills*, with the leaden Bullets aforesaid, out of the said Pistol, then and there, by Force of the said Gunpowder, shot off and discharged, in and upon the right Side of the Body of the said *Matthew Mills*, and between the two last false Ribs, and near the Back of the said *Matthew Mills*, then and there one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which said mortal Wound the said *Matthew Mills*, at *Frigate-Bay* aforesaid, in the Parish aforesaid, in the Island aforesaid, instantly died: And so you the said *John Barbot*, the said *Matthew Mills*, in Manner and Form aforesaid, at *Frigate-Bay* aforesaid, in the Parish and Island aforesaid, feloniously, voluntarily, and of your Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Clerk of Arr. How sayest thou, *John Barbot*, art thou guilty of the Felony and Murder whereof thou standest indicted, or not guilty?

Prisoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Pris. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

Pris. May it please your Honours, I have a Motion to make; which is, that I may be allowed Council on my Defence, not only to Matters of Law, but also to Matters of Fact, and to make my Defence in the fullest Manner. What I ask is no new Thing, it being, as I am informed, usual in *England*, and having been granted several Times to Prisoners in Cases of Life and Death in the King's-Bench of this Island: Which *Mr. Solicitor-General* knows to be so; having been himself concerned in those Cases on behalf of the Crown.

Mr. Solicitor-General, John Baker, Esq; May it please your Honours, I was indeed aware that this Motion would be made by the Prisoner, and in the Manner it has been; and therefore beg Leave to offer to the Court what has occurred to me on the Matter.

It is certain that the Practice in *England*, 'till a very few Years ago, was, that a Person indicted

* This *Mr. Mills* lived some time at *Richmond* in *Surrey*, and married a Daughter and Coheir of *Colonel Soulegrave*: (The other Daughter and Coheir married *Stephen Theodore Janssen, Esq;* Lord-Mayor of *London* in 1755.) He went over to *St. Christopher, Antigua, &c.* to look after his Estates there, and was barbarously murdered.

for a capital Offence was never allowed Council on a Plea of Not Guilty, unless to Matter of Law only; and that to be started by the Prisoner himself. And to this, besides the known Practice, the Authorities in Law are so full and plain, that you can look into no Book, which at all treats of this Matter, where this Doctrine does not at once stare you in the Face.

It is very true, that, by the more modern Practice, the Rigour of this Rule hath been something relaxed; but then it is proper to see how far it has been so: And I can venture to affirm, that it has gone no farther than to permit Council to examine and cross-examine Witnesses; and never to the giving them Leave to make Observations on the Evidence; or to draw Arguments or Inferences from it to the Point in Issue; or to do any Thing else in the Way of a formal or full Defence. And this, tho' at first a pure Indulgence, yet now seems to be so far grown into a Right, that I believe it would be thought hard to deny it to the Prisoner in the present Case; and I should readily consent to the granting it, on behalf of the Crown. But as to the allowing Council in the full Extent the Prisoner has moved for it, I am confident no Instance was ever yet seen of the Kind in *England*; and I fear, for that Reason, your Honours can hardly be thought at Liberty to allow it here.

This is a Trial of great Expectation, and your Honours will be very careful to do what is exactly right; and to leave no Part of your Conduct liable to Censure hereafter.

Whether it be a Hardship to deny full Council to Prisoners in capital Cases, I shall not pretend to say: But this is certain, that if it be one, it is of the Law's making, and not of your Honours; and therefore you cannot be blamed for it; tho' perhaps you might be so, for allowing an Indulgence which the Law and the Practice of *England* do not warrant.

For the Instances alledged by the Prisoner, in the Court of King's-Bench in this Island, they have been but two or three, and of very late Years only. It was no longer ago than the Year 1744, that I myself was refused by that Court to be of Council for one *James Dixon*, who stood indicted for the same Crime that the Prisoner at the Bar now does: So that any Instances to the contrary must have been since that Time; and none in the Case of Murder; tho' I think one or two of other Felonies. But these are too recent to govern the Determination of the Court in the present Case; which must therefore turn on this Question only, how far the permitting Council for the Prisoner is in itself right, and agreeable to Law.

I shall but just add, that in Proof of what I have affirmed as to the present Practice in *England*, I have here two printed Trials of Persons indicted for Murder, the one so late as in the Year 1741, and the other so very late as about ten Months ago: The former is of Captain *Goodyer*, Commander of one of his Majesty's Ships of War, for the Murder of his Brother Sir *John Dinely Goodyer*, Bart. and the latter of Miss *Blandy*, for the Murder of her own Father, tried at *Oxford* Assizes no longer ago than the Month of *March* last. The Prisoners were both Persons of some Rank and Fortune in Life, and such as both could well afford the Expence, and would not have wanted Advisers to move for full Council, had it been a Thing proper to have been asked or granted. And yet in neither Case is there the least Pretence on the Part of

the Prisoner, of being intitled to it, or any Thing like a Motion for it; but (what is yet a stronger Confirmation of what I have alledged, than a mere Silence on the Matter,) it is only asked in the Case of Captain *Goodyer*, to allow Council for the Prisoner to examine and cross-examine Witnesses; and even that is insisted on by the Council for the Crown, to be a Favour, and not a Right; and it is there granted as such.

The President then put it to the Court for their Opinion, whether or how far the Prisoner ought to be allowed Council to make his Defence; when the Court unanimously declared it as their Opinion, that he should be allowed Council to speak to Points of Law to be started by himself, and also to examine his own and cross-examine the Witnesses for the Crown, but no further.

Pris. Then I pray your Honours will please to allow Mr. *Frye* to be of Council for me.

The Court accordingly assigned Mr. Frye of Council for the Prisoner.

Cl. of Arr. *Cryer*, make Proclamation for Silence.

Cryer. Oyez, Oyez, Oyez; His Majesty's Justices do strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

Cryer. Oyez; You good Men, that are impanelled to try between our Sovereign Lord the King and the Prisoner at the Bar, answer to your Names, and save your Fines.

The Jury were called over, and appeared.

Cl. of Arr. You, the Prisoner at the Bar, these Men which were last called, and do now appear, are those who are to pass between our Sovereign Lord the King and you, upon the Trial of your Life and Death; if therefore you will challenge them, or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn: And you shall be heard.

Cl. of Arr. *George Weatherill*, look upon the Prisoner; You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to the Evidence: *So help you God.*

And the same Oath was administered to the rest, (which were sworn) and their Names are as follow:

George Weatherill, - - - - - sworn.
Benjamin Clifton, - - - - - sworn.
John Wilson, - - - - - challenged.
Thomas Morgan, - - - - - challenged.
Alexander Douglas, - - - - - challenged.
William Jackson, - - - - - challenged.
William Garvey, - - - - - sworn.
Willet Payne, - - - - - challenged.
Charles Caines, sen. - - - - - sworn.
Archibald Thompson, - - - - - challenged.
Abraham Steele, - - - - - sworn.
Joseph King, - - - - - challenged.
Thomas Edmead, - - - - - sworn.
William Isles, - - - - - sworn.
John Johnson, sen. - - - - - sworn.
William Wells, jun. - - - - - sworn.
Edmund Tannat, - - - - - challenged.
Davis Percival, - - - - - challenged.
John Fabie, - - - - - challenged.
Crisp Molineux, - - - - - challenged.
Andrew Armour, - - - - - challenged.

Pris. May it please your Honours, I challenge Mr. *Armour* for Cause: My Cause of Challenge is this—Mr. *Armour* lately at *Montserrat* was heard to say, that, if he was upon my Jury, he would hang me.

Mr. President. Can you prove this Declaration of Mr. *Armour's*?

Pris. Yes. I pray that Mr. *Frye* may be sworn to prove it.

Mr. President. Swear Mr. *Frye*, (*which was done.*)

Mr. Frye. I heard Mr. *Armour* say at *Montserrat*, that, if he was to be on Mr. *Barbot's* Jury, he would condemn him.

Mr. Sol. Gen. This is abundant Cause, to be sure.

Mr. President. Mr. *Smith*, go on with the Jury.

Cl. of Arr.

William Buckley, - - - challenged.

Thomas Wylley, - - - challenged.

Christ. Murdenborough - - - - - sworn.

Peter Carew, - - - - - challenged.

Richard Peterson, - - - - - sworn.

Edward Gillard, - - - - - sworn.

Cl. of Arr. Cryer, count these.

George Weatherill,

William Isles,

Benjamin Clifton,

John Johnson, sen.

William Garvey,

William Wells, jun.

Charles Caines, sen.

Christ. Mardenborough,

Abraham Steele,

Richard Peterson,

Thomas Edmead,

Edward Gillard.

Cl. of Arr. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any one can inform the King's Justices, the King's Solicitor-General, or this Inquest now to be taken, of any Treasons, Murders, Felonies, or Misdemeanors, committed or done by the Prisoner at the Bar, let him come forth, and he shall be heard, for the Prisoner stands now at the Bar upon his Deliverance; and all Persons that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or they will forfeit their Recognizances.

Pris. May it please your Honours, I humbly move that I may have Pen, Ink and Paper.

Mr. President. Ay, by all means.

Cl. of Arr. *John Barbot*, hold up thy Hand; Gentlemen of the Jury, look upon the Prisoner, and hearken to his Charge; he stands indicted by the Name of *John Barbot*, late of the Parish of *St. George Basseterre*, in the Island of *St. Christopher*, Gentleman, for that he not having (*as in the Indictment before set forth.*) Upon this Indictment he hath been arraigned, and upon his Arraignment hath pleaded Not guilty; and for his Trial hath put himself upon God and his Country, which Country you are: Your Charge therefore is, to inquire whether he be guilty of the Felony and Murder whereof he stands indicted, or not guilty. If you find him guilty, you shall inquire what Goods or Chattels, Lands or Tenements he had, at the Time of the Felony committed, or at any Time since: If you find him not guilty, you shall inquire whether he fled for the same: If you find that he did fly for the same, you shall inquire of his Goods and Chattels, as if you had found him guilty: If you find him not guilty, and that he did not fly for the same, say so, and no more; and hear your Evidence.

Jury. May it please your Honours, we pray we may have Pen, Ink and Paper.

VOL. X.

Mr. President. Mr. *Smith*, let the Jury have Pen, Ink and Paper.

Mr. Kerr. May it please your Honours, and you Gentlemen of the Jury, I am of Council for the King on this Trial: It is an Indictment by which the Prisoner at the Bar stands accused of the Murder of *Matthew Mills, Esq.* The Indictment sets forth, that the Prisoner at the Bar; not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the 19th Day of *November*, in the 26th Year of the Reign of his present Majesty, about the Hour of Five of the Clock in the Morning, with Force and Arms, at a Place called *Frigate-Bay*, in the Parish of *St. George Basseterre* in this Island, in and upon one *Matthew Mills, Esq;* in the Peace of God and our said Lord the King then and there being, feloniously, voluntarily, and of his Malice aforethought, did make an Assault; and that the Prisoner, with a Pistol then and there charged with Gun-powder and leaden Bullets, which he in his right Hand then and there had and held, isto and against the said *Matthew Mills*, then and there feloniously, wilfully, and of his Malice aforethought, did shoot off and discharge; and that the Prisoner, with leaden Bullets issuing out of the said Pistol, by Force of the said Gun-powder, the said *Matthew Mills*, in and upon the right Side of his Body, and between the two last false Ribs, and near the Back of the said *Matthew Mills*, then and there feloniously, voluntarily, and of his Malice aforethought, struck, penetrated, and wounded; and that the said Prisoner then and there feloniously, voluntarily, and of his Malice aforethought, gave to the said *Matthew Mills*, in and upon the right Side of his Body, between the two last false Ribs, and near the Back of the said *Matthew Mills*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which said mortal Wound the said *Matthew Mills* instantly died.

To this Accusation the Prisoner at the Bar hath pleaded Not guilty, and for Trial hath put himself upon you Gentlemen of the Jury: It is, therefore, the Duty of us, who are of Council for the King, to prove this horrid Crime upon the Prisoner to your Satisfaction; and I make no doubt we shall be able to support this Indictment, upon the most violent presumptive Proof, that ever appeared on a Trial of this Kind: If this should be the Case, I hope the Jury will, under your Honours Direction, find the Prisoner guilty of this Murder. We shall proceed to examine the Witnesses for the King, as soon as the Gentlemen who are to follow me have opened to your Honours and the Jury, the Nature of the Evidence that will be produced on this Occasion.

Mr. Sol. Gen. May it please your Honours, and you Gentlemen of the Jury;

The Prisoner at the Bar, *John Barbot*, stands indicted of no less a Crime than that of Murder; the Murder of one *Matthew Mills, Esq;* I say, of one *Matthew Mills*; because such is the Style and Form of the Indictment; and not as supposing you are, or can be any Strangers to the Name or Character of that unfortunate Gentleman: For who the Deceased was, his Rank and Distinction in Life would not permit any one in these Parts to be ignorant; and as to *what* he was, if there were any who knew it not in his Life-time, they must necessarily have learned it from the general Sorrow and Concern, and the many Hearts that are yet bleeding, for his Death.

O o

Gentlemen,

Gentlemen, as to the Murder of which the Prisoner stands indicted, it is perhaps the hardest to be accounted for, as to its Causes and the Motives to it, of any intended, any concerted Event, that has ever fallen out within the Compass of your Knowledge and Experience. The two grand and ordinary Motives to the committing of Murder, are Interest and Malice. But, for the former of these, there does not seem to have been the least Prospect of any Advantage to be reaped by any one whatever, by the Death of the Deceased: Though how many, and in how grievous a Degree, will be Sufferers by it, God knows: And for the other Motive, Malice; one would have thought his amiable Character, and most unexceptionable Conduct towards every one, must have secured him against the Enmity and Ill-will of any Person living; and even still we may venture to affirm, that no good Man was, or could be, his Enemy: Yet that he had an Enemy, (one, at least, if not more; I say, that he had, at least, one Enemy) is but too apparent from the Manner and Circumstances of his Death: And I believe your Consciences will be abundantly convinced by the Evidence, that that Enemy was the Prisoner at the Bar; the Conscientiousness of whose Guilt, if that should be the Case, must be greatly aggravated by this Consideration, that he has robbed the World of a Man, whose Loss he cannot make good to it in himself; and that there is no Probability, that in the Course of twenty such Lives as his, he should ever be able to make Amends to the great Number of Persons whom he has rendered so unhappy, and made such Sufferers by it: So diffusive a Ruin, so extensive a Mischiefe, has been accomplished by a single Stroke of so insignificant a Hand!

Gentlemen, there are few Murders committed, of which it is not with some Difficulty and Labour the Authors are found out: For, as the more atrocious the Crime, and consequently the greater the Punishment attending it, so the greater the Caution and Secrecy used in the committing it, and the Manner and Means of putting it in Execution the more carefully studied and concerted, in order to avoid a Discovery, and escape the Hand of Justice.

And yet, Gentlemen, in most Cases of Murder (for, indeed, in some few Instances, Heaven has thought fit to reserve the whole of Vengeance to itself; but, I say, in most Cases of Murder) it has pleased Providence by some Mark or another to point out the guilty Person; and all the Care and Foresight of the coolest and cunningest Offenders, have not been able to guard against some Token, some unthought-of Circumstance, which has left a Door open to a Discovery, when they imagined they had barred up all Access to it.

Thus, Gentlemen, in the present Case, though the Prisoner at the Bar flattered himself he had so effectually laid his Measures, as perfectly to secure him against (not the Knowledge and Discovery of his Crime, for that he knew there were those about him who could, and must, make public; but against) the Punishment which he knew by Law was due to it; by taking care to have none present when he committed it, who could be legal Witnesses against him: Yet I believe all his Management and Precautions of that Sort will stand him in very little stead; since, by Evidence unquestionably legal, so many and evident Tokens of his Guilt will appear; such a Train of Circumstances will be laid before you of various Kinds, as, when taken and considered together, will give such

Light and Strength to each other, as to convince the most incredulous Persons, and satisfy the most scrupulous and tender Consciences, that the Prisoner at the Bar was the Person by whose Hand the Deceased was murdered.

And this, Gentlemen, as it is legal Evidence, so it is sufficient too, if it be such as satisfies your Belief, that he committed the Fact. And indeed this is the best and only Evidence, which we can hope to meet with in almost all Cases of Murder; where the Caution and Secrecy which I observed to be used in the committing it, makes a Necessity of investigating the Truth by painful Steps, and of tracing and hunting out the Murderer, by following the Track of Circumstances, as we can find Light enough to discern and pursue it. For, if the bare taking care to have no Persons present at the Time of committing the most execrable Crimes should avail, in spite of the plainest and strongest Circumstances pointing out the Criminals, to screen them from public Justice, it would hardly ever be possible, but by extreme Accident, to convict the most flagrant Offenders; and nothing were easier than to commit the worst of Crimes with absolute Safety and Impunity.

Gentlemen, it were a Thing greatly to be wished, both for your sakes and the sake of this Island, that it had not been made the Scene of this abominable Act: So should you have been saved the disagreeable Task that is now imposed on you; and the Island the Odium, which will perhaps unjustly, as well as unfortunately, be thereby brought upon it: I say, unjustly; because, as you will hear from the Evidence, though the Matter was executed here, it was conceived and concerted elsewhere. The Arrow was indeed thrown in this Island; but it was first dipped in the Poison that was generated in another; where, as you will hear, Gentlemen, the Prisoner at the Bar was exercising himself in rehearsing this fatal Tragedy, and making himself perfect in his Part of it, some Days before it was acted.

Gentlemen, as I before told you, the Motive to this unhappy Affair is hard to be accounted for; yet all that can be conceived or imagined to have been a Provocation to it, with the Substance of what else you will hear in Evidence in Proof of the Indictment, I shall relate to you; and though the Provocation you will hear of was the slightest and strangest that was perhaps ever known to the committing an Act of this Kind, yet I believe the Prisoner will find it a difficult Matter to assign a stronger or a better.

You must know, Gentlemen, that on *Tuesday* the 7th Day of *November* last, there being a public Sale, at the Town of *Charles-Town* in the Island of *Nevis*, of an Estate in that Island commonly called *Bridgewater's*, the Prisoner at the Bar offered himself as a Purchaser, and accordingly bade for it the Sum of 2510 *l.* Sterling. The Deceased, who was largely interested in this Sale, as having a Demand for a considerable Part of the Purchase-Money, and who, as well as many others, was not only surprized to hear the Prisoner bid a Sum of Money so far beyond what all the World must be sensible he was able to make good, but also justly offended at the Prisoner's Behaviour, which tended to throw every Impediment in the Way of the Sale that he could, said, he desired that there might not be so much *Cavilling*, and that no *Boy's-Play* might be used on the Occasion; for that this Estate had once before been sold, and the Purchase-Money

Money not paid : Upon which the Prisoner, with great Heat, and a Pertness peculiar to him, stepped up to the Deceased, and in modish Phrase told him, *he expected to be treated like a Gentleman.* To which the Deceased only replied, *he should use him and every one as such.*

And this, Gentlemen, is all the Provocation, which, on all the Recollection and Inquiry that can be made use of, it can be found was ever given by the Deceased to the Prisoner ; since there appear not the least Traces of their having long before spoken to each other, or had any Intercourse on any Occasion at all ; and it is almost a Certainty, that they never spoke to, or saw one another afterwards, till the Morning of the Death of the unfortunate Deceased : But this, Gentlemen, according to the very high Conceit which the Prisoner had of himself and his own Merit, was, it seems, such an Indignity, as nothing less than the taking away so important and valuable a Life as the Deceased's could atone for. And of this he was so full, and so blinded by his Purpose, that on the *Friday* following, the 10th of the same *November* last, he declared in the Street of this very Town, that *there was a certain Gentleman in this Island, whom he would either kill, or be killed by, in less than a Fortnight :* And indeed in less (and very little less) than that Time the Deceased was killed ; and (as I believe you will by and by be perfectly convinced) by the Prisoner at the Bar. What could induce the Prisoner to make this strange and unnecessary Declaration of his Intention, is difficult to say ; nor is it at all satisfactorily to be accounted for, but from that Fatality which it has pleased Providence shall hang upon Guilt, to convince Men, that what he thinks proper shall be revealed, it shall not be in their Power, with all their Care and Precaution, to keep secret. Gentlemen, in pursuance of this Declaration, and in the Interval between that and the 19th of the same Month, when (as it is laid in the Indictment) the Deceased was killed ; the Prisoner took an Opportunity to exercise himself in firing with Pistols at a Mark ; and, as the Event has proved, became but too apt a Proficient at it ; having fatally improved himself to such a Perfection in it, as to enable him to accomplish his Design on the Deceased ; who was found dead of a Wound, apparently given from a Pistol, between Five and Six of the Clock on *Sunday* Morning the 19th Day of *November* last ; the very Night before which, as you will hear, the Prisoner, in a very hasty Manner, made his last Will at a public Tavern in the Town of *Charles-Town* in *Nevis*, where he delivered it into the Custody of one who was to have some Concern in it. Gentlemen, from these Circumstances and this Behaviour of the Prisoner, previous to the Murder, I believe no Man, for his own private Satisfaction, would look further for the Person who committed it, than the Prisoner at the Bar. But from other more numerous, and much stronger Circumstances, which you will likewise hear from the Evidence, and which I shall first open to you, I think all Shadow of Doubt, whether it was the Prisoner who committed it, must be entirely taken away. For, Gentlemen, the Night before the committing the Fact, the Prisoner, after having thus executed his last Will, and delivered it out of his own Custody, went from the Tavern into the Country with one *Dr. James Webbe*, at whose House he slept, or, at least, made Appearance of sleeping ; and accordingly, between Nine and Ten o'Clock, he bade the *Doctor* and his

Family a good Night, and retired to the Chamber allotted him, under Pretence of going to Bed ; but in the Morning when the *Doctor* arose at his usual Hour, he found to his very great—I beg Pardon ; I was going to say, *to his very great Surprise* ; but that I cannot take upon me to say ; but however he did find, that the Prisoner was gone from his House ; and about Eight or Nine o'Clock in the Morning he saw him riding up to his House on his [the *Doctor's*] own Horse, and with his own *Negro Boy* attending him. Where he had been while he had thus withdrawn himself, and what he had been doing, you will presently hear. Gentlemen, about Five o'Clock, or very little after, that same *Sunday* Morning, as one *John M'Kenley*, who is an Overseer at the Plantation of *Mr. Spooner* near *Frigate-Bay*, was lying on his Bed (for he had risen, it seems, some time before, and had been abroad ; but was now lying down again ; when) a *Negro Boy* whom he very well knew, called *Coomy*, who belonged to, and usually ran with the Deceased when he went on Horse-back, came hastily into the Chamber, and even leaped on the Bed, and with great Emotion and seeming Fright, told *M'Kenley*, that his Master was fighting on the Bay with a Gentleman come from *Nevis*, and that he feared his Master was killed ; the *Negro* then instantly went out of the Room, and mounting his Master's Horse, on which he had rode thither, galloped back to the Bay again. *M'Kenley* was going to saddle his Horse to follow him ; but thinking that would take up too much Time, and it not being more than a Quarter of a Mile, or thereabouts, to the Place, he walked away as fast as he could to the Place, where, when he came, he found *Coomy* supporting his Master against his Knees ; but on coming close to him, he found the unhappy Gentleman was actually dead, tho' still warm ; having just breathed his last. *M'Kenley* then asking *Coomy*, who it was that had killed his Master ? the *Negro* answered, it was *Mr. Barbot*, who was come from *Nevis*, and was then going back again ; and added, if you will go to the Seaside, I believe you will see him ; for I am sure he cannot be gone far. *M'Kenley* then ran to the Beach, which was about fifty Yards from the Spot where the Deceased lay ; but with a rising Bank between ; and there saw a Canoo with four Oars and a Paddle, rowing from the Shore towards *Nevis*, with somebody dressed in white sitting in the Stern ; but by the Person's Back being towards him, and from the great Consternation he was in at the unhappy Event, having himself a little while before been a Servant to the Deceased, he did not distinguish who the Person was. However, that, Gentlemen, will soon be made appear to you ; for about Half an Hour after, as the Canoo was in its Way to *Nevis*, it was met by a Schooner coming from *Montserrat* to this Port ; the Master of which very well knew the Prisoner, and saw him sitting in the Canoo, dressed in a white Coat, and having on a laced Hat ; he will shew you that there was no other Canoo then in Sight, than this one, which he pursued with his Eye, 'till he saw it near the Bay at *Nevis*, called *Molton's Bay*, where the Prisoner was seen to land out of it about Seven of the Clock in the Morning, by Persons who knew the Canoo, and two of the principal *Negroes* who rowed it. From thence, Gentlemen, the Prisoner walked up to the House of the Plantation called *Bridgewater's*, which was about Half a Mile distant from the Sea, and there inquiring for *Dr. Webbe's* Negro

Negro Boy called *Pope*, ordered him to saddle the Horse; meaning, as you will hear, the *Doctor's* Horse, which, as you will find, the Boy had brought thither about Midnight, under the Pretence of looking for his Master, though he knew he was then at Home. From hence, Gentlemen, the Prisoner rode back to *Dr. Webbe's*, where he had pretended to go to Bed the Night before, and which is about three Miles distant from *Bridgewater's*; and there dismounting, finished his glorious Expedition, and rested from his worthy Labours. I must not omit, Gentlemen, that a very sensible Negro Fellow, belonging to the Canoo, as soon as they came back to *Nevis*, seeming greatly dejected and thoughtful, and his Master pressing him to know the Occasion of it, the Fellow answered, *he was afraid Mr. Barbot had done some Mischief*; which is thus far material, that it was said before the News came from *St. Christopher's* to that Island, of the unhappy Affair.

Gentlemen, as you may perceive by what I have said, and will still more plainly find from the Evidence, the Prisoner at the Bar, whether to secure a further Chance for his escaping the Punishment due to his Crime, or, it may be, despairing of other Means or Opportunity to accomplish his Purpose against the Deceased, took Care to draw him to a Place of Appointment, in order to give the Act he committed the favourable Construction of a Duel. But, in the first Place, I believe you are not to be told, that were it really so, or were it ever so fair a Transaction, as it is generally termed, of that Sort, *that*, in the Law, by which you upon your Oaths are to try the Prisoner, is absolutely Murder. Should that appear or be believed, how far it might be an Argument for Mercy or Pardon, is the Business of another Place, and of other Persons: But the serious and solemn Business of this Day, and of you, Gentlemen, is upon your Oaths to say, whether you believe, upon the whole Matter, the Prisoner killed the Deceased or not. And in the next Place, Gentlemen, I believe you will be too well convinced by the Evidence given, that the Notion and Form of a Duel was only meant as a Cover and a Sanction to the intended Murder; and that the Deceased was unquestionably killed before he was provided, or could have a Chance of worsting the Prisoner or defending himself: For you will find, Gentlemen, that by the Wound given, which was in the Side, and the Course it took along his Belly, the Deceased could be in no offensive Posture; and it is plain his Pistols neither were, nor had been, loaded. And now, Gentlemen, we shall call the Witnesses to these several Facts which I have mentioned, from whose Mouths, and on whose Oaths, you will have a Confirmation of what it was my Duty thus to open to you, in order the better to conduct your Attention to the proper and material Parts of the Evidence.

Mr. Horne. May it please your Honours, and you Gentlemen of the Jury;

I humbly beg your Honours Indulgence, and, Gentlemen of the Jury, your favourable Attention to my speaking in behalf of the Crown, and in Support of what *Mr. Solicitor-General* has opened to you with such Strength and Perspicuity. And, though I must long lament the fatal Deed which brings me before you this Day; yet, it is a Circumstance of no slight Satisfaction to me, when I observe the Solemnity of this Assembly, this unusual Concourse of People from all the Islands,

speaking the Importance of the Occasion, and the Expectation of the Public, that my first Appearance before your Honours, is, in a Cause that requires no extraordinary Ability, in the Advocate, no Art to gloss, or Sophistry of Arguments to disguise it; that I am to speak to a Subject that lies level to every Understanding; and to a Crime whose Malignity is confessed by every Heart. And as in the Course of this Trial I shall not abuse you, or dishonour myself, in employing any dishonest Artifice; so am I as steadily resolved to suppress no Truth (however offensive to any Man) that may be necessary to detect Guilt, to retrieve Honour from the fantastic Notions under which it labours, and to engage your Justice to the Community, as well as to an injured Family, in becoming Instruments in the Hand of Heaven to punish the Guilty, and to determine agreeably to that Denunciation of Vengeance from Heaven, that, *whoso sheddeth Man's Blood, by Man shall his Blood be shed.*

Such is the natural Odium that every Man conceives against the Crime with which the Prisoner is charged, so much is the common Interest of Man affected by Murder, that at the Name of it we take the Alarm, with Impatience and Sympathy we hear and feel the Story, with Ardor we pursue the Murderer, with Eagerness apprehend him, with Pleasure deliver him up to Justice, with Satisfaction hear the Sentence, and with Approbation all acknowledge that Blood for Blood is a just Restitution. Is there a Crime, in the Discovery of which the Finger of God has been so often held forth? For when Man's Invention has entrenched the Criminal with Artifice behind Artifice, and covered him in a Disguise fitted to cheat the most inquisitive Eye, Heaven has wonderfully revealed the Man of Blood—That Providence which is attentive to the Fall of a Sparrow, can never be regardless of the most excellent of his Creation. The first Murderer carried about with him a distinguished Mark of divine Vengeance; and for the innocent Blood of a Brother, wandered a Vagabond through the World.

Crimes so odious in their Nature, which the Laws have punished with Death, are generally contrived with the utmost Caution, and perpetrated with the profoundest Secrecy; for he who knows that an ignominious Death must be the certain Consequence of the Discovery of his Villainy, will, as the Prisoner has done, employ all his Artifice, and exert his utmost Ability, in the Concealment of it; while Innocence acts always in open Day, where the World may be Spectators of its Actions. But, Gentlemen of the Jury, I am persuaded that the Witnesses will satisfy your Consciences, that in spite of all the artful Preparations that attended the Contrivance, and the studied Precaution and Secrecy that attended the Perpetration, of this Crime, that no Man on Earth but the Prisoner at the Bar could be guilty of it; for notwithstanding his Life depended upon the Concealment of his Crime, and the Knowledge of this kept alive all his Art and Caution when he was retired to himself, and was by himself concerting his Scheme; yet in Company you will be surprized to find his Vanity (such is the fatal, the providential Inconsistency of Guilt) throwing him off his Guard, and drawing from him the Discovery of his Resentment, and a Confession of his Intention. You will hear him expressing his Malice to the Deceased, vowing Vengeance against him, and setting but a
Fortnight's

Fortnight's short Period, to a Life, which, from its amiable and uncommon Value, all good Men would have wished to have had protracted to the happiest old Age.

You will be able, Gentlemen, to trace him almost Step by Step through his whole Track, and keep him almost constantly in View, from the first opening to the closing of this abominable Deed. As Mr. Solicitor has already opened the Fact and the Evidence of it, it would be impertinent in me to abuse the Patience of the Court and Jury, by an unnecessary Repetition of them in all their Circumstances: And had there been nothing else proper to offer to you, Gentlemen of the Jury, upon this Occasion, I should not rise, however painful for me to be silent on a Subject that has so sensibly affected me, and must so long lie heavy at my Heart.

The Council for the King will not, Gentlemen, go out of the ordinary Road of Justice, and have recourse to an unusual Evidence, even upon so extraordinary an Occasion, when you are inquiring into the Murder of so excellent a Man. We shall not therefore attempt to produce positive Testimony [*i. e.* the Testimony of Slaves]: For, though we have such as no Law, either of our Mother-Country, or of these Colonies, prohibits; yet good Policy in general, the Ground of all Law, and in particular the Policy of these Islands, forbids it. Indeed there is no Necessity for it, the Evidence of concurring Circumstances being in the present Case, as well as many others, more convincing, than the Testimony of any one positive Witness. The Evidence of the Prisoner's Guilt must then result from Circumstances, but Circumstances so strong, so connected, reflecting such Light upon each other, as will amount to the most violent Presumption, which, Gentlemen, their Honours will inform you, is in Law a full Proof.

And here, Gentlemen of the Jury, as it is impossible in such small Communities to avoid hearing the Conjectures and Opinions that are thrown out in all Matters of Moment sufficient to engage the public Attention; give me Leave to take Notice of two Notions that seem to have been artfully given out, and industriously propagated, on this Occasion:—"That as the Testimony of the Slaves present at this melancholy Action, will not be offered, circumstantial Evidence can be no Proof; and that if the Deceased thought proper to meet the Prisoner, and was killed in a fair Duel, the Prisoner ought to be acquitted." Nothing can equal the Weakness of these Assertions, but the Boldness with which they have been maintained. For weak as they are, it seems they have found very zealous Supporters. How deep, or how extensive, the Impression and Influence of them may be, I cannot say: But as the Tendency of such Notions may be of pernicious Consequence, it becomes necessary to prove that they have no Foundation, either in Law or Reason. For it would be to little Purpose to aim at establishing a Fact upon Circumstances, if they were not to be regarded; and to as little Purpose would it be (admitting the Force of Circumstances) to prove the Prisoner killed the Deceased, if his doing it in what is called a fair Duel, was believed to be a Justification.

If, Gentlemen, it be considered, that a Witness may be bribed, and the Bribe pervert and falsify

his Testimony; that a Witness may be concerned in Interest, and Interest warp him into Partiality; that a Witness may be a *Partaker* in the Guilt, and the Fear of Punishment intimidate him into a Suppression of the Truth; if these, I say, be considered, it will be allowed, that strong circumstantial Evidence is more to be depended upon, than the positive Testimony of a single Witness. For a Series of Circumstances, which the Wit of Man could never forge, following one the other in Order both as to Time and Place, and, as in the present Case, coming from different Witnesses in different Islands, where there was no Possibility of concerting a Scheme for the Prisoner's Condemnation; so many, and such strong Circumstances pointing him out, from the first Projection to the Completion of his Scheme, force a Conviction upon the Mind, and demand Belief. Facts arising out of Circumstances are stubborn Things, and will never lie.

Hence it is, that in numberless Trials Circumstances alone have determined the Jury. The Case of *Harrison* and Dr. *Clenche*, and many others might be mentioned: But I shall only observe further, that this Kind of Proof is thought so strong, that it is ruled particularly in the Case of a Bastard Child, that if it appears there has been an *Endeavour* to conceal its Death, there needs no Proof that the Child was born alive, or that there were any Signs of Hurt on the Body; but it shall be undeniably taken that the Child was born alive, and murdered by the Mother*. So that Circumstances always have determined, and always will determine, the Jury in Trials, when there is no Possibility of producing Eye-witnesses of the Fact.

This, Gentlemen, is no lately invented Proof that has but just found a Place only in our Law-Books; for I would (if I may presume to take a Liberty with it) refer you to a Case of the greatest Antiquity, and most sacred Authority, that depended absolutely upon Circumstance. You will anticipate me, I am sure, and immediately perceive, that I allude to the celebrated Judgment of the Man transmitted to Posterity as the wisest of the Creation. No Witnesses as Assistants to the Birth, appeared in that Case to evince the Reality of the Mother; the Truth of the Fact seemed to depend solely on the Assertion of each interested Party. Here was an Act of Justice to be done; the Case was nice, the Decision hard; even *Solomon's* Wisdom was at a Stand, 'till by a happy Thought the alarming Proposal for destroying the Child, produced a Circumstance that removed the Difficulty. The Tears and Anguish of the one revealed the true Mother, and prevailed against the Vociferation and obstinate Persistence of the other.

And indeed, if there was no Ground of Belief, no Evidence on which to determine, but from the direct and positive Testimony of an Eye-witness; the Mind would be left to fluctuate in perpetual Doubt, and be irresolute in the most interesting Concerns of Life. If the Proof that arises from Circumstance, from Reasoning and Induction, be excluded out of our Notion of Evidence, it would prove too much; for how should we be able to judge of the most important Points, even of Religion itself, either natural or revealed; how should we be able to prove the most momentous of all Truths, the Existence of the

* *Hawk.* B. II. C. 47. Sect. 43.

supreme Being? The several Parts of the Universe are but so many *Circumstances* of Creation, from whence is deduced the Proof of a Creator. If that absurd and strange Opinion already mentioned was to prevail, no Crime committed against Society would be punished, but such alone as were proved by direct and positive Evidence; the Consequence of which in a little Time would be, that no Crime would meet a Punishment at all, when the Criminal had nothing to do but to sin in secret, and sin safely. There would be then an End put to the patient Attention of Courts, and the Offices of Judge and Juror would be entirely useless.

One Thing more give me Leave to submit to your Consideration. If this Kind of Evidence were excluded from the Case of Duels particularly, which are always carried on with the utmost Secrecy and Precaution, Murders of that Sort could be rarely punished. This Consideration too will grow stronger, when you recollect, that if circumstantial Evidence is not to be admitted, particularly in Duels, what Opportunity, what Encouragement will you give to this romantic, this cruel Practice, in a Country where the Duellist's Purpose to act in secret, will be assisted by the Intervention of our Slaves, who are incapacitated to be Witnesses, and who are always at Hand to carry on the dangerous Intercourse! An unhappy Circumstance attending our Situation, (if circumstantial Evidence be rejected) that the most atrocious Crimes may be committed with their Assistance, without the Fear of being convicted on their Evidence. What an Inlet this to Confusion, and even to the Dissolution of Government!

Whatsoever, Gentlemen, makes the Truth evident, although it be Circumstance, is legal Evidence; and that which satisfies your Conscience, convinces your Understanding, and induces you to believe the Prisoner guilty, is good Evidence in Law. It may seem surprizing in another Place that any Pains should be taken to make out what is in itself so clear; but let Mistakes be ever so unreasonable, 'tis proper to remove them. Other Arguments upon this Point might be drawn from the Nature of Trials and other Considerations; but as that may possibly anticipate what may be offered in Reply to the Defence which may be expected from the Prisoner, I shall content myself with having premised thus much by way of Preparation for Evidence that is entirely circumstantial.

I must appeal to you, Gentlemen of the Jury, whether you have not heard it asserted with equal Confidence, that if the Deceased met the Prisoner on his Challenge, and was fairly killed, the Prisoner ought to be acquitted. That this is not the present Case, but that the Deceased was basely murdered, before he was prepared either to attack the other or to defend himself, you will find, Gentlemen, is to be violently presumed from the Circumstances of his unloaded Pistol, his Cloak and Gloves being found upon him, and, above all, the Situation of his Wound, which the Surgeons will prove to you, from its Entrance and its Direction, could not be received by a Man in the Posture of Defence.

To the Asserters of this second Opinion, as irrational and almost as dangerous as the first, it will be in vain to prove the Prisoner's Guilt; if the imaginary Notion of Honour is to varnish the Crime, and disappoint its Punishment. For Argument-sake then, grant what is supposed, that the

Duel was fair, and see how reconcileable this Opinion is to Reason, or how justifiable by the Laws. Alas! how is the Name of Honour prostituted! Can Honour be the savage Resolution, the brutal Fierceness, of a revengeful Spirit? No, Gentlemen of the Jury, search your own Bosoms, and there you'll find, that true Honour is manifested in a steady uniform Train of Actions, attended by Justice, and directed by Prudence. Is this the Conduct of the Duellist? Will Justice support the Duellist (and in the present Case, the Prisoner, if he be found guilty) in robbing the Community of an able and useful Member, and in depriving the Poor of a Benefactor? Will it support him in preparing Affliction for the Widow's Heart? in filling the Orphan's Eyes with Tears, and in bringing Sorrow and Misfortune on Friends, and a numerous Train of Dependants? Will Justice acquit him for enlarging the Punishment beyond the Offence? Will it permit him, for (perhaps) a rash Word that may admit of Apology, an unadvised Action that may be retrieved, or an Injury that may be compensated, to cut off a Man before his Days be half numbered, and for a temporary Fault, inflict an endless Punishment? On the other hand, will Prudence bear him out in risking an infamous Death, if he succeeds in the Duel? but if he falls, will it plead his Pardon at a more awful Tribunal, for rushing into the Presence of an offended God, with all his Imperfections on his Head? View the Duellist in the Light that either Religion or the Law considers him, and you'll quickly perceive and acknowledge the Illegality, the Impiety of his Spirit. Man, like the Centinel fixed to his Post, who dares not stir till he is relieved; Man, I say, must wait till Death, natural Death, the grand Relief of human Nature, shall discharge him; nor can he prodigally throw away a Life bestowed for better Purposes. The Giver, the Preserver of Life must be displeased with him who usurps a Power to cast away his own, or take away his Fellow-Creature's. Man is made in the express Image of his Maker. Shall the Duellist with Impunity, in the Person of his Fellow-Creature, destroy that Image, in impious Disobedience to that Command, which bids us not to kill?

The Laws of his Country too condemn the Duellist. The Sages of the Law, in their Books, will tell him, that Persons convicted barely of sending a Challenge, have been adjudged to pay * a large Fine, and suffer Imprisonment without Bail, to make a public Acknowledgment of their Offence, and to be bound to their good Behaviour. That where Persons coolly and deliberately engage in a Duel, which cannot but be attended with the apparent Danger of Murder, it is not only an open Defiance of the Laws, but carries with it a direct Contempt of the Justice of the Nation, as putting Men under the Necessity of righting themselves. That if two Persons in † cool Blood meet and fight on a precedent Quarrel, and one of them is killed, the other is guilty of Murder. And this the Law adjudges to be of Malice, and that the Party cannot help himself by alledging that he was first struck by the Deceased; or that he had often declined to meet him, and was prevailed upon to do it by his Importunity; or that it was only his Intent to vindicate his Reputation.

Who then after this will be hardy enough to acquit the Criminal, whom the Laws of God and Man condemn? Notwithstanding the Law declares that

* 3 Inst.

† 3 Vol. *Bac. Abridg.* 665, 666.

that he affronts public Justice, who snatches the Sword from the Magistrate's Hand, and carves out his own Revenge; yet, who so loud as the Duellist, when he has secretly butchered some worthy Man, in demanding Justice and a fair Trial? Try me, says the Prisoner, by the Laws of my Country, and I have nothing to fear. Astonishing Presumption! That he should dare to hope for the Protection of those very Laws, which he has just before disobeyed and dishonoured! That he should insult the Wisdom and Justice of the Laws of his Country, and rush contemptuously into the Duel that they forbid; and at the same Time claim a Shelter under the Mercy of them, and demand open and positive Evidence for a Murder which he has contrived and committed in Darkness! What! says the Man of Honour, forbid by Laws divine on one Hand, and restrained by human Laws on the other, must I never draw my Sword, never shew my Courage? Yes, draw the one, and exert the other, in the Cause of your Country; employ them to guard your Property from a Robber, to defend your Person from a Russian, your Bed from Dishonour, your Daughter from Violation, and to save your Friend from Assassins. These are Actions worthy of the Man of Honour.

Duelling seems to be an unnatural Graft upon genuine Courage, and the Growth of a barbarous Age. The polite Nations of Greece and Rome knew nothing of it; they reserved their Bravery for the Enemies of their Country, and then were prodigal of their Blood. These brave People set Honour up as a guardian Genius of the Public, to humanize their Passions, to preserve their Truth unblemished, and to teach them to value Life only as useful to their Country. The modern Heroes dress it up like one of the Dæmons of Superstition, besmeared with Blood, and delighting in human Sacrifice.

A Man of Honour, in the modern Sense, signifies no more, than an audacious Man, who will fight at all Events: A Man, perhaps, who has been first indebted to your Generosity, by dishonest Artifices has abused your Patience, and at last attempts your Life for calling in your Debt: A Man, perhaps, who will wound your Peace in staining the Honour of a Wife or Daughter, and afterwards, on your remonstrating the Wrong, heroically wash away those Stains in the Father's or Husband's Blood.

Senseless as this Notion of Honour is, it unhappily has its Advocates among us. But for the Prevalence of such a Notion, how could the amiable Person, whose Death has made the solemn Business of this Day, be lost to his Country, his Family and Friends? Would to God that I was a Master of Words, and it could be indulged to the Tenderness of a Friend to pay a Tribute to his Memory! I might then endeavour to set him full before you in the Variety of his Excellence: But as this, perhaps, would be venturing too far, I can only lament that such Virtue had not a longer Date; that this good Man was cut off in the Strength of his Age, e'er half his Glass was run; when his large Heart was projecting and executing Schemes to relieve Distress, and by the most surprising Acts of Beneficence, vindicating the Bounty of Providence for heaping Wealth upon him.

We shall now proceed to call our Evidence.

The other Gentlemen of Council for the King, were Mr. *Wilson*; and Mr. *Davis*.

Mr. *Peter Carew* sworn.

Mr. *Sol. Gen.* Pray, Mr. *Carew*, was you at *Nevis* on the 7th of *November* last?

Carew. Yes, Sir, I was.

Mr. *Sol. Gen.* Was *Bridgewater's* Estate sold that Day?

Carew. Yes, Sir, it was.

Mr. *Sol. Gen.* Were you present at the Sale?

Carew. Yes, Sir.

Mr. *Sol. Gen.* Was the Deceased there?

Carew. Yes.

Mr. *Sol. Gen.* Was the Prisoner at the Bar there?

Carew. Yes, he was.

Mr. *Sol. Gen.* Do you remember any Conversation that passed between the Prisoner at the Bar and the Deceased at the Sale?

Carew. As I went into the Room where the Estate was put up to Sale, I heard the Prisoner say to the Deceased, *he expected to be treated like a Gentleman*, or, *he did not treat him like a Gentleman*, or, Words to that Effect; which seemed to be in Answer to something the Deceased had said to him, but I did not hear what.

Mr. *Sol. Gen.* Do you know whether the Prisoner and the Deceased had any Conversation after that?

Carew. I cannot tell whether they had or not.

Mr. *Sol. Gen.* Were they together at any Time after?

Carew. I really do not know.

Pris. Pray, what was I doing at the Time that, you say, I said this to Mr. *Mills*?

Carew. I cannot tell what you were doing.

Pris. Was any body in the Room at that Time?

Carew. Yes, a great many People.

Thomas Mills, Esq; sworn.

Mr. *Sol. Gen.* Pray, Sir, were you at *Nevis* when *Bridgewater's* Estate was last sold?

Mills. Yes, Sir.

Mr. *Sol. Gen.* Were you present at the Sale?

Mills. Yes, Sir, it was on the 7th of *November* last.

Mr. *Sol. Gen.* Were the Deceased and the Prisoner at the Bar there?

Mills. Yes, they were both there.

Mr. *Sol. Gen.* Do you remember any Conversation that passed between them at the Sale, and what it was?

Mills. I remember very well that Mr. *Cottle* the Attorney was drawing the Conditions of Sale, and after he had finished them, the Prisoner objected to them, and the Deceased said, *Mr. Barbot, the Conditions of Sale are very fair; why will you cavil about them?* Upon which the Prisoner said, *Sir, I expect to be treated like a Gentleman*; and the Deceased replied, *Sir, I shall always treat you and all Mankind as such.*

Mr. *Sol. Gen.* Did you observe that the Prisoner spoke with Warmth?

Mills. Yes, he spoke very warmly.

Mr. *Sol. Gen.* Can you tell whether the Deceased had any Conversation with the Prisoner at the Bar, at any Time after these Words passed?

Mills. I cannot tell whether they had or no, for I left them together in the Auction-Room.

Mr. *Sol. Gen.* Do you know whether the Deceased saw the Prisoner after the Day of the Sale?

Mills. I cannot positively tell, but I have great Reason to believe he did not see the Prisoner till the Morning he was killed; for after the Sale was over,

over, I went with the Deceased to *Molton's Bay*, and on the 9th, which was the second Day after the Sale, we went to *St. Christopher's* together, and I saw him or heard from him every Day after, 'till the 19th that he was killed.

Mr. *Sol. Gen.* Do you know whether the Deceased gave the Prisoner at the Bar any Provocation?

Mills. None, to my Knowledge.

Mr. *Sol. Gen.* Had he never any Difference with him at all?

Mills. None, that I know of.

Mr. *Sol. Gen.* Had you ever any Difference with the Prisoner at the Bar yourself?

Mills. Never any.

Mr. *Sol. Gen.* The Prisoner is an Attorney at Law; did he ever do any Business for you?

Mills. Yes, he has done Business for me in his Profession.

Pris. Yes, I have, and have always been very honestly paid for it.

Mr. *Sol. Gen.* Do you know of any Letters that passed between the Prisoner and the Deceased?

Mills. No, I do not know of any; I have heard, since the Murder, that some Letters did pass between them.

Mr. *Frye.* Did you hear the Prisoner say any Thing to the Deceased in a cavilling Way, at the Sale of *Bridgewater's* Estate?

Mills. Yes, he cavilled at the Conditions of Sale, and the Deceased imagined he wanted to delay the Sale 'till Sun-set, in order to prevent the Estate being sold that Day; and from his Behaviour I imagined so too.

Pris. You say I was cavilling; pray, were not the Conditions of the Sale, that one Third of the Purchase-Money should be paid down immediately, and the other two Thirds in a Month, or else the first Third to be forfeited? and do not you remember I said, the Court-Act did not direct it should be so, and that it was very hard to impose such Conditions, against an Act made to regulate Sales under Executions?

Mills. I do not recollect that.

Pris. Pray, was not the whole of my Behaviour warm that Day? Did I not say something warmly to Mr. *Cottle*?

Mills. I do not remember that you did.

Mr. *Andrew Armour* sworn.

Mr. *Sol. Gen.* Mr. *Armour*, do you recollect any Conversation that passed between you and the Prisoner at the Bar, some Time before you heard the Report of the Deceased being killed?

Armour. I remember some Time in the Beginning of *November* last, the Prisoner told me that Mr. *Mills* had treated him cruelly, and in such a Manner as ought never to be forgiven.

Mr. *Sol. Gen.* Pray, what Time in *November* was it?

Armour. I am almost certain it was some Time between the 3d and the 7th, but I am sure it was before the 7th; for I went to *Montserrat* on the 7th, and did not return to this Island 'till after the Murder.

Mr. *Sol. Gen.* Where was you when he said this to you?

Armour. I was standing at Mr. *Constantine's* Door.

Pris. Pray, Sir, was there any Company present at that Time?

Armour. No, there had been, but the Company was just gone as I came to the Door.

Pris. Did I express myself warmly?

Armour. No, I do not think you did.

Mr. *Sol. Gen.* Did not the Prisoner tell you his Reason for saying this? Did he not tell you in what Manner Mr. *Mills* had behaved to him, to occasion his saying this of him?

Armour. No, he only said generally, that Mr. *Mills* had treated him in such a Manner as ought never to be forgiven.

Pris. Who was in Company, do you say?

Armour. No body, the Company was just gone as I came up.

Pris. Had I any other Conversation with you about Mr. *Mills*?

Armour. Not that I remember; I do not recollect any other than what I have already related.

Mr. *President.* Did the Prisoner say which *Mills* it was that ought never to be forgiven?

Armour. No, Sir, he only said Mr. *Mills*.

Mr. *President.* Which *Mills* did you apprehend it to be?

Armour. I took it to be Mr. *Matthew Mills*.

Mr. *Sol. Gen.* Gentlemen, pray take Notice of what Mr. *Armour* says. Did you, from the Tenor of the Discourse between you, apprehend it to be Mr. *Matthew Mills* that the Prisoner meant?

Armour. Yes, Sir, I did.

Mr. *Justice Losack.* Pray, clear up this Point—Mr. *Armour*, did you then know, or have you known since, that, previous to this Declaration of the Prisoner to you, he had any Difference or Quarrel with Mr. *Thomas Mills*, or Mr. *William Mills*?

Armour. No, I never heard he had any Difference with either.

Mr. *J. Losack.* Did you know he was on good Terms with both those Gentlemen?

Armour. I knew nothing to the contrary.

Pris. I never had any Difference with either of those Gentlemen.

Mr. *J. Losack.* Pray, what Reason had you to imagine it was the Deceased that the Prisoner meant?

Armour. Because he mentioned Mr. *Mills* only, without any Christian Name by way of Distinction; I concluded from thence it was the Deceased that he meant.

Patience Dorset sworn.

Mr. *Sol. Gen.* Mrs. *Dorset*, do you know the Prisoner at the Bar?

Dorset. Yes, Sir.

Mr. *Sol. Gen.* How long have you known him?

Dorset. Above a Twelve-month.

Mr. *Sol. Gen.* Give the Court and the Jury an Account of what you heard him say at any Time before you heard the Report of the Deceased being killed.

Dorset. Upon the King's Birth-day Mrs. *McCabe* (the Tavern-Keeper's Wife) sent to desire I would come and help her, for they were to provide an Entertainment for the Lieutenant-General and a great deal of Company that Day. Accordingly I went, and as I was going into the House, the Prisoner was standing under the Gallery talking to two Men, and as I was passing by, I heard him say, *There was a certain Gentleman in this Island, that within a Fortnight he would either kill or be killed by.*

Mr.

Mr. Sol. Gen. What Time of the Day was this?

Dorset. Between Eleven and Twelve in the Forenoon.

Mr. Sol. Gen. Did you hear any Guns fire that Day?

Dorset. Yes, I heard a great many.

Mr. Sol. Gen. Do you know the Persons the Prisoner was talking to?

Dorset. No, I never saw them, to my Knowledge, before nor since that Time.

Pris. Are you sure it was on the King's Birth-day you heard me say those Words?

Dorset. Yes, I am very sure it was.

Mr. Frye. It is very well: We shall bring Witnesses to prove the Prisoner was at *Nevis* on the King's Birth-day.

Doctor James Webbe sworn.

Mr. Horne. Doctor Webbe, do you know the Prisoner at the Bar?

Webbe. Before I answer any Questions, I pray the Court will favour me with a Word. I am brought down from *Nevis*, where I live, as an Evidence on this Trial, and I desire the Protection of this Court from any Arrests that may be issued against me. I am a Stranger in this Island, and it would be impossible for me, if I was arrested, to find Security. Another Thing too, I am afraid of being assassinated.

Mr. Sol. Gen. This is not the Country of Assassins; they come from elsewhere.

Mr. President. What Reason have you to apprehend being assassinated?

Webbe. Sir, I have been told there is an Intention to assassinate me.

Mr. President. Who has told you so?

Webbe. I have heard it commonly reported, Sir.

Mr. President. Can you fix the Intention on any particular Person?

Webbe. No, Sir, but I am afraid of Mr. Mills's Family in general; and I desire Mr. Colboun will give me Security, that I may go in Safety from Mr. Mills's Family to *Nevis*.

Mr. Colboun. May it please your Honours, if Dr. Webbe will swear that he is in Danger of his Life from me, or from any Part of Mr. Mills's Family, I am very willing to give him the Security he asks.

Mr. President. Doctor Webbe, you hear what Mr. Colboun offers; what say you to it?

Webbe. Sir, I cannot take upon me to swear any more than that I have heard there is an Intention to assassinate me.

Mr. President. It is very strange you should not know from whom you heard so!

Webbe. I did not hear it from any particular Person: I have heard it commonly reported.

Mr. President. Well then, unless you can charge some particular Person, we can take no Notice of it. Surely you would not have us bind over the whole Island!

Webbe. Then, Sir, I desire I may have my Expences paid me since I have been down here.

Mr. President. No, you cannot; for this is a Prosecution at the Suit of the Crown, and in that Case the Witnesses always bear their own Charges. With respect to your being arrested, the Court will protect you from any Arrests during their Sitting. Mr. Solicitor, go on with your Evidence.

Mr. Horne. Do you know the Prisoner at the Bar?

Webbe. Yes.

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Mr. Horne. How long have you known him?

Webbe. Between four and five Years.

Mr. Horne. Did you not usually consult and advise with him in your Affairs?

Webbe. I have employed him as an Attorney.

Mr. Horne. Were you present when *Bridgewater's* Estate was sold last at *Nevis*?

Webbe. Yes, I was.

Mr. Horne. Did not that Estate belong to you, and was it not sold for a Debt of yours?

Webbe. Yes, it was my Estate, and was sold for a Debt of mine.

Mr. Horne. When was it sold?

Webbe. On the 7th of *November* last.

Mr. Horne. Were the Prisoner at the Bar and the Deceased present at the Sale?

Webbe. Yes, they were.

Mr. Horne. Did not the Provost-Marshal make Conditions of Sale?

Webbe. Yes, I believe there were Terms of Sale.

Mr. Horne. Were those Conditions read, before the Estate was put up to Sale?

Webbe. I believe they were, but I am not certain.

Mr. Horne. What were the Conditions, pray?

Webbe. I do not remember what they were.

Mr. Horne. Did the Prisoner make any Objections to them?

Webbe. I heard him say, *We will be bound by these Conditions, as far as the Law can bind us, and no farther; and that the Marshal had no Right to make any Terms of Sale.*

Mr. Horne. Did you hear him make no other Objection? Were there no other Words past?

Webbe. No, only the Deceased said, *We will have no School-Boy's Play.*

Mr. Horne. What Answer did the Prisoner make to that?

Webbe. I do not know, I did not hear any Answer.

Mr. Horne. Why, were you not present all the Time?

Webbe. No, I was backward and forward.

Mr. Horne. How near was you to the Prisoner, when he said what you have related?

Webbe. About the Distance of the Room off.

Mr. Horne. And did you hear nothing else that passed on the Occasion?

Webbe. No, Sir.

Mr. Horne. How came you so unconcerned, as not to attend to what was going forward?

Webbe. I was so confused I could not mind any thing.

Mr. Horne. What was the Cause of your Confusion?

Webbe. The Estate being sold.

Mr. Horne. Did the Prisoner at your Request purchase that Estate?

Webbe. Yes, he did purchase it at my Request.

Mr. Horne. One would imagine, that, as you were so nearly concerned in the Purchase of the Estate, you would have been more attentive to all that passed.

Webbe. I was walking backward and forward, and getting Mr. *Jacob Saunders* to sign the Bills for the Purchase-Money.

Mr. Horne. You say you were much confused; pray, did your Confusion proceed from Concern or Resentment?

Webbe. From Concern at having my Estate sold.

Mr. Horne. How long did the Deceased stay at *Nevis* after the Sale?

Webbe. I do not know, I never saw him after.

Mr. Horne. Did the Prisoner see him after the Sale?

Webbe. I do not know that he did.

Mr. Horne. Did the Prisoner go Home with you after the Sale?

Webbe. No.

Mr. Horne. When was the first Time that you saw him after the Sale?

Webbe. I saw him the next Day.

Mr. Horne. Do you not live in great Intimacy with the Prisoner?

Webbe. Yes, I am intimate with him.

Mr. Horne. Has he not confided in you often?

Webbe. Yes, he has.

Mr. Horne. The next Day after the Sale that you saw the Prisoner, did he not tell you the Conversation that had passed between the Deceased and him at the Sale?

Webbe. No.

Mr. Horne. Had you no Conversation at all about the Sale?

Webbe. No, we only talked about the Bills.

Mr. Horne. Did you see the Prisoner the Day after that? on the 9th?

Webbe. Yes.

Mr. Horne. What Conversation had you with him then?

Webbe. I do not remember the Conversation.

Juryman. Had you no Conversation about the Estate that Day?

Webbe. I do not remember we had.

Juryman. It is very strange, that you, who was the Purchaser of the Estate, should not say something of it to the Prisoner, who purchased it for you; or that you should not remember what he said to you about it!

Webbe. We had frequent Conversations about the Estate, but I do not remember the Particulars of them.

Mr. Horne. Did you make no Inquiry about the Event of the Sale?

Webbe. No.

Mr. Horne. Did you never hear any Complaint from the Prisoner of his having been ill-treated at the Sale?

Webbe. Not that I remember.

Mr. Horne. Try to recollect: I am sure, Sir, your Memory will serve you on this Occasion, if you please. Did you never hear the Prisoner mention any thing of Satisfaction, or Ill-treatment?

Webbe. Never.

Mr. Horne. Did you never hear him express any Dissatisfaction at the Conditions of Sale?

Webbe. I heard him say they were contrary to Law.

Mr. Horne. Did he not complain of the Hardship of them?

Webbe. I do not remember that he did.

Mr. Horne. Did you yourself complain of the Conditions?

Webbe. I said I thought them hard too, and I advised him not to sign them.

Mr. President. You said in the Beginning of your Evidence, that you knew not what the Conditions of Sale were, and now you say you advised the Prisoner not to sign them, because you thought them hard; surely you must have known what the Conditions were, or you could not have given him such Advice. This is strangely inconnected indeed!

Webbe. I advised him not to sign any Conditions at all.

Mr. Horne. Do you know whether the Prisoner went to *St. Christopher's* after the Sale of the Estate?

Webbe. I do not know that he did.

Mr. Horne. Pray, are not you a Guardian to Mrs. *Dasent's* Daughter?

Webbe. Yes.

Mr. Horne. Did not Mrs. *Dasent* apply to you, and tell you she thought it improper for the Prisoner to stay at her House, and did not she desire you to speak to the Prisoner not to continue there?

Webbe. Yes, she did apply to me, and I did desire the Prisoner to leave her House, and to come to mine.

Mr. Horne. And did he go to your House?

Webbe. Yes.

Mr. Horne. When did he go there?

Webbe. He came to my House on the 16th of *November* at Night.

Mr. Horne. How long did he stay there?

Webbe. He stayed there all the next Day.

Mr. Horne. Did he never say any thing to you on the Subject of the Dispute that had happened at the Sale of *Bridgwater's* Estate?

Webbe. No, he never did.

Mr. Horne. Do not you know, or did not you hear the Prisoner say, he had hired a Canoo from *John Cribbe* to carry him down to *St. Christopher's*?

Webbe. No, I never heard him say so, nor I do not know that he did.

Mr. Horne. Where was the Prisoner on the 18th of *November*?

Webbe. On the 18th he went to Mr. *Jacob Saunders's*, where we dined.

Mr. Horne. Did not you and the Prisoner execute a Bond of Indemnity to Mr. *Jacob Saunders* that Day?

Webbe. Yes, we executed a Bond to indemnify him for indorsing the Bills for the Purchase-Money of the Estate.

Mr. Horne. Do you know whether the Prisoner sent any Letters to *St. Christopher's* on the 18th?

Webbe. He told me he had wrote to Dr. *William Mills*, about Mr. *Symmonds's* Affair.

Mr. Horne. Did the Prisoner receive any Letters from *St. Christopher's* that Day?

Webbe. While we were at Mr. *Saunders's*, the Prisoner's Negro Boy brought him a Packet from *St. Christopher's*, and the Prisoner shewed me a Letter he had received from Dr. *William Mills*.

Mr. Horne. Did he shew you no other Letter?

Webbe. No.

Mr. Horne. Nor tell you he had received any Letter from the Deceased?

Webbe. No.

Mr. Horne. Did nothing more pass while you were at *Saunders's*, than what you have already related?

Webbe. Nothing more, that I remember.

Mr. Horne. Were you not at *O Donnell's* Tavern with the Prisoner, the Night before the Murder?

Webbe. Yes, we were that Evening at *O Donnell's*.

Mr. Horne. Did not you know the Prisoner intended to execute some Paper, or Writing, that Evening?

Webbe. No, I did not.

Mr. Horne. Did not you see the Prisoner that Evening writing a Paper at *O Donnell's*?

Webbe. Yes, I saw him writing at a Side-table.

Mr. Horne. What was it he was then writing?

Webbe. I do not know.

Mr. Horne. Do not you know he was then making his Will?

Webbe.

Webbe. No, I do not know whether it was a Will, or what it was.

Mr. Horne. Did not the Prisoner desire you to procure three Witnesses to attest that Paper? and did not you desire one *Springett* not to be out of the Way that Evening?

Webbe. Yes, I believe he did desire me, and I did speak to *Springett* not to be out of the Way.

Mr. Horne. Did not you look over the Prisoner while he was writing?

Webbe. No.

Mr. Horne. Nor did not you read what he was writing?

Webbe. No.

Mr. Horne. Nor after he had finished it?

Webbe. No.

Mr. Horne. You read no Part of it at all?

Webbe. No.

Mr. Horne. Was you in the Room all the Time the Prisoner was writing?

Webbe. No, I was in and out.

Mr. Horne. Did not the Prisoner call you frequently while he was writing?

Webbe. Yes.

Mr. Horne. What did he say to you at those Times?

Webbe. I remember nothing but his asking me if I had got the Witnesses ready.

Mr. Horne. Did not he whisper to you?

Webbe. No.

Mr. Horne. Did he say nothing else to you?

Webbe. No, he only asked me if the Witnesses were come.

Mr. Horne. Do you know the Contents of the Paper the Prisoner was writing?

Webbe. No.

Mr. Horne. Did not he shew it you while he was writing it?

Webbe. No.

Mr. Horne. Who were the Witnesses to it?

Webbe. Mr. O Donnell, Mr. Potts, and Mr. *Springett*.

Mr. Horne. Did the Prisoner execute it in their Presence?

Webbe. Yes.

Mr. Horne. Did not you know, or had not you great Reason to believe, it was his Will?

Webbe. I do not know it was his Will: It might have been his Will, or a Power of Attorney; for I heard him say, he would either make a Will, or give a Power of Attorney to secure Mr. *Jacob Saunders* for indorsing his Bills.

Mr. Horne. How could a Will or a Power of Attorney secure Mr. *Saunders*? Besides, what Necessity was there for either, when the Prisoner had that very Day joined you in a Bond of Indemnity to Mr. *Saunders*?

Webbe. I do not know, but he said he would do so.

Mr. Horne. Did not the Prisoner tell you he had made you a Legatee in his Will?

Webbe. No, he did not.

Mr. Horne. What did the Prisoner do with that Paper, when he had executed it?

Webbe. He gave it to me.

Mr. Horne. Did you look into it at the Time he gave it to you?

Webbe. No.

Mr. Horne. Was it sealed or open when he gave it to you?

Webbe. It was folded up, but not sealed.

Mr. Horne. When the Prisoner delivered it to you, did he pronounce any Words?

Webbe. None that I heard.

Mr. Horne. In whose Custody is that Paper now?

Webbe. In mine, it is at *Nevis*.

Mr. Horne. Was it indorsed?

Webbe. No.

Mr. Horne. Was it ever recorded?

Webbe. No.

Mr. Horne. What did you really take it to be?

Webbe. I thought it was a Power of Attorney to secure *Jacob Saunders*.

Mr. Horne. Did you never read it, nor look into it at all?

Webbe. No, I never did.

Mr. J. Losack. It is very strange you should not have the least Curiosity to look into a Paper, that, by your own Confession, was so relative to your own Concerns! But, upon the Oath you have taken, did the Prisoner say any thing to you, and what, at the Time he delivered into your Hands the Paper we are now upon, at the Tavern?

Webbe. No, he said nothing at all to me.

Mr. J. Losack. Did he not tell you it was his Will?

Webbe. No.

Mr. J. Losack. Upon your Oath, Dr. *Webbe*, did he not inform you it was his Will, and that you were a Legatee in it?

Webbe. No, he did not.

Mr. J. Losack. Is Dr. *Webbe's* Examination, which was taken at *Nevis*, in Court?

Cl. of Arr. Yes, Sir.

Mr. J. Losack. Please to hand it up here.

Mr. Horne. I pray that Judge *Herbert* may be called, and the Examination read; for this Gentleman has now contradicted what he positively swore to before Judge *Herbert*.

Joseph Herbert, Esq, sworn.

Mr. Horne. Judge *Herbert*, is not that the Hand-writing of Dr. *Webbe* subscribed to that Examination? and was not that Examination sworn to and subscribed by Dr. *Webbe* before you?

Mr. Herbert. Yes, this Examination was subscribed by Dr. *Webbe*, and sworn to before me, and that is my Hand to the *Jurat*.

Mr. Horne. Was not the Examination read by Dr. *Webbe*, or read to him, before he swore to it?

Mr. Herbert. Yes, the Examination was by my Desire written by Mr. *Cottle* the Attorney, and taken from Dr. *Webbe's* own Lips, and afterwards read by Mr. *Cottle* to Dr. *Webbe* before he swore to it, or before the *Doctor* had signed it, and he read it himself also.

Mr. President. Mr. *Smith*, read Dr. *Webbe's* Examination.

Cl. of Arr. *Nevis, Before the Honourable Joseph Herbert, Esq, Chief-Justice of his Majesty's Court of King's-Bench and Common-Pleas, in the Island of Nevis, and Samuel Clarke and Sommers Payne, Esqrs. Justices of the same Bench.*

The Examination of James Webbe, of the said Island, Surgeon, who being sworn on the holy Evangelists of almighty God, deposeth and saith,

THAT on *Thursday* the 16th Day of this Instant, Deponent going to his House, found *John Barbot* there.

That it was some Time in the Evening after Candle-light, when he so returned Home; but Deponent knoweth not the Time precisely, or any particular Hour near it.

That

That said *John Barbot* continued at this Deponent's with Deponent till the *Saturday* following, when they dined at Mr. *Jacob Saunders's*, and staid there till about Five in the Evening, when *Barbot* and Deponent both went away from thence to Mr. *Edward Paris's*, where they made a Stay of about Half an Hour, and thence came to *Charles-Town* to Mr. *O Donnell's* Tavern, where they staid about an Hour, and then went directly Home to Deponent's House, where they arrived about Nine o'Clock, as Deponent believes.

That the said *Barbot*, soon after his coming to Deponent's House, declared he was sleepy, and wished Deponent a good Night, and went to Bed, as Deponent believes; that Deponent being troubled with a Lax, got up in the Night to go to the Necessary-house, and on passing through the Hall for that Purpose, said *Barbot* called to Deponent, and asked him, what was the Matter? To which Deponent replied, nothing had happened, or was the Matter: Said *Barbot* then asked, what it was o'Clock? Deponent told him, he believed it was about One: No other Conversation then passed. Deponent did not see or hear said *Barbot* 'till the next Morning, *Sunday* the 19th *Instant*, when said *Barbot* came to Deponent's House on Horseback, upon one of Deponent's own Horses, between Eight and Nine o'Clock, attended by a Boy-Slave called *Nero*.

Barbot continued with Deponent 'till they both set out for *Gingerland* Parish, in order to dine abroad; and Deponent parted with said *Barbot* at Mr. *Pemberton's* Negro-Houses, when said *Barbot* took Leave of Deponent, who told him he was going to dine at Deponent's Uncle *George Webbe's*. That Deponent then went and dined at Mr. *Maynard's*; from thence he went with Mr. *Maynard* to Capt. *Symmonds's*; but whilst he was at Mr. *Maynard's*, a Negro Man came to inquire for Deponent, and asked Deponent, who was then by himself in a back Room upon a Bed, if he knew where Mr. *Barbot* was? Deponent told him, he was at *Stony-hill*; the Negro then went out, and soon afterwards returned, and told Deponent, that there were People come from *St. Christopher's* after Mr. *Barbot*, for killing Mr. *Mills*, or the Gentleman upon *Toby Wall's* Estate; but Deponent does not particularly remember which. The Boy told no other white Person in the Family. About Half an Hour after Deponent's hearing this Account from the Boy, Deponent and Mr. *Maynard* set out for Capt. *Symmonds's* as aforesaid, where he received a Note from said *Barbot*, desiring him, upon the Receipt thereof, to come to the said *Barbot* directly at Mr. *John Herbert's*; upon which Deponent went to him immediately, and found him drinking Tea. *Barbot* soon afterwards told Deponent he wanted to speak with him, and they both went out together into the Necessary-house. *Barbot* there asked Deponent, if he had heard any Thing of the killing Mr. *Mills*; the Deponent told him, yes, he had heard it at Capt. *Symmonds's*, who read a Letter which had been received from *St. Kitt's* about it, and that he (Capt. *Symmonds*) was gone after him (*Barbot*) to take him. *Barbot* replied, he did not care, he should not go out of the Way, for he knew nothing of the Matter. This was the Purport of all the Conversation which passed between Deponent and *Barbot* in the Necessary-house, 'till the Constables appeared to take him. That Deponent never heard, saw, knew, or was informed of any Letters or Messages that passed between the said *Barbot* and the deceased

Mr. *Mills*. That Deponent and said *Barbot* were one Day at the Widow of *James Dasant's* House upon *Saddle-hill*, when she was from Home; when Deponent took up a Case of Pistols that were lying in the House, and said he would try whether he could shoot with them, and asked the said *Barbot* if he would go; and they accordingly went out and fired several Shot together at the Head of a Barrel. That Deponent believes it was about the Time Mrs. *Hickman* was sick, and that Deponent believes Mrs. *Dasant* was then gone to visit her.

That on the *Saturday* Evening when the said *Barbot* came to Mr. *O Donnell's* Tavern as aforesaid, he made his Will; that the said *O Donnell*, and *Charles Potts*, and *John Springett*, both in the Deponent's Service, were Witnesses to the same; the Will was delivered to the Deponent that same Night; that said *Barbot* informed Deponent he was a Legatee. That the Road Deponent and *Barbot* went that said *Saturday* Night to Deponent's House, was through *Willet's* Estate. That said *Barbot* was writing at Mr. *O Donnell's* House that same *Saturday* Night, and Deponent believes it was his Will. That Deponent was present when the said *Barbot's* Will was executed, and does not recollect any Conversation that passed between the said *O Donnell* and *Barbot* on that Occasion, nor that, upon the said *O Donnell's* saying to said *Barbot*, that this (meaning the executing the said Will) looked like a military Settlement of a Man's Affairs, he this Deponent said *hush* to the said *O Donnell*, or made use of any other Means to desire the said *O Donnell* to keep Silence.

Sworn this 22d Day of
November, 1752,
before

James Webbe.

Joseph Herbert.
Samuel Clarke.
Sommers Payne.

Webbe. I do not remember, when I read the Examination, that any Thing was in it about making me a Legatee. I read it in a Hurry.

Mr. *Horne*. Did the Prisoner give you any Reason for making his Will so suddenly?

Webbe. I do not remember it was his Will; he had talked of going to *England*, and said he would make his Will.

Mr. *J. Lofack*. Dr. *Webbe*, pray raise your Voice, the Court does not hear you; and considering how much your Evidence seems calculated for the Advantage of the Prisoner, it is pity he should lose any Part of the Benefit of it. Did you ever receive any Letters from the Deceased?

Webbe. Yes, I have received a Note or two from him.

Mr. *J. Lofack*. Then you know his Hand?

Webbe. Yes, I believe I should, if I was to see it.

Mr. *J. Lofack*. Did you never see his Hand-writing in any Letters to the Prisoner?

Webbe. No.

Mr. *J. Lofack*. Nor on the Supercription of any Letter to the Prisoner?

Webbe. No, I never did.

Mr. *Horne*. At what o'Clock did you leave *O Donnell's* Tavern, the Evening the Prisoner executed the Paper he delivered to you?

Webbe. Between Seven and Eight in the Evening.

Mr. *Horne*. Where did you go to?

Webbe. We went Home.

Mr. *Horne*. Did the Prisoner go Home with you?

Webbe. Yes.

Mr.

Mr. *Horne*. Had you no Conversation with the Prisoner relative to the Deceased, in your Way Home, or after you got Home?

Webbe. I do not remember any.

Mr. *J. Lofack*. Had you positively no Conversation relative to the Deceased?

Webbe. I do not remember we had.

Mr. *J. Lofack*. Pray, Dr. *Webbe*, do you remember on what Day you came last from *Nevis*?

Webbe. From *Nevis*, Sir?

Mr. *J. Lofack*. Yes, from *Nevis*.

Webbe. I came from *Nevis* the Day before Yesterday.

Mr. *J. Lofack*. It is very well, Sir; I only wanted to know whether you had Remembrance of any Thing.

Mr. *Horne*. Did the Prisoner never tell you of any Letter he had received from the Deceased?

Webbe. No.

Mr. *Horne*. Nor any verbal Message?

Webbe. No.

Mr. *Horne*. Did he mention to you any Intention he had of going out that Night you came from *O Donnell's*?

Webbe. No.

Mr. *Horne*. Pray, what was the Conversation you had together, after you got Home?

Webbe. I do not recollect what it was, but we had very little Conversation together, for we were reading.

Mr. *Horne*. How long were you reading?

Webbe. I cannot tell exactly, I believe it was about an Hour.

Mr. *Horne*. What Book were you reading?

Webbe. *James's* Dictionary.

Mr. *Horne*. At what Time did the Prisoner go to Bed?

Webbe. At about Nine o'Clock.

Mr. *Horne*. Did you see him that Night after he went to Bed?

Webbe. No, I did not see him till the next Morning; but I was up at about One o'Clock in the Morning, and heard him.

Mr. *Horne*. How came you up at that Hour?

Webbe. I had a Lax, and was going to the Necessary-house, and as I was passing through the Hall, the Prisoner called to me, and asked me what o'Clock it was? and I told him it was about One.

Mr. *Horne*. You say you saw the Prisoner the next Morning: Was he on Foot, or on Horseback, when you saw him?

Webbe. He was on Horseback, riding up to the House.

Mr. *Horne*. Whose Horse was he on?

Webbe. On my Horse.

Mr. *Horne*. Had he any Negro with him?

Webbe. Yes, he had my Boy.

Mr. *Horne*. What is the Boy's Name?

Webbe. *Pope*.

Mr. *Horne*. Pray, at what Time do you generally rise in the Morning?

Webbe. Between Seven and Eight generally.

Mr. *Horne*. At what Time does the Prisoner usually rise?

Webbe. He commonly rises later than that.

Mr. *J. Lofack*. Did you miss any of your Horses that Morning, before the Prisoner came to your House?

Webbe. No, Sir.

Mr. *J. Lofack*. How many Horses do you keep?

Webbe. I keep four, Sir.

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Mr. *J. Lofack*. When you get up in a Morning, do you not usually go to your Stable to see to your Horses?

Webbe. No, I very seldom do.

Mr. *J. Lofack*. Did not you visit your Stable that Morning, on the 19th of *November*?

Webbe. No, Sir.

Mr. *President*. Pray, when the Prisoner came to your House that Morning, had he any Pistols?

Webbe. No, he had none.

Mr. *President*. Was his Coat wet?

Webbe. I cannot tell.

Mr. *President*. Were any of his Cloaths wet?

Webbe. I do not know, I did not take Notice that they were.

Mr. *J. Lofack*. Had you any Conversation with the Prisoner when he came into your House?

Webbe. Yes.

Mr. *J. Lofack*. What was it?

Webbe. He asked me, whether I had breakfasted? I said, I believed not.

Mr. *J. Lofack*. Why, could not you tell whether you had breakfasted or not?

Webbe. I meant, that I believe Breakfast was not over; for I seldom do breakfast myself.

Mr. *J. Lofack*. Did you not ask the Prisoner where he had been?

Webbe. No.

Mr. *Horne*. Did you not ask him why he took your Horse and Boy without your Leave?

Webbe. No, for he was always welcome to my Horse and Boy too; he had my Leave to take them, whenever he wanted them; and he had frequently taken them without first acquainting me of it.

Mr. *Horne*. Where did you imagine the Prisoner had been?

Webbe. I had no Suspicion of where he had been; I thought he had been wenching.

Mr. *Horne*. Did the Prisoner say nothing to you about one *Peter Rowland*, a Christian Slave?

Webbe. No.

Mr. *Horne*. Did he never tell you he had bespoke a Canoo of *that Peter Rowland*?

Webbe. No.

Mr. *Horne*. Did he say nothing to you about a Canoo?

Webbe. Nothing at all.

Mr. *Horne*. Did he not tell you he was to give a Dollar to each of the Oars-Men?

Webbe. No, he did not.

Mr. *Horne*. How does the Prisoner carry his Things generally when he travels?

Webbe. His Boy generally carries them.

Mr. *Horne*. What is his Boy's Name?

Webbe. *Nero*.

Mr. *Horne*. Do you know whether the Prisoner has a Trunk?

Webbe. Yes, he has.

Mr. *Horne*. What Colour is it of?

Webbe. It is a red Trunk.

Mr. *Horne*. Where did you see the Trunk last?

Webbe. The last Time I saw it was at Mrs. *Dasent's*.

Mr. *Horne*. Does he generally carry his Things in that Trunk when he travels?

Webbe. He generally carries them in a red Trunk, I cannot tell whether it is the same I saw at Mrs. *Dasent's*.

Mr. *President*. When the Prisoner came to your House from Mrs. *Dasent's* on the 16th of *November*, had he a Trunk with him?

Webbe. Yes, I believe he had.

Mr. President. Was the Prisoner's Boy *Nero* at your House on the 18th of *November* at Night?

Webbe. No, I did not see him there.

Mr. President. Did you see him on the 19th in the Morning?

Webbe. Yes.

Mr. President. Had he the Trunk with him then?

Webbe. Yes, I saw him with the Trunk coming up to the House.

Mr. President. Was it before the Prisoner came to your House?

Webbe. It was about the same Time.

Mr. Horne. Did you not see the Trunk opened? or did you not see the Prisoner, or his Boy, take any Pistols out of it?

Webbe. No, I did not see it opened, nor I did not see the Prisoner, or his Boy, take any Pistols out of it.

Mr. Horne. What Cloaths had the Prisoner on, when he came to your House that Morning, on the 19th of *November*?

Webbe. He had on a whitish Coat and a silver-laced Hat.

Mr. Horne. What Waistcoat had he on?

Webbe. A dark-coloured Waistcoat, I think.

Mr. Horne. Did the Prisoner shift his Cloaths as soon as he came in?

Webbe. Yes.

Mr. Horne. Where did he shift them?

Webbe. In one of the Rooms of the House, I cannot tell which.

Mr. Horne. Did you ever see the Prisoner fire at a Mark with a Pistol?

Webbe. Yes.

Mr. Horne. Where was it?

Webbe. At Mrs. *Dasent's* at *Saddle-bill*.

Mr. Horne. On what Occasion?

Webbe. He fired at my Request.

Mr. Horne. What was your Reason for desiring him to fire the Pistols?

Webbe. No particular Reason, we were talking about Mr. *Dasent's* fighting *Peterston* with those Pistols.

Mr. Horne. What Kind of Pistols were they the Prisoner fired out of?

Webbe. They were silver-mounted and brass Barrels.

Mr. Horne. How often did he fire out of them?

Webbe. But that once.

Mr. Horne. I mean, how many Times did the Prisoner fire out of the Pistols that Day?

Webbe. A good many Times.

Mr. Horne. What Mark did he fire at?

Webbe. At a Barrel-head.

Mr. Horne. On what Day was it?

Webbe. The *Sunday* before the Deceased was killed.

Mr. Horne. Who did the Pistols belong to?

Webbe. They were a Pair of *James Dasent's*.

Mr. Horne. Are these the Pistols? (a Pair of Pistols shewn him.)

Webbe. I believe they are.

Mr. Horne. When you were exercising the Pistols, had you any Conversation with the Prisoner about the Deceased?

Webbe. No.

Mr. Horne. What became of the Pistols, when you had done exercising them?

Webbe. I ordered one of Mrs. *Dasent's* Boys to clean them.

Mr. Horne. Where were the Pistols generally kept at Mrs. *Dasent's*?

Webbe. There was no fixed Place for them: Sometimes they were kept in the Shop, and sometimes in the Judge's Room on a Beam.

Mr. Horne. When did you hear that Mrs. *Dasent* missed the Pistols?

Webbe. On *Monday*, the Day after I heard the Report of the Deceased being killed, Mrs. *Dasent* sent to me to desire I would go to her: I went to her accordingly, and she told me she missed a Pair of Pistols, and had been looking for them, but could not find them. She seemed frightened, and asked me, if I knew where they were? I said, I did not, but I would help her to look for them; and I went into the Shop, and searched there, but could not find them; from thence I went with her into the Judge's Room, and I said, Let us look under the Bed; and I sat upon the Bed, and took up the Base, and found the Pistols under the Bed.

Mr. Horne. Why, did you know where they were, that you so readily found them?

Webbe. No, I did not know where they were.

Mr. Horne. Were they not in Holster Caps?

Webbe. Yes, lying on a Box upon the Floor: The Caps were mouldy.

Mr. Horne. Do you, or do you not know that the Pistols were placed there by the Prisoner, or his Boy?

Webbe. I did not know they were in that Place, nor do I know who put them there.

Mr. Horne. Did the Pistols appear to have been lately made use of?

Webbe. I cannot tell, I did not examine them.

Mr. Horne. Were they the same Pistols the Prisoner fired at the Mark with.

Webbe. I believe they were.

Mr. Horne. Did the Prisoner ever make use of them, after he fired at the Mark with them?

Webbe. Not to my Knowledge.

Mr. Horne. Did he ever borrow any Pistols of you?

Webbe. No, he never did.

Mr. Horne. Had he any Pistols of his own?

Webbe. He had none that I know of.

Mr. Horne. Did he not usually ride with Pistols?

Webbe. No.

Mr. Horne. Do you not know, or have you not great Reason to believe, the Prisoner had those Pistols with him the Morning the Murder was committed?

Webbe. I do not know whether he had them or not.

Mr. Horne. Did not the Prisoner's Boy carry the Pistols to Mrs. *Dasent's*, the Morning the Murder was committed?

Webbe. I do not know that he did.

Mr. Horne. Did not you and the Prisoner usually lie in the Room where the Pistols were found?

Webbe. We have lain there sometimes.

Mr. Horne. Did you observe the Furniture of the Room the Day you found the Pistols?

Webbe. No, I did not take Notice of it.

Mr. Horne. Was there a red Trunk in it?

Webbe. Yes, there was a red Trunk.

Mr. Horne. Did it belong to the Prisoner?

Webbe. Yes, I believe it did.

Mr. Horne. Was it the same that *Nero* brought to your House the Morning before?

Webbe. Yes, I believe it was.

Mr. Horne. Did not the Prisoner ask you, the

Night

Night before you heard the Deceased was killed, to lend him your Horse, or your Boy *Pope*?

Webbe. No.

Mr. Horne. Nor had you no Suspicion of his going out that Night?

Webbe. None at all; nor I did not know where he had been 'till the next Morning, that *Pope* told me he had been at *Melton's Bay*.

Mr. Horne. Did not you miss *Pope* that Night?

Webbe. No, I did not miss him 'till I saw him in the Morning coming up with the Prisoner.

Mr. Horne. Where did you dine on *Sunday* the 19th of *November*? and where did the Prisoner dine that Day?

Webbe. The Prisoner dined at my Uncle *Webbe's* at *Stony-hill*, and I dined at Mr. *Maynard's*.

Mr. Horne. Did the Prisoner stay at your House all that Morning, from the Time you saw him alight, 'till he went to your Uncle's to Dinner?

Webbe. Yes, he did, and I rode with him to the turning off at Mr. *Ottley's*, where we parted; I went to Mr. *Maynard's*, and he went to my Uncle's.

Mr. Horne. Had you no Conversation with the Prisoner about the Deceased then? Did he not tell you of his having killed the Deceased, or having fought a Duel with him that Morning?

Webbe. No, he did not say a Word about the Matter.

Mr. Horne. Did not you hear of the Murder while you were at Mr. *Maynard's*?

Webbe. Yes.

Mr. Horne. By what Means did you hear it?

Webbe. A Negro came to me and told me, that Mr. *Barbot* had killed Mr. *Mills*.

Mr. Horne. Whose Negro told you this, and who sent him to tell you? Did not you inquire?

Webbe. I do not know whose Negro it was: I did not inquire, and do not know who sent him.

Mr. Horne. This is extremely odd, that a Negro should come and tell you this News, and you not inquire whom he belonged to, or who sent him! When you heard this, did you tell the News to Mr. *Maynard's* Family?

Webbe. I do not know whether I did or not, but I believe I did tell it.

Mr. Horne. Strange indeed! that upon hearing such News as must have surprized and concerned every other Man, you should be so very indifferent about it, as not to recollect positively your telling it to the Family!

Webbe. I believe I told them the News.

Mr. Horne. How long did you stay at Mr. *Maynard's* after hearing the News?

Webbe. Not very long.

Mr. Horne. Where did you go from thence?

Webbe. I went to Mr. *John Symmonds's*.

Mr. Horne. Who did you find there?

Webbe. Mr. *Edward Bridgewater*.

Mr. Horne. Did you tell them the News of the Murder, when you went there?

Webbe. No, I did not.

Mr. Horne. Did you not receive a Letter from the Prisoner, while you were at Mr. *Symmonds's*?

Webbe. Yes, I received a Note from him.

Mr. Horne. What was the Purport of it?

Webbe. It was, as well as I remember, *Dear Doctor, I want much to see you; on Receipt of this, come immediately to me.*

Mr. Horne. Did not Mr. *Symmonds*, while you were at his House, receive a Letter, giving him an Account of the Murder?

Webbe. Yes, he did.

Mr. Horne. Did he not, upon receiving the News, ask you, if the Prisoner did not sleep at your House the Night before?

Webbe. Yes, he did; and I told him that the Prisoner had slept at my House the Night before.

Mr. Horne. Did he not ask you, if you had seen the Prisoner that Morning?

Webbe. Yes, I believe he did.

Mr. Horne. What Answer did you make him?

Webbe. I do not recollect the Answer.

Mr. Horne. Did you, or did you not tell him, you had not seen the Prisoner that Day?

Webbe. I do not recollect what I told him.

Mr. Horne. Did not Mr. *Symmonds*, on hearing the News of the Murder, say, he would go and assist the *Posse* in taking the Prisoner? and did he not immediately order his Horse, and set out for that Purpose?

Webbe. Yes, he did say he would go and assist, and did order his Horse, and I believe did go.

Mr. Horne. Did you make any Offer to assist in taking the Prisoner, or did you tell Mr. *Symmonds* where the Prisoner was?

Webbe. No, I did not.

Mr. Horne. Why did you not offer to give your Assistance? Was it not the Duty of every honest Man to assist in taking up a Murderer? What was your Reason for behaving with that Indifference, on a Matter of such Consequence?

Webbe. It was none of my Business. *I did not like such troublesome Jobs.*

Mr. Horne. It is very strange you should act thus, when a Gentleman of Mr. *Mills's* universal good Character had lost his Life, nay, when it was reported he had been murdered! Surely you must have had some very particular private Reasons for such a Behaviour!

Webbe. I did not care to meddle in such Matters; I thought it was *nothing to me*.

Mr. Horne. How long did you stay at Mr. *Symmonds's*, after you received the Letter you mention from the Prisoner?

Webbe. I did not stay long; I went immediately to Mr. *John Herbert's*, where I found the Prisoner.

Mr. Horne. Who was with the Prisoner?

Webbe. No body but the Family, they were drinking Tea.

Mr. Horne. Where was the Prisoner taken?

Webbe. At Mr. *John Herbert's*.

Mr. Horne. Was you present when he was taken?

Webbe. Yes, I was.

Mr. Horne. How long had you been with the Prisoner before he was taken?

Webbe. Not long.

Mr. Horne. How long?

Webbe. I cannot positively say.

Mr. Horne. Pray, Sir, recollect how long.

Webbe. When I came in, they were drinking Tea; and the Prisoner took a Turn or two about the House, and then desired to speak with me, and we went into the *Necessary-house*, where he was taken by the Officers of Justice.

Mr. Horne. This, Sir, does not answer the Question. Pray, Sir, tell the Court and Jury how long (as near as you can recollect) you were with the Prisoner at Mr. *John Herbert's*, before he was taken.

Webbe. We were in the *Necessary-house*, I believe, about five Minutes before he was taken.

Mr. Horne. Pray, what did the Prisoner say to you when he took you aside there?

Webbe.

Webbe. I do not recollect what he said to me.

Mr. Horne. What! not recollect what he said to you, when you had been sent for by the Prisoner upon a Matter of such Consequence! You say, you had heard the News of the Prisoner's killing the Deceased; the Prisoner wrote to desire you to come immediately to him: You went, you say, directly to him, and were in private with him, the Prisoner, your very particular Friend; and, notwithstanding all this, you cannot recollect what passed between you! This is very strange! But pray, Sir, recollect yourself, and tell the Conversation.

Webbe. I cannot recollect positively what passed, for I did not take much Notice of it. I believe he said something of the Report of his having killed Mr. Mills. He asked me, if I had heard the Report of his having murdered Mr. Mills? I told him, yes, I had heard it; and he said, he should not fly for it, for he knew nothing of it.

Mr. Horne. Did he, or did he not tell you, he had killed Mr. Mills that Morning?

Webbe. No, he did not.

Mr. Horne. Did no other Conversation pass between you and the Prisoner at that Time?

Webbe. No other, that I remember.

Mr. Horne. Did you not ask him whether he had been off *Nevis*?

Webbe. No, I did not.

Mr. Horne. Did not the Prisoner, after he was taken into Custody, take you aside in Mr. Herbert's Hall, and speak in private with you?

Webbe. Yes, he did.

Mr. Horne. What did he say to you at that Time?

Webbe. He desired me to speak to my Uncle George *Webbe*, to let him have *ten Pistoles*.

Mr. Horne. Did nothing more pass?

Webbe. Nothing more.

Mr. J. Lofack. Was that all he whispered to you?

Webbe. Yes, Sir, all.

Mr. J. Lofack. Was it necessary to convey such a Request in a Whisper?

Mr. Horne. How long was you aside with the Prisoner at that Time?

Webbe. About two or three Minutes.

Mr. Horne. Did he give you any Papers at that Time?

Webbe. No, he did not.

Mr. Horne. Did you see the Prisoner while he was in Gaol at *Nevis*?

Webbe. Yes, I saw him once.

Mr. Horne. What Conversation had you with him then?

Webbe. I desired him to make over *Bridgwater's* Estate to me.

Mr. Horne. What else?

Webbe. I do not remember any thing else.

Mr. Horne. Had you no other Conversation at all?

Webbe. I do not recollect any thing but that.

Mr. Horne. Do you know whether the Prisoner burnt any Papers while he was in Gaol?

Webbe. I heard Mr. *Burnet* the Marshal say he did.

Mr. Horne. Do not you know it of your own Knowledge?

Webbe. No, I only heard Mr. *Burnet* say so.

Mr. Horne. Did not you hear from the Prisoner what those Papers were that he burnt?

Webbe. No.

Mr. Horne. Did the Prisoner ever give you any Paper relative to this Murder?

Webbe. No, he never did.

Mr. Horne. Where was your Boy *Pope* on the Saturday Night preceding the Murder?

Webbe. At Home.

Mr. Horne. Did you send him out on any Errand that Night?

Webbe. No.

Mr. Horne. Did you send any of your Horses out?

Webbe. No.

Mr. Horne. You did not positively send either your Boy *Pope* or your Horse out at all that Night?

Webbe. No, I did not positively.

Mr. Horne. Were you sent for that Night by any of your Patients?

Webbe. No.

Mr. Sol. Gen. Gentlemen of the Jury, I beg, for a particular Reason, that you would attend to this Part of Dr. *Webbe's* Evidence. He says, that the Night preceding the Murder, he neither sent out his Boy *Pope*, nor any of his Horses; and further, that he himself was not sent for by any of his Patients.

Mr. Horne. Did you give the Prisoner any Dram or Cordial that Night?

Webbe. No.

Mr. Horne. Did you make any Composition for him?

Webbe. No.

Mr. Horne. When you got up that Night, did you observe what kind of Night it was?

Webbe. Yes, it was a very boisterous Night.

Mr. Horne. Would you have gone out in such a Night for Pleasure?

Webbe. No, I should not.

Mr. Horne. Do you know whether *Pope* was at *Bridgwater's* Estate that Night?

Webbe. I cannot tell whether he was or no.

Mr. Horne. Do you think that, from the Time you spoke to the Prisoner that Night, to the Time you saw him riding up to your House the next Morning, he could have been at *St. Christopher's* and back again?

Webbe. Yes, I believe he might.

Mr. Horne. Were you present at Mrs. *Dasent's*, when the Prisoner's Trunk was opened?

Webbe. Yes.

Mr. Horne. What was in it?

Webbe. There was a Coat and Waistcoat, and some Linen.

Mr. Horne. Was not there a Night-gown?

Webbe. Not that I saw.

Mr. Horne. Were the Coat and Waistcoat wet?

Webbe. Yes, they were moist.

Mr. Horne. What Part of them was moist?

Webbe. I cannot tell what particular Part, but they were moist.

Mr. Horne. Are these the same Coat and Waistcoat that were found in the Trunk, and is this the Trunk (*the Prisoner's Trunk and Cloaths shewn him*) in which they were found?

Webbe. I believe they are the same, and I believe that is the Trunk.

Mr. Horne. Are these the same Coat and Waistcoat the Prisoner had on, when he came to your House on Sunday Morning, the 19th of November last?

Webbe. I cannot tell whether they are or not.

Mr. Horne. Is this the Prisoner's Trunk?

Webbe.

Webbe. I do not know.

Mr. Horne. Did you know that the Coat and Waistcoat were in the Trunk at your House?

Webbe. No, I knew nothing of the Matter.

Mr. Horne. May it please your Honours, we have done with this Witness.

Mr. President. Mr. *Barbot*, the King's Council have done with this Witness, would you ask him any Questions?

Pris. No, Sir.

Mr. Sol. Gen. Then call *Hugh O Donnell*, (who appeared, and was sworn.)

Mr. O Donnell, do you keep a Tavern at *Nevis*?

O Donnell. Yes, Sir.

Mr. Sol. Gen. Do you remember to have heard the Report of the Deceased being killed?

O Donnell. Yes, I heard it on *Sunday* the 19th of *November* last.

Mr. Sol. Gen. Do you remember to have seen the Prisoner the Night before you heard the Report?

O Donnell. The Night before I heard the Report, between Seven and Eight o'Clock, *Dr. Webbe*, and *Mr. Barbot* the Prisoner at the Bar, rode up to my House. I called to the Prisoner, and gave him a Letter that had been left at my House for him. As soon as I gave him the Letter, he attempted to read it by the Light of the Moon; but finding, I suppose, that he could not, he alit off his Horse, and came into the House; *Dr. Webbe* followed him in, and the Prisoner, as soon as he came in, asked for Pen, Ink, and Paper, which was brought him, and he sat down to write, and continued writing for a considerable Time.

Mr. Sol. Gen. Was *Doctor Webbe* in the Room with the Prisoner while he was writing?

O Donnell. Yes, the Prisoner called to him several Times, and he went to him.

Mr. Sol. Gen. Did the Prisoner speak to him while he was writing?

O Donnell. Yes, but I did not hear what he said, for they spoke in a kind of Whisper.

Mr. Sol. Gen. When the Prisoner called *Dr. Webbe* to him, did *Dr. Webbe* look over him?

O Donnell. Yes, he did look over him.

Mr. Sol. Gen. What did the Prisoner do with the Paper he was writing, when he had finished it?

O Donnell. As soon as it was finished, he sealed it, and the Prisoner and *Dr. Webbe* went into another Room; and after some little Time, *Dr. Webbe* came out, and desired *Dr. Potts*, *Mr. Springett*, and myself, to go in and witness a Paper: We went into the Room, where the Prisoner was, and we did see him write his Name to the Seal.

Mr. Sol. Gen. Did you see him acknowledge it?

O Donnell. Yes, he put his Thumb on the Seal, and spoke some Words, but they were hurried over so inarticulately, that I did not understand them.

Mr. Sol. Gen. Tell in what Manner he did it.

O Donnell. When he took his Thumb off the Seal, he said, *seal and deliver this*, and then mumbled over some Words (as I said before) so very inarticulately, that I did not understand them.

Mr. Justice Greatheed. Was there any Thing written just over the Place where you signed?

O Donnell. I believe there was, but he covered that with his Hand.

Mr. Sol. Gen. Pray, what did you take that Paper to be?

O Donnell. I took it to be a Will.

Mr. Sol. Gen. Why did you think it was a Will?

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O Donnell. Because there were three Witnesses to it.

Mr. Sol. Gen. Who witnessed the Paper besides yourself?

O Donnell. *Dr. Potts* and *Mr. Springett* were the other Witnesses.

Mr. Sol. Gen. What did the Prisoner do with the Paper, after it was signed and witnessed?

O Donnell. He folded it up, and gave it to *Dr. Webbe*.

Mr. Sol. Gen. Did you hear him say any Thing, when he delivered it to *Dr. Webbe*?

O Donnell. He did say something, but I could not hear distinctly what it was, for he spoke in a low Voice.

Mr. Sol. Gen. Did you hear him pronounce the Words, *publish or declare*?

O Donnell. I did not hear any one Word distinctly that he said.

Mr. Sol. Gen. Had you Reason to think, from his Manner of pronouncing the Words, that he intended to conceal them?

O Donnell. No, I did not apprehend that he did.

Mr. Sol. Gen. In what Manner did he speak the Words?

O Donnell. He seemed to speak them indifferently.

Mr. Sol. Gen. Was the Paper sealed, or only folded up, when he delivered it to *Dr. Webbe*?

O Donnell. It was folded up, but not sealed.

Mr. Sol. Gen. Is it usual to make Wills, or draw Instruments of Writing, at your Tavern?

O Donnell. No, Sir, I do not remember any such Thing being done at my House before.

Mr. President. Would you ask this Witness any Questions, *Mr. Barbot*?

Pris. No, Sir.

Mr. Sol. Gen. Then call *Charles Potts*, (who was sworn.)

Do you remember on what Day it was you heard that the Deceased was murdered?

Potts. Yes, I remember it was on *Sunday* the 19th of *November* last.

Mr. Sol. Gen. Were you at *Mr. O Donnell's* Tavern the Night before you heard the Deceased was killed?

Potts. Yes, I was.

Mr. Sol. Gen. Do you remember what passed with regard to your witnessing any Paper for the Prisoner?

Potts. I was sitting in the Tavern in the Evening, and somebody called me, and told me, I was wanted in the inner Room.

Mr. Sol. Gen. Who called you?

Potts. I cannot tell who it was, but somebody called me, and told me, I was wanted in the inner Room, and I went in, and the Prisoner desired me to sign, as a Witness, to an Instrument of Writing; and accordingly the Prisoner signed his Name to it: *Mr. O Donnell* signed first as a Witness to it, I signed next, and *Mr. Springett* last.

Mr. Sol. Gen. Did not the Prisoner acknowledge that Instrument of Writing, when he had signed his Name to it?

Potts. Yes, he put his Thumb on the Seal, and took it off again.

Mr. Sol. Gen. What did he say when he acknowledged it?

Potts. I do not recollect what he said.

Mr. Sol. Gen. What did you apprehend that Instrument of Writing to be?

Potts. I thought it was some Deed to secure *Jacob Saunders*.

Mr. Sol. Gen. Why did you think so?

Potts. Because I met the Prisoner and Dr. *Webbe* coming from Mr. *Saunders's* that Day.

Mr. Sol. Gen. Is that all the Reason?

Potts. That is all, Sir.

Mr. Sol. Gen. Did you read the Paper before you signed it?

Potts. No, I did not read it.

Mr. Sol. Gen. Nor any Part of it?

Potts. No, Sir.

Mr. Sol. Gen. Then how are you sure it was not a Note of Hand that you signed?

Potts. I am sure it was not a Note of Hand, for it was too long.

Mr. Sol. Gen. What was too long, the Attestation? Did you not sign just under the Attestation?

Potts. I did not observe the Attestation: I had no Suspicion of its being a Note of Hand: I thought it was a Deed to secure Mr. *Saunders's* Debt.

Mr. Sol. Gen. Did not the Prisoner cover the Attestation with his Hand?

Potts. He did not when I signed.

Mr. Sol. Gen. Did you not hear the Prisoner say he published that Paper as his Will.

Potts. No, I did not.

Mr. Sol. Gen. Did you come to the Tavern by Accident, or did any one desire you to be there at that Time?

Potts. I came there by Accident; I had been round the Island, and called at Mr. *O'Donnell's* to refresh myself with a Mug of Beer.

Mr. Sol. Gen. Where did you go after you signed as a Witness to the Paper?

Potts. I went with Mr. *James Brodbelt* to his Plantation, and from thence I went to Dr. *Webbe's*: It was about Ten o'Clock when I got there, and I went to Bed in about an Hour after.

Mr. Sol. Gen. Did you see the Prisoner that Night at Dr. *Webbe's*?

Potts. No, I did not see him from the Time I left Mr. *O'Donnell's*, till about Nine o'Clock next Morning: I saw him come into the Yard on Horseback, upon Dr. *Webbe's* Horse, *Kent*.

Mr. Sol. Gen. Did you ever hear of any Resentment the Prisoner had against the Deceased?

Potts. None in the World: On the contrary, I have always heard him express great Respect for the Deceased.

Pris. Mr. Potts, you saw me some Days before this Accident happened; did you ever hear me express any Resentment against Mr. *Mills*?

Potts. Never, I never did indeed.

Pris. Have you not often heard me speak of him in the most respectful Terms, and such as shewed I had a great Esteem for him?

Potts. I have indeed very often; and I never heard you say any Thing of him that looked like Malice or Resentment.

Thomas Hobson sworn.

Mr. Sol. Gen. Do you remember hearing the Report of the Deceased being killed?

Hobson. Yes, Sir.

Mr. Sol. Gen. Do you remember when it was that you heard it?

Hobson. It was on *Sunday* the 19th of *November* last.

Mr. Sol. Gen. Where do you live?

Hobson. I live on *Bridgewater's* Estate at *Nevis*.

Mr. Sol. Gen. Pray inform the Court and the Jury of what you know concerning a Horse and

Boy coming to your House, the Night before you heard the Deceased was killed.

Hobson. On *Saturday* Night, the Night before I heard the Deceased was killed, Dr. *Webbe's* Boy *Pope* came to the House where I live with Dr. *Webbe's* Horse; and knocked at the Door, and called me: It was about Midnight. I got up and opened the Door, and saw it was *Pope*. He was wet. I asked him, where he had been; he told me he had been round the Island looking for his Master.

Mr. Sol. Gen. Was the Horse wet?

Hobson. Yes, the Horse was wet.

Mr. Sol. Gen. Did the Horse and Boy stay at your House all Night?

Hobson. Yes, Sir, he put the Horse in the Stable, and staid there all Night; and about Eight o'Clock next Morning, I saw a little Man, in a whitish Coat, and a silver-laced Hat, coming up. As soon as he came up to the Steps, he asked for *Pope*. *Pope* went to him, and he bade him saddle the Horse.

Mr. Sol. Gen. Did not he ask first, if there was a Horse there?

Hobson. No, the Minute he came to the Steps, he called for *Pope*, and bade him saddle the Horse.

Mr. Sol. Gen. Did he seem to expect a Horse there?

Hobson. Yes, I believe he did, for he bade *Pope* saddle the Horse, without asking whether there was any Horse there.

Mr. Sol. Gen. Pray, look at the Prisoner. Was the Person you saw that Morning, that bade *Pope* saddle the Horse, like the Prisoner?

Hobson. Yes, it was that very Man.

Mr. Sol. Gen. You are sure it was the Prisoner?

Hobson. Yes, I am sure it was him.

Mr. Sol. Gen. After he ordered *Pope* to saddle the Horse, what did he do then?

Hobson. As soon as the Horse was saddled, he asked *Pope* which Road he should take, and *Pope* shewed him the nighest Way to *Pinney's*, where Dr. *Webbe* lives, and he got on Horseback, and rode away.

Mr. Sol. Gen. Did the Prisoner come up from the Bay the Morning you saw him?

Hobson. I believe he did; he came from that Way.

Mr. Sol. Gen. Did you take Notice whether his Cloaths were wet?

Hobson. I observed his Shoes were wet. I cannot tell if the rest of his Cloaths were wet or not.

Mr. Sol. Gen. How high up was he wet?

Hobson. Only his Shoes, that I saw.

Mr. Sol. Gen. Had he any Boy with him with a Trunk?

Hobson. No, I saw no Boy with him, nor no Trunk.

Mr. Sol. Gen. We have done with this Witness.

Mr. President. Would you ask this Witness any Questions, Mr. *Barbot*?

Pris. No, Sir.

Sarah Hobson sworn.

Mr. Sol. Gen. Where do you live?

Hobson. I live on *Bridgewater's* Estate at *Nevis*.

Mr. Sol. Gen. Do you remember hearing the Report of the Deceased being killed?

Hobson. Yes.

Mr. Sol. Gen. And when it was?

Hobson. Yes, it was on *Sunday* the 19th of *November* last.

Mr. Sol. Gen. Well, give the Court and the Jury an Account of what you know of a Horse and Boy coming to your House, the Night before you heard of the Report of the Murder.

Hobson. The Night before I heard the Report of the Murder, I heard a knocking at the Door about Midnight, and I called to my Brother, and asked him what it was. He told me, he believed it was the Negroes cutting Wood in the Garden; but I knew it could not be that, for the Garden was too far off to have heard, if it had been so. My Brother immediately got up and opened the Door, and found it was Dr. Webbe's Pope with his Horse. My Brother asked him, where he had been; he said, he had been round the Island looking for his Master. I did not see Pope, but I heard this as I was in the Chamber; and, about Eight o'Clock the next Morning, as I was standing at the Door, I saw a little Gentleman coming up to the House. As soon as I saw him, I went into the Chamber, and looked through the Window at him; and as soon as he came up to the Steps, he called for Pope. Pope went to him, and he ordered him to saddle the Horse.

Mr. Sol. Gen. Gentlemen of the Jury, you observe both these Evidences say the Boy Pope declared, when he came to Bridgewater's, that he was looking for his Master; and yet, as I desired you to take Notice in the Course of Dr. Webbe's Evidence, the Doctor himself declared, he neither sent out this Boy, nor any of his Horses, that Night. What! did he bid Pope saddle the Horse, before he knew whether there was a Horse there or no?

Hobson. Yes, the Moment he came to the Steps, he called for Pope, and bade him saddle the Horse.

Mr. Sol. Gen. Did he speak as if he expected to find a Horse there?

Hobson. I believe he did, by bidding Pope saddle the Horse the Minute he came to the Steps.

Mr. Sol. Gen. Pray, how was he dressed?

Hobson. He had on a whitish Coat, a silver-laced Hat, and a pig-tail Wig.

Mr. Sol. Gen. Look at the Prisoner. Pray, was the Person, you saw that Morning, like him?

Hobson. Yes, that is the very Man.

Mr. Sol. Gen. You are sure it was the Prisoner?

Hobson. Yes, I am sure it was him.

Mr. Sol. Gen. What did he do, after he had ordered Pope to saddle the Horse?

Hobson. As soon as the Horse was saddled, he asked Pope which Road he should take, and Pope shewed him the nighest Way to Pinney's, where Dr. Webbe lives, and he got on Horseback, and rode away.

Mr. Sol. Gen. Do you know where the Prisoner came from, when he came up to your House?

Hobson. I believe he came from the Bay, for he came from that Way.

Mr. Sol. Gen. Were his Cloaths wet?

Hobson. I did not take Notice that his Cloaths were wet, but his Shoes were.

Mr. Sol. Gen. How high up was he wet?

Hobson. I only observed that his Shoes were wet.

Mr. Sol. Gen. Had he any Boy with him with a Trunk?

Hobson. No, he had no body at all with him, that I saw, nor no Trunk.

Mr. Sol. Gen. We have done with this Evidence.

John M^cKenley sworn.

Mr. Sol. Gen. Mr. M^cKenley, where do you live?

M^cKenley. I live upon Mr. Spooner's Estate at Frigate-Bay.

Mr. Sol. Gen. Pray inform the Court and the Jury of what you know concerning the Death of the Deceased.

M^cKenley. On Sunday Morning the 19th of November last, I got up at about Four o'Clock, and went out to give some Orders in the Plantation, and returned in about a Quarter of an Hour. As soon as I came in, I lay down upon my Bed; and presently after a Negro Boy rushed into my Chamber, and threw himself upon the Bed where I was lying, and cried out, O Lord, Master, make Haste and come down, for my Master is fighting with Sword and Pistols, with a Gentleman that is come from Nevis. I immediately got up, and asked him, who was his Master? He answered me, Mr. Matthew Mills. I then looked hard at the Boy, and knew him to be Coomy, that always ran with the Deceased. The Boy immediately got upon his Master's Horse, (for he had rode up) and galloped down as fast as he could, and I followed him on Foot, for I thought I should get down to the Bay sooner, than if I stayed to have my Horse saddled. When I came down to the Place just by the Starting-Post, I found Coomy supporting the Deceased between his Legs, and the Deceased's Head leaning on Coomy's Breast. I ran immediately up to him, and asked him who had used him so, but he made me no Answer. I took hold of his Hand at the same Time, and he had no Pulse. I found then that he was stone dead, but still warm, and was but just expired. I then asked Coomy, who it was that had killed his Master; he told me it was Mr. Barbot, and that if I would go down to the Bay, I might see him, for that he was just gone off in a Canoo.

Pris. Gentlemen of the Jury, you will please to observe, that what Mr. M^cKenley tells you of Coomy's Declaration, is no Evidence at all. Coomy himself cannot be an Evidence at any Rate, much less can what he only told another be Evidence.

Mr. Frye. Gentlemen, this is but hearsay Evidence, which I appeal to the Bench is no Evidence in any Case, much less where a Man's Life is concerned.

M^cKenley. I immediately ran down to the Seaside, and saw a Canoo with four Oars and a Paddle, making very fast from the Shore.

Mr. Sol. Gen. At what Distance was the Canoo from the Shore, when you first saw it?

M^cKenley. It was about fifty Yards off.

Mr. Sol. Gen. Could you distinguish the Persons in the Canoo?

M^cKenley. No, I could not distinguish who they were. I saw somebody in white sitting in the Stern of the Canoo, but I could not tell who it was. I was in so much Confusion, that I did not take as much Notice as I might have done.

Mr. Sol. Gen. What Cloaths had the Deceased on?

M^cKenley. He had on his great Coat and his Gloves.

Mr. Sol. Gen. What Kind of Gloves?

M^cKenley. I really cannot tell what Kind of Gloves; they were of a brownish Colour.

Mr. Sol. Gen. Were they Buff Gloves?

M^cKenley. No; I think they were not Buff; but I cannot positively say what Kind of Gloves they were.

Mr. Sol. Gen. What Situation were the Deceased's Pistols in?

M^cKenley.

M^rKenley. His Pistols were in the Holsters on his Horse.

Mr. Sol. Gen. Did you examine his Pistols?

M^rKenley. No, I did not.

Mr. Sol. Gen. Was his Sword drawn?

M^rKenley. No, his Sword was lying on the Ground at some Distance from him in the Scabbard, and the Belt wrapt round the Hilt.

Mr. J. Lofack. What Time do you think it would take to go in a Canoo from *Frigate-Bay* to the *Salt-Ponds*?

M^rKenley. I cannot tell; but the Canoo was rowing very hard from the Shore.

Mr. Sol. Gen. How long do you think it would take? You may guess pretty near the Time.

M^rKenley. I believe it might take about Half an Hour.

Pris. Was the Person you saw in white, sitting in the Stern of the Canoo, a white Man or a Negro?

M^rKenley. I cannot tell whether it was a white Man or a Negro.

Mr. Sol. Gen. Call *William Johnson*, (who appeared.)

Pris. May it please your Honours, I humbly beg Leave to oppose *Johnson's* being sworn.

Mr. President. Let us hear your Objections to him.

Pris. He is an infamous Person.

Mr. Frye. He is so, for I saw him publicly whipt at *Montserrat* for Petty Larceny.

Mr. Sol. Gen. May it please your Honours, if the Prisoner would invalidate the Evidence of *Johnson*, on the Score of what *Mr. Frye* alledges, it is necessary that he produce the Record of his Conviction. Let him produce the Record.

Mr. Frye. I knew nothing of this Man's being produced as a Witness till the Day before Yesterday; otherwise I could have had the Record, or an attested Copy of it now. But I humbly apprehend I may be admitted to produce Witnesses to prove that he was publicly whipt for Petty Larceny, for stealing a Pair of silver Shoe-buckles. He is rendered an infamous Man, and ought not to be admitted as a Witness.

Mr. Sol. Gen. I am surprized to hear a Gentleman of *Mr. Frye's* Standing and Experience in the Law, offer a Thing of this Kind, when he must know, that nothing but the Record of this Man's Conviction, or an attested Copy of it, can disable him to be a Witness. It is absolutely illegal, Sir, to offer to prove the Fact *Mr. Frye* speaks of by Witnesses, who, he says, saw *Johnson* punished; or by any other Method, than that which I have mentioned.

Mr. Frye. Surely we shall be allowed to examine Witnesses to the Character of this Man.

Mr. Sol. Gen. Yes, to his general Character you may be allowed to give Evidence, but not to any particular Part of it; and that only to discredit his Evidence, after he has given it: But no Evidence of that Sort can disable him from being a Witness at all.

Mr. Frye. I did see him publicly whipt, and I know him to be an infamous Person, and would not regard his Oath of a Farthing.

Mr. Horne. May it please your Honours, I humbly beg that *Mr. Frye* be not allowed to speak in this Manner of the Witness. If he had intended to object to this Man, he ought to have done it legally; he knew the Method the Law had prescribed, and ought to have pursued it; and I

hope your Honours will not allow him to discredit the Witness, by throwing out Things he cannot legally support. It is done with a Design to influence the Jury. If *Mr. Frye* can produce any Evidence to his general Character, he has been told he may do so; but that in its proper Place, and not to prevent his giving his Evidence, or before he has given it.

Mr. Frye. I will produce Witnesses to his Character; but it is strange I sha'n't be allowed to prove that Fact by *vivâ voce* Witnesses!

Mr. Horne. You are not to be allowed that, *Mr. Frye*; you know it is illegal; and I am surprized a Gentleman of your Knowledge in the Law, should insist on a Thing of this Kind.

Mr. Frye. Go on then, Sir, I will by and by produce Witnesses to this Man's Character.

Mr. President. Swear *Johnson*, (which was done.)

Mr. Sol. Gen. Did you come to this Island at any Time in or about the Month of *November* last?

Johnson. Yes, on *Sunday* the 19th of *November*.

Mr. Sol. Gen. Pray inform the Court and the Jury, whether you saw the Prisoner at the Bar on *Sunday* the 19th of *November* last, and where it was you saw him?

Johnson. I left *Montserrat* on *Saturday* the 18th of *November* last, and came to an Anchor at the *Salt-Ponds* at about Two o'Clock the next Morning, and at about Four I put out of the *Salt-Ponds*; and in about two Hours after, a Canoo with four Oars and a Sail passed by me. The Prisoner was in the Canoo, he had on a white Coat and a laced Hat, and a dark-coloured Waistcoat.

Mr. Sol. Gen. Do you know the Prisoner?

Johnson. Yes, I have seen him several Times at *Nevis*, and once at *Montserrat*.

Mr. Sol. Gen. Could you see, from the Place where you were when you met the Canoo, all the Way between *Frigate-Bay* and *Nevis*?

Johnson. Yes.

Mr. Sol. Gen. And was there any other Canoo in the Channel?

Johnson. No, there was none but that which the Prisoner was in.

Mr. Sol. Gen. At what Distance was the Canoo from you, when it passed by?

Johnson. It was about forty or fifty Yards off.

Mr. Sol. Gen. Where did you think it came from?

Johnson. It seemed coming from *Frigate-Bay*, and was standing for *Nevis*.

Mr. Sol. Gen. Are you sure the Prisoner at the Bar was the Person you saw in the Canoo?

Johnson. Yes, I am sure he was the Person.

Mr. Frye. It is very odd you should now be so positive it was the Prisoner, when you could not positively swear to him the very Day of the Murder, when you were examined before the Coroner's Inquest. We shall produce a Witness by and by to prove that you were not then so positive.

Mr. Sol. Gen. Since this has been thrown out, I beg Leave to ask the Witness another Question. Pray, did you see the Prisoner at any Time between your Examination before the Coroner, and this Day?

Johnson. Yes, I saw him in *Gaol*; and when I saw him there, I was satisfied he was the Man that I had seen in the Canoo the Morning I was coming from the *Salt-Ponds*.

Mr. Sol. Gen. However, to make this Matter still plainer, we shall call a Gentleman of Character, who will inform the Court and Jury, that this

this Witness declared his seeing the Prisoner at the Time and Place he has now sworn he did, before he had received any Intimation, or had it at all suggested to him, that the Prisoner was then there. Call *Thomas Wilson*, Esq;

Thomas Wilson, Esq; sworn.

Mr. Sol. Gen. Mr. *Wilson*, will you please to give the Court and the Jury an Account of your seeing *Johnson* on the 19th of *November* last, and what passed between you?

Wilson. On *Sunday* the 19th of *November* last, in the Morning, on hearing that the Deceased was killed, I went down to Mr. *Colboun's*, to inquire further of the Matter. I staid there about Half an Hour, and at my Return home I found this Witness *Johnson* waiting for me with a Letter, which he had just brought from Mr. *Misset* of *Montserrat*. He told me, that Mr. *Misset* had hired him on Purpose to bring me that Letter, and that if I did not dispatch him by Twelve o'Clock, Mr. *Misset* was to pay him so much an Hour after that Time. I then said to him, *There has been Murder committed here*. He asked me, *What Murder?* I told him, that a Gentleman of this Island, one Mr. *Mills*, was killed, and it was supposed by Mr. *Barbot*. *Barbot!* said he, *why I met him going in a Canoo to Nevis this Morning*. Do you know him then? said I. Yes, said he, *I have known him above eighteen Months*. I thought this so material a Circumstance, that I immediately acquainted Mr. *Colboun* of it.

Mr. Sol. Gen. The Court and Jury will take especial Notice of Mr. *Wilson's* Evidence, because it will stand for an Answer to the Objection that will be made to *Johnson's* Evidence, from what they insinuate of the Badness of his Character; which in this Case must be wholly out of the Question, seeing the first Information he gave was before there is the least Probability he could have had it suggested to him.

Jasper Thomas sworn.

Mr. Sol. Gen. Pray inform the Court and the Jury, whether you saw the Prisoner on the 19th of *November* last, and where you saw him.

Thomas. On *Sunday* Morning, the 19th of *November* last, I saw a Canoo land under the Manchioneal Trees, just under *Lowland-Church*: It was Mr. *Cribbe's* Canoo; Mr. *Hulburd's Peter* and Mr. *Deverade's Joe* were in it, and the Prisoner jumped out of the Canoo the Instant it struck the Shore. He had on a silver-laced Hat, and a whitish Coat.

Mr. Sol. Gen. What Time in the Morning was it that he landed?

Thomas. It was between Six and Seven in the Morning.

Mr. Sol. Gen. Did any body come out of the Canoo with the Prisoner?

Thomas. There was a little yellow Negro Boy, with a little red Trunk on his Head, that jumped out of the Canoo at the same Time that the Prisoner did, and went towards the Town.

Mr. Sol. Gen. Did you see the Canoo at any Distance before it landed?

Thomas. I saw it above fifteen hundred Yards off before it landed. It was under Sail, and they did not strike Sail 'till the Canoo struck the Ground.

Mr. Sol. Gen. Where did you think the Canoo came from?

Thomas. It seemed to me to be coming from the *Salt-Ponds*.

Mr. Sol. Gen. Are you sure it was the Prisoner at the Bar you saw land out of the Canoo?

Thomas. Yes, I am sure it was him, for I know him very well.

Mr. Sol. Gen. Do you know where he went to when he landed?

Thomas. No, I cannot tell where he went to.

John Thomas sworn.

Mr. Sol. Gen. Do you remember when it was you heard the Deceased was killed?

Thomas. Yes, it was on *Sunday* the 19th of *November* last that I heard it.

Mr. Sol. Gen. Did you see the Prisoner at the Bar that Day?

Thomas. Yes.

Mr. Sol. Gen. Then give the Court and the Jury an Account where, and at what Time, you saw him.

Thomas. It was on *Sunday* Morning, the 19th of *November* last, the Day that I heard the Deceased was killed. I was with my Father *Jasper Thomas*, and I saw a Canoo at a Distance under Sail, that seemed to be coming from *St. Kitt's*; and I said to my Father, I believed there were some *St. Kitt's* People coming up; and soon after the Canoo came ashore, and Mr. *Hulburd's Peter* and Mr. *Deverade's Joe* were in it; and I saw a little Man, very like the Prisoner, jump out of the Canoo, and run up the Bank. He had on a silver-laced Hat and a long-tail Wig, a whitish Coat, and a brownish Waistcoat.

Mr. Sol. Gen. Was it the Prisoner at the Bar that you saw?

Thomas. I do believe it was him, for the Person I saw was very like him.

Mr. Sol. Gen. Did any body land out of the Canoo besides the Prisoner?

Thomas. There was a little yellowish Negro Boy, with a small red Trunk on his Head, that jumped out of the Canoo at the same Time the Prisoner did, and went towards Town.

Mr. Sol. Gen. What Time in the Morning was it that the Prisoner landed out of the Canoo?

Thomas. It was between Six and Seven in the Morning.

Mr. Sol. Gen. Did you observe which Way he went after he landed?

Thomas. No, I did not take Notice which Way he went.

William White sworn.

Mr. Sol. Gen. Do you know the Prisoner at the Bar?

White. Yes, I know him very well.

Mr. Sol. Gen. Do you live at *Nevis*?

White. No, but I have been working there for above a Twelvemonth.

Mr. Sol. Gen. When was it you first heard the Report of the Deceased being killed?

White. I heard it on *Sunday* the 19th of *November* last.

Mr. Sol. Gen. Did you see the Prisoner that Day?

White. Yes, I was at work at Mr. *Woodley's* Estate at *Nevis* that very Morning, and I looked towards the common Road, and saw a little Man that I took for the Prisoner. He was walking up the Road that leads to *Bridgewater's* Estate.

Mr. Sol. Gen. Pray, does that Road lead to any other Estate or House besides *Bridgewater's*?

White. Yes, it leads to Mr. *Huggins's*.

Mr. *Sol. Gen.* Did you see where the Prisoner came from?

White. No, but I believe he came from the Bay.

Mr. *Sol. Gen.* How was he dressed?

White. He had on a laced Hat, and a brown Coat.

Mr. *Sol. Gen.* A brown Coat? You must be mistaken surely?

White. No, I am not; it was a brown Coat.

Mr. *Sol. Gen.* Do you see any Coat here in Court that is like it? Look about, and see if you can't find some Coat that resembles it in Colour.

White. It was like this Coat, I think, (*showing a brown Coat.*)

Mr. *Sol. Gen.* He may be mistaken in the Colour of the Coat. If he swears to the Identity of the Person, it is sufficient. Once more let me ask you on your Oath, Are you sure it was the Prisoner at the Bar that you saw?

White. Yes, I am sure it was him.

Mr. *Edward Bridgewater* sworn.

Mr. *Sol. Gen.* Mr. *Bridgewater*, pray inform the Court and the Jury, whether you saw the Prisoner on the 19th of *November* last, and where you saw him.

Bridgewater. On the 19th of *November* last, between Nine and Ten in the Morning, I saw the Prisoner riding over *Gruff's Gutt*, the nearest Way to Dr. *Webbe's*. He met *Jacob Saunders*, and they stopt and spoke together, and that gave me an Opportunity of coming pretty near him, and I took Notice that the Prisoner was on a Horse of Dr. *Webbe's*; it was a sorrel Horse, with a white Face. In the Afternoon of the same Day I went to Mr. *John Symmonds's*; while I was there, Dr. *Webbe* came in, and presently after Mr. *Symmonds* received a Letter, that gave an Account of the Prisoner's having killed the Deceased. As soon as Mr. *Symmonds* mentioned it, Dr. *Webbe* said, that the Prisoner had lain at his House the Night before.

Mr. *Sol. Gen.* Did you perceive any Alteration in Dr. *Webbe*, on Mr. *Symmonds's* mentioning what had happened?

Bridgewater. Yes, he changed Countenance, and seemed, I thought, a good deal confused; and Mr. *Symmonds* asked him, if he had seen the Prisoner that Morning? Dr. *Webbe* answered, that he had not seen the Prisoner since he went to Bed the Night before at his House; at which I expressed a good deal of Surprize, and said, that I had seen him that Morning riding towards Dr. *Webbe's* House on a Horse which I was sure belonged to Dr. *Webbe*.

Mr. *Sol. Gen.* Did Dr. *Webbe* make you any Answer to this?

Bridgewater. I do not remember that he did; but in about five or six Minutes after he went away, and said he was going up towards the Mountain.

John Cribbe sworn.

Mr. *Sol. Gen.* Pray inform the Court and the Jury, whether the Prisoner hired a Canoo of you, and when it was.

Cribbe. It was the *Friday* before I heard the Deceased was killed. The Prisoner hired my Canoo to carry some Letters to *St. Kitt's*, and the Canoo returned the next Day in the Afternoon.

Mr. *Sol. Gen.* Did the Prisoner hire the Canoo again of you the Day she returned?

Cribbe. No, the Day she returned, the Negroes that belong to her took her to go a fishing, as I understood; and I did not see them again 'till about Eight o'Clock on *Sunday Morning*, which was the Day I heard the Deceased was killed. I went to *Peter*, and asked him, *What Luck?* for I imagined they had been fishing: He answered me, *Poor Luck!* and looked very thoughtful and melancholy, and said, he was troubled. I asked him, what was the Matter? He told me, he had been at *St. Kitt's* with Mr. *Barbot*, who, he was afraid, had done a great deal of Mischiefe, for he believed he had killed Mr. *Mills*.

Pris. Gentlemen of the Jury, pray don't be influenced by this Part of the Evidence. This is the same with what *M^cKenley* swore of *Coomy's* Declaration; but neither one or other of them, as being only hearsay Evidence, and that of Slaves too, ought to affect me.

Mr. *Frye.* Nay, indeed, the Evidence ought not to have been given: Surely, no Hearsay can be Evidence. Nothing is more indisputable than that.

Mr. *Sol. Gen.* In this Case it is very material Evidence; but of that by and by: We won't interrupt the Course of Evidence; but observe upon it in a more proper Place. At what o'Clock in the Morning was it that you had this Discourse with *Peter*?

Cribbe. It was about Ten o'Clock.

Mr. *Sol. Gen.* Had you then heard it reported that the Deceased was killed?

Cribbe. No, I had not heard it 'till *Peter* told me of it.

Mr. *Sol. Gen.* He was the first Person you heard it from?

Cribbe. Yes, he was the first that told me of it.

Mr. *Sol. Gen.* We will bring a Witness to prove that *Peter* could not have heard the Report of the Murder at the Time this Witness says he told him of it; for we shall shew that the Person who carried the first News of the Murder to *Nevis* did not arrive there, 'till at least an Hour after *Cribbe* had the Conversation he has related with *Peter*.

Call *Thomas Quin*, (who was sworn.)

Mr. *Sol. Gen.* Mr. *Quin*, at what o'Clock did you arrive at *Nevis*, the Day you were sent up in pursuit of the Prisoner at the Bar?

Quin. It was about Eleven o'Clock, Sir.

Mr. *Sol. Gen.* When you arrived at *Nevis*, did you report publicly that the Deceased was killed?

Quin. No, I did not say a Word of it to any body but the Gentleman I carried the Letters to from Mr. *Colboun*.

Mr. *Sol. Gen.* Was it known at *Nevis*, before you arrived there, that the Deceased was killed?

Quin. No, I am sure it was not, or I should have heard of it. I am sure I was the first that carried the News of it, for I did not stop or stay any where, but went off the Minute Mr. *Colboun* gave me the Letters, and made the best of my Way up.

Mrs. *Frances Dasant* sworn.

Mr. *Sol. Gen.* Madam, will you please to give the Court and the Jury an Account of what you know concerning the Prisoner's taking away a Case of Pistols from your House?

Dasant. Upon hearing that the *Magazine* was broke open on *Sunday Night*, the 19th of *November* last, I ordered all the Arms in the House to be

be searched for, to see that there were none missing; and upon missing a Pair of Pistols, I ordered the Boy to look on the Beam for them, where I had directed him to put them. He looked, and could find but one Pair: I then grew very uneasy, and sent to desire Dr. *Webbe* to come over to me. He did so the next Morning, and I told him I was very uneasy; that I missed a Pair of Pistols, and asked him, if he knew where they were? He told me, that he knew nothing of them. I begged of him then to help me to search for them. Accordingly he went into the Shop with me, and searched there, but could not find them. From thence we went into the Chamber, and the *Doctor* looked under the Bed, and found the Pistols.

Mr. *Horne*. What was it that induced you to look for the Pistols?

Dasent. Hearing the Magazine was broke open, and the Accident that had happened to Mr. *Mills* together, made me think of looking for them. I was very uneasy about it, for I had heard that the Prisoner and Dr. *Webbe* took down the Pistols in my Absence, while I was at my Mother's, to fire out of.

Mr. *Horne*. Did you see a red Trunk belonging to the Prisoner, in the Room where the Pistols were found?

Dasent. Yes, there was a small red Trunk that belonged to the Prisoner.

Mr. *Horne*. Did you ever desire the Prisoner to leave your House?

Dasent. Yes; the *Thursday* before this Accident happened, I desired him to come to my House no more, for some prudential Reasons I had.

Mr. *Horne*. Did this put an end to his Visits?

Dasent. Yes, he came to my House no more; but he sent to borrow a Horse of me the Day before the Murder, which I refused to lend him; nor I knew nothing of his Trunk being at my House 'till the *Monday* after the Accident, that Judge *Herbert* came to my House, and demanded the Trunk, and it was opened before him.

Mr. *Horne*. Were you present when the Trunk was opened?

Dasent. Yes, Sir.

Mr. *Horne*. What was in it, pray?

Dasent. I saw nothing in it but a brown Waistcoat, and a Pair of black Breeches.

Mr. *Horne*. Did they belong to the Prisoner?

Dasent. Yes, I believe they did.

Mr. *Horne*. Is this the Prisoner's Trunk, and are these the Cloaths (*the Prisoner's Trunk and Cloaths shewn her*) you saw taken out of that Trunk?

Dasent. Yes, I believe they are.

Joseph Herbert, Esq; sworn.

On hearing the Deceased was killed by the Prisoner with a Pair of *James Dasent's* Pistols, I went, the Day after the Murder, to Mrs. *Dasent's*, to inquire for them. When I came there, I saw a small red Trunk, which being opened, I found a Pair of black Breeches and a brown Waistcoat in it, which were wet. I touched the Waistcoat with my Tongue, and found it salt, from which I concluded it must have been wet with Salt-Water. These Pistols (*Pistols shewn him*) which Mrs. *Dasent* had missed, were shewn to me at the same time; and I was informed by some of the Negroes, that they believed the Prisoner's Boy had brought the Pistols to Mrs. *Dasent's* privately in his Cloaths.

Mr. *Sol. Gen.* Is this the Trunk, and are these the Cloaths, you saw at Mrs. *Dasent's*, (*the Trunk and Cloaths shewn him*) the Day after the Murder?

Mr. *Herbert*. Yes, they are.

Dr. *Hamilton* and Mr. *Edwards* sworn.

Mr. *Horne*. Dr. *Hamilton*, you were sent for, I think, to inspect the Body of the Deceased?

Dr. *Hamilton*. Yes, Sir, I was sent for on *Sunday* the 19th of last *November* by the Coroner, to view the Body of the Deceased. When I came to Mr. *Colboun's*, where the Body lay, I found that the Deceased had received a Wound on the right Side, which must have been given him by a Ball out of some Fire-arm.

Mr. *Horne*. Whereabout on the right Side?

Dr. *Hamilton*. I cannot describe it better than thus; by drawing a straight Line directly from the Pap four Inches downwards, and then carrying it four Inches towards the Back. In that Place was the Wound.

Mr. *Horne*. Sir, will you please to put your Finger on the Place, as near as you can guess, where the Wound was received?

Dr. *Hamilton*. It was just here, (*placing his Finger on his own Side.*)

Mr. *Horne*. Now go on, Sir, if you please.

Dr. *Hamilton*. I then, with the Assistance of my Son Mr. *Edwards*, opened the Body, and found that the Ball had entered between the two last false Ribs, and splintered one of them, and had penetrated the Body obliquely from the right to the left Side, and had wounded the fore Part of the Liver on the left Side. I found too, that in passing it had wounded a large Blood-vessel.

Mr. *Horne*. Do you think the Deceased could have received that Wound, if he had been standing in a Posture of Defence?

Dr. *Hamilton*. No, I think he could not; for the Situation of the Wound was such, that had he been in a Posture of Defence, he could not have received it in that Place: And from the Course the Ball took (which was towards the fore Part of the left Side of the Body) it is evident, I think, that the Deceased could not have been in a Posture of Defence.

Mr. *Horne*. Do you think that that Wound was the Cause of his Death?

Dr. *Hamilton*. Yes, I am certain it was.

Mr. *Horne*. Did you find the Ball?

Dr. *Hamilton*. No, I searched for it, but could not find it. I believe it had fallen into the *Abdomen*, which was so full of Blood, that there was no Possibility of finding the Ball, unless we had taken out all the Bowels; and it was so late, that the Jury, satisfied on my Report that the Wound must have been given by a Ball discharged from some Fire-arm, and that it was the Cause of the Deceased's Death, did not think it necessary to look any farther for the Ball.

Mr. *Horne*. Mr. *Edwards*, you assisted Dr. *Hamilton* in opening the Body of the Deceased; can you give the Court any farther Information of the Nature of the Wound than what the *Doctor* has already related?

Edwards. No, Sir, I can say no more than what Dr. *Hamilton* has already related.

Mr. *Walter Pringle* and Mr. *Samuel Baker* sworn.

Mr. *Sol. Gen.* Mr. *Pringle*, pray give the Court and the Jury an Account of the Situation you found the Deceased's Pistols in the Morning he was killed.

Pringle. On *Sunday* Morning, the 19th of *November* last, I heard the Deceased was killed at *Frigate-Bay*, and that his Body was brought to Mr. *Colboun's*, where I went to see it. As soon

as I came into the Room, I asked for the Deceased's Pistols, and somebody (I really do not recollect who it was) brought them to me. They were a small Pair of screw-barrel Pistols, with a brown wooden flat Handle, (*the Pistols shewn him.*) These are the Pistols. I unscrewed one of them, and found a Ball sticking in the Barrel. I looked into the Chamber, and could find no Powder in it. I smelt it, and it did not appear to me by the Smell that it had been lately fired out of. Then I examined the Screws and the Cock very carefully, and could not perceive that any Part of them were the least tinged with Powder. I then unscrewed the other Pistol, and examined it in the same Manner I had done the first; but I found no Ball in it, nor any the least Sign of Powder either in it or about it, except about two Grains, which I imagine had been bruised by the Hammer; but I think, if the Pistols had been fired out of lately, there would have been a Stain of burnt Powder left about the Cock, which always remains after any Fire-arm is discharged; and there was no such Stain on either of these Pistols.

After I had done with the Pistols, I examined the Deceased's Cloaths, and found upon the right Flap of his Coat a Stain of dry Powder, and the same upon the Inside of his great Coat, on the right Side.

Baker. I was at Mr. Colboun's on Sunday the 19th of November last, the Morning that the Deceased was killed, and upon inquiring for the Deceased's Pistols, they were brought to me. These are the Pistols: They were half-cocked. I unscrewed one of them, and examined it very carefully, and there was neither Powder nor Ball in it, nor any where about it, except about two Grains of Powder, which seemed to have been bruised by the Hammer. I unscrewed the other, and examined it in the same Manner, and found a Ball sticking in the Barrel, but no Powder at all either in the Chamber, or any where else about it, nor there was not the least Stain of burnt Powder either about the Cock, or any where else; for I put my little Finger into the Barrel, and there came off upon my Finger a yellowish rusty Dirt; whereas if the Pistols had been fired out of, there would have remained in the Barrel a black Moisture, which would have come off on my Finger: From all which Circumstances I am convinced the Pistols had not been fired out of. After I had done with the Pistols, I examined the Deceased's Cloaths; and the right Flap of his Coat, and the Inside of his great Coat, were stained with dry Powder, as Mr. Pringle has related.

Mr. Horne. I desire Judge Herbert may be called again.

Judge Herbert was called and appeared.

Mr. Horne. Will you please, Sir, to give the Court and the Jury an Account of what you found in the Pockets of the Deceased?

Mr. Herbert. The Morning that the Body of the Deceased was brought to Mr. Colboun's, I was there; and a little while after the Body was laid down, I searched the Deceased's Pockets, and found in his Breeches Pockets three Bullets.

Mr. Sol. Gen. May it please your Honours, we shall call no more Witnesses, unless the Prisoner makes it necessary by his Defence; but shall rest the Charge here.

Mr. President. Mr. Barbot, now is the Time to make your Defence. The King's Council will

call no more Witnesses, 'till they hear what you have to say.

Prisoner. May it please your Honours, and you Gentlemen of the Jury,

Now that the Council for the Crown have gone through their Evidence, such as it is, and finished their Charge, I am to beg your serious Attention, while I speak to you in my Defence.

To you, Gentlemen of the Jury, I shall chiefly address myself. You, Gentlemen, are my principal Judges on this unhappy Occasion; Judges which the Wisdom of our Ancestors have provided for every *British* Subject, who is, or shall be, accused; lest the Torrent of Power should at any Time prevail over Justice, and Malice and Ill-will should injure and oppress the Innocent. It is now, Gentlemen, I have Reason to think myself fortunate. I am by Birth an *Englishman*, and thereby, notwithstanding the implacable Resentment of my powerful Prosecutors, I cannot be denied the Privilege of having twelve honest Men to acquit me of the Crime laid to my Charge: For acquit me you must, if you, as I am sure you will, govern yourselves according to the Evidence; since, notwithstanding the Colourings which the Gentlemen for the Crown have given to what they have produced as such, there cannot, even upon the Footing on which it now stands, be more Reason to adjudge me guilty, than any of you, Gentlemen, who are now to pass upon me on my Life or Death.

Gentlemen, could I lay open my Heart to you, and make the Sentiments of my Soul visible to your Eyes, you would there see the most lively Sorrow for the Decease of the worthy Gentleman, for whose Death I stand here accused. I truly revere his Memory. He was, I doubt not, all that the Gentlemen concerned against me have said of him. But while I lament his untimely End, I cannot accuse myself for his Death. Would the depriving me of Life, on Rumour and Surmise, make Atonement for the Loss the World has sustained in him? Surely no! And therefore, as this Prosecution has been begun and carried on against me, not only with all imaginable Heat, but every Art has been used to deprive me of Existence, I must, I will stand up in Support of it, and, by preserving my Life, thereby pave the Way for vindicating my injured Character, and deprive my Prosecutors of the Satisfaction of triumphing over my Misfortunes.

Gentlemen, was I not afraid I should take up too much of your Time, I could give you a Detail of Impositions and Hardships that would shock you; the chief End of which was to deprive me of the Opportunities and Means of making a fair and just Defence. My Friends, Gentlemen, have been spirited from me; they have been threatened, if they should dare to come near me; Spies have been placed round the Gaol, to see if I was continually in Irons or no, and if at any Time I was taken out to dress: Mr. Thompson the Marshal has been harrassed and reprimanded for giving me too much Indulgence. I have been kept in total Ignorance of all which I ought to have known; and, 'till this Day, I was not made acquainted with the Persons who were to be produced as Evidence against me, much less with the Purport of what they were to swear, lest I might have provided the Means of invalidating any of their Testimony. I have been deprived the Privilege of writing privately to such Persons as I had Business with;

with; even Mr. *Cooke* my Sollicitor never approached me without a Witness (intended at least) to our Conversations; and the whole Island has been made acquainted with the Contents of a private Letter I received from my Father, on which some very ingenious Comments have been made, with an Intent, I suppose, to raise a popular Odium against me, and to make you think, Gentlemen, the Life of a Villain, such as I have been represented to be, was not worth your Care, and that you might, upon the slightest Surmise, condemn me to Death, if not for the Crime wherewith I am accused, yet for the general Disrepute I might acquire by the Success of these artful Endeavours to vilify my Reputation.

No Wonder then, Gentlemen, if that appears thus clouded. But I have such Confidence, Gentlemen of the Jury, in your Honour and Integrity, that I am assured you will not be influenced by any of these Artifices. Your Breasts, I doubt not, are divested of all Prejudice. I therefore promise myself you will attend calmly and deliberately to me, while I make some Observations on the Evidence you have heard delivered to you, and answer the Arguments which have been advanced against me.

One of these Witnesses, *Johnson*, Gentlemen, has taken upon himself, you have heard, to swear most positively he saw me on *Sunday* the 19th of *November* last in a Canoo, rowing towards *Nevis*, with some other Particulars. Yet is it not strange that this Man, on the very Day on which he thus pretends to have seen me, when the Fact must have been supposed to be most recent in his Memory, before the Coroner's Inquest, on being to this Purpose particularly interrogated by Mr. *Julius*, declared he could not positively swear it was me he saw, but only believed so? his Reason he gave for knowing me, at the same Time shewing his Malice against me, on Account of my being the Instrument of putting him twice in Gaol, which, however, I have no Recollection of. It is most plain, if he saw any Canoo at all, he judged me to be in such Canoo, from the Reports he had heard on Shore; and mad with the Desire of Revenge, he hastened to the Coroner's Inquest, with Intent to do me all the Prejudice in his Power. Yet there his Conscience pricked him, and, when made to recollect himself, could say no more than that he believed he saw me. After this, and from the Character you have heard of him, can any Credit be given to what he has sworn? I am well assured, Gentlemen, you will give it none.

As to the Evidence of *Patience Dorset*, she swears, Gentlemen, positively, that the Words which she is pleased to have heard me say, were spoken by me on the 10th of *November* in the Morning, being the King's Birth-day, at Mr. *McCabée's* Tavern. Now, Gentlemen, I shall prove to you beyond Contradiction, I was all that Day, and for four preceding Days, and for ten Days after, at *Nevis*. And particularly on the 10th of *November*, I was for the whole Day in a Part of *Nevis* the farthest removed from this Island, at least seven Miles from the Town, and did not in the least dream of coming down here, having Business of Importance to transact there, which required my Presence. And when I have done this, I hope I shall have effectually destroyed this mighty Fabrick, which the Council for the Crown have taken such infinite Pains to raise up.

All the rest of the Evidence have not the least, the most distant Relation to the Crime wherewith I am charged, consisting only of my Motions from Place to Place, and of some trifling Transactions, none of which shew any Thing like my harbouring Designs to the Prejudice of any one, much less of Mr. *Mills*; against whom there is not the least Appearance I could entertain any Anger. I desire Mrs. *Lowman* may be called.

Mrs. *Frances Lowman* sworn.

Pris. Please to inform the Court, Madam, whether I was, or was not at *Nevis* on the 10th of *November* last.

Lowman. Mr. *Barbot* came to my Father's, Mr. *George Webbe's* senior, on the 8th of *November* last; he dined and lodged there; and lodged there the next Night also. On the 10th he breakfasted there; and after Breakfast, he and Mr. *William Daniel* walked out together, and returned in about two Hours; and I left him at my Father's, at about One o'Clock, just going to sit down to Dinner. Dinner was upon Table, and I went away to my Brother *George Webbe's*, where I dined in Company with Mr. *William Herbert*.

Mr. *Sol. Gen.* You say the Prisoner and Mr. *Daniel* took a Walk after Breakfast on the 10th of *November*; pray, where did they go to?

Lowman. I believe they went to Mr. *Ottley's*.

Mr. *Sol. Gen.* They were absent for two Hours, you say; at what Time in the Morning did they go out?

Lowman. They went out at about Nine o'Clock, and returned in about two Hours.

Mr. *Sol. Gen.* Pray, Madam, when were you first applied to, to endeavour to recollect where the Prisoner was on the 10th of *November*?

Lowman. I was first applied to the Day before Yesterday, and I am positive he was at my Father's on the 10th of *November*.

Pris. I pray Mrs. *Ottley* may be sworn.

Mrs. *Lucretia Ottley* sworn.

Pris. Do not you recollect, Madam, that I came to your House with Mr. *William Daniel*, on the King's Birth-day in the Morning?

Ottley. I do remember that Mr. *Daniel* and you came to my House one Morning after the Sale of *Bridgewater's* Estate, but I cannot positively say what Day it was, though I remember it was in the same Week that *Bridgewater's* Estate was sold.

Mr. *Sol. Gen.* Was the Prisoner at your House any more than one Morning?

Ottley. No, he never was there more than once, to my Knowledge.

Pris. I pray Mr. *Ottley* may be also sworn.

Mr. *Thomas Ottley* sworn.

Pris. Will you please, Sir, to inform the Court on what Day it was I came to your House with Mr. *William Daniel*?

Ottley. I remember that the Prisoner did come to my House one Morning with Mr. *Daniel*, but I neither remember on what Day of the Week or Month it was.

Pris. I desire that Mr. *Josiah Webbe*, the Son of Mr. *George Webbe*, senior, may be sworn.

Mr. *Josiah Webbe* sworn.

Pris. Pray, Sir, be kind enough to inform the Court, whether I was not at your Father's on the 10th of *November* last.

Webbe. I am not certain, but I think Mr. *Barbot* dined at my Father's on the 10th of last *November*. I remember that he and Mr. *Daniel* dined at my Father's on *Wednesday* the 8th of *November*, and lay there at Night, and they stayed all next Day, and spent most Part of the Day in playing at Backgammon, and lay there again that Night; and, I cannot be positive, but to the best of my Remembrance, Mr. *Barbot* dined at my Father's on the 10th. I stayed at Home that Day to keep Mr. *Barbot* Company, and I am almost sure it was the 10th.

Mr. *Sol. Gen.* When were you first desired to recollect this?

Webbe. The Day before Yesterday.

Pris. I desire Mrs. *Lowman* may be called again.

Mrs. *Lowman* called up again.

Pris. Pray, Madam, are you not very positive I was at your Father's on the 10th of *November*?

Lowman. Yes, Sir, I am positive that I left you at my Father's on the 10th of *November*, and I dined that Day at my Brother *George Webbe's*, in Company with Mr. *William Herbert*.

Mrs. *Ottley.* I now recollect very well that it was on *Thursday* the 9th of *November*, that Mr. *Barbot* came to my House with Mr. *Daniel*. Miss *Nanny Herbert* was at my House at the same Time. She is now here, and has mentioned some particular Circumstances, that make me recollect the Thing perfectly well.

Mr. *Sol. Gen.* I desire Miss *Herbert* may be sworn.

Miss *Ann Herbert*, the elder, sworn.

Mr. *Sol. Gen.* Please to declare to the Court, on what Day it was the Prisoner went with Mr. *Daniel* to Mr. *Ottley's*.

Herbert. The Day after the Sale of *Bridgwater's* Estate, I dined in Town at my Brother's with Mrs. *Ottley*, and we saw Mr. *Daniel* there, and Mrs. *Ottley* invited him to her House in the Country: Accordingly he came the next Morning after Breakfast with Mr. *Barbot*: They stayed about an Hour and an half, and went away again.

Mr. *Sol. Gen.* Are you sure it was on the 9th of *November* that the Prisoner and Mr. *Daniel* went to Mr. *Ottley's*?

Herbert. Yes, I am sure it was on the 9th; for it was on the second Day after the Sale of *Bridgwater's* Estate.

Pris. I desire Mr. *William Herbert* may be sworn.

Mr. *William Herbert* sworn.

Pris. Please to declare to the Court, Sir, whether you did not dine, in Company with Mrs. *Lowman*, at Mr. *George Webbe's* junior, on the 10th of *November* last.

Herbert. I remember dining at young Mr. *George Webbe's*, the *Thursday* after the Sale of *Bridgwater's* Estate, in Company with Mrs. *Lowman*; and the next Day I dined at Mr. *Cole's*. As I was riding to Mr. *Cole's*, I heard the Guns fire, and on asking the Reason of their firing, I was told it was the King's Birth-day: I remember particularly it was the King's Birth-day; for after Dinner, I said to Mr. *Pemberton*, who was one of the Company, As you are the oldest Man in Company, begin with a Bumper to his Majesty's Health.

Mr. *Sol. Gen.* Are you sure it was on the King's Birth-day you dined at Mr. *Cole's*?

Herbert. Yes, I am sure it was, Mr. *James*

Brodbelt is now in Court, he was one of the Company.

Mr. *Sol. Gen.* Can you tell how many Guns you heard fired on the King's Birth-day?

Herbert. I think I heard fifteen; but Mr. *Weekes* the Gunner is in Court, he can tell positively how many he fired.

Mr. *William Weekes* sworn.

Mr. *Sol. Gen.* Do you remember firing any Guns on the King's Birth-day?

Weekes. Yes, I remember to have fired fifteen.

Mr. *Sol. Gen.* Did you fire any more or less than that Number?

Weekes. No. I fired exactly fifteen.

Pris. I pray *John Cornelius* may be sworn.

John Cornelius (a free Negro) sworn.

Pris. Do you remember on what Day it was *Bridgwater's* Estate was sold?

Cornelius. It was on *Tuesday* the 7th of *November* last. I was at work at Mr. *George Webbe's* that Day, and the *Thursday* after I saw Mr. *Barbot* at old Mr. *Webbe's*: He and Mr. *Daniel* went out in the Morning to Mr. *Ottley's*, as I was told, and returned in about two Hours; and the next Day, which was the King's Birth-day, Mr. *Barbot* dined at old Mr. *Webbe's*.

Mr. *Sol. Gen.* Did you hear any Guns fire that Day?

Cornelius. No, I heard none.

Mr. *Sol. Gen.* Was you desired by any body to recollect this?

Cornelius. No.

Mr. *Sol. Gen.* Did no body instruct you to say it?

Cornelius. No body at all.

Mr. *James Brodbelt* sworn.

Mr. *Sol. Gen.* Please to declare to the Court, where you dined on the King's Birth-day.

Brodbelt. I dined at Mr. *Cole's* on the King's Birth-day, with Mr. *William Herbert*, Mr. *Pemberton*, Mr. *Paris*, and some other Gentlemen. The Fort-Guns fired on account of the Day, and I remember Mr. *Herbert* proposed to Mr. *Pemberton* drinking the King's Health in a Bumper, which we all did.

Pris. I desire *Samuel Lawrence* may be sworn.

Samuel Lawrence sworn.

Pris. Do you remember when *Bridgwater's* Estate was sold?

Lawrence. I do not remember the Day.

Pris. Do not you remember the Day I came to old Mr. *Webbe's*?

Lawrence. No.

Pris. Do not you know how long I stayed there?

Lawrence. Indeed I cannot tell.

Pris. Do you remember the Day I wrote a Note for old Mr. *Webbe* to send to Mr. *Cradock* for Corn?

Lawrence. I do remember you wrote a Note to Mr. *Cradock* for Corn for Mr. *Webbe*, but I do not recollect on what Day it was.

Pris. Do you not remember I dined at old Mr. *Webbe's* the Day I wrote that Note?

Lawrence. Yes, you did dine there the Day you wrote the Note, but I do not remember what Day that was.

Pris. I pray Mr. *Josiah Webbe* (Dr. *Webbe's* Brother) may be sworn.

Mr.

Mr. *Josiah Webbe* sworn.

Pris. Pray, Sir, inform the Court, whether I was not at your House on the King's Birth-day, and whether I was not sent for, while I was there, to make Mrs. *Hickman's* Will?

Webbe. I remember Mr. *Barbot* came to my House one Afternoon soon after the Sale of *Bridgewater's* Estate, and while he was there, a Messenger came from Mrs. *Hickman* to him, to desire he would go and make her Will.

Pris. Was it not on the King's Birth-day?

Webbe. It was one Day after the Sale of *Bridgewater's* Estate, but I am not certain what Day it was.

Pris. I desire Mrs. *Dasent* may be sworn.

Mrs. *Frances Dasent* sworn.

Pris. Please to declare to the Court, Madam, on what Day it was you sent for me to make your Mother's (Mrs. *Hickman's*) Will.

Dasent. I sent for Mr. *Barbot* to make my Mother's Will, and I remember he came and made her Will, but I cannot be certain what Day it was.

Pris. I desire Miss *Jenny Herbert* may be sworn.

Miss *Jane Herbert* sworn.

Pris. Do you remember being at Mrs. *Hickman's* when she was ill?

Herbert. Yes.

Pris. Do you remember my making her Will?

Herbert. Yes, Miss *Nancy Herbert* and myself were Witnesses to it.

Pris. Do you recollect when *Bridgewater's* Estate was sold?

Herbert. Yes, it was on *Tuesday* the 7th of last *November*.

Pris. How long after that was it that I made Mrs. *Hickman's* Will?

Herbert. I am not certain whether it was the *Thursday* or *Friday* after, but I believe it was the *Friday*.

Pris. It was the *Friday* after?

Herbert. I think it was, but I am not positive whether it was the *Thursday* or *Friday*.

Pris. Did you stay at Mrs. *Hickman's* that Night?

Herbert. No.

Pris. Do you know whether young Mr. *Payne* came there the Day following?

Herbert. I cannot tell whether he did or no.

Pris. I pray Mr. *Sommers Payne*, junior, may be sworn.

Mr. *Sommers Payne*, junior, sworn.

Pris. Do you remember the Day that I was at Mrs. *Hickman's*?

Payne. I remember seeing you there, but I cannot tell on what particular Day it was.

Pris. I pray Miss *Nancy Herbert* may be sworn.

Miss *Anne Herbert*, the younger, sworn.

Pris. Do you remember what Day it was I was at Mrs. *Hickman's* to make her Will?

Herbert. No, I do not recollect the Day.

Pris. Do not you remember to have heard of a Ball being at *St. Kitt's* on the King's Birth-day.

Herbert. I remember to have heard there was to be a Ball at *St. Kitt's*, but I cannot tell on what Day.

Pris. Had you no Conversation with any young Ladies of your Acquaintance about the Ball?

Herbert. Yes, I believe I might have talked about it, but I do not remember the Day.

Pris. I desire Mr. *Julius* may be sworn.

Mr. *William Julius* sworn.

Pris. Mr. *Julius*, you were one of the Coroner's Inquest; pray, what did *Johnson* swear before the Inquest?

Julius. When he came before the Inquest, I asked him if it was Mr. *Barbot* that he saw in the Canoo? He said, he believed it was, but he could not swear positively to him, for he was a Musket-shot off.

Pris. I pray *Mansell Wilkes* may be sworn.

Mansell Wilkes sworn.

Mr. *Frye.* Do you know *Johnson*?

Wilkes. Yes, I know him very well.

Mr. *Frye.* What Character does he bear?

Mr. *Sol. Gen.* You are to take Notice, that you are to speak to the Character of the Man in general, and not charge him with any particular Fact; for he is not come here prepared to defend himself against any particular Charge.

Wilkes. Since I have known him, he has always borne a bad Character.

Mr. *Frye.* Has he been always looked upon as a Man of infamous Reputation?

Wilkes. Yes, he is reckoned a bad Man.

Mr. *President.* Have you any more Witnesses to examine, Mr. *Barbot*?

Pris. No, Sir.

Mr. *Sol. Gen.* May it please your Honours, since the Prisoner has attempted to prove that he was at *Nevis* on the 10th of *November*, in order to invalidate the Testimony of *Patience Dorset*; we beg leave to produce some further Evidence of his being actually on this Island on that Day. Call *Martha Scoaper*, *Mary Sutton*, and *Mary Cockade*, (a free Mulatto;) who appeared and were sworn.

Mr. *Sol. Gen.* Mrs. *Scoaper*, do you know the Prisoner at the Bar?

Scoaper. Yes, Sir, I know Mr. *Barbot* very well.

Mr. *Sol. Gen.* How long have you known him?

Scoaper. I have known him a great while; he is my near Neighbour.

Mr. *Sol. Gen.* Do you remember seeing him on this Island on the 10th of *November* last?

Scoaper. I do not know what Day of the Month it was, but I am almost sure I saw Mr. *Barbot* here on the King's Birth-day. To the best of my Remembrance, I saw him pass by my House in the Forenoon, and his Boy came to my House that Morning to beg some Water.

Mr. *Sol. Gen.* Do you know, by any particular Circumstance, that it was on the King's Birth-day you saw the Prisoner?

Scoaper. It was the Day that there was a great Ball at *Manasseh Williams's*. I was at the Ball myself.

Mr. *Sol. Gen.* That was on the King's Birth-day. Mrs. *Sutton*, do you know the Prisoner at the Bar?

Sutton. Yes, I know him very well.

Mr. *Sol. Gen.* Please to inform the Court and the Jury, whether you saw him here on the King's Birth-day.

Sutton. Between Eleven and Twelve o'Clock in the Forenoon, on the King's Birth-day, as I was sitting in my House, I saw Mr. *Barbot* coming down by Mr. *Bunyard's* House, and he turned down the Alley that leads to Mrs. *Philips's*,

Mr.

Mr. *Sol. Gen.* Do you remember how he was dressed?

Sutton. He had on a white Coat, a green Waistcoat, and a silver-laced Hat flapt.

Mr. *Sol. Gen.* Are you sure it was on the King's Birth-day you saw the Prisoner?

Sutton. Yes, I am sure it was on the King's Birth-day.

Mr. *Sol. Gen.* Mrs. *Cockade*, do you know the Prisoner at the Bar?

Cockade. Yes, Sir, I know him very well.

Mr. *Sol. Gen.* Pray inform the Court and the Jury, whether you saw him here on the King's Birth-day.

Cockade. Mrs. *M^cCabée* sent for me on the King's Birth-day to help her; for they were to provide an Entertainment for a great deal of Company: And while I was in the public Room below, Mr. *Barbot* came in, and I heard him ask a Man whom I did not know, whether there was a good deal of Company up Stairs.

Mr. *Sol. Gen.* Are you sure it was on the King's Birth-day you heard him say this?

Cockade. Yes, I am sure it was.

Mr. *Sol. Gen.* May it please your Honours, we have gone through all our Evidence. We could produce many more Witnesses to prove the Prisoner's being actually on this Island on the 10th of *November*, but we think those that have been already examined sufficient to establish that Fact, notwithstanding what hath been sworn to by Mrs. *Lowman* and *Cornelius*, who are the only positive Witnesses to the Prisoner's being at *Nevis* on the 10th of *November*; and the first of them (Mrs. *Lowman*) founds her Evidence on two Circumstances, in both of which she stands flatly contradicted: The first, that of the Prisoner's going with Mr. *Daniel* to Mr. *Ottley's* on the King's Birth-day in the Morning; and the other, that of her dining on the same Day at her Brother *George Webbe's*, in Company with Mr. *William Herbert*. Now, your Honours and the Gentlemen of the Jury must have observed, that, in the first of these Circumstances, Mrs. *Lowman* stands contradicted by the Evidence of Mrs. *Ottley* and Miss *Anne Herbert*, who have both positively sworn that it was on the 9th of *November*, the Day preceding the King's Birth-day, that the Prisoner and *Daniel* were at Mr. *Ottley's*; and in the other she is also contradicted by Mr. *William Herbert*, who has likewise positively sworn, that it was on the 9th of *November* he dined at Mr. *George Webbe's* junior, in Company with Mrs. *Lowman*, and that on the 10th he dined at Mr. *Cole's*. And this Evidence of Mr. *Herbert* is corroborated by that of Mr. *James Brodbelt*.

Mr. *President.* Mr. *Barbot*, go on with your Defence.

Here Mr. Frye got up, and handed some Papers to the Prisoner, which Mr. Horne, one of the Council for the King, observing, addressed the Court in this Manner:

Mr. *Horne.* May it please your Honours, I beg Mr. *Frye* may not be allowed to do this. He is now giving Papers to the Prisoner to assist him in his Defence.

Mr. *Frye.* They are nothing more than simple Notes of the Evidence, which I took, in order to help his Memory, when he comes to make his Defence; and one or two Cases that I have writ down for him.

Mr. *Sol. Gen.* It is what they have not a Right to; but it is no great Matter. You may give him the Papers.

Mr. *Frye.* Here, Mr. *Barbot*, you are to read from this Place to this, (*pointing with his Finger.*)

Pris. May it please your Honours, the first Witness produced against me, in order to prove my having had some Resentment against the Deceased, is Mr. *Carew*, who, as you must have observed, says no more, than that on the Day *Bridgewater's* Estate was sold at *Nevis*, he heard me say to the Deceased, *that I expected to be treated like a Gentleman*. If I did say these Words, I assure you, Gentlemen, they made no Impression at all on me, for I have not the least Recollection of having said any Thing like this to the Deceased. But, admitting I had; does the saying to a Gentleman, that I expect to be well treated, or treated like a Gentleman by him, imply any kind of Malice, or Resentment, against that Gentleman? Surely no!

Mr. *Thomas Mills* was the next Witness produced on this Occasion. He agrees with Mr. *Carew* in the Words that passed at the Sale of *Bridgewater's* Estate. But, Gentlemen, was there any Thing offensive, or malicious, in my Answer to the Deceased; or can any Thing be collected from thence, to shew that I had any Resentment against him? I think not, and I am confident you will think so too.

Mr. *Armour* has sworn to a Conversation that, he says, passed between him and myself, some Time before the Sale of *Bridgewater's* Estate. He swears he heard me say, Mr. *Mills* had treated me in a Manner never to be forgiven. This, I confess, astonishes me; for I have not the least Remembrance of it. And it is indeed strange and very improbable, that I should throw out such Expressions concerning a Gentleman, against whom I never had any Reason to conceive the least Anger or Resentment. It is probable I might, at the Time Mr. *Armour* says he joined Company with me, have been talking about Mr. *James Dasent's* Affairs, and might have said that Mr. *Mills's* Behaviour to Mr. *Dasent* ought never to be forgotten; for I well knew that Mr. *Mills* had been a great Friend to Mr. *Dasent*. It is therefore probable, I say, that Mr. *Armour* might have misunderstood me. And indeed he must have been mistaken, for I am certain I never uttered the Words he has sworn to. Besides, it is observable, that Mr. *Armour* does not swear which of the *Mills's* I spoke of. He believes, indeed, it was the Deceased, and for no other Reason than because I did not use any Christian Name by way of Distinction. I might, Gentlemen, for any Thing Mr. *Armour* knew, have meant Mr. *William Mills*, or Mr. *Thomas Mills*.

The Evidence of *Patience Dorset*, I confess, is more surprizing than any. She has boldly sworn, that she heard me throw out a Menace at a public Tavern in this Town on the King's Birth-day, in Company with two Men, whom she says she did not know, nor did she hear any of the Conversation previous or subsequent to this Menace. Is it not very strange, that this Woman should only hear that particular Part of the Conversation and no other, and not be able to recollect who the People were I was talking to? Besides, admitting I had had any Resentment against Mr. *Mills*, it would have betrayed great Weakness in me to have thrown out such a Menace. But, Gentlemen of the Jury, I am confident this Piece of Evidence will have no Weight with you, as it has been sufficiently

sufficiently proved by three Witnesses, (one of them a Lady, and the other a Gentleman, of undoubted Characters, and the third a very honest Man) that at the Time *Dorset* heard me use this Threat she has sworn to, I was actually at the Island of *Nevis*. This, I think, Gentlemen, fully sufficient to invalidate her Evidence, and I make no Doubt will have its proper Weight with you.

Doctor *James Webbe* was called next on the Part of the Crown. Between the Doctor and myself, there has for a long Time past, and still does subsist a very great Intimacy; insomuch, that if I had ever had any Quarrel with, or Resentment against, the unhappy Gentleman deceased, it is extremely probable I should have communicated it to him. And yet, Gentlemen, you have heard the Doctor positively swear, that so far from his being acquainted with my having any Difference with the Deceased, or any Intention to fight him, that he never knew, or even suspected, any Thing of the Kind.

It has been also given in Evidence to your Honours, and the Gentlemen of the Jury, that on the 18th of *November* at Night, I went to Bed at Dr. *Webbe's* House about Nine o'Clock; and Dr. *Webbe* swears, that about One in the Morning, as he was passing through the Hall, he spoke to me. This plainly proves, I was at that Time at Dr. *Webbe's* House in *Nevis*. It has been also proved, that I was at Dr. *Webbe's* at Nine o'Clock in the Morning of the 19th, the Day on which the Deceased is supposed to have been killed; and it is observable, that through all the Evidence that has been produced against me, there has not been one Witness who could swear that I was even at *Frigate-Bay* that Morning; and I do take upon me to say, it was incumbent on the Council for the King to prove, by some positive Witness, that I was that Morning at *Frigate-Bay*. They have endeavoured indeed, by presumptive Evidence, to prove my being there, and for that Purpose *John M'Kenley* and *Johnson* have been examined. *M'Kenley* swears the Deceased's Negro Boy *Coomy* told him, I had killed his Master, and that on this he ran to the Bay, and saw a Canoo rowing from the Shore, with a Person in white sitting in the Stern. I beg leave to make two Observations on *M'Kenley's* Evidence. First, that his Information was from a Slave, who, by the Laws of this Country, would have been an incompetent Witness, had he been produced as such; and consequently any Hearsay from him must be illegal, and ought to have no Weight with the Jury. Add to this too, the Possibility that *Coomy* might have been bribed to fix the Murder on me. And next, that *M'Kenley* himself cannot positively say that it was even a white Person that he saw sitting in the Stern of the Canoo. Is it not therefore unjust to conclude that I was the Person?

As to *Johnson's* Evidence, I beg leave to add only one Observation to what I have already said on that Matter. It has appeared in Evidence to you, Gentlemen of the Jury, that he is a Man of a very bad Character, and, had I had timely Notice of his being a Witness against me, I could have had a Copy of the Record of his Conviction for Petty Larceny from *Montserrat*, which would have proved him beyond all Doubt an infamous Person. But although I have been so unfortunate as not to be able to produce this Record, yet from what you have heard of this Man's Character, I am per-

suaded you, Gentlemen of the Jury, will pay no Regard to what he has sworn.

The Council for the King, to prove this Fact upon me, have endeavoured, by a Number of Witnesses, to trace me, as they are pleased to call it, from Place to Place. This kind of Evidence, I hope, will have no Weight with you, Gentlemen of the Jury, as it is at best but very light presumptive Evidence, and as it is absolutely necessary to prove positively that I committed the Fact. Great Stress has been laid also on my exercising the Pistols at Mrs. *Dasent's*. It has been proved to your Honours and the Jury, by Dr. *Webbe*, that this was merely accidental, and that after we had done with the Pistols, they were cleaned and put up by a Boy of Mrs. *Dasent's*. Is it not strange that this Piece of Evidence should be made use of to prove the Murder upon me? What had my exercising these Pistols (which I did a Week before merely for my Amusement) to do with the killing Mr. *Mills*? Did no other Person ever fire at a Mark with Pistols? Now, Gentlemen of the Jury, if it had happened that a Man was found dead of the Wound of a Sword, and one of you had been exercising a few Days before a Case of Foils; might it not with equal Justice be said that you killed that Man?

For my being seen to land out of a Canoo, I am sure, Gentlemen, that can be no Proof of my having been at *Frigate-Bay*. Besides, the Witnesses themselves cannot take upon them to swear I came from *Frigate-Bay*. For any Thing they knew, I might have been a fishing; and surely that is an innocent Action. Was no other Person seen that Morning in a Canoo but myself?

There has been no kind of Proof that I had any Pistols with me, or that my Boy had any. They have indeed now produced a Case of Pistols which they suppose I used that Morning; but I beg leave to observe, that these very Pistols were found by Dr. *Webbe*, under the Bed at Mrs. *Dasent's*, in a Pair of Holster Caps; and it does not appear, from any of the Evidence, that they had been lately used.

I make no Doubt the Council for the King will lay great Stress on the Evidence that has been given of my having executed a Paper at *O'Donnell's*, which they have endeavoured to prove was my Will. Is it not the Duty of every Man, as well as a Satisfaction to him, to make a Will? and is he not at Liberty to make it when and where he pleases? Besides, I had very good Reasons for making a Will, which were to secure Mr. *Jacob Saunders* for indorsing my Bills, as I intended going to *England* in Captain *Fleming*, who was to sail in a few Days.

Mr. *Justice Lofack*. Mr. *Barbot*, give me leave to interrupt you. I apprehend you are only wasting your Time, and doing yourself very little Service, by all this. Would it not be much more for your Advantage, to prove where you was from the Time you went to Bed at Doctor *Webbe's* the Night preceding the Murder, to the Time you were seen to land at *Nevis*?

Pris. That, Sir, would be a Hardship indeed. I submit it to you, Gentlemen of the Jury, whether it would not be very difficult for any of you to prove where you were on any particular Night, from Nine to Six in the Morning; and, on Failure of such Proof, to be supposed guilty of Murder? Besides, may it please your Honours, I humbly apprehend

that in this Case the *onus probandi* lies on the Crown, and that they must first prove an *ibi*, before I am obliged to prove an *alibi*. But admitting I had been out the Night preceding the Murder, ought it from thence to be concluded, that I committed the Murder? Was no other Person out that Night but myself?

Gentlemen of the Jury, it has been said to you, that presumptive Evidence is sufficient to convict a Man of Murder, and I expect the Council for the King will labour to prove this Point. But I beg leave to assert, that presumptive Evidence is by no Means sufficient, and that nothing but positive Proof ought to be admitted to convict a Man of a Crime where his Life is at Stake. It would be of the most dangerous Consequence to admit of presumptive Evidence in such Cases; for an innocent Man might suffer for a Crime he never was guilty of. I have some Authorities in my Hand, to shew how extremely cautious Juries ought to be in finding a Man guilty, on any but the clearest and fullest Proof. *Coke Inst.*

“ An Uncle was correcting his Nephew, and
 “ the Boy was heard to cry out, O Lord,
 “ Uncle, don’t kill me. The Boy immediately
 “ after absented himself. The Neighbours,
 “ who had heard the Outcry, on missing the
 “ Boy, suspected the Uncle had killed him.
 “ The Uncle, finding he was suspected to
 “ have murdered his Nephew, procured a Boy
 “ very like his Nephew to personate him. But
 “ it being soon discovered that this was not
 “ his real Nephew, the Uncle was thereupon
 “ apprehended, tried for the Murder, and
 “ convicted. Some Time after this the Nephew
 “ appeared.”

Another Case I have, Gentlemen, to the same Point. I do not immediately recollect the Book it is in, but the Case is this.

“ A Man was found dead in a Field. Another
 “ Man happened to pass by and see him, and
 “ went and told two Persons of it. These two
 “ Persons, suspecting him to be the Murderer,
 “ carried him before a Magistrate. He was
 “ indicted for the Murder; and one of the
 “ Jury that tried him, contrary to the Opinion
 “ of the other eleven, and of the Court also,
 “ would not find him guilty. Upon this Man’s
 “ standing out a long Time, and absolutely
 “ refusing to agree with the rest of the Jury,
 “ they were called into Court, and upon the
 “ Judge’s asking this Man his Reason for
 “ refusing to find the Prisoner guilty, he
 “ honestly confessed that he himself had
 “ killed the Man, and that the Prisoner at
 “ the Bar was perfectly innocent.”

From hence it appears, Gentlemen of the Jury, that you ought not to be determined by circumstantial Evidence. If former Juries have taken upon themselves to judge severely from presumptive Evidence, that should be no Rule, no Example, for you.

I beg leave to trouble your Honours, and the Gentlemen of the Jury, with one Case more, to shew the Necessity of having positive Evidence to convict a Man on a Trial of this Sort.

“ It happened at *Montserrat*, that one Captain
 “ *Watts* was indicted for killing of one *Oulds*.

“ A Woman, who was the only Evidence,
 “ swore she heard the clashing of Swords,
 “ and saw Captain *Watts* draw a Sword out
 “ of *Oulds*’s Body; but because she could
 “ not swear that she saw *Watts* thrust the
 “ Sword into his Body, the Jury acquitted
 “ him.”

Common Fame, Gentlemen, I am persuaded, will have no Weight with you at all. You must all have been sensible at Times, how Report is apt to speak untruly. And, in the present Case, every Art has been tried to raise it to my Prejudice. You are sworn to judge by the Evidence which is delivered to you, not by what you have heard out of Doors. If the Evidence is favourable, you must in your Consciences judge so; otherwise you introduce a Precedent for the greatest Evils.

Gentlemen, if you examine the whole Tenor of my Behaviour for a few Days which preceded this unhappy Accident, until my Commitment, you will find me solely employed about Dr. *Webbe*’s and Mrs. *Dasent*’s Affairs, and preparing for a Voyage to *Europe*; and for the Moments of Recess from Business, only employed in passing my Time agreeably among my Friends. The very Night before poor Mr. *Mills*’s Death, my Behaviour was such, as shewed I harboured no mischievous Intentions. And can it be supposed that, if I had been conscious of the Crime laid to my Charge, I should have dined at Colonel *Webbe*’s (the House where I always dined on a *Sunday* when at *Nevis*) the very Day on which the Murder was committed, and behaved there in my usual Manner? My Circumstances were such as might have made the Means of escaping very easy to me, had I been guilty of so weighty a Crime as that I am accused of.

Upon the whole, if any Presumption can be drawn from Evidence like this, it must be favourable for me, as they do most effectually demonstrate the whole of my Behaviour to have been most innocent and inoffensive. I shall just beg leave to caution ye, Gentlemen, against any Arguments that have, or may be made use of, to influence your Passions on this Occasion. Much Pains have been taken to stir up in your Breasts Sentiments of Rage and Indignation against me, and to make me appear guilty in your Eyes, though I could by no Means be proved so.

But, Gentlemen, I know you are not to be blinded by Subtleties of this Kind. It is not rhetorical Flourishes will move you on this Occasion to lay down my Life a Sacrifice to my Prosecutors, however powerful they may be. You are, Gentlemen, a Jury, Judges upon your Oaths of Matters of Fact according to Evidence; and, from the personal Knowledge I have of every one of you, I am persuaded nothing but full and demonstrative Proof will any ways induce you to condemn me: not distant Arguments that amount hardly to a Possibility; and when they have an equal Possibility, that any of the Persons in this Court may be the guilty Person, and not me. For the Presumption, I am sure that is altogether in my Favour.

I shall say no more to you on this Occasion, but commit myself, Gentlemen, to your Judgments, not doubting a happy Issue. May God Almighty incline your Hearts in my Favour. On his Protection I depend; and to him be all Honour and Glory henceforth and for ever. *Amen.*

Mr. Sol. Gen. May it please your Honours,

I shall beg the Indulgence of a few Words, in Reply to the Prisoner's Defence. I shall not make any Recapitulation of the whole Evidence; both as the Trial has been drawn out into so very great a Length, and as that will be done from the Bench; but confine myself to the making a few Observations which I think necessary, on what has fallen from the Prisoner in the Course of his Defence: In which too I shall not be long; for indeed the Prisoner has saved me the Necessity of giving you much Trouble, by the extreme Weakness of his Defence; which was indeed so very weak, that his very Defence itself seems a Proof of his Guilt. For has he invalidated any Part of the Evidence against him? Has he disproved a single Fact? Nay, has he even attempted to do it? save in one Instance only, where it was not without Concern I saw him endeavouring to cover one Crime by another, in offering, by a palpable Perjury, to take away the Force of the Evidence of *Patience Dorset*, by getting it proved, that he was not on this Island at the Time when she swore she heard him speak the particular Words she gave an Account of. Could he indeed have fairly and honestly disproved her, it might have been of no small Avail to him: But by unsuccessfully attempting to do it, he has only the more established the Truth of her Testimony; and the very Attempt itself shews how strongly he felt the Weight of it lie upon him; and amounts to a Sort of Confession of his Crime, in labouring, by so undue Means, to destroy an Evidence, which only the Consciousness of his Guilt could make him so strenuous to invalidate.

But the main of his Defence seems to lie in this, that the Evidence against him is only circumstantial; and therefore, however strong, ought not to avail to convict him, without absolute and positive Proof of his committing the Fact, by Persons who saw him do it. I indeed expected he would fly to this miserable Refuge, the last Resort of a guilty Man, oppressed by the Weight of Conviction, and borne down by the Force of the plainest Evidence against him. I shall therefore beg to be a little particular to this Point; not only as being what the Prisoner seems to have rested the whole Force of his Defence upon, and placed all his Hopes of an Acquittal in; but as I am sensible great Pains have been also taken to inculcate this Doctrine abroad: A Doctrine the falsest and most dangerous that can be broached, and which plainly contradicts all our Reason and Experience on this Matter. For,

Not only, according to this Doctrine, hardly any Criminal could ever be convicted at all; but moreover, I am bold to say, out of all those that have been so, by much the greater Part were convicted on circumstantial Evidence.

So far from being none, or even bad Evidence, it has ever been allowed that, for the Lights it does give, it is the best and surest of all Kinds whatsoever, and the least likely to deceive and mislead.

A Man may lye, but, as an ingenious Gentleman said this Morning, Facts cannot lye. A well-invented Tale may be told and stood to by a wicked and daring Witness, in a Manner that he knows it is impossible for him to be detected in: But a Variety of Facts of several Kinds, all collected from different and distant Persons, Places and Times, with an apparent Impossibility of Combination or Confederacy, all independent of each other, and with no other Connexion or Agreement between

them, but what arises from their bearing from different and distant Points to the same Center of Truth; these can never mislead the Judgment, or impose upon the Belief; but justify and confirm each other, and are the surest and most unerring Guides to conduct to Truth.

They who affirm, that circumstantial Evidence alone cannot be sufficient to convict, must not only be greatly unused to the hearing or reading of Trials; but must also be perfectly ignorant of the very Nature of a Trial, and what it is. For what is a Trial, but to hear, examine, and weigh all that is offered on either Part; and then from the whole to draw out, or (as the well-known Term is) to *find* the Truth?

Is it not the constant and universal Practice on Trials by Juries, for the Judge who sums up the Evidence, to close the Charge with Words to this Effect? "If, upon the whole Matter, you believe in your Consciences that the Prisoner at the Bar committed the Fact of which he stands indicted, you are to find him guilty: But if, upon the whole Matter, you do not believe in your Consciences that he committed it, you are to find him not guilty?" Is it not the usual and constant Practice, I say, to close the Charge with Words like these?

But where is the Sense or Meaning, I pray ye, of such an Admonition, or of Words like these, if strong Circumstances alone may not, in any Case, be a sufficient Evidence to authorize the Jury to find the Prisoner guilty?

If nothing but positive, ocular, point-blank Evidence can be sufficient for that Purpose, how trifling and impertinent were it to give such a Charge? For,

If there be such positive and absolute Evidence, what Doubt or Difficulty can there be in the Case? or how is it then congruous to say, if they believe, upon the whole Matter, a Thing so plainly and palpably sworn, as to leave no Room to talk of the whole Matter, or hardly of believing at all? And,

If there be not such positive and absolute Evidence, what Reason or Justice is there in the Judge's saying to them, if, upon the whole Matter, they believe in their Consciences, what he sees there is no Foundation, and they can have no Right, to exercise their Belief or their Consciences at all about?

In a Word, if nothing less than such positive Evidence would avail, how can there ever be any Doubt at all? or what Occasion can there be, in any Case, of having a Jury at all? In God's Name, what, in that Case, is, or can a Jury be for?

If such positive Evidence only will suffice, 'tis immediately seen whether there be such or not: And then the Court, without the Mediation of a Jury, have no more to do than to acquit or condemn at a single Word; and the very swearing a Jury were a most unnecessary and idle Formality.

But to consider this Matter a little further.—How frequently do Trials of Murder in *England*, last eight, twelve, sixteen Hours, or longer? Every body knows that such Things have frequently happened.

But, I beseech ye, how could this be, if only ocular, downright positive Proof could avail to convict a Person?

Is it not, and must it not be seen, in one Hour of the Trial, whether there be such positive and absolute Proof or not?

If there be such positive Proof, what can there be further to be done? or what Occasion to protract the Trial to any greater Length?

If there be not such positive Proof, why are so many fruitless Hours wasted in giving in Evidence, and laying together Circumstances and Presumptions, which, though ever so numerous, or ever so powerful, could be of no Consequence at all?

What a Figure must the Judges make in suffering so much Time to be mispent, in hearing, and permitting to be solemnly given in Evidence, what in itself, at this Rate, must all be so utterly insignificant and beside the Purpose?

And yet, do they not constantly, after Trials of so great a Length, solemnly and gravely enumerate all the Circumstances and Presumptions, and then put it to the Belief and Consciences of the Jury, whether they are from them convinced of the Prisoner's Guilt? and are not Prisoners accordingly constantly convicted on them? But

Were it not the most crying Abuse in the Judges, and the greatest Profanation of Justice in itself, thus gravely to set the Prisoner's Life on such a Hazard, if they knew in their Consciences, that there was no Evidence given, which ought to affect him?

Ought they not to tell the Jury at once, they are to find the Prisoner not guilty, without more ado?

Gentlemen of the Jury,

Though I hope you need no further Conviction of the Falseness of this Doctrine, yet it may not be amiss to tell you what our great Oracle of the Law, my Lord *Coke*, whose Name you have, I make no Doubt, often heard of, defines a Trial to be: "A Trial (says he) is to find out, by due Examination, the Truth of the Point in Issue."

And is not this, Gentlemen, perfectly agreeable to, and a Confirmation of, what I have been insisting on? That is, that it is to hear, examine and weigh all that is offered on either Side? Is not this, I say, the finding out the Truth on due Examination?

But, I pray ye, would this be an apt or proper Definition, or would this exhibit a just or adequate Idea, of a Trial, if nothing but point-blank Proof of the Commission of the Fact were, or could be, allowed a sufficient Evidence to convict a Person?

Does it not, on the contrary, suppose an Uncertainty? Does it not imply a Doubt and Difficulty? But

Where can be the Doubt and Difficulty, if there is such positive point-blank Proof? or what is there to be found out, on due Examination, if none else be sufficient?

But, Gentlemen, to illustrate this Matter still further by the same great Authority, I beg Leave to read you other Words of the same Author, extremely pertinent to this Purpose; and, Gentlemen, they are these: "When the Trial is by Verdict of twelve Men, there the Judgment is not given upon Witnesses, or other Kind of Evidence, but upon the Verdict; and upon such Evidence as is given to the Jury, they give their Verdict—And many Times Juries, together with other Matter, are much induced by Presumptions, whereof there be three Sorts, viz. violent, probable, and light or temerary. *Violenta presumptio* is many Times *plena probatio*; as if one be run through the Body with a Sword in a House, whereof he instantly dieth,

"and a Man is seen to come out of that House with a bloody Sword, and no other Man was at that Time in the House." Thus you hear, Gentlemen, the general Doctrine he lays down; and the Instance he gives by way of Illustration of it, and which may serve the better to make it understood.

But, Gentlemen, I have another Authority in my Hand still more explicit of this Matter, and which may enable you still the more clearly to judge of it; and that is from a Trial which I had Occasion to mention this Morning to another Purpose; which is of Miss *Blandy*, who (as I make no Doubt you have all heard) was tried at *Oxford* no longer ago than the Month of *March* last, for the Murder of her own Father; where the learned Judge, in the Close of his Charge to the Jury, has the following Words, extremely apposite to the present Purpose: "In the present Case, which is to be made out by Circumstances, great Part of the Evidence must rest upon Presumption, in which the Law makes a Distinction: A slight or probable Presumption only, has little or no Weight; but a *violent Presumption* amounts, in Law, to full Proof, that is, where Circumstances speak so strongly, that to suppose the contrary, would be absurd."

Thus, Gentlemen, it appears in the plainest Manner, from the Reason of the Thing; from constant Experience; from the Words with which the Charge of the Judge to the Jury is always wont to be closed; from the, otherwise, Impropriety of those Words of the Charge; from the frequent extreme Length of Trials of Murder in *England*; from the absolute Unnecessariness of such Length on any other Supposition; from the Definition of a Trial by my Lord *Coke*; and lastly, from the express and plain Words of the very Charge of which I have just now read you a Part: From all these, I say, it is plain and clear, that circumstantial Proof may be, and frequently is, sufficient in itself to convict an Offender, and prove the Charge against him; and that the contrary Doctrine is contrary to Experience and good Sense, and in itself false and absurd.

But, may it please your Honours, and you Gentlemen of the Jury, as absurd as this Doctrine is, the Absurdity of it is not all.—No; there is still something further to be considered and guarded against; and that is, its dangerous and destructive Tendency.

If once it comes to be established into a Rule, that nothing but point-blank, positive, ocular Evidence shall suffice to convict a Man; who can be secure of his Life or Property but for a single Day? What a Lesson of Encouragement were this to hold out to bloody-minded and ill-disposed Men! What a Security and Indemnity were here promised and insured to them in the Commission of their Crimes!

Were not this plainly to say to them in so many express Words, "See that you commit your Crimes with tolerable Secrecy and Caution, and you may be assured of Impunity; only take Care that none be present to behold you execute them: And then, though a thousand and a thousand Circumstances ever so loudly proclaim your Guilt; though it should be evinced by ever so many and ever so glaring Tokens; though every body believes, sees, and assuredly knows, that you did, and must have

“ have committed the Fact; yet all this is ‘but
 “ Circumstance and Presumption, and by no
 “ Means Evidence to convict, or at all affect,
 “ you; but, with all the plainest and clearest
 “ Marks of your Guilt about you, you may laugh
 “ at your Prosecutors, and set the whole World
 “ at Defiance.”

Is not this the plain and palpable Language, is it not the necessary and inevitable Consequence, of such a Doctrine? Is it to be supposed that ill Men can be so mighty dull, as not to take so very plain a Hint? or is it to be imagined they will be checked and restrained by Justice and the Laws, when they are taught how they may so easily, and with using so little Caution, put themselves out of their Reach?

I hope, therefore, we shall hear no more of this senseless and pernicious Doctrine; pretended to be grounded on Scrupulousness and Tenderness of Conscience; but the mere Effect of Falseness of Judgment, or Perverseness of Will. For,

What Sort of Conscience must that be, which thus combats itself? or by what unaccountable Kind of Reasoning must it be, that a Man persuades himself he is bound in his Conscience to find that to be the Case, which in his Conscience he believes, and is perfectly assured, is not the Case?

A Man that can argue at this Rate, let his Pretence be what it will, perversely belies the Truth, and equivocates and plays double with God Almighty, and Justice, and his own Conscience.

But now if it should be asked, if then any Thing less than positive and absolute Proof of the Commission of the Fact will avail, and a Man may be convicted on circumstantial Evidence only; how shall we know what Circumstances are sufficient to convict an Offender? I say, if this be asked, I answer, in the Words which I observed to be wont to be used in the Close of a Charge, “ when, upon the whole Matter, you
 “ believe in your Consciences that the Prisoner
 “ committed the Fact of which he stands in-
 “ dicted;” or, (which is still better) when (as it is so happily and ingeniously expressed in the Part of the Charge I have just read to you) I say, “ when Circumstances speak so strongly, that to
 “ believe the contrary, would be absurd.” For,

It is not barely what this or that Witness, or these two or three, or any other precise Number of Witnesses say, that shall acquit or condemn. No; ’tis the joint Result of the whole Evidence taken and considered together; and what, upon examining and weighing that, shall appear to you, or (as the well-known Term is) you shall find, to be the Truth.

To pretend to lay down any general Rule of what is, or is not, sufficient Evidence, were ridiculous and absurd.

Every Fact is to stand on its own Circumstances; and that, and that only, is to be taken to be proved, of which the Consciences and Belief of the Jury are convinced.

The Evidence that does not convince their Consciences and Belief, though it consist of a thousand Particulars, is not enough: And

The Evidence that does convince their Consciences and Belief, is enough, though it consist of ever so few.

Gentlemen, you may have observed how strenuous both the Prisoner and his Council were in endeavouring to ward off the Force of one Piece

of Evidence, which they perceived made so powerfully against him; and that was that *Coomy*, the Deceased’s Negro Boy, told *M^r Kenley*, when he came down to the Bay, that it was *Mr. Barbot* who had killed his Master: This, they say, you are to give no heed to; as being what is called hearsay Evidence only, and no more than what one Person tells another. But, Gentlemen, give me Leave to observe, there is a Distinction in this Matter; and that this is, in Truth, a very strong Evidence indeed. That hearsay Evidence is no Evidence at all, I do generally allow; and therefore, had *Coomy* the next Day, or some Hours after, told this to *M^r Kenley*, or any other Person, it ought to have no Weight at all with you, because in that Case it might not be true; but in the present Case it ought to weigh with you, and powerfully too, because it must have been true, as the Event and what followed invincibly demonstrated.

A Gentleman is found murdered, and just expiring, and a Clamour is made, on the Spot and on the Instant, that such an one was his Murderer; a Person is seen flying from the Place where the Murder was committed; and the Person so flying is pursued from the Place, and found to be the very same who was alledged on the Spot to have been the Murderer: I pray ye, does not this prove that the Clamour was, and must have been, true? and that the Persons who made it spoke from absolute Certainty, and were neither deceived themselves, nor deceived others? Therefore as Hearsay is generally no Evidence, because it *may be false*; so that *Coomy* told *M^r Kenley* is good Evidence, because it *must be true*. And there is no Medium between these two Things, that either *Coomy* saw the Prisoner kill his Master, or he must have been inspired.

The same Observation will hold, with regard to what *Peter* the Negro told *Cribbe* in the Morning at *Nevis*, viz. that he feared *Mr. Barbot* had done Mischief; and against which too the same Objection was so strongly pressed, that it was only Hearsay, and what one Person told another. But as you heard, Gentlemen, this was said by *Peter* before the News otherwise came from this Island to *Nevis* of this unhappy Event: And therefore *Peter* (who, as *Jasper Thomas* swore, was one of the Negroes who rowed the Canoo which brought the Prisoner to *Nevis*) could not then speak what he did, from the Information of others, but of his own Knowledge only; and as the Deceased actually was found murdered at that Time, either what he said of the Prisoner was a necessary Truth, or he must have known that Mischief was done, by Inspiration. And now, Gentlemen, as either of these two Circumstances singly, speaks so exceeding strongly, what is not the Force of them when put together? ’Tis plain there could be no Combination or Confederacy between these two Negroes, *Coomy* and *Peter*; and therefore for the former to say, on the Spot, and on the Instant, of the Murder committed, that *Mr. Barbot* had killed his Master; and the latter so soon after, at the Distance of several Leagues, that he feared *Mr. Barbot* had done Mischief, amounts to a Demonstration that both must have spoke Truth: And when to this we join all the intermediate Circumstances, and the tracing the Prisoner from Place to Place, the Whole composes the fullest and most invincible Proof, without a Possibility of Perjury

or Mistake in the Matter, that ever was made of any Fact whatsoever. And therefore,

It is to little Purpose that the Prisoner has asked, Did no other Person than himself make a Will such a Day? Did no other Person go in a Canoo? Was no other Person out at such an Hour of the Night? Did no other Person fire at a Mark with Pistols? For were these Questions singly asked, there is no Doubt but there might be many Persons, of whom each of these Matters might with Truth have been separately affirmed: But alas! that is not the Matter! for of what avail were this to the Prisoner's Defence, unless there were other Persons of whom all these together might be also affirmed? And therefore the only Way of asking these Questions materially to this Purpose, were in this Manner: Was there any other Person who had Words of Heat with the Deceased on the 7th of *November*? Who made such a Declaration on the 10th? Who was firing at a Mark with Pistols on the 12th? Who hastily made a Will at a Tavern, and delivered it out of his own Custody on the 18th? Who the same Night left his Bed and House at Midnight; and the next Morning was seen flying from the Place where the Deceased was murdered, just after he was so? And then if there be any one else, of whom only Half these Circumstances can with Truth be affirmed, we may safely allow all these, in the Case of the Prisoner, to go for nothing.

And here, in speaking of flying from the Place of the Murder committed, I cannot but observe how vastly stronger is the presumptive Proof against the Prisoner, than that in the Case put by my Lord *Coke*, and which I just now read to you: For there was only that single Circumstance; but here is the same accompanied with twenty others, which of themselves had availed to convince any reasonable Person's Mind, who must have committed the Murder, even without the seeing him fly from the Spot.

Gentlemen, I shall but just add; the Prisoner cautioned you against suffering your Passions to be unduly worked upon by the Eloquence of the Council, and being misled by their Rhetoric into a Belief of his Guilt. For my own Part, I pretend to no Mastery over the Passions, or other Talent of the Sort; and did I even imagine I were possessed of such, should think myself not warranted to use it on an Occasion like this. The present Case is a Case of Blood, where the Ornaments of Speech, and the Arts of Rhetoric, to inflame the Passions, and blind the Reason, however justifiable they may be in a Prisoner on his Defence, are certainly not candid or allowable on the Part of the Prosecution. The single Question in the Case is of mere Fact, to wit, whether the Prisoner committed the Murder; and therefore I have confined myself to such Reasonings and Arguments only, as I thought conduced to the better finding out the naked Truth of that; and can truly say, I have urged nothing to your Consciences, which did not seem right and just to my own. For

I should think the offering to mislead or abuse yours, were doing my own the greatest Injury.

You will therefore, Gentlemen, consider the Whole together; and if, upon the Whole, you believe in your Consciences the Prisoner did not commit this Murder, God Almighty forbid you

should condemn him; and if you believe in your Consciences he did commit it, God Almighty forbid you should acquit him.

Mr. *Kerr*. May it please your Honours,

Mr. *Sollicitor*, in his Reply, has so fully answered every Objection of the Prisoner, that it were needless to trouble your Honours further on this Occasion. I shall only beg Leave to observe one Thing which has been omitted by Mr. *Sollicitor*, and that is, that the Cases which have been quoted by the Prisoner, I will venture to affirm, are not in any Book of Authority now extant; so that I am really inclined to believe they are Cases of Mr. *Frye's* own making.

Mr. *President*. Gentlemen of the Jury, this Trial has taken up a great deal of Time, and been attended with a Variety of Circumstances. I shall therefore, as briefly as possible, sum up the Evidence, and make such Observations as occur to me, with as much Perspicuity as I am able.

The first Witness produced by the Council for the King, was Mr. *Carew*, who says, that at the Sale of the Estate called *Bridgewater's*, on the 7th of *November* last, the Prisoner and the Deceased being present, he heard the Prisoner say to the Deceased, *that he expected to be treated like a Gentleman*, or Words to that Effect. These Words, the Witness says, were spoke, he believes, in answer to something the Deceased had said to the Prisoner, which the Witness did not hear.

The next Witness is Mr. *Thomas Mills*, who was also present at the Sale of *Bridgewater's* Estate. He says, that the Prisoner objected to the Conditions of Sale, and that the Deceased (apprehensive that he did it with Design to protract the Time 'till Sun-set, after which the Estate could not be sold on that Day) said to the Prisoner, *Mr. Barbot, the Conditions of Sale are very fair, why will you cavil about them?* To which the Prisoner replied, *I expect to be treated like a Gentleman*, or Words like these; that to this the Deceased made no other Answer, than *that he should always treat him and all Mankind as such*. This Witness says also, that the Prisoner's whole Behaviour appeared to be calculated to delay the Sale. He says too, that he verily believes the Prisoner and the Deceased never saw each other from the Day of the Sale, 'till that of the Murder; for that he either saw the Deceased, or heard from him, every Day after the Sale, 'till he was killed; but he does not know whether they had any other Conversation the Day of the Sale; for he left them together in the Room where the Estate was sold. You will observe, Gentlemen, that the Testimony of Mr. *Carew* and Mr. *Mills* corroborate each other.

The next Witness is Mr. *Armour*, who says, that between the 3d and the 7th of *November* last, he was in Company with the Prisoner at Mr. *Constantine's* Door, and heard him say, that Mr. *Mills* had treated him in such a Manner as ought never to be forgiven. Mr. *Armour* indeed says, that the Prisoner did not particularly mention which of the *Mills's* it was that had treated him thus; but he understood that it was the Deceased he meant. I would make one short Remark here. The Prisoner himself has declared he never had any Difference with either Mr. *Thomas Mills*, or Mr. *William Mills*; and as there was no other Man of the Name of *Mills* in this Island but the Deceased,

Deceased, you will judge from the Event, who it was the Prisoner meant in that Conversation with Mr. *Armour*.

The next Witness that is called on the Part of the Crown is *Patience Dorset*: She tells you, that on the King's Birth-day she saw the Prisoner standing under the Gallery at *Mr. Cabée's Tavern*, talking to two Persons whom she does not know, and in passing by she heard him say, *There was a certain Gentleman in this Island, that within a Fortnight he would either kill or be killed by.* She is very positive that it was on the King's Birth-day she saw the Prisoner, and heard him say these Words, from two Circumstances; the first, that Mrs. *Mr. Cabée* sent for her that Day to assist in providing an Entertainment for the *Lieutenant-General* and his Company; and the other, that she heard a great many Guns fired. The King's Birth-day, you all remember, (I suppose) was celebrated on the 10th of *November*. Now, if you will compare what the Prisoner said to Mr. *Armour* before the 7th, his Behaviour to the Deceased upon the 7th, and the Declaration he made on the 10th, in the hearing of *Patience Dorset*; I think there is too much Reason to imagine it was the Deceased he meant, when he threw out that Menace.

Dr. *James Webbe* is then called. Before this Gentleman was examined, I confess, I expected he would have fully proved the Fact upon the Prisoner; for, from the close Connexion and Intimacy between them, I thought it highly probable he might have known something, if not the Whole of this Matter. And from the Character of the *Doctor*, his Education, and Rank in Life, I took it for granted he would have candidly and ingenuously related all that he knew concerning this unhappy Affair. But; I own, I was no less surprized than concerned, to find that every Thing which came from him, tending to bring this Matter to Light, was extorted with seeming Violence; and that he readily told all that he thought would obscure and hide the Fact. He says, that he has known the Prisoner between four and five Years; that he has frequently employed him as an Attorney; and that he lives in great Intimacy with him. That he was present at the Sale of *Bridgewater's* Estate on the 7th of *November* last, where the Deceased and the Prisoner also were; that the Estate then belonged to himself, and was sold for his Debts. He does not know what were the Conditions of Sale; but he remembers to have heard the Prisoner say, We will be bound as far as by Law we can be bound. He does not recollect any other Words passing at the Sale, only hearing the Deceased say to the Prisoner, *Let us have no School-boy's Play*, or something to that Effect. He did not hear the Prisoner make any Answer to this; for he was at that Time, he says, so distracted and confused at having his Estate sold, that he gave very little Attention to what passed. He tells you, that the Prisoner, at his Request, purchased the Estate for him. This really seems strange and unaccountable, that a Man whose Estate was then selling, and who had procured a Friend to purchase it for him, should be so inattentive, as not to recollect what the Conditions of Sale were; and it is as extraordinary, that a Man should buy an Estate without knowing on what Conditions. He says, he does not know how long the Deceased stayed at *Nevis* after the Sale, or whether the Prisoner ever

saw him after. That the Day after the Sale he saw the Prisoner, but does not recollect that any Conversation passed between them on the Business of the preceding Day, or that the Name of the Deceased was mentioned by the Prisoner. This is very amazing, that a Man, in an Affair so near his Heart, and which had thrown him into such Confusion and Distraction of Mind, should not the next Day, on seeing his Friend who purchased his Estate for him, make some Inquiry about the Event of the preceding Day. But this Gentleman's Memory is fatally treacherous to him; for he, in almost the same Breath, says, he thought the Terms of Sale hard too, and advised the Prisoner not to sign them. From hence it plainly appears, that Dr. *Webbe* was well acquainted with the Conditions of Sale, and must have had some Conversation with the Prisoner about them, or he could not have thought them hard, nor have advised the Prisoner not to sign them. He tells you, that the Prisoner came to his House on the 16th of *November*, and stayed there 'till the 18th, on which Day they dined together at *Jacob Saunders's*, and executed a Bond of Indemnity to *Saunders*, for having indorsed the Prisoner's Bills for the Deposit of the Purchase-Money of the Estate; that from thence in the Evening he went with the Prisoner to *O Donnell's Tavern*, where the Prisoner sat down to write; that the Prisoner desired him to get three Witnesses to attest the Paper he was writing; and that he did procure three Witnesses, which were *Potts*, *O Donnell*, and *Springett*, in whose Presence the Prisoner executed the Paper he was writing; and immediately after delivered it to him (*Webbe*.) He tells you, that he neither read the Paper while the Prisoner was writing it, nor since it has been in his own Custody; and that he is quite ignorant of the Contents of it. In this he is manifestly contradicted by his own Deposition which you have heard read, and which, as has been proved to you, was taken before Judge *Herbert* at *Nevis*. In that Deposition he swears, that the Prisoner made his Will at *O Donnell's* on the 18th of *November* in the Evening, and delivered it to him (*Webbe*.) informing him at the same Time that he had made him a Legatee in it. He tells you, that after this Paper (for he will not now call it a Will, though it has been fully proved he knows it to be so) was executed and delivered to him by the Prisoner, they both went Home together to this Witness's House; that the Prisoner at about Nine o'Clock went to Bed; that having Occasion to get up at about One o'Clock, as he was passing through the Hall, the Prisoner called to him, and asked him what o'Clock it was; but that he did not see the Prisoner from the Time he went to Bed, 'till the next Morning, at about Nine o'Clock, he saw him riding up to the House on one of his (*Webbe's*) Horses, attended also by his Negro Boy *Pope*; that he had on a white Coat, a dark-coloured Waistcoat, and a silver-laced Hat; that he did not ask the Prisoner, nor does he know, where he had been; but thinks there was Time enough, from the Hour he spoke to him the Night before, 'till the next Morning that he saw him riding up, to have been at *St. Christopher's* and back again; that he knew nothing of the Prisoner's taking his Horse and Boy, but that it was very customary for him to take them whenever he wanted them, without asking his Leave. He remembers the Prisoner having

having a red Trunk, which he brought from Mrs. *Dasent's* on the 16th of *November*; that he did see the Prisoner's Boy *Nero* bring a red Trunk to his House the Morning of the 19th, at the same Time that the Prisoner was riding up to his House; but he does not know whether that Trunk was the same the Prisoner brought from Mrs. *Dasent's* on the 16th, or whether the Trunk now produced to him is the same. He tells you, that on the *Sunday* before the Murder, the Prisoner and he were firing at a Mark with a Pair of Pistols that belonged to Mrs. *Dasent*; that Mrs. *Dasent*, on missing a Pair of her Pistols, sent to him, to desire he would come to her House; that he did go and assist her in searching for the Pistols; that he found them under the Bed in a Pair of Holster Caps; but he knew not of their being in that Place, nor who put them there: That at the Time he was searching for the Pistols in the Chamber, he observed a red Trunk, which he believes belonged to the Prisoner, and which he saw opened afterwards by Judge *Herbert*; in which were found, he says, a Coat, Waistcoat, and some Linen, which were moist; that he cannot tell whether the Cloaths found in the Trunk were the same the Prisoner had on the 19th in the Morning, when he rode up to his House; that he believes the Trunk and Cloaths now produced to him, are the same which he saw at Mrs. *Dasent's* the Morning after the Murder. He tells you, that on the 19th the Prisoner dined at Mr. *George Webbe's* senior, and he himself dined at Mr. *Maynard's*; that in the Afternoon, while he was at Mr. *Maynard's*, a Negro came to him, and told him the Prisoner had killed the Deceased; that he went soon after to Mr. *Symmonds's*; that he did not mention there what the Negro had told him, though he had a very good Opportunity to do it; for while he was there, he says, Mr. *Symmonds* received a Letter, giving an Account of the Prisoner's having killed the Deceased; that he himself also received a Note from the Prisoner, pressing him to come immediately to him at *John Herbert's*; that he did not mention at Mr. *Symmonds's*, having received such a Note from the Prisoner, though he heard Mr. *Symmonds* say, he would go and assist the *Posse* in Pursuit of him; that he went immediately after to *John Herbert's*, where he found the Prisoner drinking Tea; that the Prisoner immediately took him out into the Necessary-house, and asked him if he had heard the Report of his having killed Mr. *Mills*; that he answered, yes; that the Prisoner replied, he should not fly for it, for he knew nothing of it. He tells you, that this was all the Conversation that passed between them at that Time; that while they were in the Necessary-house, the Officers of Justice apprehended the Prisoner; that the Prisoner took him aside in Mr. *Herbert's* Hall, after he was apprehended, and desired him to get ten Pistoles from his Uncle *Webbe* for him; that he saw the Prisoner while he was in Gaol at *Newis*; that all the Conversation he had with him there was, desiring him to make over *Bridgewater's* Estate to him. He tells you, that he never knew that the Prisoner had any Resentment against the Deceased; that he knew nothing of his Boy *Pope's* having been at *Bridgewater's* Estate the Night before the Murder; that he did not send *Pope* out any where that Night, and did not know that he was gone out; that he himself was not sent for by any of his Patients that Night; and that it was so

boisterous a Night, as he should not have gone out in for Pleasure.

Upon the Whole of Dr. *Webbe's* Evidence, his Inclination to serve the Prisoner very plainly appears: But from his Want of Candour and Ingenuity, from the many Prevarications he has been guilty of, and the manifest Contradiction between his Deposition at *Newis*, and his Examination on the Trial; his Evidence, instead of answering the Intention of his giving it, serves rather to fix a strong Suspicion of Guilt on the Prisoner.

Mr. *O Donnell*, who was the next Witness, says, that the Prisoner and Dr. *Webbe* came to his House between Seven and Eight o'Clock in the Evening on the 18th of *November*; that the Prisoner called for Pen, Ink, and Paper, and sat down to write; that while he was writing, he called Dr. *Webbe* to him several Times, and they spoke together in a low Voice; that Dr. *Webbe* looked over the Prisoner frequently while he was writing; that as soon as the Prisoner had finished what he was writing, he went with Dr. *Webbe* into an inner Room; that after some little Time Dr. *Webbe* returned, and desired him, with *Potts* and *Springett*, to go in and witness a Paper; that the Prisoner did execute a Paper in the Presence of *Potts*, *Springett*, and this Witness; that he knows not what the Paper was, but believes it was a Will, because there were three Witnesses to it; that the Prisoner, after he had signed the Paper, put his Thumb on the Seal, and pronounced some Words, but so inarticulately, that he could not distinguish what he said; that the Prisoner covered with his Hand the Place where the Attestation is usually written, so that he could not see it. He tells you, that as soon as the Prisoner had executed this Paper, he delivered it to Doctor *Webbe*.

Charles Potts is then called. He says, that on the 18th of *November* last, being at *O Donnell's* in the Evening, somebody called to him, and told him he was wanted in the inner Room; that he went in, and the Prisoner desired him to witness an Instrument of Writing; that he, together with *O Donnell* and *Springett*, did witness a Paper, to which he saw the Prisoner sign his Name; that the Prisoner put his Thumb on the Seal, and took it off again, but does not recollect that he heard him say any Thing; that he took the Instrument of Writing to be some Deed to secure *Jacob Saunders*, because he met the Prisoner and Dr. *Webbe* coming from *Saunders's* that Day. I cannot help observing, that this is a very weak Reason for supposing it to be a Deed to secure *Saunders*; for had it been really so, there could be no Necessity for keeping it such a profound Secret; and, in the next Place, it is very natural to suppose, they would have executed any Deed of that Kind at *Saunders's* House, when they executed the Bond of Indemnity to him. He tells you, that he never knew that the Prisoner had any Resentment against the Deceased, but that, on the contrary, he has heard him often express great Regard for him.

The next Witness that is called is *Thomas Hobson*. He tells you, that on *Saturday* Night, the Night before he heard the Deceased was murdered, Dr. *Webbe's* Boy *Pope* came with a Horse of his Master's at Midnight, to the House where he (*Hobson*) lives, on *Bridgewater's* Estate, and said he had been round the Island looking for his Master; that *Pope* and the Horse were both wet; that *Pope* put the Horse in the Stable, and stayed there all Night.

Night. He tells you, that about Eight o'Clock the next Morning (which was the Day on which he heard of the Murder) he saw a little Man coming up to the House in a white Coat, and silver-laced Hat; that as soon as he came up to the Steps, he called for *Pope*, and ordered him to saddle the Horse; that he asked *Pope* which Road he should take; that *Pope* shewed him the shortest Way to Mr. *Pinney's*, where Dr. *Webbe* lives; and that he got on Horseback; and rode away: He believes he came from the Bay; and that his Shoes were wet. He tells you, that the Prisoner at the Bar is the very Man who came to his House on the 19th in the Morning, and whose Dress and Person, with the other Circumstances, he has described to you.

Sarah Hobson, the Sister of *Thomas Hobson*, is called next; but as her Evidence agrees in every Particular with that of her Brother, I think it is needless to repeat it to you.

The next Witnesses on the Part of the Crown is *John M'Kenley*. He tells you, that between Four and Five o'Clock in the Morning on the 19th of *November*, as he was lying on his Bed, *Coomy*, a Negro belonging to the Deceased, rushed into his Chamber, and, in great Fright, told him, that his Master was fighting at *Frigate-Bay*, with a Gentleman from *Nevis*; that he immediately got up, and ran down to the Bay, where *Coomy*, being on Horseback, had got before him; that he found *Coomy* supporting the Deceased; that he went up to him, and took hold of his Hand, and spoke to him; that he made him no Answer, nor had no Pulse; that he found then he was dead, though still warm, and was but just expired. He tells you, that on inquiring of *Coomy* who it was that had killed his Master, *Coomy* told him it was the Prisoner, and that he was just gone off in a Canoo; that he immediately ran down to the Sea-side, and saw a Canoo, with four Oars and a Paddle, making very fast from the Shore, and somebody in white sitting in the Stern of it, but he could not distinguish whether it was a white Person or a Negro; that the Deceased had on his great Coat and Gloves; that his Pistols were in the Holsters on his Horse; and his Sword in the Scabbard, wrapped in the Belt, at some Distance from him.

The next Witness is *William Johnson*. He tells you, that about Six o'Clock in the Morning, on the 19th of *November* last, as he was coming down from the *Salt-Ponds*, he saw the Prisoner in a Canoo, with four Oars and a Sail, between forty and fifty Yards distant from him; that the Canoo seemed coming from *Frigate-Bay*, and was rowing towards *Nevis*; that the Prisoner had on a white Coat, a silver-laced Hat, and a dark-coloured Waistcoat; that he knows the Prisoner very well; that he could see all the Way between the Place where he met the Prisoner, and *Nevis*; and that no other Canoo was in the Channel, but that in which the Prisoner was. The Prisoner and his Council have attempted to discredit the Testimony of *Johnson*, by saying he was publicly whipt for Petty Larceny at *Montserrat*; and that he could not positively swear before the Coroner's Inquest, that it was the Prisoner he saw in the Canoo. But they should, to have effected their Purpose, have produced the Record of *Johnson's* Conviction, without which, a bare Assertion of his Guilt ought to have no Weight with you. With regard to his refusing to swear positively to the Prisoner before the Coroner's Inquest, I think he swore as every cautious Man ought to do, that he verily

believed it was the Prisoner he saw in the Canoo; but after he had, for his better Recollection, seen him in Gaol, he was certain, and has now, as you have heard, positively sworn it was the Prisoner he saw in the Canoo. And besides, Mr. *Wilson's* Evidence does entirely acquit *Johnson* of any ill Design against the Prisoner, and does certainly strengthen his Evidence; for Mr. *Wilson* swears, that *Johnson* brought him a Letter from *Montserrat* the Morning the Deceased was murdered; that having heard the Report of the Murder, he told *Johnson*, that the Deceased was killed by the Prisoner; at which *Johnson* expressed a good deal of Surprise, and said, that he had met him that Morning in a Canoo going to *Nevis*. From this Circumstance, I think, *Johnson's* Evidence ought to receive its full Credit.

Jasper Thomas, and his Son *John Thomas*, are next called. They both agree in their Evidence, and tell you, that between Six and Seven o'Clock in the Morning, on the 19th of *November* last, they saw a Canoo belonging to *John Cribbe* land under the Manchioneal Trees, just under *Lowland-Church*, at *Nevis*; that as soon as the Canoo struck the Shore, the Prisoner jumped out of it; that a little yellow Negro Boy jumped out at the same Time, with a small red Trunk on his Head, and went towards the Town; that *Hulburd's Peter*, and *Deverade's Joe*, were in the Canoo; that the Prisoner had on a whitish Coat, and a silver-laced Hat; that they saw the Canoo above fifteen hundred Yards before she came to Land; that she was under Sail, and did not strike Sail 'till she landed; and that she seemed coming from the *Salt-Ponds*.

William White is then called. He tells you, that on the 19th of *November* in the Morning, as he was at work at Mr. *Woodley's* Estate, he saw a little Man in a brown Coat and a laced Hat, which he knew to be the Prisoner, walking up the Road that leads to *Bridgewater's* Estate; that he believes he came from the Bay; that he knows the Prisoner very well, and is certain he is the Person he saw.

The next Witness is Mr. *Bridgewater*, who tells you, that between Nine and Ten o'Clock in the Morning, on the 19th of *November*, he saw the Prisoner on a sorrel Horse belonging to Dr. *Webbe*, going the nearest Way to Dr. *Webbe's* House; that on the same Day in the Afternoon he went to Mr. *Symmonds's*; that while he was there, Dr. *Webbe* came in; that presently after, Mr. *Symmonds* received a Letter, giving him an Account of the Prisoner's having killed the Deceased; that as soon as Mr. *Symmonds* mentioned it, Dr. *Webbe* changed Countenance, and said that the Prisoner had lain at his House the Night before; that Mr. *Symmonds* asked Dr. *Webbe* if he had seen the Prisoner that Morning; that Dr. *Webbe* said he had not seen him since the Night before; at which this Witness expressed a good deal of Surprise, and said he had seen the Prisoner that Morning riding towards his (*Webbe's*) House, on one of his Horses; that to this *Webbe* made no Answer, but, in about five Minutes, went away, and said he was going up towards the Mountain.

John Cribbe is then called, who tells you, that on the *Friday* before the Deceased was killed, the Prisoner hired his Canoo to carry some Letters to *St. Kitt's*; that she returned the next Day in the Afternoon, and the Negroes that belonged to her, took her (as he thought) to go a fishing; that he did not see them again 'till about Eight o'Clock

the next Morning, which was the Day he heard the Deceased was killed; that he went to *Peter*, one of the Negroes belonging to the Canoe, and asked him, *What Luck?* (supposing he had been fishing;) that *Peter* answered him, *Poor Luck!* and seemed very melancholy and thoughtful; that upon inquiring the Reason of it, *Peter* told him he had been to *St. Kitt's* with Mr. *Barbot*, who, he was afraid, had done a great deal of Mischief, for he believed he had killed Mr. *Mills*. He tells you, it was about Ten o'Clock in the Morning when he had this Conversation with *Peter*; that at that Time he had not heard, either by common Report, or otherwise than from *Peter*, of the Death of the Deceased; and indeed from the Evidence of *Quin*, which immediately follows, he could not have heard it from common Report; for *Quin* tells you, he was the first that carried the News to *Nevis*, and that he did not arrive there 'till Eleven o'Clock. This makes it highly probable, that what *Peter* said was too true.

Mrs. *Dasent* is then called. She tells you, that on the 19th of *November* last, hearing that the Magazine was broken open, and of the Murder of the Deceased, she ordered all the Arms in her House to be searched for; that missing a Pair of Pistols, she sent to Dr. *Webbe*, who came to her, and after searching a good while, at last found the Pistols under the Bed; that the Prisoner's Trunk was in the Room where the Pistols were found, but she knew not of its being there 'till that Day, nor how it came there; that she saw the Trunk opened, in which were found a brown Waistcoat and a Pair of black Breeches, which she believes belonged to the Prisoner; that she believes the Trunk and Cloaths now produced to her, are the same she saw opened at her House by Judge *Herbert*.

Judge *Herbert*, who is the next Witness, tells you, that the Day after the Murder he went to Mrs. *Dasent's*, where he saw the Pistols, with the Trunk and Cloaths which have been produced to him; that the Cloaths were wet, and he believes with Salt-Water; for, on touching the Waistcoat with his Tongue, he found it salt. He also tells you, that being at Mr. *Colboun's*, where the Body of the Deceased was brought on the Day of the Murder, he searched the Pockets of the Deceased, and found in his Breeches Pockets three Bullets.

Mr. *Pringle* and Mr. *Baker* are then called, who tell you, that being at Mr. *Colboun's* on the Day the Deceased was killed, they examined his Pistols, which they know to be the same that are now produced; that they could not, upon the most careful Examination of them, perceive the least Stain of Powder on either of them, except about a Grain or two, which they supposed to have been bruised by the Hammer; that they are convinced neither of the Pistols had been lately discharged, for Mr. *Baker* having put his Finger into the Barrel, there came off on it a rusty Dirt, which he tells you would not have been there, if the Pistols had been lately fired out of. They also tell you, that upon examining the Cloaths of the Deceased, they found on the right Flap of his Coat, and the Inside of his great Coat, on the right Side, a Stain of dry Powder.

The Council for the Crown, to corroborate and support the Evidence of *Patience Dorset*, have produced *Martha Scooper*, *Mary Sutton*, and *Mary Cockade*, with whom they conclude their Evidence. The two last swear positively that the Prisoner was on this Island on the King's Birth-day, and are so

very circumstantial in their Evidence, that I think they cannot be mistaken. For *Sutton* has very particularly described his Drefs to you, and *Cockade* has also sworn to some particular Words she heard him say in *M^cCabée's Tavern* on the King's Birth-day. The Evidence of *Scooper* is not so positive as that of the other two, but it serves to strengthen and give Weight to what they have sworn.

The Prisoner, in his Defence, positively denies his having had any Resentment against the Deceased; says it was very easy for him to have made his Escape, if he had been guilty of the Crime laid to his Charge, and that it was natural to suppose he would have done so; that the firing the Pistols the *Sunday* before the Murder, was merely accidental, and to amuse himself; that he was not on this Island on the 10th of *November*. He then calls his Witnesses, the first of which is Mrs. *Lowman*. She is positive that the Prisoner was at her Father's on the 10th of *November*; that in the Morning of that Day he went with *Daniel* to Mr. *Ottley's*, and returned and dined at her Father's; that on that same Day she herself dined at her Brother *George Webbe's*, in Company with Mr. *William Herbert*. In the first of these Circumstances she is contradicted by the Evidence of Mrs. *Ottley* and Miss *Anne Herbert*, who tell you, that it was on the 9th of *November* the Prisoner and *Daniel* came to Mrs. *Ottley's*; in the other she is also contradicted by Mr. *William Herbert*, who tells you, that it was on the 9th of *November* he dined at young *George Webbe's*, in Company with Mrs. *Lowman*, and on the 10th he dined at Mr. *Cole's*; so that Mrs. *Lowman* must be mistaken in the Day. Mr. *Josiah Webbe*, the Brother of Mrs. *Lowman*, is next called. He cannot swear positively; but he believes the Prisoner was at his Father's on the 10th of *November*.

John Cornelius is the next Witness. He is positive that the Prisoner was at old Mr. *Webbe's* on the 10th of *November*; but the contrary has been proved by so many Witnesses on the Part of the Crown, supported with such strong Circumstances, that *Cornelius* must certainly be mistaken in the Day.

Mr. *Julius* was also called upon by the Prisoner to prove that *Johnson*, one of the Witnesses against him, could not swear positively to him before the Coroner's Inquest; but the Observations I have already made on that Part of *Johnson's* Evidence, will be sufficient, without repeating to you that I think *Johnson's* Evidence a good one, and ought to have its proper Weight with you.

These are the Witnesses produced by the Prisoner, that seem to be any ways material in his Favour: He has, indeed, called many others to prove his being at *Nevis* on the *tenth* of *November*; but they have all failed in this Circumstance, which would have been of great Consequence to him, if he could have established it; as it would have effectually invalidated the Evidence of *Patience Dorset*, and the rest, who swore to his being in this Island on that Day.

I have, as well as I have been able, Gentlemen, given you the Substance of the Evidence on both Sides, in which I hope I have omitted nothing material.

I must observe to you, that in Cases of Murder, and the like atrocious Crimes, the Law has relaxed much of its Severity and Scrupulousness in the Proofs, and does not so absolutely require such positive Proof, as in Matters of *meum* and *tuum*, where

where they may be had, but in these cannot: For no Man who knows, or even imagines, that his Life must answer for the Perpetration of a Deed, will call Eye-witnesses to it; but will, with as much Secrecy as his Invention can supply, execute his Intention; and to admit none but positive ocular Proof, would be rejecting all, and proclaiming Impunity.

It has been justly observed to you by the Council for the Crown, that the Law, where the Circumstances are so closely connected and linked together, as in this Case, and amount so fully to what is called a *violenta presumptio*, admits this as full Proof, and, in my Opinion, more so than any one positive Evidence, whose Memory may be deceitful, or who may possibly be suborned; but in Facts made appear from Circumstances which are dumb, we cannot be deceived; nor they falsely charge, or partially excuse.

The Circumstances of this unfortunate Affair hang so closely together, that they carry too glaring a Proof to admit of much Doubt, by whose Hand Mr. Mills fell.

Mr. Armour declares, that he heard the Prisoner say, between the *third* and *seventh* of November, that Mr. Mills had treated him cruelly, and in such a Manner as ought never to be forgiven: The Prisoner has acknowledged, he had never any Difference with Messieurs Thomas and William Mills, it then could have been none but the Deceased he meant: Though this the Prisoner denies, and says, Mr. Armour must have misunderstood him.

Patience Dorset swears, that she heard the Prisoner declare, on the *tenth* of November, that he would either kill or be killed by a Person of Distinction in this Island, in the Course of ten Days. Mr. Mills is found dead in a remote Part of the Island on the 19th, within the Time limited; and by the Evidence now given in Court, by the Gentlemen who opened the Body before the Coroner's Inquest, it appears, that he had been killed by a Bullet, or some other Substance discharged from a Fire-arm. From the Evidence of Armour and Dorset, a pre-pense Malice appears; and a Life taken away through such Malice pre-pense, in the Eye of the Law and Man, is deemed Murder in the highest Degree.

The Prisoner too, in a precipitate Manner, and in a Tavern, the Night before Mr. Mills was found dead, executed his Will; in his Defence he acknowledges the Deed executed at O Donnell's to have been such: Had he not been conscious that he might have ran some Risque of losing his Life the next Morning, why in such a Place, and in such a Manner, draw and execute a Deed of so nice a Nature, and of such Consequence, as his Will? But the Time, by Mrs. Dorset's Evidence, which it appears he had limited to his own Life, or a Person's of Distinction in this Island, was near expired, therefore necessary such a Deed should be executed.

The next Morning Mr. Mills is found dead. The Prisoner is declared by Coomy to be the Person by whose Hand his Master fell: And tho' by Law this is not Evidence; yet by Mr. M'Kenley's Evidence, who declares he saw a Person rowing in a Canoo, from the Place from whence Coomy had told him the Prisoner embarked, describing his Dress; which Person is immediately after met by Johnson, who personally knows him, describes him to be dressed in the same Manner, and declares that no Canoo was then at Sea, but the one in which was the Prisoner; that he could distinctly

see the whole Passage from *Frigate-Bay*, the Place where Mr. Mills then lay dead, to *Nevis*, where the Prisoner was seen to land by Jasper Thomas and his Son, who declare that they saw the Canoo coming from *St. Christopher's*, describe his Dress to be the same as M'Kenley and Johnson: Jasper is so particular as to name two of the Negroes who rowed the Canoo, one of which (*Peter*) as appears from Cribbe's Evidence, and which strengthens and is strengthened by Coomy's Declaration, says, that he had been that Morning to *St. Kitt's* with Mr. Barbot, who he feared had done a great deal of Mischief, for he believed he had killed Mr. Mills. And as this Declaration of Peter's was made to Cribbe, before the Account of Mr. Mills's Death had reached *Nevis*, as appears from Quin's Evidence, who was the Express sent up in Search of the Prisoner, and the two Slaves were four or five Leagues asunder, and could not have seen each other from the Time of the Commission of the Fact, to this Declaration of Peter's; this could not have been by them concerted, and of itself carries so much Weight, as to merit some Attention. Again, Thomas Hobson and Sister declare, that in the Morning of the Day on which they heard the Account of Mr. Mills's Death, they saw a little Man, whom they know to be the Prisoner, coming up from the Bay; that he came to their House, and asked for Dr. Webbe's Boy Pope: When the Boy appeared, he did not ask if he had got a Horse, but ordered him to saddle the Horse: From this then it is evident, that he knew the Horse and Boy were there, or he would not have called so immediately for Pope, and ordered saddling the Horse. Dr. Webbe too proves, that the Horse and Boy must have been taken out of his Stable by the Prisoner; for he declares, that he himself had not that Night been called out by any Patient, nor had he sent that Boy on any Message. These Evidences describe the same Dress as the preceding ones. Other Evidences have been produced by the King's Council, who described the same Dress, and traced the Prisoner to Dr. Webbe's, where the Doctor acknowledges his Arrival, dressed also in the same Manner, as every other Evidence had.

From such a Chain of Evidences, who were separated from each other in different Islands, Persons no ways connected, and so exactly tallying with each other, little Room, as I said before, can be left to doubt.

It was essentially incumbent on the Prisoner, for his own sake, to prove where he was, from the Time he went to Bed at Dr. Webbe's, on the 18th of November at Night, to the Time he was seen to land at *Nevis*, on the 19th in the Morning; but this he has not attempted to do.

Lest you should have entertained a Notion, that the killing a Person in a Duel is not Murder in the Eye of the Law, as the Life of each in such an Encounter runs an equal Risque; I assure you, Gentlemen, the Law makes no such Distinction, even in Cases of fair Duels. If from the Evidences you are satisfied, that Mr. Mills fell by the Hands of the Prisoner, and that he had a malicious Intent, the Law makes it Murder as much in this Case as any other. The Prisoner, in his Defence to clear himself, says, from his known and past Conduct in Life, there is no Reason why he should be even suspected of engaging in a Duel: But from the Evidences of Messieurs Pringle and Baker, that the Pistols of the Deceased had never been discharged, or even were they loaded; and from his Sword's Belt

Belt being buckled round the Hilt, and at a Distance from him, as appears from *M^r Kenley's* Evidence; and from the Direction of the Ball or Substance which pierced the Body of the Deceased, which entered so far backwards, and struck on the opposite Side so far forwards; and of which Messieurs *Hamilton* and *Edwards* declare, to the best of their Knowledge and Belief, Mr. *Mills* died, and that he could not have received the Wound in a Posture of Defence: From these Circumstances, it must be left to you, upon the Evidences, to consider whether this was even a fair Duel.

I shall detain you, Gentlemen, with but one more Observation, which is, that no Person but the Prisoner has been proved or known to have declared a Resentment to Mr. *Mills*, the Deceased; no Person but the Prisoner was seen going from the Place where Mr. *Mills* was found but just expired; and no Person of Distinction in this Island killed but Mr. *Mills*.

All Circumstances of Persons, Time, and Place, must be well considered. It is also your Duty to weigh the Evidences that have been offered to you, and to judge from thence, whether the Prisoner is guilty of the Murder wherewith he stands charged, or not guilty; and in considering this Matter, let me recommend to you, that you divest yourselves of any Impressions that may have been made on you from the Relation of this Fact out of Doors, and that you consider merely the Evidence given you here on the Trial.

If, upon the whole, you believe in your Consciences, that the Prisoner committed the Fact of which he stands indicted, you will find him guilty: But if, upon the whole, you do not believe in your Consciences that he committed it, you are to find him not guilty.

Then the Jury withdrew, and in about Half an Hour returned.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *John Barbot*, hold up thy Hand, (*which he did.*) Gentlemen of the Jury, look upon the Prisoner: How say you, is *John Barbot* guilty of the Felony and Murder whereof he stands indicted, or not guilty?

Jury. Guilty.

Cl. of Arr. What Goods or Chattels, Lands or Tenements, had he at the Time of the same Felony and Murder committed, or at any Time since, to your Knowledge?

Jury. None.

Cl. of Arr. Hearken to your Verdict as the Court hath recorded it. You say that *John Barbot* is guilty of the Felony and Murder whereof he stands indicted; and that he had not any Goods or Chattels, Lands or Tenements, at the Time of the said Felony and Murder committed, or at any Time since, to your Knowledge; and so you say all.

Cl. of Arr. *John Barbot*, hold up thy Hand. You have been indicted of Felony and Murder. You have been thereupon arraigned, and pleaded thereto Not guilty, and for your Trial you have put yourself upon God and your Country, which Country have found you guilty. What have you now to say for yourself, why the Court should not

proceed to give Judgment of Death upon you according to Law?

Pris. May it please your Honours, there is a Fault in the Indictment. The Fact is laid to have been committed at *Frigate-Bay* in the Parish of *St. George Basseterre*, and *Frigate-Bay* is in the Parish of *St. Peter*.

Mr. Sol. Gen. May it please your Honours, the Prisoner, admitting it were as he says, is too late in his Exception. That is a Matter of Fact, and, if it had been material, (which it was not) ought to have been shewed on Evidence; but cannot be made use of in Arrest of Judgment. However, the Truth is, there is no such Mistake as he mentions in the Indictment; for *Frigate-Bay* is actually in the Parish of *St. George*, and if it were necessary we could prove it.

Pris. May it please your Honours, I have nothing more to say.

Mr. President. *John Barbot*, you have been indicted for the Murder of *Matthew Mills*, Esq; and for your Trial have put yourself upon God and your Country: That Country has found you guilty.

You have had a long and a fair Trial. You have challenged many who were called up as Jurors, though not the whole Number you were intitled to by Law; so that I may with Justice say, you have been tried by a Jury, to which you yourself had no Exception.

I am sorry it falls to my Lot to acquaint you, that I am no longer at Liberty to suppose you innocent.

You are convicted of a Crime the most horrid and dreadful in itself: A Crime attended with the most aggravating Circumstances. You have deprived the World of one of its most worthy and useful Members; and rendered unhappy Numbers of Persons, who drew the Means of Subsistence immediately from the Bounty and Benevolence of the unfortunate Gentleman deceased.

It is hard to conceive what Provocation you could have received from a Gentleman of so mild and gentle a Disposition as the Deceased was, to induce you to perpetrate an Act so shocking. But I would advise you, as some Kind of Atonement for the Crime you have been guilty of, to make a full Confession of the whole Matter. Let me recommend to you also, to employ the little Time you are likely to continue in this World, in endeavouring to make your Peace with that great God, whose Mercy is equal to his Justice.

Nothing now remains, but to pronounce the Sentence of the Law upon you, which is,

That you are to be carried to the Place from whence you came, and from thence to the Place of Execution, where you are to be hanged by the Neck until you are dead: And may God of his infinite Mercy receive your Soul.

The Prisoner then addressed himself to the Court in this Manner:

May it please your Honours,

Since it can no longer avail me to conceal the Fact, I will make a frank Confession of the Whole.

That I did kill Mr. *Mills*, is most true.— That I killed him fairly, is equally true—fairly according to the Notions of Honour prevailing among Men. From these false Principles of Honour I was induced to engage in the unhappy Duel, which in its Consequences deprived the

World

World of so worthy a Gentleman, and has involved me in these unhappy Circumstances. False I am convinced they are, notwithstanding the Countenance they receive from the daily Practice of the World.

I make no Doubt but that the Words which Mr. Carew and Mr. Mills have sworn, did pass between the Deceased and myself at the Sale of *Bridgewater's* Estate, though I cannot now recollect that they did. But this was not the Cause of the Duel.

The Provocation I received from Mr. Mills was this:

After I was declared the Purchaser of the Estate, I sat down to draw the Bills of Exchange for the Deposite. While I was about them, Mr. Mills came and looked over me, and observing that I had made them payable at ninety Days Sight, he objected to them, and asked me if I knew what I was about, and insisted on having the Bills drawn at a shorter Sight: To which I answered, that I was sure he must know it was usual for Bills of so large a Size to be drawn at a long Sight. I told him further, that I apprehended he had no Right to object to the Bills at all, if the Marshal agreed to accept them as they were drawn. To this Mr. Mills replied, *Sir, you are an impertinent Puppy.* I took no Notice of this 'till after I had finished the Bills, and then I took him aside, and spoke to him to this Effect: That I little expected to receive such Treatment from a Gentleman of his known Politeness and good Breeding; that, as I was not conscious of having deserved it, I desired he would make me some Apology for it. He replied, that he would not make me any Apology; but that, if I thought myself injured, he was at my Service when properly called upon. I made him no Answer, but immediately left him; and, on the *Thursday* following, I wrote him a Letter, telling him, that since he had done me the Honour to assure me he would be at my Service whenever I should call upon him, I expected he would meet me by Dawn of Day the next Morning, near *Lowland-Church*, armed with a Case of Pistols only. Mr. Mills sent me an Answer to this; and there were six Letters in all passed between us, three from him, and three from me, which I do not now recollect, for I destroyed them*, though I believe I shall be able to remember the Substance of them. The last I received from him was, that he would meet me at the Time and Place appointed, which was *Frigate-Bay*. The Night before the Duel, I made my Will at Mr. *O'Donnell's*, and delivered it to Dr. *Webbe*. The Doctor put it in his Pocket without reading it, and we immediately went Home to the Doctor's House, where I went to Bed soon after I arrived. At about One in the Morning I heard the Doctor up, and called to him: He answered me, and went out; and as soon as he came in and returned to Bed, I got up, and went with *Pope* to the Stable, and saddled one of the Horses, which I immediately mounted, directing the Boy to follow me, and rode very fast 'till I passed Mr. *Pinney's*,

where I was overtaken in a very hard Shower of Rain, that wet me through all my Cloaths. I rode with all the Speed I could 'till I came to *Molton's-Bay*, where I had ordered a Canoo to wait for me. At first I could not perceive the Negroes, but on looking round, I saw them lying under a Sail. They immediately got ready, and I jumped into the Canoo, and ordered *Pope* to carry the Horse to *Bridgewater's* Estate. The Night was very tempestuous, and the Canoo was several Times near filling with Water. I had a Phial of Rum with me, which I had filled at Dr. *Webbe's*, and finding myself excessive cold and chilly, I drank a Dram of it. When I got to *Frigate-Bay*, I jumped out of the Canoo, and ordered my Boy to follow me with my Trunk, in which were my Pistols. I then seated myself under a Privet-hedge, and sent my Boy to the Entrance of the *Basseterre* Road, to wait for Mr. *Mills's* Arrival. In the mean Time I examined my Pistols, and fresh primed one of them. I had no sooner done this, than I heard the Footsteps of a Horse. I arose immediately, and saw Mr. *Mills* riding fast up to me. As soon as he came near, we saluted each other; after which he immediately alit, and took his Pistols out of the Holsters, and primed them. While he was priming his Pistols, his Horse's Head being between me and himself, I told him, I had, as I had wrote to him, brought down the Letters he had wrote me, and I doubted not he had likewise with him those I had wrote him. I then took out the Letters from my Pocket-book, and offered them to him: He made me no Answer, but hastily ordered his Boy to lead away his Horse, and putting himself in a Posture of Defence, presented his Pistol at me. I gave his Letters then to my Boy, and ordered him, in case I should drop, to give them to Mr. *Mills*. I immediately then presented my Pistol at him; which he observing, cried out, Stay, stay! I instantly dropped my Pistol, and Mr. *Mills* said to me, Stay, let me give the Letters to the Boy; which he immediately did; and then recovering his Posture again, himself on one Side the Road, and I on the other, we presented our Pistols at each other. I observed Mr. *Mills* drew his Pistol near his Eye, from which I imagined he was near-sighted. About four or five Seconds after I had presented, I fired; and Mr. *Mills* cried, *Sir, you have killed me, you have killed me, Sir.* I was extremely shocked to see him fall, and I went up to him and said, *Sir, I am heartily sorry, I pray God to bless you, but I can stay no longer here.* I then ordered his Boy to take Care of him, and immediately went down to the Canoo and jumped in, and ordered the Negroes to row as fast as ever they could. I asked my Boy, when we were in the Canoo, whether Mr. *Mills's* Pistol had snapped. He told me it had; but for my own Part, I neither heard it snap, nor saw the Flash.

The Letters Mr. *Mills* wrote me on this unhappy Occasion were extremely polite; and those I wrote him were in as respectful Terms as I was Master of. It was Mr. *Mills's* Character, his Rank

* The Prisoner, in a Conversation he had with the Publisher, while he was under Condemnation in Gaol, told him, that he had destroyed the original Letters which passed between Mr. *Mills* and himself; but that he had preserved Copies of them, which Copies he had put in a Bottle, and buried in Mr. *Pinney's* Garden (where Dr. *Webbe* lives) at *Newis*. So remarkable a Circumstance as this, had it been true, one would think could hardly have escaped him on his Confession in Court. The Omission of this Circumstance therefore very justly calls in Question the Genuineness of the Letters, and inclines one too reasonably to believe, from that and some other Observations, that the Letters which he has given for those that passed between Mr. *Mills* and himself, are the Effect of an After-thought, and were probably formed, during his Condemnation in Gaol, and sent up by him with Directions to bury them at *Newis*.

and Distinction in Life, that engaged me in this unfortunate Business; for I should not have accepted a Challenge from any Man inferior to him.

For myself, my Concern for the unhappy Fate I shall soon meet with is little, compared to that I feel for the Sorrow and Affliction it will bring on a tender Parent; and the Grief and Anguish the Consequences of this unfortunate Duel will occasion to an unhappy Lady, when she hears the shocking News of her Husband's Death.

I must, in Justice to Dr. *Webbe*, acquit him of any Concern in the Matter. He is perfectly innocent of the Cause of my Quarrel with Mr. *Mills*; neither did he know any thing of the Duel, either before or after it. One Gentleman was acquainted with it; a Gentleman whom I asked to be my Second, which he refused. I beg to be excused mentioning his Name, but he is neither of this Island, nor of *Nevis*.

I am obliged to your Honours for the Candour and Impartiality you have shewn in the Course of my Trial. You, Gentlemen of the Jury, I must acknowledge, have acted like upright honest Men. Had I been in your Place, I should have found the same Verdict you have done.

I have nothing now to ask of your Honours, but that you would please to allow me a little Time, to settle my Affairs, and to make my Peace with God.

To which Mr. President replied,

To be sure you shall have a proper Time allowed you.

On *Saturday* the 20th of *January*, 1753, the Prisoner was executed at the Town of *Basseterre*, according to the Sentence pronounced against him.

At the Place of Execution he delivered the following Paper to the Provost-Marshal.

My Friends and Fellow-Subjects,

“ You see me this Moment a dreadful Instance, how much the human Mind may be led away and imposed on by false and empty Notions, affecting Reputation in the Estimation of weak and fallible Men: Even so far as to commit the highest Crimes in the Sight of God, and daringly to violate all human Laws, calculated for the Good and Safety of Society. Let my Example be a Means to teach Men to act more consistently with their Reason; and let my Punishment deter them from the Commission of Crimes like mine. And then my Death, and that of the unhappy Gentleman who fell by my Hand, will, I hope, by the Benefit the World will receive from the Example, make some Amends to the Community for the Loss of two Subjects, who might, had it not been for the unhappy Fate which attended them, have lived not unuseful Members of Society.”

Mr. *Barbot* was born in *London*, where his Father, who is a Working Silversmith, (a Man of some Substance in the World, and, as it is said, of a good Character) still lives. At about fourteen Years of Age, he was put Clerk to Mr. *Delaport*, an Attorney in *Staples-Inn* in *London*; with whom he served a Clerkship for the usual Term of five Years. After that Time expired, he came from *England*, in the Year 1746, in Character of Clerk

to a Gentleman of the Profession of the Law in *Antigua*. With this Gentleman he lived near two Years; and then, having not been very prudent in his Conduct, and having besides contracted some Debts there, to the Amount of 2 or 300*l.* Currency, he came to *Nevis*; where he made a very close Acquaintance with the Family of the *Webbe's*. Having for some Time lived a very idle Life there; and given away, and otherwise unprofitably disposed of, a considerable Part of a small Cargo of Goods, of about the Value of 4 or 500*l. Sterling*, which his Father had sent him to sell, and spent the Produce of the rest of it; and being at length reduced to extreme Necessity, he came, about three Years ago, to this Island; where, by a critical Scarcity of Attornies at Law, he got himself admitted one in the ordinary Court of Common Law; and in the very first Year, had such a Run of Business, as to enable him to clear off what Debts he owed in the *West-Indies*; which amounted to near 400*l.* Currency; and to put a handsome Sum of Money in his Pocket besides. The first Year of his being here, he behaved with Industry and Fairness; but soon after, from a natural Dislike to Business, and too great a Disposition to get Money by the most likely Means that offered, he greatly neglected his Clients Affairs, and fell into a Way of buying up desperate Debts; which he commonly found Means so to turn and twist about, as to make them good in the End; by getting still better and better Security for them every Time he sued for them, and by adding each Time the Interest and Costs: By which Means he made them at once larger and more secure. Thus by the Dissatisfactions of many who employed him, and some small Imputations he drew on his Character; as also by Persons of less questionable Reputation, and more Industry; coming to practise as Attornies in the same Court, his Practice was greatly reduced: And yet, by one Means or another, he became at length worth, as he says, (and, I believe, truly) about 800*l. Sterling*. His Age, by the Plate on his Coffin, appeared to be but twenty-five: Though I should think he must have been two or three Years older: But of this I have no Certainty.

For the rest, he had a good School Education; and knew *Latin*, and spoke *French*, very well. He had made some Progress in the Mathematics; and knew, and was very apt in, Figures; and was a tolerable Proficient in Music. He had a pretty good Taste of Literature in general; and a good deal of general light Reading: But his Judgment was by no Means solid; and his Mind of a romantic Cast; though not without something of ingenious in it, and some considerable Sprightliness of Parts. To which I must add, he was a very ready Writer, in either Sense of the Word; having both great Freedom and Quickness of Hand, and Fluency of Expression. He was remarkably courteous in his common Behaviour; but his Politeness and Deportment were of that Sort, which is usually distinguished by the Name of Priggism: which the Littleness of his Person (a Circumstance well worthy the Attention of Persons of the same Size and Turn) contributed to make much more observable, and thereby to set him in a more ridiculous and contemptible Light; as a certain Pertness in his Manner, and Forwardness in his Behaviour, with a Vanity conspicuous in all he said and did, rendered him often very troublesome and disgusting.

XLVIII. *The TRIAL of Timothy Murphy, for Felony and Forgery, on Saturday the 13th Day of January, 1753, before the Right Honourable Sir Crisp Gascoyne, Knt. Lord-Mayor of the City of London, the Right Honourable the Lord Chief Baron Parker, and others of his Majesty's Justices, &c. at Justice-Hall in the Old-Bailey, for the City of London.**

Clerk of the Arraignments.

CRYER, make Proclamation.

Cryer. Oyez, Oyez, Oyez; You good Men of the City of London, summoned to appear here this Day, to try between our Sovereign Lord the King and the Prisoners that shall be at the Bar, answer to your Names as you shall be called.

Then the Jury were called over.

Cl. of Arr. Set Timothy Murphy to the Bar. (Which was done.)

Cl. of Arr. How sayest thou, Timothy Murphy, art thou guilty of the Felony whereof thou standest indicted, or not guilty?

Prisoner. Not guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Pris. By God and my Country.

Cl. of Arr. God send thee a good Deliverance.

You, *Timothy Murphy*, the Prisoner at the Bar, hearken to what is said to you.

These good Men, who are now called, and do here appear, are those that are to pass between our Sovereign Lord the King and you, upon your Life and Death; if therefore you will challenge them, or any of them, you must challenge them as they come to the Book to be sworn, before they are sworn; and you shall be heard.

Cl. of Arr. Call Thomas Batten, (who appeared.)

Cl. of Arr. Cryer, give the Book to Mr. Batten.

You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, and true Verdict give, according to your Evidence: *So help you God.*

In like Manner the other eleven were sworn, *viz.*

*Robert Holaday,
Thomas Godenough,
Peter Bredal,
John Goldsmith,
James Callings,
Edward Pope,*

*William Bitherny,
Gilpin Russell,
Richard Pargiter,
Robert Nash,
James Elliot.*

Cl. of Arr. Count these. (They were counted.)

Cryer. Are you all sworn, Gentlemen?

Jury. Yes.

Cl. of Arr. Make Proclamation.

Cryer. Oyez, Oyez, Oyez; If any of you can inform my Lords the King's Justices, the King's

Serjeant, the King's Attorney-General, or this Inquest now to be taken; of the Felony and Forgery of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance.

Cl. of Arr. Timothy Murphy, hold up thy Hand. (Which he did.)

Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause: He stands indicted by the Name of *Timothy Murphy*, late of London, Yeoman, for that he, after the 29th of June, 1729, to wit, on the 9th of February, in the twenty-fourth Year of his present Majesty's Reign, with Force and Arms, at London, *viz.* in the Parish of *St. Benedict*, near *St. Paul's Wharf*, in the Ward of *Castle-Baynard*, in London aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willingly act and assist in the false Making, Forging, and Counterfeiting, a certain Will and Testament, purporting to be the last Will and Testament of *John Wilkinson*: The Tenor of which said Will and Testament is as follows, that is to say,

In the Name of God, Amen. John Wilkinson, late of the Princess Amelia, being of sound and disposing Mind and Memory, make this my last Will and Testament; first and principally commend my Soul into the Hands of the Almighty God, hoping for Remission of all my Sins, through the Merits of Jesus Christ, my blessed Saviour and Redeemer, and my Body to the Earth or Sea, as it shall please God; and as for such worldly Estate and Effects which I shall be possessed of or tilted (meaning entitled) unto at the Time of my Decease, I give and bequeath the same followeth, that is to say, unto my loving Friend John Daunt, of Lisbon, in the Kingdom of Portugal, Victualler, all such Sallery or Sallaries, Prize-Money, Bounty-Money, Wages, Tickets, Short-Allowance-Money, Smart-Money, and all other Sum or Sums of Money that shall be due to me at my Decease: And I do hereby grant the said John Daunt whole and sole Executor of my last Will and Testament, and I do hereby revoke and disannul other Wills, at any Time by me before made: And I do hereby nominate, constitute, and appoint the said John Daunt, Exectu^r (meaning Executor) of this my last Will and Testa-

* Taken with Leave of the Court by *T. Gurney*, Short-Hand Writer at the Sessions-House in the *Old-Bailey*.

ment; and I do give and bequeath unto my said Executor, all the rest and of my Estate whatsoever, both real and personal, hereby revoking and making void all others and former Wills by me heretofore made as aforesaid, declare this to be my last Will and Testament. In Witness whereof, I have hereunto set my Hand and Seal, this 5th Day of May, in the Year of our Lord, 1747.

Joⁿ Wilkinfon.

Signed, sealed, published, and declared, by the said John Wilkinfon, (meaning by the said John Wilkinfon) as and for his last Will and Testament, in the Presents (meaning Prefence) of us who have hereunto subscribed our Names, as Witnesses, in the Presents (meaning Prefence) of the Testator.

L. S.

Thomas Carty, Dinish Collins.

With an Intent to defraud *Thomas Noads*, against the Form of the Statute in such Case made and provided. There are several other Counts in the Indictment for publishing the said forged Will, with the like Intention to defraud the said *Noads*, &c.

Upon this Indictment he hath been arraigned, and thereunto hath pleaded *Not guilty*, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to inquire whether he be guilty of the Felony and Forgery whereof he stands indicted, in Manner and Form as he stands indicted, or not guilty.

Mr. *Bamber Gascoyne* having opened the Indictment,

The Honourable Mr. *Hume Campbell* (Brother to the Earl of *Marchmont*) spoke as follows: May it please your Lordship, and you Gentlemen of the Jury, I am Council on the Side of this Prosecution. You have heard from the Indictment, that the Person who now stands a Prisoner before you, is charged with the Forgery of a pretended Will of one *John Wilkinfon*, in order to defraud *Thomas Noads* of a considerable Sum of Money. And, Gentlemen, was there nothing more requisite in this Case, than to open the Evidence which shews the Prisoner's Guilt; had no Artifice been used, no extraordinary Attempts been made, to prevent or to prejudice this Trial, I should scarce have appeared here to give you any Trouble at all. And now I am here, I should have been glad, if the Conduct of a Person acting for the Prisoner, and who now hears me, had permitted me to state only such Facts, as prove the Justice of the Prosecution. But from what happened this Session as well as the last, in relation to this Trial; from an Intimation that the baffled Attempt to try the Prosecutor on the Evidence of the Prisoner, would be turned into an Endeavour to avoid or discredit the Testimony of that Prosecutor; it becomes necessary for me to relate Facts of an earlier Date than I should otherwise have done, and Circumstances I should have wished not to mention: These will prepare you for what may arise in the Course of the Trial, and enable you to understand what, I guess, the learned Gentlemen I see here on the other Side will insist on.

You all, doubtless, have heard, that some Years ago, in the Time of War, several Privateers, four in Number, were fitted out by the Merchants of *Bristol* and *London*, by the Name of the *Royal Family*: On board one of these Ships (the

Princess Amelia) one *John Wilkinfon* entered as a Midshipman: The Ships put to Sea, and having taken Prizes of great Value, Mr. *Henry Casemajor* of *Bristol* was appointed Agent for the Payment of the Sailors, for whom it was thought most convenient they should be paid at *Bristol*; but as some Persons might have Occasion to call for their Money in *London*, Mr. *Casemajor* employed a Person in Town, who was to write to him, that Money might be remitted to pay them; that Person was *Thomas Noads*, a Gentleman who has unfortunately, by that Situation, brought his Name into Question in this Place, and is become (God only knows why) the Object of the Resentment of a Man, whose Name I must presently mention to you; though much to his Discredit and Dishonour.

Mr. *Noads* being thus employed, and in *August* 1750 Notice having been given that all the Sailors might receive their Prize-Money of the proper Agent, in the *February* following the Prisoner at the Bar conceived he might get Money by setting up the forged Will and Power of a Person he probably thought would never appear to call it in Question, or at least that he had so much Art as to avoid a Discovery, or evade the Justice and Laws of his Country.

The Prisoner happened to be at a House near *Charing-Cross*, a House of bad Fame, with a Man whose true Name now comes out to be *Thomas Williams*: To him the Prisoner applied, and desired he would co-operate with him, telling him he would get him Money enough; that he should wear a Sword, and live like a Gentleman: The Man did not very well understand in what Manner this was to be contrived; but *Murphy*, who it seems is pretty ready at Invention, disclosed his Method of executing his Scheme in this Manner: If you will, says he to *Williams*, appear as the Executor, I will forge the Will of *John Wilkinfon*: We shall go together, you as recently arrived from *Portugal*, and I as your Acquaintance: We shall get the Money without Suspicion. *Williams* was a Novice; and, terrified at that which might reach his Life, he did not care to join in what the Prisoner proposed. You don't know, says the Prisoner, how many there are in *London* that live by forging Wills and Powers: Why, you may dress like a Gentleman, appear in good Company, and wear a Sword. Go down Stairs, continues the Prisoner, and I'll make a Will and Power for this *John Wilkinfon*, that shall intitle you to his Prize-Money: Your Name shall be *John Daunt*. *John Daunt*! Who is *John Daunt*? replied *Williams*. He is a Man, answers the Prisoner, whom I knew when at *Lisbon* with the Privateers; he kept a Public House there, where *Wilkinfon*, myself, and others, used to resort; this will make the Story tell; for we will say, that you, *John Daunt*, of *Lisbon*, a House-keeper, are come over with this Will and Power of *Wilkinfon*, in order to get the Money, and that he made his Will to you on the Account of a Debt of about seventeen *Moidores*; and I'll go along with you as a Friend, and shall get the Money. By this Artifice, and some Threats, *Williams* was prevailed on to assent, and left *Murphy* to do as he pleased. Soon after, *Murphy* called him up, and read over to him the Will he had made. The Will, Gentlemen, is here to be shewn to you, with two Witnesses Names to it. Then *Murphy* said to *Williams*, Now you are *John Daunt*, the Executor. After he had read over both

both the Will and Power, fresh forged, he conducted him to the Lodgings of Mr. *Noads*, where the Money was to be received. The Letter of Attorney was first produced. Mr. *Noads* asked a very natural Question, *viz.* Where is this *Wilkinson*? Here *Murphy* made a Mistake, by producing the Power first; but, I suppose, they thought to get it upon the Letter of Attorney; but finding that would not do, *Murphy* answered, *Wilkinson* went from *Lisbon* to the Coast of *Guiney*, and there he died. Then, says *Noads*; I can't pay the Money on a Letter of Attorney. But we have his Will as well as Power, replies *Murphy*; and then the Will in question was produced, and *Williams* passed at this Time for *Daunt* the Executor. Mr. *Noads* told them, the Will was nothing 'till proved. *Daunt* was to pass for a Stranger, and as unacquainted with what was to be done in this Country; and therefore the Prisoner took upon himself the Conduct of the Whole, and asked *Noads* where they were to go to prove the Will, who recommended them to Mr. *Crespigny*, (a Gentleman of very great Character in his Profession, and employed by the Managers as their Proctor;) therefore they desired Mr. *Noads* to write the Name on the Back of the Will, and he wrote *Crespigny* accordingly; then *Murphy*, and *Williams*, by the Name of *Daunt*, (for at this Time neither Mr. *Crespigny* nor Mr. *Noads* had the least Suspicion that he bore any other Name,) went to Mr. *Crespigny*, where they produced this Will again as the Will of *John Wilkinson*, who, they said, was dead on the Coast of *Guiney*. Mr. *Crespigny*'s Clerk wrote it down, and went with them before a learned Doctor, where *Williams* (as *Daunt*) took the Oath usual on such Occasions; and the Probate was granted; but not being able to pay for the Probate, they told Mr. *Crespigny*'s Clerk, that they were poor Sailors, and had nothing but what they were to get by the Will, and therefore they could not pay him then; but if he would be so good to send the Probate to Mr. *Noads*; the Money should be paid out of the Prize-Money. After this they came again to Mr. *Noads* to receive the Money. The necessary Form was to give Mr. *Noads* a Letter of Attorney, to receive it in the Name of *Daunt*, and then he was to pay it to them: Mr. *Noads* wrote to Mr. *Casamajor* at *Bristol*, to let him know of the Application made to him; and as Mr. *Casamajor* was always desirous to avoid Clamour, on Account of detaining any Prize-Money, he immediately remitted to Mr. *Noads* what was due for *Wilkinson*'s Share; but the Letter of Attorney made to *Noads* not being executed before a Magistrate, *Murphy*, with *Williams*, by the Name of *John Daunt*, went before the then Lord-Mayor of this City, and *Williams* (as *Daunt*) there re-executed the Letter of Attorney, to which *Murphy* was a Witness: They then returned to *Noads*, and received the whole Money due to *Wilkinson*, amounting to thirty-seven Pounds; and having given *Noads* a Guinea for his Trouble, and paid Mr. *Crespigny*'s Clerk his Bill for the Probate of the Will, a Receipt was given, and signed *John Daunt*, Executor, in the Presence of *Murphy*. Dated the 20th of *February*, 1750-1. It is in these Words:

Received of Thomas Noads 37l. 12s. 6d. being so much he received from Mr. Casamajor, per Probate of the Will of John Wilkinson, in full Ballance of his Account.

Signed John Daunt, Executor.

You will observe the Date, it is the 20th of *February*, 1750-1. Thus the Matter rested without Suspicion. Mr. *Noads* had paid the Money, little imagining what he had been thus transacting as a Servant, was paying 37l. out of his own Pocket, in his own Wrong, or that he should; by the Artifice of any Man, be called in Question, not only for his Character, but even for his Life; yet such a Man there is in this Country: But I trust in God it will not be long before Vengeance overtakes him.

There was not a Suspicion of the Transaction 'till *January* 1752, or thereabouts, when *John Wilkinson*, whose Will was proved as dead, and his Prize-Money paid; arrived in *England*. Then Mr. *Noads* found he had been cheated, and therefore he determined to do; what every body will commend him for, to discover and bring to Justice the Contrivers and Perpetrators of this Iniquity; little imagining, that he should by that Means incite a capital Prosecution against himself. *Murphy*; at the Time of the Transaction, in order to impose upon *Noads*; pretended that he acted only as a Friend to assist a Stranger from *Lisbon*, and therefore; in the Presence of *Noads*, demanded Half a Guinea of *Daunt* for his Trouble. You perceive, Gentlemen, the Artifice of the Prisoner: From this small Demand it was natural for Mr. *Noads* to think that Mr. *Murphy* acted as a Friend and Assistant only; but as soon as he got out of *Noads*'s House, he made a very different Demand; he insisted upon Half the Money received, besides two Guineas for making the Will; and he threatened *Daunt* with Hanging; if he refused to pay it.

Mr. *Noads* was now endeavouring to find out the Men, and bring them to Justice. He inquired of all the Sailors whom he knew. *Murphy* had gone by his own Name, but *John Daunt* had imported his from *Lisbon*; therefore it is plain, *Murphy* might be discovered, though *Daunt* might long lie hid: Accordingly Mr. *Noads* having got Information that *Murphy* was in *London*, (this was about two Years after the Forgery) he instantly applied to one of the worthy Aldermen of this City for a Warrant to take him up; but the Bird was flown, not to be found in that Jurisdiction. He got at last Intelligence that he was in *Surry*; and immediately had the Warrant backed by a Justice of the Peace of that County, put it into the Hands of a Constable, who with other Assistants secured him. *Murphy* knew not at first for what he was taken; perhaps he flattered himself that this Iniquity, committed so long ago, was not discovered; but as soon as *Noads* appeared; which was after he was in Hold, his Conscience struck him; he then knew what the Matter was, that it was a capital Offence, and therefore broke from the Officer and ran away; but he was soon taken again, and brought before the Sitting Alderman at *Guildhall*; and upon the Oath of Mr. *Noads*, upon his Charge, and at his Prosecution, he was committed for the Forgery now to be tried. The Defence he then made, was not that he was persuaded by his Prosecutor to commit this Forgery, but that he was innocent, and went only as a Friend of *John Daunt*'s, whom he knew at *Lisbon*, to receive of *Noads* what *Daunt* pretended to be due to him as Executor of *Wilkinson*; that he knew nothing at all of any Forgery, and therefore it was a very cruel Case, and hard upon him. However, he was committed

to the Compter. He had not long been there, before a Person got Access to him, whose Profession I know not, but his Business was to persuade *Murphy*, that it was in his Power to pervert the Laws, to screen the Guilty, and spill innocent Blood. This Person's Name is *Goddard*. What was the Artifice made use of? It makes me tremble to think of it; it was an Attempt to make the Prisoner a Witness against his Prosecutor, and punish him for the other's Guilt. If this should be suffered to prevail, farewell all Prosecutions for Iniquity. If such a Person can have the Ear of a Magistrate, and get a Prisoner admitted an Evidence against his Prosecutor; if a Felon may be allowed to charge his Prosecutor with the very Felony he stands committed for, the Law is made in vain, and Magistracy will only be a Terror to the Injured.

This Attempt *Goddard* conceived and perpetrated. He procured the Prisoner to be carried from the Gaol to turn Evidence against *Mr. Noads*. One would scarce believe any Justices could be found to join in such a Scheme; yet he imposed on two Justices so far, that they not only admitted the Information of the Felon, but went in Person to the Grand Jury to procure a Bill to be found to hang that Man who had been injured, who had seized and prosecuted that Evidence. Shocking as this is, yet such was the Attempt, and it is this strange Iniquity which calls me to this Place.

Thus far Iniquity prospered: But there is a superintendent Power, and we may thank the Almighty for it, who here stopped its Progress.

Mr. Noads continued his Inquiry after *Daunt*; for *Murphy* never would inform him who he was: At last he providentially discovered, that *John Daunt's* true Name was *Thomas Williams*, and that he was confined in the Gaol of *Corke* in *Ireland*: From thence he has been brought, and is now here to be produced as a Witness before you.

After *Goddard* and his Associates had got Information that *Williams* was discovered, and might be produced; that *Mr. Noads* was a Person whose Character could be established beyond the Power of any Stain from *Goddard*, (though I am informed he has attacked many higher Characters) the next Contrivance was to defeat all the Evidence; and for this Purpose a Bill of Indictment was procured against *Mr. Noads*, the original Prosecutor; against *Williams*, a Witness they knew for the King; and against another Man, who knew nothing of the Offence; but Conscience told them, he might be a Witness, as he was acquainted with *Murphy's* Hand; he was therefore clapped into the Indictment. Having effected this Stratagem, of putting the King's three Witnesses into one Indictment, for the identical Offence with which the Prisoner is charged, they endeavoured to impose upon this Court, and struggled hard to get these three Men tried first upon the Evidence of *Murphy*.

It came before the Court the last Sessions, and the Court did that which was just. The present Indictment was ordered to come on first, that you, Gentlemen, might have the whole of this Case laid before you by those who were the original Prosecutors, and who brought this Transaction to Light. And it will be proved to you, with this additional Circumstance, that when the other Indictment was found against *Noads*, *Williams*, and *Carter*; the Will being produced from *Doctors-Commons*; and *Murphy* having declared before *Goddard* and other Persons then present, that it was all of his own

Hand-writing; *Goddard* soon after had the Assurance to apply to *Peter Edwards*, (who brought the Will from the Prerogative-Office, and heard *Murphy's* Declaration,) and importuned him to conceal that Part of his Evidence.

This, Gentlemen, is the Nature of the Case. You are only to try whether the Prisoner forged the Will of *John Wilkinson*, with Intent to defraud *Mr. Noads*, whom he has defrauded of 37*l.* We shall produce the Will, and prove the actual doing of it by the Prisoner, his Confession of its being his own Hand-writing, and that *Wilkinson* is now alive.

When that is done, I make no Doubt but you will be satisfied that you ought, according to your Oaths, to find the Prisoner guilty.

I have said nothing, I hope, to bear harder upon him than the Facts will warrant.

As to that Man *Goddard*, whom I have so often named to you, I could not do less than place him in the Light I have done: If I guess right, the Question will not be, whether the Prisoner is guilty or not, but whether the Artifices which *Goddard* has used shall be sufficient to stifle the Evidence, and prevent its being offered for your Consideration. For that Reason I have stated the Case at large.

My Lord will give us an Opportunity, I doubt not, to support the Character of *Mr. Noads*, if they attack it. I have not the least Doubt but they will repent it, if they do, as I hope they will every Part they have acted in this Affair. We shall now proceed to call our Witnesses.

Peter Edwards sworn:

Edwards. I am an Officer in the Commons in the Prerogative-Office. [He produces a Will of *John Wilkinson*.]

Coun. Where had you that?

Edwards. I had it out of the Prerogative-Office; it was filed there.

Coun. Who delivered it to you?

Edwards. It was delivered to me by the Record-keeper's Clerk; he has them Wills in his Custody always.

Coun. for the Pris. Did you see the Record-keeper's Clerk take it off the File?

Edwards. Yes, I did. [It is read in Court to this Purport.]

' In the Name of God, Amen. *John Wilkinson*, late of the *Princess Amelia*, being of sound and disposing Mind, &c. as set out in the Indictment: In Witness whereof I have hereunto set my Hand and Seal, this 5th Day of *May*, in the Year of our Lord 1747.'

John Wilkinson

' Signed, sealed, published, and declared, by the said *John Wilkinson*, as and for his last Will and Testament, in the Presents of us who have hereunto subscribed our Names, as Witness, in the Presents of the said Testator.'

Thomas Carty, Dinish Collins.

Coun. Has the Prisoner seen this Will?

Edwards. He saw it the last Sessions, I was present, it was at the Coffee-house in the *Old-Bailey*.

Coun. Who delivered it to him?

Edwards. I gave it to *Mr. Goddard*, and *Mr. Goddard* handed it to him.

Coun. Did he read it over?

Edwards. He looked it over, and owned he wrote the Body of the Will.

Coun. What were his Words?

Edwards.

Edwards. He said he wrote the Body of the Will, but that *Noads* either signed the Name *John Wilkinson*, or one of the Witnesses Names.

Coun. Did he say *Thomas Noads*?

Edwards. He said *Noads*, I cannot be positive whether he mentioned *Thomas*.

Coun. Did Mr. *Goddard* come to you afterwards; and what was the Conversation?

Edwards. He came to the Office some Time afterwards, I believe the next Week after, and told me not to take any Notice of what passed: That I only attended with the Will as an Officer of the Court; and he desired me not to take in the Conversation at any Time.

Coun. Did he give you any Reason?

[Here his Lordship interposed, because what *Goddard* said, was not Evidence to affect the Prisoner.]

Cross-Examination.

Coun. for the Pris. Did you attend as an Officer of the Court last Sessions?

Edwards. I did, I attended with the Will before the Grand Jury, when the Prisoner at the Bar was there as a Witness.

Coun. for the Pris. What did you attend for?

Edwards. To produce the Will, as I have done now.

Coun. for the Pris. Was it before or after you went to the Grand Jury, you heard the Prisoner own he wrote the Body of the Will?

Edwards. Before I went to the Grand Jury, the Prisoner spoke to *Goddard*, and then he confessed writing the Body of the Will.

Coun. for the Pris. Which Name did he confess he wrote?

Edwards. I cannot be certain; if I could; I would tell it.

Coun. for the Pris. How do you know that a Probate has been granted?

Edwards. Here is a Memorandum of a Probate being granted on the Back of it.

Coun. for the Pris. What is the other Mark on the Back for?

Edwards. It is that the Testator was late belonging to his Majesty's Ship the *Amelia*.

Coun. for the Pris. Have you seen the Probate?

Edwards. No, I have not.

Coun. for the Pris. Whose Hand-writing is that Memorandum?

Edwards. It was Mr. *Crespigny's* Clerk. That is filled up by the Proctor's Clerk, in order to fix the Seal. Before it is sealed, there is an Entry made by some Officer, to shew that this is a Person that died beyond Sea.

Coun. for the Crown. What is that Entry made on the Back of it for?

Edwards. That is the Foundation of granting out the Administration.

Thomas Noads called:

Prisoner's Council, Mr. (afterwards Serjeant) Nares.

My Lord, though I am of Council in this Case with the Prisoner at the Bar, I shall think myself no farther bound to defend him, than he shall actually appear to be, or at least may be presumed to be, innocent of this Accusation. On which Side soever the Villainy is, I sincerely wish it may be detected; and if I knew, or was at Liberty to presume, that the Facts now stated by Mr. *Hume* are as he represents them, I would throw up my Brief directly.

But every Man, my Lord, is by Law presumed to be innocent, till he is proved to be guilty; therefore it would ill become me, who am of Council with the Prisoner, to presume him otherwise; and therefore your Lordship will excuse me, if I take such Objections in Point of Law, in the Course of this Trial, as either are, or at least my weak Judgment induces me to believe, may be of Service to the Prisoner.

In the first Place, my Lord, *Noads*, who is now offered as an Evidence on behalf of the Prosecution, stands indicted for the same Crime for which the Prisoner at the Bar is now on his Trial. The Indictment is found, and principally, if not solely, upon the Prisoner's Evidence; therefore I must first desire the Indictment may be read. [It is produced.]

I must submit it to your Lordship; that *Noads* in this Case is not a Witness. I will not take upon me to say, that no Accomplice can be a Witness; to be sure it is laid down in many Cases that he may, and it is often absolutely necessary he should be so; therefore I shall not take up your Lordship's Time in insisting on a Point which seems now to be settled: But it seems to me by no means settled, that an Accomplice, against whom an Indictment is found, is admissible as a Witness; therefore I beg Leave to state what are my Reasons why the Law appears to be doubtful in this Particular.

I shall very candidly own; that in *Hawkins's Pleas of the Crown*, it is said, that although an Accomplice be indicted, he may be a Witness; but then it is likewise said, in the same Paragraph, that he may be a Witness, if he is not indicted; and that Mr. Serjeant *Hawkins* seems to lay down in the first Place as Law, and cites Authorities for it; and from the Expression, if he be not indicted; this Conclusion seems plainly to be deduced; that if he is indicted he cannot be a Witness.

Supposing then the Authorities are both Ways; I shall think myself justified in saying, there is a Doubt in the Case; and if it should remain a Doubt with your Lordship, I dare say your Lordship will determine on the merciful Side, in Favour of Life.

My Lord *Hale*, in his first Volume of his *History of the Pleas of the Crown*, 305, takes Notice of the same Doctrine that is laid down by Mr. Serjeant *Hawkins*, and after stating the several Instances in which an Accomplice may be admitted, he goes on and says, "But that Person must never be indicted;" and speaks of his Capacity of being a Witness, in case he is indicted, with so much Diffidence, that he seems to have a great Doubt whether he is to be admitted or not; and I cannot help saying, that there is, in Point of Reason, great Weight in such an Objection; for it seems exceeding strange to me, if not absurd, to say, that, in Point of Law, the most minute pecuniary Interest in the World, though ever so remote, shall take off a Man's Testimony, and render him incapable of being a Witness, as not being unbiassed and impartial, and at the same Time to say, a Person can be an unbiassed and impartial Witness, who is indicted for the same Crime, and is swearing to save his own Life, (which must necessarily be the Consequence in the present Instance,) for if the Prisoner is convicted, there can be no Evidence against the Witness.

As to the Minuteness of a pecuniary Interest to take away a Person's Capacity of being a Witness, I shall only mention one Instance, which I have known in Practice; which is, that on an Indictment

ment for stopping up or obstructing an Highway, which is laid to be used for Carts and Carriages, no one of the Inhabitants, who are bound to repair, can be admitted as a Witness to prove it is not a Way for Carts and Carriages, but only for Horses; because it is to diminish an Expence to which he is liable. And this Rule holds, though the Number of Inhabitants who contribute to the Repairs amount to ten thousand.

But supposing your Lordship should think that the View of saving Life, or securing personal Safety, though immediate, is not considered, in Point of Law, as having the same Influence on a Witness, as so small and so remote a pecuniary Interest as I have mentioned, there is an Objection to *Noads's* being an Evidence arising from such an Interest.

It has been opened by Mr. *Hume*, and *Noads* is now called to prove, that he hath been defrauded of 37 *l.* which Sum he paid out of his own Pocket, by an Imposition put upon him by the Forgery of this Will, it being produced to him as the Will of *John Wilkinson*, who was on board the *Amelia* Privateer, by his pretended personal Representative; and it is likewise laid in the Indictment to be to *Noads's* Damage.

And I must submit it to your Lordship, that 'tis a Rule of Evidence, that no Person can possibly be admitted as a Witness to overturn a Fact, the Overturning of which may be any ways beneficial to himself.

In order to state this Objection as fully as I can, I beg Leave to mention the Words of *Hawkins's Pleas of the Crown*, 433, and apply what is there said to the present Objection.

It is there laid down as a good Exception against a Witness, that his Interest is concerned; "that he is either to be a Gainer or a Loser by the Event of the Cause, whether such Advantage be direct and immediate, or consequential only: And this seems to be the Reason, why he who is Bail for the Defendant cannot be a Witness for him without Consent. Also upon the same Ground it is agreed, that he who borrows Money upon an usurious Contract, cannot be a Witness upon an Information for the Usury, unless he hath paid the Money, whether such Information be brought by himself, or any other; for, if in such Case a Man might be a Witness, he would in Effect swear for himself, by proving a Matter which may avoid his own Contract. And upon the like Reason it hath been ruled, that he who has been imposed upon by a Sleight, to set his Hand to a Note for more Money than he intended, is no Witness on an Information for the Cheat, because a Conviction may be a Means to avoid the Note, by being made use of as a Motive to influence the Jury: And for the like Reason it is generally agreed, that he whose Property may be prejudiced by a Forgery, is no Evidence to prove it: And it hath been adjudged, that he, against whom a Verdict is given, cannot be a Witness to prove Perjury in the Evidence; so that, if there be but the remotest Possibility even of its being thrown out to a Jury, that the Witness can avail himself by his Testimony, he can be no legal Witness."

These are the Words of the Book: Let us then apply the Doctrine here laid down to the present Case.

It is very plain, *Noads*, as it has been opened, has

paid 37 *l.* upon this Will being produced to him as a real Will. This certainly was an Imposition on him. Now the Question is, how far any Advantage can arise to *Noads* one Way or the other, from the Consequence of this Conviction: The Money was paid to *Williams*, who personated one *Daunt*, the pretended Executor of *Wilkinson's* Will: *Noads* might bring an Action for the Money against *Williams*, as Money had and received to his Use, being procured by a Deceit: In order to prove the Deceit, it may be necessary to shew the Will, of which *Williams* pretended to be Executor; and by Colour of which he received the Money; was forged; and though I will not contend that Verdicts in criminal Prosecutions are in general to be given in Evidence in Actions, yet I cannot see why the Copy of the Indictment, in which the Will is set forth, and of the Conviction in consequence of it, might not be a proper, if not necessary Evidence to prove the Deceit; if not, the mentioning it to the Jury would have a great Influence on them; and if that is Law which is laid down in *Hawkins*, an Advantage, even of that Sort only, would be sufficient, in Point of Law, to take away a Man's Testimony.

For these Reasons, my Lord, I beg Leave to insist that *Noads* is not a proper Witness, as being an Accomplice indicted; and if he is as such, yet if he hath that Interest or Advantage arising to him from the Consequence of this Trial, in respect of the Money he has paid, as I have hinted at, that will be sufficient to destroy his Testimony.

Second Council for the Prisoner, Mr. (afterwards Serjeant) Davy.

I do assure your Lordship, the Matter hinted at by Mr. *Hume* is intirely new to us, and if we had any Reason to believe it to be Truth, your Lordship would not have been troubled with the Appearance of either of us here; and without doubt, we cannot be justified in deserting the Prisoner, as he is to be tried for his Life, so he may be sure of all the Assistance we can give him under your Lordship's Directions.

Where a Man is at all influenced in the Evidence he is to offer to your Lordship, by any Interest he may receive, either pecuniary, or any Advantage he may have in escaping Punishment, or what not, it will be such a Bias, that will take off that Credit to his Testimony, and therefore be the Cause of his Rejection.

The first Objection is, that he himself stands indicted. I take this to be a Rule, that if he had been indicted in the same Indictment, he might come in as a Witness, supposing he would confess himself guilty, as in *Sir Peter Crosby's Case*, 1 *Hale's P. C.* 303. It was held in the Star-Chamber, that if two Defendants be charged for a Crime, one shall not be examined against the other to convict him of an Offence, unless the Party examined confess himself guilty, and then he shall be admitted.

This will account for the Distinction made by my Lord Chief Justice *Hale*, mentioned by Mr. *Nares*; for my Lord *Hale's* Idea of it is, that no Man can turn Evidence for himself; if that is so, your Lordship will see whether there is any Distinction in the Case, when there are two-Indictments in the same Case.

This will come still stronger, when it is considered that the Prisoner stands as an Accuser on the Back of that Indictment which is found against *Noads*, and

and that which *Noads* is by and by to be tried for. If he can give Evidence against *Murphy*, and convict him, he will prevent that: No Interest can be more immediate, than that he should give Evidence to take off the Testimony of another Man from convicting him of a capital Crime immediately.

The Order was, *Murphy* being first indicted, should be first tried: Your Lordship will observe who squeaked first. This Indictment against *Murphy* was never found 'till such Time that there was a Charge against *Noads* for this very Forgery: And, my Lord, this Objection comes in some measure stronger by the Evidence of Mr. *Edwards*: He has been called in to prove a Kind of Confession of the Prisoner of this Forgery. Now all Confessions must not be taken in Part, but together: The same Evidence proves *Noads* also to have a Hand in it, because *Murphy* confessed he wrote the Body of it, and *Noads* either the Attestation or another Name. An Objection will come here in Point of Interest: Mr. *Noads* is the Person charged in the Indictment to have been defrauded by this *Murphy*; for so it has been opened by the Gentlemen on the Part of the Prosecution: Can't he avail himself of this afterwards? And as he is immediately concerned in this to save his own Life, he will disable *Murphy* by his Conviction, who is Prosecutor against him in the other Indictment; and under such a Bias he ought not to be received as a Witness.

The Case in *Hawkins*, about a Woman who had indicted her Son for fraudulently obtaining from her a Note of 100*l.* intending to give her 50*l.* Lord *Hardwicke* in the Case of the King and *Bray* mentions that Case; my Lord *Hardwicke's* Words are, That nothing but that great Authority could support it; but he says this too in that Case of the King and *Bray*, That nothing is more unsettled than the Rule of Evidence: The Determinations often turn upon some right or wrong Application of that Rule I have mentioned, and that is, the Bias Witnesses are under when they come to give Evidence.

Whether *Noads* is not under such a Bias, is not the Question; but whether that Bias is not so strong, that it is a material Objection to his being received as a Witness, I leave to your Lordship.

Mr. Hume Campbell's Reply.

My Lord, I should scarce think it justifiable to take up any of your Lordship's Time to answer the Objections, which the Gentlemen, by stating with so much Candour, have really answered themselves, was it not that the present Question is of the utmost Importance to Futurity, in the Attainment of the great Ends of Protection and Justice. We are now to consider it as a Matter of Doubt, whether every Criminal, by turning the Charge against his Prosecutor, may not evade Justice, and prevent the Court from having any Evidence produced on the Part of the Crown.

There are always two Ways in which Objections to Evidence are made; one is to the Competency of a Witness, which is a total Rejection of his Testimony; and the other is to his Credit, which is proper only for the Consideration of the Jury.

In the present Case, the Gentlemen don't chuse their Objection should be directed at Mr. *Noads's* Credit; that would not answer their Purpose, because we can establish his Credit beyond a Doubt. Their Attempt, therefore, is totally to reject his

Testimony; nothing less can afford a Possibility of supporting the Scheme of turning the Prisoner's Evidence against his Prosecutor, or of making the extraordinary Behaviour of the two Justices, to bring this Matter about, of any Effect.

I have watched to hear if they could produce an Instance, wherein it was ever held that a Prosecutor's Testimony should be rejected, to receive that of a Prisoner charged and committed originally upon such Prosecutor's Oath; and my learned Friends have not offered to state to your Lordship a single Authority for it: The Authority quoted out of *Hawkins* is strongly against them: My Lord Chief Justice *Hale* puts it rightly; it may go to his Credit, and may be weighed by the Jury, but it never can go to the total Rejection of his Evidence. There is no Colour, therefore, why your Lordship should not hear the Witness.

The next Objection is very singular; it is, that because, by a forged Will of a living Man, *Williams* has defrauded *Noads* of 37*l.* and *Noads* may bring an Action against him for imposing upon him, therefore *Noads* cannot be a Witness to prove *Murphy* guilty of forging that Will, which, whether counterfeit or genuine, leaves Mr. *Noads* equally defrauded.

I submit it to your Lordship, that there is not a sufficient Foundation to support either of the Objections, which, your Lordship observes, may be attended with those perilous Consequences which I pointed out, and endeavoured to prepare the Court for, in the Opening of the Case.

Mr. (afterwards Lord Chief Justice) Pratt's Reply.

In a common Case, I think, I should hardly have thought it worth while to give your Lordship any Trouble; but the present Objection is of the last Consequence to the Justice of this Kingdom; for, if it prevails, it will teach every Criminal a Method how to screen himself from the Law, and no Prosecutor will ever be able to apprehend a Felon, without running the Risk of putting his own Life in Danger.

This therefore is a Point which deserves a very serious Consideration. *Murphy*, who appears now the Prisoner on this present Indictment, was, upon hearing Council on both Sides, ordered to be tried first in favour of Mr. *Noads*. Now, if the Objection prevails, it will not only go to *Noads*, but likewise to *Williams* and *Carter*, who are both indicted with Mr. *Noads* by the Prisoner, and these are all the Witnesses who are capable of proving the Forgery upon him; the Consequence then will be, that not only the present Prisoner must be acquitted for want of the King's Evidence being heard, but Mr. *Noads* must be tried immediately after, and this very Prisoner's Evidence must be admitted against him. Your Lordship will observe, what strange perverted Proceedings there would be upon these Occasions, if, where two cross Indictments are depending, one brought by the Prosecutor, and the other by the Criminal himself, it should be held just to render the Prosecutor's Testimony incompetent upon the first Indictment that comes to be tried. If this be the Case, Mr. *Noads* would have done right to have come to the Court, and desired to have been first tried; because then, the Prisoner being set aside as having been indicted for the same Offence, Mr. *Noads* would have been clearly acquitted, and upon the second Indictment, being clear of Objection by the Acquittal, must have convicted the Prisoner.

But to consider the Principle of Law upon which this Kind of Testimony stands. This then I take to be a clear Maxim and Ground of Law, and is universal, That every Man in this Kingdom is a competent Witness on an Indictment in Behalf of the Crown, unless he is convicted or attainted of some scandalous Offence. There must be a Conviction before the Witness can be disqualified; which proves that a mere Accusation or Indictment cannot render him incompetent, however it may affect his Credit; for, in Point of Law, every Man is presumed innocent 'till he is proved guilty: Nor is this denied, but admitted by my Lord Chief Justice *Hale*, though what has been cited upon the present Occasion, is confined to Cases of confessed Accomplices and joint Indictments; as to which his Words are, that such Persons, though indicted, may be admitted as Witnesses if they confess themselves guilty, but their Testimony is not conclusive to the Jury; for they may as well consider the Credibility or not Credibility of the Witness, as the Matter he swears. And this is all the Distinction he makes even in this Case, that though one be indicted, it is not an Objection to his Competency, but may be to his Credit. Nay, in Cases of Treason, he is clear, that such a Person is not barely a competent Witness, but may be one of the two Witnesses required by the Statute to an Overt-Act of Treason. The only Qualification to the Rule is this, that such a Witness, so indicted, should confess himself guilty of the Crime for which he stands indicted, which undoubtedly is right; for, if the Court was to admit him a Witness to prove his own Innocence, that would be a clear Objection to him; but, if he confesses, he comes only to charge another, and not to clear himself. But these are not like the present Case. What is the Case here?

Mr. *Noads* is the original Prosecutor, and preferred the first Indictment. The Prisoner afterwards indicts the same Mr. *Noads*, by a separate Indictment, for the same Offence. Mr. *Noads* does not come here to give Evidence that he in Conjunction with the Prisoner forged this Will; he does not come under the Light of an Accomplice, but insists upon his Innocence, and must at this Time be deemed in Law as innocent, with regard to this Fact, as any Man in Court. This then is a material Difference between joint and separate Indictments; to which Purpose my Lord *Hale* in that very Book puts this Case, that if *A*, *B*, and *C* are separately indicted, *A*, one of the Persons indicted, may be Evidence for *B* and *C*, and they may both be acquitted on his Testimony. Mr. *Noads* is indicted in one separate Indictment, and the Prisoner in another. Can there be any Ground to say, that Mr. *Noads*, the Person defrauded, and the first Indicter, shall be no Witness against the Prisoner, for this Reason only, because he has been afterwards indicted by him? Was ever a Case like this before? That six Weeks after the Prisoner had been committed, he should be permitted to turn Evidence against Mr. *Noads*, who was the only Person defrauded in the first Instance by the Forgery; who took him up, and confronted him before the Alderman; who charged him upon his own Oath with this Offence uncontradicted; who caused him to be committed, who indicted him? Shall this Prisoner now, to save his own Life, give Evidence against his Prosecutor (for the second Indictment is the Evidence of the Prisoner) to set aside that Indictment upon which he himself

is to be tried? If this be the Case, the Lord have Mercy upon every Man that attempts to prosecute a Felon for the sake of Justice; for, if this should be allowed, no Man, except the Prosecutor, will ever be convicted.

[Mr. Moreton was going to enforce what had been said, when his Lordship declared it was unnecessary, and that the Court was clearly of Opinion, Mr. Noads ought to be admitted a Witness, and therefore over-ruled the Objections to his Competency.]

Thomas Noads sworn.

Noads. The Prisoner at the Bar was one of the Sailors on board one of the *Royal-Family* Privateers; he came to me in the Beginning of *February* 1750-1, about the 3d or 4th, with a Person by the Name of *John Daunt*.

Q. Where did you live then?

Noads. I lived then in the *New-Buildings, Coleman-Street*.

Q. What is your Business?

Noads. I act as a Book-keeper or Clerk to the Managers of the *Royal-Family* Privateers.

Q. Had you seen the Prisoner before *February* 1750-1?

Noads. He has been frequently at our Office: I was by when he received his own Part: The first of his coming was to solicit for 20 *l.* before the Accounts were settled.

Q. Had you ever seen that Person before, that came in the Name of *John Daunt*?

Noads. No, I never had.

Q. What did they come about?

Noads. The Prisoner brought *Daunt*, and a Will and Power, and told me it was the Will and Power of *John Wilkinson*. I knew by our Book there was such a Person on board. The Prisoner told me that *Daunt* kept a Public-House in *Lisbon*, and that he had frequently drank at his House at *Lisbon* with *Wilkinson*; and said it was a House that he and several other Sailors used while the Ships lay there; and that he knew *Daunt* to be a very honest and worthy Man: He desired I would write to Mr. *Casamajor* of *Bristol*, (who was the Agent appointed to pay the People for their Services on board) for the Money due to *John Wilkinson* for his Service on board the *Royal-Family* Privateers. I asked him some few Questions with regard to the Ships: Both of them told me, that *John Wilkinson* lodged with *John Daunt* at *Lisbon*, at the Time the Ships were fitting out for a second Cruize. I asked them, what was become of *Wilkinson*, that I had heard nothing of him for upwards of two Years; *Murphy* replied, he died on the Coast of *Guiney*: I should otherwise have paid them the Money on the Power of Attorney, which they had first produced; but as I understood the Man was dead, I could not then pay the Money upon the Power. *Murphy* then immediately proposed to go to the *Commons* to prove the Will, saying at the same Time, he knew very well how to go about it; for that he had proved the Will of one *Miles Masterfon*, I think the Name was; he then mentioned some Proctor's Name, I think it was *Hughes*; I then told him he might as well go to Mr. *Crespigny*.

Q. Do you know the Day of the Month you had this Conversation?

Noads. I believe this was the 9th of *February*. They were several Times with me from the Beginning of *February* to the 9th. In the Afternoon the

the same Day they returned to me, and told me that the Will was proved, and desired me to make out a Power of Attorney for me to receive the Money of Mr. *Casamaijor*, he living at *Bristol*. I made one out accordingly, *Murphy* was a Witness to it. (*He produces it.*) They went away from me, and came in two Days after. I believe this was on *Saturday*, and they returned on the *Monday*, and brought it re-executed before the then Lord-Mayor. I then wrote to Mr. *Casamaijor*, and he remitted me the Money on the 18th or 19th of *February*: They both called again on the 20th, and on that Day I paid the Money to *Thomas Williams*, the Man who calls himself *John Daunt*: I took a Receipt for it; (*He shewed a Receipt*) this is it. *Thomas Williams* signed it by the Name of *John Daunt*, and *Murphy* was present at the Time. I paid down the whole Money on the Table, 37*l.* 12*s.* 6*d.* they paid back the Deductions, which was about forty Shillings, for proving the Will; they had not Money to pay for the proving the Will, so Mr. *Crespigny's* Clerk sent the Will to me, to take the Money for him.

Q. What did they give you for your Trouble?

Noads. I believe they gave me about a Guinea; it was not more than twenty-five Shillings, for the Trouble I had in writing Letters, paying Postage, and drawing the Letter of Attorney.

Q. Who received the Money of you?

Noads. It was received by the Person who went by the Name of *Daunt*, in the Presence of *Murphy*. *Murphy* at that Time desired that *Daunt* would give him something for his Trouble in shewing him the Way to *Doctors-Commons*, so *Daunt* gave him Half a Guinea; *Murphy* muttered and grumbled, and said it was too little; then they went out of the House.

Q. Had you ever seen the Will of *Wilkinson*, or Power of Attorney, before that Time they brought it in *February*?

Noads. No, I had not.

Q. Who wrote *Crespigny* at the Back of the Will?

Noads. I might write it very likely, but it is so much erased that I can't say: I should have in Course sent them to Mr. *Crespigny*; I sent every Body that came to have any Thing done in his Way to him; he is the Person employed by the Gentlemen as their Proctor.

Q. Have you seen *Wilkinson* since that Time?

Noads. I have: I believe him to be the same that was on the Books.

Q. Has there been any Demand by him for this Money since?

Noads. No, there has not, neither by him or any body else.

Q. When did you first hear that *Wilkinson* was living?

Noads. I heard it when the Cause came on in Chancery about a Year ago, then he appeared.

Q. Have you seen him?

Noads. I saw him in this Court in the Parlour with Mr. *Goddard*, the Sessions before last.

Q. Did you ever see him before?

Noads. I have seen him at *Lisbon* among the Ships Crews, and I talked with him since about his being there, and about two or three of the Ships, and believe him to be the Man.

Q. How long was it after you paid the Money, when you saw him first?

Noads. It was a Year and an half after, and that was at this Court, as I mentioned before.

Q. To which Ship did he belong?

Noads. He was one of the Crew of the *Princess Amelia*.

Q. Upon your hearing he was alive, and you having paid the Money, what was the first Thing you did?

Noads. I made Inquiry after this *Daunt*, but could not find him. I then began to inquire for *Murphy*; and one *Carter*, who had been intimate with *Murphy*, and was on board the Privateers commanded by Commodore *Talbot*, was the first Person that gave me any Information of him: He at first thought I wanted to arrest him, 'till I told him the whole Affair. *Carter* went to several Places to make Inquiry after him. When we got an Account of him, which was in about a Fortnight, I got a Warrant from Mr. Alderman *Ironside*, and then I heard he was at *Tooting*: I got the Warrant backed by Justice *Clarke*, and went there, and found he had been there, but was gone: Then I heard he was at *Dulwich*; there I got the Warrant backed by another Justice, and found he had been at the *Green-Man* there; but was gone a few Days: I applied to the Master of the College, and, by the Assistance of a Servant to that Gentleman, he was taken at *Newington* on that Side the Water. After he was taken, I appeared. As they were bringing him round the Corner, the Prisoner made his Escape from the Constable, and ran; but was taken again in a few Minutes after. We took him into a Public-House there: He asked what he was taken up for: I told him he might well imagine for what; I said it was for forging such a Will, and that I was very confident it was his Hand-writing, I had compared it with some of his. He took me to one Corner of the Room, and said, *Dear Sir*, (lifting up his Hands) *do you think I had any Thing to do with it?* But upon my telling him I was confident it was his Hand-writing, and that several People knew it, he said he threw himself at my Feet, and hoped I would not take away his Life, or to that Purpose.

Q. What were his Words, as near as you can recollect?

Noads. He said, *I beg my Life*. I told him I did not want to take his Life away, I only wanted to have common Justice done.

Q. Did you understand him to mean he wrote the Will and Letter of Attorney?

Noads. I did understand him so; he allowed he wrote it, but did not immediately say he did.

Q. During all this Conversation which you had with him, did you inquire after *John Daunt*?

Noads. I asked him, if it was not one *Thomas Williams* that personated *John Daunt*, because I understood from *Carter* that it must be him; and he said but very little afterwards, and called for some Water, and was ready to faint; he never made me any Answer to that, whether it was he or not. We then took him before Justice *Clarke*, and he sent him to *Guildhall*, there he was committed to the *Poultry-Compter* by Mr. Alderman *Chitty*, the Sitting Alderman.

Q. Was you by at his Examination before the Alderman?

Noads. I was.

Q. Who made the Charge against him?

Noads. I did.

Q. Did you make it upon Oath?

Noads. I did.

Q. What was the Charge?

Noads. It was with the Forgery for which he now stands indicted. I had several Opportunities of

of comparing Hand-writings of his that I had got during the Time of my knowing it was a Forgery, and the Time I took him up; and by several Comparisons, I believe the whole to be his Hand-writing. When we had him before the Alderman, he was asked after *Daunt*; he said he could prove he lived at *Lisbon*, but said he could not tell where he then was; afterwards he insisted upon his Innocency, and said he knew nothing of the Matter; he did own he met *Daunt* in the Street, and said he had seen him at *Lisbon*, and that *Daunt* told him he had a Right of receiving that Money from that Will.

Q. When did you prefer a Bill of Indictment against him?

Noads. I did the very next Sessions, which was in September.

Q. Were Mr. *Wilkinson* and Mr. *James Goddard* there at that Time?

Noads. They were: I believe that to be *Wilkinson*.

Q. Who else were there?

Noads. There were *Peter Edwards* and *Anthony Devoyer*. That Bill was not found.

Q. How long have you been informed that the Person who called his Name *John Daunt*, was *Thomas Williams*?

Noads. *Carter* would have it to be him; but I was not confident 'till I went over to *Ireland*, after that Bill was thrown out, to see whether a Man who I was informed was in *Corke Gaol*, was the Man that I paid the Money to; I found him to be the same Person, I remembered him immediately, and am sure he is the same Man that I paid the Money to by the Name of *John Daunt*, who was recommended to me by the Prisoner as an honest Man.

Cross-Examination.

Coun. for the Pris. Who was you Agent to?

Noads. I was Agent under Mr. *Henry Casamaijor*, I transacted Business for him.

Coun. for the Pris. Did you know *Murphy* before?

Noads. I had seen him frequently before he came with that Person who called his Name *Daunt*; he was one of the Seamen on board the *Royal-Family Privateers*; he at last got to assist the Captain's Steward as a Kind of Cabbin-Boy.

Coun. for the Pris. You say he came to receive his own Money, what was it?

Noads. The Ballance of the Account came to about 7 or 8l. a Share was 36l. 8s. 1d. each, and I believe he had a Share and an Half.

Coun. for the Pris. Did he produce the Will and Power of Attorney both together?

Noads. He did, I believe he took them out of the other Man's Hand, and gave them to me.

Coun. for the Pris. Did you direct them to make Use of your Name to Mr. *Crespigny*?

Noads. No, I did not.

Coun. for the Pris. Pray recollect yourself, did you write that Name on the Back of the Will or not?

Noads. I might, but I don't know; that which is not crazed looks like my Writing.

Coun. for the Pris. Do you know how it came to be scratched out?

Noads. No, I do not, nor when it was scratched out.

Coun. for the Pris. Did you read over the Probate?

Noads. No, I did not, I only looked to see whether the Name *John Wilkinson* was there.

Coun. for the Pris. Is it not usual to read the Probate over?

Noads. I don't know that ever I read over one in my Life, I don't know that it is customary.

Coun. for the Pris. Is this the Probate produced here?

Noads. This is the very Probate.

Coun. for the Pris. Had you ever seen *Williams* before that Time he came with the Prisoner, as you say, in the Name of *Daunt*?

Noads. I never did, as I know of: The first Time I saw him was in the Beginning of *February 1750-1*.

Coun. for the Pris. Have you seen him since?

Noads. I have, several Times; I was with him eight or ten Times in *Ireland*.

Coun. for the Pris. What was your Business when you went to *Ireland*?

Noads. I went on purpose to find him out.

Coun. for the Pris. How came you to mistrust him being the Person?

Noads. I shewed the Receipt to *Carter*, and he said he was very confident the Name *John Daunt* was his Hand-writing.

Coun. for the Pris. Have you no other Witness to prove that, than *Carter*?

Noads. No, I have not.

Coun. for the Pris. Did you make use of any Threats?

Noads. No, I did not.

Coun. for the Pris. Did you mean the Will and Power was the Hand-writing of *Murphy*?

Noads. The Will and Power, Signing and all; I mean all in general.

Coun. for the Pris. Did you think the Name *Dimish Collins* is of a different Writing to the other Names?

Noads. I think it is all the Writing of one Hand.

Coun. for the Pris. What is *Carter*?

Noads. He was on board the Privateers, not the same Cruize, but the Cruize before.

Coun. for the Pris. Did you shew him the Will?

Noads. I did, and he said the Name *John Wilkinson* in particular was *Murphy's* Hand-writing.

Thomas Williams sworn.

Mr. *Hume Campbell* to Noads. Do you know this Witness?

Noads. This *Thomas Williams* is the same Man that came to me and received the Money in the Name of *John Daunt*.

Mr. *Hume Campbell* to *Williams*. Do you know *Timothy Murphy*?

Williams. I do, it is the Prisoner at the Bar.

Q. How long have you been acquainted with him?

Williams. I was acquainted with him about a Month or five Weeks before the Beginning of *February 1750-1*. I met him near *Charing-Cross* in the Street; we went to a House of ill Fame there; I believe the Man of the House his Name is *Mullings*, he is a *Scotchman*: This was the Month of *January*; he took me a walking round the Park, and to several Places, and told me he had something to relate to me, and if I would be ruled by him, he would do for me, and in the Park he swore me to Secrecy, (not by Book, but by Word.) He first swore, then I swore; I told him, if it be any thing except Robbery or Murder, I'd stand true to him; the next Day in the Morning we came to this *Mullings's* House again.

Q. Can you recollect what Time in *January 1750-1* this was?

Williams.

Williams. It was about the latter End of *January*. Then he said, Come, *Williams*, God I'll do for you now. He took me up Stairs into a large Room, and called for a Bowl of Punch, saying, This is cold Weather, we must drink something that will make us warm; he made me drink pretty heartily. At last he pulled out a whole Parcel of Papers, some of them were Prints, some with Stamps, and some without; he began to laugh and smile; he said, I told you, I had something to do for you, now I'll do for you, said he; there's one *Wilkinson* that belongs to the *Princess Amelia* private Ship of War, that is dead on the Coast of *Guiney*, and his Money can be taken by any body, and said, I will go for it; said I, I don't understand that Way of getting of Money; said he, D—n it, what a Fool you are, not to consent to get Money at so safe a Rate! there are several of my Acquaintance (if you were to know as well as I) that get Money enough in forging Seamens Wills and Powers, and receiving Wages and Prize-Money due to them; and if you'll be ruled by me, you shall not want Money, for you shall dress like a Gentleman, and wear a Sword; then he rubbed his Hands, and said, Drink t'other Glafs, and go down and warm yourself by the Fire: I went down, and left him with Pen, Ink and Paper; and in a short Time after he called me up Stairs again, and told me he had Writings drawn up, purporting to be the Will and Power of *John Wilkinson*; he made them to me in the Name of *John Daunt*, and he called for a Candle, which was brought lighted; he took a Piece of Sealing-Wax, and clapped the Seal on it, before the Name *John Daunt* was wrote; then he wrote *John Wilkinson*, *Thomas Carty*, and *Dinish Collins*; then he put a Seal on them.

Q. How many Seals were there?

Williams. I believe there were more than one; there was one to each Paper, that is, the Will and the Power. After he had sealed them, he asked for a Penknife; I lent him one; he made two or three different Pens, and said, that this will not do well, to have these Witnesses all of one Hand-writing. The Names *Thomas Carty* and *Dinish Collins* were for two subscribing Witnesses.

Q. What were these Pens made for?

Williams. To write the Names with different Pens, that they should not look alike.

Q. Did he write all, both on the Will and Power?

Williams. He wrote it all over, every Word, both the Will and Power, and then took and sealed them up, and put them into his Pocket.

Q. Did he say any Thing about *Wilkinson* owing *Daunt* any Money?

Williams. He said *John Wilkinson* owed *John Daunt* seventeen Moidores; these were the Reasons which he gave to me for my going by the Name of *John Daunt*, saying, if a Reason should be required why it was left to me, it should be represented, that this *Wilkinson* was indebted to me these Moidores. After this, we went to some other House of his Acquaintance, where we drank that Afternoon, and I went to Bed pretty merry; the next Morning early he came and called me out of Bed, and desired me to come along with him to the House of *Thomas Noads* in *Coleman-Street*. I said, I had not got my Breakfast. He said, Come along; what a Blockhead you are? We will get a Pint of Purl, and go about our

Business: Then he hurried me out. After we had had a Draught of Purl at the *Castle* and *Horse-shoe*, *Charing-Cross*, we took Boat at *Whitehall* Stairs, we landed at the *Old Swan*, and went to the House of *Mr. Noads*; there the Prisoner introduced me by the Name of *John Daunt*, and said I was a very honest Man, and that he had known me a great while to keep a House at *Lisbon*, and that he had drank at my House several Times in Company with *John Wilkinson*; then he produced this forged Will and Power, and desired he'd pay the Money due to *John Wilkinson*, for his Services on board the *Princess Amelia*, a private Ship of War, to me, in the Name of *John Daunt*; *Mr. Noads* and he talked a little while together; he told the Prisoner, I believe I can't pay it upon this Power; then the Prisoner said, This *Wilkinson* is dead: How long has he been dead? said the other: Said *Murphy*, I believe he has been dead two Years, he died upon the Coast of *Guiney*: Then *Murphy* proposed to go to the *Commons* (I think he said to a Proctor) to prove the Will, but *Mr. Noads* told him to go to *Mr. Crespigny* to do it; we went, and on our Way thither I stopped, and said, *Murphy*, I don't understand what you are about, I believe you are going to play the Rogue with me, I'll not go a Step farther; I'll return back, and tell *Mr. Noads* my Name is not *Daunt*; I'll divulge the whole Affair to him. With that he swore vehemently, and took up a great Stick, and said, he'd dash my Brains out, or have me hanged, if I did not go that Minute, and prove the Will in the *Commons*.

Q. Where were you when you had this Conversation?

Williams. It was in a little Alley not far from *Coleman-Street*.

Q. Did you go?

Williams. By the Fright I went along with him, and by his Desire and Directions, and there in his Presence I proved the Will.

Q. To what Proctor did you go?

Williams. To *Mr. Crespigny*; there the Will was produced and proved.

Q. Look at this Paper, do you know it?

Williams. That is the very Will; the Hand-writing is *Murphy's*; if I was to die this Minute, I am sure no Man wrote it but he; here are the Names, I saw them wrote; he wrote this Name *John Wilkinson*, with a fine Pen, which he made with my Knife; he wrote also the other Names *Thomas Carty* and *Dinish Collins*, and I am sure I saw him have such a Seal in his Pocket as is here put on the Wax.

Q. What did you do after the Will was proved?

Williams. Then he came back to *Mr. Noads's* House, and told him, the Will was proved at the *Commons*.

Q. Who told him so?

Williams. *Murphy* did; then there was a Letter of Attorney made by *Murphy's* Desire, for *Mr. Noads* to have Power to receive the Money of *Mr. Casamaijor*, who he told us was in *Bristol* at that Time.

Q. Who signed that Power?

Williams. I did, and *Murphy* was the only subscribing Witness to it; then we took it along with us, (this was I believe on *Saturday* Afternoon) and on the *Monday* he called me very early, and by his Desire, I went along with him to my Lord-Mayor's Office, and there I think this

Letter of Attorney was re-executed; then we went again to Mr. *Noads's* House, and gave him the Power of Attorney, to receive the Money of Mr. *Casamaijor*; then we went away, and went again two or three Times between that and the 19th or 20th of *February*: On one of them Days we received the Money, he said, he had from Mr. *Casamaijor*, and then he paid me 37l. 12s. or thereabouts, in the Name of *John Daunt*, in the Presence of *Murphy*, and took a Receipt for the Money, signed by me; I wrote *John Daunt*; if you'll please to look, you'll see a Sort of a Boggle, there is a Letter not made right; instead of the Letter *a*, I was going to write *o*, and was forced to make it an *a* afterwards; I did not know how to write *Daunt* cleverly. [*His Lordship, Jury, and Council, looked at it, and it appeared as he said.*] *Murphy* said to Mr. *Noads*, I have taken a d—d deal of Trouble, he ought to give me something for my Trouble, (we had made that Bargain before we came there, that I was to give him Half a Guinea in the Presence of Mr. *Noads*, to induce Mr. *Noads* to believe he was only to have that for his Trouble) I gave him Half a Guinea in Mr. *Noads's* House, then we went away, and at a little Distance he said to me, Don't you remember you are to give me two Guineas for my Trouble in making the Writings, over and above the Half of the Money? I was very much disheartened, and said, *Murphy*, I'll go back and give him the Money back, saying, it is a very unjust Thing, I will not carry it any farther; he swore Damnation to his Soul, if I should go a Step farther, he'd give a Judge or Jury no Trouble, but he'd dash my Brains out if I did not go forward, and had a great Stick in his Hand at the Time, he pushed me along before him; I was afraid of my Life, for he threatened me both one Way and t'other, either to kill me or get me hanged: Then I said, Take all the Money, and gave it him all in his Hand, I'll have nothing to do with it: He answered to that, No, no, I have revealed all my Secrets to you, and now you are going to have me hanged; he said, I'll take two Guineas, and Half the whole Money, which he did, and gave me the Remainder of it.

Q. When was the first Time you saw Mr. *Noads*?

Williams. I never saw him 'till I went with the Prisoner to his House, nor never saw *Wilkinson*, or knew that there was such a Man living.

Q. When did you hear *Wilkinson* was alive?

Williams. I never heard it 'till Mr. *Noads* came to me in *Corke* in *Ireland*, where I was a Prisoner for Debt.

Q. Had you seen Mr. *Noads* between the Time you took the Money and the Time you saw him in *Corke*?

Williams. No, I never did.

Cross-Examination.

Coun. for the Pris. How much Punch might you drink at the House near *Charing-Cross*, when you say this Will was made?

Williams. I believe we drank about three Shillings worth.

Coun. for the Pris. Did you call for a second Bowl?

Williams. No, we did not.

Coun. for the Pris. What had you been drinking before?

Williams. We had been drinking a Dram each, and a Pint of Purl.

Coun. for the Pris. Then you was a little in Liquor, was you not?

Williams. I was tolerably warm.

Coun. for the Pris. Was there a Fire above Stairs?

Williams. No, there was not.

Coun. for the Pris. What Time of the Day was it that you was there?

Williams. It was in the Morning.

Coun. for the Pris. Did either of you smoke Tobacco?

Williams. No, we neither of us did.

Coun. for the Pris. What did you do with your Candle then?

Williams. That was brought up by the Prisoner's Desire, after he had drawn the Writings up.

Coun. for the Pris. How long had you been in the House before the Candle was brought you?

Williams. We might have been in the House two Hours before the Maid brought it up.

Coun. for the Pris. How long had you been in the House in all?

Williams. I believe we might have been in the House two Hours and an Half in all.

Coun. for the Pris. How long was you in the House before you went above Stairs?

Williams. It might be above Half an Hour before I went up, which was when he called me.

Coun. for the Pris. When did you hear the Name of *John Daunt* first?

Williams. I never heard it before that Day.

Coun. for the Pris. Where did he get the Wax?

Williams. He had Wax in his Pocket, and I believe a Seal too.

Coun. for the Pris. Did you see him put the Seal to the Wax?

Williams. I did, he put it to one of them before he wrote the Name.

Coun. for the Pris. Did he to the other, do you remember?

Williams. I can't say whether he wrote the other first or not.

Coun. for the Pris. Which did he seal before he wrote the Name?

Williams. It was the Will.

Coun. for the Pris. What Sort of a Table were they wrote upon?

Williams. It was a Table big enough for Half a Dozen Men to dine at.

Coun. for the Pris. Did you see him write all the Will?

Williams. I saw him write Part of it, that is the latter End, that is Part of one Side, where the Witnesses are; he had not finished it when he called me up.

Coun. for the Pris. Had he Ink of his own, or was there any other that he made use of?

Williams. There was a Pewter Ink-stand in the Room?

Coun. for the Pris. Are you sure you saw him write the Name to the Will?

Williams. I saw him write them three same Names on it.

Coun. for the Pris. Was there but one Ink-stand?

Williams. No, there was but one Dish with Ink.

Coun. for the Pris. Were these three Names wrote with the same Ink?

Williams. They were, but with different Pens.

Coun. for the Pris. How long do you think you might be above Stairs?

Williams.

Williams. We might be there about an Hour.

Coun. for the Pris. Where did you bestow your Time the other Part of the Day?

Williams. We went and walked and smoked and drank mostly, for it was very cold Weather.

Coun. for the Pris. Then you must go near being fuddled, was you not?

Williams. I went to Bed brave and heavy, I know.

Coun. for the Pris. Where did you live then?

Williams. I lodged near Mr. Manning's at Charing-Cross, at the Tbisle and Crown: Bob Carter lodged over-against me.

Coun. for the Pris. You say you never saw Mr. Noads 'till that Time the Prisoner and you went to his House the Beginning of February 1750-1; recollect yourself whether you had not seen him before?

Williams. I had not.

Coun. for the Pris. Did not he once lend you Half a Crown on your Chatham-Chest Ticket?

Williams. No, he never lent me any Thing.

Coun. for the Pris. Do you know one Margaret Williams?

Williams. I lodged at her House several Nights, but my proper Place of lodging was at Mr. Fox's on the Back of the Haymarket.

Coun. for the Pris. Did you ever pawn your Chatham Ticket?

Williams. No, I never did; I might, but I don't remember I did; I am almost sure I never did; it is a 4*l.* Ticket, that is, 4*l.* a Year for my Life.

Coun. for the Pris. Upon your Oath, did you or did you not borrow Money on your Ticket of Mr. Noads?

Williams. Upon my Oath, I never did, nor never let it go out of my Possession to any body.

Coun. for the Pris. In your Way going along, you say your Conscience seized you, and you told the Prisoner you would not go a Step farther; was that the first Remorse you felt?

Williams. No, I had a Remorse of Conscience that Morning, when he desired me to go.

Coun. for the Pris. Did you believe he would be as good as his Word, when he said he'd knock your Brains out, and threatened you?

Williams. I did by his Countenance.

Coun. for the Pris. Was he with you all the Time you was proving the Will?

Williams. He was.

Coun. for the Pris. Did not you go into a particular Office to prove it by yourself?

Williams. No.

Coun. for the Pris. Were there any Threats made use of in Doctors-Commons?

Williams. No, there were not.

Coun. for the Pris. Was you under any Surprize when you was there?

Williams. I was under much Fear.

Coun. for the Pris. How many People were there in the Room?

Williams. There was but one Gentleman there.

Coun. for the Pris. Why did you not tell the Gentleman the Affair, that he might assist you?

Williams. I was shocked so, that I did not know what I had best to do.

Coun. for the Pris. Did you swear there that your Name was John Daunt?

Williams. I did, by the Prisoner's Directions and Desire.

Coun. for the Pris. Was any body with you and Murphy, when you were with Mr. Noads?

Williams. There was not a Soul with us.

Coun. for the Pris. Why did not you tell Mr. Noads that it was a Forgery?

Williams. I did not indeed, I did not know what to do, I was so confounded.

Coun. for the Pris. Who wrote the Word *Extor*, after the Name *John Daunt*, on the Receipt?

Williams. I wrote the Name *John Daunt*, but I don't know who wrote the Word *Extor*, either *Murphy* or *Noads*.

Coun. for the Crown. Which do you believe wrote it?

Williams. I believe *Murphy* did.

Coun. for the Pris. Whether your Remorse and Threatening to go back again was not because he demanded two Guineas of you?

Williams. No, it was not.

Coun. for the Pris. Did he demand two Guineas of you before, or after you said you'd go back?

Williams. I told him I'd go back, and return the Money, before he demanded the two Guineas, and after too.

Coun. for the Pris. How long did you stay in England after this Transaction?

Williams. But a very little Time, about a Fortnight; I was obliged to go down to Chatham to receive my Pension-Money that was due to me there.

Coun. for the Pris. In this great Remorse of Conscience that you had before and after you had received the Money, how came you to remain a Fortnight out of the Power of *Murphy*, and did not make a Discovery of it?

Williams. I was afraid to go about it myself, and I had no Opportunity to do it 'till Mr. Noads came to me in Gaol in Ireland; I thought the very Stones would fly in my Face about it, and he hunted me out of the Way as fast as he could.

Q. from his Lordship. Why did not you open the Affair before my Lord-Mayor?

Williams. I had not the Sense to do it; I was directed and led like a Child by him, as he pleased.

[The Receipt read to this Purport.]

Received the 20th of February 1750-1, of Thomas Noads, 37*l.* 12*s.* 6*d.* being so much he received of Mr. Cafamajor, per Probate of the Will of John Wilkinon, in full Ballance of his Account.

£. 37 12 6

John Daunt, *Extor.*

Coun. for the Pris. to Noads. Who added the Word *Extor* to the Receipt, after the Name *John Daunt*?

Noads. I did.

Pris. I desire Mr. Noads may be put out, while I ask *Williams* a Question or two.

[It was granted, and he went out.]

Q. from the Pris. How came *Williams* to be so perfect as to the Day of the Month, that he mentions of the Money being paid? Whether the Papers were not shewn to him by *Noads* since?

Williams. No, they never were since I came to England; I have not seen one of them 'till I saw them now; nor Mr. *Noads* never told me what Day of the Month the Money was paid.

Q. from

Q. from the Pris. Whether that Witness ever went to Mr. Noads with Mrs. Williams?

Williams. No, I never did.

Q. from the Pris. Whether he ever heard Margaret Williams say her Dependance was upon Mr. Noads?

Williams. I heard her say there was some Prize-Money due to her.

Q. from the Pris. Did you ever hear her mention one Jones?

Williams. I don't know that ever I heard her mention the Name of Jones.

Q. from the Pris. Did not he borrow Money on your Ticket? Where did you get the Money you paid her?

Williams. I pawned my Watch in *St. Martin's-Lane.*

Q. from the Pris. Where did he and I agree upon this?

Williams. At *Mac Mullings's*, a Bawdy-house.

Q. from the Pris. Did I pay for the Punch there?

Williams. No, the Prisoner took Care of that, he made me pay.

Q. from the Pris. Where did he get the Money?

Williams. The Prisoner found roguish Money for me.

Noads called in.

Coun. for the Pris. to Noads. Whether or no you shewed either the Power of Attorney or Will of *Wilkinson* to *Williams* since he came to *England*?

Noads. No, I have not.

Coun. for the Pris. Whether or no you told him the Month in which you paid the Money to him?

Noads. I shewed it him in *Ireland.*

Coun. for the Pris. Whether you have not since he came to *England*?

Noads. No, I have not.

Coun. for the Pris. Did ever *Thomas Williams* come to your House along with one Mrs. *Williams*?

Noads. No, never.

Q. from the Pris. Do you know Mrs. *Williams*?

Noads. She came to me two or three Times, and told me the Prisoner had robbed her of her Prize-Money.

Q. from the Pris. When did you see her last?

Noads. I believe I saw her in the Court-Yard this Morning.

Coun. for the Pris. Do you know where she is now?

Noads. No, I don't know that.

Q. from the Pris. Was not this Mrs. *Williams* at your House in *Bell-Alley*?

Noads. She never was to my Knowledge.

Mr. Alderman *Cokayne* sworn.

[*He is shewed a Letter of Attorney made to Mr. Noads.*]

Mr. Alderman. This was re-executed before me; here is the Name *Timothy Murphy*, a Witness; I believe the Prisoner is the Man that wrote it. [*It is read to this Purport:*]

“ Know all Men, by these Presents, that I
“ *John Daunt*, Executor of *John Wilkinson*, de-
“ ceased, late of the *Princess Amelia* Privateer,
“ for certain good Causes and Considerations me
“ hereunto moving, have, and do hereby name,
“ make, and, in my Stead and Place, put and
“ constitute *Thomas Noads* of *London*, Gentleman,

“ my true and lawful Attorney, revocable, for me,
“ in my Name, and to my Use, to ask, claim,
“ demand, recover, take, and receive of and from
“ the Agent for the *Royal-Family* Privateers, or
“ whom else it may concern, all and singular
“ such Salary, Wages, Tickets, Bounty-Money,
“ Prize-Money, Short-Allowance-Money, Smart-
“ Money, Pensions, and all other Sum and Sums
“ of Money whatsoever, as now is, or at any
“ Time or Times hereafter shall be due, payable,
“ and belonging unto me, for my own, or any
“ other Person's Service, or otherwise, in any of
“ his Majesty's Ships, Frigates, or Vessels, or
“ any Merchant-Ship or Ships; and also of all
“ other Person or Persons whatsoever, all and
“ singular such other Sum and Sums of Money,
“ Salary, Wages, Goods, Wares and Merchandize,
“ Freight, Profits, Rents and Arrears of Rent,
“ Debts, Dues, Duties, Claims and Demands
“ whatsoever, which now is, or at any Time or
“ Times hereafter shall be due, owing, payable,
“ and belonging unto me by any Ways or
“ Means, Right or Title whatsoever or howsoever;
“ giving, and hereby granting unto my said
“ Attorney, his Substitutes and Assigns, all my
“ Authority and lawful Power in the Premises,
“ for receiving, recovering, obtaining, compound-
“ ing and discharging the same, as fully and
“ effectually as I myself might or could do, being
“ personally present, and Acquittances, Releases,
“ or any other Discharges in my Name, to make,
“ seal and deliver; and one Attorney, or more,
“ to make, substitute, and at Pleasure to revoke;
“ ratifying, and hereby confirming all and what-
“ soever my said Attorney, his Substitutes and
“ Assigns, or any of them, shall lawfully do, or
“ cause to be done in and about the Premises by
“ Virtue of these Presents. In Witness whereof
“ I have hereunto set my Hand and Seal, the 9th
“ Day of *February*, in the twenty-third Year of
“ the Reign of our Sovereign Lord *George* the
“ Second, by the Grace of God, of *Great-Britain*,
“ *France*, and *Ireland*, King, Defender of the
“ Faith, and in the Year of our Lord one thou-
“ sand seven hundred and fifty-one.

John Daunt. †

Sealed and delivered (being first duly stamped) in the Presence of
Timothy Murphy.

London, re-executed the 11th Day of *February*,
1750, before me,

F. Cokayne, Mayor.

Anthony Devoyer sworn.

Anthony Devoyer. I am Clerk to Mr. *Crespigny* the Proctor; in *February* 1750-1, I don't remember the Persons, but there were two Men applied to me in the Absence of Mr. *Crespigny*, to prove a Will of *John Wilkinson*.

Q. What was the Executor's Name?

Devoyer. It was *John Daunt*; the Person pretending to be so, was one of the two that desired me to get a Probate of the Will. We always do inquire where the Testator died, and when, and we write that under the Jurat, that it should be passed to the Seal. The Description of the Testator was, that he was a Batchelor, and belonged to some Ship, I don't remember the Name; that he died on the Coast of *Guiney*, within the Time there limited.

[*He is shewed the Will.*]

Devoyer.

Devoyer. This is my Hand-writing on it, and this is the very Will brought to me at that Time; I attended the Person who called his Name *John Daunt* before the Surrogate, who subscribed his Name.

Q. Was he sworn?

Devoyer. He was, I think, in my Presence, as Executor to the Will, as is usual on such Occasions, and upon that the Probate was put under Seal afterwards, which is now upon it.

Cross-Examination.

Coun. for the Pris. You say, you can't swear to the Persons of the two Men that came?

Devoyer. No, Sir, I cannot.

Coun. for the Crown. Can you recollect what passed at the *Compter*, when you saw the Prisoner there?

Devoyer. I was at the *Compter*; the Prisoner there told me he remembered me; he there told me, while I was gone to get the Executor sworn, he was in Conversation with Mr. *Crespigny*.

Coun. for the Crown. Did he mention any Thing of his being the Person that came along with the pretended Executor?

Devoyer. Yes, Sir, he did.

Coun. for the Pris. When was this Conversation?

Devoyer. This was the Day that the first Bill was thrown out.

Coun. for the Pris. When you carried *Daunt* in to be sworn, did that other Person go with you into the Room?

Devoyer. I believe we left him in the Office.

Thomas Dyer sworn.

Dyer. I was Constable. Mr. *Noads* applied to me to take the Prisoner at *Newington* on the other Side the Water; I was at my House over-right the *Black Prince*, and Mr. *Noads* was at the *Black Prince*, and one *Frith* brought me the Warrant. On the *Saturday* Morning *Murphy* had been with me to Justice *Hammond* to assist me with a Prisoner; I promised to pay him; he came on the *Monday* Morning for his Money; I said, I'll pay you presently, but I have got a Warrant against you: He said, For what? and wanted to see the Warrant: I told him, I would not shew it him. The other Man (*Frith*) said, it was for Forgery, and asked him if he knew Mr. *Noads*; he said, yes. This was as we were going along: He desired to walk by my Side. *Frith*, at the same Time, went out to fetch Mr. *Noads* from the *Black Prince*; the Prisoner turned on his Heel and ran away, and kept calling out, A poor Debtor! A poor Debtor! I ran after him, and called, Stop Thief! knock him down!

Q. Was Mr. *Noads* in Sight when he turned to run away?

Dyer. I cannot say whether he was or not; but if he was at the *Black Prince* Door, the Prisoner might see him very well.

Q. How far did he run?

Dyer. He ran into a Brick-field; there we took him again, and we carried him to the *Black Prince*; then I went to get my Breakfast 'till they were ready to go; then we took him before 'Squire *Clarke*, and from thence to Alderman *Chitty*. I delivered him up to Mr. *Ward* on *London-Bridge* as we were going, and went with him before the Alderman as an Assistant; then the Prisoner was charged by Mr. *Noads* for forging a Seaman's Will; the Prisoner said, he knew nothing of it.

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Q. Do you recollect he said any Thing about Half a Guinea?

Dyer. Yes, he said he had Half a Guinea for signing a Letter of Attorney.

Cross-Examination.

Coun. for the Pris. Had he been told what he was taken for, before he ran away?

Dyer. He had.

Coun. for the Pris. He soon stopped, I suppose, did he not?

Dyer. He stopped when he could run no farther; there was one *Fielder* went to stop him, and he ran against him to knock him down, and turned him round.

Coun. for the Crown. When he stopped, did he surrender? or what did he do?

Dyer. No, he then took up a Brickbat, and swore he'd kill the first Man that opposed him.

John Frith sworn.

John Frith. I am Servant to the Master of *Dulwich* College; I was applied to by Mr. *Noads* to endeavour to discover and take up *Timothy Murphy*, the Prisoner at the Bar; and was by when the Constable, Mr. *Dyer*, took him at *Newington*.

Q. Was Mr. *Noads* by at the Time?

Frith. No, he was not; the Prisoner asked, what he was taken up for? Mr. *Dyer* would not tell him: He said, Pray, Gentlemen, what am I taken up for? I desire to know: Then said I, If you must know, it is for Forgery; said he, Upon what Account? I said, I can't tell, but I'll go to a Gentleman hard by, and he'll tell you. Then I went for Mr. *Noads*; and when I was at a little Distance, I heard the Constable call out, Stop Thief! then I turned again, but I was too far behind; he was taken and secured before I came up.

Q. How far was you from the Place where Mr. *Noads* was, when he ran away?

Frith. I was about 200 Yards from him.

Q. Where was Mr. *Noads* when you heard the Cry, Stop Thief!

Frith. He was at the *Black Prince*.

Q. Was he within or out of the House?

Frith. I can't tell which.

Q. Did he attempt to break away 'till you had informed him it was for a Forgery?

Frith. No, he did not.

Mr. Woodman sworn.

Woodman. I am Keeper of the *Poultry-Compter*.

[He is shewed a Commitment.]

Woodman. I remember this being brought to me with the Prisoner on the 27th of *July* last, the Day it bears Date, to the *Poultry-Compter*.

Q. What is he charged with in that Commitment?

Woodman. He is charged before Alderman *Chitty*, by the Oath of *Thomas Noads*, upon a violent Suspicion of being concerned with one *John Daunt*, not yet taken, in publishing and uttering a false, forged, and counterfeit Will. It is signed, *Thomas Chitty*.

Mr. Hume Campbell.

My Lord, In the general Course of Business Witnesses are not produced to support the Character of a Prosecutor, unless his Character is impeached either by Evidence or the Nature of the Transaction itself; in the present Instance the

Gentlemen have taken an Objection to Mr. *Noads's* Competency as a Witness; it has been, with great Justice, over-ruled in that Respect, but left to operate on his Character with the Jury: The Indictment against him has been read in Evidence: It is an Indictment against him, together with the other Witness to the Fact, and upon the Back of it stand Mr. *Goddard* and two or three more. This being admitted Evidence against his Character, we are proper to produce Evidence in Support of Mr. *Noads's* Character, and I hope your Lordship will be of Opinion we are regular in so doing.

Lord Chief Baron. You have a Right to it under the Circumstances of this Case.

To the Character of Thomas Noads.

Nicholas Magens, Esq; sworn.

Mr. Magens. I have known *Thomas Noads* ever since he came to *London*, which is about seven or eight Years; it was about the Beginning of the breaking-out of the *Spanish War*.

Q. What is his general Character?

Magens. I have always known him for a very diligent, sober, promising young Man; I have all the Reason in the World to believe him so, and don't doubt his Integrity in the least.

Cross-examined.

Coun. for the Pris. Do you think he would not say what is false to save his own Life?

Magens. I can't answer to that.

James Laroche, Esq; sworn.

Mr. Laroche. This is the second Time I have come from *Bristol* to *London* to speak to Mr. *Noads's* Character: I have known him eight Years, I knew him at *Bristol*, where he was under the Direction of a Gentleman there, (that Gentleman is so infirm he can't come up.) Mr. *Noads* behaved so well there, that the Gentleman recommended him to my Brother-in-Law, Mr. *Henry Casamaijor*, to transact his great Affairs, being Agent for very rich Prizes; he behaved diligently through the whole Transaction. I have heard many speak well of him in *Bristol*, and never heard any Thing reflecting on his Character in my Life. I don't think he'd be guilty of a Forgery.

John Ellis, Esq; sworn.

Mr. Ellis. I have known Mr. *Noads* these six Years; I believe him to be as honest a Man as any Man whatsoever; I don't think he'd do a scandalous Thing; I don't think he is capable, for any lucrative Views whatsoever, to be guilty of a Forgery.

Mr. Alderman Ironside sworn.

Mr. Alderman Ironside. I have known Mr. *Noads* about seven or eight Years; he has been concerned in an Affair where I am interested, in which he has always acted with great Diligence and Prudence; I have trusted him with large Sums of Money; it has been in his Power to have injured us, but I never had any Occasion or Room to doubt his Honesty; I don't believe he'd be guilty of a Forgery on any Consideration.

Henry Casamaijor, Esq; sworn.

Mr. Casamaijor. I have known Mr. *Noads* I believe ten Years.

Q. What is his general Character?

Mr. Casamaijor. As good as any Man's in Being,

both for Honesty and Industry; I have had great Experience of him, he was with me from a Child: I, from my good Opinion of him, recommended him to my Brother; he might have wronged me of large Sums of Money; I never found a Disposition in him either to wrong me or any body else.

Mr. Nares. I desire the first Part of the Will may be read.

[*It is read.*]

“ In the Name of God, Amen. I *John Wilkinson*, late of the *Princess Amelia* Privateer.”

Coun. for the Pris. Now read in the Probate.

[*It is read.*]

“ The last Will and Testament of *John Wilkinson*, of his Majesty's Ship the *Princess Amelia*.”

Coun. for the Pris. There is a Difference between his Majesty's Ship and a Privateer.

Lord Chief Baron. The Probate being a wrong Description does not alter the Case; suppose there had been no Probate at all, the Prisoner is indicted for forging the Will.

The Prisoner being called upon to make his Defence, said only, that they had sworn as they thought proper.

Whereupon the Lord Chief Baron summed up the Evidence to the Jury, who, in less than a Minute, gave in their Verdict,

Guilty, Death.

Immediately after this Trial, Mr. *Thomas Noads* and Mr. *Robert Carter* were tried for this Forgery; but were honourably acquitted, and Copies of their Indictments granted them by the Court.

The Confession of Timothy Murphy.

I Was taken up in the Month of *July* by the Orders of *Thomas Noads*, Clerk to the Managers of the *Royal-Family* Privateers, for forging the Will of *John Wilkinson*, late belonging to the *Princess Amelia* Privateer, being one of the Ships that composed the said *Royal-Family*, and was committed to the *Poultry-Compter* for the said Offence; and on that Day, and the Day after, one *Patrick Flanigan* came to me, and asked what Motive induced me to sign a general Release for my Share of my Prize-Money, to the said Managers: I made Answer, that Mr. *Belchier*, and the rest of the Gentlemen, had long before that Time advanced me twenty Pounds, when I was in want of Money, and that they had behaved to me with the greatest Honour. The said *Flanigan* further asked me, how came I to give a Receipt for 54 *l.* and upwards, and insinuated so much was not due to me, and desired me not to conceal it from him, for that he was acquainted with the whole Affair: And said, if I had a Million of Lives, unless I would do one Thing, I was a lost Man. I then went on my Knees, and begged for Heaven's Sake he would let me know what that was. He made Answer, Not yet; and said, I know you have been a Tool to Mr. *Noads* a long Time, and asked me, who came to me from him or any of the said Managers. I told him, I had not seen or heard from any of them. He then said, Keep your own Mind from them: I commiserate your present Situation, I will call at another Time. And gave me 18 *d.* In a few Days after, he came again, and asked me, whether the said *Noads*, or any of the said Gentlemen,

men, had been with me. I answered, they had not. He then gave me Half a Crown, and said some of them would send to me with Directions to write to Mr. *Belchier*, and advised me not to answer that I would, and said, Do not write at your Peril: And promised to come next Night; which he accordingly did, and advised me to get some Person in Prison to write a Letter to Mr. *Belchier*, but not to have any Thing mentioned in relation to the said Will (I so unfortunately forged of the said *John Wilkinson*.) He went away, and promised to come again. He came again the same Night; when I shewed him the Letter I caused to be wrote, which he desired I would send to Mr. *Belchier*; and after many Assurances of Friendship, he went away; and said he would come the next Night. The Day after, Mr. *Robinson*, Clerk to Mr. *Belchier*, came and shewed me the Letter I sent, and asked me, if it was not my Hand-writing; I told him, it was not. He desired me to write my Mind freely to Mr. *Belchier*, in my own Hand-writing; which, after he went away, I accordingly wrote, with a full Resolution to send to Mr. *Belchier*, in order to open the whole Affair, and rely on his Mercy. He the said *Flanigan* called soon after, and told me Mr. *Robinson* had been with me, and asked what he said: I told him, that he brought back the Letter he directed me to send, and asked me, if it was my Hand-writing; I told him it was not; and that he had directed me to write in my own Hand, and that I had wrote such, but had not sent it. He then replied, Did not I tell you that was a dead Set for you? That a Letter under your own Hand is what will cast you in Court? And told me, that he had been with Mr. *Belchier*, and the rest of the Gentlemen the said Managers, and that he was in great Friendship with them, and knew all their Secrets; and said, I was a dead Man if I sent such Letter, or acted contrary to his Advice. Then I said, The Lord have Mercy upon my Soul, I fear my Life is gone at any Rate. Replied *Flanigan*, If they can, you Fool, do you know how far it lies on them to do so? I said, I did not; neither did I know what Service my Life could be to them: And said, it was the general Character of Mr. *Belchier*, that he was merciful, and that the Gentlemen Prisoners in the *Compter* had so assured me. *Flanigan* then replied, What a great Fool you are! Take special Care of them; as sure as Death, they are set upon to get Words out of your own Mouth; and advised me to keep my Room, and keep my Secrets, otherwise it would not be in his Power to have me saved. I then went down on my Knees, and prayed to the Almighty to have Mercy on my Soul, and that he (*Flanigan*) would assist me: He desired me to get up, and assured me that I should be saved, if I took his Advice, and that he had been that Day about me; and told me, I need not fear, for there was one of the Persons was a Duke of very great Interest; and told me, he had caused a Letter to be presented to the Duke, which he received, and declared he would stick to that Cause, and that he would acquaint his Majesty thereof, and that I should have his Interest: I desired him to explain himself, what he meant by that Cause. He said he would not then tell me, but again advised me to keep my Room, and avoid speaking to any Persons, and gave me one Shilling, and went away: Came again, and told me he had been at *Doxors-Commons*, and saw the forged Will, and that he knew the Name *Dinish Collins*, subscribed as a Witness to

the said Will, to be the Hand-writing of said *Noads*, and said it was in vain for me to deny it; and insisted it was so, and that he would swear it to be so, and that it must be so, and said, you are now under no Restraint, and might and should be admitted a King's Evidence, provided I would impeach the said *Noads*; and said, it was in vain for me to deny the Forgery, saying, I can and will prove the Body of the said Will to be all of your Hand-writing, when subpoena'd on the Trial; but said, if you impeach *Noads*; and are admitted an Evidence, you'll make him squeak; and assured me that nothing else could save my Life: And assured me afterwards, that all the Managers would be prosecuted by the King and Government; but did not explain for what; and said, if I did not hang, they must; and if it cost them ten thousand Pounds, they would cast me; and desired me to give him one of the Buttons out of my Sleeve, and said, The Man to whom this is to be given, is a Person whose Interest will save your Life; repeating at the same Time, that the Dependance of 78,000 *l.* was on the said Will. I then said, The Lord have Mercy on me, I am a lost Man. He then said, the Managers want you to submit to be cast; and they will promise to save you, (they will tell you so) I know it to be what they are upon, but for your Life don't send them a Scroll from under your Hand; if you do, it will be impossible to save you; and said, he knew all their Secrets, and that they could do nothing without his Knowledge, and gave me Half a Crown, and went away. He came next Morning, and told me that one *Robert Carter's* Hand-writing was procured, and compared with the Names to the said Will, and that it appeared he the said *Carter* was also concerned in said Forgery; and said, there was a Decree granted against the Managers for all the Money; and unless I was hanged, they never could get over the Decree: Now, says *Flanigan*, if you flinch, I shall be subpoena'd to prove the Will to be your own Hand-writing, and said he would not perjure himself for any Man; and then insinuated my Life was in his Hands. He then went away, and came the next Day, and produced me a Letter from *Commodore Walker*, giving me a strict Charge to stand on my Defence, assuring me his Interest with the Duke of *Argyll* would save my Life; and *Flanigan* then gave me a strict Charge to stick to whatever should be prescribed to me, and that he would let me know from Time to Time all the said Managers Secrets. He then swore me on a Book not to make Use of his Name, or to discover what Conversation had or should pass between him and the Person who should produce to him the said Sleeve-button, and that I should not call him by any other Name than Mr. *Friend*, and told me he had also sworn that Person, meaning *Goddard*, not to mention his Name before me. That on the same Day, after *Flanigan* went away, Mr. *James Goddard* came to me, and introduced himself, and called for a Pint of Wine, and asked me how I did; and bid me have a good Heart, and then presented the said Sleeve-button, and told me he was a Man of as good a Fortune and as great Interest as any of the Managers were; and said he thought it was a lucky Thing for me that he had purchased the Interest of the said *Flanigan*, whom he named by the Name of Mr. *Friend*; and said such Purchase cost him fifty Pounds, in order to get at all the Secrets of the said Managers; and told me the said *Friend*

was very great with the said *Noads*, and all of them, and without his Interest, my Life could not be saved. He said, he was Master of all that passed between me and *Friend*, and said that *Friend* could and would prove the Forgery against *Carter* and *Noads*, as well as I, and that I might freely speak to him; and said, that *Friend* was to be subpoena'd as an indifferent Person against *Noads*, and that he would swear that *Noads* wrote the said Name *Dinib Collins*, and that *Friend* had seen the said Will in the *Commons*, and could prove the Body to be my Hand-writing; and expressed himself much in the same Manner as *Friend* had repeated, before he told me that *Friend* acted as Attorney for Commodore *Walker*: He gave me a Crown, and said he would call again. He came the next Day, and expressed himself to the Purport aforesaid, and said he would call the Day after; and charged me, at my Peril, not to write to the said Mr. *Belchier*: Then went away, and neglected coming according to Promise, which made me very uneasy in Mind, and induced me to write a Letter to the said *Friend*, purporting, I thought it was a Scheme laid between him and *Goddard* to take away my Life; and that I would write to Mr. *Belchier*. Soon after, *Goddard* came to me, and told me of the said Letter, and said it frightened him and *Friend*, and desired I would not write in that Manner any more, assuring me I need not be afraid, and requested I would not communicate to any body what passed; telling me I was safe. He then took a Paper out of his Pocket, which he read to me, purporting what I was to swear to; and told me I had no Business to deny it, for *Friend* knew it to be true, and that he would also prove it; and said, the same Seal which was to the Will *Friend* assured him was the said *Noads's*. He then took another Paper out of his Pocket, and got me to sign it, purporting to be admitted an Evidence, and addressed to Alderman *Chitty*: He wrote something more to the other Paper he brought, and said my Irons should be knocked off, and assured me it was by Mr. *Belchier's* Directions that I was ironed, that I might easily judge by that what they were upon; assuring me of his Friendship, and went away. The next Morning he came, and told me I should be sent for to Sir *Joseph Hankey's*, and that my Irons should be taken off, which accordingly were. He then read over the said Paper he had so first produced as aforesaid, and desired me to recollect the Contents, when examined; and to stick to it, otherwise my Life would be lost. I was carried to Sir *Joseph Hankey's*, and in the Presence of Alderman *Chitty*, *Goddard* appeared, and Mr. *Lock*; *Goddard* took out the said Paper, and asked me several Questions, as did also the Justice, and sent me back: *Goddard* came to me, and had me in private, and told me I should be sent for again to be examined the next Day, and then produced the said Papers, and made some Amendments, and desired me to stick to it. The next Day I was carried to Sir *Joseph's*, Alderman *Chitty* was there; *Goddard*, *Lock*, and the said *John Wilkinson*, attended; and *Wilkinson* shewed me a Subpœna he was served with by *Noads*, to prosecute me at the *Old-Bailey*; and *Goddard* there asked me several Questions, as did also the Justice; and the Answers I gave were calculated by the false Counsel, Instructions, and Advice, the said *Goddard* and *Friend* gave me, without doing which, they assured me, my Life could not be saved.

I was sent back. *Goddard* frequently came to me, and advanced me Money from Time to Time; and one Morning he told me he had thought of a Thing which would prevent the Bill being found against me, which he afterwards told me was, that the forged Will was proved at the *Commons*, as the Will of *John Wilkinson*, who belonged to his Majesty's Ship the *Princess Amelia*. The Day the Bill was thrown out by the Grand Jury, that was preferred against me, soon after *Goddard* came to me, and told me, that Alderman *Chitty* made it appear to the Grand Jury, I was admitted an Evidence, and that the Bill was thrown out; and told me, I should be sent for the next Day to *Guildhall*, to swear to a Paper that was drawn up, and prepared according to Form in Law, and said, he would shew it me at *Guildhall*. The next Morning I was sent for to *Guildhall*, where *Goddard* attended before the Sitting Alderman came, and called me into a Closet there, and took out a Paper, and gave me to read, and said, he had got it drawn up, and that it was what I must swear to, in order to save my Life; and said, I must stick to that Paper, or my Life would be lost. He went out of the Room, and Mr. *Lock* came in, and said, Mr. *Murphy*, was you not afraid before the Bill was thrown out? I replied, I was. He then said, You are a free Man, and desired me to consider what I was about. I had not Time to converse with Mr. *Lock*, to know how I was free, before Mr. *Goddard* came in, and interrupted us; and *Lock* and *Goddard* went out, and *Goddard* soon returned, and desired me not to speak to Mr. *Lock*, or to the Alderman, but to swear to that Paper; and said, he would give Mr. *Lock* Half a Guinea for his Trouble. I was soon after brought into the Room where Alderman *Chitty* was, and some other Person, and was sworn to the said Writing, which I never saw, 'till produced in the said Closet, and declared such Writing was calculated by the said *Goddard*. I was sent back. *Goddard* came to me, and produced a Paper ready drawn, which he desired me to copy in my own Hand, which was of his Hand-writing, and directed me to give it to the Judge or Recorder at the *Old-Bailey*, the next Day, which he said would clear up all to Satisfaction. I copied the same, and the Day after delivered it at the *Old-Bailey* to the Recorder, and was sent back to the *Compter*. *Goddard* came there to me, and asked me what passed: I told him I had delivered the Paper as he directed. That *Goddard* and Mr. *Woodman* had a Pint of Wine together, and had some Conversation in respect of having me detained in the *Compter*, and it was agreed a friendly Action to be laid, which *Goddard* assured me was in order to preserve my Life, assuring me, if I went abroad, I should certainly be knocked on the Head, poisoned, or a Robbery sworn against me, by the Contrivance of the said Managers, to prevent my Evidence. *Goddard* put me on the Master-Side, for which he paid *Woodman*. I grew very uneasy at not being at my Liberty. As the Bill was thrown out, and I admitted, as *Goddard* told me, a King's Evidence, being in a bad State of Health, of the Gaol-Sickness, of which many died, I requested *Goddard*, when he came again, to have me bailed out, and sent into the Country, to the same Place where he kept the said Mr. *Wilkinson*; at which *Goddard* seemed uneasy, and declared he knew of no Place in

England so safe to preserve my Life as the Place where I was, and repeated as aforesaid, that if I went abroad before I was examined as a Witness, I should certainly lose my Life; and promised to get me on the Debtors Side, with the Assistance of Mr. Woodman, provided I could get a Friend that could be confided in to keep Things secret, who would bring a friendly Action against me, and promised he would allow me a Shilling a Day, and pay for my Lodging, till discharged; at which I was more reconciled to stay than I was before, apprehending what Goddard had so represented was intended in order to preserve my Life. I then told him, that I believed Timothy Mabony, who was my Relation, and whom Goddard knew, and was in the Secret, would be the only proper Person to bring such Action. Then Goddard took a Direction where the said Mabony lived, and told me, he would go to him. The said Mabony came to me in a Day or two after, and told me, Mr. Goddard had been with him, and addressed himself to him, by telling him, he had something to say to him to save my Life, and wanted him to go and swear a Debt against me, in order to keep me on an Action in the Compter: And that he assured him, that though the Bill was thrown out against me, yet if I went abroad, I should be knocked on the Head, poisoned, or a Robbery sworn against me, and that my Life would certainly be taken away, by the Party who were against me. The said Mabony told me he said to the said Goddard, he would not take such an Oath on any Account: And that Goddard asked him, Would he not do such a Thing as to take an Oath to save my Life, being my Relation? and said, he told the said Goddard, he would not take a false Oath for the World. And that Goddard, at length, by many fair Speeches, importuned him to go to take out such Action, and had directed him to his Brother's House in St. Christopher's Church-yard, for 15s. on that Account, and promised to leave Directions with his Brother to give the Money, and desired Mabony, when he got the Money, to come to me, in order to take out such Action. The said Mabony also told me, he had received the 15s. which he offered to give me, and said, he would not take out any such Action, as I was not indebted to him in any Sum that amounted to an Arrest: Then I pressed and intreated the said Mabony to bring such Action, as it was intended to save my Life, and told him I would give him a promissory Note for as much as he was to take the Action for, and he would be safe in so doing, which he then complied with; and I drew a Note for 5 or 6l. which I antedated, payable to him or Order; and it being then too late to take out any Action, in a Night or two after Mabony came again to me, and I directed him to go to the Office and lodge such Action, which he did; and he afterwards gave him 15s. — That the said Mr. Friend, at different Times, came to me, and assured me he would attend at the Trial, and swear that Noads wrote the said

Name *Dimish Collins*; and he also assured me that if I went abroad before the Trial was over, I should be murdered or poisoned, or have a Robbery sworn against me, by the Contrivance of the said Managers. That Goddard frequently came to me, and kept me full of Spirits, assuring me I should be an Evidence against Noads and Carter; and if *Thomas Williams*, who was the supposed Executor of the said *Wilkinson*, and went by the Name of *John Daunt*, should not be produced on my Trial, the said Mr. Friend was to swear falsely against the said Noads. I do declare, that the said Mr. Noads and *Robert Carter* were innocent of what I swore against them, relating to any Knowledge they had in any Forgery; and that I, and the said *John Williams*, otherwise *Daunt*, were the only Persons concerned in forging and publishing the said Will of the said *John Wilkinson*. And I do also declare, that I never had any Intention whatsoever to charge the said Mr. Noads, or the said *Carter*, with the said Forgery, until I was spirited and prompted up in the Manner aforesaid, by the Art, Management, and Contrivance of the said Goddard and *Flanigan*. And I do also solemnly declare, that the said *James Goddard* has often, since my Conviction, sent several Messages to me, to desire I would not reveal any of the secret Transactions that passed between us as aforesaid, and sent, in his own Hand-writing, a false Paper to be published, which he requested I would sign, but refused so to do. I had several Letters and Papers of Consequence, which, being advised and requested, I burnt, lest I should be searched, which would have given a very full and satisfactory Discovery in this Affair. That Word was sent to me last Night by Goddard, that if I kept it secret, in case my Life could not be saved, I should be decently buried, provided I would send back to him signed the false Confession, which he sent me in his own Hand-writing, as also another Writing that would be sent me. Mr. *Vicors*, Chaplain to the *Spanish* Ambassador, being my Father, this Day told me, that he dined with the same *James Goddard* Yesterday, and that he had desired him to bring back to him from me the said Confession, and proposed to send by him another Writing to be signed by me, which the said Mr. *Vicors* told me he informed the said Mr. Goddard he would not be any wise concerned therein, but he said he would charge me to make an open Confession of the Truth before Life parted. And I declare the said Mr. *Vicors* advised me so to do; and, as a dying Man, being desirous to discharge my Conscience, have made this Declaration, which is nothing but the Truth. Given under my Hand, from my Cell in *Newgate*, the 27th of *January*, 1753.

TIM. MURPHY.

Present,
William Hawkins,
Isaac Dolston.

He was executed at *Tyburn*, Monday, Feb. 12, 1753.

XLIX. Proceedings against Dr. Archibald Cameron, at the King's Bench, May 17, 1753; on the Bill of Attainder passed against him 19 Geo. II. for being in the Rebellion 1745.

“ THIS Dr. Cameron * was younger Brother
 “ to Donald Cameron of Lochiel, and Son
 “ of Evan Cameron, who was in the Rebellion in
 “ 1715, and was one of the Seven that came
 “ from France with the young Pretender, and who,
 “ on their landing in July 1745, went to the House
 “ of Donald Macdonald of Kenloch-Moidart, and
 “ from thence Orders were issued for the Clans
 “ to join the young Pretender: On which Donald
 “ Cameron, after much Intreaty, waited on him,
 “ and expressed his Surprize to see him so weakly
 “ attended, and refused to raise his Clan, ’till the
 “ young Pretender could produce in Writing the
 “ French King’s Resolution to assist him with a
 “ proper Number of Forces, &c. and being
 “ assured that he would, he summoned his Clan,
 “ and set up his Standard with this Motto,
 “ TANDEM TRIUMPHANS, *At length Triumphant*;
 “ though, at the same Time, he told the young
 “ Pretender, that his Scheme was so ill concerted,
 “ that he feared no Success would happen from
 “ it, and that the Issue of it would be the Ruin
 “ of his Friends; as in the End it proved.

“ Dr. Cameron was in himself of a quiet and
 “ peaceable Temper; and, had he not been
 “ Brother to Lochiel, it is very probable he would
 “ never have gone into the Rebellion.

“ His Father gave him the best Education
 “ Scotland could afford, designing him for the
 “ Bar; which Profession he did not like, and
 “ applied himself to the Study of Physic and
 “ Anatomy, and put himself under the Direction
 “ of Dr. Alexander Monro, of the University of
 “ Edinburgh, a Gentleman of established Repu-
 “ tation; and when he had acquired a competent
 “ Skill in Anatomy, he applied himself to Physic,
 “ and was instructed therein by Dr. Sinclair, a
 “ Gentleman very eminent in the Faculty; after
 “ which he travelled abroad, and studied in those
 “ Branches at Paris; and after staying some Time
 “ there, returned to Lochaber, and married a
 “ young Lady of the Name of Campbell, by whom
 “ he left seven Children.

“ This Dr. Cameron might have made a con-
 “ siderable Figure in his Profession, had he settled
 “ at London or Edinburgh; but chose his Residence
 “ near his Brother’s, among the Highlands, where
 “ he took great Pains to cultivate the Minds and
 “ Manners of the Highlanders, who by his
 “ Means were greatly improved. He was a Man
 “ of no Ambition, but of an easy, quiet Temper.
 “ His chief Business in the Rebel Army was to
 “ attend his Brother, and to assist him with his
 “ Skill, if any Accident should befall him in

“ Battle; and he did attend not only several of the
 “ wounded Rebels, but likewise several of the
 “ King’s Troops that fell wounded into the
 “ Hands of the Rebels. But the Battle of Culloden
 “ put a final End to the Rebellion, and all the
 “ Pretender’s Hopes, and ruined vast Numbers of
 “ Families, that put their Trust in French Faith:
 “ Lochiel was wounded in the Ankle in the Battle,
 “ and carried off by his Clan, and attended daily
 “ by the Doctor his Brother, wandering about
 “ for some Time after the Battle; ’till at last
 “ the young Pretender, Lochiel, his Brother the
 “ Doctor, and some other of his Followers,
 “ embarked on board a Vessel in the Harbour of
 “ Flota in the Isle of South-Ulst, and landed at
 “ Boulogne in France about the Middle of September
 “ 1746, to their great Joy, having suffered
 “ innumerable Hardships.

“ Lochiel had immediately a Regiment given
 “ him by the King in the French Army, and the
 “ Doctor was made Physician to it; but on the
 “ Death of his Brother, in September 1748, he
 “ was appointed Physician to Lord Ogilvie’s
 “ Regiment, then quartered at Lisle in Flanders.

“ About the Year 1749, a Collection was
 “ made among the Jacobites for their Friends
 “ abroad; and, it was said, Dr. Cameron came
 “ over, and received a Part of it: After this,
 “ another Collection was made for these unhappy
 “ People; and the Doctor represented, that his
 “ Pay would not keep him and his Family: But,
 “ after many Sollicitations, receiving no satis-
 “ factory Answer, he came over himself to Scot-
 “ land, and was there discovered, and was seized
 “ by a Party of Lord George Beauclerk’s Regiment,
 “ who were sent from the Fort of Inversnaid in
 “ search of him, and brought Prisoner to Edinburgh
 “ March the 26th, 1753; and being brought be-
 “ fore the Lord Justice Clerk, who told him, *You*
 “ *are the only Man in your Circumstances, that ever*
 “ *I had Occasion to speak to since I have been engaged*
 “ *in Business, whose Answers to me could be of no*
 “ *Prejudice to him; because you are to be carried to*
 “ *London, and there are Witnesses ready to appear*
 “ *against you at the Court of King’s Bench, to prove*
 “ *that you are the identical Dr. Cameron mentioned*
 “ *in the Bill of Attainder: This will condemn you,*
 “ *and you are to have no other Trial.*—This struck
 “ him; and, after some Pause, he replied, *That he*
 “ *did not come over with any political Design, but only*
 “ *to transact some Affairs relating to Lochiel’s Estate.*

“ Upon his Arrival at London, he was examined
 “ by the Council at the Cockpit, and committed
 “ Prisoner to the Tower.”

* From the Historical Account of his Life, published at the Time of his Death.

Doct^r CAMERON'S Case.*

PLEAS before our Lord the King at Westminster of Easter Term, in the 26th Year of the Reign, &c.

Amongst the Pleas of the King Roll.

ENGLAND. Our present Sovereign Lord the King hath transmitted to his beloved and faithful Sir William Lee, and others his Fellows Justices, &c. [as in the Case of Mr. Murray of Broughton, *mutatis mutandis*, Vol. ix.]

Dr. Archibald Cameron, who was one of the Persons attainted by the Act of the 19th of the King, was, on the 17th of May 1753, brought to the Bar by Habeas Corpus directed to the Lieutenant of the Tower; and being arraigned by the Secondary on the Crown Side, the Writ of *Mittimus* with the *Certiorari* and Return were read to him by the Secondary. The Attorney-General then prayed that Execution might be awarded; and the Secondary demanded of the Prisoner, what he had to say why Execution should not be done upon him.

The Prisoner, who, during the whole Time he stood at the Bar, behaved with great Propriety, not insensible of his Condition nor greatly disconcerted, said, That he was led to take a Part in the Rebellion against his own Judgment and Inclination, by some upon whom his All depended: That he still flattered himself he should appear not unworthy of his Majesty's Mercy; and mentioned some Facts which he hoped might intitle him to it. He said, he did not offer these Things as a Defence he relied on in point of Law, but as Facts which he hoped might have some Weight in another Place, for he was determined to throw himself entirely on his Majesty's Mercy.

Whereupon Proclamation being made for Silence, the Chief Justice, after a short Exhortation to the Prisoner, pronounced the usual Judgment in Case of High Treason, as an Award of Execution grounded on the Act of Attainder. And a Rule was made for his Execution on the 7th of June, and Writs for that Purpose to the Lieutenant of the Tower and the Sheriff of Middlesex were ordered, as in the Case of Mr. Ratcliffe, Vol. ix.

The Court in pronouncing Judgment in this Case followed the Precedents in the Cases of *Humphry Stafford*, (1 H. 7. 23, 25.) and of *Barkstead, Okey, and Corbet*, (1 Sid. 72. 1 Lev. 61. *State Trials*, Vol. viii. p. 363.) The Cases of *Holloway* and *Sir Thomas Armstrong* in Charles the Second's Time, (*State Trials*, Vol. iii. Edit. 1741. p. 944, 984.) and of *Lord Griffin* † in the late Queen's Time, were mentioned at a Conference among the Judges of the King's Bench on this Occasion; but little Regard was paid to them.

For in *Holloway's*, which was the leading Case, the Opinion of the Court seemeth to have been given hastily and against the Sense of the Bar. And in *Lord Griffin's* Case, Chief Justice *Holt*, who was at that Time absent, was of a contrary Opinion, and, as I have heard, constantly persisted in it; and I do not see how an Attainder by Outlawry at Common Law, is, in this respect, distinguishable from the Case of an Attainder by Act of Parliament, which, in the present Case, is but in Nature of a Parliamentary Outlawry.

Indeed in Cases within the Act of the 19th of the King, c. 34. where the Proceeding is upon a Suggestion on the Roll that the Prisoner did not surrender to Justice pursuant to that Act, the constant Course hath been to award Execution, without pronouncing Sentence of Death as in Cases of Felony: But that Practice is grounded on the Words of the Act; "And it shall be lawful for the Court to award Execution against such Offender, in such Manner as if he had been convicted and ATTAINTED in the said Court."

The Record in the Case of *Barkstead, &c.* was searched, and the Judges had Copies of it. It is of Easter Term in the Fourteenth of King Charles the Second; it agreeth, *mutatis mutandis*, with the Record in Mr. Murray's Case, Vol. ix. and after setting forth the Act of Parliament by which the Prisoners stood attainted, it proceedeth, *Et modo scilicet die Mercurii prox' post Quinden' Pasch' isto eodem Termino coram Domino Rege apud West' veniunt prædicti Johannes Barkstead, Johannes Okey, & Milo Corbet, per Johannem Robinson Mil. & Bar. Locum tenent' Turris London', virtute Brevis Domini Regis de Habeas Corpus ei inde direct' ad Barram hic duet' in propriis Personis suis (in cujus Custod' præantea ex Causis prædicti commisi fuerunt) qui committuntur eidem Locum tenent' super quo quæsit' est per Cur' de eisdem Johanne Barkstead, Johanne Okey, & Milone Corbet, si quid pro se habeant, vel dicere sciant, quare Cur' hic ad Executionem de eis & eorum quolibet procedi non debeat, Seperatim dicunt quod ipsi non sunt eadem Personæ, nec eorum aliquis est eadem Persona, quæ de altâ Proditione prædicti in Actu Parliamenti prædicti Specificat' Convict' & Attinēt' existunt; & hoc parat' sunt verificare prout Cur' &c. unde petunt Judicium &c. & Galfridus Palmer Mil. & Bar. Attornat' Domini Regis Generalis qui pro eodem Domino Rege in hac Parte sequitur præsens hic in Cur' pro eodem Domino Rege dicit, quod prædicti Johannes Barkstead, Johannes Okey, & Milo Corbet, modo comparant' sunt eadem Personæ, & quilibet eorum est eadem Persona in prædicti Actu Parliamenti nominat' qui de altâ Proditione prædicti Convict' & Attinēt' existunt, & hoc pro Domino Rege petit quod inquiretur per Patriam, & prædicti Johannes Barkstead, Johannes Okey, & Milo Corbet, similiter &c. Ideo immediate veniat inde Jurata coram Domino Rege ibidem &c. Et Juratores Juratæ prædicti per Vicecomit' Middlesex*

* *Foster's Reports*, p. 109—112.

† *The Case of Lord GRIFFIN*, from a MS. Report of the late Lord Chief Baron Dod. Pasch. 7 Annæ 1708.

Lord Griffin, who had been outlawed for High Treason, was this Term brought to the King's Bench; and the whole Record of the Indictment and Outlawry was read to him, and he was demanded, if he had aught to say why Execution should not be done; and he not making any material Objection, the Court ordered Execution to be done. But note, Sir *James Mountagu*, Solicitor-General, (there being then no Attorney-General) prayed that Judgment as in Case of High Treason might be pronounced; or that at least it might be entered on the Roll in the Award of Execution: And said, this was the Opinion of *Holt*, Chief Justice, then at *Bath præter Ægritudinem*. But *Powell* and the Court held, that the Award of Execution should be general; for the Judgment in the Outlawry implieth all the Particulars, and no second Judgment ought to be given. And so they said it was held in the Cases of *Holloway* and *Sir Thomas Armstrong*. *Mes per auters dubitatur, quia le Livre del 1 H. 7. fo. 24. est contra*; and it was said that in the Case of *Barkstead, Okey, and Corbet*, the Court followed the Precedent of that Book.

prædicti ad hoc impannellati exacti veniunt, qui ad Veritatem de præmissis dicendi electi tria & jurati dicunt super sacramentum suum, quod prædicti Johannes Barkstead, Johannes Okey, & Milo Corbet, sunt eadem Personæ, & quilibet eorum est eadem Persona in prædicti Actu Parlamenti nominati qui de altâ Proditione prædicti in Actu Parlamenti prædicti Convicti & Attinere existunt, prout prædicti Galfridus Palmer Mil. & Bar. Attornatus Domini Regis nunc Generalis pro dicto Domino Rege superius allegavit &c. & Ulterius quæsit est de præfatis Johanne Barkstead, Johanne Okey, & Milone Corbet, sepe ratim, si quid ulterius pro se habeant vel dicere velint necne, qui Nihil dicunt &c. Ideo considerat est quod prædicti Johannes Barkstead, Johannes Okey, & Milo Corbet, ducantur, & quilibet eorum ducatur usque Turrim London, & deinde per medium Civitatis London directe usque ad Furcas de Tyburn Trabantur, & quilibet eorum Trabatur, & super Furcas illas ibidem Suspendantur & quilibet eorum Suspendatur, & Viventes ad Terram prosternantur, & quilibet eorum prosternatur, & Interiora sua extra Ventres suos & eorum cujuslibet capiantur, ipsisque Viventibus comburantur, & Capita eorum & eorum cujuslibet amputentur, & Corpora eorum & eorum cujuslibet in quatuor Partes dividantur, & quod Capita & Quarteria illa ponantur ubi Dominus Rex ea assignare voluerit &c.

“ On Dr. Cameron’s receiving Sentence, he made a genteel Bow, and only desired he might have Leave to send for his Wife, who, with seven Children, entirely dependent on him for Support, were at *Lisse* in *Flanders*; which was granted. He said, that in 1746 he came from *France* to surrender himself, agreeable to the Proclamation, but was prevented by an Accident happening in his Family: He behaved with great Resolution and Decency before the Court. *

“ During the Interval between the Sentence and his Execution, his Wife used all possible Means to obtain a Pardon, by delivering a Petition to his Majesty, another to her Royal

“ Highness the Princess of *Wales*, and to several of the Nobility; but without Effect: For on Thursday June 7th, about Ten o’Clock in the Forenoon, he was brought out of the Tower; guarded by a Party of the Horse-Guards, and delivered to the Sheriffs of *London* and *Middlesex*. As soon as he was out of the Tower Gate, he was put into the Hurdle, to which he was fastened by the Executioner. In this Manner he was drawn through the City, attended by Sir *Richard Glyn*, one of the Sheriffs, and under the Care of the Sheriff’s Officers and Constables, to the Place of Execution. Sir *Charles Asgill*, the other Sheriff, left the Prisoner at the Tower.

“ The Doctor being arrived at the Place of Execution, and helped into the Cart, desired to speak to the Sheriff, who came to him: The Doctor intreated the Favour of him, that he would give Orders to let his Body hang ’till he was quite dead, before the Executioner began his further Operation, and the Sheriff promised to oblige him in his Request; and accordingly the Body hung three Quarters of an Hour before cut down, when no Remains of Life was in him.

“ While in the Cart, a Gentleman in a lay Habit came and prayed with him, and then left him to his own private Devotions; by which it was imagined the Doctor was a Roman Catholic, and the Gentleman who prayed with him a Priest. He died with great Decency and Resolution, without any visible Alteration in his Countenance or Behaviour, but perfectly resigned to the Will of Heaven. He left no Paper behind him. After his Body was taken from the Gallows, the Executioner cut off his Head, and took out his Bowels, but did not quarter the Body. His Body and Head were put into a Coffin, with this Inscription on the Lid of it, *Dr. Archibald Cameron suffered the 7th of June, 1753, aged 46.*”

* From the Historical Account of his Life, p. 27.





L. *The TRIAL of Elizabeth Canning, Spinster, for Wilful and Corrupt Perjury, at Justice-Hall in the Old-Bailey, held by Adjournment on Monday the 29th of April, Wednesday the 1st, Friday the 3d, Saturday the 4th, Monday the 6th, Tuesday the 7th, and Wednesday the 8th of May, 1754, before the Right Hon. Thomas Rawlinson, Esq; Lord-Mayor of the City of London, Sir Edward Clive, Knt. one of the Justices of his Majesty's Court of Common-Pleas, the Hon. Heneage Legge, Esq; one of the Barons of his Majesty's Court of Exchequer, William Moreton, Esq; Recorder, and others the Justices, &c. **

AT the General Session of Oyer and Terminer, holden for the City of London, at Justice-Hall in the Old-Bailey, within the Parish of St. Sepulchre, in the Ward of Farringdon Without, in London aforesaid; on Wednesday the 24th Day of April, in the twenty-seventh Year of the Reign of our Sovereign Lord George the Second, King of Great-Britain, &c. Before Thomas Rawlinson, Esq; Mayor of the City of London; Sir Edward Clive, Knt. one of the Justices of our Lord the King, of the Court of Common-Pleas; Heneage Legge, Esq; one of the Barons of the Exchequer of our said Lord the King; William Moreton, Esq; Recorder of the City of London; Robert Scott, Esq; Samuel Fludyer, Esq; Aldermen of the said City, and others their Fellows Justices of our said Lord the King, assigned, &c. and continued by several mesue Adjournments to Monday the 13th of May following.

On Monday the 29th of April, 1754, the Court being opened, the Prisoner Elizabeth Canning was set to the Bar, in order to take her Trial upon the following Indictment, which had been preferred against her in the June Session 1753, and to which she had appeared and pleaded Not guilty, in the February Session following.

Gentlemen of the Jury.

- William Manning, - - - - sworn.
- John Wilding, - - - - sworn.
- William Webster, - - - - sworn.
- John Langley, - - - - sworn.
- James Waugh, challenged by Crown.
- Charles Moore, challenged by Crown.
- Rickard Frome, - - - - sworn.
- Robert Smith, challenged by Defendant.
- John Scott, - - - - sworn.
- William Evered, - - - - sworn.

- William Nash, challenged by Crown.
- John Carter, - - - - sworn.
- John Potter, challenged by Crown.
- John Kent, challenged by Crown.
- John Rogers, challenged by Crown.
- William Martin, challenged by Crown.
- Richard Linch, challenged by Crown.
- Robert Rampshire, challenged by Crown.
- Joseph Russell, - - - - sworn.
- Stephen Prew, challenged by Crown.
- John Nemes, challenged by Defendant.
- Wilkinson Brathwait, challen. by Crown.
- William Walker, - - - - sworn.
- John Mitchell, challenged by Crown.
- Martin Newth, challenged by Crown.
- Benj. Glanville, challen. by Defendant.
- Edward Baxter, challenged by Crown.
- John Whipham, challenged by Crown.
- William Parsons, - - - - sworn.
- Thomas Stracey, challenged by Crown.
- Daniel Destleu, challenged by Crown.
- Edward Dymoke, - - - - sworn.

- Clerk of the Arraigns. Cryer, count these.
- William Manning, John Wilding,
 - William Webster, John Langley,
 - Richard Frome, John Scott,
 - William Evered, John Carter,
 - Joseph Russell, William Walker,
 - William Parsons, Edward Dymoke.

Cl. of Arr. Cryer, make Proclamation.
 Cryer. Oyez, oyez, oyez; If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney, on this Inquest to be taken, of any Crimes or Misdemeanors, done or committed by the Defendant at the Bar, let them come forth, and they shall be heard.

God save the King.

* Taken in Short-hand by Thomas Gurney, Samuel Rudd, and Isaac Harman, all eminent Short-hand Writers, appointed by the Court for that Purpose; and after being carefully examined together, faithfully transcribed by the said Thomas Gurney, many Years Short-hand Writer at the said Court. Printed by the Authority and Appointment of the Right Hon. Thomas Rawlinson, Esq; Lord-Mayor.

Cl. of Arr. Gentlemen of the Jury; The Defendant at the Bar stands indicted by the Name of *Elizabeth Canning*, late of *London*, Spinster; and the Indictment sets forth, that at the General Session of the Peace holden for the County of *Middlesex*, at *Hicks's-Hall* in *St. John's Street*, in the County aforesaid, on *Monday* the 19th Day of *February*, in the twenty-sixth Year of the Reign of our present Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain, France, and Ireland*, King, Defender of the Faith, and so forth; before *Luke Robinson*, Esquire, Sir *John Cross*, Baronet, *Thomas Lane* and *Pierce Galliard*, Esquires, and others their Fellows Justices of our said Lord the King, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespases, and other Misdeeds committed in the same County, by the Oath of *Edmund Kane*, Gent. *John Jennings*, *George Fry*, *David Reynolds*, *Thomas Foreman*, *Arthur Hancock*, *Isaac George*, *Lewis Powell*, *William Meads*, *Henry Haines*, *John Greenbill*, *Thomas Hibbins*, *John Brooke*, *Thomas Bowman*, *Richard Westmerland*, *Elias Lock*, *Henry Coleman*, *John Knowles*, *Henry Carthrup*, *William Fort*, *Thomas Woorell*, *Job Blandford*, and *Robert Rewell*, good and lawful Men of the County aforesaid, then and there sworn and charged to inquire for our said Lord the King, for the Body of the said County; It was presented that *Mary Squires*, late of the Parish of *Enfield* in the County of *Middlesex*, Widow, on the 2d Day of *January*, in the twenty-sixth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great-Britain, &c.* with Force and Arms, at the Parish aforesaid, in the County aforesaid, in the Dwelling-House of one *Susannah Wells*, there situate, upon one *Elizabeth Canning*, Spinster, in the Peace of God and our said Lord the King then and there being, feloniously did make an Assault, and her the said *Elizabeth* in bodily Fear and Danger of her Life then and there feloniously did put; and one Pair of Stays of the Value of ten Shillings, of the Goods and Chattels of the said *Elizabeth*, from the Person and against the Will of the said *Elizabeth*, in the Dwelling-House aforesaid, then and there, violently and feloniously did steal, take, and carry away, against the Peace of our said Lord the King, his Crown and Dignity: And thereupon such Proceedings were had, that afterwards (to wit) at the Delivery of the Gaol of our said Lord the King of *Newgate*, holden for the County of *Middlesex*, at *Justice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Wednesday* the 21st of *February*, in the twenty-sixth Year of the Reign of our said Lord the King, before Sir *Crisp Gascoyne*, Knight, Mayor of the City of *London*; Sir *Martin Wright*, Knight, one of the Justices of our said Lord the King, assigned to hold Pleas before the King himself; *Nathaniel Gundry*, Esquire, one of the Justices of our said Lord the King of the Court of Common-Pleas; Sir *Richard Adams*, Knight, one of the Barons of the Court of Exchequer of our said Lord the King, and others their Fellows Justices of our said Lord the King, assigned to deliver his Gaol of *Newgate* of the Prisoners therein then being; and before whom the Indictment aforesaid, against the said *Mary Squires*, was then depending; came the same *Mary Squires* in the same Indictment named, under the Custody of Sir *Charles Asgill*, Knight, and Sir *Richard Glyn*,

Knight, Sheriffs of the said County (into whose Custody in the Gaol of *Newgate* aforesaid, she the said *Mary Squires*, for the Cause aforesaid, had been before committed :) And the said *Mary Squires* being then brought to the Bar there in her proper Person, and being then and there asked how she would be acquitted of the Premises specified in the said Indictment as aforesaid, she the said *Mary Squires* did then and there say, that she was not guilty thereof; and thereupon for Good and Ill she put herself upon the Country: Whereupon such Proceedings were had, that afterwards (to wit) at the same Session of the Delivery of the Gaol aforesaid, holden for the County aforesaid, at *Justice-Hall* aforesaid, on the said *Wednesday* the 21st Day of *February*, in the twenty-sixth Year aforesaid, and before the same Justices of our said Lord the King, in that behalf above-named, and others their Fellows aforesaid, by a certain Jury of the County between our said Lord the King and the said *Mary Squires* in that behalf in due Manner chosen, tried and sworn, the Issue aforesaid was tried. And the said present Jurors for our said Lord the King, now upon their Oath aforesaid, do further present, That upon the said Trial between our said Lord the King and the said *Mary Squires*, at *London* aforesaid, (that is to say) at the Parish of *St. Sepulchre*, in the Ward of *Farringdon Without*, in *London* aforesaid, (to wit) at *Justice-Hall* aforesaid, in open Court aforesaid, the said *Elizabeth Canning*, late of *London*, Spinster, did appear as a Witness for and on behalf of our said Lord the King, against the said *Mary Squires*, and the said *Elizabeth Canning* then and there did, before the said Justices last named, in open Court aforesaid, take her corporal Oath, and was duly sworn upon the holy Gospel of God, to speak the Truth, the whole Truth, and nothing but the Truth, of and upon the Premises so as aforesaid put in Issue between our said Lord the King and the said *Mary Squires*; (the same Justices then and there having a competent Authority to administer an Oath to the said *Elizabeth Canning* in that behalf;) and the said *Elizabeth Canning* being so sworn, and not having the Fear of God before her Eyes, but being moved and seduced by the Instigation of the Devil, and having no Regard for the Laws and Statutes of this Realm, nor fearing the Punishments therein contained, and unlawfully, wickedly, maliciously, and deliberately advising, contriving, and intending to pervert the due Course of Law and Justice, and to cause and procure the said *Mary Squires* untruly to be convicted of the Felony and Robbery charged upon her in and by the Indictment aforesaid, afterwards, (to wit) upon the 21st Day of *February*, in the twenty-sixth Year aforesaid, before the Justices of our said Lord the King last above-named, at the same Session of Delivery of the Gaol aforesaid, at *London* aforesaid, (that is to say) at the Parish of *St. Sepulchre* aforesaid, in the Ward of *Farringdon Without* aforesaid, in *London* aforesaid, did falsely, wickedly, voluntarily, and corruptly, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, upon her said Oath, so by her taken as aforesaid, say, depose, swear, and give in Evidence (among other Things) to the Jurors of the Jury, who were then and there in due Manner chosen, tried, and sworn to try the said Issue, That she the said *Elizabeth Canning* had been at *Salt-Petre Bank* to see an Uncle and Aunt, and stayed there till about Nine at Night,

on the 1st Day of *January* (meaning the Month of *January* in the said Indictment mentioned:) That then her Uncle and Aunt came with her as far as *Aldgate*, when they parted: That she the said *Elizabeth Canning* was then alone, so came down *Houndsditch* and over *Moorfields* by *Bedlam* Wall: That there two lusty Men, both in great Coats, laid hold of her: That they took her to the Prisoner *Wells's* House (meaning the Dwelling-House of the said *Susannab Wells* in the said Indictment mentioned, situate at *Enfield* aforesaid, in the County aforesaid.) And the said *Elizabeth Canning* being then and there, at and upon the said Trial, asked and examined upon her said Oath, at what Time she thought it might be that she was taken to the said *Susannab Wells's* House; she the said *Elizabeth Canning* then and there, in the said Court, at that Trial, falsely, wilfully, and corruptly, upon her said Oath, said, deposed, answered, and gave Evidence to the Jurors of the said Jury, so as aforesaid chosen, tried, and sworn to try the said Issue, That, as near as she could think, it was about Four o'Clock in the Morning (meaning the Morning of the said 2d Day of *January*.) The Indictment, Gentlemen, further sets forth, That the said *Elizabeth Canning*, being so sworn as aforesaid, did then and there, upon the said Trial, further falsely, voluntarily, and corruptly, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, upon her said Oath, so by her taken as aforesaid, say, depose, swear, and give in Evidence (among other Things) to the Jurors of the said Jury, so chosen, tried, and sworn to try the said Issue as aforesaid, that she the said *Elizabeth Canning* saw the Gypsey Woman *Squires* (meaning the above-named *Mary Squires*) sitting in a Chair (meaning sitting in a Chair in the said Dwelling-House.) That as soon as she the said *Elizabeth Canning* was brought in, (meaning into the said Dwelling-House) the said *Mary Squires* took her by the Hand, and asked her if she chose to go their Way, saying, that if she did, she should have fine Cloaths. That she the said *Elizabeth Canning* said, No. That then she the said *Mary Squires* went and took a Knife out of a Dresser-Drawer, and cut the Lace of her the said *Elizabeth Canning's* Stays, and took them (meaning the said *Elizabeth Canning's* Stays) from her. That she the said *Mary Squires* gave her the said *Elizabeth Canning* a Slap on the Face: That she the said *Mary Squires* pushed her up Stairs (meaning certain Stairs leading from the Kitchen of the said Dwelling-House) into a certain Room called the Workshop, belonging to the said Dwelling-House, from out of the Kitchen (meaning the Kitchen of the said Dwelling-House) where they were. And the said *Elizabeth Canning* being then and there, upon the said Trial, asked and examined upon her said Oath, concerning the Name of the Place she was put into; she the said *Elizabeth Canning* then and there, at that Trial, falsely, wilfully, and corruptly, upon her said Oath, deposed, answered, and gave in Evidence to the Jurors of the said Jury, so as aforesaid chosen, tried, and sworn to try the said Issue, That they call it (meaning the said Room called the Workshop) the Hay-loft, (meaning by such Answer so given to such Question, that she the said *Elizabeth Canning* had been pushed up the said Stairs by the said *Mary Squires* into the said Room called the Workshop.) The Indictment, Gentle-

men; further sets forth, That the said *Elizabeth Canning* being so sworn as aforesaid, did then and there, upon the said Trial, further falsely, voluntarily, and corruptly, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, upon her said Oath, so by her taken as aforesaid, say, depose, swear, and give in Evidence (among other Things) to the Jurors of the said Jury, so chosen, tried, and sworn to try the said Issue as aforesaid, That the Room Door was shut as soon as the said *Elizabeth Canning* was put up: That after she the said *Mary Squires* shut the Door, she said, that if ever she heard the said *Elizabeth Canning* stir or move, she would cut her the said *Elizabeth Canning's* Throat. That when the Day-light (meaning the Day-light of the 2d of *January*) appeared; she could (meaning that she did) see about the Room (again meaning the said Room called the Workshop:) That there (again meaning the said Room called the Workshop) was a Fire-place and Grate in it: That there (again meaning the said Room called the Workshop) was a black Pitcher not quite full of Water, and about twenty-four Pieces of Bread; and that a certain Pitcher, then and there produced to the said *Elizabeth Canning*; at the Time of her giving her Evidence as aforesaid, was the Pitcher, and that it was full (meaning full of Water) to near the Neck. And the said *Elizabeth Canning* being then and there, at and upon the said Trial, also asked and examined upon her said Oath, how long she continued in the said Room called the Workshop; she the said *Elizabeth Canning* then and there, in the said Court, at that Trial, falsely, wilfully, and corruptly, upon her said Oath, said, deposed, answered, and gave in Evidence to the Jurors of the said Jury, so as aforesaid chosen, tried, and sworn to try the said Issue, a Month by the Weeks, all but a few Hours. The Indictment, Gentlemen, further sets forth, that the said *Elizabeth Canning*, being so sworn as aforesaid, did then and there, upon the said Trial, further falsely, wickedly, voluntarily, and corruptly, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, upon her said Oath, so taken as aforesaid, say, depose, swear, and give in Evidence (amongst other Things) to the Jurors of the said Jury, so chosen, tried, and sworn to try the said Issue as aforesaid, That on the *Wednesday* (meaning *Wednesday* the 24th Day of the said Month of *January*) before the said *Elizabeth Canning* came away, she saw somebody look through the Crack of the Door, (again meaning the Door of the said Room called the Workshop:) That she the said *Elizabeth Canning* got out, (meaning out of the said Room called the Workshop) about Four o'Clock in the Afternoon, on a *Monday* (meaning *Monday* the 29th Day of the said Month of *January*) after she the said *Elizabeth Canning* had been confined there four Weeks, all but a few Hours: That she the said *Elizabeth Canning* broke down a Board that was nailed up at the Inside of a Window, (meaning a Window of and belonging to the said Room called the Workshop) and got out there, (meaning out of the said Window:) That she the said *Elizabeth Canning* took an old sort of a Bed-gown, and a Handkerchief, that were in the said Hay-loft, (again meaning the said Room called the Workshop) and lay in a Grate of the Chimney, (meaning the Chimney of the said Room called the Workshop.) And the said *Elizabeth Canning* being then

then and there, at and upon the Trial, asked and examined upon her said Oath, concerning the Time she had drank all her Water, (meaning the Water she so as aforesaid gave in Evidence to have been in the said Pitcher) she the said *Elizabeth Canning* then and there, in the Court at that Trial, falsely and corruptly, upon her said Oath, said, deposed, answered, and gave in Evidence to the Jurors of the said Jury, so as aforesaid chosen, tried, and sworn to try the said Issue, That she drank all that (meaning all the Water she so as aforesaid gave in Evidence to have been in the said Pitcher) about Half an Hour before she got out of the Room, (meaning the said Room called the Workshop:) Whereas, in Truth and in Fact, she the said *Elizabeth Canning* was not, about Four of the Clock in the Morning of the said 2d Day of *January*, taken by two Men to the said Dwelling-House of the said *Susannab Wells*; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* was not taken or brought into the said House on the said 2d Day of *January*; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* was not, on the said 2d Day of *January*, or at any other Time in the said Month of *January*, in the said House; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not, on the said 2d Day of *January*, see the said *Mary Squires* in the said House; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not, at any other Time in the said Month of *January*, see the said *Mary Squires* in the said House; and whereas, in Truth and in Fact, she the said *Mary Squires*, on the said 2d Day of *January*, was at *Abbotsbury* in the County of *Dorset*, and was not on that Day in the said House; and whereas, in Truth and in Fact, the said *Mary Squires* did not take her the said *Elizabeth Canning* by the Hand, and ask her if she chose to go their Way, saying, that if she did she should have fine Cloaths; and whereas, in Truth and in Fact, the said *Mary Squires* did not take her the said *Elizabeth Canning* by the Hand, and ask her if she chose to go their Way; and whereas, in Truth and in Fact, the said *Mary Squires* did not go and take a Knife out of a Dresser-Drawer, and cut the Lace of her the said *Elizabeth Canning's* Stays, and take them from her; and whereas, in Truth and in Fact, the said *Mary Squires* did not cut the Lace of her the said *Elizabeth Canning's* Stays; and whereas, in Truth and in Fact, the said *Mary Squires* did not take the said *Elizabeth Canning's* Stays from her; and whereas, in Truth and in Fact, the said *Mary Squires* did not give the said *Elizabeth Canning* a Slap on the Face; and whereas, in Truth and in Fact, the said *Mary Squires* did not push the said *Elizabeth Canning* up the said Stairs leading from the said Kitchen into the said Room called the Workshop; and whereas, in Truth and in Fact, the said *Mary Squires* did not push the said *Elizabeth Canning* upon the said Stairs into the said Room called the Workshop; and whereas, in Truth and in Fact, the said *Mary Squires* did not push the said *Elizabeth Canning* up any Stairs into the said Room called the Workshop, or Hay-loft, or into any other Room or Place whatsoever; and whereas, in Truth and in Fact, the said *Mary Squires* did not say, that if she ever heard the said *Elizabeth Canning* stir or move, she would cut her Throat; and whereas, in Truth and in Fact, when the Day-light of the said 2d Day of *January* appeared, she the said *Elizabeth Canning* could not see about the

said Room called the Workshop; and whereas, in Truth and in Fact, the said *Elizabeth Canning* did not, on the said 2d Day of *January*, see about the said Room called the Workshop; and whereas, in Truth and in Fact, the said *Elizabeth Canning* was not, on the said 2d Day of *January*, in the said Room called the Workshop, or in any Room or Place belonging to the said Dwelling-House; and whereas, in Truth and in Fact, the said *Elizabeth Canning* was not, at any other Time between the said 2d Day of *January* and the said 29th Day of *January*, in the said Room called the Workshop, or in any other Room or Place belonging to the said Dwelling-House; and whereas, in Truth and in Fact, there was not, on the said 2d Day of *January*, any black Pitcher, and about twenty-four Pieces of Bread, or any other Number of Pieces of Bread, in the said Room called the Workshop; and whereas, in Truth and in Fact, the Pitcher so produced to the said *Elizabeth Canning*, at the Time of her giving Evidence as aforesaid, was not, on the said 2d Day of *January*, in the said Room called the Workshop; and whereas the said Pitcher so produced to her the said *Elizabeth Canning*, as aforesaid, was not, on the 2d Day of *January*, full of Water, to near the Neck; and whereas, in Truth and in Fact, the said *Elizabeth Canning* did not drink all the Water, in and by her said Evidence pretended to have been in such Pitcher, about Half an Hour before the Time, she so as aforesaid gave in Evidence, that she got out of the said Room called the Workshop; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not, at any Time on the said 29th Day of *January*, or at any other Time between the said 2d Day of *January* and the said 29th Day of *January*, drink any Water out of the said Pitcher, in the said Room called the Workshop, or in any other Place or Room belonging to the said House; and whereas, in Truth and in Fact, the said *Elizabeth Canning* did not continue in the said Room called the Workshop a Month by the Weeks, all but a few Hours; and whereas, in Truth and in Fact, the said *Elizabeth Canning* was not, at any Time in the said Month of *January*, confined in the said Room called the Workshop; and whereas, in Truth and in Fact, the said *Elizabeth Canning* was not, in the said Month of *January*, confined in any other Room of or belonging to the said House of the said *Susannab Wells*, for one Month by the Weeks, all but a few Hours, or for any other Space of Time; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not, on the said *Wednesday* the said 24th of *January*, see any Person look through the Crack of the Door of the said Room called the Workshop; and whereas, in Truth and in Fact, the said *Elizabeth Canning* did not, at any other Time in the said Month of *January*, see any Person look through the Crack of the said Door; and whereas, in Truth and in Fact, the said *Elizabeth Canning* did not break down any Board that had been nailed up at the Inside of any Window of or belonging to the said Room called the Workshop; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not get out of the said Room called the Workshop on *Monday* the said 29th Day of *January*; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not get out of the said Window; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not get out of any Window of or belonging

belonging to the said Room called the Workshop; and whereas, in Truth and in Fact, the said *Elizabeth Canning* did not take an old Sort of a Bed-gown and a Handkerchief, that were in the said Room called the Workshop, and lay in a Grate of the Chimney of the said Room; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not take any Bed-gown or Handkerchief out of a Grate in the Chimney in the said Room; and whereas, in Truth and in Fact, there was not any Grate in the Chimney of the said Room on the 2d Day of *January*; and whereas there was not any Grate in the Chimney of the said Room, at any other Time, during the Time she the said *Elizabeth Canning* so as aforesaid gave in Evidence that she continued or had been confined in the said Room called the Workshop; and whereas, in Truth and in Fact, there was not, on the said 2d Day of *January*, or at any other Time between that Day and the said 29th Day of *January*, any Grate in the Fire-place of the said Room called the Workshop, as she the said *Elizabeth Canning*, by her false and corrupt Testimony aforesaid, at and upon the said Trial, did most falsely, voluntarily, and corruptly, by her own proper Act and Consent, upon her said Oath, so taken as aforesaid, say, depose, swear, and give in Evidence to the Jurors of the said Jury, in Manner aforesaid. And then, Gentlemen, the Indictment in this Place concludes, That she the said *Elizabeth Canning*, at and upon the said Trial, upon the said 21st Day of *February*, in the 26th Year aforesaid, at *London* aforesaid, (that is to say) at the said Parish of *St. Sepulchre*, in the said Ward of *Farringdon Without*, in *London* aforesaid, before the said Justices of our said Lord the King last above-named, and others their Fellows aforesaid, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, in Manner and Form aforesaid, did falsely, voluntarily, and corruptly, upon her said Oath, so taken as aforesaid, commit wilful and corrupt Perjury, to the great Displeasure of Almighty God, in Contempt of our said Lord the King and his Laws, to the evil and pernicious Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity. The Indictment, Gentlemen, further charges, That at the Session of the Delivery of the Gaol of our said Lord the King of *Newgate*, holden for the County of *Middlesex*, at *Justice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Wednesday* the 21st Day of *February*, in 26th Year of the Reign of our said Sovereign Lord *George* the Second, King of *Great-Britain*, &c. before Sir *Crisp Gascoyne*, Mayor of the City of *London*; Sir *Martin Wright*, Knight, one of the Justices of our said Lord the King, assigned to hold Pleas before the King himself; *Nathaniel Gundry*, Esq; one of the Justices of our said Lord the King of the Court of Common-Pleas; Sir *Richard Adams*, Knight, one of the Barons of the Court of Exchequer of our said Lord the King, and others their Fellows Justices of our said Lord the King, assigned to deliver the said Gaol of *Newgate* of the Prisoners therein being; one *Mary Squires* was, in due Form of Law, tried by a Jury of the Country, duly taken between our said Lord the King and the said *Mary Squires* in that behalf, upon another Indictment, for the Robbery of *Elizabeth Canning*, Spinster, of a Pair of Stays of the Value of ten Shillings, of the Goods and Chattels of her the

said *Elizabeth*; in the Dwelling-House of one *Susannah Wells*, Widow, situate in the Parish of *Enfield*, in the said County of *Middlesex*, on the said 2d Day of *January*, in the 26th Year aforesaid; and that upon the said last-mentioned Trial, *Elizabeth Canning*, late of *London*, Spinster, did then and there appear as a Witness for and in behalf of our said Lord the King; against the said *Mary Squires*; and she the said *Elizabeth Canning* did then and there, before the said Justices last-mentioned, in open Court aforesaid, take her corporal Oath, and was duly sworn upon the holy Gospel of God, that the Evidence which she should give for our said Lord the King, against the said *Mary Squires*, should be the Truth, the whole Truth, and nothing but the Truth, (the same last-mentioned Justices then and there having a competent Authority to administer the said Oath to her the said *Elizabeth Canning* in that behalf;) and she the said *Elizabeth Canning* being so sworn, and not having the Fear of God before her Eyes, but being moved and seduced by the Instigation of the Devil, upon the said 21st Day of *February*, in the 26th Year aforesaid, at *London* aforesaid, (to wit) at the Parish of *St. Sepulchre*, in the Ward of *Farringdon Without* aforesaid, in *London* aforesaid, before the said Justices last-named, in the open Court aforesaid, did falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following; I (meaning herself the said *Elizabeth Canning*) had been to *Salt-Petre Bank* to see an Uncle and Aunt, his Name is *Thomas Colley*: I (again meaning herself the said *Elizabeth Canning*) set out from Home about Eleven in the Forenoon, and stayed there till about Nine at Night, on the 1st Day of *January*, (meaning the 1st Day of *January* now last past :) Then my Uncle and Aunt came with me (again meaning herself the said *Elizabeth Canning*) as far as *Aldgate*, where we parted: I (again meaning herself the said *Elizabeth Canning*) was then alone, so came down *Houndsditch*, and over *Moorfields* by *Bedlam Wall*; there two lusty Men, both in great Coats, laid hold of me. And that the said *Elizabeth Canning*, being so sworn, did then and there, upon the said last-mentioned Trial, falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) They (meaning the said two Men) took me (again meaning herself the said *Elizabeth Canning*) to the Prisoner *Wells's* House, (meaning the Dwelling-House of the said *Susannah Wells*, situate at *Enfield* aforesaid, in the County aforesaid.) And that she the said *Elizabeth Canning* being then and there, upon the said Trial, asked and examined upon her said Oath, concerning the Time of her being so taken to the said House of the said *Susannah Wells*; she the said *Elizabeth Canning*, being so sworn, did then and there further falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, answer, and give in Evidence, according to the Purport and Effect following, (that is to say) As near as I (again meaning herself the said *Elizabeth Canning*) can think, it was about Four o'Clock in the Morning, (meaning the Morning of the 2d Day of the said Month of *January*.) And that she the said *Elizabeth Canning* being then and there, upon the said Trial, asked and examined upon her

Oath, concerning what she saw at the said House of the said *Susannah Wells*, at the Time that she as aforesaid gave in Evidence that she was taken there; she the said *Elizabeth Canning*, being so sworn, did then and there further falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, answer, and give in Evidence, according to the Purport and Effect following, (that is to say) I (again meaning herself the said *Elizabeth Canning*) saw the Gypsie Woman *Squires*, (meaning the said *Mary Squires*,) who was sitting in a Chair, (meaning sitting in a Chair in the said House.) And that she the said *Elizabeth Canning*, being so sworn, did then and there, upon the said last-mentioned Trial, falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) As soon as I (again meaning herself the said *Elizabeth Canning*) was brought in, (meaning into the said House,) *Mary Squires* (again meaning the said *Mary Squires*) took me (again meaning herself the said *Elizabeth Canning*) by the Hand, and asked me (again meaning herself the said *Elizabeth Canning*) if I (again meaning herself the said *Elizabeth Canning*) chose to go their Way, saying, if I (again meaning herself the said *Elizabeth Canning*) did, I (again meaning herself the said *Elizabeth Canning*) should have fine Cloaths; I (again meaning herself the said *Elizabeth Canning*) said, No. And that she the said *Elizabeth Canning*, being so sworn, did then and there, upon the said last-mentioned Trial, falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) Then she (again meaning the said *Mary Squires*) went and took a Knife out of a Dresser-Drawer, and cut the Lace of my (meaning her the said *Elizabeth Canning*'s) Stays, and took them from me, (meaning herself the said *Elizabeth Canning*.) And that she the said *Elizabeth Canning*, being so sworn, did then and there, upon the said last-mentioned Trial, falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) She (meaning the said *Mary Squires*) pushed me (meaning herself the said *Elizabeth Canning*) up Stairs, (meaning certain Stairs leading out of the Kitchen of the said House, up into a certain Room adjoining and belonging to the said House) from out of the Kitchen, (meaning the Kitchen of the said House) where we (meaning herself the said *Elizabeth Canning*, and the said *Mary Squires*) were. And that she the said *Elizabeth Canning* being then and there, upon the said Trial, asked and examined upon her said Oath, concerning the Name of the Place she was put in; she the said *Elizabeth Canning*, being so sworn, did then and there further falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, answer, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) They call it the Hay-loft, (meaning a certain Room belonging to the said House, into which the said Stairs lead.) And she the said *Elizabeth Canning* being then and there, upon the said Trial, asked and examined upon her Oath, how long she continued in that Room; she the said *Elizabeth Canning*, being

so sworn, did then and there further falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, answer, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) A Month by the Weeks, all but a few Hours. And that she the said *Elizabeth Canning*, being so sworn, did then and there, upon the said last-mentioned Trial, falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) I (again meaning herself the said *Elizabeth Canning*) got out (meaning out of the said Room) about Four o'Clock in the Afternoon, on a *Monday*, (meaning *Monday* the 29th Day of the said Month of *January*,) after I (again meaning herself the said *Elizabeth Canning*) had been confined there (meaning in the said Room) four Weeks, all but a few Hours. And that she the said *Elizabeth Canning*, being so sworn, did then and there, upon the said last-mentioned Trial, falsely, willingly, and corruptly, by her own proper Act and Consent, say, depose, swear, and give in Evidence to the Jurors of the said Jury, according to the Purport and Effect following, (that is to say) I (again meaning herself the said *Elizabeth Canning*) took an old Sort of a Bed-gown and a Handkerchief, that were in the Hay-loft, (meaning the said Room,) and lay in a Grate in the Chimney, (meaning the Chimney of the said Room.) Whereas, in Truth and in Fact, she the said *Elizabeth Canning* was not taken by two Men to the said House of the said *Susannah Wells*; about Four o'Clock in the Morning of the said 2d Day of *January*, or at any other Time of that Day; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not, at any Time on the said 2d Day of *January*, see the said *Mary Squires* in the said House; and whereas, in Truth and in Fact, the said *Mary Squires*, on the said 2d Day of *January*, was at *Abbotsbury* in the County of *Dorset*, and was not at any Time on that Day in the said House; and whereas, in Truth and in Fact, the said *Mary Squires* did not, on the said 2d Day of *January*, take the said *Elizabeth Canning* by the Hand in the said House, and ask her if she chose to go their Way, saying, if she did, she should have fine Cloaths; and whereas, in Truth and in Fact, she the said *Mary Squires* did, not, on the said 2d Day of *January*, take the said *Elizabeth Canning* by the Hand; and whereas, in Truth and in Fact, she the said *Mary Squires* did not take a Knife out of any Dresser-Drawer, or any other Drawer, and cut the Lace of her the said *Elizabeth Canning*'s Stays, and take them from her; and whereas, in Truth and in Fact, the said *Mary Squires* did not cut the Lace of her the said *Elizabeth Canning*'s Stays; and whereas, in Truth and in Fact, the said *Mary Squires* did not push the said *Elizabeth Canning* up any Stairs belonging to the said House; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not continue, or was in any wise confined in the said Room belonging to the said House, into which the said Stairs lead, for a Month by the Weeks, all but a few Hours; and whereas the said *Elizabeth Canning* did not continue, or was any ways confined in the said Room, or in any other Room belonging to the said House, for a Month by the Weeks, all but a few Hours, or for any other Space of Time; and whereas, in Truth and in Fact,

Fact, she the said *Elizabeth Canning* did not get out of the said Room about Four o'Clock in the Afternoon of the said 29th Day of *January*, or at any other Time of that Day; and whereas, in Truth and in Fact, she the said *Elizabeth Canning* did not take any Bed-gown or Handkerchief out of any Grate in the Chimney of the said Room; and whereas, in Truth and in Fact, there was no Grate in the Chimney of the said Room on the said 2d Day of *January*, or on the 29th Day of *January*, or at any other Time between the 2d and 29th Days of *January*, as she the said *Elizabeth Canning* by her false and corrupt Testimony aforesaid, at and upon the said last-mentioned Trial, did most falsely, voluntarily, and corruptly, by her own proper Act and Consent, upon her said Oath, so taken as aforesaid, say, depose, swear, and give in Evidence to the Jurors of the said Jury, in Manner aforesaid. And so the Jurors aforesaid, now here sworn, upon their Oath aforesaid, do say, That she the said *Elizabeth Canning*, at and upon the said Trial, upon the said 21st Day of *February*, in the 26th Year aforesaid, at *London* aforesaid, (that is to say) at the Parish of *St. Sepulchre*, in the Ward of *Farringdon Without*, in *London* aforesaid, before the said Justices of our said Lord the King last above-mentioned, and others their Fellows aforesaid, by her own proper Act and Consent, and of her own most wicked and corrupt Mind, in Manner and Form aforesaid, did falsely, voluntarily, and corruptly, upon her said Oath, so taken as aforesaid, commit wilful and corrupt Perjury, to the great Displeasure of Almighty God, in Contempt of our said Lord the King and his Laws, to the evil and pernicious Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity.

Mr. GASCOYNE.

May it please your Lordship, and you Gentlemen of the Jury; I am Council in this Case for the King, against the Prisoner at the Bar, who stands before you indicted of wilful and corrupt Perjury: And the Indictment sets forth, that, at the General Session of the Peace held for the County of *Middlesex*, on the 19th of *February*, in the 26th Year of his present Majesty's Reign, an Indictment was found against one *Mary Squires*, for having, on the 2d Day of *January* in the same Year, with Force and Arms, assaulted the Prisoner at the Bar, and having put her in Fear of her Life, feloniously and with Force took and stole from her Person, and against her Will, in the Dwelling-House of one *Susannah Wells*, in the Parish of *Enfield*, in the County of *Middlesex*, a Pair of Stays of the Value of ten Shillings, the Property of the Prisoner at the Bar: And the Indictment charges, that at the Gaol-Delivery of *Newgate*, on the 21st Day of *February* in the same Year, which was the Year 1753, *Mary Squires* was arraigned upon the Indictment so found against her, and having pleaded Not guilty, the Prisoner at the Bar appeared at the Trial, and being duly sworn as a Witness, did maliciously and deliberately, and in order to procure the said *Mary Squires* to be convicted of the Felony and Robbery charged on her, falsely and corruptly depose and give in Evidence, that she the Prisoner at the Bar, on the 11th Day of *January* 1753, had been at a Place called *Salt-Petre Bank*, to see an Uncle and Aunt; that she stayed there till about

Nine at Night; that her Uncle and Aunt came with her from thence as far as *Aldgate*, where they parted; that she the Prisoner at the Bar being then alone, and coming over *Moorfields* by *Bedlam* Wall, two Men laid hold of her, and took her by Force from thence to the House of *Susannah Wells* at *Enfield*; and being there, that *Mary Squires* took her by the Hand, and asked her if she would go their Way, saying, that if she did, she should have fine Cloaths; that she refused; and that thereupon *Mary Squires*, with a Case-Knife, cut the Lace of her Stays, and took them from her, gave her a Slap on the Face, and pushed her up Stairs into another Room, which they called the Hay-loft; that as soon as she was there, the Door of the Room was shut upon her; and that she was threatened by *Mary Squires*, that if she heard her stir or move, she would cut her Throat: And the Indictment charges, that the Prisoner at the Bar being asked on the Trial of *Mary Squires*, how long she had continued in that Room, she falsely and wilfully swore, that she was kept there a Month, all but a few Hours; and that upon the 29th of *January* she broke down a Board that was nailed up at the Inside of the Window, and got out there: Whereas in Truth, as the Indictment charges, the Prisoner at the Bar was never taken or carried to the House of *Susannah Wells*; and that, in Truth and in Fact, *Mary Squires* was at that Time at *Abbotsbury* in the County of *Dorset*: And the Indictment charges, that in Truth and in Fact, *Mary Squires* did not cut the Lace of the Prisoner's Stays, and take them from her, or slap her on the Face, or push her up Stairs into another Room, or say, that if she heard her stir or move, she would cut her Throat; and that, in Truth, the Prisoner at the Bar was not in any Room or Place belonging to the House of *Susannah Wells*; and therefore, that she was on the Trial of the said *Mary Squires* guilty of wilful and corrupt Perjury: All which is said to be done, to the great Displeasure of Almighty God, in Contempt of the Laws of this Land, and to the evil and pernicious Example of all others in the like Case offending, and against the Peace of our Lord the King, his Crown and Dignity. To this, Gentlemen, the Prisoner has pleaded Not guilty: We shall call our Witnesses, and if we prove her guilty, you will find her so.

Mr. (now Serjeant) DAVY.

May it please your Lordship, and you Gentlemen of the Jury;

I am Council for the Prosecution against the Defendant at the Bar, who now comes before you to be tried for wilful and corrupt Perjury; attended with so many Circumstances of Aggravation, and calculated to produce such fatal Effects, that it is to be lamented the Law has not made it capital.

For it was committed to support a groundless Prosecution for Felony, and, under Colour of Justice, to take away the Life of an innocent Person.

Than which it is hard to conceive an Offence more shocking to Humanity, or more dreadful.

Gentlemen, the Indictment sets forth, that the Defendant maliciously and deliberately intending to pervert the due Course of Law and Justice, and to procure one *Mary Squires* untruly to be convicted of a Robbery, did, upon the 21st of *February*

February 1753, in this Court, give false Testimony against her. It contains several Particulars of the Defendant's Evidence upon that Occasion; and avers, that in each Particular she was guilty of Perjury.

What could tempt one so young to such accumulated Wickedness, though the Prosecution is not concerned to account for it, may be easily conceived upon recollecting what had happened.

And, indeed, one would give Way to any charitable Suggestion, rather than suppose her Heart so thoroughly polluted, as at first to design a Sacrifice.

To preserve her Character, it became necessary to frame an Excuse for her Absence from her Master's Service, during the Space of a Month, from the 1st to the 29th of *January*. To what such Absence was really owing, I am not inclined to suggest, lest I should wrong her. But her Flight was sudden, unexpected, and alarming.

An ill-concerted Story for this Purpose, or the forgetting some material Circumstances in one invented with a greater Appearance of Truth, was, in all likelihood, her first Step to the Crime she is now to answer for. And a too great Forwardness in satisfying unexpected Inquiries, the Effects of Distrust and Curiosity, might lead her unwarily into a Description of Places and Persons, unthought of before, from which, once fixed, she thought it dangerous to deviate.

But an additional Temptation fell in her Way, a Temptation too strong to be resisted in the Situation to which she was reduced; and this was a Scheme to raise Money.

For those, who were weak enough to believe all the Absurdities to which their own Credulity had given rise, were so affected with her unprecedented Sufferings, that they proposed a general Subscription, as well to punish the infamous Wretches, who, it was said, had endeavoured to starve her out of her Chastity, as to reward her Purity.

Here then she was under a Necessity, either to renounce those golden Hopes, by retracting what she had declared, and so to ruin her Character, or to persist in it through Perjury. And having by this Time subdued all Remains of Virtue, she preferred the Offer of Money, tho' she must wade through innocent Blood to attain it.

The Project succeeded to the utmost of her Wishes. For, by the Help of Prejudices most artfully, industriously, and (I may add) infamously inculcated, she made her Way to the Conviction of *Mary Squires* and *Susannah Wells*, (the former for robbing her of her Stays, and the other for being an Accomplice in that Robbery,) and so she became the Object of almost universal Compassion.

The unfair Means made use of upon that Occasion, by Advertisements in the Daily Papers, and in printed Bills, every where dispersed, with the Names of six reputable Tradesmen, attesting the Truth of a Story, of which they were not able to prove a single Syllable; and all this for the sake of prejudging those unhappy Women, who in Consequence of it fell a Sacrifice; would pass unnoticed in this Trial, had not the same unjustifiable Methods been continued to the present Hour.

An Appeal to the Public concerning Matters triable by Juries, has a direct Tendency to shut up the Avenues to Conviction, and to enervate the Arm of Justice.

But it is the Happiness of this Prosecution to

be brought before a Jury of Citizens, whose Characters give the greatest Room to hope for an impartial Trial, notwithstanding all the Arts which have been practised to inflame their Passions and corrupt their Judgment.

And if I am not greatly mis-instructed, the Prejudices must be strong *indeed*, that can resist the Proofs of this Woman's Guilt.

Gentlemen, before I open the Evidence we have to offer, I must beg Leave to trouble you with repeating what the Defendant swore upon the Trial of *Mary Squires*, and with remarking some of the Objections to which it stands exposed, without any other Proofs to contradict it.

She swore, " That on the 1st of *January* 1753, " about Nine at Night, two Men seized her in " *Moorfields*; and, without speaking, robbed her " of Half a Guinea, and three Shillings, and her " Gown, Apron and Hat, which they folded up, " and put into a great-coat Pocket.

" That she screamed out, and then one of the " Men stopped her Mouth with a Handkerchief.

" That they then tied her Hands behind her; " after which one of them gave her a Blow on the " Temple, which stunned her, and threw her " directly into a Fit.

" That this Transaction in *Moorfields* lasted " Half an Hour; but no body passed by in all " that Time.

" That she remained totally insensible for six " Hours after; when she found herself by a large " Road, with the two Men who had robbed her.

" That they dragged her to the House of one " *Susannah Wells*, (who was at the same Time tried " as an Accessary to *Squires*) at *Enfield-Wash*, " (which is between eleven and twelve Miles from " *Moorfields*) where she arrived in Half an Hour " after the Recovery of her Senses. And it was " then about Four o'Clock in the Morning.

" That she there saw *Mary Squires*, and two " young Women in the Kitchen. And, as soon " as she was brought in, *Squires* took her by the " Hand, and asked her, *if she chose to go their Way*, " saying, *if she did, she should have fine Cloaths*.

" That upon her answering, *No*, *Squires* cut off " her Stays, and took them from her. And im- " mediately the two Men went away.

" That *Squires* then called her Bitch, gave her " a Slap in the Face, pushed her up Stairs into a " Hay-loft, (a few Steps from the Kitchen) and " shutting the Door upon her, threatened to cut " her Throat, if she heard her stir or move.

" That when Day-light appeared, she saw " about the Room, in which there was a Fire- " place, and a *Grate* in it, *no Bed or Bedstead*, " nothing but Hay to lie upon, a *Pitcher* almost " full of *Water*, and about twenty-four Pieces of " Bread, to the Amount of a *Quartern Loaf* in " the whole.

" That these Pieces of Bread, and this Water, " between three and four Quarts, was all she had " to subsist on, (except a Penny Mince-pye, which " she had in her Pocket,) for the whole Time she " remained in that Room; which was from " *Tuesday* the 2d of *January* at Four in the " Morning, till *Monday* the 29th at Four in the " Afternoon. And that she had no Stool in all " that Time.

" That no one came to her, nor did she see a " human Creature, except once she saw some- " body look through a Crack of the Door.

" That

“ That she had eat up all her Bread on *Friday* the 26th, and had drank up all her Water on *Monday* the 29th, at Half an Hour after Three in the Afternoon; and at Four o’Clock she made her Escape, which she had never attempted (nor did it ever once come into her Head to attempt) till that Day.

“ That the Manner of her Escape, was by breaking down a Board which was nailed up at the Inside of a Window, about eight or ten Feet from the Ground; from which she jumped down, without the least Hurt, it being soft clay Ground.

“ But, before she left the Room, she took a Bed-gown and a Handkerchief, which she found in the Chimney Grate.

“ That having never been on that Road before, she inquired her Way of People she met, and so walked on the great Road to her Mother’s House, (about twelve Miles) without seeking Refuge in any of the Houses on the Road, for fear she should meet with somebody belonging to the House she had escaped from.

“ That she arrived at her Mother’s in *Alder-manbury*, at a Quarter past Ten at Night; and she told her Friends that her Confinement was somewhere in the *Hertfordshire* Road, which she had discovered, while she was under Confinement, by seeing a Coach go by, which she knew frequented that Road.

“ And being called upon by the Court to particularize the *Furniture* of the Room she was confined in, she mentioned a *Barrel, a Saddle, a Basin, and a Tobacco-mould.*”

This, Gentlemen, was her Evidence.

Now I would ask any reasonable unprejudiced Man in the World, whether he ever heard a Story so intirely destitute of all human Probability?

Is it not a Heap of monstrous Absurdities, with Falshood glaring in every Circumstance?

What could induce the two Ruffians in *Moorfields* to behave in this extraordinary Manner?

Did they mean to rob, or kidnap her, or both?

If only to rob, why did they kidnap her? If only to kidnap, why rob her? If both, why lose Half an Hour in stripping her in so public a Place, when Multitudes of People were continually passing by; since they might have done it securely at the End of their Journey?

Having robbed and stripped her, what Temptation had they to take the Pains and run the Hazard of carrying her twelve Miles, *in a Fit*, (supposing it possible,) through several Turnpikes and Villages, where it was a thousand to one, that they would be discovered and apprehended?

The same Difficulties occur at *Enfield-Wash*. While she was in the House, was any Thing transacted, whereby one can trace the *Motive* of her being brought or confined there?

At first, indeed, she was asked, *whether she would go their Way; and if she would, she should have fine Cloaths.*

Their Meaning in this was left unexplained, and no further Persuasions were used to tempt her!

Advantage taken of a concise Refusal,—she was instantly locked up for a Month upon Bread and Water!

Not the least Inquiry in all that Time, what Effect this hard Usage had upon her; or what was become of her!

Whether she was *dead*, which might have been expected, if she remained in the Room; or had *escaped*, which it was more reasonable to suppose: For,

SEE HOW WONDERS MULTIPLY!

The Means of Escape were left open to her every Moment of the Time; at the Hazard of *their* Lives! Those Means unemployed, and unthought of, for the Preservation of *her own*!

Is it not amazing she should manage her Allowance of Bread and Water (scarce sufficient for a Week’s Subsistence) with such Providence, that the former lasted till within three Days, and the latter, (which she could less endure the Want of,) tho’ less in Proportion, till within Half an Hour of her coming away!

And yet she had never received the least Intimation, how long she was to remain in Confinement; or whether she was to have any Supplies!

That she should survive all this Treatment, too hard for the best Constitution, and find Strength to walk twelve Miles immediately afterwards, without the least Refreshment or Rest!

These are not all, nor the fiftieth Part of the Objections, to which this unexampled Tale is liable! It would be mispending Time to enumerate them—they are obvious to every Understanding.

Does there need much Evidence to contradict this? Does not common Sense, and the Observation of all Mankind upon the Course of Nature, refute it in every Instance?

Yet such Arts have been practised to engage Men to believe it, that there are, at this Day, thousands who embrace it as zealously, as an Article of religious Faith.

Insisting upon the mere Possibility of this romantic Story, and having an implicit Faith in the Defendant’s Sincerity, because her Character (they say) is clear of any other Imputation, they have been drawn in to conclude upon the Truth of all she has sworn.

Such are incapable of Conviction; upon whom neither Argument nor Evidence can have any Effect.

Let me imagine a Case, better authenticated than this before you, but in Favour of which Men have no Prejudices; and see what Reception it would meet with.

Suppose a Pretender to the Art of Flying (an Art which some soaring Geniuses of the last Age thought practicable) should swear to have taken a Month’s Tour round the Extremity of the Atmosphere, without breathing in all that Time.

Were no Arts used to mislead Men’s Understanding, were they left to judge for themselves; no one would believe this even upon the Faith of fifty Witnesses.

For, however unlikely it is, that fifty disinterested Men should concur in a Falshood, it would be still more unlikely, that a Man should be flying for a Month without drawing Breath.

But, Gentlemen, this Prosecution will not rest upon Improbabilities. It was commenced upon the clear Proof of Facts; sufficient to convince every Man, whose Judgment is not captivated by Prejudice.

The Evidence to be produced against the Defendant is of several Kinds.

First, To shew that *Mary Squires* was in another Place, above 130 Miles from *Enfield-Wash*, at the Time of the supposed Robbery there.—But lest the

the Believers in Wonders should think this insufficient, and insist upon the Possibility of *Squires' being in two Places at once*; we shall,

In the next Place, under various Heads of Proof, attack the whole of the Defendant's Evidence, and shew that in every Part of it she is forsworn.

Gentlemen, because there may be no Uncertainty in that Part of the Case which relates to *Squires*; she will attend here in Person, to be referred to by the Witnesses. And you will observe, (to use her own Language to the Defendant, when she first charged her with the Robbery,) that *the Almighty has not created her Likeness*. So it is impossible; either for the Witnesses, or the Defendant, to mistake her for another.

She is one of that Tribe of People called *Gypsies*, and ströls about the Country as a Hawker and Pedlar. She is a Widow; and has a Son *George*; a young Man, and two Daughters *Lucy* and *Mary*, both young Women.

It happened, that in the latter End of the Year 1752, this Gypsie, with her Son and her Daughter *Lucy*, travelled on Foot into the West of *England* with smuggled Goods, such as they meet with in Sea-port Towns, and sell again to People in the Country.

The material Questions with respect to these People will be, *Where were they upon the 1st and 2d of January 1753? And when did they arrive at Enfield-Wash?*

In order to give you the clearest Satisfaction in this Matter, it will be necessary to go a little farther back than the 1st of *January*, and trace them down to the Time of their being apprehended on the 1st of *February*.

Gentlemen, it will be worth your Observation, with what Degree of Certainty the Witnesses swear, not only with regard to the Identity of the three Persons, (who will be all in Court to be referred to,) but also as to the precise Times of seeing them.

And, if it should appear to you, that they can be under no Mistake, either as to Persons or Times; it will only remain for your Consideration, what Credit should be given to their Oaths.

They are forty in Number; they are totally disinterested; and of unexceptionable Characters.

Upon *Friday* the 29th of *December* 1752, in the Evening, these three Foot-Travellers, *Mary Squires*, *George* and *Lucy Squires*, came to lodge in a little Inn at *South-Parrot*, in *Dorsetshire*; and went forward towards *Abbotsbury* the next Morning. The Landlady of the Inn will tell you, she is certain as to the Time, from an Accident of some Guests leaving a Reckoning to pay, which she entered in her Book that Evening: A Book, wherein she had seldom occasion to make Entries; but whenever she did, it was her Custom to ascertain the Time by her Almanack: And she remembers to have referred to the Almanack, while they were in the House.

You will find them the next Morning, *Saturday* the 30th of *December*, between Eight and Nine o'Clock, taking Refreshment upon the Road, at a Place called *Winyard's Gap*, about a Mile from *South-Parrot*. The Person who proves this, saw them the Evening before as they were going to *South-Parrot*, and was so struck with the old Woman's hideous Face; that she compared her to a Picture then in her House of Mother *Skipton*.

The same Day at Two in the Afternoon they came to *Litton*, about nine Miles from *Winyard's Gap*, and three from *Abbotsbury*. There they lay

at an Ale-house, and stayed till *Monday* Afternoon the 7th of *January*. This will be proved by five Witnesses, who will give you a particular Account of them during all that Time.

Monday the 1st of *January*, in the Evening, they came to *Abbotsbury*, a Sea-port Town in *Dorsetshire*; where they were very well known by a great many People, having been often there before. There they stayed till *Tuesday* the 9th. This will be proved by no less than eleven Witnesses: And as it is impossible these People should be under any Mistake as to their Persons, it will be material to observe, that it is equally impossible they should mistake as to the Time. It happened, that the Exciseman, stationed at *Abbotsbury*, was taken ill a few Days before the coming of these People there; and another Officer was placed in his stead, who lodged in the same House with them, at one *Gibbons's*, and came there on the very same Day. You will find this, not only by the Exciseman himself, and several of the Witnesses who remember his and their coming; but we shall also produce the Books from the Excise-Office, by which the Time of this Man's coming to *Abbotsbury* will appear with absolute Certainty. There are, besides, several other Circumstances, which lead the Witnesses to Exactness of Time, as well here, as at the other Places before-mentioned.

Before we leave *Abbotsbury*, it will be proper to let you know that *Lucy Squires*, though the Daughter of such a deformed Woman, is very far from disagreeable, and had an Acquaintance there, who was dear to her. This was one *William Clarke*, a Shoe-maker of that Place, who met them at *Litton*, and travelled on a Day and a half's Journey with them from *Abbotsbury*. The Reason of my taking Notice of this Circumstance will appear hereafter, when you find them at *Basingstoke*.

With this *Clarke* they left *Abbotsbury* on *Tuesday* the 9th of *January*, and went to *Portersham*, where they lay that Night.

Wednesday the 10th they went to *Ridgway*; where *Clarke* took an unwilling Leave of his *Lucy*, after obtaining her Promise to send him a Letter soon; they lay at *Ridgway* that Night; and,

The next Day, *Thursday* the 11th, you will find them crossing the Waters by *Dorchester*, which were very high after great Rains.

They had received an Account, that the other Daughter *Mary* was ill, and so travelled faster from this Time, to hasten Home.

Friday the 12th they lay at *Chettle*.

Saturday the 13th at *Martin*, in a Farmer's Barn.

Sunday the 14th at *Coombe*: From whence they proceeded the next Day in the Road to *London*.

The next Account you will receive of them, will be *Thursday* the 18th at *Basingstoke*; which you will observe, according to their Rate of travelling, to be four Days Journey from *Coombe*.

And here you will find a Piece of Evidence very material, and conclusive with regard both to Persons and Times, and which will confirm the rest of the Evidence before it to the utmost Degree of Certainty.

I mentioned before, that *Lucy Squires* had promised her Sweetheart, *William Clarke*, to send him a Letter on the Road. It was at this Place she performed her Promise.

But being an illiterate Girl, she was obliged to have Recourse to the Landlady of the Inn to write for her.

The Letter is dated from *Basingstoke*, the 18th of *January* 1753. The Landlady, Mrs. *Morris*, will

will tell you it was wrote by her at the Time it bears Date. It will appear with the *Basingstoke* Post-Mark upon it.

There being no direct Post from *Basingstoke* to *Dorchester*, the Letter was put into the *London* Bag; and therefore the *London* Post-Mark is also upon it, by which it will appear, that it came into the General Post-Office on the 19th of *January*.

It happens that this Letter (which will be read to you in the Course of the Evidence) refers to the Circumstance of *Clarke's* travelling with them from *Abbotsbury*.

Friday the 19th they went to *Bagshot*, and

Saturday the 20th to *Brentford*; where *George* left his Mother the *Sunday* Morning, to go to his Sister *Mary*, whom he found well enough recovered to go with him to *Brentford* the *Monday* to her Mother.

Tuesday the 23d they lay at a House called the *Seven Sisters* at *Page-Green*, by *Tottenham*. And the next Day,

Wednesday the 24th of *January*, they went to *Enfield-Wash*.

Here they were Strangers; and, inquiring for Lodging, had the ill Luck to be recommended to *Susannab Wells*, whom they had never seen before.

Happy for that Woman, that these unfortunate Strangers came to her House! In all likelihood she owes her Life to that Accident. For,

Had there been no old Woman in her House, besides herself; nay, had she not (another Accident for which she is indebted to Providence!) changed Seats with the old Gypsey at the Fire-side, five Minutes before the Defendant's Arrival there on the 1st of *February*—there is too much Reason to believe, that *Wells* herself had been accused of this Felony.

Had it so happened, the same Evidence, which was applied to *Squires*, would have served for her Conviction. And she had no *alibi* to save her Life.

The Defendant had then been prosperous in Perjury; and the Means of detecting her had been borne down by popular Clamour.

Squires, her Son and Daughter, remained at *Wells's* from the 24th of *January* till the 1st of *February*; when they were apprehended.

What happened that Day, will fall under another Head of Evidence.

I have now done with that Part of the Prosecutor's Case, so far as it relates to the Innocence of *Mary Squires*.

Upon which I shall only observe, that, if the Evidence brought to support it is clear and convincing, it will be too late for the Defendant to shelter herself under any Pretence of a Mistake.

For whether she was robbed by *Squires*, or not, was the most material Question upon that Woman's Trial, and her Fate depended upon the Defendant's positive Testimony.

And it is worthy Observation, that there was not the least Doubt suggested, when she was giving Evidence against the most remarkable Person in the World.

Gentlemen, the next Head of Evidence will be to shew, (what would of itself be sufficient to convince all Mankind,) that the Defendant could give no Account of the Room she pretended to have been confined in for a whole Month together; and

that the Place she afterwards fixed upon, and positively swore to, was not in any Respect answerable to her first Description of it; and that her Description of the Room upon the Trial of *Squires*, was in Consequence of its being shewn to her some little Time before. You will also find her Evidence flatly contradicted, in a Variety of material Circumstances, by her own Information upon Oath at another Time.

It has been urged in the Defendant's behalf, with much Shew of Reason, that her giving an exact Description of the Place of her Confinement is a strong Proof of her having been there.

But on the other hand, if her Description of the Place of her Confinement was as unapplicable to the Room she ventured afterwards to swear to, as it was to *St. Paul's Cathedral*, is it not an answerable Proof, that she was not there?

For can it be imagined, she should be alone in a Room for twenty-eight Days, without any Obstruction of her Senses, and at the End of that Time as ignorant of it, as if she had never seen, or heard of such a Place?

It was on *Monday* Night the 29th of *January*, according to her Account, that the Defendant returned to her Mother. On *Wednesday* the 31st she applied, with several of her Friends, to *Mr. Chitty*, the Sitting Alderman, for a Warrant against *Wells*, upon Suspicion of having robbed her. For at that Time she did not pretend to Certainty.

The Alderman having heard her Story, then declared his Doubts, and called upon her to authenticate it by a particular Description of the Place she had been in.

She swore it was a little, square, dark Room, in which was an old Stool or two, an old Table, and an old Picture over the Chimney. And this was all the Description she gave. No Mention of any *Bason*, *Saddle*, *Tobacco-mould*, or *Barrel*; and so far from any Pretence of *Hay*, that she complained of having been forced to lie every Night upon the bare Floor.

She also swore, that her Modicum of Bread was in five or six Pieces, (not four and twenty;) and that she left some of the Water in the Pitcher, when she came away: That she escaped by the help of a Pent-house under the Window, upon which she slid down, and from thence jumped upon a Bank on the Back-side of the House.

A Warrant being obtained from the Alderman; it was agreed upon by her Friends, who had heard this, to go down to *Wells's* the next Morning; and after securing all the People in the House, to inquire whether any Room there was answerable to the Account she gave. Resolving, if they found she spoke Truth, to support her to the utmost of their Power; if otherwise, to drop her.

The next Morning they all set out for *Enfield-Wash*, and immediately secured all the People in *Wells's* House; there were *Mrs. Wells*, *Mary Squires*, her Son and two Daughters, *Virtue Hall*, and *Fortune Natus*, and his Wife *Judith Natus*.

It will be proper here to describe this House, and the several Rooms in it.

At the Entrance into the House there is a Stair-case, the Bottom of which is within two or three Yards of the Street-door; this Stair-case leads to three Rooms on the first Floor, in one of which lay the old Gypsey and her two Daughters, in another *George Squires*, and in the third *Mrs. Wells* and her Daughter, and *Virtue Hall*.

Below Stairs, on the left Side of the little Passage from the Street-door, is a Parlour, in which all the Family were placed, as soon as they were seized.

On the right Hand of the Passage is the Kitchen, from which a Door opens to a little Flight of seven or eight Steps, leading into a Sort of Lumber-room or Workshop, where *Natus* and his Wife lay upon a Bed of Hay. These Steps or Stairs are inclosed in the Room, there being no Door but at the Foot of the Steps, which separates it from the Kitchen. And this Place, which some call a Workshop, and others a Hay-loft, (on Account of some Hay usually kept there,) the Defendant was pleased to fix upon, as the Place of her Confinement.

The Arrival of the Defendant's Friends was above an Hour before her; but no Room could be found like what she had represented.

There were two Persons, one called *Adamson*, the other *Scarrat*, who (for Reasons best known to themselves) were extremely desirous of reconciling every Difficulty; and they would have it, that this Lumber-room must be the Place of Confinement.

But some Obstacles were to be removed.

There was a Quantity of Hay, not less than Half a Load, in the Room; and not a Word of Hay had been mentioned. These two Gentlemen imagined she might have forgot it, and proposed that one of them should ride back to meet the Defendant upon the Road, in order to ask her about it. They cast Lots, who should go upon this honest Errand, and it fell to Mr. *Adamson*.

In a little Time *Adamson* returned brandishing his Hat, and exulting, *We are all right; she says, there is Hay in the Room!*

She had never said so before; and, if she forgot to mention it, she also forgot the Use of it, for the whole Month while it was before her Eyes. For she lay upon the bare Boards!

But this was not the only Difficulty which required the Skill of *Adamson* and *Scarrat* to solve.

The Room is neither *square*, nor *dark*, nor *little*. It is thirty-five Feet three Inches and a half long, by nine Feet eight-Inches wide; it is extremely light, not only from the Windows, (but one of which she pretended was boarded up) but also from the Roof itself, which is of Pantiles, raised above the Walls, so as to let in a great deal of Light from the Top.

There was no Grate in the Chimney, nor the least Sign that a Grate had been there. For, in the first Place, there was no Hearth to it; and besides, the whole Chimney, from the Bottom upwards to the Mantle-piece, was full of Cobwebs and Nastiness. It is impossible therefore that a Grate or any Thing else could have been there within three Days before, or indeed, as many Months.

There was a large Chest of Drawers by the Side of the Wall, which she had said nothing of. Did she forget this too?

Perhaps it had been put there since her Escape the *Monday* before. Remove it, and see whether it has the Marks of long standing. The Experiment was made, and immediately fifty *Spiders* ran out to give Testimony of a long, undisturbed Possession.

Instead of any Pictures over the Chimney, there was an old broken Casement, which filled the whole Place, and had the like Vouchers for its

long standing; the Cobwebs uniting it to the Wall:

Where was the Stool and Table she spoke of? Nothing like either to be found.

Where was the Pent-house, or Shed of Boards under the Window, by which she escaped? The Wall on both Sides perpendicular; the Windows but eight Feet from the Ground on the Outside; and there never was either Pent-house, or Shed, or any Thing else by the Wall.

On the right-hand Side coming into this nasty Room, was some Hay made in the Form of a Bed, with a little Bag of Wool by way of Bolster. And *Natus's* Wife was seized just rising from this Bed.

Near this Bed's-head was a Hole, through which a Jack-line had formerly run from the Kitchen. The Hole was almost large enough to thrust her Head through, and looked quite over the Kitchen. This she never observed; for she saw no body, but once during the whole Month, and then it was through a Crack of the Door.

Over this Hole were the Pullies of the Jack-line, which she also forgot to mention.

In short, she forgot almost all the Things that were there, and supplied her Defect of Memory, by naming several Things which had never been in the Room.

By this Time there was a great Company of People in the House; some led by Curiosity, some by Justice, and some by Motives, which must be left to themselves to assign.

At last the Defendant arrived with her Mother in a Coach. She was immediately conducted to the Kitchen, and set on the Dresser.

The Door leading to the Lumber-room was then open, on her *left* Hand, and within three Yards of her, so that she could then see all the Stairs, and a considerable Part of the Room; yet she took no Notice of it. Nor did she drop the least Hint that the Kitchen she was then in, was the Place where her Stays were cut off; though she remained in the Kitchen five or six Minutes.

She was then placed on a Chair, with the Door of the Lumber-room open on her *right* Hand, where she could see up into other Parts of the Room. Still, not the least Notice taken of it.

It was then proposed to carry her into the Parlour, where all the Family were Prisoners, in order for her to fix upon the Person who cut off her Stays.

In the mean while the Prisoners were disposed in the Room so, as she might have a distinct View of them all. Mother *Wells* was placed on the *right* Side of the Chimney, and the Gypsey on the *left*. But, a few Minutes before the Defendant's coming into the Parlour, the two old Women had changed Places, and the Gypsey then sat on the right Side of the Chimney, leaning over the Fire, almost double, and smoaking her Pipe.

In this Situation were they, when the Defendant entered the Room; and in a Moment, without seeing her Face, pointing to the Gypsey, she said, *This is the Woman who robbed me of my Stays.*

The poor old Woman, smoaking her Pipe, was inattentive to what was said. But one of her Daughters exclaimed, *Lord! Mother, the young Woman says you robbed her.*

Immediately the Gypsey starting from her Chair, and looking in Astonishment full at her, exposed

exposed her hideous Face, which till then was almost covered with a Clout. *I rob you! take care what you say; if you have once seen my Face, you can't mistake it, for God never made such another!* And being told that this Fact was committed on the 1st of *January*, the old Woman immediately, without the least Hesitation, declared she was then above one hundred Miles off in *Dorsetshire*. And *George Squires* then said, they were at *Abbotsbury* on the 1st of *January*, and for several Days after.

Protestations of Innocence were to no Purpose; the Defendant remained positive, and *Mary Squires* must suffer for it.

The next Thing to be done, was to fix upon the Room.

In the first Place, the Defendant suffered herself to be led up the great Stair-case from the Street-door, and so into all the Rooms forward. But neither of these was the Room.

Not the least Notice taken that the Place she was confined in was contiguous to the Kitchen, and but a few Steps from it; not at all like this Stair-case.

At last she was conducted to the Lumber-room; and, after pausing for some Time, she declared this was the Place; but that there seemed to be more Hay, than she had observed during her Confinement there.

The Witnesses, who had heard what she swore before Mr. Alderman *Chitty*, and had made their Observations upon this Room just before her coming down to *Enfield-Wash*, were astonished.

She then recollected *one* of the three Saddles, and the Barrel, Basin, and Tobacco-mould; neither of which she had mentioned before. But she remembered nothing of the Chest of Drawers, the broken Casement over the Chimney, the Hay-bed, the Hole in the Wall, nor the Pulley.

One asked her, why she had not opened the Window Casement, and escaped *that* Way, seeing she might have done it without the least Difficulty? Her Answer was, she took it for granted it was nailed, but had never tried it.

The Effect these Observations had upon such of her Friends, as did not go there with a Resolution to assist her in all Events, is easy to imagine. They were satisfied she was an Impostress, and withdrew their Assistance.

Their Names are Mr. *Gawen Nash*, Mr. — *Hague*, and Mr. — *Aldridge*, Citizens of established Reputation; who will give you a very faithful and circumstantial Account of this whole Transaction.

Though what has been already opened would be abundantly sufficient to maintain this Indictment, yet this is not all.

For, instead of relying upon Circumstances, however satisfactory, we shall go further, and shew by *direct positive Evidence*, that the Defendant was not in this Room in the Month of *January*.

Natus, a poor labouring Man, and his Wife, will tell you, that this Bed of Hay was their only Lodging during that whole Month, and for five or six Weeks before; and that they lay in this very Room every Night: And this will be confirmed by the Evidence of several other Witnesses.

They will all tell you, that this Room, being the Repository of Mrs. *Wells's* Hay, with which her Horse was fed, and of Pollard for the feeding her Pig, was visited by some or other of them every Day.

That this black Pitcher, which the Defendant says was in the Room for all the Time she was there, was in constant Use in the Family, and filled with Water from a Neighbour's Pump almost every Day, during the Time the Defendant pretends to have been in the House.

That none of them ever saw the Defendant, or heard of her, till she came down on the 1st of *February* with Mr. Alderman *Chitty's* Warrant.

Ezra Whiffin, who keeps an Inn in the Neighbourhood, will be produced a Witness to prove, that he bought of Mrs. *Wells* a Sign, which formerly hung at her Door, when she kept a Public House; and on the 18th of *January* he took it out of this Workshop, and *Natus's* Wife was then lying there upon a Hay-bed.

He will fix the precise Day by a very particular Circumstance, in which he will be confirmed by another Witness.

John Whiffin, his Son, went with him to bring away the Sign; and stayed below in the Parlour, while his Father went up into the Room for it.

Three Witnesses will be produced to prove their *lopping Trees* by the Side of Mrs. *Wells's* House on the 8th of *January*; and at that very Time they had some Conversation with two Women, *Virtue Hall* and *Sarah Howit*, another Witness, then looking out at the Window of this very Room, where the Defendant is supposed to have been confined.

And the Time of their lopping these Trees will be fixed also by a fifth Witness to this Fact.

Such of these Witnesses, as have been in the Workshop, will give you the same Account of it, as you will find by the other Witnesses to the former Head of Evidence.

After proving the Defendant perjured, not only with regard to the Person, whom she charged with having robbed her, but also as to the Place, in which she swore she was confined; we shall need an Apology for proceeding further.

But to cut off all Pretence for Excuse, we shall beg Leave in another Instance to shew the Defendant's Guilt, by her *own* Testimony.

In her Evidence at the *Old-Bailey*, set forth in this Indictment, she swore that she had drank up all the Water in the Pitcher, about Half an Hour before the Time of her Escape.

Before Mr. Alderman *Chitty* she swore that she did not drink it all, but some of it remained in the Pitcher, when she came away.

But in an Information she made before Mr. *Fielding*, a Justice of Peace for *Middlesex*, (which we shall produce for this Purpose) she swore that she had drank up all the Water on the *Friday*, and so had not a Drop to drink from that Time till the *Monday*, on which Day she escaped.

The Pain of Thirst has been felt by almost every one, at some Time or other; and whoever has endured it for three Days and Nights, will be sure to remember it as long as he lives.

These Self-contradictions therefore could not arise from mere Mistake; except only it was forgetting at one Time, what she had sworn at another.

A Lyar, says the Proverb, should have a good Memory. But he who is resolved to speak Truth, needs take no Pains to recollect in what Manner he had told his Story before.

Gentlemen, to all this Evidence we shall add

Two Circumstances, which you may possibly think worth your Attention.

Soon after the Defendant's supposed Return to her Mother, she was visited by a Midwife, who was an old Acquaintance; to whom the Mother, in the Daughter's Presence, related the whole Story.

The Midwife's Curiosity took Place of her Pity, and she desired to see the Shift, which the Defendant was supposed to have worn for a Month.

The Observations made upon it will best become the Witness herself to tell you. They lead to suspect strongly, that it had not been worn so long as was pretended. On the contrary, it looked as clean, as if it had not been worn three Days.

The other Circumstance is a *striking* one. After the Conviction of *Squires*, there was a Re-examination of the Case before the late Lord-Mayor, in order to pave the Way to the Throne for Mercy, which proved effectual.

The Defendant was present at that Inquiry, and the Bed-gown which she pretended to have taken out of the Workshop, as also the Pitcher, were both produced.

She was very desirous of taking them with her; which my Lord-Mayor objected to, and proposed that they should be deposited in some public Place to be seen by any body, because they might possibly lead to a Discovery.

What induced the Defendant to be so extremely anxious for the Possession of this tattered Bed-gown and broken Pitcher, is hard to say; but she was so much bent upon it, that she unwarily claimed a Property in the *Bed-gown*, and said, *it was her Mother's*.

If it was her Mother's Bed-gown, how did it get to Mrs. *Wells's*?

This, Gentlemen, is the Nature of the Evidence we have to lay before you; upon the Weight of which there can be no Doubt but you will find the Defendant guilty.

Mr. WILLES.

I am Council in this Case for the Crown; and though I cannot help feeling some Concern for the unhappy Situation of the Prisoner at the Bar, yet I own I rejoice, for the sake of Truth, and for the sake of the deluded Multitude, that this Matter is at length to receive the most solemn and impartial Examination.

For, in what Light soever we consider the Prisoner's History of herself, either as a gross Imposition on the World, or, as others would have it, a wonderful and miraculous Truth; most certainly 'tis a Fact about which Mankind have been much divided, which has been the Cause of great Uneasiness and Distraction in this Country, and concerning which the Minds of the People ought to be quieted.

Nor can we wonder at these Dissensions among the Populace, when many able and great Magistrates have engaged in this Dispute; some of whom have with great Warmth and Eagerness declared themselves implicit Believers of this amazing Story, whilst others have looked upon *Elizabeth Canning* as the most vile and abandoned Impostress.

I do not mention this with an Intent to throw Reflections on the Patrons of either Side of the Question; the wisest of Men have been deceived,

nor will it be any Imputation on their Character, that they have been so; unless there is any Reason for conjecturing, that either through Partiality, Prejudice, or other still worse Motives, they have wilfully shut their Eyes to the Truth.

Far is it from me to insinuate that any thing of this Sort has happened in the present Instance: I verily believe that the Fountain of Justice in this Kingdom has flowed, through all its Channels, unstained, uncorrupted, and clear from all Manner of Pollution. I hope that those who have sat under his Majesty's Commission of the Peace, have acted *merely* and *singly* in that Capacity, and have not descended from the Dignity of Magistracy, to become Advocates for either Party.

But be that as it will, it is not our Duty, as Council for the Prosecution, to take Notice of collateral Circumstances or *extrajudicial Behaviour* in any one; 'tis our Business only to lay the Particulars of the Charge against the Prisoner before you; and if the Weight of Evidence appears clearly to be on the Side of the Crown, I don't doubt but that the Truth will be irresistible, and that we shall have your Verdict for the Conviction of the Prisoner.

And, Gentlemen, the Prisoner stands indicted of one of the most heinous of Crimes; an Endeavour, by wilful and corrupt Forswearing herself, to take away the Life of a guiltless Person; and without Aggravation, in the black Catalogue of Offences, I know not one of a deeper Dye. 'Tis a Perversion of the Laws of her Country to the worst of Purposes; 'tis wresting the Sword out of the Hands of Justice to shed innocent Blood.

Let us reflect a Moment on the sad Catastrophe which might have ensued. On her Evidence *Mary Squires* was condemned to be executed, and had suffered the Judgment of the Law, but for the Wisdom and Clemency of his Majesty, ever careful, ever tender of the Lives even of the meanest of his Subjects. During the Application that was made to the Throne for Mercy, did the Prisoner abate ought of her Repentment against the unhappy Convict? No; her cruel Heart never in the least relented: God forbid, that the Measure she has meted another, should this Day be measured to her again!

When I think of the Age of the Prisoner at the Bar, scarcely yet above nineteen Years old, I can hardly persuade myself that human Nature could so early attain to such a Pitch of Wickedness: But when I attend to the very strong and convincing Proofs we have to produce against her, I must give up my Reason to my Incredulity, if I any longer doubted, whether she was guilty or not.

And, Gentlemen, the whole we have to lay before you in support of this heavy Charge, will naturally arise under one or other of these Considerations:

The numberless Inconsistencies, and even Contradictions of herself in her own Evidence, as taken at different Times before different Magistrates:

The Improbability of her Story:

The Testimony of a Multitude of Witnesses of Credit and Character, who contradict her *materially* in almost every Circumstance she has related.

And, Gentlemen, in order to make you sensible how frequently *Canning* has varied in her *own* Account of these Facts, it will be necessary to inform you that she has been examined on Oath four several Times. On the 31st of *January* before Alderman *Chitty*, when a Warrant was granted

granted for the apprehending Mrs. Wells; on the 1st of February before Justice Tashmaker, after she had been down at *Enfield-Wash*; on the 7th of February before Justice Fielding; and on the 21st of February at the Trial of *Squires*; on which last Examination we have assigned the Perjuries mentioned in the Indictment.

In tracing her through these several Examinations, we shall have an Opportunity of discovering what Variations from Time to Time there are in her Story, what new Circumstances, Supplements, or Embellishments were added to her first Relation; and then we shall be able to judge impartially whether all these are reconcilable with Truth.

Before Alderman *Chitty* her Evidence was simply this; That she was robbed by two Men in *Moorfields* of her Money, Hat, Gown, and Cap: That there she received a Blow on her Head, which stunned her, but did not so far deprive her of her Senses, but that she remembers her being afterwards carried through *Bishopsgate-Street*: That she then was dragged to Mother *Wells's*, and there stript of her Stays, and because she would not go their Way, (as it is termed) confined in a little, square, dark, or darkish Room, which had nothing in it but an old Grate, an old Table, a Stool or two, and some Pictures over the Chimney: That there were four or five Pieces of Bread and some Water, on which she lived till she made her Escape; and that she lay all the Time on the bare Boards: That she got out of the Window on a small Shed of Boards or Pent-house, down which she slid, having clothed herself with an old Bed-gown and Handkerchief, which she took from the Grate.

This is the short Account she gave at first before the Alderman, for her Story had not then received Half its Decorations. The Circumstance of her being subject to Fits was not then mentioned: No Hint of any Gypsey's being concerned, much less any Description of *Mary Squires*, the most remarkable Woman in her Person that ever perhaps existed: Not a Word of any Hay being in the Room; though it appeared, on her coming down to *Enfield*, that there was above Half a Load, which had been laid in the Summer before. Let any one then believe, if they can, that, during her long Confinement, she could overlook such a Quantity of Hay, and continue Night after Night to take up her hard Lodging on the bare Boards!

In her Examination before Justice *Tashmaker*, her Story receives several new Improvements. She had seen Mrs. *Wells's* little Workhouse, so now drops the unfortunate Circumstance of its being a little, square Room: Had she ever seen it before, she could not have so described it. She now recollects more Particulars of what the Gypsey said to her: That she promised her, if she would go their Way, she should have fine Cloaths enough. This Attack (if it deserves the Name of an Attack) on the poor innocent Girl's Virtue, was a proper Subject to excite the Compassion of the Public, and a pretty Use was made of it in the several Advertisements, which were printed at that Time, to raise Subscriptions for her.

She now swears, that after she came to Mrs. *Wells's*, a Man unknown to her took away her Cap. This expressly contradicts her former Evidence, in which she says she was robbed of her Cap in *Moorfields*.

She now introduced, for the first Time, the

Circumstance of the famous broken-mouthed black Pitcher, on the Water in which, and some Pieces of Bread, she lived till the Wednesday before she made her Escape, when the whole was consumed. No Wonder she could now describe the Pitcher, which was artfully conveyed into the Workshop by her Friend *Adamson* before her Arrival at *Enfield-Wash*.

As to the Circumstance of her Provision lasting her only till Wednesday, it neither agrees with what she afterwards swore before Justice *Fielding*, nor with her Evidence on the Trial of *Mary Squires*. Truth is always consistent, but Falshood and Fiction must be judged by another Criterion.

We are now come to her Examination before Justice *Fielding*: I know not through what Medium they were conveyed, but she had certainly then received some new Lights, and is infinitely more learned and artful in the Manner of her telling her Story. The Men she swears in *Moorfields* feloniously and violently took from her a Shaving Hat, &c. These Words, *feloniously and violently*, are not the Expressions of a poor illiterate Girl, perhaps they are the Suggestion of her Solicitor.

She now swears, that the Blow in *Moorfields* threw her into a Fit, which deprived her of her Senses; and that she was used to have Fits, which lasted six or seven Hours. This was an useful and necessary Embellishment of her Story, as a Fit accounted much more naturally for a six Hours Insensibility, than a Blow which only stunned her could do.

That on her Recovery she found herself in a high Road, but that she was so intimidated, she durst not call out. 'Twas proper to give a Reason for not doing what any body in her Circumstances naturally would have done. I own I always admire and suspect an Affidavit, which assigns a Reason for every Thing which is sworn in it.

She then swears she was shoved into a back Room without any Furniture at all in it. I will not dwell on this trivial Mistake in her Account; and yet surely, in the Imagination of a Girl who had had her Education at an Alehouse, Stools, Tables, and Pictures would be deemed Furniture.

But 'tis material to observe, she now says, that on Friday, and not Wednesday, she had consumed all her Bread and Water. This Alteration of her Evidence from Wednesday to Friday must have its Design: Weak and ill as she was, could she have been able to walk from *Enfield* to *London* in less than six Hours, which is eleven Miles, if she had received no Sustainance for five Days before? Whereas shortening the Time of her being without any Refreshment, took off a good deal from the Improbability of this Part of her Story.

In her Evidence on the Trial of *Mary Squires*, she adds still some new Circumstances. She says, on her Recovery from her Fit, she found herself in a great Road, where there was Water. This Addition was not without some View, and I think there is no Difficulty in finding out what it was. It supplied the World with a Reason, why she and her Friends at first directed their Inquiries towards *Enfield-Wash*.

A Barrel, Saddle, Bafon, and Tobacco-mould, are now recollected to have been in the Room: Strange, we should never hear any thing of them before!

She now swears, she had not drank all the Water till about a Quarter of an Hour before she escaped. This Amendment of her Evidence was with the same

same Intention as the former Alteration from *Wednesday to Friday*; that is, to lessen the Improbability of her being able to walk from *Enfield* to Town, without once stopping to take the least Refreshment.

These are some of the most glaring Contradictions in her *own* Evidence, which must strike every body, who reflects that these were Particulars in which she could not err either through *Forgetfulness or Mistake*; I will not say more.

But to this we may add the Improbability of her whole Story, which is as it were *felo de se*; at least, 'tis such a Tale as requires the strongest Proof in the World to compel us to believe one Tittle of it.

The two Ruffians to continue with her Half an Hour in so public a Place as *Moorfields*, and though it was so early in the Evening, (an holiday Evening too) yet when she screamed out, for nobody to hear her! But why first rob her, and afterwards kidnap her? Was it their Design to rob her only? or, to rob her, and afterwards carry her where (in the Gypsy Language) they hoped they should oblige her *to go their Way*?

If a Robbery only was designed, would they have carried with them the strongest Evidence of their Guilt? If their Purpose was only to add this poor Girl to the Herd of wicked Wretches at *Mother Wells's*, what Reason was there to begin their Seducement with a Robbery? At these Kind of Houses a young Woman may be easily stripped of her Money, and yet no Robbery committed: *Mother Wells* might soon have made herself *Canning's* Cash-keeper, without the Aid of a Blow to stun her, or the Terrors of a Case-Knife.

If her Murder was intended, why not have done it on the Road? Why not on her first Arrival at *Enfield-Wash*? Why was she supplied with any Bread and Water at all?

Her Fit likewise is of the marvellous Kind; it continued on her near six Hours, went away in an Instant; and though she was used to have Fits on any Fright; yet she never had another during her long and terrifying Confinement. How amazing this! What! a Girl used to Fits on Frights not have a Fit for a Month together, when she might naturally expect, during all that Time, every next Minute would be her last!

But let us now follow this wonderful Girl to *Enfield*; not forgetting one very extraordinary Circumstance in her Evidence before the Alderman, that though *she was stunned in Moorfields*, yet *she remembers afterwards her being carried through Bishopsgate-Street*.

Is it credible, on her coming thither, that the Gypsy, an artful Procurefs, hackneyed in the Ways of Women, should only slightly ask her *to go their Way*, and, because she faintly said *No*, should give over all further Attempts? Was this acting like the President or Lady Abbess of such a House as *Mother Wells's*? Was this any proper Trial of the Prisoner's Virtue? I hope, for the Honour of the Female Sex, that there hardly ever was a young Woman not above eighteen Years of Age, who did not say *No*, once at least, especially if solicited by an ugly, old, decrepit Hag. And yet this faint, this half-consenting, no-Refusal, is the only Reason given for her long and barbarous Confinement. Her Confinement! To what Purpose was it? What! starve a young Woman out of her Virtue? Rich Food and strong Liquors

may do much; but Bread and Water, Cold and Hunger, are not apt to inflame the Passions.

This Bread and Water; a broken Pitcher of Water, and just *twenty-four Pieces of Bread, about equal to a Quartern Loaf*; before Alderman *Chitty* these *twenty-four Pieces* were not above four or five. But be they more or less, when was the Pitcher of Water and these conveyed into the Room? Was there any Expectation of such a Guest? No. Were they carried in after *Canning* came thither, and before she was shoved into the Workshop? There was not Time enough to make such a particular Provision. As to the Supposition that they might be conveyed into the Room after *Canning* was there, she herself expressly swears that no body came into the Room from the Time of her being shut up till she made her Escape. *Virtue Hall* indeed in her Information says, that the Pitcher of Water was conveyed in there afterwards; but I shall lay her Evidence out of the Case, especially as she is in this Circumstance absolutely contradicted by the Prisoner.

But having mentioned *Virtue Hall's* Name, I cannot help taking Notice of an Argument I have heard in favour of the Prisoner's Innocence, which is this, *That Canning and Virtue Hall were never together before Virtue Hall's Examination, and yet they agree in almost every Circumstance of the Story, and therefore Canning's Evidence must be true*. But the Answer to this is a very easy and obvious one. It does not at all appear, but that *Canning* and *Virtue Hall* were together before *Virtue Hall's* Examination; at least, 'tis certain they might have found out some Means of communicating their Sentiments to each other, which would answer the same End. 'Tis very remarkable, that *Virtue Hall's* Confession was not taken at first (for what Reason I know not) *vivâ voce* before Justice *Fielding*. She was sent out of the Room to retire with her Solicitor, who was also *Canning's* Solicitor: Her Information was reduced into Writing, and was two Hours in preparing. After this, what mighty Wonder is there, that when she came into the Justice's Presence again, she should repeat her Lesson without the least Hesitation?

But to pursue the Train of Improbabilities: Was it not strange, that *Canning* should subsist so long on so small a Quantity of Bread and Water; four Weeks, wanting only a few Hours? Stranger, that she should husband her Store so well as to have some of her Bread left, according to her first Account, till the *Wednesday*; according to her last, till the *Friday* before she made her Escape; and that she should save some of her miraculous Pitcher till the last Day? Was the twenty-fourth Part of a six-penny Loaf a Day sufficient to satisfy her Hunger? If not, why should she defer the immediate Gratification of her Appetite, in order to make Provision for a precarious uncertain Futurity? Shall we suppose some Revelation from above in Favour of one of the *Faithful*? Perhaps an Angel from Heaven appeared to this *Mirror of modern Virtue*, and informed her, if she eat above one Piece of Bread a Day, her small Pittance would not last her till the Time she was to make her Escape. Her Mother, we know, is a very enthusiastical Woman; a Consulter of Conjurers; a Dreamer of Dreams; perhaps the Daughter dreamed also what was to happen, and so, in Obedience to her Vision, would not eat when she was hungry,

hungry, nor drink when she was thirsty. However that was, I would risk the Event of the Prosecution on this single Circumstance, that, without the Interposition of some preternatural Cause, this Conduct of the Prisoner's must appear to exceed all Bounds of human Probability.

That she should have no Evacuations except by Urine, is another strange Circumstance, which decorates this romantic Girl's Story.

But another Thing; How came she to make her Escape so easily at last, and yet never before once attempt it? Were these Dragons always on the Watch? Surely, if they sat up all Night, they must sleep in the Day-time, and the Prisoner tells you the House was then very quiet. Even the Evening she made her Escape, it must astonish us to find, that a Girl, who had been kept so long without her proper Nourishment, should stop no where on the Road to take the least Refreshment, though she passed by several Houses, and met several Persons.

But these Wonders, if possible, will grow more and more wonderful, when we come next to examine the Place of her supposed Imprisonment. This Room, what was it but a weak Erection of Lath and Plaster? Cracks and Crannies innumerable in the Sides of it, and the whole Building so slight, that a Boy of ten Years old might in an Hour's Time have demolished any Part of it. The Window towards the East neither boarded nor fastened; but three Feet from the Floor, and but nine from the Ground. The Casement so large, that a very fat Man might have got out of it; so little a Way from the Ground, that a Child might have slipped down without hurting himself. And yet in this Cage, with the Door open, was this extraordinary Girl confined for a Month, without once trying to get out. The Story indeed is all of a Piece, 'tis all Witchcraft and Enchantment.

But, if she was afraid of breaking out, why should she not call out of the Window for Assistance? It was near at Hand; the *Hertfordshire* Road was not above sixty Yards from the North Window, and she frequently saw the Coachman pass by, who used to drive her former Mistress. Besides this, there is a little Lane directly under that Window, which was used every Morning and Night by the Farmers and their Servants, who went that Way with their Cattle to the Marshes. There is likewise a Pond not above seven or eight Yards from the Window, where the Townsman watered their Horses, and in frosty Weather it was a Sliding-place for all the Boys and Girls in the Village. Had she made the least Alarm, there were many ready to have come to her Assistance; but we hear of no Endeavours of this Kind; may be, the Gypsey had put a Spell upon her.

But perhaps I am talking of Impossibilities to Persons, whose Credulity is great enough to believe whatever is artfully told them, how monstrous and absurd soever it may be in reality. I know the present Age to be, in some Respects, a very credulous one. Mr. *Davy's* Story of a flying Man might now, for ought I know, be credited; 'tis not long since the Bottle Hero drew after him a numerous Attendance; this Heroine likewise has had her Admirers and Protectors; but, for my own Part, I would as soon believe either of those Stories, as hers, which is equally incredible.

But should these Improbabilities, I might almost say Impossibilities, find Credit with you; yet surely, Gentlemen, you cannot be totally inatten-

tive to the Testimony of several Persons of Credit and Character, who contradict the Prisoner in almost every Circumstance of her Narrative.

As to her Description of the Room, what say Mr. *Nash*, *Hague*, *Aldridge*, and Mr. *White* the Sheriff's Officer? They will give you such an Account of it, as must amaze you. The three first were her Friends, who went down to *Enfield-Wash* on the 1st of *February*, with her Master Mr. *Lyon*, to assist in this notable Discovery; they will give you the Reasons why they have not continued to be her Friends: That the Room *Canning* fixed upon as the Place of her Confinement, was a long, light Room, not a little, dark, square one: That the Dimensions of it were above thirty long, and only about nine Feet broad: That there was a large Quantity of Hay there, and an old rusty Hay-bed: That there was no Grate in the Room, and the Chimney so overspread with Cobwebs, that it was impossible there should have been a Grate there for some Months before: No Pictures over the Chimney, nor any Marks that there ever had been any, but in their Place an old Casement joined to the Wall by Cobwebs: That there were in different Parts of the Room three old Saddles, a Nest of old-fashioned Drawers, and a Tub of Pollard: That, on removing the Chest of Drawers from the Side of the Wall, they found it so affixed to it by Filth and Nastiness, that they are certain it could not be lately brought there: That they observed, under the Pulley of an old Jack-line, a large Hole in the Wall, which had Communication with the Kitchen, and commanded a View of every Thing that was done there. This Hole likewise had escaped *Canning's* Notice, though it will be proved to have been in the same Condition for many Years past. That, on the most careful Examination, they could not find that there either was, or ever had been, any Shed or Pent-house under the North Window, or any Thing which could possibly be mistaken for it: That the Room had a light Casement in it, large enough for a Person to get out; and that *Canning* being asked, why she did not make her Escape this Way, said, she believed it was fastened, but that she had never tried.

These were the Circumstances that staggered their Belief; nor could they account for the Prisoner's remembering none of these Things, though, during her long Continuance there, she had Leisure enough to have marked every Cranny in the Room, and to have counted every Nail in the Floor.

These Witnesses and others will inform you, that on her coming down to *Enfield*, she was first carried into the Kitchen, and set on the Dresser; and though the Door was open which led to the Hay-loft, yet she never once intimated that this was the Place where her Stays were cut off, but suffered herself afterwards to be carried over the rest of the House in Search of the Place of her Imprisonment. These Witnesses, and particularly *White*, will speak to the busy Officiousness of *Scarrat* and *Adamson*, in pulling down the Boards of the North Window, and in conveying the Pitcher into this Room before *Canning* came there; and that one of them was then dispatched to meet her on the Road,—with what View one may easily guess.

But in order to give you more convincing Proofs that *Canning* never was at Mother *Wells's* in the Month of *January*, *Fortune Natus* and *Judith* his Wife will assure you, that they lay in this very

Room at the Time the Prisoner pretends she was there. This Fact they both asserted on the 1st of *February*, and this they would have given in Evidence on *Squires's* Trial, if the furious Temper of the Times would have permitted them, without the Hazard of their Lives, to have come into Court and given their Testimony. I will not say what are the usual Attendants of Fraud and Imposture; but thus much is certain, Truth wants not a Party-Mob to support it.

Another very remarkable Piece of Evidence to this Purpose, is the Attestation of three honest day-labouring Men, who on the 8th of *January* were lopping a Tree just over-against the East Window of this Room, and saw *Virtue Hall* and *Sarah Howit* looking out of the Casement; they had a deal of Chat with these Girls, and in Sport threw Dirt at them: *Sarah Howit* will confirm this, who is one of Mother *Wells's* Daughters. The Time will be fixed by *John Cantril*, a Publican, who used at that Season of the Year to give his Neighbours and Customers a cold Entertainment.

One *Ezra Whiffin* will tell you, he went into this Workshop with Mother *Wells* herself on the 17th of *January*, to fetch out the Irons of a Sign-arm he had bought of her, and that he then observed *Fortune Natus's* Hay-bed, at the Feet of which lay this Sign-arm. His Evidence will be supported likewise by his Son's; and the Time will be ascertained by a Note of Hand, which was just then become payable, and for the Discharge of which he was going to *Wormleigh* to borrow some Money. *Ezra Whiffin* will acquaint you how he came not to be examined at *Mary Squires's* Trial. I am sorry he has so good a Reason for his Absence. If the Avenues which lead to the Seat of Justice are to be surrounded and guarded by an inflamed Mob, what Security is there for our Lives and Properties; where is all our boasted Liberty?

Robert White, a poor labouring Man, will prove, that in the Month of *January* he was at Mother *Wells's* almost every Night in the Week, and that he frequently saw the People of the Family go in and out of this Room; though 'tis true he was never in it himself.

John Howit, and indeed all the People who were at the House, will affirm that Mother *Wells* kept Hay in this Room for her Horse, and Pollard for her Poultry, and that some one or other of them went in there every Day. If all this last Set of Witnesses are not forsworn, if but one of them speaks the Truth, what must we think of *Canning's* Assertion, *That there was no body in the Room during the whole Time she was kept there?*

As to the taking of the Bed-gown out of the Grate, two Gentlemen of Figure and Reputation will acquaint you, that the Prisoner, on her Examination at the Mansion-House, insisted upon taking away the Bed-gown with her, and said, *it was her Mother's*. If her Mother's, how could it be found at *Mrs. Wells's*, or taken out of the Grate, when there was no Grate in the Chimney?

Old *Mrs. Canning's* Midwife will inform you, that the Daughter's Shift, which she pretended she had worn a Month in that nasty Place, was not dirty enough to have been worn by a cleanly Person a Week; that it was not draggled in, the least, nor had any Spots of Dirt on it. Some other Particulars you will hear from her own Mouth, which perhaps may lead you to guess

what was the Prisoner's Employment during this long Recess from the World and her Friends.

But if to all these Circumstances we add the incontestable Proof we have to produce of *Mary Squires*, and her Son *George* and Daughter *Lucy*, being at *Abbotsbury* on the 1st of *January*, what Opinion ought we to have of the Prisoner's Veracity? Let it be remembered likewise, that this is no new-invented Story; for at *Enfield-Wash*, as soon as the Gypsey was charged by *Canning* with having cut off her Stays on the 1st of *January*, she immediately answered, *That can't be, for I was at that Time above a hundred Miles off at Abbotsbury*. This Fact of the Gypsey's being then at *Abbotsbury* will be attested by above thirty Witnesses. The Unexceptionableness of their Characters, the amazing Consistency of their Evidence, their Remoteness of Habitation, and Ignorance of each other, as well as their having no Inducement to swear falsely, will, I am certain, not escape your particular Observation.

These Witnesses speak not only as to the Person of *Mary Squires*, but also to the Persons of the Son and Daughter, who travelled with her; they conversed with them; and several of them have known the old Woman for many Years last past, which removes all Possibility of imagining they are mistaken.

These Witnesses take up the Gypsies at *South-Parrot* on the 29th of *December*, about eight or ten Miles beyond *Abbotsbury*; and from thence from Place to Place, Step by Step, bring them to *Enfield-Wash*, but not till the 24th of *January*.

At *Abbotsbury* they stayed from the 1st of *January* till the 9th, appeared publicly, and were present at several Dancing-Matches: *Lucy* had a Sweetheart there, who accompanied her Part of her Journey, and was an Evidence for the old Woman on her Trial. The Time will be fixed to a Degree of Demonstration by the Excise-Books, to which *Gibbons*, who keeps the *Skip* Ale-house there, referred himself on his former Examination. The young Man who officiated for the Exciseman lay in the same Room with *George Squires*, and is now attending to be examined. A Number of little Circumstances will confirm their Testimony, and leave the Truth of it incontestable. A Piece of Nankeen left at one Place, a dead Horse seen at another, a Letter wrote by *Lucy's* Direction at *Basingstoke*, and which will be produced with the Post-mark on it, are some of those unerring Tokens, by which Truth is always to be distinguished from Falshood.

If the Gypsey was at *Abbotsbury* on the 1st of *January*, God (I hope) will forgive the Prisoner, for she has sworn that both the Mother and Daughter were then at *Enfield-Wash*.

After all these Contradictions, Absurdities, and glaring Falshoods, need I remark that the Prisoner (conscious of her Guilt) did not surrender herself till she was in Danger of an Outlawry? The *fugam fecit* is by our Law considered always as a strong Proof of Guilt, and is allowed as Evidence in all criminal Prosecutions. And now a Question may be asked, What could be the Prisoner's Inducement to all this? Mr. *Davy* has suggested *Gain*; and doubtless she and her Associates have had a plentiful Harvest. Perhaps this was only a secondary Motive; the primary one might be the Concealment of some Things from the World, which would have placed her Conduct in no very advantageous Light. But another

ther Question may be asked, Where was she all this Time? Certainly it will appear she was not at Mocher Wells's, which is all that is necessary for us to shew in order for the Conviction of the Prisoner.

It was agreed upon by the Council on both Sides, that the Witnesses should be examined apart, and, when examined, not to return to the others. And they gave each other a List of their Witnesses Names.

William Chetbam. (He produced the Copy of the Record of the Conviction of Mary Squires.) This I examined at the Office at Hicks's-Hall; it is a true Copy.

Cross-examined.

Mr. Williams. How did you examine it?

Chetbam. I examined it with the Clerk of the Peace. I read this, and the other was read to me.

Mr. Williams. Did you read the Record?

Chetbam. I looked upon it when the Copy was read over, and saw that it was right.

*The Copy read in Court. The Purport of which was, that Mary Squires had a Bill of Indictment found against her at Hicks's-Hall before the Grand Jury for the County of Middlesex, for putting Eliz. Canning, Spinster, in bodily Fear, in the House of Susannah Wells, Widow, at Enfield-Wash, and stealing a Pair of Stays, Value ten Shillings, on the 2d of January, 1752. And that she was tried for the same at the Old-Bailey, in the February Sessions 1753, and found guilty of the Indictment.**

When he was asked, if he saw Elizabeth Canning sworn upon that Trial, Mr. Davy answered, that was admitted.

Thomas Gurney sworn.

Mr. Davy. You are the Short-hand Writer, I believe, that took the Evidence here at the Old-Bailey, upon the Trial of Mary Squires for the Robbery of Elizabeth Canning?

Gurney. Yes.

Mr. Davy. I suppose you have got the Minutes you took at that Time.

Gurney. I have.

Mr. Davy. Please to mention the Evidence she gave.

Gurney. The Contents are in the Sessions-Paper.

Mr. Davy. You are to give an Account of all the Evidence she gave at that Time; you may refresh your Memory by looking on your Minutes.

Gurney. She said, she had been at Salt-Petre Bank to see her Uncle and Aunt there; her Uncle's Name was Thomas Colley. She went from Home about Eleven o'Clock, and stayed there till about Nine at Night, on the 1st of January; then came homewards; her Uncle and Aunt came with her as far as Aldgate, there they parted with her; and she had no body in Company with her; she came down Houndsditch, over Moorfields by Bedlam Wall; two Men came to her by Bedlam Gate, better than a Quarter after Nine o'Clock; they took hold on her, and said nothing. Then she was asked, what Sort of Men they were? she said, they were lusty Men. She was asked, if she

loft

* To make this Trial of Canning's more complete, we shall here add the Trial of Mary Squires and Susannah Wells, from the Sessions-Paper; also the Lord-Mayor's Memorial, delivered to the King on Squires's behalf, &c.

The TRIAL of Mary Squires, and Susannah Wells, Widows, at the Sessions-House in the Old-Bailey, before the Right Hon. Sir Crisp Gascoyne, Knt. Lord-Mayor of the City of London, the Hon. Mr. Justice Wright, the Hon. Mr. Justice Gundry, the Hon. Mr. Baron Adams, William Moreton, Esq; Recorder, and others his Majesty's Justices of Oyer and Terminer of the City of London, and Justices of Goal-Delivery of Newgate, holden for the said City and County of Middlesex, on Wednesday the 21st of February, and continued till Monday the 26th, 1753.

MARY SQUIRES, Widow, and Susannah Wells, were indicted; the first, for that she, on the 2d of January, in the Dwelling-House of Susannah Wells, Widow, on Elizabeth Canning, Spinster, did make an Assault, putting her the said Elizabeth Canning in corporal Fear and Danger of her Life, and one Pair of Stays, Value ten Shillings, the Property of the said Elizabeth, from her Person, in the Dwelling-House, did steal, take, and carry away. And

The latter, for that she, well knowing her the said Mary Squires to have done and committed the Felony aforesaid on the said 2d of January, her the said Mary did then and there feloniously receive, harbour, comfort, conceal, and maintain, against his Majesty's Peace, and against the Form of the Statute.

Elizabeth Canning. I had been to Salt-Petre Bank to see an Uncle and Aunt; his Name is Thomas Colley. I set out from Home about Eleven in the Forenoon, and stayed there till about Nine at Night, on the 1st of January; then my Uncle and Aunt came with me as far as Aldgate, where we parted;

I was then alone, so came down Houndsditch, and over Moorfields by Bedlam Wall; there two lusty Men, both in great Coats, laid hold of me, one on each Side; they said nothing to me at first; but took Half a Guinea in a little Box out of my Pocket, and three Shillings that were loose.

Q. Which Man took that?

E. Canning. The Man on my right Hand. They took my Gown, Apron, and Hat, and folded them up, and put them into a great-coat Pocket. I screamed out; then the Man that took my Gown put a Handkerchief; or some such Thing, to my Mouth.

Q. Were there any Persons walking near you at that Time?

E. Canning. I saw no body. They then tied my Hands behind me; after which one of them gave me a Blow on the Temple, and said, D—n you, you B—h, we'll do for you by and by. I having been subject to Convulsion-Fits these four Years, this Blow stunned me, and threw me directly into a Fit.

Q. Are these Fits attended with a Struggling?

E. Canning.

lost any Thing? she said, Half a Guinea in a little Box, and three Shillings. She said, the Man that stood on the right Hand took it, and took her Gown, Apron, and Hat, folded them up, and put them into a great-coat Pocket; she screamed out; then one of them put a Handkerchief, or some such Thing, in her Mouth; it was the Man who took her Gown that did that, and that she saw no other Persons by at that Time; they then tied her Hands behind her; after that, one gave her a Blow on the Temple, and said, D—n you, you B—h, we will do for you by and by. Then she was asked about her having Fits; she said, she had been troubled with Fits four Years, that they were convulsive Fits. She gave an Account, that the Blow stunned her, and flung her into a Fit. She was asked, whether those Fits were attended with Struggling? she said, she could not tell. The next Account she gave was, she found herself by a large Road where there was some Water, and the two Men that robbed her were with her: She said, they lugged her along, and said, You B—h, why don't you walk faster? that one held her by one Arm, and the other by the other, while they pulled her along, and took her to the House of *Susannah Wells*, which was about Four o'Clock in the Morning. When she was asked, if she could form any Judgment of the Manner in which she was carried to the Place? she said, they dragged her along by the Petticoats, she thought, they being so dirty: That when she came there, it was not Day-light; that it was Day-light about three Hours after; that she believed it was then about Four o'Clock, and

that she then saw the Gypsey Woman. She was then asked the Woman's Name; and she said, *Mary Squires*.

Mr. *Davy*. Was *Mary Squires* then at the Bar? *Gurney*. She was. She then went on and said, there were two young Women there, but she did not see the Prisoner *Wells* then; that the young Women were standing up, and the Gypsey Woman was sitting in a Chair: That when she was brought in, she took her by the Hand, and said, if she chose to go their Way, she should have fine Cloaths; that she said, No. She was then asked, if she explained the Words, *go their Way*? she said, she did not: That then the Gypsey took a Knife out of the Dresser-drawer, and cut the Lacing of her Stays, and took them from her. She was then asked, if she was under Apprehensions of Danger at that Time? she said, she thought they were going to cut her Throat. She was asked, if she saw *Wells* there? she said, No; and that *Mary Squires* looked at her Petticoat, and said, Here, you B—h, take that, or I will give you that, and gave her a Slap on the Face. She was asked, if she had the Petticoat in her Hand? she said, No, it was on me: Afterwards, she said, she pushed her up Stairs. She was asked to describe the Kitchen; she said, it was on the right Hand going in, and the Stairs by the Fire-side. She was asked, what they called the Place where she was? she said, the Hay-loft, and that it was not then Day-light. She gave an Account that the Room-door was shut, but she did not know whether it was fast or no; that the Door was at the Bottom of the Steps in the Kitchen. She said, that
if

E. Canning. I don't know that.

Q. What happened afterwards?

E. Canning. The first Thing that I remember after this was, I found myself by a large Road, where was Water, with the two Men that robbed me.

Q. Had you any Discourse with them?

E. Canning. I had none; they took me to the Prisoner *Wells's* House.

Q. About what Time do you think it might be?

E. Canning. As near as I can think, it was about Four o'Clock in the Morning. I had recovered from my Fit about Half an Hour before I came to the House. They lugged me along, and said, You B—h, why don't you walk faster? One had hold on my right Arm, and the other on the left, and so pulled me along.

Q. Can you form any Judgment in what Manner you was conveyed to the Place before you recovered of your Fit?

E. Canning. I think they dragged me along by my Petticoats, they being so dirty.

Q. When you came to *Wells's* House, was it Day-light?

E. Canning. No, it was not; I think it was Day-light in about three Hours, or better, after I was there; which is the Reason I believe I was carried in about Four o'Clock.

Q. When you was carried in, what did you see there?

E. Canning. I saw the Gypsey Woman *Squires*, who was sitting in a Chair, and two young Women in the same Room; *Virtue Hall* (the Evidence) was one; they were standing against a Dresser.

Q. Did you see the Prisoner (*Wells*) there?

E. Canning. No, I did not. As soon as I was

brought in, *Mary Squires* took me by the Hand, and asked me if I chose to go their Way, saying, if I did, I should have fine Cloaths; I said, No.

Q. Did she explain to you what she meant by going their Way?

E. Canning. No, Sir. Then she went and took a Knife out of a Dresser-drawer, and cut the Lace of my Stays, and took them from me.

Q. Had you, at that Time, any Apprehensions of Danger?

E. Canning. I thought she was going to cut my Throat, when I saw her take the Knife.

Q. Did you see the Prisoner (*Wells*) at that Time?

E. Canning. No, I did not.

Q. Was any thing else taken from you?

E. Canning. There was not then; but *Squires* looked at my Petticoat, and said, Here, you B—h, you may keep that, or I'll give you that, it is not worth much, and gave me a Slap on the Face.

Q. Had she the Petticoat in her Hand?

E. Canning. No, it was on me. After that, she pushed me up Stairs from out of the Kitchen, where we were.

Q. Describe the Kitchen.

E. Canning. The Kitchen was at the right Hand going in at the Door, and the Stairs are near the Fire.

Q. How many Steps to them?

E. Canning. There are Four or Five of them.

Q. What did they call the Name of the Place where they put you in?

E. Canning. They call it the Hay-loft. The Room-door was shut as soon as I was put up.

Q. Was it fastened?

E. Canning.

if she (the Gypsey Woman) heard her stir or move, or Words to that Purpose, she said she would cut her Throat. She was asked, if she saw any thing brought up to eat or drink? she said, No: That when Day-light appeared she could see about the Room. She was asked, what sort of a Room it was? she said, a long Room, with a Fire-place and a Grate; that there was no Bed or Bedstead, only Hay to lie upon; that she saw a black Pitcher, which was produced in Court; then she said, This is the Pitcher, it was full up to near the Neck with Water, and about twenty-four Pieces of Bread. She was then asked, how great a Quantity of Bread there was? she said, about a Quartern Loaf; and that she had a Penny Mince-pye in her Pocket, that she bought to carry Home to her Brother. Then she gave an Account that she was confined there a Month by the Weeks, all but a few Hours; and that she saw no body in the Room all that Time, only she once saw a Person look through the Crack of the Door, but did not know who it was. Then she was asked, if she had made any Attempt to get out before? she said, No. Then she was asked, what Time she got out? she said, about Four o'Clock in the Afternoon on a *Monday*. Then she was asked again, how long she had been confined there? she said, four Weeks, all but a few Hours; she said, she broke down a Board from the Window, and got out. She was then asked, how high that Window was from the Ground? she then pointed to a Place in the Court, which was about eight or ten Feet high: She gave an Account, that she first put her Head out, and got fast hold on the Wall,

then got her Body out, and then jumped into a little narrow Place by a Lane. She was asked, if she did not hurt herself? she said, there was some soft Clay: Then she gave an Account that it was Day-light. She was asked, what she had for Cloathing? she said, she took a Bed-gown and Handkerchief, which lay in the Grate in the Chimney. Then she was asked, if she saw any body when she got out? she said, she did not. Then she went up the Back of the House, crossed a little Brook over two Fields, as she thought, and there got into the Road-way, then she went straight up the Road to *London*. She gives an Account, that she did not know the Way, therefore asked her Way to *London*. Then she was asked, if she called by the Way? she said, she did not call at any House; but coming over *Moorfields*, the Clock struck Ten. She was asked, if she acquainted any body with it? she said, No, she got to her Mother's in *Aldermanbury* a Quarter after Ten o'Clock; the first Person she met with was the Apprentice, then she saw her Mother and the Children; her Mother, she says, went into Fits directly.

Mr. *Davy*. As far as you have mentioned, are you able to say, upon your Oath, that that was the Evidence that the Girl, upon her Oath, then gave in Court?

Gurney. The Substance of it is the Evidence she gave in Court.

Cross-examined.

Mr. *Moreton*. What Day did she say she was robbed?

Gurney.

E. Canning. I don't know that; it was at the Bottom of the Stairs in the Kitchen. After she shut the Door, she said, if ever she heard me stir or move, or any such thing, she'd cut my Throat.

Q. Did you see any thing brought up to eat or drink?

E. Canning. I saw nothing brought up. When Day-light appeared, I could see about the Room; there was a Fire-place and a Grate in it, no Bed nor Bedstead, nothing but Hay to lie upon; there was a black Pitcher not quite full of Water, and about twenty-four Pieces of Bread, (*a Pitcher produced in Court.*) This is the Pitcher, which was full to near the Neck.

Q. How much in Quantity do you think these twenty-four Pieces of Bread might be?

E. Canning. I believe about a Quartern Loaf.

Q. Had you nothing else to subsist on?

E. Canning. I had in my Pocket a Penny Mince-pye, which I bought that Day to carry Home to my Brother.

Q. How long did you continue in that Room?

E. Canning. A Month by the Weeks, all but a few Hours.

Q. What do you mean by a Month by the Weeks?

E. Canning. I mean a four-weeks Month.

Q. Did any body come to you in the Room during that Time?

E. Canning. No, Sir, no body at all. On the *Wednesday* before I came away, I saw somebody look through the Crack of the Door, but don't know who it was.

Q. Did you, during the Time you was in this Confinement, make any Attempts to come down Stairs, or make your Escape?

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E. Canning. No, Sir, I did not till the Time I got out.

Q. Had you any thing to subsist on during the Time, besides the Pieces of Bread, Penny Pye, and Pitcher of Water?

E. Canning. No, I had not.

Q. At what Time did you get out?

E. Canning. I got out about Four o'Clock in the Afternoon on a *Monday*, after I had been confined there four Weeks, all but a few Hours.

Q. How did you get out?

E. Canning. I broke down a Board that was nailed up at the Inside of a Window, and got out there.

Q. How high was the Window from the Ground?

E. Canning. (*She described it by the Height of a Place in the Sessions-House, which was about eight or ten Feet high.*) First I got my Head out, and kept fast hold by the Wall, and got my Body out; after that I turned myself round, and jumped into a little narrow Place by a Lane, with a Field behind it.

Q. Did not the Jump hurt you?

E. Canning. No, it was soft clay Ground.

Q. Was it light then?

E. Canning. It was.

Q. What did you do for Cloathing?

E. Canning. I took an old sort of a Bed-gown and a Handkerchief, that were in this Hay-loft, and lay in a Grate in the Chimney. (*Produced in Court.*) I made my Ear bleed at getting out; the Handkerchief I tied over my Head instead of a Cap, it was very bloody.

Q. Did you see any body when you jumped out at the Window?

3 M

E. Canning.

Gurney. I have it in my Minutes that it was the 11th of *January*, which was the Day she went to see her Uncle.

Mr. Davy. Now describe what she observed in the Hay-loft.

Gurney. There was a Barrel, a Saddle, a Bafon, and a Tobacco-mould, in the Room where she was. She was asked, what she meant by a Tobacco-mould? she said, what People do up Papers of Tobacco in.

Mr. Davy. Now please to go on where you left off.

Gurney. She was then asked, if she had given the Account to any body at that Time? she said, Yes, to *Mrs. Woodward*, who came to see her; she told her she had lived upon Bread and Water.

Mr. Davy. Did she say *Mrs. Woodward* was so frightened she could not ask her any Questions?

Gurney. She said, she did not ask her any more Questions then. Then she says, *Mr. Wintlebury* came in, with whom she had lived Servant: He took her by the Hand, and asked, where she had been? she said, on the *Hertfordshire* Road: He said, *Bet*, how do you know that? she said, Because I have seen my Mistrefs's Coachman go by, knowing them to go to *Hertfordshire*; she said, she knew it, for she used to carry Things to the Coach, and fetch them back again. Then she was asked, if she was asked any Questions that Night about the Room or Jug? she said, she had told them there was a Jug not quite full: That they asked her, how much? she said, better than a Gallon. She was asked, how she got out of the

Window? then gave an Account how she tore her Ear in getting out.

Upon her Cross-Examination; she gave an Account, that the two Men were with her about Half an Hour in *Moorfields*, and that no body else was by, and there was a Box taken out of her Pocket: Then she gave an Account, that she had a Handkerchief, which she did not lose. She was asked, if there was any Light near the Place where she was first attacked? she said, there was a Lamp. She was asked, how long it was before she came to herself? she could not be sure, but she came to herself Half an Hour before she came to the House of *Wells*. She was then asked, if she had any Degree of Sense? she said as before, she had none, only about Half an Hour before she got to *Mrs. Wells's* House: Then she was asked the Question again, to which she answered as before. Then she was asked, if she had Sense enough of any Sort to know by what Means she was conducted there? she said, she thought they dragged her along by the Petticoats, for they were dirty. Then she gave an Account, that she was in a great Surprize and all of a Tremble, and the Terror made her sensible. Then she gave an Account, that the two Men stayed there no longer than till they saw her Stays cut off; then they went away, before she was put in the Hay-loft. She said, she did not attempt to get out of the Hay-loft till *Monday*: She was asked, why she did not? she said, she thought they might let her out, and that it never came into her Head till that Morning: Then she was asked, where she was sitting, when she

E. Canning. No, no body at all; then I went on the Backside the House up a Lane, and crossed a little Brook, and over two Fields, as I think, but I did not take Notice how many Fields; the Path-way brought me by the Road-side. Then I went by the Road straight to *London*.

Q. Did you know the Way?

E. Canning. I did not.

Q. Did you call at any House?

E. Canning. No, I did not. It struck Ten o'Clock just as I came over *Moorfields*. I got Home about a Quarter after to my Mother's House in *Aldermanbury*.

Q. Did you acquaint any body with your Misfortune coming along?

E. Canning. No, I did not.

Q. Who did you meet with first?

E. Canning. I met with the Apprentice first; then I saw my Mother and the Children. She went into a Fit directly.

Q. Did you give an Account to any body how you had been treated?

E. Canning. Yes, I did to *Mrs. Woodward*, who came to see me, that I had lived on Bread and Water. She was so affrighted, she could not ask me many Questions then; then *Mr. Wintlebury* came in, with whom I lived Servant before I went to live with *Mr. Lyon*; he took me by my Hand, and asked me where I had been; I said, Sir, in *Hertfordshire* Road; he said, *Bet*, how do you know that? I said, Because I saw my Mistrefs's Coachman go by, which she used to go into the Country into *Hertfordshire*, that was *Mrs. Wintlebury*; I knew the Coach, because I used to carry Things to it, and fetch them back again.

Q. Was you asked any Questions about the

Room or Jug that Night, and what you had to subsist on?

E. Canning. Yes, there were many People came in, and I told them I had a Jug which was not quite full of Water; they asked me, how much? and I said, I believed better than a Gallon of it: They asked me also, how I got out? and I said, I broke out of the Window, and hard torn my Ear in getting out, which bled all the Way coming Home.

Q. What Things did you observe in this Hay-loft?

E. Canning. There was a Barrel, a Saddle, a Bafon, and a Tobacco-mould.

Q. What do you mean by a Tobacco-mould?

E. Canning. I mean such a Thing that they do up Pennyworths of Tobacco with.

Cross-Examination.

Q. How long might these two Men continue with you in *Moorfields*?

E. Canning. About Half an Hour.

Q. Did any body pass by at the Time?

E. Canning. No body at all.

Q. Was this Box, that contained your Half Guinea, taken out of your Pocket?

E. Canning. Yes, Sir, it was.

Q. Had you any thing else in your Pocket?

E. Canning. I had a Pocket-handkerchief with a Pye in it, which I did not lose.

Q. Was there any Light near this Place where you was first attacked?

E. Canning. There was a Lamp.

Q. Have you recollected how long you lay in this Fit before you came to yourself?

E. Canning.

she saw somebody peeping through the Door? she said, she was walking along the Room: She said, there were four or five Steps up, and that she did not in all the Time perceive where she was, till about a Week after she was there, and that was by looking out of the Window and seeing the Coach. She was asked, if she was not extremely weak? she said, she was; her Words were, *I was pretty weak*. Then she was asked, whether she was that Way before? she said, she was not. She gives an Account of passing by many Houses, and asking the Way of the People on the Road. Then she was asked, why she did not go into any House? she said, she thought she might meet somebody belonging to that House, that might know her and take her back again. Then she was asked over again, the first Time of her making the Discovery: She said, it was in her Mother's House; and then she gave an Account where her Mother's House is, the Corner of *Aldermanbury*. Then she gives an Account to Questions asked before, whether she saw Mrs. *Wells* at the Time she was there? she then said, she saw her afterwards when she went down to the House. She was asked again about it, whether she is certain to the Prisoner *Squires*? and she says, she is sure she is the Person who cut her Stays off, and she was sitting in a Gown and a white Handkerchief about her Head. She was asked, during her whole Confinement, whether she tried to see if the Door was fast? she said, she had pushed against it, and found it fast. She was asked, whether she heard any Noise in the Kitchen? she said, she heard People blowing the Fire, and passing in and out;

and there was another Room she heard a Noise in of Nights, but that it was very quiet of Days, being a House of Entertainment in the Night. She said, that she eat all her Bread on the *Friday* before she got out. Then she was asked, how she eat it? she said, it was quite hard, that she was forced to soak it in the Water, and that she drank all her Water about Half an Hour before she got out. Then she was asked, where she did her Occasions? she said, she had never a Stool during the Time she was there, only made Water.

Mr. *Davy*. Was the Apprentice she says she saw first, examined as a Witness on that Trial?

Gurney. No.

Cross-examined.

Mr. *Moreton*. Were Mr. *Nash*, Mr. *Hague*, and Mr. *Aldridge*, examined as Witnesses?

Gurney. They were not.

Esther Hopkins sworn.

I live in *Dorsetshire*, at *South-Parrot*.

Mr. *Willes*. How far is that from *Abbotsbury*?

Esther Hopkins. I don't know, it is the lowest Part of *Dorsetshire*; it is about a Mile from *Winyard's Gap*. I keep a House of Entertainment for Travellers of all Sorts.

Mr. *Willes*. Look at that old Woman sitting there; do you know her?

E. Hopkins. I really believe in my Conscience, this is the old Woman that was at my House on the 29th of *December 1752*, with her Son. I remember the Son particularly well: They lodged there one Night, and went away the next Morning.

Mr.

E. Canning. I cannot be sure, but it was about Half an Hour before I arrived in *Wells's* House.

Q. During the Time of your first being attacked, whether you had any Degree of Sense at all?

E. Canning. Not till Half an Hour before I came to that House.

Q. Had you Sense enough of any Sort to know by what Means you was conducted?

E. Canning. I think they dragged me along by my Petticoats, they were made so dirty; but I was not sensible.

Q. Was you in any Surprise when she took your Stays?

E. Canning. I was in a great Surprise, and all of a Tremble.

Q. Then how can you tell who was there at the Time?

E. Canning. The Terror made me look about me to see what Company was there.

Q. How long did the two Men stay in the Room?

E. Canning. They stayed no longer than till they saw my Stays cut off, then they went away, before I was put up in the Loft.

Q. Did not you make an Attempt to get out before that *Monday* you talk on?

E. Canning. I did not.

Q. How came you not to make an Attempt before?

E. Canning. Because I thought they might let me out; it never came into my Head till that Morning.

Q. Where was you sitting, when you saw somebody peep through the Crack of the Door?

E. Canning. I was walking along the Room.

Q. How wide was this Crack?

E. Canning. It was about a Quarter of an Inch wide.

Q. Did not you, in the whole twenty-seven Days, perceive where you was?

E. Canning. I did in about a Week after, by seeing the Coach go by.

Q. Was not you extreme weak?

E. Canning. I was pretty weak.

Q. Was you ever that Way before?

E. Canning. No, I never was.

Q. Did not you pass many Houses in your Way Home?

E. Canning. I did, and asked my Way of People on the Road.

Q. How came you, being in that deplorable Condition, not to go into some House, and relate the Hardships you had gone through?

E. Canning. I thought, if I did, may be I might meet somebody belonging to that House.

Q. Did you see the Prisoner (*Wells*) while you was in that Confinement?

E. Canning. I never saw her in the House at all till I went down afterwards.

Q. Had you any of your Fits while in that Room?

E. Canning. I had not, but was fainting and sick. *Squires*. I never saw that Witness in my Lifetime till this Day three Weeks.

Q. How was the Prisoner (*Squires*) dressed, when you was carried in?

E. Canning. She was sitting in her Gown with a Handkerchief about her Head.

Q. Did you never, during all the Time, try if the Door was fastened or not?

E. Canning.

Mr. *Willes*. Do you remember what Day of the Week it was?

E. Hopkins. I cannot say that I can.

Mr. *Willes*. How do you remember the Day of the Month?

E. Hopkins. Because there were several Gentlemen there in Company at that Time, and two of them left the Reckoning to pay, and I put down the Day of the Month, and I keep my Book by the Almanack.

Mr. *Willes*. Do you remember any Thing of her Daughter being there?

E. Hopkins. I don't remember whether it was the Daughter or not; I remember the old Woman; I think I never saw a Woman more particular in my Life; she told me the young Woman was her Daughter, and the other was her Son.

Mr. *Willes*. Did they tell you where they were going next Morning?

E. Hopkins. No, they did not.

Mr. *Willes*. Look at the young Man and young Woman behind her; do you know them, or either of them?

E. Hopkins. That is the Man (*pointing to George Squires*) to the best of my Knowledge.

Cross-examined.

Mr. *Moreton*. I think you did not seem to speak positively to the old Woman.

E. Hopkins. I never saw a Woman more like her in all the Days of my Life, and I really believe she is the Woman.

Mr. *Moreton*. Have you not many Passengers lie at your House?

E. Hopkins. Some or other lie at my House every Night.

Mr. *Moreton*. What was her Business? did she sell any Thing?

E. Hopkins. I asked them, what they sold? they told me, Hard-ware.

Mr. *Moreton*. Did they sell any Thing in your House?

E. Hopkins. No.

Mr. *Moreton*. Did you see any Thing they had to sell?

E. Hopkins. The Man carried a Bundle or Bag; not very large, under his Arm.

Mr. *Moreton*. Had they a Horse?

E. Hopkins. I suppose they had not.

Mr. *Moreton*. Had you ever seen the old Woman before?

E. Hopkins. No, I had not.

Alice Farnham *sworn*.

I live at *Winyard's Gap*; it is a Mile South from *South-Parrot*, in the lower Part of *Dorsetshire*, and about ten from *Abbotsbury*; it lies between them.

Mr. *Gascoyne*. How far is it from *Litton*?

A. Farnham. I don't justly know, I believe it is about ten or eleven Miles.

Mr. *Gascoyne*. Look at that old Woman; do you know her?

A. Farnham. I remember I saw her once on a Saturday Morning, between Eight and Nine o'Clock, a little after *New Christmas 1752*: She came in at my House for Refreshment: I keep a Public House: I took particular Notice of her, and

E. Canning. I did once push against it with my Hand, and found it fast.

Q. Had you used to hear any body in the Kitchen?

E. Canning. I heard People sometimes blowing the Fire, and passing in and out. There was another Room in which I heard a Noise at Nights, but the House was very quiet in the Day-time.

Q. Did you eat all your Bread?

E. Canning. I eat it all on the *Friday* before I got out; it was quite hard, and I used to soak it in the Water.

Q. When did you drink all your Water?

E. Canning. I drank all that about Half an Hour before I got out of the Room.

(*Upon being asked, where she did her Occasions while in the Room, she answered, she never had had any Stool while in Confinement, she had only made Water.*)

Virtue Hall. I know the two Prisoners at the Bar; *Wells* lived at *Enfield-Wash*; I went and lived there as a Lodger. *Mary Squires* lived in the House, and had been there about seven or eight Weeks.

Q. How long before *E. Canning* was brought in?

V. Hall. About a Fortnight before, which was on the 2d of *January*, about Four in the Morning; she was brought in there by two Men; *John Squires* was one of them; he is Son to *Mary Squires*; the other Man I don't know any thing of; I never saw him before.

Q. How was she dressed when brought in?

V. Hall. She had no Gown on, or Hat or Apron.

Q. Who was in the House at the Time?

V. Hall. There was I and *Mary Squires*, the Prisoner and her Daughter. The Gypsey Man said, Mother, I have brought you a Girl, do you take her: Then she asked *E. Canning*, whether she would go her Way.

Q. What did she mean by that?

V. Hall. She meant for her to turn Whore, but she would not.

Q. Do you mention this by way of Explanation, or as Words that she said?

V. Hall. As Words that she said; then *Mary Squires* took a Knife out of a Dresser-drawer in the Kitchen, and ripped the Lace of her Stays, and pulled them off, and hung them on the Back of a Chair in the Kitchen, and pushed her up into the Room, and said, D—n you, go up there then, if you please; then the Man that came in with the Gypsey's Son, took the Cap off *E. Canning's* Head, and went out a doors with it; the Gypsey Man *John Squires* took the Stays off the Chair, and went out with them.

Q. Where was *E. Canning*, when the two Men took away the Things?

V. Hall. She was then up in the Room.

Q. Had you ever been in that Room?

V. Hall. I had, before she was brought there, several Times.

Q. What was the Name they call it by?

V. Hall. They call it by the Name of the Workshop; there was a great deal of Hay in it; they only put Lumber in it; there was a great many Pieces of Wood, a Tobacco-mould, and this black Jug; about three Hours after the young Woman was put up, *Mary Squires* filled the Jug with Water, and carried it up.

Q. How

and compared her to a Picture that I had in the Room of old Mother *Sbipton*; there was a young Man and Woman with her.

Mr. *Gascoyne*. Look at that Man.

A. *Farnbam*. I see him; I know him perfectly well; it is her Son.

Mr. *Gascoyne*. Look at the young Woman near him.

A. *Farnbam*. I think, to my Knowledge, she is the same Person; they stayed with me almost an Hour that Morning; I never saw them before or since; they had one Quart of Beer and some Bread and Cheese; and told me they would come to see me again in Old *Christmas* Holidays; they asked me how far it was to *Litton*, and went up the Road, all three of them together, towards it; I am certain I know the old Woman and her Son.

Mr. *Gascoyne*. How far is *Litton* from your House?

A. *Farnbam*. It is ten or eleven Miles.

Mr. *Gascoyne*. Had you seen them before they came to your House?

A. *Farnbam*. I was coming out of *South-Parrot* on the *Friday* Night, and met them as they were going in, and the next Morning they came to my House; I told my Mother, as we were laughing and talking, that I had met three Gypsies, and she asked me, if I was not affrighted.

Mr. *Gascoyne*. How do you know that this was before Old *Christmas*?

A. *Farnbam*. My Mother was a brewing, and I went and asked her, if she would let me go to *Crookborne* Market, which is on a *Saturday*: She

told me, she could not spare me, and said it would be rare enough to go on *Monday* to buy some Things against Old *Christmas*; and this was just as those People went out at the Door.

Cross-examined.

Mr. *Nares*. When was the first Time you saw them?

A. *Farnbam*. It was on the *Friday* Night.

Mr. *Nares*. Do you know where they lay that Night?

A. *Farnbam*. No, I cannot tell; when they came into my House, they asked me, how far it was from *South-Parrot*, and I said, one Mile.

Mr. *Nares*. What Sign is yours, you keep?

A. *Farnbam*. I keep the Sign of the *Three Horse-shoes*; it is a Public House.

Mr. *Nares*. What made you think they were Gypsies?

A. *Farnbam*. Because they were all three together; one had a little Bag in his Hand, not a large one nor a small one; it was about as much as I could carry under my Arm; it was a little Fardle.

Mr. *Nares*. Which had that?

A. *Farnbam*. To the best of my Knowledge, the Man had the Bag.

Mr. *Nares*. How was this old Woman dressed?

A. *Farnbam*. She had a sort of a drab-coloured Cloak on, and a sort of a Serge Gown.

Mr. *Nares*. Was it whole or ragged?

A. *Farnbam*. It was not Rags.

Mr. *Nares*. How was the Daughter dressed?

A. *Farnbam*. She had a white Gown on and a red

Q. How do you know it was three Hours after?

V. *Hall*. Then it began to be lightish.

Q. Did you hear any Talk between them after she was in the Room?

V. *Hall*. They took Care I should know but little.

Q. Has *Susannah Wells* a Husband?

V. *Hall*. No, she has not: When I went out of the Kitchen, I went into the Parlour; *Wells* said, *Virtue Hall*, the Gypsies came in and told me, that his Mother had cut the Stays off the young Woman's Back, and he had got them; and she bid me not to say any thing to make a Clack of it, fearing it should be known.

Q. How long was you in that House?

V. *Hall*. I was there a Quarter of a Year in all, if not more; I was there the whole Time *E. Canning* was there; but I never saw her once after she was put up into that Room. I was the first that missed her; I asked the Gypsies Woman once, whether that Girl was gone? She answered, What is that to you, you have no Business with it: But I durst not go to see if she was gone; if I had, very likely they would have served me so.

Q. Did you ever see the other Man after that Night?

V. *Hall*. No, I never did.

Q. Who lodged in the House at the Time besides?

V. *Hall*. There was *Fortune Natus* did.

Q. Did *Mary Squires* continue in the House long after this?

V. *Hall*. She did, till we were all taken up, which was I think on the *Thursday* after the young Woman was gone.

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Q. What was you in that House?

V. *Hall*. I went there as a Lodger, but I was forced to do as they would have me.

Q. from *Mary Squires*. What Day was it that the young Woman was robbed?

Court. She says on the Morning of the 2d of *January*.

M. *Squires*. I return Thanks for telling me, for I am as innocent as the Child unborn.

Q. from *Wells*. How long were these People (meaning the Gypsies) at my House in all, from first to last?

V. *Hall*. They were there six or seven Weeks in all; they had been there about a Fortnight before the young Woman was brought in.

Q. Did you ever see this Cap or Bed-gown before?

V. *Hall*. Not to my Knowledge.

Thomas Colley. I am *E. Canning's* Uncle; I live at *Salt-Petre Bank*; on the New-year's Day she dined and supped at my House, and went away about Nine in the Evening, as near as I can guess; I and my Wife went along with her to *Houndsditch*, almost to the *Blue-Ball*; there we parted with her, about a Quarter or very near Half an Hour after Nine o'Clock.

Q. How was she cloathed?

Colley. She had a Gown, Hat, and white Apron on.

Elizabeth Canning. *E. Canning* that has given her Evidence is my Daughter; after she was missing from New-year's Day, I advertised her three Times; she came back on the Day before

red Cloak; it was a sort of a Holland Gown; very clean and neat.

Mr. Nares. Then she did not look like a Traveller or Gypsy by her Dress?

A. Farnham. No, she did not.

Mr. Nares. Did you inquire of them, what Business they were of?

A. Farnham. No, I did not inquire that; they asked me for one Mug of Beer, and I drew it them; they stayed almost an Hour.

Mr. Nares. Was you with them all the Time they stayed?

A. Farnham. Yes; I was.

Mr. Nares. Look at them, and tell us from the Dress they are in now, and the Dress they were in then, whether you are certain they are the same Persons?

A. Farnham. To the best of my Knowledge, they are the same Persons.

Mr. Moreton. I think it is opened that the young Man and young Woman (*meaning George and Lucy Squires*) are to be examined; if so, they ought not to be in Court to hear the other Witnesses examined.

Mr. Davy. Then I'll either call them next; or not at all, which you chuse.

Mr. Moreton. Then call them next.

Mr. Nares. Did they make the same Appearance they do now, or a different one?

A. Farnham. They were very well dressed, as they are now; they were clean and fitty.

Mr. Nares. Did the old Woman appear to be as weak as she is now?

A. Farnham. She was very unhealthy, seemingly coming up against the Hill.

Mr. Nares. Could she walk without Assistance?

A. Farnham. She did not hold by them, they walked before her.

Mr. Nares. Can you take upon you to swear to the Identity of her Person?

A. Farnham. I do think she is; I took a true Observation of her; she had a great Nose and Lips.

Mr. Nares. Did you take Observation of her Daughter?

A. Farnham. I did; she seem'd to be a very clean Sort of a Body, and of a black Complexion.

Mr. Nares. What did you think them to be?

A. Farnham. I took them to be Travellers; I did not know whether they sold any Thing for a Livelihood; they offered me nothing, and I asked them for nothing; they paid for what they had.

Mr. Davy. Lucy must go out while George is examined. (*She goes out of the Court.*)

George Squires sworn.

Mr. Davy. What Relation is that old Woman to you?

G. Squires. My own Mother, and the young Woman that is turned out is my Sister Lucy.

Mr. Davy. Where was you on the Christmas before your Mother was taken up?

G. Squires. Really I cannot tell you.

Mr. Davy. Was you ever in Devonshire?

G. Squires. I am not acquainted there; I was in Somersetshire in Queen-Canneal.

Mr. Davy. Was you ever in South-Parrot?

G. Squires. I was.

Mr. Davy. Can you remember the Time?

G. Squires. I came there on a Friday Night.

Mr.

King Charles's Martyrdom, about a Quarter after Ten o'Clock at Night; she had nothing but this ragged Bed-gown and a Cap; I fell into a Fit directly; my Daughter is subject to Fits; there was a Garret Ceiling fell in upon her Head, which first occasioned them; and at times, when any body speaks hastily to her, or at any Surprize, she is very liable to fall in one; she has sometimes continued in one seven or eight Hours, sometimes three or four; she is not sensible during the Time she is in one, no more than a new-born Babe; when I came to myself, my Daughter was talking to Mrs. Woodward and Mr. Wintlebury; they asked her, where she had been? she said, on the Hertfordshire Road, which she knew by seeing a Coach going by; she gave the same Account she has here. When she came into her warm Bed, she was very sick, and had no free Passage through her for Stool or Urine, till she was supply'd with Glysters, for seven Days after she came Home, but what was forced by half a Cup-full at a Time.

John Wintlebury. I saw Elizabeth Canning the Night she came Home; she appeared in a very bad Condition, and had this dirty Bed-gown and Cap on. Hearing she was come Home, I went to her Mother's House, and said, Bet, how do you do? She said, I am very bad. Said I, Where have you been? She said, I have been somewhere on the Hertfordshire Road, because I have seen the Hertfordshire Coach go backwards and forwards.

Q. Have you heard the Evidence she has given here in Court?

Wintlebury. I have; she gave the same Account that Night, but not quite so fully that Night, as she did before the Sitting Alderman on the Wednesday after; but all agrees with what she has said here. I found her in a great Flurry, so did not ask her many Questions that Night.

Joseph Adamson. I have known Elizabeth Canning the younger some Years. I never saw her after she came Home, till the Day we went down to take the People up. I, and several Neighbours of us, agreed to go to the Place, some on Horseback, and some in the Coach with E. Canning. I was down about an Hour, or an Hour and half, before the Coach came, and had secured all the People we found there. I seeing the Room before she was brought in, thought she was capable of giving some Account of it: I returned to meet her, and asked her about it; she described the Room with some Hay in it, a Chimney-place in the Corner of it, an odd Sort of an empty Room. I went with her to the House, and carried her out of the Chaise into the Kitchen, and set her on the Dresser, and ordered all the People to be brought to her, to see if she knew any of them; she was then very weak. I took her in my Arms like a Child. Upon seeing Mary Squires, she said, That is the Woman that cut my Stays off, and threatened to cut my Throat if I made a Noise.

Q. Did any of the People seem unwilling to be inspected?

Adamson. Yes, they were very unwilling to be stopped, when we went down in the Morning, particularly Mary Squires; after the Girl had said this

Mr. Davy. What Day of the Month was it?

G. Squires. It was on the 29th of December; my Mother and Sister *Lucy* were there with me.

Mr. Davy. What makes you certain as to the Time?

G. Squires. It was after New Christmas, that made me take an Account of it.

Mr. Davy. At whose House was you?

G. Squires. I put up at the Sign of the *Red Lion*, to the best of my Knowledge; her Name is *Hopkins*; I have been there since, we stayed there but one Night.

Mr. Davy. From whence did you come to that Place?

G. Squires. We came from it by *Yeovil*.

Mr. Davy. What was the last Village you came from, when you came to *South-Parrot*?

G. Squires. I can't recollect it.

Mr. Davy. Where did you lie the Night before you came to *South-Parrot*?

G. Squires. I cannot tell the Place's Name.

Mr. Davy. How long had your Mother, Sister, and you been travelling together?

G. Squires. I came from Home at *Newington-Butts* in *Southwark*, and I went from thence, as near as I can guess, about seven or eight Weeks before *Michaelmas*.

Mr. Davy. Can't you recollect the Place you lay at before you came to *South-Parrot*?

G. Squires. It was a pretty large Village.

Mr. Davy. How many Miles had you travelled that Day?

G. Squires. We had travelled about seven or eight Miles.

Mr. Davy. Where did you go the next Day, that is the *Saturday*?

G. Squires. I went to *Litton*.

Mr. Davy. Is not there a Town between *South-Parrot* and *Litton*?

G. Squires. There is *Winyard's Gap*.

Mr. Davy. How far is *South-Parrot* from *Litton*?

G. Squires. It is ten or twelve Miles, to the best of my Knowledge; I lay at *Litton* on the *Saturday*, and left my Sister and Mother there on the *Sunday* Morning, and went to *Abbotsbury*.

Mr. Davy. What Day of the Month was the *Sunday*?

G. Squires. It was the 31st Day of the Month; my Mother stayed there one Night after me; Mr. *Clarke* had then a good Regard for my Sister *Lucy*; he was a Sweetheart of hers, and she of his; I went to him at *Abbotsbury*, and lay at *Gibbons's* House one Night; then in the Morning, which was on a *Monday* the 1st of *January*, *Clarke* and I went to *Litton*; there we dined upon two Fowls, which I bought: My Mother was surpris'd at my staying all Night at *Abbotsbury*, and she went in pretence to see what was the Matter with me, thinking I was sick; there she heard I was gone with *Clarke* to *Litton*, and she came back again to *Litton* before we had dined.

Mr. Davy. How far is *Litton* from *Abbotsbury*?

G. Squires. It is three or four Miles.

Mr. Davy. Who walked with your Mother to *Abbotsbury*?

G. Squires. No body, that I know of; after Dinner, my Mother, Sister, *Clarke*, and I walked to

this of *Squires*, *Squires* said to her, she hoped she would not swear her Life away, for she never saw her before: *E. Canning* pointed to *Virtue Hall*, and said, That young Woman was in the Kitchen, when I was brought in: She pointed also to another young Woman, and said, she was there at the Time. Then we carried her up to examine the House; she said, none of the Rooms she had seen, was the Room in which she was confined: Then I asked if there were any other Rooms; they said, Yes, out of the Kitchen, (I had before been in it, but did not say so then, because I had a mind to see if she knew it.) We had her up into it: She said, This is the same Room in which I was, but here is more Hay in it than there was then: I laid my Hand upon it, and said, It has lately been shook up, it lay hollow. She was then pretty near a Casement; said I, If you have been so long in this Room, doubtless you are able to say what is to be seen out here. She described a Hill at a Distance, which is *Chinkford Hill*: I believe she could not see it at the Time she spoke about it, for I was between her and the Casement, with my Back towards the Casement. She also said there were some Houses on the other Side the Lane; then I opened the Casement, we looked, and it was as she had described. I asked, where was the Window she broke out of? she shewed it us, (there were some Boards nailed up against it,) and said, That is the Window I used to see the Coach go by at: Then we pulled down the Board; it was big enough for me to have got out of it; it appeared to me to be the same Window, before she came to the House, for I saw some of the

Plaster broke off on the Outside; that Window was one Story high.

Edward Lyon. The young Woman lived Servant with me till she was missing. I live in *Aldermanbury*. I was one of the Persons, that went down to *Wells's* House. I went after the rest of the Gentlemen on the 1st of *February*; we were there some time before she came, and had taken the People up; when she came, she was carried into the Kitchen, and set on a Dresser, and the People set all round her! I said to her, *Bet*, don't be frightened or uneasy, you see your Friends about you, and on the other hand don't be too sure, without you really can swear to what you say, therefore be very careful: She pitched upon *Mary Squires* to be the Person that cut her Stays off; she pitched upon a young Woman that was said to be Daughter to *Mary Squires*, and said, she was in the Kitchen at the Time, and likewise *Virtue Hall*, but said they did nothing to her. This black Jug was brought down, a Bason, and the Tobacco-mould: She said, they were both in the Room where she was confined; she had described this Jug before, and said it was broken at the Mouth, as it now appears to be.

Robert Scarrat. I went down to *Enfield-Wash*; there were six of us in all: Her Mother and two Women were with her in the Chaise; she described the Fields, and likewise a Bridge, that Night she came Home, near the House; I asked her, if she perceived a Tanner's House near? she said, she believed there was.

to *Abbotsbury*, and we danced there that Night in Mr. *Gibbons's* Parlour; he keeps the Sign of the *Ship*.

Mr. *Davy*. What Company had you there?

G. *Squires*. There were a great many of my Acquaintance; I can't call them all to Mind; there was Mr. *Wallace* a Shop-keeper, and Mr. *Bond* a School-master, he got fuddled that Night; Mr. *Wallace* generally drinks Cyder, he came in for a Penny Pot of Cyder.

Mr. *Davy*. Who was your Partner?

G. *Squires*. I danced with *Gibbons's* Sister, and Mr. *Clarke* with my Sister *Lucy*; I can't mention all the Company, it is impossible; we danced Country Dances till about Eleven or Twelve at Night; we danced several Nights there after the first Night.

Mr. *Davy*. Had you ever been at *Abbotsbury* before?

G. *Squires*. Yes, I had several Times; and know several People in the Town.

Mr. *Davy*. How long did you continue at *Abbotsbury*?

G. *Squires*. We came there on the 1st of *January*, and went away on the 9th.

Mr. *Davy*. Did your Mother stay with you there all the Time?

G. *Squires*. She did; and when we went away, Mr. *Clarke* went with us to a little Village they called *Portersham*, about a Mile or a Mile and Half from thence; this was on a *Tuesday*.

Mr. *Davy*. Do you remember one *Andrew Wake*, an Exciseman, at *Abbotsbury*?

G. *Squires*. I do; he borrowed a great Coat of

me one Day in order to survey in it, being a very wet Day.

Mr. *Davy*. What Day was that?

G. *Squires*. I cannot take upon me to say that; it was one Day while we were there.

Mr. *Davy*. What House did you go to at *Portersham*?

G. *Squires*. To the best of my Knowledge, it was the *Chequer*, an Ale-house; it is on the left Hand going down the Village; we lay there, Mr. *Clarke* lay with me, and we all went the next Day to *Ridgway*, which was *Wednesday* the 10th, which is about five or six Miles from *Abbotsbury*; we breakfasted there the next Morning, and, to the best of my Knowledge, went from thence about Eight or Nine o'Clock.

Mr. *Davy*. At what House did you lie at *Ridgway*?

G. *Squires*. At the House of Mr. *Bewley*, the Sign of the *Ship*; his Son, and he, and a Maid-servant, keep the House.

Mr. *Davy*. Did any Thing happen remarkable at *Ridgway* while you was there?

G. *Squires*. There was a dead Horse, and a Man skinning him as we came by; and I left a Piece of Nankeen, about three Yards and a Quarter, for my Reckoning with my Landlord. I was afraid that Silver would fall short; so I went to his Bed-side, and told him I was afraid Money would fall short before I came Home, and desired he would take that till I fetched it. My Mother, Sister, and I went from *Ridgway* to *Dorchester* on *Thursday* the 11th, which is about three Miles Distance; we did not lie there, but went forward almost

Q. Have you heard the other Evidences that went down give their Evidence?

Scarrat. I have, and what they have said is the Truth, which I heard also; I also heard *E. Canning* examined before the Sitting Alderman, she gave the same Account she has done here.

Q. Was *John Squires* in the Room at the Time she pitched upon his Mother and the rest?

Scarrat. He was; she said she could not swear to him; he had his great Coat on at our first going there, but he had pulled it off; she said, he looked like the Person, but she could not swear to him; they made him put his great Coat on before the Justice; then she said, he looked more like one of the two Men that brought her there.

Edward Rossiter. I went down with the rest on the *Thursday*. I heard *E. Canning* examined before Mr. *Tasemaker* the Justice; she gave the same Account then as now; she said, *John Squires* was much like one of the Men, when he had got his great Coat on; she said, she did not see *Wells* in the House, but she once saw her out at a Window, but did not know she was the Woman that belonged to the House.

Sutherton Bakler. I am an Apothecary; I saw *E. Canning*, the Day after she came Home, on the 30th of *January* about Noon; she was extremely low and weak; I could scarcely hear her speak, her Voice was so low, and her Pulse scarcely to be felt, with cold Sweats; she told me she had no Passage during the whole Time of her Confinement; she was then in such a Condition, she had

a Glyster administered the same Day; she had many Glysters given her, which after some Time relieved her.

Q. Whether a Person that is extremely costive cannot subsist longer without Food, or with less Food, than a Person that is not so?

Bakler. I cannot answer to that. (*Each of the Persons that said they went down to take the Prisoners, were asked where they went to, and answered, to Enfield-Wash, the House of the Prisoner Wells.*)

Mary Squires said nothing in her Defence, but called the following Witnesses.

John Gibbons. I live at *Abbotsbury*, six Miles from *Dorchester*; I am Master of the House called the *Old Ship*; on the 1st of *January*, 1753, the Prisoner *Squires* came into the House; there was *George* her Son, and *Lucy* her Daughter with her, as she called them; she came with Handkerchiefs, Lawns, Muslins, and Checks, to sell about Town; she stayed there from the 1st to the 9th Day of the Month, and lay at my House.

Q. How long have you kept that House?

Gibbons. I have kept it two Years, come *Lady's* Day.

Q. Look at the Woman, are you sure that is her?

Gibbons. He looks at *Squires*, and says; I am sure it is.

Cross-Examination.

Q. How long have you known her?

Gibbons. I have known her three Years, and have seen her there three Years ago.

Q. How

almost all Night; for we had received a Letter from my Sister *Mary*, who was at *London*, that she was extremely ill, and desired us to come Home as soon as possible; there was a very great Water out at *Dorchester*, and the Miller's Man carried my Sister *Lucy* over it on Horseback, behind him; for which I told him I'd give him a Pint of Beer; and I took my Mother, and carried her on my Back through the Water; there is a Mill just by the Place; my Sister stayed till we came to her, then we all three walked on together.

Mr. *Davy*. Where did you stop?

G. *Squires*. The next Day we got to a Place called *Tawney-Down*, and we went into a little Ale-house on the Road, and had some Bread and Cheese, and a Pint of Beer: We lay at a Place called *Chettle* that Night, which was the *Friday*.

Mr. *Davy*. How many Miles is *Chettle* from *Dorchester*?

G. *Squires*. I cannot tell, because we went through *Blandford*.

Mr. *Davy*. What Time did you get to *Chettle* on the *Friday*?

G. *Squires*. We got there in the Evening; my Mother was very weary, and I asked a Shepherd on the Downs for an Ale-house, and he said there was never a one to *Chettle*: On the *Saturday* we went from thence to *Martin*; there I asked at an Ale-house for Lodging, and could get none; so a Gentleman let us lie in his Barn.

Mr. *Davy*. Do you know his Name?

G. *Squires*. I do not recollect it.

Mr. *Davy*. Was it Farmer *Thanes*?

G. *Squires*. It was; we lay there; my Mother and Sister were with me, we never were a Minute from each other all the Time to *London*.

Mr. *Davy*. Where did you go when you went from *Martin*?

G. *Squires*. We went from thence to *Coombe* on the *Sunday* Night, to the House of Widow *Greville*; her Son *Thomas Greville* is dead of the Small-pox.

Mr. *Davy*. When did you leave *Coombe*?

G. *Squires*. We left that on the *Monday*, but can't recollect where we lay.

Mr. *Davy*. Where did you lie on the 15th?

G. *Squires*. I cannot tell; I went to *Basingstoke* on the *Tuesday*, I think.

Mr. *Davy*. Recollect again.

G. *Squires*. I cannot recollect it.

Mr. *Davy*. How many Places did you lie at, or how many Days were you in going from *Coombe* to *Basingstoke*?

G. *Squires*. I cannot tell.

Mr. *Davy*. What Day of the Week did you get to *Basingstoke*?

G. *Squires*. I cannot tell: We travelled about ten Miles a Day.

Mr. *Davy*. Where did you put up at *Basingstoke*?

G. *Squires*. At the *Spread-Eagle*; a Widow Woman keeps it; she wrote a Letter for my Sister *Lucy* to Mr. *Clarke*; Mr. *Clarke* and we had parted a long Time, and he desired *Lucy* to send a Letter to him.

Mr. *Davy*. Where did *Clarke* and you part?

G. *Squires*. We parted at *Ridgway*.

Mr. *Davy*. What is the Landlady's Name who wrote this Letter?

G. *Squires*. I don't know her Name; the Letter was sent to the Post-Office at *Dorchester*, directed to Mr. *William Clarke* at *Abbotsbury*; we did not lie at the *Spread-Eagle*, we could not have Lodging there; but she directed us about a Mile or Mile and Half farther on our Way to *London*.

Mr. *Davy*. What is the Name of the Place you lay at?

G. *Squires*. It is called *Old Basing*, it is a little out of the Way.

Mr.

Q. How long have you lived there?

Gibbons. I was born at that Town; I am a married Man, have a Wife and one Child; I was bred in the Farming Way at *Fisherton*.

Q. By what do you recollect the Day?

Gibbons. There came an Exciseman to officiate there for one *John Ward* that was sick, and I put the Day of the Month down, when he came; the Excise-Office is kept at my House; the Man that came was *Andrew Wicks*, or *Wick*.

Q. Did you see the Prisoner sell any of these Goods you mentioned?

Gibbons. No, I did not; they offered them to sell to me, and others; my Wife bought two check Aprons.

William Clarke. I live at *Abbotsbury*, and have for seven Years; I remember seeing the Gypsey there; the last Time I saw her was on the 10th of *January* last; I met with them on the Road; we went some Way together; we parted at *Crude-way-foot*, four Miles from *Abbotsbury*, and three from *Dorchester*.

Q. Where were they going?

Clarke. I cannot tell that.

Q. Had you ever seen her before?

Clarke. I saw her, and her Son and Daughter, three Years ago come *March*, at *Abbotsbury*; they came with Handkerchiefs, Lawns, and Muslins to sell; I saw the Landlord's Wife at the *Ship* buy some Aprons of them the last Time they were there.

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Cross-Examination.

Q. How came you to take particular Notice of the Day?

Clarke. By keeping my other Accounts; I carried Goods out with me the same Day to *Portersham*.

Q. Have you your Book with you?

Clarke. No, I have not; but I can't forget the Day, because I don't go so often.

Q. Which Way were they going?

Clarke. They were making for *London*, they talked so.

Q. Did they give you any Account to what Place they were bound next?

Clarke. They did not; they lodged at this Man's House (pointing to Gibbons) at *Abbotsbury*.

Q. Did you see them there?

Clarke. I did, on the 1st of *January*: I commonly go there of an Evening, to have a Pot of Liquor.

Q. Do you remember when you kept *Christmas-Day*?

Clarke. I do not.

Q. Can you give any Account of New Stile or Old?

Clarke. No, I cannot; but if I was to die for the Woman, I'll speak the Truth.

Q. How was she cloathed there?

Clarke. The same as now, and the Son in a blue Coat and a red Waistcoat, and had a great Coat with him.

Q. What Size is he?

Mr. Davy. Where did you go the next Day?

G. Squires. We went, I believe, to *Bagshot*, and lay at the *Greyhound* there; and on the *Saturday* we went to *Brentford*, to the House of Mrs. *Edwards*; I lay there one Night, and on *Sunday* I went to *London* to look after Sister *Mary*; I stayed there one Night, and the next Day, which was on a *Monday*, I brought my Sister *Mary* to *Lucy* and my Mother at *Brentford*; we all stayed there till *Tuesday*.

Mr. Davy. What Sign does Mrs. *Edwards* keep?

G. Squires. She keeps no Sign, but there is the Sign of the *Drum* just by it; there we were all four together; and to the best of my Knowledge, we all left *Brentford* on the *Tuesday*, and went to the *Seven Sisters* by *Tottenham*, to the Sign of the *Two Brewers*.

Mr. Davy. Is not there another Name to that Place?

G. Squires. I don't know; there is a *Green*; they call it by some Name, but I don't know it.

Mr. Davy. What Day of the Week was this?

G. Squires. It was on a *Tuesday*.

Mr. Davy. Where did you go the next Day?

G. Squires. Then we went to Mrs. *Wells's* House; this was on a *Wednesday*.

Mr. Davy. How came you to go there?

G. Squires. I was recommended to her House for Lodging; they said she was a very civil Woman: I never saw her in my Life before this Time, if I was to be racked to Death. There is an Acquaintance of mine that owed me seven Pounds fifteen Shillings in *London*, and I went there to stay till I could receive it, to Mrs. *Wells's* House: We went to a Woman's House who sells Pease-foop at *Edmonton*; we would have lodged there;

but my Mother wanted to wash, and the Woman said that was not customary, so she recommended us farther, to a Place called *Chestnut*; upon that we went to Mrs. *Wells's* House, being recommended there by Mrs. *Long's* Daughter; I left my Mother and two Sisters at Mrs. *Wells's* House, and went to *London* to receive my Money about two or three Days after we got there; I lay in *London* one Night, and came back the next Day, and we all remained there till we were taken up:

Mr. Davy. Describe particularly the Rooms you lay in at Mrs. *Wells's* House.

G. Squires. The Room my Mother and two Sisters lay in, is as you go by the Kitchen Door up a Pair of Stairs, and turn short on the right Hand; it is a large Room, with one Bed in it, in which they all three lay; it is the handsomest Room they have in the House.

Mr. Davy. What Room was under that?

G. Squires. There is a Parlour under it; I lay in a little Room facing the Stair-head.

Mr. Davy. Where did Mother *Wells* lie?

G. Squires. She lay in a Room on the left Hand of mine, as you go up Stairs.

Mr. Davy. Who lay in that Room with her?

G. Squires. There was a Daughter of hers, and *Virtue Hall*.

Mr. Davy. Do you remember any body else that lay in the House?

G. Squires. There was *Fortune Natus* and his Wife lay in a Place where there is a vast deal of Hay.

Mr. Davy. What do you call that Room?

G. Squires. It was a Shuffle-board Room, as they say; you go up two or three Steps to it out of the Kitchen; they had a Bed made of Hay on the right Hand going up.

Mr.

Clarke. He is about five Foot seven or eight Inches high; the Girl was in a *Camblet* Gown.

Q. You are sure you saw her the Time you mention?

Clarke. I undertake to swear positively to that, that I saw her there on the 1st of *January* last, and either on the 9th or 10th afterwards; and saw them going about the Town in the Time, to sell Things.

Q. What are you?

Clarke. I am a Housekeeper, and have been in Business about six Years; I am a Cordwainer.

Thomas Greville. I live at *Coombe*, three Miles from *Salisbury*; I keep a Public House there, the Sign of the *Lamb*; I saw *Mary Squires* at my House on the 14th of *January*.

Q. How many Miles is *Coombe* from *Dorchester*?

Greville. I cannot tell.

Q. Who was with her there?

Greville. There was her Sister and her Brother, as she said; they sold Handkerchiefs, Lawns, and such Things.

Q. How long did she stay at *Coombe*?

Greville. They stopped there but one Night.

Cross-Examination.

Q. What *January* do you mean?

Greville. I mean last *January*, five Weeks ago last *Sunday*.

Q. How came you to take such particular Notice of it?

Greville. There was a Carpenter at my House; he had spent the biggest Part of his Money; it

being *Sunday* Night, I would have him go about his Business, and put him out of the House two or three Times, and after that he went over the way to another House, and pawned his Ax. (These three Witnesses shewed their Subpoena's, as the Cause of their coming to give their Evidence.)

For the Crown.

John Inifer. I sell Fish and Oysters about *Waltham-Cross* and *Theobalds*. I know the Prisoner *Squires* very well by Sight; the last Time I saw her before now, was at the Time she was taken at *Susannah Wells's* House; before that I had seen her several Times every Day up and down, before she was taken.

Q. Are you very certain of that?

Inifer. I am, that I saw her three Weeks before; that she walked into People's Houses, pretending to tell Fortunes. She told me mine once.

Q. Did you see any Goods she had to sell?

Inifer. No, I did not; I always saw her by herself. I saw a young Man in blue-grey when she was taken up, and two young Women, all taken in the House of *Wells*.

Wells being called upon to make her Defence, said, As to her Character, it was but an indifferent one; that she had an unfortunate Husband, who was hanged; and added, she never saw the young Woman (meaning E. Canning) till they came to take us up; and as to *Squires*, she never saw her above a Week and a Day before they were taken up.

Squires Guilty, Death. *Wells* Guilty.

Squires,

Mr. Davy. At the Time you was at *Enfield-Wash*, how did you supply yourselves with Provision?

G. Squires. I bought my own Victuals myself; there is a little Chandler's Shop over the Way; the Man's Name is *Larney*; he is a Bricklayer; they sell Butter, Tea and Coffee, Soap and Candles; I went there several Times for Tea.

Mr. Davy. Where did you buy your Butchers Meat?

G. Squires. It was in Herring Time; we lived on Fish, and did not buy Meat there; there was an old Man came to the Door, Mrs. *Wells* bought Fish of him, and so did I.

Mr. Davy. Did you see this young Woman at the Bar when you was there?

G. Squires. No, I did not; I never saw her before we were taken up in my Life, if I was to be racked to Death; I'll stand with a Sword put to my Heart, if ever I saw her till she came in the Chaise; we came there on a *Wednesday*, and at the End of a Week and a Day my Mother was taken up.

Cross-examined.

Mr. Moreton. At setting out on your Examination, you said you could not tell where you was at *Christmas*.

G. Squires. Not the New *Christmas*.

Mr. Moreton. You said you was not at *London* before.

G. Squires. I mean, not before six or seven Weeks before *Michaelmas*.

Mr. Moreton. From what Place did you set out?

G. Squires. I went down into *Hampshire*.

Mr. Moreton. When did you set out on your Journey, and where is your Home?

G. Squires. We set out from *Newington* to *Somersetshire* and *Dorsetshire*.

Mr. Moreton. Where did you leave your Sister *Mary*, when you set out?

G. Squires. She was with a particular Acquaintance; with Mrs. *Squires's* Brother-in-law; I left her in *Kent*; Mrs. *Squires* in the Borough has a Brother, and his Wife was very ill, and I left my Sister *Mary* with her, in order to do what was in her Power for her; they sell Goods in the Country, and travel about as we do.

Mr. Moreton. At what House, or in what Town did you leave her?

G. Squires. I had not a Thought of being called to such Questions as these.

Mr. Moreton. I shall ask you a great many Questions you have not heard yet: Can you give me any Answer, at what House, or what Town you left your Sister *Mary*?

G. Squires. It was in *Kent*.

Mr. Moreton. Was your Mother and Sister with you when you parted with her?

G. Squires. We were all three together; I don't know at what Town, or whose House; when I left my Lodgings, I went into *Kent*, and happened to meet with them. I went into the *Wild* of *Kent*.

Mr. Moreton. Did you come back again then to *Newington*?

G. Squires. I went from *Kent* into *Sussex*.

Mr. Moreton. Name a Town there.

G. Squires. *Lewes*, *Battel*.

Mr. Moreton. Did you go through either of them?

G. Squires. No, I did not.

Mr. Moreton. Name the first great Town that you went through in *Kent*.

G. Squires.

Squires, the last Day of the Sessions, being asked what she had to say before she received Sentence, answered, that on New-year's Day I lay at *Coombe* at the *Widow Greville's* House; the next Day I was at *Stoptage*; there were some People who were cast away, and they came along with me to a little House on the Top of the Moor, and drank there; there were my Son and Daughter with me. Coming along *Popham Lane*, there were some People raking up *Dung*. I drank at the second *Alehouse* in *Basingstoke* on the Thursday in the New-year Week. On the Friday I lay at *Bagshot-Heath*, at a little tiny House on the Heath. On the Saturday I lay at *Old Brentford* at Mrs. *Edwards's*, who sells *Greens* and *Small Beer*. I could have told this before, but one pulled me, and another pulled me, and would not let me speak. I lay at Mrs. *Edwards's* on the Sunday and Monday; and on the Tuesday or Wednesday after, I came from thence to Mrs. *Wells's* House at *Enfield*.

The Time drawing near for the Report of the Convicts, Sir *Crisp Gascoyne* laid before His Majesty, not only the whole Evidence given at the Trial; but also the several Informations and Certificates he had received since her Conviction, accompanied by the following Memorial.

To the KING's Most Excellent MAJESTY.

" May it please your Majesty to permit your dutiful Subject, the Lord-Mayor of your faithful City of *London*, with the most profound Humility and Respect to represent to your Majesty, that before the Trial of *Mary Squires*,

" for the Robbery of *Elizabeth Canning*, and of *Susannah Wells*, as Accessary, many unfair Representations were printed and dispersed, which could not fail to excite public Prejudice against them.

" The fatal Consequence whereof, in depriving those unhappy Wretches of a material Part of their Evidence, engaged me, from the high Station I have the Honour to bear, to express my Duty to your Majesty, and the Public, by making this Inquiry.

" In which the utmost Caution has been observed. — All the Witnesses have been strictly, separately, and publicly examined, and their Credit well certified.

" Many other Informations, to the same Effect, have been offered; but I declined troubling your Majesty with further Evidence, as humbly apprehending it totally unnecessary.

" In the Course of this Inquiry, *Virtue Hall*, a principal Witness, voluntarily and publicly retracted the whole of the Evidence she gave upon the Trial.

" To this I presume, by your Majesty's Leave, to add, that amidst all the Examinations I have taken, there has not appeared any Variation or Inconsistency, or the least Circumstance or Suspicion, that could lead me to doubt the Innocence of those unhappy Convicts.

" All which is humbly submitted to your Majesty's great Wisdom and Judgment, by

Your Majesty's faithful Subject,

CRISP GASCOYNE, Mayor."

G. Squires. I don't know which I went through first; I went through *Lewes*; I made the best of my Way into the West.

Mr. Moreton. After you left *Lewes*, what is the first Town you came to that you did know?

G. Squires. Really I do not know; it is so long ago, I can't tell you.

Mr. Moreton. You, without an Almanack, have given a long and seeming fair Account of a long Journey, pray trace yourself down into *Dorsetshire*; I don't ask you the first Town from *Lewes*; but the first Town you do remember after you left *Lewes*.

No Answer.

Mr. Moreton. It was not *South-Parrot*, was it?

G. Squires. No, it is not possible I can tell you; I went from thence into *Hampshire* and *Wiltshire*; I went through *Salisbury*.

Mr. Moreton. Is that the first Town you can remember, after you left *Lewes*, you came at?

G. Squires. No, I went through several, but don't remember their Names; I must have went through some: I hope you will excuse me, I hope you will not ask me any more.

Mr. Moreton. Can you tell the Name of any Town you went through between *Lewes* and *Salisbury*?

G. Squires. No, I cannot.

Mr. Moreton. Where did you go when you went from *Salisbury*?

G. Squires. I went to *Hindon*.

Mr. Moreton. What County is that in?

G. Squires. That is in *Wiltshire*.

Mr. Moreton. Where did you go when you went from *Hindon*?

G. Squires. I went partly by *Mear*.

Mr. Moreton. What was the next Town when you left *Mear*?

G. Squires. Really, Sir, I hope you will excuse me, be pleased to excuse me; I cannot tell indeed; please to excuse me.

Mr. Moreton. You gave so clear an Evidence on that Part of your Return, that if you do not go

on, it must be left to my Lord who tries you: Tell me where you went when you left *Mear*?

G. Squires. From *Mear* we went towards *Shaftsbury*.

Mr. Moreton. Did you go to it?

G. Squires. I went partly by it.

Mr. Moreton. Tell me some Town you lay at: No Answer.

Mr. Moreton. Did you lie at *Lewes*?

G. Squires. I did; I cannot tell the House; it was an Ale-house, but I don't know the Sign.

Mr. Moreton. Tell us another Town you lay at.

G. Squires. I know *Mear* very well; I lay there, but had never lain at that House before.

Mr. Moreton. Where did you use to lie there?

No Answer.

Mr. Moreton. Did you lie at *Shaftsbury*?

G. Squires. I cannot tell whether I did or not.

Mr. Moreton. Where was you going to in the West?

G. Squires. I sell Goods.

Mr. Moreton. What Goods?

G. Squires. I had white Waistcoats, and worked Gowns, and Hollands, and such Things; and where my Business led me, there I went.

Mr. Moreton. What Quantity of Goods might you have when you went out of *Kent*?

G. Squires. I had not dealt largely, I believe I had then about twenty Pounds Worth of Goods, consisting in Aprons, worked Gowns, Nankeens, and such Things.

Mr. Moreton. How long was you before you came to *South-Parrot*?

G. Squires. I cannot tell; I never was at *South-Parrot* before the 29th of *December*; I went down with a Gentleman once since.

Mr. Moreton. Is *Yeovil* farther from *London* than *South-Parrot*?

G. Squires. No, Sir.

Mr. Moreton. Did you go through that?

G. Squires. No, I came partly by it; but they said they had got the Small-pox in the Town, and I had never had it, so I did not come thro' it.

Mr.

“ On the 10th of *April* following, the Report was accordingly made of the Convicts under Sentence of Death; when his Majesty was graciously pleased to respite the Execution of *Mary Squires* for six Weeks; and to refer the Consideration of the Evidence on both Sides, (for Evidence against her had been presented) to his Attorney and Solicitor-General. — Soon after the Attorney and Solicitor-General made their Report, with their Opinion, That the Weight of Evidence was in the Convict's Favour: Whereupon his Majesty was graciously pleased to grant her a free Pardon.” Thus far from Sir *Crisp Gascoyne's Address to the Livery*, p. 26, 27.

The Friends of *Canning*, in their *Refutation of Sir Crisp Gascoyne's Address*, say, “ But of the Purport of this Memorial, and what in particular was annexed to it, the Friends of *Canning* were totally ignorant till the Publication of *The Address*; and therefore could not examine any Witnesses with a particular View to contradict it. They had indeed, upon the Recantation of *Virtue Hall*, taken some Affidavits to prove, that the Gypsey was at *Enfield* when the Robbery was committed; and the Duke of *Newcastle* (on whom they waited) having ac-

quainted them, that his Majesty had referred the Consideration of the Evidence on both Sides to his Attorney and Solicitor-General; they took many other Affidavits to prove the same Facts; but when these Affidavits were presented to the Attorney and Solicitor-General, they rejected them, because they were not at Liberty to examine any Evidence that was taken after the Day of Reference: It necessarily followed therefore, that the Weight of Evidence was in the Convict's Favour; and so it was reported, and she pardoned. Upon this View of the Case, however, it does not become in any Degree more probable, that she was innocent.” See the *Refutation of Sir Crisp Gascoyne's Address to the Livery*, in Folio, p. 18.

These Friends of *Canning* likewise gave an Answer to Sir *Crisp's* Memorial presented to the King, &c. But Sir *Crisp's Address*, and *Canning's* Friends *Refutation* of it, make two large Folio Pamphlets; and the many other Pamphlets published on both Sides at that Time, are too numerous to insert here, or take any Notice of; and, as *Canning's* Friends thought, did not clear up that mysterious *Affair*; probably this Trial of *Canning*, for Perjury, may be said to have done it.

Mr. Moreton. Was you at *Crookhorne*?

G. Squires. No, I was not there at all.

Mr. Moreton. Tell me a great Town after you left *Shaftsbury*?

G. Squires. I went away from *Shaftsbury* to *Abbotsbury*.

Mr. Moreton. Tell me the Name of one Town you lay at in *Somersetshire*.

G. Squires. I did not go very far in *Somersetshire*.

Mr. Moreton. Name one Town betwixt *Yeovil* and *South-Parrot*, that you lay at.

G. Squires. I don't know a Town betwixt them; there are several Villages, but I can't tell the Name of one.

Mr. Moreton. Tell me the Sign of an Inn where you lay at beyond *Shaftsbury*, whether it was a Fox, a Goose, a Dog, or a Pair of Compasses.

G. Squires. I don't know the Sign of any Place where I lay at, because it is so long ago.

Mr. Moreton. You remember the other Places very well.

G. Squires. That is because I have been there since.

Mr. Moreton. Then you remember it by the last Journey you took.

G. Squires. Yes, Sir, and by the other too.

Mr. Moreton. Then you cannot remember either a Town, an Ale-house, or a Sign where you lay at, after you left *Shaftsbury*?

G. Squires. No, I cannot.

Mr. Moreton. Now we shall be a little better acquainted: We bring you now to *South-Parrot*; you say you had travelled seven or eight Weeks before *Michaelmas*, till the 29th of *December*.

G. Squires. But I did not travel all that Time, I came Home to my House at *Newington* before that.

Mr. Moreton. Did you return Home after you set out for *Kent*, and so into the West, before you got to *South-Parrot*?

G. Squires. Before the Time of my coming Home, I could not.

Mr. Moreton. Let me understand you: Did you return back to *Newington* before *Christmas*?

G. Squires. No, Sir, not till after *Christmas*.

Mr. Moreton. Then from the Time you set out, seven or eight Weeks before *Michaelmas*, you was travelling about the Country with your Goods?

G. Squires. Yes, Sir.

Mr. Moreton. Can you tell the exact Time you set out from *Newington-Butts*?

G. Squires. It was Harvest-time, or near it; I can't tell whether it was in *July* or *August*.

Mr. Moreton. Well, we are come to *South-Parrot*; you say you came there the 29th of *December*; you say you met with Mr. *Clarke* on a *Sunday* at *Abbotsbury*, and lay there that Night, and set out with him on the *Monday*, and went to *Litton*, and your Mother went after you to *Abbotsbury*: Now I'll ask you this Question, When your Mother went after you there, did you meet her on the Road?

G. Squires. No, I did not.

Mr. Moreton. Then did your Sister come with your Mother there on the *Monday* Morning?

G. Squires. No, she stayed in the House at *Litton*.

Mr. Moreton. Then your Mother walked on the *Monday* Morning *December*, the 31st, from *Litton* to *Abbotsbury* by herself, and back again, and dined on two Fowls, then went with you to *Abbotsbury* again?

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G. Squires. Yes, Sir.

Mr. Moreton. What Time did she come back to *Litton*?

G. Squires. Betwixt Two and Three o'Clock, and dined with us, and walked with us to *Abbotsbury* that Night.

Mr. Moreton. What Time did you all set out from *Litton* to go to *Abbotsbury*?

G. Squires. We set out between Three and Four o'Clock in the Afternoon.

Mr. Moreton. Was it dark?

G. Squires. It was quite dark.

Mr. Moreton. Where did you buy the two Fowls?

G. Squires. I bought them of one Mrs. *Turner*; I made a *Cludation* for the Feathers, she said she would have the Feathers.

Mr. Moreton. You lived well, I should think two Fowls a very remarkable Dinner for three Gypsies.

G. Squires. Fowls are bought there for Sixpence a-piece, it is cheaper than Beef or Mutton; that I have very often.

Mr. Moreton. I hope you always buy them.

G. Squires. I do.

Mr. Moreton. Were they boiled or roasted?

G. Squires. They were both boiled; I was not at Home to see them boiled, but I eat Part of them.

Mr. Moreton. What Day was it you lent the Exciseman your Coat?

G. Squires. I don't know the Day.

Mr. Moreton. How many of your Goods might you have disposed of at that Time?

G. Squires. I had disposed of them all, except a Piece of Check and two Waistcoats.

Mr. Moreton. Then you had taken a little Money?

G. Squires. I had, and owed some, and returned it to *London*.

Mr. Moreton. To whom?

G. Squires. To an Acquaintance of mine, Mr. *Norman*; he is since dead; he was a Tide-waiter.

Mr. Moreton. From what Place did you return the Money?

G. Squires. I cannot name the Place.

Mr. *Davy*. I beg leave to ask one Question I forgot; What happened at *Ridgway* when you were there?

G. Squires. A young Man that lives at *Abbotsbury*, who sells Turnips, had two Horses, and Mr. *Clarke*, after he had dined with us, designed to return Home; he knowing the Man, desired him to come in; we had got some Beef-steaks; this Man dined with us, and Mr. *Clarke* rode on one of his Horses Home; he is here.

Mr. Moreton. Tell me his Name.

G. Squires. I don't know his Name.

Mr. Moreton. Is that the House you left a Piece of Nankeen at?

G. Squires. Yes, Sir.

Mr. Moreton. Do you call Nankeen Check?

G. Squires. No, Sir.

Mr. Moreton. When you left this Piece of Nankeen in Pawn, because you was afraid you should want Money, pray how much Money had you then?

G. Squires. I had borrowed some of Mr. *Clarke*, and had some of my own.

Mr. Moreton. Tell us this one Thing, that as Mr. *Clarke* was so much your Friend, and your Sister's Friend, why did he not pay your Reckon-

ing, and save your Nankeen, that you might make your Money of it?

G. Squires. He offered it, but I was so kind I would not let him.

Mr. Moreton. What Money did you borrow of *Clarke*?

G. Squires. I borrowed six Shillings of him.

Mr. Moreton. Have you had your Nankeen since?

G. Squires. No, he has got it in Custody since.

Mr. Moreton. What was your Reckoning?

G. Squires. It was about three Shillings and Sixpence.

Mr. Moreton. What is Nankeen worth a Yard?

G. Squires. It is worth, or I generally sell it for two Shillings a Yard.

Mr. Moreton. Where did you receive the News of your Sister *Mary*'s Illness?

G. Squires. It was in the Country, I cannot tell the Town where.

Mr. Moreton. How did you receive the Account of it?

G. Squires. It came by the Post, sure it must.

Mr. Moreton. Upon your Oath, did you leave any Directions with her to write to you in the Country?

G. Squires. Yes, and I had a Letter she was ill, I had it first by a Letter.

Mr. Moreton. Can your Sister *Mary* write?

G. Squires. No, she cannot.

Mr. Moreton. Was the Letter directed to you or your Mother? Was it after you left *Abbotsbury* you received the Letter?

G. Squires. I cannot say that.

Mr. Moreton. Then, if you received it before you came there, or at the Place, it is strange you should stay dancing there!

G. Squires. I will not swear I received it before we came there, or not.

Mr. Moreton. You say, at *Dorchester* the Miller carried your Sister over the Water on Horse-back, how did you and your Mother get over?

G. Squires. I asked him to carry my Mother over; he said he could not stay.

Mr. Moreton. Did he come back again by you, or go on?

G. Squires. No, he went another Way.

Mr. Moreton. How far, after you set out from *Ridgway*, where the dead Horse was, might you walk with that old Woman, that Day and Night after you had received an Account of your Sister *Mary*'s Illness?

G. Squires. She got no farther than *Chettle*.

Mr. Moreton. How far is *Ridgway* from *Dorchester*?

G. Squires. It is about three or four Miles.

Mr. Moreton. How far is it from *Chettle* to *Blandford*?

G. Squires. I can't tell how many Miles.

Mr. Moreton. What did you lie upon in that Barn you mentioned?

G. Squires. We all three lay upon Straw; we don't carry Sheets or Blankets with us; we all sat up in our Clothes.

Mr. Moreton. Whereabouts does *Chettle* lie?

G. Squires. It is on the left Hand, and *Martin* on the right.

Mr. Moreton. Which was you at first?

G. Squires. At *Chettle*, and then to *Martin*, and from thence to *Coombe*.

Mr. Moreton. Is not *Martin* in the direct Road from *Chettle* to *London*?

G. Squires. No, it is not; it is the Bottom Way; we came there because it was Night.

Mr. Moreton. How long did you stay at that House where the Letter was wrote?

G. Squires. About an Hour and Half; we came there about Three o'Clock, to the best of my Knowledge.

Mr. Moreton. Where did you go to find your Sister *Mary*?

G. Squires. To a Relation's of mine, who belongs to the Customs, named *Samuel Squires*; he lives down in *White-Hart-Yard*.

Mr. Moreton. Did she ask you whether you had received a Letter from her or not?

G. Squires. I told her I had.

Mr. Moreton. Did you tell her where you received it?

G. Squires. No.

Mr. Moreton. Which Way did you go from *Brentford* to *Tottenham-High-Cross*?

G. Squires. I went through the City, along by *Covent-Garden*.

Mr. Moreton. Did you go to your House at *Newington*?

G. Squires. No.

Mr. Moreton. Nor your Sister nor Mother?

G. Squires. No.

Mr. Moreton. On which Side the Park Wall did you come from *Kensington*?

G. Squires. Through *Knightbridge*, and all along the great Road.

Mr. Moreton. Do you know this Town of *London*?

G. Squires. I can find my Way in any Part of the City, but I am not acquainted with the Streets Names.

Mr. Moreton. Did you go through the City?

G. Squires. I went clear quite through the City.

Mr. Moreton. Which Way did you go out of Town to *Tottenham*?

G. Squires. By *Shoreditch*.

Mr. Moreton. Had you, or had you not, a Lodging at *Newington* at that Time?

G. Squires. Yes, I had; and my Household Goods were there at the Time.

Mr. Moreton. Then how came you to go through *London*, and not to your Lodgings?

G. Squires. Because I owed a Sum of Money, and was afraid of being arrested, and wanted to see *Mr. Squires*, who lived in the Neighbourhood, to make it up for me.

Mr. Moreton. What Day of the Week did you pass through *London*?

G. Squires. I left *Mrs. Edwards*'s House of a *Wednesday*, and the same Day I came through *London*.

Mr. Moreton. Where did you meet the Person that recommended you to this House of *Wells*'s?

G. Squires. Before I came to *Enfield*; the Woman's Name is *Long*.

Mr. Moreton. How many Beds are there in the Room at *Wells*'s where your Mother lay?

G. Squires. There is but one Bed.

Mr. Moreton. If you ever did go this Journey, be positive with yourself, whether it was in the Year 52?

G. Squires. Yes, Sir; I am sure it was then, and not at any other Time.

Mr. Moreton. Did your Mother and Sister help you in your trading?

G. Squires. My Mother buys old Clothes and silver Lace.

Mr.

Mr. Moreton. Who bought these Goods of yours?

G. Squires. I did myself.

Mr. Moreton. Did your Mother and Sister know of your trading?

G. Squires. They did.

Mr. Moreton. Did they know what Quantity of Goods you had?

G. Squires. I don't know whether they did or not.

Mr. Darcy. We will not call *Lucy* the Sister; she is rather more stupid than her Brother, and has not been on that Road since their coming to *Enfield-Wash*; and so can give but a very imperfect Account either of Times or Places. But we will call Mr. *Willis*, who went with *George Squires* about the Country since the Commencement of this Prosecution, in order to ascertain the particular Places where *Mary Squires* and her Family have travelled through: And Mr. *Willis* will assign the Reason of this Man's remembering the Times and Places of their Return from the West with such Exactness, when he can recollect so little of the Journey of going down.

Robert Willis sworn.

I set out some Time in last *June* from *Dorchester*.

Mr. Nares. Whether this Gentleman is called to prove any thing else than what *Squires* has related to him, and what he has heard from others since the Fact, I object to his Evidence.

Mr. Gascoyne. Mr. *Willis* went into the Country with *George Squires*, in order to ascertain the Places, he being a Person of Reputation, at Houses where these three People lodged; and has found them to be Facts.

Mr. Moreton. You have shewn there was a Person with them in Court, (that is *Lucy*) and you refuse calling her, and now call this Man to give an Evidence of Hearsay only, after a Person has been examined an Hour and Half, and told you of a Person within your Lordship's Power to call, who he says has been with him all the Journey: Will your Lordship suffer a third Person, that can only tell what this or that Man told him upon his making Inquiry? We are willing to risque the Issue of this Trial singly upon the Evidence of *George* and *Lucy*, examined separately.

Mr. Baron Legge. If they don't call the Sister, you'll make what Observations you please upon it. That Evidence has said upon his Oath, that his Sister went this whole Journey with him; and in order to confirm that what he said was Truth, they will not call her, but this Attorney.

Mr. Justice Clive. This is but Hearsay Evidence, and that is not Evidence; but if you go to discredit this Man, surely they may produce Evidence to shew the Conformity of his Evidence, that he was always in one Story.

Mr. Nares. This must be proved by a Person that was present at the Fact; if the Case was otherwise, I could call a hundred Witnesses in order to confirm my own Evidence.

Mr. Baron Legge. The several People that lived at the Houses where he says he called, are the Evidences to call to prove that.

Mr. Moreton. Here is a Man goes and tells his Case to his Attorney, and he comes here as a Witness. (Refused.)

George and Lucy Squires were again placed by their Mother in the Court.

John Fry sworn.

I live at a Place called *Litton*, in *Dorsetshire*; I am a Tiler and Plaisterer; I came to Town on *Wednesday* last.

Mr. Willes. Do you know that old Woman that sits there? (meaning *Mary Squires*.)

J. Fry. I have seen the old Gypsey several Times; I remember seeing her on the 30th of *December 52*, at *Litton*; it was on a *Saturday*, at the House of *James Hawkins*; I was at Work there at the same Time.

Mr. Willes. Pray, how can you remember the particular Time?

J. Fry. Because it was in the New *Christmas* Time, and the *Monday* following was the New-year's Day; this is the very old Woman.

Mr. Willes. Look at the Man and Woman with her.

J. Fry. They are the two Persons that were with her on that *Saturday* Evening.

Mr. Willes. Was you in Company with them?

J. Fry. I was not at all, but I saw them by the Kitchen Fire.

Mr. Willes. How can you be certain these are the People?

J. Fry. I have known the old Woman thirty Years; she has been in that Part many Times; I have seen her Face often before.

Cross-examined.

Mr. Nares. Is this Mr. *Hawkins* living?

J. Fry. He is, and is now here.

Francis Gladman sworn.

Mr. Gascoyne. Do you know *Mary Squires*?

Fr. Gladman. Yes, Sir; that is the Woman. (Pointing to her.)

Mr. Gascoyne. Do you know these two People that stand by her?

Fr. Gladman. I do, they are her Son and Daughter; I keep a House at *Litton*, and am a Gardener; I remember seeing these People there on *Monday* the 1st of *January 53*, in the House of *James Hawkins*; there is no Sign, it used to be the *Three Horseshoes*; I shaved *George* the *Sunday*, being the Day before, at my House.

Mr. Gascoyne. Had you ever seen the old Woman before?

Fr. Gladman. To the best of my Knowledge, I never did; but I am positive sure to them.

Mr. Gascoyne. What is the Reason you know it to be the 1st of *January*?

Fr. Gladman. The Reason is, we generally ring-in the New Year; I went to ring a Peal, and the People of the Parish gave us some Liquor, that is, some Ale and some Cyder, to drink; we concluded to go to the Alehouse with our Jug of Cyder, that was given us, to have something put into it; we went to *Hawkins's*; the old Woman sat there; I sat down close by her, and asked her, if she could tell Fortunes? she said, No; she was no Fortune-teller: I asked her, if she could talk *Spanish*? and said, I thought I had seen her abroad somewhere or other; she said, she could not: I asked her, if she could talk *Portuguese*? she said, No: I said, Nor *French*? she said, No: Nor *Dutch*? No: She said she knew what I said, but could not answer me. Upon this an old Gentleman said, You must cant to her, talk Gypsey to her, and she'll answer you; then I said, You are one of the Family of the

Scamps;

Scamps; she said, No, I am no Scamp; and a young Man in the Room said her Name was *Squires*.

Cross-examined.

Mr. *Williams*. Did she sell any thing?

Fr. *Gladman*. She did not appear to me to sell any thing.

James Angel sworn.

Mr. *Davy*. Did you ever see that old Woman before?

J. *Angel*. I have seen her a great many Times.

Mr. *Davy*. Did you ever see her at *Litton*?

J. *Angel*. I saw her there on the last Day of the Year 52, at *James Hawkins's* Apartment, a Public House; and I believe there was Miss *Lucy* with her.

Mr. *Davy*. Did you ever see the young Man?

J. *Angel*. No, I did not see him there.

Mr. *Davy*. By what Circumstance do you remember the particular Time?

J. *Angel*. Because it is a usual Thing for us to ring-in the New Year; we rang a Peal, and in the Morning concluded to go to a Public House to drink together; there we saw the old Woman sitting smoaking her Pipe; I was there two Hours, and then I was called away to go a Fox-hunting.

Mr. *Davy*. Did you ever see her before that Time?

J. *Angel*. No, but I have several Times since, and am well satisfied it is the same Woman.

Mr. *Davy*. What is your Business?

J. *Angel*. I am a Stay-maker.

Cross-examined.

Mr. *Moreton*. What Time of the last of *December* did you see her?

J. *Angel*. It was after the Evening Prayer on a *Sunday*; she was not in the Kitchen, but in a new Apartment, which was not made a Public House of then, but is now.

Mr. *Moreton*. What Time did you ring in the Morning?

J. *Angel*. It was just about Day-break.

Mr. *Moreton*. How long might you stay at *Hawkins's*?

J. *Angel*. I believe near two Hours; she was there all the Time, and I left her there when I went away.

Mr. *Moreton*. What Time was it you went to go a hunting?

J. *Angel*. I believe betwixt Nine and Ten o'Clock, I am not certain to the very Time.

Mr. *Moreton*. How long did you stay a Fox-hunting?

J. *Angel*. Till almost Night; I believe it might be Three o'Clock.

Mr. *Moreton*. Did you go to *Hawkins's* in the Evening?

J. *Angel*. I did, but then they were not there.

Mr. *Moreton*. Do you know *Clarke*? Did you see him there that Evening?

J. *Angel*. I know him, but I did not see him there.

Mr. *Moreton*. Do you imagine, that betwixt Ten and Two, or Half an Hour after, the old Woman could walk from *Litton* to *Abbotsbury* and back again, and after that walk again to *Abbotsbury*?

J. *Angel*. I think she might; she must make very good Speed.

Mr. *Moreton*. How many Miles are they from each other?

J. *Angel*. It is three little Miles we call it.

James Hawkins sworn.

I keep an Alehouse at *Litton*.

Mr. *Willes*. Do you know that old Woman there?

J. *Hawkins*. Yes, she passes by the Name of *Mary Squires*; I remember seeing her at our House on the 30th of *December* 52, being on a *Saturday*.

Mr. *Willes*. Do you know that young Man and Woman?

J. *Hawkins*. Yes, they are *George* and *Lucy*, her Son and Daughter; they were all three of them at my House at that Time together; it was just at the turning of the Date; they lay there on the *Saturday* and *Sunday* Nights; and went away on the *Monday* about Two in the Afternoon.

Mr. *Willes*. What Time did they get to your House on the *Saturday*?

J. *Hawkins*. About Two in the Afternoon; *George* went to *Abbotsbury* on the *Monday* the 1st of *January*, and one *Clarke* came with him.

Mr. *Willes*. Where was the old Woman that *Monday* Morning?

J. *Hawkins*. She was at our House; she eat a Fowl in a little new Chamber.

Mr. *Willes*. Did she not leave your House before they all went away?

J. *Hawkins*. I don't remember she did; they were by themselves; that Chamber is not in the House; they eat Fowls for their Dinner.

Mr. *Willes*. Who were the Fowls bought of?

J. *Hawkins*. They were bought of one *Dance Turner*, in our Parish.

Mr. *Willes*. Were they boiled or roasted?

J. *Hawkins*. They were boiled, I believe; we don't eat roast Meat in the Country but very little.

Mr. *Willes*. What Time did they leave your House?

J. *Hawkins*. They went away, I believe, about Two in the Afternoon.

Mr. *Willes*. Were *George Squires* and *Clarke* at Dinner with the others?

J. *Hawkins*. I am certain they were; in my Opinion the old Woman went to look for *George* out into the Fields, somewhere or another; she did not tarry long.

Mr. *Willes*. How long?

J. *Hawkins*. About an Hour; but I went but seldom into the Room where they were.

Mr. *Willes*. Do you remember *Angel's* being at your House at the Time?

J. *Hawkins*. I do; they had been a ringing; and the Minister's Kinsman went a Fox-hunting that Day, and gave the People some Money.

Mr. *Willes*. How do you know it was the 31st of *December*?

J. *Hawkins*. By reason I made a Fire in that little Chamber on the *Monday* Morning, when the People were ringing, where no Fire had been made before.

Cross-examined.

Mr. *Nares*. Was *Angel* in the new Room or the common Kitchen?

J. *Hawkins*. In both of them.

Mr. *Nares*. Did *Mary Squires* smoak in the Kitchen or the other Room?

J. *Hawkins*. I believe she might smoak in both Rooms.

Mr.

Mr. Nares. Where did she smook on Monday Morning?

J. Hawkins. I believe it was in the old House.

Mr. Davy. If you design to impeach these People's Characters, here is the Minister we can call to confirm them.

Mr. Moreton. We have nothing to say against their Characters.

William Clarke sworn.

I live at *Abbotsbury*, and know the old Woman, *Lucy* and *Polly*; I remember *George* coming to my House at *Abbotsbury* the Day before New-year's Day, in the Forenoon, last *December*, was twelve Months; he and I went to *Litton* together on the Monday Morning; I was a Sweetheart of *Lucy's*; we got there some time in the Afternoon, and met with *Lucy* about Three or Four o'Clock; I know it was some time before it was dark.

Mr. Gascoyne. Was the old Woman there?

W. Clarke. She was not when we came there; for she had come to make Inquiry where *George* was, because he did not return on the Sunday Night; the old Woman came there about half an Hour after us, and *George*, she, *Lucy* and I went to *Abbotsbury* that Night, and we danced at *Gibbons's* House.

Mr. Gascoyne. Do you remember any thing of a Couple of Fowls?

W. Clarke. We eat something there; I took Part of a Fowl.

Mr. Gascoyne. Was it roast or boiled?

W. Clarke. It was boiled Fowl, to the best of my Remembrance.

Mr. Gascoyne. Then if you stayed to dine, what Time did you set out for *Abbotsbury*?

W. Clarke. We set out late after dark.

Mr. Gascoyne. Who was your Partner?

W. Clarke. *Lucy* was my Partner.

Mr. Gascoyne. Can you tell who was *George Squires's* Partner?

W. Clarke. I cannot tell you indeed; *Melchisedech Arnold* played on the Music; that I am sure of.

Mr. Gascoyne. How many Days did they stay at *Abbotsbury*?

W. Clarke. They stopped there from the 1st to the 9th, all three of them.

Mr. Gascoyne. Did you see them often in that Time?

W. Clarke. I was in their Company every Day the Time they were there, and saw *Lucy* some Part of her Journey; I went as far as *Portersham*.

Mr. Gascoyne. At whose House did you lodge at *Portersham*?

W. Clarke. We lodged at *Sias Frampton's* House, that is a Mile from *Abbotsbury*; I saw her three Miles farther, and parted with them at *Ridgway-Foot*; I supped with them there at *Francis Bewley's*, and then returned to my own House.

Mr. Gascoyne. Did any body borrow Money of you at *Ridgway*?

W. Clarke. Yes, *George* borrowed six Shillings of me.

Mr. Gascoyne. What had you for Supper there?

W. Clarke. We had Beef-steaks.

Mr. Gascoyne. Upon what Terms did *Lucy* and you part, upon good Terms?

W. Clarke. We were upon civil Terms; I never saw any thing by her but civil Terms; she is as honest a Girl as any in the World, for what I know.

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Mr. Gascoyne. When she and you parted, did you give her Directions to write to you?

W. Clarke. I did.

Mr. Gascoyne. Did she give any Directions to you?

W. Clarke. She did.

Mr. Gascoyne. Did you give Directions only, or desire her to write to you?

W. Clarke. I desired her to write to me as soon as possible; after that I received a Letter from *Bristol* at *Esbam in the Vale*.

Mr. Gascoyne. How long after your parting with them was it you received this Letter from *Bristol*?

W. Clarke. It was not half a Year after; I had it brought to *Abbotsbury*; it was directed to me, but who wrote it I cannot tell.

Cross-examined.

Mr. Williams. What Countryman are you?

W. Clarke. I was bred and born at *Abbotsbury*.

Mr. Williams. How long have you been acquainted with these People?

W. Clarke. Four Years last *March*; the first Time that ever I saw them was at the *Old Ship* at *Gibbons's*; the second Time I saw them was the last of *December* 52, when *George* came from *Litton* to me, and I went there back with him.

Mr. Williams. What Time of the Day was it when you came to *Litton*?

W. Clarke. Some Time in the Afternoon; I can't say to an Hour or two; it might be Three o'Clock.

Mr. Williams. How long were you walking from *Litton* to *Abbotsbury*?

W. Clarke. We were two Hours walking it; it is three Miles.

Mr. Williams. What Time did *Mary Squires* come in, after you was at *Litton*?

W. Clarke. She might come in in half an Hour, and that might be between Three and Four o'Clock; we took Part of a Fowl there.

Mr. Williams. What, amongst you all?

W. Clarke. Yes, amongst us all.

Mr. Williams. Was it boiled or roasted?

W. Clarke. To the best of my Remembrance, it was boiled.

Mr. Williams. Who paid the Reckoning?

W. Clarke. I don't know indeed, I did not pay a Farthing.

Mr. Williams. Is it but three Miles from *Litton* to *Abbotsbury*?

W. Clarke. It is three computed Miles, but it is four Post Miles.

Mr. Williams. Can you walk as fast as *Mary Squires*?

W. Clarke. I can, and a great deal faster.

Mr. Williams. Could she do it in less than four Hours?

W. Clarke. No, I don't think she could, because she is an elderly Woman; that is, walking thither and back again.

Mr. Williams. When you parted at *Ridgway-Foot*, did *George Squires* tell you whether he had Money, or no Money?

W. Clarke. He did not tell me whether he had or not.

Mr. Williams. Who paid all the Money from the 1st to the 9th, where you drank?

W. Clarke. *George* paid it, I believe; I don't know but he did; whether he paid it or not, he had six Shillings of me.

Mr. Williams. Did he sell any Goods, do you know; to any body?

W. Clarke. Yes, he sold an Apron to the Landlady at the *Old Ship*, and another to the Servant.

Mr. Williams. Did he ask you to lend him any thing?

W. Clarke. Yes, he did.

Mr. Williams. Did you know of his pledging that Piece of Goods at *Ridgway* for the Reckoning?

W. Clarke. I did not till afterwards.

Mr. Williams. Did you offer to pay half there?

W. Clarke. No, I did not; *George* would not let me.

Mr. Williams. Did you lend him this Money before or after he pawned the Nankeen?

W. Clarke. It was before.

Mr. Williams. How came he to pawn it?

W. Clarke. I cannot tell that.

Mr. Williams. How long was you at *Ridgway*?

W. Clarke. I might be there two Hours.

Mr. Williams. What Time did you set out for *Abbotsbury*?

W. Clarke. I set out about Four o'Clock in the Afternoon, and lodged at *Portersham* going back.

Mr. Davy. When you came to *Litton*, had *Lucy* and *Mary Squires* sat down to Dinner?

W. Clarke. No, Sir.

Mr. Davy. Did you see the Dish when first served up?

W. Clarke. I eat Part of what was meddled with.

Mr. Davy. Had they been eating before you came there?

W. Clarke. I don't know whether they had eat any thing or not.

Mr. Davy. Did you lie with *George Squires* at *Ridgway*?

W. Clarke. No.

Mr. Davy. Do you know any thing of the Circumstance of the Piece of Nankeen?

W. Clarke. No, Sir.

Mr. Davy. Do you know any thing about a dead Horse?

W. Clarke. There was a dead Horse lay in the Highway at *Ridgway* as I went by.

John Gibbons sworn*.

I keep the *Old Ship* at *Abbotsbury*; I know *Mary Squires*, and the young Man and Woman; they are Son and Daughter to the good Woman.

Mr. Willes. When did you see them at your House?

J. Gibbons. They were at my House on *Monday* the 1st of *January* 53; they came there in the darkish of the Evening.

Mr. Willes. Had you any Merriment at your House that Night?

J. Gibbons. Yes, Sir; Dancing; *George* danced with a Sister of mine named *Mary Gibbons*, and *Lucy* danced with *William Clarke*; the old Woman was in the House at the Time.

Mr. Willes. How long did they stay at your House?

J. Gibbons. They stay'd from the 1st to the 9th, then they went away.

Mr. Willes. Did they stay in your House all that Time?

J. Gibbons. The old Woman did, I saw her every Day there, and so I did *George* and *Lucy*; I am sure of this, upon my Oath; I knew *Mary Squires*

* " These *Abbotsbury* Witnesses were indicted
 " for Perjury, for the Evidence they gave in the
 " Trial of *Squires* and *Wells*. *Canning's* Friends
 " had moved the Court of *King's Bench* for a
 " *Certiorari* to remove the Indictment, which
 " had been refused: But the Attorney for her
 " insisted, that according to antient Practice, a
 " *Certiorari* might be obtained by Application to
 " a Judge during a Vacation, at the Instance of
 " a Prosecutor in a Criminal Cause, as a Matter
 " of Right; because it is the King's Privilege,
 " who in Criminal Causes is the Plaintiff, to sue
 " in what Court he will. Therefore the Attorney
 " for *Canning* was unwilling to try them at the
 " *Old-Bailey*, where *Sir Crisp Gascoyne* had a Seat;
 " and went down to *Totteridge*, to Lord Chief
 " Justice *Lee's*, and got his Hand to the *Fiats*;
 " upon which the *Certiorari's* were issued out to
 " remove the Indictment into the Court of *King's*
 " *Bench*; and next Term a Motion was made to
 " enforce a Return of them. Upon this Motion
 " a Rule was made, for the Court at the *Old-*
 " *Bailey* to shew Cause, why a Return should not
 " be enforced. The Attorney against her prayed
 " a particular Day, which was allowed; and he
 " undertook to be ready on that Day. He
 " moved, that the *Certiorari's* might be super-
 " seded; alledging, that the Lord Chief Justice
 " had been imposed upon in signing the *Fiats*:
 " But his Lordship not being present, a Rule
 " was made for hearing the Merits of that Sug-
 " gestion at a future Day. On this future Day
 " the Council for the Countrymen moved, that
 " the Writs might be superseded, in the Absence
 " of the Lord Chief Justice: But as the Motion

" to supersede these Writs was founded on a
 " Suggestion, that the Lord Chief Justice had
 " been imposed upon; and as none but his Lord-
 " ship could know, whether he was imposed upon
 " or no; both Motions were ordered to stand
 " over, till his Lordship should be present: But
 " as he died without ever coming into Court
 " afterwards, the Writs are not superseded to
 " this Hour." *Refutation of Sir Crisp Gascoyne's*
Address to the Livery, p. 20, 21.

The TRIALS of *John Gibbons*, *William Clarke*, and *Thomas Greville*, for *Wilful and Corrupt Perjury*, at the Sessions-House in the *Old-Bailey*, held on *Thursday* the 6th, *Friday* the 7th, *Saturday* the 8th, and *Monday* the 10th Day of *September*, 1753, before the Right Hon. the Lord Chief Justice *Willes*, *William Moreton*, Esq; Recorder, and other His Majesty's Justices of Oyer and Terminer.

[Memorandum. *Sir Crisp Gascoyne*, Knt. Lord-Mayor of *London*, withdrew when these Trials came on, as he always declared he would.]

JURY.

Robert Groom,
John Trimmer,
Joseph Tenniswood,
Richard Graham,
John Allen,
Henry Bland,

William Remnant,
William Champion,
Barnard Townsend,
Bartholomew Pain,
John Merry,
Samuel Watlington.

According to the Course of the Court, the Trials of *Gibbons*, *Clarke*, and *Greville*, the three *Abbotsbury* Witnesses upon the Trial of *Mary Squires*, for the Robbery of *Elizabeth Canning*, being

Squires almost three Years before, and knew her when she came into my House.

Mr. *Willes*. When they went away, where did they tell you they were going?

J. *Gibbons*. They told me they were going to *Portersham*; *Clarke* went with them.

Mr. *Willes*. Do you remember an Exciseman coming to your House to officiate for another that was sick?

J. *Gibbons*. I do, his Name is *Andrew Wake*; he lay in the same Room with *George Squires*, and they were very familiar together.

Mr. *Willes*. Do you remember the Exciseman borrowing *George's* great Coat?

J. *Gibbons*. I believe he did one Night, as he was walking his Rounds?

Mr. *Willes*. Was it as he was walking his Rounds, or to walk his Rounds?

J. *Gibbons*. It was to walk his Rounds.

Mr. *Willes*. How do you know that?

J. *Gibbons*. I heard him tell it.

Cross-Examination.

Mr. *Moreton*. You was examined when *Mary Squires* was tried at this Bar?

J. *Gibbons*. I was.

Mr. *Moreton*. I will only ask you, whether you gave an Account of seeing them dance, as you have now?

J. *Gibbons*. I don't know that it was asked me.

Mr. *Moreton*. Was it not material to say, We had Music and they danced at our House at that Time? Did you swear that then?

J. *Gibbons*. I can't say whether I might or not.

Mr. *Moreton*. When did you first recollect it?

J. *Gibbons*. On the 1st of *February*.

Mr. *Moreton*. Then why did you not swear it then, and give my Lord and the Jury an Account of it?

J. *Gibbons*. I don't know, I was not asked it then.

Mr. *Moreton*. Did you give an Account of the Exciseman lying in the same Room with *George*?

J. *Gibbons*. No; but I then told the Court the Exciseman was there at my House.

Mr. *Moreton*. Was the Exciseman here then?

J. *Gibbons*. No.

Andrew Wake sworn.

I was an Exciseman about nine Months ago; and am now in the Foot-Guards; I was ordered to *Abbotsbury* to officiate for one Mr. *Ward* who was ill, by Order of the Supervisor, from *Dorchester*; on the 31st of *December* 1752, I got there, I went to the *Ship* at *Gibbons's*; (he takes a Book in his Hand, and looks in it) this is my Writing, these are our Entries, it is the Journal.

Mr. *Gascoyne*. Look at the old Woman sitting there, do you know her?

A. *Wake*. I do, it is *Mary Squires*; I saw her at *Abbotsbury*, at *Gibbons's* House, at that Time, the 31st of *December* 52.

Mr. *Gascoyne*. Do you know that young Man?

A. *Wake*. I do; he passed for *George Squires*; he lay in the same Room with me.

Mr. *Gascoyne*. Do you know that young Woman by him?

A. *Wake*. I do, it is *Lucy*; they both went for Son

being called on, the Right Honourable the Lord-Mayor quitted the Chair, and retired out of Court.—But in order to remove the Indictments into the Court of *King's Bench*, and to supersede the Jurisdiction of this Court, three Parchment Writings, said to be Writs of *Certiorari*, were presented to the Court: Whereupon Mr. *Davy*, of Council for the Defendants, inform'd the Court, that he was greatly surprized at this Attempt, not only as the Court of *King's Bench* had, on the last Day of last Term, absolutely refused to grant these Writs, although applied for by the Prosecutors; but as the Defendants had acted so very fairly, as to have given them (what they were not obliged to give) eight Days Notice of Trial, and had now near an hundred Witnesses attending, many of them brought from great Distances, at a vast Expence, to manifest the Innocence of the Defendants to the World.—Upon which the Person who attended with these Writs, being asked by the Court, Who he was? How he came by them? And how those Writs had been obtained? He informed the Court, that he was Clerk to Mr. *Miles*, (an Attorney) who was out of Town; that he had the Writs delivered to him by Mr. *Miles's* Brother, the Distiller; and that he himself knew nothing further of the Matter.—Which Answer not being satisfactory to the Court, the Court was pleased to order him to take the Writs back again, to recommend an Inquiry how these Writs had been obtained, and the Trials to be called on. Whereupon the Jury were charged with the following Indictment against *John Gibbons*.

First Indictment.

LONDON. } The Jurors for our Lord the King upon their Oath present, That at the Delivery of the King's Gaol of *Newgate*, holden for the County of *Middlesex*, at *Justice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Wednesday* the 21st Day of *February*, in the 26th Year of the Reign of our Sovereign Lord *George* the Second, King of *Great-Britain*, &c. before Sir *Crisp Gascoyne*, Knt. Mayor of the City of *London*, Sir *Martin Wright*, Knt. one of the Justices of our said Lord the King, assigned to hold Pleas before the King himself, *Nathaniel Gundry*, Esq; one of the Justices of our said Lord the King of the Court of Common Pleas, Sir *Richard Adams*, Knt. one of the Barons of the Court of Exchequer of our said Lord the King, and others their Fellows Justices of our said Lord the King, assigned to deliver the Goal of our said Lord the King of *Newgate*, of the Prisoners therein being, *Mary Squires*, late of the Parish of *Enfield*, in the County of *Middlesex*, Widow, was tried and convicted upon an Indictment against her, For that she, on the 2d Day of *January*, in the 26th Year of the Reign of our Sovereign Lord *George* the Second, King of *Great-Britain*, &c. with Force and Arms, at the Parish aforesaid, in the County aforesaid, in the Dwelling-house of one *Susannah Wells*, Widow, there situate, upon one *Elizabeth Canning*, Spinster, in the Peace of God and our said Lord the King then and there being, feloniously did make an Assault, and her the said

Elizabeth

Son and Daughter of *Mary Squires*; I saw *George* first there; he was sitting by the Kitchen Fire, and one *Clarke*, a Shoemaker of that Place, with him; this was on *Sunday* Night: I am not positive to the first Day I saw *Mary Squires*, because I was obliged to be out early in the Mornings; but I think I first saw her on the *Wednesday*, and *Lucy* with her, by the Kitchen Fire.

Mr. *Gascoyne*. How long did you remain in that Town?

A. Wake. From the 31st of *December* to the 14th of *January*; *Gibbons's* House was my House all that Time; I remember they went away two or three Days before I did.

Mr. *Gascoyne*. Can you remember the Day they went away?

A. Wake. Upon my Word I do not.

Mr. *Gascoyne*. Do you know this by your Memory, or by your Books?

A. Wake. By my Memory.

Mr. *Gascoyne*. Did *George Squires* lie in the same Room you did every Night?

A. Wake. I don't remember but he did; the Mother and *Lucy* lay in a Room where there were two Beds, which we went through to go to Bed; it was up one Pair of Stairs; I saw them in Bed.

Mr. *Gascoyne*. Do you remember any Dancing there?

A. Wake. I do; I was in the Room with them one Evening; *George* danced with a young Woman of *Abbotsbury*, *Clarke* danced there, and *Lucy* danced there.

Mr. *Gascoyne*. What Sort of Weather was it, while you was there?

A. Wake. There was a good deal of Snow: I remember I borrowed a great Coat of *George Squires* to go my Rounds in; because I had been out in my own, and it was wet.

Mr. *Gascoyne*. Who played the Music?

A. Wake. A Blacksmith, named *Melchisedech Arnold*, played on a Fiddle; he sold Cyder; I surveyed his House; I remember I had been taken ill coming my Rounds, and was sitting by the Fire-side, and the old Gentlewoman prescribed something to cure me, she got me something hot; the next Morning, or the Morning after, she made me a buttered Toast before I went out.

Mr. *Gascoyne*. You had a Book in your Hand; is every Day's Gauge in that?

A. Wake. I believe they are; we return these Books to the Excise-Office; this Book was sent for out of the Country on purpose; when I was examined; I had left them with *John Ward* at *Abbotsbury*; when I went from thence to *Dorchester* again.

Mr. *Gascoyne*. What Time was it you heard of this Affair about the Trial of the old Woman?

A. Wake. I saw it in a News-paper; that one *Mary Squires*, a Gypsie Woman, was taken up for a Robbery.

Mr. *Gascoyne*. Did it mention the Time?

A. Wake. I cannot remember whether it did or not; but I believe I told my Mother, that *that* could not be the Woman, because I saw her at *Abbotsbury* when I was officiating for Mr. *Ward*; I was sent to *Lewes* in *Suffex*, and had an Order by my Supervisor, from the Commissioners, to come up and attend my Lord-Mayor, but I did not know

Elizabeth in bodily Fear and Danger of her Life then and there feloniously did put, and one Pair of Stays of the Value of ten Shillings, of the Goods and Chattels of the said *Elizabeth*, from the Person and against the Will of the said *Elizabeth*, in the Dwelling-house aforesaid, then and there violently and feloniously did steal, take, and carry away, against the Peace of our said Lord the King, his Crown and Dignity. Upon which same Trial, one *John Gibbons*, late of *Abbotsbury*, in the County of *Dorset*, Victualler, on the 21st Day of *February*, in the Year aforesaid, to wit, at *Justice-Hall* aforesaid, in the Parish of *St. Sepulchre*, in the Ward of *Farringdon Without*, in the City of *London*, came in his own proper Person as a Witness on the Behalf of the said *Mary Squires*, of and upon the Matters contained in the said Indictment; and the said *John Gibbons*, then and there in the Court aforesaid, before the said Justices last above-named, and others their Fellows assigned as aforesaid, upon the Trial aforesaid, was in due Manner and Form sworn, and took his corporal Oath upon the Holy Gospel of God, as such Witness, (the same Court then and there having a sufficient Authority to administer the same Oath to the said *John Gibbons* in that Behalf.) And the said *John Gibbons*, on the said 21st Day of *February*, in the Year aforesaid, not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, and wickedly and unjustly devising and intending to pervert Justice, and to procure the said *Mary Squires* unjustly to be acquitted of the said Crime laid to her Charge in the said Indict-

ment, then and there upon the Trial aforesaid, upon his Oath aforesaid, falsely, maliciously, wilfully, wickedly, and corruptly, did say, depose, swear, and give in Evidence to the said Court, and the Jurors of the said Jury, upon the Trial aforesaid, as follows, (that is to say,) On the 1st Day of *January*, 1753, (meaning the Year of our Lord 1753,) the Prisoner *Squires* (meaning the above-named *Mary Squires*) came into the House, (meaning the House of the said *John Gibbons*, at *Abbotsbury* aforesaid, in the said County of *Dorset*.) There was *George* her Son, (meaning *George* the Son of the said *Mary Squires*,) and *Lucy* her Daughter, (meaning *Lucy* the Daughter of the said *Mary Squires*,) with her, (meaning the said *Mary Squires*.) And that the said *John Gibbons*, upon the Trial aforesaid, upon his Oath aforesaid, on the said 21st Day of *February*, in the Year aforesaid, at *Justice-Hall* aforesaid, in the Parish of *St. Sepulchre* aforesaid, in the Ward of *Farringdon Without* aforesaid, did falsely, maliciously, wilfully, and corruptly, say, depose, swear, and give in Evidence as follows: She (meaning the said *Mary Squires*) came with Handkerchiefs, Lawns, Muslins, and Checks, to sell about Town, (meaning *Abbotsbury*, in the County of *Dorset*;) she (meaning the said *Mary Squires*) stayed there (meaning at *Abbotsbury*, in the said County of *Dorset*) from the 1st to the 9th Day of the Month, (meaning from the 1st to the 9th Day of the Month of *January*, in the said Year of our Lord 1753,) and lay at my House, (meaning the House of him the said *John Gibbons*, at *Abbotsbury* aforesaid, in the said County of *Dorset*.) And the said

know upon what Account; I came up, and gave the same Evidence before his Lordship, as I do now, after he had sent me to *Newgate* to see *Mary Squires*, whom I knew very well by many Circumstances, and she knew me.

Mr. *Gascoyne*. How came you to be out of the Excise?

A. *Wake*. I was discharged, and so went into the Guards.

Mr. *Gascoyne*. For what was you discharged?

A. *Wake*. For Stamping.

Mr. *Gascoyne*. How could you see the People in Bed when you went through the Room?

A. *Wake*. Because there were no Curtains to their Beds.

Cross-examined.

Mr. *Williams*. Tell us what Year this was.

A. *Wake*. This is the Book we had from the Office at that Time; they are marked at the Excise-Office before they come.

Mr. *Williams*. Look in it, and shew me the first Entry you made there.

A. *Wake*. It was on the 1st of *January*; it is my Hand-writing from that to the 14th of *January*.

Mr. *Williams*. Was it in the Year 1752 or 1753?

A. *Wake*. There is no Year to it, only the Days of the Month.

Mr. *Williams*. What Year was this 1st of *January* in?

A. *Wake*. I believe it was the Year 53; the Mark 52 is done by the Supervisor on the 1st Page, before we have them.

Mr. *Williams*. Had you ever seen *Mary Squires* before that Time?

A. *Wake*. No, Sir, not since, till I saw her in *Newgate*.

Mr. *Williams*. Did you dance there?

A. *Wake*. No, I did nor at all.

Mr. *Williams*. Can you tell who *Clarke* danced with?

A. *Wake*. *Clarke* danced with *Lucy*, to the best of my Knowledge.

Mr. *Williams*. Did *Mary Squires* recollect you, or you her first, before you told her upon what Account you came to see her?

A. *Wake*. I said nothing at all to her, only asked her if she knew me; she said, Yes, that I was the young Man belonging to the Excise-Office; and said she remembered me very well, that I borrowed her Son's great Coat.

Mr. *Williams*. Did she seem to be under any Hesitation at that Time?

A. *Wake*. No, she seemed rather over-joyed; she knew me through the Grate as she was in the Prefs-yard.

Mr. *Williams*. Had you the same Cloaths on then, as you wore in *Dorsetshire*, when you saw her there?

A. *Wake*. Yes, I had the same Coat on, a sort of a Pepper-and-Salt Coat; I went there before I went to my Lord-Mayor.

Mr. *Williams*. Had you sent her any Notice you was coming there?

A. *Wake*. No, I had not.

Mr. *Williams*. Explain what you mean by Stamping.

A. *Wake*.

faid *John Gibbons*, then and there, upon the faid Trial being demanded to look at the faid *Mary Squires*, then a Prisoner at the Bar there, and being asked whether or not he was sure that she was the same *Mary Squires*, whom he had so as aforefaid deposed and sworn to have come to his faid House at *Abbotsbury* aforefaid, on the faid 1st Day of *January*, in the faid Year 1753, and to have stayed there from the faid 1st Day of *January* aforefaid, to the 9th Day of the faid Month; he the faid *John Gibbons*, upon the Trial aforefaid, upon his Oath aforefaid, in Answer to the faid Demand and Question, did falsely, maliciously, wickedly, wilfully, and corruptly, further say, depose, swear, and give in Evidence as follows: I (meaning himself the faid *John Gibbons*) am sure it is, (meaning that he the faid *John Gibbons* was sure that the faid *Mary Squires*, then a Prisoner at the Bar there upon the faid Trial, was the same *Mary Squires*, whom he the faid *John Gibbons* had as aforefaid deposed and sworn to have come into his faid House at *Abbotsbury* aforefaid, on the faid 1st Day of *January*, in the Year of our Lord 1753, and to have stayed there from the faid 1st Day of *January* aforefaid, to the 9th Day of the faid Month.) Whereas, in Truth and in Fact, on the faid 1st Day of *January*, in the Year of our Lord 1753, the faid *Mary Squires* did not come into the House of the faid *John Gibbons*, at *Abbotsbury*, in the faid County of *Dorset*. And whereas, in Truth and in Fact, the faid *George*, the Son of the faid *Mary Squires*, and the faid *Lucy*, the Daughter of the faid *Mary Squires*, or either of them, were not in

the House of the faid *John Gibbons*, at *Abbotsbury* aforefaid, in the faid County of *Dorset*, on the faid 1st Day of *January*, in the Year of our Lord 1753, with the faid *Mary Squires*. And whereas, in Truth and in Fact, the faid *Mary Squires* did not stay at *Abbotsbury*, in the faid County of *Dorset*, from the 1st to the 9th Day of the Month of *January*, in the faid Year of our Lord 1753. And whereas, in Truth and in Fact, the faid *Mary Squires* did not lie at the House of the faid *John Gibbons*, at *Abbotsbury* aforefaid, on the faid 1st Day of *January*, in the Year of our Lord 1753, until the 9th Day of the same Month. And whereas, in Truth and in Fact, the faid *Mary Squires* did not lie at the House of the faid *John Gibbons*, at *Abbotsbury* aforefaid, on the faid 1st Day of *January*, in the faid Year of our Lord 1753, nor on the faid 9th Day of the faid Month of *January*, in the Year last-mentioned, nor at any Time between the faid 1st Day of *January*, in the faid Year of our Lord 1753, and the faid 9th Day of the same Month of *January*. And whereas, in Truth and in Fact, the faid *Mary Squires*, on the faid 1st Day of *January*, in the Year last before-mentioned, was not at the House of the faid *John Gibbons*, at *Abbotsbury* aforefaid, nor at any other House or Place at *Abbotsbury* aforefaid. And so the Jurors aforefaid, upon their Oath aforefaid, do say, That the faid *John Gibbons*, on the faid 21st Day of *February*, in the 26th Year aforefaid, at *Justice-Hall* aforefaid, upon the Trial aforefaid, in the Court aforefaid, (the same Court then and there having a competent Authority to administer the faid Oath to

A. Wake. That is Neglect of Duty, writing at home instead of going abroad.

Mr. Williams. Did not you say my Lord-Mayor sent you to see her in *NevoGate*?

A. Wake. My Lord asked me, if I had seen her? I said, I had: He asked me, if I was positive to the Woman? I said, I was: He said, If you are not, go again; so I went and talked with her again.

Mr. Davy. Was you not positive, made you go again?

A. Wake. I was positive then.

Mr. Williams. Did my Lord-Mayor examine you before he had the Excise-Books?

A. Wake. I don't know that.

Francis Aldborough sworn.

I am Assistant to the General Examiner at the Excise-Office; these Books are called the 5th and 6th Round for the Year 1752, ending at *Midsummer* 1753; they are sent from the Office once in a Quarter of a Year, by Order of the Board; these are for *Abbotsbury* Division; they are returned to the Office by the Supervisor; these contain an Account of what was done in *Abbotsbury* from the 21st of *December* 1752, to the 15th of *March* following, 1753; there is an Order of Board for every Officer that officiates in the place of one that is sick.

Mr. Gascoyne. Look in the Book: Do you know whose Hand-writing it is?

F. Aldborough. I don't know *Wake's* Hand-writing; here is noted in this Book *January* 1 to 13; *Andrew Wake* officiated for the proper Officer,

he being indisposed; the Book says *John Ward* is the proper Officer.

Cross-examined.

Mr. Moreton. At what Time are these Books returned to the Office?

F. Aldborough. There is no certain Time for that; there is an Order for them to be sent in six Weeks after they are done with; some may be kept three Months, some more, some less; but we look upon him to be the more industrious Officer that sends them up in proper Time: I was informed these came up according to Express, and they were put in my Possession.

George Clements sworn.

I live at *Abbotsbury*.

Mr. Davy. Do you know that old Woman there? look at her Face.

G. Clements. I have looked at her Face many Years ago.

Mr. Davy. Do you remember her Daughter?

G. Clements. What, *Lucy*? Yes, Sir, and her Brother too; he is my Name-fake.

Mr. Davy. When did you see them in your Country?

G. Clements. I saw them all three on the 1st of *January*; I went into the Public House the *Old Ship*; there the old Woman's Son and Daughter danced with our *Abbotsbury* People; it was about Nine at Night.

Mr. Davy. Who was *Lucy's* Partner?

G. Clements. *William Clarke*.

Mr. Davy. Did they stay at *Abbotsbury*?

G. Clements.

the said *John Gibbons* in that Behalf) falsely, maliciously, wilfully, wickedly, and corruptly, in Manner and Form aforesaid, did commit wilful and corrupt Perjury, to the great Displeasure of Almighty God, to the evil Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity.

All the Witnesses, on the Back of the Bill, were called out to give Evidence; but no one appearing, except Mary Woodward, and she declaring she knew nothing of the Matter, an Officer was sent to the Prosecutors to attend the Court; but none of them appearing, the Jury acquitted the Defendant.

A second Indictment to the same Purpose was read against *William Clarke*; but he was acquitted for want of Evidence.

A third Indictment was preferred against *Thomas Greville*, for swearing he saw *Mary Squires* at *Coombe* on the 14th of *January*; and he was acquitted likewise for want of Evidence.

During the Time a Messenger was sent to the Prosecutors to attend the Court, Mr. Davy, Council for the Defendants, took that Opportunity of addressing himself to the Court as follows:

My Lord,

I HAVE the Honour to appear before your Lordship in Behalf of the three Defendants; who stand indicted for Perjury, supposed to have been committed by them in this Place, upon the Trial of *Mary Squires*, for the Robbery of

Elizabeth Canning, at *Enfield-Wash*, in *January* last.

Gibbons and *Clarke* are charged with falsely swearing, that *Mary Squires* was at *Abbotsbury* from the 1st to the 9th of *January*; and *Greville*, that she was at *Coombe* on the 14th.

If their Testimony was true, *Mary Squires* was unjustly accused; but it was hers, and their Misfortune, that it then obtained no Credit.—

They were Strangers, unknown to every body at the Trial.—*Canning* was positive, and being by unfair Means confirmed in her Evidence, *Squires* was convicted.

Upon this Charge of Perjury, great Care hath been taken, attended with great Expence, on either Side, to search this Matter to the Bottom; every Circumstance hath been scrutinized, and nothing omitted to investigate the Question thoroughly.

It hath a long while been the general Subject of Conversation, and hath engaged the Attention of the Public, more, perhaps, than any private Transaction ever did before.

Here are the Names of no less than fifty Witnesses indorsed upon each of their Indictments; yet only one of them, a poor Woman, whose Evidence is immaterial, appears to prosecute!

This Desertion may occasion various Conjectures, and many false Reasons will probably be suggested for not prosecuting these Indictments.

It may perhaps be attributed to a Compromise—It may be said, that these Defendants are to be acquitted by Consent, and that the Indictment against

G. Clements. They did; they lodged at Gibbons's; I drank with them the first and second Mornings, and dined with them the Sunday following; I saw them on the Monday, and on the Tuesday, the Day they set out from thence.

Mr. Davy. Who set out with them?

G. Clements. William Clarke; he and Lucy went together.

Mr. Davy. I hope they are married by this Time.

G. Clements. The Lord knows, I don't know that.

Cross-examined.

Mr. Nares. How often have you seen this old Acquaintance of yours, Mary Squires?

G. Clements. About fifteen or sixteen Times in that Place, but justly I cannot tell.

Mr. Nares. How often have you seen George?

G. Clements. I cannot tell; I have seen him more than once

Mr. Nares. Twice?

G. Clements. More.

Mr. Nares. Three times?

G. Clements. Three times.

Mr. Nares. Four times?

G. Clements. I cannot tell.

Mr. Nares. Then you will not say you have seen him more than three times?

G. Clements. It may be more, I will not say.

Mr. Nares. When George was not with the old Woman, who came with her?

G. Clements. Her Daughters, Polly and Lucy.

Mr. Nares. How often have you seen Polly and Lucy?

G. Clements. I cannot tell.

Mr. Nares. Have you seen them oftener than you have George?

G. Clements. I cannot tell.

Mr. Nares. How long is it since you saw the old Woman at Abbotsbury, before this Time you are speaking of?

G. Clements. I believe it is four Years since.

Mr. Nares. Was George with her that Time?

G. Clements. Yes, Sir.

Melchisedech Arnold sworn.

I am a Blacksmith, and live at Abbotsbury; I know the old Woman perfectly well, and the Girl on the left Hand, and the Man behind her; they are her Son and Daughter; the last Time I saw them all three, was in January last was Twelvemonth; I saw them on an Evening at the Old Ship at Abbotsbury.

Mr. Willes. Do you mean Old Stile or New?

M. Arnold. I mean this present calculated Time; I remember it was on the 1st of January at Night; the young Man and young Woman danced, and I played on the Violin.

Mr. Willes. Do you know who was Lucy's Partner?

M. Arnold. Her Partner was William Clarke, and George Squires's Partner was Mary Gibbons; they might give over Dancing at Eleven or Twelve at Night.

Mr. Willes. Did you see them afterwards?

M. Arnold. I be not positive I saw them the next Day, but I saw them several Times that Week there; I saw them on the Saturday Night in particular,

against Canning is to be dropped. One cannot easily imagine what Rumours Malice may raise.

For this Reason, and to prevent any Imputation upon those who are concerned for the Defendants, I beg Leave to assure your Lordship, and all who hear me, that the Defendants now come prepared for Trial; that their Witnesses attend your Lordship, ready to give their Testimony with such clear, ample, convincing Circumstances, as would demand universal Assent; and fully prove the Innocence of the three Defendants, and the Falsity of Elizabeth Canning's Story in every Particular.

Here are Witnesses, more in Number than perhaps ever appeared in any one Cause, collected together at a vast Expence, and from different remote Places.

Here is other Evidence also ready to be produced, such as, in its Nature, cannot deceive.

The Prosecutors have been invited to meet them here before your Lordship and the Jury; and so desirous were the Friends of the Defendants that this Matter should be fairly tried, that they have offered to bear Part of the Charges of this Prosecution.

The Public hath been a long while amused with Promises, that, in the Trials of these Indictments, the Guilt of the present Defendants should be clearly manifested, and the whole of this mysterious Transaction unravelled.

The Time is come to perform these Promises, and Thousands expect it.

Why do all these Boasters now hide their Faces? because they are covered with Confusion.

They are aware how dangerous it is to pursue a Prosecution, founded in the foulest and most daring Perjury; and wisely withdraw themselves from a Trial which would involve them in Ruin.

Had I considered the Case of the Defendants alone, without regard to any other Person, I should have thought it needless to give the Court any Trouble upon this Occasion.

They are private Countrymen, without any Connections in this Part of the World, and totally unconcerned at any Reports which may prevail here:—Within the narrow Circle of their Acquaintance, their Characters will remain unblemished, let Fame do its worst; because the Charge against them is the Attestation of a Fact, which all their Acquaintance, all their Parish, and their whole Country, know to be true.

But there is One, whose near Relation to this great City makes it necessary for me to say thus much.

It is impossible for Him to be unsollicitous for public Approbation, after having done so much to deserve it.

Yet all the Reproaches which Malice could suggest to little, dark, designing Men, have been levelled at the Chief Magistrate of this City, only for doing what the Love of Justice and Humanity inspired him to.

For His Sake, therefore, I have thus trespassed upon your Lordship's Patience, and only beg Leave to add a few Words more, to shew how unmerited those Reflections were.

As his Lordship was at the Head of the Commission at the Trial of Mary Squires, and was

ticular, that Week, they were dancing again, and the old Woman sat in the Dancing-Room; she was in the Kitchen on the *Monday* Night, sitting by the Fire-side; I also saw them the next *Monday*, being the 8th; they were then in *Gibbons's* House; I heard they went away the *Tuesday*, being the next Day.

Cross-examined.

Mr. *Williams*. Had you any Knowledge of them before this Time you talk of?

Mr. *Arnold*. I don't remember any perfect Knowledge I had of them; but I have heard say they were there three Years before, but I don't remember I ever saw them before.

Mr. *Williams*. What Business do they follow?

Mr. *Arnold*. I don't know that, for I never dealt with them.

Mr. *Williams*. Where did you see them these Times you mention?

Mr. *Arnold*. They were at the *Ship*, and I don't know that I saw them at any other House.

John Ford sworn.

I live at *Abbotsbury*, and am a Carpenter.

Mr. *Davy*. Did you ever see that old Woman before? (*Pointing to Mary Squires.*)

Mr. *Ford*. I have seen her many Times before at *Abbotsbury*; I saw her a matter of four Years ago, and I saw her on the 1st of *January*, a Twelve-month ago last *January*, being of a *Monday*; I shook Hands with her, drank with her Son, and kissed her Daughter; the Daughter, Son, and she came all together to the Excise-Office in our Town, (there they lodged;) *John Gibbons* keeps the House; he is a Nephew of mine; I drank with *George*, or else I am not here now.

Mr. *Davy*. Did you see them often?

Mr. *Ford*. I saw them at *Gibbons's* House from the 1st to the 9th every Day; they bought the Bread they eat of me; I am as sure I saw them there, as I am that I am here this Minute.

Mr. *Davy*. Who bought the Bread?

Mr. *Ford*. *Mary Squires* did, or her Son, or Daughter.

Mr. *Davy*. How came you, that are a Carpenter, to sell Bread?

Mr. *Ford*. I keep a Shop, and sell Bread and several other Things.

Mr. *Davy*. Have you any particular Reason for remembering the Day?

Mr. *Ford*. I have, it being the 1st of *January*; and Mr. *Bond*, a School-master in our Town, gives his Scholars a Holiday at New-year's Time; he was there on the *Sunday* Evening, and gave them Liberty; I was with him, and Mr. *Wallace*, and *George Squires*.

Cross-Examination.

Mr. *Moreton*. Where did they come from then?

Mr. *Ford*. They came from a Place called *Litton*.

Mr. *Moreton*. How early on the *Monday* did you see them there?

Mr. *Ford*. It was some Time about One, Two, or Three o'Clock; I am sure it was some Time in the Afternoon; I know it was not Night, because I was looking over the Hatch, and saw *George* coming down the Street, and spoke to him.

Mr. *Moreton*. How far might you see *George*, before he came to speak to you?

Mr. *Ford*. I saw him, perhaps, fifty Yards; I could see a hundred, and I believe I could see a thousand Yards.

Mr. *Moreton*. What Hour do you take it to be?

Mr. *Ford*. I am sure it was not come to Three o'Clock; upon my Life I kissed *Lucy* before Three o'Clock.

Mr. *Moreton*. You have given a very particular Reason for knowing it to be the 1st of *January*, that is, that Mr. *Bond* had given his Scholars a Play-day; then does he only give them a Play-day on the 1st of *January*?

Mr. *Ford*. No, not in particular.

Mr. *Moreton*. Does not he let them break up at *Christmas*?

Mr. *Ford*. No, he does not let them break up all the *Christmas*; they had several Days at this Time, that is the Reason I know the Day.

Mr. *Davy*. You say the first Time you saw them was on *Monday* the 1st of *January*; pray what Time of the Day was it?

Mr. *Ford*. I went to the Ale-house between One and Two o'Clock for a Mug of Beer.

Mr. *Davy*. How many Pots of Beer have you drank To-day? Do you take upon you to say you saw them on the *Monday* about Two or Three in the Afternoon?

Mr. *Ford*.

was totally uninfluenced by the infamous Endeavours which at that Time had been used to give Credit to a most improbable Narrative; he was directed, merely by a Regard for Truth; to make further Inquiry into a Story, pregnant with Absurdities, and unlike any Transaction that ever went before it.

And the Evidence of *Elizabeth Canning* depending entirely upon this Question, Whether the Account which these three Men had given was true, where could his Lordship so properly direct his Inquiry, as to those Places, where they swore they had seen her?

The Success of that Inquiry answered the Wishes of his Humanity; and the most indubitable Proofs of the Convict's Innocence warmed the Royal Heart to Mercy.

One should have thought, that this Conduct of a Magistrate, whose sole Motive to it was a Desire of rescuing a wretched, friendless Convict, from the Miseries into which Perjury and popular

Prejudice had thrown her, should, at least, exempt him from Censure.

But his Enemies could never forgive him the Merit of this Action: As it raised him still higher in the Esteem of good Men, he became more the Object of Envy; and no Arts were unessay'd to diminish the Reputation he had so justly acquired.

Had my Lord-Mayor been present, I should not have said so much; but I have been the more encouraged to it from observing, that *his Lordship withdrew himself* as soon as these Causes were called, because he was pleased to think it improper for Him to preside, where any thing that might be thought to concern Himself should come before the Court.

I have an Apology to make for giving your Lordship any Trouble, where there is no Prosecution; but as the Court waits for the Return of a Messenger, and no Business is now proceeding upon, I hope I have given no Offence. *Vide Sessions-Paper in Gascoyne's Mayoralty, Sept. 1753.*

J. Ford. I did.

Mr. Davy. You are drunk now, and ought to be ashamed of yourself.

Daniel Wallace sworn.

I live at *Abbotsbury*, and am a Mercer: I have seen these three People before, and remember them all very well: I saw them there the 7th of *January*, which was on a *Sunday*.

Mr. Willes. Had you seen the Son and Daughter before?

D. Wallace. I had several Times before.

Mr. Willes. When did you see the Son and Daughter first?

D. Wallace. It was three or four Years before; I saw them that Time almost every Day.

Mr. Willes. Had you seen either of them that Week, before *Sunday* the 7th, at *Abbotsbury*?

D. Wallace. I saw *George* almost every Day; he bought Sugar of me; and I saw *Lucy* twice that Week, but did not see the Mother till the 7th, and did not see them after that Day.

Mr. Willes. Had you ever seen the Mother before, so as to be certain of knowing her?

D. Wallace. I had, and that is the real Woman.

Cross-examined.

Mr. Williams. When did you first see them that Week?

D. Wallace. I saw *George* the Day he came to Town; I believe he came into Town the *Sunday* before.

Mr. Williams. What Day of the Month was it when you first saw *George*?

D. Wallace. I saw him on the first Day he came into Town, about Six in the Evening.

Mr. Williams. Did you see him on the *Monday* the 1st of *January*?

D. Wallace. I saw none of them on the *Monday*; I believe I saw *George* on *Tuesday*, *Wednesday*, *Thursday* and *Friday*; I have seen the old Woman several Years ago, and have conversed with her a great many Times.

Mr. Williams. What did they come there for?

D. Wallace. That I don't know; they have at different Times sold Things.

Mr. Recorder. What do you know the particular Day by, on which you saw the old Woman?

D. Wallace. I had bought a new Jack, and had a Shoulder of Mutton roasted for Dinner on the *Sunday*; and the old Woman was peeling Potatoes, and asked me to dine with her, and I said, I had something particular to dine on.

Hugh Bond sworn.

I am a School-master at *Abbotsbury*; I saw this old Woman there on the 8th and 9th of *January* 1753, and *George* and *Lucy* along with her; this was on a *Monday* and *Tuesday*, at the Sign of the *Old Ship*: I had been down in *Devonshire*, and came Home about Six or Seven at Night: I lodged at the *Old Ship*, and had never seen the old Woman before; they went away on the Morning of the 9th about Nine o'Clock; this old Woman is the very same Person; whoever sees her once, can never mistake her again: I saw *George* again the same Night; then *Clarke* and he came back again from *Portersham*.

Mr. Gascoyne. Had you any Conversation with her?

H. Bond. No, but I had with *George*, and one Mr. *Wake*, an Exciseman, that officiated in the

room of Mr. *Ward*, who was then sick; for when I came Home, my Landlady begged I would not be offended at her putting somebody in my Bed; that was this Exciseman; there are two Beds in the Room, and in the other *George Squires* lay.

Mr. Gascoyne. When did you go down into *Devonshire*?

H. Bond. I went on the 31st of *December*, and came back on *Monday* the 8th of *January*.

Mr. Gascoyne. As you are a School-master, you must know the Time of your going out.

H. Bond. My Wife was in *Devonshire*; I went to see her; she was sick, and is since dead.

Cross-examined.

Mr. Moreton. What Time did you see this old Woman on the 8th?

H. Bond. It was after Candles were lighted; after I had shifted myself, I came and sat down by the Fire, with *George Squires* and Mr. *Wake*; I had never seen *George* before; I asked my Landlady, who he was? she said, his Name was *Squires*, and that his Mother and Sister were in another Room; after which the old Woman came out to call her Son to go to Bed.

Mr. Moreton. What Time did they go away the next Day?

H. Bond. I don't know what Time; but when the Girl came to call me from the School to Breakfast, they were then in the Kitchen.

Mr. Moreton. How far is *Portersham* from *Abbotsbury*?

H. Bond. It is about a Mile Distance.

Mr. Moreton. Are you sure you saw *George*, after he came back again from *Portersham*?

H. Bond. I am; he came back again in the Evening; and drank a Mug of Beer at my Door, after School-time, with *William Clarke*, in the Street.

Mr. Moreton. What might it be o'Clock?

H. Bond. It might be Five o'Clock; I saw no more of him; *George* said he would not stay any longer; for he must go to *Portersham*; I did not go out, but went to Bed afterwards.

John Bailey sworn.

I live at *Abbotsbury*, and am a Carpenter.

Mr. Davy. Look at that old Woman; do you know her?

Bailey. I do; the Man and Woman behind her are *George* and *Lucy*: I saw them at *Abbotsbury* on the 1st of *January* 1753, at the *Old Ship*, the Excise-Office; and I saw them all three there the *Monday* and *Tuesday*, which was a Week after. My Yard joins to the *Old Ship*; I saw them most Days of that Time; I shaved *George* twice, the Time he was there, on the *Wednesday* and *Monday* after; I practise the Trade of a Barber as well as a Carpenter.

Mr. Davy. How long have you known the old Woman?

Bailey. I have known her ten or fifteen Years, and am sure I am not mistaken.

Mr. Davy. How long have you known the Son and Daughter?

Bailey. Not so long; I have known them above three Years; that is, from the last Time they came there before this 1st of *January* I mentioned.

Mr. Davy. By what Circumstance do you recollect it to be the 1st of *January*?

Bailey. I had a Brother that used the Sea, and he went away that very Day for *Bristol*; I am certain that was the very Day: He left something of a Will for me to enjoy, if he died; and he has since returned, and taken the Paper from me.

Cross-examined.

Mr. Moreton. What Time did you see them at *Abbotsbury* on the 1st of *January*?

Bailey. It was in the Evening, betwixt Eight and Nine o'Clock, by the Kitchen Fire.

Mr. Davy. Do you remember the Dancing there?

Bailey. I cannot say I do, for I went Home to Bed.

Thomas Anson sworn.

I live at *Abbotsbury*, and am a labouring Man; I know that old Woman very well, and her Son and Daughter, as she calls them.

Mr. Willes. Did you ever see them at *Abbotsbury*? and when?

Anson. I saw them on Old *Christmas-Day* there, being on a *Friday*, the 5th, at *John Gibbons's* House; they were all three together; I had seen them a Day or two before that.

Mr. Willes. Had you seen them before this Time of coming there?

Anson. I had seen her about four Years ago, and her Son and two Daughters with her.

Mr. Willes. Do you know one *William Clarke*?

Anson. I do; he was with them at the same Time; they were intimate together, that is, *Lucy* and he, as Sweethearts; it was reported so then.

Cross-examined.

Mr. Nares. Do you know their Reasons for coming there?

Anson. No, I do not.

Mr. Nares. How long have you lived at *Abbotsbury*?

Anson. About five Years.

Mr. Nares. How far is that from the Sea?

Anson. It is about a Mile from it.

John Hawkins sworn.

I live at *Abbotsbury*, and am a Weaver.

Mr. Gascoyne. Look at that old Woman that sits there, and her Son and Daughter.

Hawkins. I do; I know them: I saw them at *Gibbons's* at *Abbotsbury*, on the 1st of *January*, about Eight at Night.

Mr. Gascoyne. What *January*?

Hawkins. I am no Scholar; it was not last *January*, but *January* was Twelve-month; the Son and Daughter were dancing then.

Mr. Gascoyne. Who played on the Violin that Time?

Hawkins. *Melchisedech Arnold.*

Mr. Gascoyne. Where was the old Woman?

Hawkins. She was sitting in the other House by the Fire-side in the Kitchen.

Mr. Gascoyne. Why do you call it the Kitchen, belonging to the other House?

Hawkins. That is the lower House, joining to the same House.

Mr. Gascoyne. Did you see the old Woman more than once?

Hawkins. I saw her every Day till the Day she went away, which was on a *Tuesday*, being the 9th Day of the Month.

Mr. Gascoyne. Had you ever seen the old Woman before that *January*?

Hawkins. Yes, Sir, I had; it may be a Year, two, or three before, at *George Clements's*.

Mr. Gascoyne. By what do you remember the particular Time of your seeing her?

Hawkins. Because it was on New-year's Day, and being Holiday-time, we got to dancing.

Mr. Gascoyne. Were you acquainted with them before this?

Hawkins. No, I was not.

Mr. Gascoyne. Did you dance with them?

Hawkins. Yes, I did on the *Monday* Night.

Mr. Gascoyne. Can you tell how they were coupled?

Hawkins. I cannot tell who my Neighbours danced with.

Mr. Gascoyne. Who did *Clarke* dance with?

Hawkins. I cannot tell.

Mr. Gascoyne. Who did you dance with?

Hawkins. I cannot tell now.

Cross-examined.

Mr. Moreton. This was a very merry Dance: What had you been at all Day? Had you kept Holiday the whole Day? Cannot you remember your Partner?

Hawkins. I do not remember my Partner.

Mr. Moreton. Nor who danced with *Lucy*?

Hawkins. No, I cannot; there was a very great Company of us.

Mr. Moreton. Who did *George* dance with?

Hawkins. I do not know.

Mr. Moreton. Do you remember the Place?

Hawkins. Yes, I do; it was in *Gibbons's* Parlour; it was a common Dance, any body might come as would.

Mr. Moreton. What was *Clements's* House, where she came before?

Hawkins. A private House; she used to lie at that House.

Mr. Moreton. What is his Trade?

Hawkins. He is no Trade, but a Fisherman.

Mr. Moreton. Does he never catch such a Thing as a Handkerchief, such as is round your Neck, at Sea?

Hawkins. No, not as I know of.

Mr. Moreton. What had the old Woman used to deal in?

Hawkins. I never saw her deal in any thing; I have heard People talk she sold Things.

Mr. Moreton. Was it hard Ware?

Hawkins. I do not know what Ware it was.

Mr. Moreton. Did you ever talk with her?

Hawkins. Yes, once at *Clements's*.

Mr. Moreton. What was your Conversation then?

Hawkins. It was about telling of Fortunes; we asked her Questions, and she told us she was no Fortune-teller.

Mr. Moreton. Did she tell you what her Trade was?

Hawkins. No; we went about our Business; there were two young Men with me.

Mr. Davy. Now we leave *Abbotsbury*, and come to *Portersham*.

William Haines sworn.

I live at *Portersham*.

Mr. Davy. Look at that old Woman; do you know her?

W. Haines.

W. Haines. I know her very well, her Name is *Mary Squires*; I have known her thirty Years and upwards.

Mr. Davy. Where did you see her last?

W. Haines. I remember seeing her at *Portersham* on the 9th of *January 1753*.

Mr. Davy. Do you know that young Man and Woman that are by her?

W. Haines. I do; they are *George* and *Lucy*: They were all three of them at my Door with *William Clarke* from *Abbotsbury*; they were going to their Quarters, the Sign of the *Chequer*, *Josua Frampton's* House; *Clarke* called at my House, to know if I had done his Cloaths; (I am a Taylor.) I asked the old Gentlewoman and the rest to come into my House, but they did not, and went on to the *Chequer*; after that I went down to the *Chequer*; there was one *Richard Chipman*; we drank a Pot of Beer: *Mrs. Squires* sat in one Corner, and *George* in the other, and *Lucy* and *Clarke* before the Fire in the Kitchen.

Mr. Davy. What Sort of Weather was it that Night?

W. Haines. It was terrible bad Weather the next Day; I left them that Night there.

Mr. Davy. What makes you remember it to be the 9th of *January*?

W. Haines. I rent a Shop at *Abbotsbury*, and was going there on New-year's Day; and because of the Old *Christmas*, I never went till *Monday* the 8th. Although I have known the old Woman so long, yet I never had any Knowledge of the young ones, till *William Clarke* courted *Lucy*: As for *George*, he might pass by, but I never had any Knowledge of him till then. I lived two Years at *Abbotsbury*: I was once at Work at *George Clements's*, and the old Woman happened to be there all the Time I was there, which was seven or eight Days.

Cross-Examination.

Mr. Nares. What Time in the Afternoon did you see them at your Door on the 9th of *January*?

W. Haines. It was about Ten or Eleven o'Clock in the fore Part of the Day.

Mr. Nares. Did you go after them to the *Chequer*?

W. Haines. I did.

Mr. Nares. In how long Time after?

W. Haines. About an Hour or two after them.

Mr. Nares. How long did you stay with them?

W. Haines. I only drank a Pot or two of Beer.

Mr. Nares. Did you see *George Squires* there?

W. Haines. No, I did not see him there any Time after that Afternoon; after I went away, I went to *Abbotsbury*, and I met him in the Fields that come from *Abbotsbury*.

John Haines sworn.

I am Son to *William Haines* of *Portersham*; I live there with my Father.

Mr. Willes. Look at that old Woman; do you know her?

J. Haines. I have seen her before at *Portersham* on the 9th of *January*.

Mr. Willes. Do you know her Son and Daughter?

J. Haines. Yes, I saw them there the same Time.

Mr. Willes. What Day of the Week was the 9th of *January*?

J. Haines. It was on a *Tuesday*; they lay at the *Chequer*; *William Clarke* came with them; they came there about Nine, Ten, or Eleven o'Clock; *William Clarke* lay there, so did they; they went away about Nine or Ten the next Day; it was a very bad rainy Day.

Cross-Examination.

Mr. Williams. Did you ever see this old Woman before that Time?

J. Haines. I saw her at *Abbotsbury* on the 6th of *January*, and never before.

Mr. Williams. Did you see them in the Evening?

J. Haines. I do not remember I saw them in the Evening; I saw them the next Morning.

Mr. Williams. Did you see an Exciseman there?

J. Haines. No, I did not.

Mr. Williams. How came you to be so particular as to the Day?

J. Haines. The Reason is, because I saw them at *Abbotsbury* the 6th of *January*; the *Epiphany* Day; I was at *Abbotsbury* then.

Mr. Williams. How long have you lived with your Father?

J. Haines. Ever since I was born.

Mr. Davy. Upon your Oath, is this the very Woman?

J. Haines. It is; I cannot be mistaken.

Francis Bewley sworn.

F. Bewley. I live at *Ridgway*, and keep a small Public House, the Sign of the *Sloop a-ground*.

Mr. Davy. How many Miles is that from *Portersham*?

F. Bewley. It is four or five.

Mr. Davy. Look upon that old Woman there; and tell us whether you have seen her before?

F. Bewley. I have several Times at my House.

Mr. Davy. Did you see her at any Time about a Year ago at your House?

F. Bewley. I did on *Wednesday* the 10th of *January*.

Mr. Davy. Were the Son and Daughter with her at that Time, and *Clarke* of *Abbotsbury*?

F. Bewley. They were.

Mr. Davy. What Time might they come to you?

F. Bewley. I believe, betwixt Nine and Eleven in the Morning.

Mr. Davy. Did they come in all together?

F. Bewley. I don't know whether they came all together, but they were there all together in a short Time.

Mr. Davy. What had they to eat or drink?

F. Bewley. At first they had some Roll and Cheese; I carried it myself; and they had some Beef-steaks for Dinner, at about One or Two o'Clock, or after; it was not much off of that.

Mr. Davy. Do you remember the Circumstance of any body having a dead Horse?

F. Bewley. Yes, Sir; a Woman going from *Siron* Market to *Weymouth* Market, the Horse was taken sick upon the Road, and she hired my Horse to ride to *Weymouth* Market: She bid me take care of this Horse, and get a Blacksmith to do something to him, and the Horse died on the *Wednesday* Morning, at almost Day: I got a Man to lend me a Horse to draw him out of my Stable to a Place behind my House, under a Hedge: When the Woman came back, she desired me to give somebody Six-pence to skin him, and the Horse

Horse was a skinning as they came along into the Yard.

Mr. Davy. Did *Clarke* stay at your House that Night?

F. Bewley. No, he did not: A Man was selling Turnips, with two Horses, about the Parish; and *Clarke* had spoke to him, as far as I heard, to come to *be* to carry him Home on one of those Horses: It was a terrible wet Day as ever I know'd.

Mr. Davy. Where did the Gypsey Woman, her Son and Daughter lie?

F. Bewley. They lay at my House that Night.

Mr. Davy. Before you was up in the Morning, did any body come to your Bed-side?

F. Bewley. Yes, *George Squires* did, with his Mother: He told me he had a Pattern of a Waistcoat, (*he produces a Remnant of Nankeen*) this is the Stuff.

Mr. Davy. What did he say to you?

F. Bewley. The first he said was, he asked me if I wanted a Waistcoat, and said he had been to *Abbotsbury*, and Money was short, and I should have it cheap. I said, I did not understand it, and I never had such a Waistcoat in my Life, and I did not want it: With that his Mother came in, and said, they were short of Money, and desired to leave it in my Hand, and desired I'd take it for the Reckoning, which I did, and have had it ever since. They told me they would either send the Money, or bring it.

Mr. Davy. Had you ever, before this Time, seen the Gypsey Woman and her Daughter?

F. Bewley. I can't say justly to the old Woman; I once saw the Son and Daughter dancing at our House, when they lodged at *Broadway* once.

Mr. Davy to *George Squires*. Look at this Piece, (*he takes the Nankeen in his Hand*.)

Squires. I can't swear this is the same that I left with him, but it is very much like it; it is the same Sort of Stuff.

F. Bewley. I wrote my Name upon it, before I let it go out of my Custody to any body; my Name is now on it, (*shewn to the Jury, and appeared with his Name on it*.)

Mr. Davy. How do you remember the Time particularly?

F. Bewley. I am sure it was that Time, by reason it was such Weather, and the *Blandford* Sessions were sitting at Court; it was a Flood, and the dying of the Horse, and several Circumstances.

Mr. Davy. How far is *Blandford* from *Ridgway*?

F. Bewley. It is fifteen computed Miles. We know that Sessions is always kept the 8th or 10th of *January*; many of my Neighbours were at the Sessions, and told me, when they came Home, what a Flood there was in going.

Cross-examined.

Mr. Moreton. Are you sure this was *January* 53?

F. Bewley. It was *January* was Twelve-month.

Mr. Moreton. Are you sure you have seen *George* and his Sister a dancing before this?

F. Bewley. Yes, Sir, I have, three or four Years back; but I can't say I had seen the old Woman; they lodged at *Broadway* then.

Mr. Moreton. What Trade did they carry on?

F. Bewley. Upon my Word I cannot tell.

Mr. Moreton. Did not you know of their dealing in Nankeens?

F. Bewley. I never know'd they did; they brought this to me; I never saw them have a Bit in my Life before.

Mr. Moreton. How far is *Ridgway* from the Sea?

F. Bewley. It is about two Miles.

Mr. Moreton. Was you up here when *Mary Squires* was tried?

F. Bewley. No, I was not.

Mr. Moreton. Was you not apply'd to by *George* or *Lucy* to come up to that Trial?

F. Bewley. No, I was not. I read in the News of a *Mary Squires* tried for a Robbery, but I did not know that it was this *Mary Squires*; I said there were others of that Name.

Mr. Davy. Did you ever know a *Mary Squires* with such a Face as this?

F. Bewley. No, Sir.

Thomas Mockeridge sworn.

Mr. Davy. Inform the Court who you are, and whether you have ever seen those three Persons, and when, and where?

T. Mockeridge. I live at *Abbotsbury* now; I had been at *Ridgway* and *Upway* selling Turnips (it was very bad Weather) on the 10th of *January*, by the present Stile; it was the *Wednesday* after Old *Christmas-Day*. I found the old Woman, her Son *George*, and her Daughter *Lucy*, and *William Clarke*, at Mr. *Bewley's* House, at the Sign of the *Ship*; I had made an End of selling my Turnips before I came there: I came in, I believe, between Twelve and One at Noon, and think I stopp'd there till between Two and Three.

Mr. Davy. Had you seen the old Woman *Mary Squires* before?

T. Mockeridge. I had several Times. I remember seeing her at *George Clements's* House, going down towards the Sea, (we call it *Gracechurch-Street*) about three Years ago before that.

Mr. Davy. Are you sure those are the People you saw there that Day?

T. Mockeridge. I am upon my Oath, and will not come here to speak a false Word for the World.

Mr. Davy. Do you know of any Accident that happened to a Horse on this Day?

T. Mockeridge. No, I do not.

Cross-examined.

Mr. Nares. Where did you go back to afterwards?

T. Mockeridge. To *Abbotsbury*: I had two Horses; I rode one, and *William Clarke* the other; he went to *Portersham*, where he lodged, and I went Home with my Horses; he took leave of those People at *Ridgway*.

John Taylor sworn.

J. Taylor. I live at *Fordington*; at the Sign of the *Coach and Horses*.

Mr. Davy. Whereabouts is that?

J. Taylor. It is joining *Dorchester*; it is not a Stone's-cast apart; many do mistake it for Part of the Town.

Mr. Davy. Do you remember this unhappy old Woman?

J. Taylor. I know her perfectly well; I have seen her above once or twice.

Mr. Davy. Do you know that Girl and the young Man there?

J. Taylor.

J. Taylor. I do, and have known them some Years; they are her Son and Daughter; I saw them at *Fordington* on *Thursday* the 11th of *January*; they were not in my House, they were in my Stable on the 10th; there was such a Rain they could not pass along the Road; the Waters were so high, they went through a Neighbour's House and my Stable the back Way.

Mr. Davy. Are you a Miller?

J. Taylor. No, but there is a Mill lies close by my Door.

Mr. Davy. How did they get through the Water?

J. Taylor. The old Woman took up her Coats and went along through it, and the young Woman was carried over by the Miller's Boy on Horseback.

Mr. Davy. Did you see the old Woman cross on Foot?

J. Taylor. Yes, Sir, to be sure, I saw it as plain as I see you.

Mr. Davy. When was this?

J. Taylor. It was on *Thursday* the 11th of *January* 53, in the Forenoon, betwixt the Hours of Eight and Eleven.

Mr. Davy. Did you see her walk all the Way through the Water?

J. Taylor. I saw her go along Part of it, I did not see it all, because it is two or three Rivers; I saw her go over two of the Rivers.

Mr. Davy. Did you see any body carry her over?

J. Taylor. No body carried her, she went on Foot.

Mr. Davy. Did you see the old Woman cross all the Rivers?

J. Taylor. She went over the Bridges, as far as I know of it; she forded the Water at my Stable-door, or as near it as it is cross the Court-yard; I did not see her walk through all the Water; I had no Business to watch her; *George* had told me they lodged at *Mr. Bewley's* at *Ridgway-Foot*, the Night before.

Mr. Davy. Did they tell you whither they were going?

J. Taylor. I can't tell where they were going; they were in the *Blandford* Road.

Cross-examined.

Mr. Williams. You say you saw the Miller's Boy carry over the Daughter?

J. Taylor. He carried her over all of it: The Place where he took her up she waded through, and after that there be Bridges; one is Stone, and the rest are wooden ones.

Mr. Williams. How far is it from your House to *Chettle*?

J. Taylor. I cannot tell; I believe it is seventeen or eighteen Miles, but I don't know where it is.

Thomas Hunt sworn.

T. Hunt. I live at *Chettle*, I am a Thresher.

Mr. Willes. Look at that old Woman, her Son and Daughter: Have you seen them before?

T. Hunt. I have at *Chettle*, on *Friday* the 12th of *January* 53, about Four in the Afternoon: The old Woman came into out Back-side, to the Barn-door to me, and begged Lodging of me; there was no Public House in the Place; I let her lie in an Out-house on some clean Oat-straw; it belongs to *Mr. Watts* of *Cranborne*: I asked her, if she had any body belonged to her? she told me she had none but a Couple of Children, and imme-

diately call'd, Why don't you come along? and immediately there came a Man and Woman.

Mr. Willes. Look at that Man and Woman near her; do you know them?

T. Hunt. The Man I can swear to safely; the Woman I do not so much, because she was cover'd over: I know the Man full well, as I know my right Hand from my left; I let them in at Night, and there I found them in the Morning; and the Morning being very wet, they remained there till Ten or Eleven o'Clock, or it may be something more.

Mr. Willes. Had you ever seen the old Woman before?

T. Hunt. I had not; but I am very sure it is the Woman, before God and the World.

Mr. Willes. How can you fix upon the Time?

T. Hunt. It was a very remarkable Day, the Old New-year's Day, which proved, by altering the Style, to be the 12th of *January*.

Cross-examined.

Mr. Moreton. Did you ever see them before?

T. Hunt. No, never before that *Friday*.

Mr. Moreton. Have you seen them since?

T. Hunt. I have, in the City, about a Month before *Michaelmas*.

Mr. Moreton. Do you know where they came from, that Day you saw them at *Chettle*?

T. Hunt. No, Sir, I don't.

Mr. Moreton. How far is *Ridgway-Foot* from *Chettle*?

T. Hunt. I don't know.

Mr. Moreton. How far is *Chettle* from *Dorchester*?

T. Hunt. They count it twenty Miles; but I never was there in my Life.

John Elderton sworn.

J. Elderton. I am a Servant-man; a Carter to one Farmer *Thane*, at *Martin*; I have seen that old Woman, and the young Woman, and the young Fellow.

Mr. Gascoyne. Where?

J. Elderton. At *Martin*, on *Saturday* Seven-night after Old *Christmas-Day*, in the Year 53, in the Afternoon, about Four o'Clock; they all three lay in an Out-house where I live; the old Woman came first, and asked my Master Leave to lie there.

Mr. Gascoyne. Did you hear her?

J. Elderton. I did.

Mr. Gascoyne. Was there Straw or Hay?

J. Elderton. Straw; I saw them all in the Out-house about Four in the Evening, and on the Morning before they went away.

Mr. Gascoyne. What Time did you see them in the Morning?

J. Elderton. I saw them about Eight o'Clock; they were getting up; I am sensible they are the three People.

Mr. Gascoyne. Had you ever seen the old Woman before?

J. Elderton. No, I had not.

Mr. Gascoyne. Is your Master Farmer *Thane* here?

J. Elderton. No; he was coming up, but was taken sick on the Road; he came to *Salisbury* in Company with us, and there we left him; he came to give Evidence in this Trial.

Cross-examined.

Mr. Nares. What Time did they come to your Master's?

J. Elderton. About Four o'Clock.

Mr. Nares. Did they all come together?

J. Elderton. The old Woman came a little before the others: When Master had granted Lodging, she went and called them; then they came.

Mr. Nares. What is getting up out of a Barn?

J. Elderton. It is dressing themselves; putting on their Cloaths, or tackling themselves up.

Mr. Nares. Did you see any Sheets they had?

J. Elderton. No, I did not see any.

Mr. Nares. Did you see any of their Cloaths off?

J. Elderton. No, I did not; they were tying their Cloaths up.

Mr. Nares. Did you see their Gowns off, or Caps off, or Petticoats off?

J. Elderton. No, Sir.

Mr. Davy. Did the Straw appear as if they had laid on it?

J. Elderton. It did; there were Marks where they had laid.

William Hort sworn.

W. Hort. I live at *Martin*.

Mr. Davy. Look at that old Woman; did you ever see that Face before?

W. Hort. Yes, Sir, I have at *Martin*.

Mr. Davy. Do you know that Girl behind her, and that Man near her?

W. Hort. Yes, Sir, I do; they are the Woman's Daughter and Son, for what I know.

Mr. Davy. When did you see them before?

W. Hort. I saw them all three at *Martin*, on *Saturday* Seven-night after *Old Christmas-Day*; they lay in an Out-house at *Farmer Thane's*.

Mr. Davy. What do you mean by an Out-house?

W. Hort. By that I mean a Barn, or Place where was Straw.

Mr. Davy. How did they lie?

W. Hort. I don't know; I did not see them lie in Bed: I am *Farmer Thane's* Servant; they asked Leave of Master to lie there.

Mr. Davy. What did they lie upon?

W. Hort. I cannot say what they lay upon, there was Straw.

Mr. Davy. Do you take upon you to say these are the same three Persons?

W. Hort. I do by my Life; that I say in the Presence of God.

Mr. Davy. Look upon them again.

W. Hort. I do, I am sure they are the same.

Cross-examined.

Mr. Williams. How long did they stay?

W. Hort. They came in the Evening, and went away the next Morning.

Mr. Williams. Did you see them at any other Time?

W. Hort. I saw the old Woman in Master's House by the Fire, and her Daughter was joining China for them.

John Blandford sworn.

J. Blandford. I live with *Farmer Thane*, at *Martin*.

Mr. Willes. What are you?

J. Blandford. I am a Blacksmith.

Mr. Willes. Look at that old Woman.

J. Blandford. I saw her there on the *Saturday* Evening, seven Nights after *Old Christmas*, about

Four o'Clock, or something after, which is the 13th of *January*.

Mr. Willes. Did you see only the old Woman?

J. Blandford. No, I only saw her, because she came in before them.

Mr. Willes. Had you ever seen her before that Time?

J. Blandford. No, I don't know that ever I did.

Mr. Willes. Did she lie at *Farmer Thane's*?

J. Blandford. She did somewhere, but I cannot tell where; I did not see her afterwards then.

Cross-examined.

Mr. Moreton. How long might you see her?

J. Blandford. It might be half a Quarter of an Hour, or something less.

Mr. Moreton. Have you seen her since that Time?

J. Blandford. I have.

Mr. Moreton. When?

J. Blandford. Last *Wednesday*.

Mr. Moreton. Yet you can swear to her after a Year and half?

J. Blandford. Yes, Sir, if it was twenty Years I could.

Joseph Hayter sworn.

J. Hayter. I live at *Coombe*, and am a Maltster.

Mr. Gascoyne. Do you know that old Woman, and young Man and Woman?

J. Hayter. I do all three: I saw them between *Martin* and *Coombe* the *Sunday* Seven-night after *Old Christmas*: I met them on the Road as they were coming for *Coombe*, about Eleven in the Morning.

Mr. Gascoyne. What Year do you mean?

J. Hayter. I mean in the Year 53; the young Man was a little before them, and the old Woman had hold on the Daughter's Hand: The young Man asked me, how far it was from *Coombe*? I said, I thought he knew as well as I did, (as I had seen him before;) the old Gentlewoman was half a Dozen *Luggs* behind him; she ask'd me, and I told her, it was two Miles and a half.

Mr. Gascoyne. Had you seen them both before?

J. Hayter. I had, but I can't say I had seen the young Woman before.

Mr. Gascoyne. What is the Reason you know that particular Day?

J. Hayter. By reason my Wife was gone over to keep *Christmas*, and I was going to fetch her home from *Martin*: And I saw them again the same Day at *Coombe*; I came back to *Coombe* again the same Night: I saw them on the *Monday* Morning at Seven o'Clock; I saw them at *Mrs. Greville's*, the Sign of the *Lamb*; *Thomas Greville* is dead; I went down to ask him if he had a Load of Furz, I wanted a Load; there this old Gentlewoman sat in the Corner, and *George* stood up in the Middle of the House, and *Lucy* stood by him; I never spoke a Word to them then.

Cross-Examination.

Mr. Nares. How long before this was it that you had seen this old Woman before?

J. Hayter. I cannot say, it may be two Years.

Mr. Nares. What did you take them to be?

J. Hayter. I took them to be, what we call, *Gypsie* People.

Mr. Nares. Where had you seen *George* before?

J. Hayter. I had seen him often at *Coombe*.

Mr.

Mr. Nares. Without his Mother?

J. Hayter. Yes, and with his Mother some Years back; but she might be there at that Time, and I not see her.

Mr. Nares. Is Coombe a Market-town?

J. Hayter. No, it is a Village; I heard of her being indicted for robbing a Girl, and I was applied to, to come up.

Mr. Nares. Was you here when Greville was indicted?

J. Hayter. No, I was not here Time enough.

Mr. Nares. Did you come up to the old Woman's Trial.

J. Hayter. I was not applied to, to come up; I told it, as soon as ever I heard Greville went, that I met her in such a Place.

Mr. Nares. Why did you not appear to give Evidence before?

J. Hayter. I was not subpœna'd, is the Cause I did not come.

Mary Greville sworn.

M. Greville. I live at Coombe.

Mr. Davy. What Relation are you to Thomas Greville, who was indicted for Perjury here?

M. Greville. I am Sister to him; he is dead.

Mr. Davy. Look at that old Woman, and the Girl in a Capuchin, and the Man behind her.

M. Greville. I know these three Persons.

Mr. Davy. Where did you see them?

M. Greville. I saw them on the 14th of January, on a Sunday, at my Mother's House, the Sign of the Lamb, at Coombe; I live in the same House; they went away on the Monday Morning.

Mr. Davy. Do you speak with absolute Certainty, that these are the very Persons you saw, and no other?

M. Greville. These be the very Persons indeed.

Mr. Davy. May you not be mistaken?

M. Greville. It is impossible I should; I am very well satisfied I am not mistaken in them.

Mr. Davy. Had you ever seen them before?

M. Greville. I don't remember I ever did.

Mr. Davy. Did you notice the old Woman?

M. Greville. Yes, I did.

Mr. Davy. I speak of her Features, not her Profession.

M. Greville. That is what I mean; and that is the very Son and Daughter indeed.

Cross-examined.

Mr. Williams. Who waited upon them?

M. Greville. My Mother did; they were by the Kitchen Fire.

Mr. Williams. What Time did they come in?

M. Greville. They came in between Two and Three in the Afternoon.

Mr. Williams. When did they go away?

M. Greville. They went away between Seven and Eight in the Morning.

Mr. Williams. How far is Coombe from Martin?

M. Greville. It is four Miles.

George Towil sworn.

G. Towil. I live at Coombe; I have seen that old Woman and her two Children before.

Mr. Willes. When did you see them before?

G. Towil. I saw them the Sunday was Seven-night after Old Christmas-Day, which was the 14th of January.

Mr. Willes. Are you certain of it?

G. Towil. I am very certain.

Mr. Willes. Where did you see them?

G. Towil. At Mary Greville's, at the Sign of the Lamb.

Mr. Willes. Were you in Company with them?

G. Towil. No, I was not; no body but the Landlady and I drank together; we were passing our Accounts.

Mr. Willes. How long was you there?

G. Towil. I believe I was there from Two o'Clock to Four.

Mr. Willes. Had you ever seen the Gypsie Woman before?

G. Towil. I don't know that ever I did: There was another Man in Company with them; I believe he was a Carpenter; he had a leather Apron on: He ask'd me, if I was a Carpenter; I said, I was a Well-wisher to it.

Cross-examined.

Mr. Moreton. When was you called?

G. Towil. The first Time I was subpœna'd was in May.

Mr. Moreton. Have you been to see the old Woman since?

G. Towil. I have, and am sure it is the same Woman.

Mr. Moreton. Are you sure to them all?

G. Towil. I am.

Richard Aimer sworn.

R. Aimer. I live at Coombe, and am Servant to Farmer John Harris.

Mr. Gascoyne. Look at that old Woman: Who is she?

R. Aimer. Mary Squires; and she in the Capuchin is her Daughter Lucy; and the other Person by her is her Son George.

Mr. Gascoyne. Where have you seen them before?

R. Aimer. I saw them at Coombe on Sunday the 14th of January 1753, just after One o'Clock; they were travelling upon the Road.

Mr. Gascoyne. Did you speak to them?

R. Aimer. Her Son ask'd me, how far it was to Sutton? I said, I could not tell, for I was never there.

Mr. Gascoyne. What Conversation had you with the old Woman?

R. Aimer. It was in the Way of bantering and telling of Fortunes.

Mr. Gascoyne. Did you speak to the young Woman?

R. Aimer. I never said a Word to her; I saw the old Woman afterwards; she came to our Master's Door.

Mr. Gascoyne. Do you know what for?

R. Aimer. No, I don't; and I saw her Son on the Monday Morning at the Widow Greville's, at Coombe, but I never spoke a Word to him there, or he to me.

Mr. Gascoyne. Did you see the old Woman or Daughter on the Monday?

R. Aimer. No, Sir, I did not.

Cross-examined.

Mr. Nares. When they spoke to you between Sutton and Coombe, did you know them?

R. Aimer. No, Sir.

Mr. Nares. Then how do you know that this is George and Lucy?

R. Aimer. I know that only as they told me since, for I never saw them before in my Life.

Mr. Nares. Did the old Lady tell you your Fortune?

R. Aimer.

R. Aimer. Yes.

Mr. Nares. All is come true, I hope?

R. Aimer. I did not think any Thing was true when it was dore.

Mr. Nares. What did you give her for telling you your Fortune?

R. Aimer. Two-pence.

Mr. Nares. Were her Daughter and Son by?

R. Aimer. They went on while we talked together.

Mr. Nares. What Time did you see her at Coombe?

R. Aimer. Upon my Return there in the Evening I saw her.

Mr. Nares. Have you seen her since?

R. Aimer. I never saw her since; till I saw her in Newgate.

Robert Merchant sworn.

R. Merchant. I live at Coombe, I am a Carter.

Mr. Davy. Do you know that old Woman?

R. Merchant. I do, very well.

Mr. Davy. Do you know her Son and Daughter?

R. Merchant. They were gone on, when I saw the old Woman.

Mr. Davy. Where did you see the old Woman?

R. Merchant. At Coombe, the 14th of January.

Mr. Davy. Do you know the Day of the Week?

R. Merchant. No, Sir.

Mr. Davy. How do you know it to be the 14th of January?

R. Merchant. By my Master's Account and the Farrier's; I ask'd Master that Day, what Day of the Month it was?

Cross-examined.

Mr. Williams. When did your Master tell you it was the 14th of January?

R. Merchant. We had a Horse bad that very Day the Woman was there; and Master and the Farrier disputed it to the best of their Knowledge, that *that* was the Day that I saw her.

Mr. Williams. What is your Master's Name?

R. Merchant. My Master is Farmer *John Harris*.

Mr. Williams. When had you this Dispute?

R. Merchant. We had no Dispute at all.

Mr. Williams. When did you hear your Master say it was the 14th of January?

R. Merchant. The same Day the Woman was there.

Mr. Williams. How came you to be talking of the Day of the Month?

R. Merchant. Being the Horse was bad, Sir; and because the Horse was bad, they set down the Day of the Month.

Mr. Williams. What, were they settling their Accounts?

R. Merchant. They were, so far as I know: Master was to pay the Farrier Money for curing the Horse.

Mr. Williams. Was there any Talk then about the Gypsey?

R. Merchant. No, Sir, I heard no Talk about the Gypsey.

Martha Waters sworn.

M. Waters. I live at Coombe.

Mr. Willes. Did you ever see that old Woman before?

M. Waters. Yes, I have at Coombe, on the 14th of January.

Mr. Willes. Were her Son and Daughter with her?

M. Waters. No, Sir; I saw her at a Farmer's House where I live.

Mr. Willes. How came she to come there?

M. Waters. She came and asked for some Small Beer.

Mr. Willes. Had you ever seen her before?

M. Waters. No, I never did; but I am sure she is the Woman.

Cross-examined.

Mr. Moreton. How long did she stay there?

M. Waters. She stayed there about the Value of a Quarter of an Hour.

Mr. Moreton. Did she tell thee thy Fortune?

M. Waters. No, she did not; I did not want it.

Mr. Davy. Your Lordship may remember, that *George Squires* could give no Account of Places between *Coombe* and *Basingstoke*, therefore we could not collect any Evidence between these Towns; so the next Witness comes from *Basingstoke*, which you will find to be forty Miles from *Coombe*, and that is four Days Journey, according to their Rate of Travelling: They were at *Coombe* on the 14th of *January*, and you will find them at *Basingstoke* on the 18th.

Mary Morris sworn.

M. Morris. I live at *Basingstoke*, at the *Spread-Eagle*.

Mr. Davy. Look at that old Woman.

M. Morris. That old Gentlewoman is *Mary Squires*, and the young Woman is *Lucy Squires*, and the young Man is *George Squires*. I wrote a Letter for the young Woman on the 18th of *January*.

Mr. Davy. What Day of the Week was it?

M. Morris. Really I will not be positive; it was on a *Thursday* or *Friday*; it was for one *Clarke* at *Abbotsbury*.

Mr. Davy. Look at this Letter; is this your Writing?

M. Morris. (*She takes it in her Hand*)—Sir, it is my Hand-writing, Directions and all; my little Boy carried it to the Post-Office, and Mr. *Squires* gave him a Half-penny because he did not stay.

(*The Letter read, directed* “ To the Post-House in *Dorchester*, to be directed to *Abbotsbury* for Mr. *William Clarke*, Cordwainer. This with Care.”)

“ *Basingstoke, Jan. 18, 175* *

“ S I R,

“ This, with my kind Love and Service to you, and all your Family, hoping you are all in good Health, as I be at present. This is to acquaint you, that I am very uneasy for your troublesome Journey, hoping you received no Illness after your Journey; so no more at present from

“ *Your most obedient and humble Servant,*

“ *Lucy Squires.*

“ I desire to hear from you as soon as possible. Direct for *Lucy Squires* at *Brentford*, near *London*. George and Mother give their Compliments to you, and all your Family.”

Mr. Davy. You are sure this is your Hand-writing?

M. Morris. This is my own Hand-writing, which

* The other Figure being in the Corner, was supposed to be torn off.

which I wrote at *Basingstoke*, at the Request of *Lucy Squires*.

Mr. Davy. Were the old Woman and Son there then?

M. Morris. They were in the House all the Time; they would have lodged at my House, but I had not Lodgings; they had a Pint or two of Beer, and eat a Bit of Bread, and went on to *Old Basing*.

Mr. Davy. How far is *Old Basing* from *Basingstoke*?

M. Morris. It is about two Miles.

Mr. Davy. Is it not possible you may mistake these People for any other Gypsies?

M. Morris. I am positive that these are the very People I saw at my House.

Cross-examined.

Mr. Nares. Had the old Woman ever been at your House before?

M. Morris. She had lain at my House about a Year and three Quarters before.

Mr. Nares. None but the old Woman?

M. Morris. No; I never saw the Son and Daughter before.

Mr. Nares. Are you sure this Letter was wrote the Day it bears Date?

M. Morris. I am positive sure it was.

Mr. Willis sworn.

Mr. Willes. How far is *Coombe* from *Basingstoke*?

Willis. It is about forty Miles.

Mr. Willes. Where had you this Letter?

Willis. When I came to the Post-office at *Dorchester*, which is the nearest Post-office to *Abbotsbury*, the Directions being very blind, the Post-master had sent it under Mistake to one *Clarke*, as I understood, at *Charlster*, who sent his Wife with it immediately.

(The Court look upon the Back of the Letter, and discover two Post-marks upon it.)

Thomas Ravenbill sworn.

T. Ravenbill. I belong to the Post-office; I am Assistant Clerk to the Western Road.

Mr. Davy. Look at the Post-mark upon that Letter, and tell us where the Letter was marked.

T. Ravenbill. This is a Mark of the General Post-office in *London*.

Mr. Davy. What Day of the Month does it appear to be stamped?

T. Ravenbill. The Stamp is very imperfect, I cannot take upon me to speak with Certainty.

Mr. Davy. Of whose Hand-writing is the Post-charge?

T. Ravenbill. This is mine, that is the Charge, which is seven Pence; the original Place where it came from to *London* is three Pence; that is three Pence up, and four Pence down; it is directed to be left at the Post-house in *Dorchester*, that is four Pence.

Mr. Davy. See what Part of the printed Mark do you find plain?

T. Ravenbill. The Stamp is so very imperfect, that I cannot with any Degree of Certainty tell; the 9 is very plain; whether it is 19 or 29 I cannot say; it is not the 9th, for if it was, that Figure would have been in the Center.

Mr. Davy. Look at the Letters at the Bottom of the Circle.

T. Ravenbill. The second Letter seems to be an A.

Mr. Davy. I think your Stamps are marked MR for *March*?

T. Ravenbill. They are.

Mr. Davy. Then there can be the Name of no Month, the second Letter of which is A, but *January* and *May*.

T. Ravenbill. I do not recollect that the second Letter of any Stamp is A, but that of *January* and *May*.

Mr. Davy. Can you get the Stamps from the Post-office, that the Court may see them?

T. Ravenbill. Yes. (He goes, and returns with several Impressions on Paper, as Jan. 9, Jan. 19, Jan. 29, and May 1, March 26.) These are all the Stamps where A is the second Letter; all the inland Stamps have the Figure on the Top of the Letter, and the foreign Stamps have it at the Bottom; the Figure 9 is placed not in the Center, but just over the second Letter.

Mr. Davy. Look at this Letter; do you believe that Stamp to be *January*?

T. Ravenbill. I cannot form an Opinion of it, more than any Stranger to it; I believe it to be the 19th or 29th, rather than the 9th.

Cross-examined.

Mr. Moreton. What are those Stamps made of?

T. Ravenbill. They are made of Box.

Mr. Moreton. Do you stamp a Letter for 52 with the same Stamp of 51?

T. Ravenbill. No, we do not; we use every Day one, and they last no longer; sometimes, at the latter End of the Day, it is so defaced and clogged, that it will hardly last a Day; and after they have been used, they are thrown into a Drawer, where they remain five or six Months, and then we burn them.

Mr. Moreton. Are you sure this Mark of the Charge is your Mark?

T. Ravenbill. I am very sure it is.

Mr. Davy. Has *Basingstoke* a Stamp to it?

T. Ravenbill. I can't say whether it has or no.

Mr. Davy. Is there a Post-master there?

T. Ravenbill. There is.

Mr. Davy. Have not all Post-masters Stamps?

T. Ravenbill. I can't say whether they have or not.

Mr. Davy. Look at this, and see if there is a Post-mark upon it.

T. Ravenbill. I see very plainly there is a Mark; but it is so blind, I can't distinguish what it is.

Mr. Davy. Is it a Mark of two Lines?

T. Ravenbill. I believe it may be a Post-mark of two Lines.

Mr. Davy. Why have some two Lines, and some but one?

T. Ravenbill. Those of two Lines are generally where the Town's Name is a long one.

Elizabeth Edwards sworn.

E. Edwards. I live at *Brentford*.

Mr. Willes. Look at that old Woman, and these two People with her.

E. Edwards. I see her, and her Daughter and Son; they came all three into my House; I don't know the Day, but we had a Neighbour's Child christened at the Time they were there; (She produces the Copy of the Register) this is a true Copy of the Register of the Child when it was christened; Mr. *Gascoyne* went himself and took it out of the Book.

Mr. *Willes*. Can you tell by any other Circumstance ?

E. Edwards. No, I cannot.

Mr. *Willes*. What Day was it the Child was christened ?

E. Edwards. By this, it was the 22d Day of *January*, and the old Woman went away on the 23d, being on a *Tuesday*; but they came to my House on the *Saturday* before.

Mr. *Willes*. Do you keep a Public House ?

E. Edwards. No, I do not; I keep a Shop; they lodged at my House: *George* went out on the *Sunday*, and brought his other Sister to our House on the *Monday*, and they went all away together on the *Tuesday* Morning betimes towards *London*.

Mr. *Willes*. What did they call the other Sister's Name ?

E. Edwards. I have forgot what he called her, but one of them he called *Lucy*.

Mr. *Willes*. Was that she that he brought on the *Monday* ?

E. Edwards. No, it was not.

Mr. *Willes*. Are you sure they were at your House at that Time ?

E. Edwards. I am positive they were.

Susannah Burwill sworn.

S. Burwill. I live at *Brentford*; the last Witness is my Mother; she has had two Husbands, which is the Reason our Names differ.

Mr. *Gascoyne*. Do you know that old Woman there ?

S. Burwill. I do: I never saw her before she came to my Mother's. I know them all three; they all came together on a *Saturday* Night, the 20th of *January*; they asked for Lodgings, and said they were recommended by a Friend of my Mother's, and my Mother let them lie there: On the *Sunday* the old Gentlewoman and her Daughter stayed there, and the Son went to *London*, and did not come home till the *Monday*, and then he brought a Sister (as he called her) with him.

Mr. *Gascoyne*. What Time did he return ?

S. Burwill. I can't tell the Time directly; it was some Time of the Day.

Mr. *Gascoyne*. Did they lie there on *Monday* Night ?

S. Burwill. They did, Sir, and went all four of them away on the *Tuesday* Morning.

Mr. *Gascoyne*. Did they say where they were going ?

S. Burwill. They said they were going to *Epping* in *Essex*.

Mr. *Gascoyne*. Can you tell what Time they went away ?

S. Burwill. I really cannot; they went away some Time in the Morning.

Cross-examined.

Mr. *Nares*. Had you ever seen them before ?

S. Burwill. No, I never had, to my Knowledge.

William Tredget sworn.

W. Tredget. I live at *Tottenham*, at the *Seven Sisters*, the Sign of the *Two Brewers*.

Mr. *Davy*. How far is that from *London* ?

W. Tredget. It is four Miles.

Mr. *Davy*. How many Miles is it from *Enfield-Wash* ?

W. Tredget. I cannot justly tell: I know the Place.

Mr. *Davy*. Look at those three People, — that old Woman, and the Daughter and Son.

W. Tredget. I remember the old Woman very well, and the Daughter and Son too.

Mr. *Davy*. Where did you see them ?

W. Tredget. I saw them at *Tottenham* on the 23d of *January*, which was on a *Tuesday*: I am sure to the Day and the People.

Mr. *Davy*. Where did they say they came from ?

W. Tredget. They said they came from *Brentford*.

Mr. *Davy*. Did they lie at your House ?

W. Tredget. No, they did not; I told them I had no Lodging, and directed them over the Way to a Farm-house, one Mr. *Philips's*; but cannot say whether they lay there or not.

Mr. *Davy*. What Time of the Day did they call at your House ?

W. Tredget. It might be about Four; it was a little before Candle-lighting.

Mr. *Davy*. Had you ever seen them before ?

W. Tredget. I cannot say I ever did, unless it was the old Gentlewoman; I believe I had seen her about three Years before; I had taken Notice of her Face, that she was a Woman not common to be seen, the last Time.

Mr. *Davy*. Had you taken Notice of her Face before that Time ?

W. Tredget. No.

Mr. *Davy*. When you saw her upon the 23d of *January*, did you recollect that you had seen her before ?

W. Tredget. No; but when they came to ask me to come and see her in *Newgate*, then I recollected that it was the Face I had seen three Years before.

Mr. *Davy*. Do you now say upon your Oath, that these are the very People whom you saw upon the 23d of *January* ?

W. Tredget. It is the very same Woman; I saw her then at *Page-Green*; then her Son and Daughter were with her, but not when I saw her before, as I know of.

Cross-examined.

Mr. *Williams*. How many People did you see at *Page-Green*, that asked for Lodging on the 23d of *January* ?

W. Tredget. I saw none but the old Woman, *George* and *Lucy*.

Mary Tredget sworn.

M. Tredget. I am Wife to the last Witness; we live at *Page-Green*; I saw the old Gypsey at my House on *Tuesday* the 23d of *January*; she asked us for Lodgings; I did not let them have any, but recommended them to a Farm-house over the Way.

Mr. *Willes*. What is the Farmer's Name ?

M. Tredget. His Name is *Philips*.

Mr. *Davy*. My Lord, we have now gone through the Proof of the *alibi* of *Mary Squires*, and brought her to *Page-Green*, within two or three Miles of *Enfield-Wash*: We will leave her there for the present, and proceed to another Part of our Case, which goes in Contradiction to the whole of the Defendant's Evidence: We shall therefore call Witnessess to prove, that her Information before Mr. Alderman *Chitty*, on the 31st of *January*, differed in many Instances from what she swore afterwards; and that she at first gave a false Description of the Place she pretends to have been

been confined in, and varied in her Story after she had been carried to *Wells's House at Enfield-Wash*; on the 1st of *February*: We will also give your Lordship and the Jury a true Description of this supposed Prison, and of what happened there on the 1st of *February*. We beg Leave first to examine Mr. Alderman *Chitty*; but I must let the Gentlemen concerned for the Defendant know the Names of the Witnesses we intend to call to this Part of our Case, that they may also be examined separately; Mr. *Chitty*, Mr. *Nash*, Mr. *Hague*, Mr. *Aldridge*, and *William White*.

W E D N E S D A Y the 1st of *May*:

Alderman *Chitty* sworn.

Mr. *Gascoyne*. Be pleased, Sir, to give an Account of what passed before you on the 31st of *January* 1753, relating to *Elizabeth Canning*.

Alderman *Chitty*. I was the Sitting Alderman at that Time; *Elizabeth Canning* was brought before me, but as it is about a Year and half ago, I cannot give a distinct Account of it. I remember it was on the 31st of *January*; about half an Hour after Twelve, or One o'Clock. Mr. *Lyon* and another Person (I believe it was Mr. *Nash*) came to me. There were a few Notes taken for my own Memorandum, which I believe are in Court, which are the Substance of what passed.

Mr. *Gascoyne*. Were they signed by her?

Alderman *Chitty*. No; I took it on Paper; as I generally do; but not thinking it would have been the Subject of so much Inquiry; I did not take it so distinct as I could wish. (*He produces a Paper.*)

Mr. *Gascoyne*. Is this your Hand-writing?

Alderman *Chitty*. It is; this is not what I had taken at that Time, but what I took since from that Paper I took then of hers, and other Persons that were brought before me.

Mr. *Gascoyne*. Then is this the Substance of that Account of hers you took?

Alderman *Chitty*. It is:

Mr. *Gascoyne*. You may refresh your Memory by looking on it, and give the Court an Account of it; you may read it.

He reads. "A Copy of the Minutes taken by *Thomas Chitty*, upon the Examination of *Elizabeth Canning*, at *Justice-Room, Guildhall, January 31, 1753.*"

"*Elizabeth Canning* swore, that on last New-year's Day, as she was returning from her Uncle's, about *Saltpetre-Bank*, as she came along by the dead Wall against *Bedlam*, in *Moorfields*, about or near Ten o'Clock at Night, she was met by two Men, who stripped her, and robbed her of Half a Guinea, three Shillings, and a Halfpenny."

Mr. *Davy*. Are you sure she said a Halfpenny?

Alderman *Chitty*. I am sure she did; also her Gown from her Back. (Now I would observe, here I asked her, What else? she said, a Hat, she said it was a straw or chip Hat; I did not put that down, but I as well remember it as if it was but Yesterday.) She said, "A Hat from her Head; she struggled and made a Noise; one stopped her Mouth with something like a Handkerchief, and swore, if she made any Noise or Resistance, they would kill her, and then hit her a Blow over the Head, and stunned her, and forced her along *Bishopsgate-*

Street; each holding her up under her Arms; but did not remember any thing more that passed, and did not come to herself till about half an Hour before she came to *Enfield-Wash*, as she had learned since, to *Wells's House* there, and there were several Persons in the Room; they said, she must do as they did, and if so, she should have fine Cloaths; &c. She said, she would not, but would go Home, and refused Compliance; and then a Woman forced her up Stairs into a Room; and, with a Case-knife she had in her Hand, cut the Lace of her Stays, and took her Stays away, and told her there was Bread and Water in the said Room, and if she made any Noise, she would come in immediately and cut her Throat; then went out, and locked the Door; and never saw her nor any one of them since, till after her Escape; which Bread was in Quantity about a Quarter of a Peck Loaf in Pieces, and three Quarters of a Gallon of Water; or a little more, in a Pitcher; as she supposed; on which only she subsisted, and one Penny Mince-pye she had in her Pocket; till she got away, which was on the 29th of *January*, about half an Hour after Three o'Clock or Four in the Afternoon, and then made the best of her Way to Town to her Mother's at the Bottom of *Aldermanbury*. She farther said, on Inquiry, she had no Stool all that Time, only made a little Water; and said, there was an old Stool or two, an old Table; and an old Picture over the Chimney; two Windows in the Room, one fastened up with Boards, the other, Part ditto and Part Glass; in which latter she made a Hole by removing a Pane, and forced Part open, and got out on a small Shed of Boards or Pent-house, and so slid down and jumped on the Side of a Bank on the Back-side of the House, and so got into the Road, and proceeded to her Mother's that Night, which was about Ten o'Clock. Her Mother said she was faint, so she got her some Wine and Water, but it would not go down, the Passages being swelled, therefore sent to the Apothecary for Advice. Mr. *Lyon* her Master gave her an exceeding good Character, and so did her late Master Mr. *Wintlebury*." There were a great many Questions asked her, which are not down here. There was an Examination for I believe near an Hour; and after I had examined her, I sent for Alderman *Fludger*; but he did not chuse to examine her, and put her over to the Sitting Alderman, which happened to be my Turn.

Mr. *Gascoyne*. During the Time of this Examination, did she mention any *Hay*?

Alderman *Chitty*. She said, there was nothing in the Room but those Things she had mentioned; not one Tittle of *Hay*, neither do I remember what she said she lay upon.

Mr. *Gascoyne*. Did she describe any Gypsey, or any remarkable Woman?

Alderman *Chitty*. I asked her, whether she should know the Woman again? she said, she believed she should; but she did not make mention of any extraordinary Woman doing this.

Mr. *Gascoyne*. Did she say when she drank all her Water?

Alderman *Chitty*. She said, a little Water was left when she made her Escape. I asked her, whether

whether she knew what the Quantity of a Quartern Loaf was? she said, she did, for her former Master kept a Public House. I asked her, what Sort of Bread this was? she said, there were four or five Pieces, to the Quantity of a Quartern Loaf.

Mr. *Gascoyne*. Are you sure she said four or five Pieces?

Alderman *Chitty*. I am sure she said four or five, or five or six Pieces.

Mr. *Davy*. Did she mention any such Thing as a Tobacco-mould, a Bafon, a Saddle, Hay, or a Barrel?

Alderman *Chitty*. I heard of no such Things: She said, there was nothing in the Room but what Things she had mentioned: She apprehended then, it might be the Woman of the House that had served her thus; but it appears, as it comes out, she had no Notion who that Woman was. I asked her, whether or no she had seen any body in all that Time? she said, she had not but once; she looked through the Key-hole, and saw some one Person pass below.

Mr. *Gascoyne*. Please to look at this Paper.

Alderman *Chitty*. This is my Hand-writing; it is my Warrant for the apprehending the People that she charged.

Mr. *Gascoyne*. Did she mention the Name of *Wells*, or whose House she had been at?

Alderman *Chitty*. I was a little unwilling, at this extraordinary Account, to grant a Warrant: I said to her, Be sure what you say; say nothing but what you can swear to: And as she swore all to be true, upon this Information I granted her a Warrant, but told her I could not believe the Story she had told me.

Mr. *Gascoyne*. Do you recollect whether, in the Time she was in Confinement, she heard any thing by which she could discover the Names of any of the People?

Alderman *Chitty*. The Name of *Wells* was not mentioned at all by her.

Mr. *Gascoyne*. How came you to grant a Warrant in particular against *Wells*?

Alderman *Chitty*. Because they had learned the Name since of the Keeper of the House, and that they supposed to be this *Wells*.

Mr. *Gascoyne*. Were there any particular Features described of the Person?

Alderman *Chitty*. No.

Mr. *Gascoyne*. Who mentioned the Name of *Wells*, as *Canning* never mentioned that Name?

Alderman *Chitty*. I cannot remember that: It was mentioned, Mother *Wells* was the Occupier of this House.

Mr. *Gascoyne*. Was one *Scarrat* there?

Alderman *Chitty*. There were above fifty People there; I did not know them.

Mr. *Gascoyne*. During this Examination, did she mention any Fit she had?

Alderman *Chitty*. I don't remember she did, but the Mother did; she said, she had been subject to Fits from her Infancy.

Mr. *Gascoyne*. Did she say she went down *Bishopsgate-Street*?

Alderman *Chitty*. She did, between two Men, one held under one Arm, and the other under the other; but said, how she came there, she could not tell; that she was not so far stunned, but that she knew a little, as she went along that Part; but how she went afterwards, she did not know: She said, she might have been put

in some House, for what she knew, but she could not tell that.

Mr. *Gascoyne*. Previous to this Examination, had you seen any Advertisement in the Papers of the 6th of *January*, which gave an Account of a young Woman taken out of a Hackney Coach?

Mr. *Moreton*. That is not a proper Question.

The Warrant read.

“ To all Constables and other Peace-officers.
“ *London, to wit.* These are in his Majesty's
“ Name to command you, and every one of you,
“ upon Sight hereof, to take and bring before
“ me, or some other of his Majesty's Justices of
“ the Peace, the Body of a Person that goes by
“ the Name of Mother *Wells*, at *Enfield-Wash*,
“ in the County of *Middlesex*, —

Q. from a *Juryman*. Who put that Name in the Warrant, or who gave the Name?

Alderman *Chitty*. I cannot recollect who mentioned the Name *Wells*: I apprehend they had got that Name before they came to the *Justice-Room*: I asked the Girl, whether that was the Mistress of the House or no? she said, she could tell nothing of the Woman's Name.

The Conclusion of the Warrant.

“ of whom you shall have Notice, to answer to
“ such Things that shall be alledged against her
“ by *Elizabeth Canning*, for violently assaulting
“ her, and robbing her of a Pair of Stays, and
“ confining her in a Room in the said House,
“ and keeping her on Bread and Water for up-
“ wards of three Weeks, as Oath has been made
“ before me,

“ *Jan. 31, 1753.*

Thomas Chitty.”

Gawen Nash.

G. Nash. I belong to *Goldsmiths-Hall*, and keep a Coffee-house in *Gutter-Lane*. On the 31st of *January* 53, I went to Mr. *Lyon's* House in *Aldermanbury*; he is a particular Acquaintance of mine, and has been some Years; there was he and his Wife. I asked them, whether that Paragraph in the Paper, about their Servant's coming Home in such a Condition, was true? he told me it was.

Mr. *Davy*. Was you present in the *Justice-Room*, when the Defendant was there before Mr. Alderman *Chitty*?

G. Nash. I was, as a Friend to this Girl; the City-Marshall's Man was there: I was there a little before the others; I asked leave to let the Room be cleared, there being many People in the Room: I had never seen the Girl till that Day; but had Compassion for her from the Account I had heard of her hard Usage.

Mr. *Davy*. Was Mr. *Adamson* there?

G. Nash. I think he was.

Mr. *Davy*. Was Mr. *Scarrat* there?

G. Nash. I do not know whether he was or not. The Girl gave an Account of the Place where she had been in: Mr. Alderman *Chitty* asked her, (how it might slip his Memory, I cannot tell) what Sort of a Room she had been confined in? her Answer was, *that it was a little, square, darkish or dark Room, with Boards nailed up before the Windows.*

Mr. *Davy*. Are you sure the Words *little* and *square* were mentioned?

G. Nash. I am sure of it, I remember it very well.

Mr.

Mr. Davy. Did she say *Windows*, in the plural Number?

G. Nash. She did; she said, through the Cracks of the Boards she could see the *Hertfordshire* Coach pass by upon the Road, that had used to carry her Mistress. Upon being asked what was in the Room, she said, there was an old broken Stool or a Chair, and in the Chimney an old Iron Grate, and a few old Pictures hung over the Chimney.

Mr. Moreton. Did you take this in Writing?

G. Nash. No, I never did: Upon being asked what she lay upon, I remember very well she said, she lay on the Boards; which melted my Heart indeed: I felt an inward Affection for the Girl, upon recollecting it was cold Weather at that Time, for I think we had a good deal of Frost at that Time.

Mr. Davy. Have you heard what the Alderman said in his Evidence?

G. Nash. I have.

Mr. Davy. What did she say about Bread in the Room, and how many Pieces were there?

G. Nash. She said, there was about the Value of a Quartern Loaf thrown about the Room in Crufts, which were blue and mouldy; the Number of Pieces I do not remember she said.

Mr. Davy. Do you remember she said she slid down a Pent-house?

G. Nash. I do not; she said, she pulled down one of the Boards of the Window, after she had strove at it many Times; and in getting out at the Window, she tore her Ear by a Nail by the Side of the Window in turning herself about; and her Mother standing by, said, her Ear was then bloody; her Ear then seemed to be very sore. There was a Warrant granted upon this against one *Wells*. The Alderman does not remember what it was that induced him to grant it against her in particular: I recollect it, because it was in a Paragraph in the News-paper, that she had been at the House of Mother *Wells* at *Enfield-Wash*.

Mr. Davy. What Charge was there before the Alderman against Mother *Wells*? for he could not grant a Warrant by Information from the News-paper.

G. Nash. I recollect she was asked where she had been, and that she, or somebody else, said she had been at the House of Mother *Wells*, at *Enfield-Wash*.

Mr. Davy. Recollect, if you can, whether it was she, or another Person, who said so.

G. Nash. Upon my Word I cannot positively tell which; but it was repeated aloud, that she had been at the House of Mother *Wells*, (that is a notorious bad Woman;) she being asked how she came to know she had been at Mother *Wells*'s, she said, she had heard her called so while she was under Confinement in the Room.

Mr. Davy. Did she describe any Person she saw in the House?

G. Nash. There were no particular Descriptions given by her of any one Person in the House.

Mr. Davy. Was the Name of *Virtue Hall* mentioned then?

G. Nash. I never heard it indeed before the Alderman.

Mr. Davy. Do you remember any other Particulars of the Description of the Room, or any other Circumstances?

G. Nash. I do not recollect any other Description than I have hitherto told: Upon this a Warrant was granted.

Mr. Davy. Did you, upon that, go down with any Persons to *Enfield-Wash*, and when, in order to apprehend the People, or see the House?

G. Nash. I really can't recollect whether Mr. *Lyon* took the Warrant out of the Clerk's Hand or I, but we went on cheek-by-jowl to the Hall-yard; I know Mr. *Lyon* paid the Shilling for the Warrant: When we were in the Yard, we were consulting what to do in this Affair; fearing it should gather Wind in the Country, and the People all get away before we got down there. Upon this, Mr. *Lyon* and I being very intimate, went Home to my House; my Wife was very unwilling I should lie out of Town that Night, otherwise we had gone down immediately, to have apprehended the People that Night. We agreed to go the next Morning in a Coach, and he asked me to take a Friend or two, which I did; they were Mr. *Edward Aldridge* and Mr. *John Hague*. We went (this was on the 1st of *February*) at our own Expence, and took Coach in *Chiswell-Street*, and desired the Coachman to proceed as fast as he could, fearing we should miss what we aimed at. When we came to about *Hounds-Field*, somewhere by *Ponder's-End*, we had several People met us, riding as hard as they could, to give us Intelligence that they had seized all the People in the House.

Mr. Davy. As you had heard the Defendant give a Description of the Room, did you mention that to Mr. *Hague* and Mr. *Aldridge*?

G. Nash. I told them what I had heard.

Mr. Davy. At the Time you were going down with them, did you declare any Intention you had to take a Survey of the Place, and see whether it answered her Description?

G. Nash. I can't tell whether I said so, but it was my Intention so to do, and to see the Warrant executed.

Mr. Davy. What Time did you arrive there?

G. Nash. I guess it was about Eleven o'Clock, which was about an Hour before *Elizabeth Canning* came there: The Coachman drove us up to the *Sun and Punch-bowl*, almost opposite to Mother *Wells*'s House; there were People, some on Horseback, and some on Foot, all in an Uproar. Mr. *Hague*, Mr. *Lyon*, and Mr. *Aldridge* went into the House. I pushed over to the House, in order to find if the Description of the Room answered: I saw some People in the Room on my left Hand, which they call the Parlour; then I went up the Stair-case leading from the great Door that comes into the Street, and, to my great Surprise, I looked about the three Rooms, and found nothing there like it; there were Beds in them, which seemed to have been laid in that Night; then I came down again, and went into the Kitchen, and saw a Man with a Broom-stick in his Hand; I said to him, Friend, do you know any Thing of this House? he said, there is a Room here: He unbuttoned a Button, and opened the Door; I saw a Door on each Side, one opened to a Cellar full of Water, another opened to a Place like an Oven, and the other led me to a Place where were a few Steps or Stairs, which led up into this Hay-loft, a nasty Room: I have since told the Steps; I think there were eight of them; I am sure there was nothing like her Description there at that Time. I cannot say I observed the Key-hole, but I was thereabout afterwards, and believe there has not been a Lock upon that Door for many Years; there were no Signs where a Lock could have been placed;

placed; I saw no Marks of a Lock fastened thereon; I am sure there had been no Lock there; neither was there any Bolt; there was a large Bar that secured the three Doors.

Mr. Davy. Are the Steps without or within-side the Door?

G. Nash. They are on the Inside the Door; the Stairs are Part of the Room.

Mr. Davy. Can you mention the exact Length and Breadth of the Room?

G. Nash. I never measured it; it is a very long Room; you may as well call this Table a Square, (*meaning a long Table in the Sessions-house;*) that Man and I went up into it by ourselves.

Mr. Davy. Did you take any particular Notice of what Things were in the Room?

G. Nash. At that Time I cannot say I did, because I had not found out the Room according to the Girl's Description. I came down, and saw Mr. White, one of my Lord-Mayor's Marshal-men, who went down to execute the Warrant: I said to him, For God's sake, what do you think of this Affair? he said, he believed we were got into the wrong Box, and he believed the Girl had never been there: Then I went over to my Companions that came down along with me; this was before Canning came. We went over to the House again; we went up into this Room: Some Persons, I cannot tell who, said, This must be the Room; Mr. Lyon stood near me; said I, This cannot be the Room according to her Description, for she said it was an empty, dark Room; Mr. Lyon said, These Things may have been put here since: There were Numbers of Things then in it.

Mr. Davy. Mention the Things you saw there.

G. Nash. There was to the Quantity of half a Load of Hay; an old Nest of Drawers, about four Feet long, and three high; there was a high Tub with Pollard in it; two Side-Saddles, and an old Man's Saddle: On my right Hand coming up Stairs, there seemed to be a Place as if some poor People had laid upon it; it was some Part Hay that was taken from the Heap, and some Wool put into a Sack for a Bolster, made up in the Form of a Bed: Over this nasty Bed (if I may so call it) were some Pullies and a Line belonging to a Jack; and at the Head of this Bed was a Hole, through which, it seems, formerly the Line did run, that had some Hay stuffed in it to keep out the Wind; I took it out; it was a long Square, about six by eight Inches; there is a Jack in the Kitchen, to which the Line had been fastened; the Hole looks directly into the Kitchen; it is a very thin Partition; it is Lath and Plaster: Through that Hole might be seen every Thing in the Kitchen, except just under it; and there was a Window in the Kitchen, which looks out into the Road, and from that Hay-loft a Person might see through that Window cross the Road.

Mr. Davy. Could you, when standing in the Kitchen, see through into that Room?

G. Nash. You might see the Window that fronts the Kitchen, through the Hole.

Mr. Davy. How high is the Hole from the Floor of the Kitchen?

G. Nash. I believe it might be about seven or eight Feet, to look through from the Kitchen; a Person might elevate himself, or look upwards; and when in the Room, the Hole is about five or six Inches above the Pillow of this Hay-bed, which was made on the Floor. In this Room was a Chimney, which I apprehended was for the warm-

ing a Glew-pot; and over this Place was a little Ledge, upon which stood an old Iron Casement all dusty; the Chimney stands in the Corner of the Room; as near as I can think, it is to the South; there was Cobwebs and Nastiness upon the Things; it is impossible they should have been newly put there:

Mr. Davy. Were there any Cobwebs on the Casement?

G. Nash. There were; they seemed to fix the Casement to the Chimney-ledge; it had such an Appearance to me, I did not move it; it was all over Cobwebs, and seemed to be soldered to the Wall with them; I did not move it.

Mr. Davy. Was there any Grate in the Chimney?

G. Nash. No, there was not; it appeared to me as if there never had been any.

Mr. Davy. Was there a Hearth to the Chimney?

G. Nash. I think there was not.

Mr. Davy. Was the Hearth-place, I mean the Floor of the Chimney, covered with Dust?

G. Nash. At that Time I did not particularly observe whether it was or no.

Mr. Davy. Was there any Appearance to you of any Pictures having been over the Chimney?

G. Nash. I believe there never was a Picture hung up in that Room in this World.

Mr. Davy. Did you observe the Window at the North End of the Room?

G. Nash. I did; that Window was nailed up with Boards, and the Muntam was betwixt; there were two Windows in the Room, one at the End, and the other almost facing the Stairs, going up out of the Kitchen; the Window at the End seemed to have had a Light; the Casement was whole, with the Boards nailed up upon the Top, and Boards nailed to the Muntams, and the Glass Casement shut.

Mr. Davy. What do you mean by a Muntam?

G. Nash. It is the Upright that divides the Window in halves: The Western Side was boarded up, and the Eastern Side was Glass; the which Casement commanded the *Hertford* Road, with a Pond at the End of the House, that came within eight or ten Feet of it; a Person standing at that Window might see all the People that pass upon the Road. The other Window was not then boarded up, nor, I believe, ever had been; that was only a Casement. I made particular Observations on it, to see if there ever had been any Nails on either Side, and could see no Appearance of any; that is large enough for me to get out at; I have since shook Hands with my Wife out at it, she standing on the Ground without, and I in the Room; it was easily opened, only by turning a long Hook; this looks out to a little narrow Lane or Ditch, and over the Hedge is a large common Field.

Mr. Davy. Was the Room light or dark?

G. Nash. It is what you may call a light Room, rather than dark, by means of these two Windows, and the Tiles never were pointed; the Light came in from the Roof; it could never be a dark Room.

Mr. Davy. What Sort of Tiles were they?

G. Nash. They were Pan-tiles.

Mr. Davy. How far was that Window from the Ground?

G. Nash. I believe, was I to hang out at the Window by my Hands, I should not be above three Feet from the Ground. The Ground is higher

higher at that Window than it is at the North Window a good deal.

Mr. Davy. Did you observe an old Sign in the Room?

G. Nash. I don't recollect there was.

Mr. Davy. Were there any Trees in that Hedge near the East Window?

G. Nash. There were, so near the Window, that was I within-side with a hunting Whip, I could reach the Boughs.

Mr. Davy. Did you observe the Boughs, whether they had been lopped lately?

G. Nash. I did not.

Mr. Davy. Were there any Cobwebs on the Drawers, so as to fix them, as it were, to the Wall?

G. Nash. I did not observe that.

Mr. Davy. Was Canning come at this Time, while you was observing the Room?

G. Nash. No, she was not.

Mr. Davy. Was Adamson there?

G. Nash. He was in the Room long before she came; there were a great Number of People there.

Mr. Davy. Whether any Thing remarkable happened from Adamson's Conduct?

G. Nash. Whether it was from his Zeal I know not, but he took hold on the Boards, and pulled them down from the North Window: I said, Gentlemen, this cannot be the Room, for the Girl gave no Account of any Hay being in the Room.

Mr. Davy. What Part of the Room did the Hay lie in?

G. Nash. It lay toward the East, on the same Side the Window was on, betwixt the North and East Window; and the Bed was on the right Side the Stairs, under the Jack-line Hole, in the South-west Part; we agreed by-and-by to go over the Way again.

Mr. Davy. Did you see the Pitcher while you was in the House?

G. Nash. I can't say I saw one, or look'd for one; it might be there, and I overlook it.

Mr. Davy. Where were the People of the House then?

G. Nash. We had left them in Custody in the Parlour, which is the left-hand Room coming into the House; when we were over the Way, I saw Mr. Adamson, and another Man whom I did not know, tofs up to know who should go to meet Canning; and Adamson went to meet her, and came back before her.

Mr. Davy. For what Purpose did they want to go to meet her?

G. Nash. I conjectured it was to see if they had not gone to a wrong House: We were all impatient to see her; for if I had had a Horse, I would have gone myself: When I and abundance of other People were returned to Mother Wells's House, Adamson came riding up, seemingly with a good deal of Pleasure, waving his Hat with his left Hand, and said, We are all right yet, for she says there is a little Hay in the Room. Presently after the Chaise appeared, in which the Girl was: When she came, some were for carrying her over to the Public House; others were for bringing her to the House of Mother Wells, which they did; she was brought, and set on a Dresher in the Kitchen, on the left Hand of the Door, fronting the Fire-place; and the Door where she afterwards said she had been confined was on the left Hand,

and the Door at that Time open; if she had turned her Head that Way, she might have seen the Stairs; but whether she did turn her Head that Way, or whether she might have seen up into the Room, I cannot say; I believe she might have seen Part of it. Then there was a Proposal to send for a Bottle of Wine to refresh those People that had been in the Landau with her in the Cold. She remained on the Dresher about four or five Minutes; then she was removed to the Middle of the Kitchen, on a broken Stool, with her Back toward the Fire-place, with the Door of the Hay-loft on her right Hand, looking towards the Dresher; the Door of the Room was then remaining open, and she might have seen that Part of it that the Stairs led up to: I believe she might sit thus, first and last, twenty Minutes: It was the Time they went and got a Pint of Wine, and mulled it.

Mr. Davy. When it came, did she drink much?

G. Nash. She drank but very little: Then somebody put the Thing thus, Now let us call Mother Wells in: I said, Hold, Gentlemen, this will be an Old-Bailey Story, and whoever is fixed upon for the committing the Fact, they'll certainly be hanged: Let the Room be filled full of People, and let her go and find out the People whom she accuses with robbing her; and proposed to carry her into the Parlour, where were a great many People: She was carried in; and Mary Squires sat on the right Hand of the Chimney; upon a low Chair, almost doubled together, with a black Bonnet on; I am sure I could not see her Face.

Mr. Davy. To what Part of the Room did Mary Squires then direct her Looks?

G. Nash. I believe her Face was pointing to the Window, straight as she sat, and Mother Wells sat on the left-hand Side of the Fire: I said to Canning, Now look for the Woman that robbed you; she immediately pointed to Mary Squires, and said, That old Woman in the Corner was the Woman that robbed me.

Mr. Davy. Did she see her Face at that Time?

G. Nash. I could not, but I will not pretend to say what she could see; I stood close to her; somebody said, (I think it was Mary Squires's Daughter,) Do you hear what the Gentlewoman says? she says you robbed her. The old Woman got up from the Stool immediately, and said—

Mr. Moreton. I object against that being mentioned; it is no Evidence.

Court. He may give an Account of what was said in the Defendant's Hearing and Presence.

G. Nash. The old Woman came up to her, and said, Madam, do you say I robbed you? (and put herself in a particular Posture, and had a Sort of a Clout about her Face;) Pray, Madam, look at this Face; and sure, if you have once seen it before, you must have remembered it, for God Almighty, I think, never made such another; pray, Madam, when do you say I robbed you? She answered, it was on the first Day of this New Year—The first Day of this New Year, Madam, do you say? Lord bless me! I was an hundred and twenty Miles from this Place then. I with my Finger tapped her on the Shoulder, and said, Dame, where was you? She replied, I was at Abbotbury in Dorsetshire, and there are a hundred People I can bring to prove it; and some of them have known me twenty, thirty, and forty Years. I think there were twenty People saying she has been

been here but a very little Time. There was a poor Woman they called *Natus*, fat there, who said, she herself had been there, I think, ten or eleven Weeks, and that she had never seen *Canning* there before; and she said, *Squires* had been there but a very little Time. After this was done, *Canning* was carried out of the Room, and carried up the Stairs facing the Street-door into all the Rooms; I did not go up with her: After that she was carried up into the Hay-loft; there she said, *she believed that was the Room.*

Mr. *Davy*. Are these her Words, *she believed*?

G. *Nash*. I think I can take upon me to swear they were her Words. I asked her, what she knew in the Room? she turned about on her left Hand, and said, *This is the Room, for here is the Hay I lay upon, but I think there is more of it than there was then,* pointing to the loose Hay on her left Hand. Upon that, she was asked by the People, that had her under the Arms, what could she note more in the Room? They took up a Pitcher that stood upon the Ground, and held it up to her; she said, *Yes, that is the Jug I had my Water in:* Then a Gentleman that was there took hold of a Tobacco-mould, which was in a Corner, and asked her, if she remembered that? *she said, she remembered that.* He asked her what else she remembered, (I think that was Mr. *Hague*) and added, Do you remember these three Saddles? (that were in the Room) she said, I believe there might be one; the Saddles seemed to be all over Dust, they seemed to have been laid up there out of the Way for a long Time: Then she was asked, if she remembered the Nest of Drawers? she said, she did not remember them. A Gentleman made Answer, Have you been here twenty-eight Days, and never remember them Drawers? she said, she did not remember them. Then Mr. *Hague* asked, why she did not strive to get out at that Window? (that is the East Window fronting the Stairs) she said, she thought it had been fastened.

Mr. *Davy*. Did she say she had tried to see if it was fast?

G. *Nash*. I don't remember she said she had.

Mr. *Davy*. Did *Natus's* Wife say any Thing about her lying in the Room?

G. *Nash*. *Natus's* Wife said in the Parlour, that her Husband and she had laid there, in this Hay-loft, ten or eleven Weeks: *Canning's* Mother was in the Room, lamenting sadly, that *that* was the Hay that her poor dear Girl had laid upon.

Mr. *Davy*. Was the Girl asked whether she remembered the Jack-line?

G. *Nash*. She was; she said, she did not remember seeing it.

Mr. *Davy*. Was the Tub of Pollard mentioned to her?

G. *Nash*. I think it was not.

Mr. *Davy*. Did she continue positive that *Squires* was the Woman who robbed her?

G. *Nash*. I heard no Contradiction to that.

Mr. *Davy*. What has led you to recollect, at this Distance of Time, all these Particulars?

G. *Nash*. It was so remarkable, it could not slip out of my Head; it was at that Time the Subject of Conversation: It is well known I told my Sentiments the same Night to abundance of People that came to know about it.

Mr. *Davy*. Knowing all these Particulars, which would have been extremely necessary to have been proved in the Defence of *Mary Squires* and Mother *Wells*, how came you, when these People were to

be tried, the one for a capital Felon, and the other as an Accessary, not to be an Evidence then?

G. *Nash*. I was here some Part of the Time the Girl was giving her Evidence, and really was a little discontented in my Mind, about her giving her Evidence at that Time, and her varying from the Particulars she first related before Mr. Alderman *Chitty*, and then to us: We had a very large Feast at *Goldsmiths-Hall*, and I was obliged to give my Attendance, because I am Butler to the Company; I had the Care of, may-be, three or four thousand Pounds Worth of Plate; so that I stayed in Court but till Eleven o'Clock, being obliged to be there, and I did not think there was any Danger of her being convicted upon such an incredible Story.

Mr. *Davy*. Had you a Subpœna?

G. *Nash*. No, I had not.

Mr. *Davy*. Did you then know that *Mary Squires* was upon Trial for her Life?

G. *Nash*. I did, and I did not think she would have been cast, indeed.

Mr. *Davy*. Had you apprehended her in Danger of being convicted, should you have thought yourself excusable in not giving Evidence?

G. *Nash*. If she had died, and I not gave my Evidence, I should not have forgiven myself; I should have been very angry with myself; but in my own single Opinion I did not think she would have been convicted; I thought the whole Circumstance of the Thing collected together could not amount to full Proof, and apprehended the Woman was in no Danger.

Mr. *Davy*. If you had apprehended it possible that the Woman should have been convicted, would you not have stayed and given Evidence?

G. *Nash*. I would have gone and made an Excuse, and come again.

Mr. *Davy*. Have you been always of the Opinion you are now, that *Canning's* Evidence was untrue?

G. *Nash*. I have always insisted upon the same I have now related. At the Trial of *Mary Squires*, I went Home and told Mr. *Flower*, the Assistant of the Goldsmiths Company, how far I had heard of the Trial, and said, I think it is impossible, with all the Circumstances, that she can be convicted; and he said, he thought so too.

Mr. *Davy*. How came you not to acquaint the Court, that you, of your own Knowledge, knew she was guilty of Perjury?

G. *Nash*. I can give no Reason for that.

Mr. *Davy*. What Conduct did you pursue after the Conviction of *Squires*, in order to atone for your not giving Evidence for her?

G. *Nash*. Some Time after that, I heard the old Woman had a Respite; I immediately waited on my Lord-Mayor, and told him, I believed I could let him into the whole Affair, as well as any Man could.

Mr. *Davy*. Did you do this voluntarily?

G. *Nash*. I did; I was very glad to hear there was some Design of saving the poor Woman; I did it not out of Spite to the Girl, but merely in Justice to the Gypsey.

Cross-examined.

Mr. *Moreton*. Did you hear the Girl positively charge *Mary Squires* with robbing her at *Enfield-Walk*, on the Trial of *Mary Squires*?

G. *Nash*. I did.

Mr.

Mr. Moreton. Did you hear her finish her Evidence?

G. Nash. I cannot tell whether she had quite done or not, for I looked at my Watch, and found it was Time to go, so went away.

Mr. Moreton. What did Mr. Flower say?

G. Nash. He said, they never could convict her.

Mr. Moreton. Whether your Dissatisfaction that you have given an Account of, was not owing to the Observation you made at Mother Wells's, upon the Answers the Girl gave there on the 1st of February?

G. Nash. I did then think she was mistaken in the Woman.

Mr. Moreton. Whether you heard the Girl give any Account of this at her Mother's?

G. Nash. I never was at her Mother's.

Mr. Moreton. When the old Woman made her Face so odd, by putting herself in a particular Posture, as you described, did the Girl alter in her Opinion?

G. Nash. No, I did not hear she did.

Mr. Moreton. Was Canning in the Room, when Natus's Wife said she had laid in the Room ten or eleven Weeks?

G. Nash. She first said she had laid in the House; whether it was before we went up into the Room, I cannot say; but I am certain she said so in the Parlour, when Canning was by.

Mr. Moreton. Did you continue to have a good Opinion of Canning?

G. Nash. I dropped my Opinion quite about her being innocent.

Mr. Moreton. Look at this Letter, is it your Hand-writing? (He takes a Letter in his Hand.)

G. Nash. It is my Hand-writing.

Mr. Moreton. When was it wrote?

G. Nash. The Day it bears Date.

Mr. Moreton. Who is it wrote to?

G. Nash. To Mr. Lyon.

John Hague sworn.

J. Hague. I am a Goldsmith, and live in Noble-Street, and am acquainted with Mr. Nash: He came to me on the 31st of January 53, at Night, and told me of an extraordinary Affair; the Contents were what he had heard before Mr. Alderman Chitty from Elizabeth Canning; he desired me, and I agreed to go down to Enfield-Wash with him. Mr. Nash, Mr. Lyon, Mr. Aldridge, and myself, went together in a Coach on the next Morning. Before we got down, we met a Man on Horseback, (who it was, I do not know;) he came to the Coach Side, and said, We have taken them all. When we came there, we went to Mrs. Wells's directly; we first went into the Parlour on the left Hand, there we saw the People that were taken; after we had talked with them, we went to take a View of the House; we went up the Stairs, and saw the Rooms; then we came down, and went up into the Hay-loft or Workshop, and finding nothing that answered the Description the Girl had given before Mr. Alderman Chitty, as Mr. Nash had said to us, he said, here is no Room answers the Description she gave: We went over to Cantril's, and got a Glass of Wine to refresh ourselves.

Mr. Willes. Was Mr. Adamson in the Room called the Hay-loft, when you was?

J. Hague. He was; he and Scarrat were saying to one another, Do you go, and Do you go, and at last they tossed up a Halfpenny, and it fell to

Adamson's Lot to go; he took his Horse and went, and came back with great Triumph, with a Whip lashing over his Head, saying, By G—d we are all right, she says there is a little Hay in the Room; and in about a quarter of an Hour after this, Canning came; she was first brought to Mother Wells's Door, and was taken into the Kitchen on the right Hand; she was set upon the Dresser in the Kitchen on the left Hand, and the Door opening to the Hay-loft was then open, which she could not miss to see; but she did not mention a Word that *that* was the Place where she had been in; she sat there a few Minutes; then they took her off, and set her in a Chair; she never opened her Lips about her Stays being cut off there.

Mr. Willes. How long do you think she was in the Kitchen?

J. Hague. In sitting on the Dresser and in the Chair, I believe she had been there a little better than a quarter of an Hour; then they carried her into the Parlour, and set her upon a Table; Mother Wells sat very close to her; as they were bringing her in, Mother Wells said, with a Sort of a Sneer, Why, the Girl is sick; there was no Answer made to that; as Canning was sitting, she pointed to the Gypsey Woman, and said, That is the Woman that cut my Stays off.

Mr. Willes. Was the Gypsey in such a Situation, that she could then see her Face?

J. Hague. Upon my Word, I think she could not; I was close to her, she was smoaking a Pipe.

Mr. Willes. Upon that, what did the Gypsey say or do?

J. Hague. Lucy Squires went up to her Mother, and said, Mother, the Girl says that you have cut her Stays off: Then the old Woman got up, and, in a great Trembling, she took her Bonnet off, and stroked her Hair up, and said, Madam, consider what a remarkable Woman I am; would you go to take a Life away? I was at *Abbotsbury* at that Time.

Mr. Willes. Did she say how many Miles that was from Town?

J. Hague. I don't remember she did; but George Squires then said it was a hundred and twenty Miles from London.

Mr. Willes. Have you heard Mr. Nash give Evidence a little Time ago?

J. Hague. I have not heard a Word of his Evidence.

Mr. Willes. Did any body else take Notice how long the Gypsey had been at *Enfield*?

J. Hague. No, I don't remember any body did.

Mr. Willes. Do you remember seeing *Judith Natus*?

J. Hague. I cannot say I heard her say any thing.

Mr. Willes. How long had Canning been in that Room, before you took her up into the Hay-loft?

J. Hague. I believe, about half an Hour; I led her up Stairs myself; I had hold on one Arm, and another Person on the other, but I do not know who it was; he has not appeared since; but before we went there, we went into several other Rooms; she was very quick, and said, This is not it, and That is not it.

Mr. Willes. What did she say upon her first coming into the Hay-loft?

J. Hague. When we got to the Top of the Stairs, she turned upon her right Hand next to

the Chimney, and took no manner of Notice of any thing: Then turning to the left, *This is the Room*, says she, *that I was confined in*: Then her Mother said, Ay, this is the Room where my poor Child was confined in. Said I, Good Woman, was you confined here with her? No, says she, but I believe every thing my Daughter says: Then I said, Pray hold your Tongue, and do not answer any Questions. There I saw a very large Hole on the right Hand coming up Stairs, large enough for a large Cat to go through; it was open.

Mr. Willes. How high is it from the Floor?

J. Hague. It is close to the Floor; the Jack-line run through it, and a Pully just over it; if there had been a Mouse in the Room, she might have seen it.

Mr. Willes. Was you in that Room as soon as *Nash* and *Aldridge*?

J. Hague. No, they had been there before me. There I saw also a dirty nasty Hay-bed on the Ground, nothing but Hay, which I suppose was taken from the other Hay, where we were told *Fortune Natus* and his Wife lay. I asked *Canning*, whether she remembered the Pully? she said, No, she never saw it. There is a little narrow Chimney, about fifteen or sixteen Inches wide; there was no Grate, or Appearance that there ever had been one in the Chimney; it was full of hardly any thing else but Cobwebs, which seemed to have been there a considerable Time, they were so nasty and dirty.

Mr. Willes. Were the Cobwebs so spread about the Chimney, that it was impossible there should have been a Grate there two Days before?

J. Hague. Yes, Sir. There was an old Casement over the Chimney that was very dirty and dusty: I said to *Canning*, Child, did you take this for a Picture? she said, No. When I took it away, all the Cobwebs came with it from the Top to the Bottom; and on the Place from whence it was taken, there appeared a Print of it, that looked as if it had been there a Year or two.

Mr. Willes. Was there any Mark of any Place, as if a Picture had been there?

J. Hague. No, Sir.

Mr. Willes. Did you observe the Window that looks towards the East?

J. Hague. I did; it is a Casement large enough for me to get out at; that is it which fronts the Stairs: I asked her how she came not to get out there, and opened it when I had hold of her Arm; she said, Sir, I believe it was nailed; then I looked to see if there were any Appearance of Nails being there, and could see none at all.

Mr. Willes. How high is this Window from the Ground?

J. Hague. It might be about ten Feet; it went into a little narrow kind of a Ditch, about half a Yard wide, where was a Bank up against it, and a Hedge and a Field behind it; in the Hedge were several Trees near the Window.

Mr. Willes. Did the Branches look as if they had been lopped lately?

J. Hague. Yes, they did.

Mr. Willes. How much Hay do you think there might be in the Room?

J. Hague. I believe about half a Load; it lay in the Room on the same Side the Window was on; it seemed to have laid there a long Time: There was another Window opened into the

Road, boarded up on one Side, and a Casement on the other that opened, that is to the North, and there is a Lane at the Corner of it; I looked out at it; there was no Pent-house or Shed under it; it was perpendicular. Mr. *Adamson* turned some of the Hay over to look for the Stays. I saw also a Chest of Drawers, which, I dare venture to say, had been there more than a Year, if not two; they were so very dusty betwixt the Drawers and the Wall, that I did not care to meddle with them.

Mr. Willes. Do you remember a Barrel or Tub in the Room?

J. Hague. I cannot say I do; there was a Tobacco-mould over *Fortune Natus*'s Bed; somebody asked her, if she knew that? she said, she did. There were two Womens Saddles and a Man's Saddle; I asked her, if she saw them? she said, she believed there was one; they all appeared to have been there a long while, they were very nasty and dusty.

Mr. Willes. Did you observe the Door that leads to this Room, how it fastened?

J. Hague. I did particularly: I could not perceive there ever was a Lock upon it; I believe there never was one; it fastened only by a Latch and a Button; I will not be positive there was a Latch; I said to the Girl, Zounds, Child, I cannot think you was ever here at all.

Mr. Willes. What Answer did she make to that?

J. Hague. She made me none at all.

Mr. Willes. Did you hear *Judith Natus* say any thing in *Canning*'s Presence about the Room?

J. Hague. I cannot say whether I did or not.

Mr. Willes. Did you go away satisfied with what you had seen?

J. Hague. No, I went away very much dissatisfied. When we were in the Coach going Home, Mr. *Nash*, and Mr. *Aldridge*, and I gave our Opinions to Mr. *Lyon*, that we did not think she was there; we said, she must be mistaken: He was so angry at it, that he did not speak to us all the Way Home, and that, I suppose, is the Reason we were not subpoena'd or called.

Mr. Willes. How came you not to come and give your Opinion in Favour of *Squires*?

J. Hague. I was in Court all the while, and I'll give my Reasons why. When they were first taken up, *Canning* said, *Virtue Hall* was one of the Girls that stood by when her Stays were taken off; at the same Time *Virtue Hall*, with all the seeming Innocency, laughed in her Face, and said, God forgive you, Madam, I never saw you in this House in my Life. She had challenged her and *Lucy Squires* with being by: *Lucy Squires* said the very same as she did. Seeing such seeming Innocence in her there, and when in Court to hear her swearing such a Thing that I thought to be as false as the Gospel is true, I protest I had not Power to speak; I believed she was perjured in all she said, that is the whole Reason why I did not speak; but had I had Spirits, I would have spoke.

Mr. Willes. After *Squires* was convicted, did you approve of your own Conduct?

J. Hague. Upon my Word, Sir, I was not easy upon my being silent. I went of my own free Will before my Lord-Mayor, and gave an Account of what I knew, the same as now.

Mr. Willes. Had you any Acquaintance with Alderman *Gascoyne* then?

J. Hague.

J. Hague. No, I do not know that ever I had seen him before.

Mr. Willes. How long after the Trial was it, that you went to my Lord-Mayor?

J. Hague. It was about a Fortnight or three Weeks after; it was long before *Squires* was respited.

Mr. Willes. Had you any Knowledge of *Canning* before you went down with her?

J. Hague. No, I never saw her before in my Life.

Mr. Willes. Did you go with her as her Friend?

J. Hague. I did, as much her Friend as any one that went along with her; and before she came down, did as much abuse old Mother *Wells* and *George Squires*, and the People in the House.

Cross-examined.

Mr. Nares. Was you present at the whole Trial of *Mary Squires*?

J. Hague. I was.

Mr. Nares. How long was you in Court after *Virtue Hall* had been examined as a Witness?

J. Hague. She was the second Witness.

Mr. Nares. Was you so much alarmed, you could not recover yourself in the whole Trial?

J. Hague. Upon my Oath, I could not recover myself; I really was shocked at it.

Mr. Nares. Had you heard *Canning* give her Information of the Room?

J. Hague. No, I had not; I had it from *Mr. Nash*.

Mr. Nares. Did you see *Canning's* Mother in the Hay-loft?

J. Hague. I did; she followed us up there, and said them Words to her as I said before.

Mr. Nares. Are you sure you saw her in the Hay-loft?

J. Hague. Yes, I am.

Mr. Nares. Did she continue there the whole Time you was examining it?

J. Hague. I do not know that.

Mr. Nares. How near is the Dresser in the Kitchen to the Stairs?

J. Hague. It is very close to the Stairs.

Mr. Nares. Can you, from that Dresser, see up the Stairs, if the Door is open?

J. Hague. When the Door is open, you may sit on any Part of the Dresser, and see quite up into the Room; to be sure she could see quite up into the Room.

Mr. Nares. Was *Mr. Adamson* in the Hay-loft when the Girl was there?

J. Hague. I do not remember I saw him there then; I saw him there before the Girl came down to *Enfield-Wash*.

Mr. Nares. Was you in the Room all the Time the Girl was?

J. Hague. I was.

Mr. Nares. Did you hear any body ask her, what was to be seen out at the Window?

J. Hague. I did not hear that; I saw him and *Bob Scarrat* going to tear the Boards down before the Girl came there, and they were pulled down before she came.

Mr. Nares. What did they do that for?

J. Hague. I do not know; it may be through Prejudice; I do not know the Reason why.

Mr. Nares. Whether there was not an Observation of yours, or somebody else, that those Boards had been but lately done up?

J. Hague. No, not by me, or any body else that I know of.

Edward Aldridge sworn.

E. Aldridge. I live in *Foster-lane*, and am a Working Silversmith; I am acquainted with *Mr. Nash*, *Mr. Hague*, and *Mr. Lyon*. On the 1st of *February*, 1753, I went down along with them to *Enfield-Wash*, having been told how sadly *Mr. Lyon's* Maid had been used. When we were on the Road, there was a Man came on Horseback, and told us they had taken up the People of the House.

Mr. Gascoyne. Have you heard any of the Evidence given by *Mr. Nash* and *Mr. Hague*?

E. Aldridge. No, I have not. When we got to *Enfield-Wash*, we went to *Mrs. Wells's* House; I went into the Parlour; there were all the People sitting all round the Fire; then I went into the Kitchen by myself, and so all over the House: I was in the Room where the Girl says she was confined; it is called by the Name of the Hay-loft. I believe I was there before *Mr. Nash* was; I was then alone.

Mr. Gascoyne. In what Circumstance was this particular Window that looks towards the North?

E. Aldridge. It was Part of it Glass, and Part Wood.

Mr. Gascoyne. Had the Casement Wood over it?

E. Aldridge. That I cannot tell; I am sure Part of it was boarded up.

Mr. Gascoyne. That Part that was not boarded up, had that any Appearance of any thing nailed up?

E. Aldridge. I was not so curious while I was there to examine it: They had described the Room to me as being a square Room, and a Room with a Grate in it. After I had been there, *Canning* came down, and was carried into the Kitchen, and set on a Dresser.

Mr. Gascoyne. Was the Door open that leads up into the Hay-loft?

E. Aldridge. I cannot be sure of that; I was not in the Kitchen all the Time she was there. She looked about as if she did not know where she was. I was with her when she was carried into the Parlour: As soon as we had taken her in there, *Mother Wells* came to her, and said, *Madam*, do you know me? No, said she, I do not know that ever I saw you in my Life before: Then *George Squires* came up, and said, *Madam*, do you know me? She said, No, I don't know that ever I saw you in my Life; it was that old Woman in the Corner that cut my Stays off. I was close by *Canning* at the Time.

Mr. Gascoyne. Did you see the Gypsey's Face at the Time?

E. Aldridge. No, I never saw her Face till she got up: *Madam*, said she, I cut your Stays off! (she throwed her Things open) I am very remarkable, if ever you see me before, you must know me. She mentioned *Abbotsbury*, and several other Places Names, which I have forgot, where she said she was.

Mr. Gascoyne. Could *Canning* see the Gypsey's Face in that Position she was in at the Time she charged her?

E. Aldridge. That I cannot tell: When *Canning* went up into the Hay-loft, I followed just after her: I remember seeing the Hole in the Wall, when I went up before, there was a great Wisp of Hay in it, which I took out and put in again; when it was out, I could look all over the Kitchen; it was a Hole where the Jack-line was; it was pretty

pretty large, I could get my two Hands in it; there was a Pully hung over it, but it then had no Communication with the Jack.

Mr. *Gascoyne*. Did you ask *Canning* any Question?

E. Aldridge. No; I heard Mr. *Hague* ask her, why she did not get out at that Window? she said, she believed it was fastened up.

Mr. *Gascoyne*. Did you hear any body ask her, if she remembered that Hole?

E. Aldridge. No: There was Hay between the Stairs and the Jack-hole, and a little square Chimney just at the Corner.

Mr. *Gascoyne*. Were there any Pictures over it?

E. Aldridge. There was a Casement over it, that seemed to have been there a great while, because it had Cobwebs over it, and was tied, as it were, to the Wall by them; and the Chimney was covered with Cobwebs from one Side to the other, and full of Dirt, and no Sign that there had been a Grate there at all.

Mr. *Gascoyne*. Did you look at the Window towards the East?

E. Aldridge. No, I did not. I came down Stairs, and left them above.

Mr. *Gascoyne*. Do you remember a Chest of Drawers being in the Room?

E. Aldridge. I do.

Mr. *Gascoyne*. Did you hear her asked any Thing concerning them?

E. Aldridge. No, I did not.

Mr. *Gascoyne*. Do you remember some Saddles, a Tobacco-mould, and about half a Load of Hay being there?

E. Aldridge. I do: There were three Saddles, and a large Quantity of Hay.

Mr. *Gascoyne*. Did you see ever an old Stool, or Table?

E. Aldridge. I did not take Notice of any. I went up just after the Chest of Drawers were removed a little Way from the Wall; it seemed as if it had stood there twenty Years. I remember there was a Barrel with some Stuff in it, Bran or Flour, Pollard I believe.

Mr. *Gascoyne*. Did the Hay seem as if it had been there pretty long?

E. Aldridge. It did, because it was pretty hard.

Mr. *Gascoyne*. Was you satisfied with the Room upon seeing it?

E. Aldridge. I was satisfied it was not like a Place of Confinement; neither did I believe she was ever there.

Mr. *Gascoyne*. Did you, upon your being in the Room two or three Times, observe the Window towards the Chimney?

E. Aldridge. Yes; it was a narrow Casement Window, big enough for a Man to get out at.

Mr. *Gascoyne*. How far was it from the Ground?

E. Aldridge. Any body might drop out of it very easily, without hurting themselves.

Mr. *Gascoyne*. Did you look to see if the Window had been fastened?

E. Aldridge. I looked, but could not find any Thing like Fastening to it.

Mr. *Gascoyne*. Did you examine the Door, how that was fastened?

E. Aldridge. Yes; it was not fastened at all, only with a Button; there was no Lock to it; there were some Holes where Locks had been; they looked like Key-holes, pretty large Holes.

Mr. *Gascoyne*. Was it probable to think there had not been a Lock upon the Door for a Month?

E. Aldridge. Yes, and longer than that.

Mr. *Gascoyne*. Might you venture to swear, by the Appearance of the Door, there had been no Lock upon it for a Week before?

E. Aldridge. That I might, or for a Month before.

Mr. *Gascoyne*. Or a Year?

E. Aldridge. Things alter very much in a Year.

Mr. *Gascoyne*. Did you go down as a Friend of the Girl's?

E. Aldridge. I did, and at my own Expence.

Mr. *Gascoyne*. After examining these Circumstances, did you return with the Belief of her Story or not?

E. Aldridge. I went and stood at the Door, and there came one *Hall*, a School-master, who lives at *Theobalds*, and said to me, What do you think of it? I said, The Girl is mistaken; I believe she never was here.

Mr. *Gascoyne*. Is there any Pent-house under the Window, where 'tis supposed she made her Escape?

E. Aldridge. No; there was a Cellar-door under it; no Boards, no Pent-house; it was perpendicular to the Ground.

Mr. *Gascoyne*. Did you observe the Wall on the Outside?

E. Aldridge. I did; I went out in particular to look at it; there was no Sign of clawing the Wall, or any thing.

Mr. *Gascoyne*. When you returned to Town, upon the whole, what did you think of it?

E. Aldridge. Upon the whole, I did not think she had been there.

Mr. *Gascoyne*. How came you not to appear as a Witness for *Squires* upon her Trial?

E. Aldridge. I was never subpoena'd.

Mr. *Gascoyne*. Was you in Court on that Trial?

E. Aldridge. I was at the Beginning of it.

Mr. *Gascoyne*. Why did you not stay all the Time?

E. Aldridge. Because we had a Dinner at *Goldsmiths-Hall*, and I was going to it.

Mr. *Gascoyne*. Was you not very much concerned at your Conduct, when you heard she was convicted?

E. Aldridge. I said to Mr. *White* the Officer, at going out, What do you think of it? he said, he thought she would be acquitted: I said, I thought so too.

Mr. *Gascoyne*. How came you, after this, to go before my Lord-Mayor?

E. Aldridge. My Lord-Mayor had heard of me by Mr. *Hague* or Mr. *Nash*: They desired me to go with them.

Mr. *Gascoyne*. Had you any Acquaintance with the Lord-Mayor before that?

E. Aldridge. No, I had not.

Mr. *Gascoyne*. How long after the Conviction of *Mary Squires* was it, that you went before my Lord-Mayor.

E. Aldridge. I can't justly tell.

Mr. *Gascoyne*. Was it a Week after?

E. Aldridge. It was a great deal longer than that.

Mr. *Gascoyne*. Did you give the same Account there, as you have done now?

E. Aldridge. I believe, I gave exactly the same.

Mr. *Gascoyne*. Had you any Acquaintance with *Canning* before?

E. Aldridge. No, I had not. I went with Mr. *Lyon*, because I had heard a bad Character of *Wells* at

Enfield-Wash, and was glad to hear she was taken; in order to be brought to Justice.

Mr. *Gascoyne*. Did Mr. *Lyon* and you all return very good Friends?

E. *Aldridge*. They went before Justice *Tasb-maker*, and I was quite tired of the Thing. I went to an Alehouse, and got some Mutton Chops, and half a Pint of Wine: I thought it was not worth hearing.

Cross-examined.

Mr. *Williams*. Was you with *Elizabeth Canning* in the Kitchen?

E. *Aldridge*. I was; She seemed to stare about her, as though she did not know where she was.

Mr. *Williams*. Did any body ask her if she knew the Place?

E. *Aldridge*. No; no body did, as I know of.

Mr. *Williams*. How long might she be in the Kitchen?

E. *Aldridge*. Not a long Time; she had some Wine brought her there.

Mr. *Williams*. Did she seem to be ill?

E. *Aldridge*. She did, to be faint and ill then.

Mr. *Williams*. How long was she before she pointed to the old Woman, after *George Squires* asked her the Question whether she knew him?

E. *Aldridge*. It was immediately after.

Mr. *Williams*. Did she speak that of her own accord?

E. *Aldridge*. I believe she did; I don't think any body prompted her to it: I saw no body talk to her then.

Mr. *Williams*. When did you declare your Dissatisfaction first?

E. *Aldridge*. I declared it before I left the House.

Mr. *Williams*. When did you cease to be her Friend?

E. *Aldridge*. I soon ceased to be her Friend.

Mr. *Williams*. How long after this was it you had Conversation with Mr. and Mrs. *Howard* about this? and upon what Account did you go down there to them?

E. *Aldridge*. I was going down to *Enfield-Wash*, I cannot tell how long after; I don't know whether it was not that Week. I hardly knew the Gentleman; I have heard say he is a Surveyor of the Window-lights: I remember I went down to Mr. *Edward Aldridge's* at *Enfield-Wash*; when I went out, I was desired to take some of the Papers (her printed Case in order for a Subscription) to Mr. *Aldridge* there.

Mr. *Williams*. Did you recommend it to them about subscribing for the Girl?

E. *Aldridge*. I did not deliver Papers: Mr. *Aldridge* took one in his Pocket with him, and I went with him to Mr. *Howard's*; we had some Discourse with him, but I can't say what it was justly.

Mr. *Williams*. I'll put you in Mind of one Thing: Did you, or did you not, say you were satisfied with the Girl's Description she gave of the House, either to Mr. or Mrs. *Howard*?

E. *Aldridge*. I denied it from the very first.

Mr. *Williams*. Did you say you thought she had been at the House, or did you declare you thought she had not?

E. *Aldridge*. If I declared any Thing about it, I declared she was not at the House; whether I did, or did not, I am sure, if I said any Thing, I said she was not confined there.

Mr. *Williams*. Did you any ways recommend this Paper to Mr. or Mrs. *Howard*, or endeavour, with Mr. *Aldridge*, to encourage the Case?

E. *Aldridge*. No; I only left the Paper with him; I did not encourage the Case either one Way or other; we did talk about the Gypsies, whether she was there; they could not tell what Time she had been there. I asked them, how long they thought she had been there? Mrs. *Howard* said, she could not call to mind how long she had been there, but said, she thought she had been there some Time, for she knew her very well.

Mr. *Williams*. How many Papers had you there?

E. *Aldridge*. I had but one.

Mr. *Williams*. How long after the Conviction of the old Woman was it, before you went before my Lord-Mayor?

E. *Aldridge*. Mr. *Nash* and Mr. *Hague* had been there two or three Times before I had been there, and they desired me to go with them.

Mr. *Williams*. Was it a Month after?

E. *Aldridge*. It was that, to be sure.

Mr. *Williams*. How came you, when you heard this poor Woman was reprieved, upon an Information made on her Behalf, when every body was then endeavouring to explain the Matter, not to go before the Magistrate in a Month's Time? Did not you think it a Matter of Justice to go?

E. *Aldridge*. When I was called for, I did: It was no Business of mine to trouble my Head about it to go.

William White sworn.

W. White. I am an Officer under my Lord-Mayor. I remember going down to *Enfield-Wash*, on the 1st of *February* 1753, to apprehend *Susannah Wells*. There was a Warrant went down before me: I met three Gentlemen there with the Warrant: I apprehended it was to take up Mother *Wells*, for cutting off *Elizabeth Canning's* Stays: I went over the Way to a Public House; then somebody said they saw Mother *Wells* go by; then I said, Let us go over and secure every body in the House: There were four of us, Mr. *Adamson*, Mr. *Wintlebury*, I, and another Person whom I do not know: We went there: When we were in the Parlour, Mr. *Adamson* pointed to Mother *Wells*, and said, That is she; there were two or three other Women in the Room with her. I immediately drew my Hanger, and said, they were all Prisoners. I put a Centry over them, and went to the other Parts of the House, and took all that were in the House, and put them into the Parlour: Mother *Squires* and her two Daughters were in a fore Room up one Pair of Stairs: *George Squires* was brought into the Room by some of the People: I told him he must be detained: Gentlemen, said he, look over every Thing that I have here: I turned them all out, and the old and young Womens Things too, to look for the Stays, but no such Thing was found.

Mr. *Willes*. Did you tell them the Reason of your apprehending them?

W. White. I did not just then: I said, there was a Robbery committed, and they must not go away: I found one of Mother *Wells's* Daughters, and *Virtue Hall* next, and brought them to the rest: After this, I went into the Kitchen on the right Hand, and looked round: After that, I saw a Woman's Head, by looking over the Door

through a Chasm, in a Place they call the Hay-loft. There was at the Bottom of it seven Steps to go up. I went and fetched her down, and put her amongst the rest; this was *Judith Natus*; she appeared to be just getting up.

Mr. *Willes*. What Time of the Day might this be?

W. *White*. I take it to be about Nine in the Morning. After I could find no body else, I went up into the Hay-loft to take a View of it; I just looked round, and saw the Hay, and two Windows, some Saddles, a Chest of Drawers, an old Barrel, a Musket, and a Tub, and a great deal of Lumber that I can't particularly describe.

Mr. *Willes*. How much Hay might there be?

W. *White*. If it had been bound up, I believe there were about the Value of twelve or fifteen Trusses; it seemed to have laid there a great while: I saw also a little Stove Chimney without a Grate in it. I did not stay to make particular Observation.

Mr. *Willes*. Were there any Pictures over the Chimney?

W. *White*. No, there were none: I saw the Bed *Judith Natus* had lain in, that was opposite the Fire-place. When I had looked round the Room, I was a little surprized, and thought the Girl was mistaken; so I went out on the Outside, and looked under the Window that fronts the Road, the North Window: I could not observe any Thing particular there, neither the Footsteps of any body dropping from the Window, or Print of their Cloaths by dropping down; it was clay Ground; it was so soft, that a Step of a Dog might make an Impression: There was a Heap of human Dung lay under it, about as high as the Body of a Quart Bottle; there was no Appearance of any body being there for some Time; neither did it appear to me as if any body had been out at that Window: I called Mr. *Adamson* to shew him; he would have persuaded me there were some Scratches on the Wall with her Foot, but I could not see any.

Mr. *Willes*. Was there any Pent-house or Shed between the Ground and the Window?

W. *White*. No, there was not; the Wall was perpendicular from the Ground. I was in the Parlour amongst them when *Canning* came down, which I believe was about Twelve or One o'Clock; she was carried into the Kitchen, and set upon the Dresser opposite the Parlour; she sat there about four or five Minutes.

Mr. *Willes*. Were the other Witnesses there at that Time?

W. *White*. There were so many People, I can't tell: After this, she was carried up Stairs to where I fetched the Gypsey from, but I did not go up Stairs with them; neither did I go up into the Hay-loft with her. The Prisoners being all in the Parlour, it was proposed to bring them one at a Time into the Kitchen; I objected against that, and desired they would all go back again into the Parlour, and let *Canning* go in and pick the Woman out from among them all, that had robbed her; I was afraid somebody would go and give a Signal; then we went into the Parlour; they were all placed in a Circle round the Fire; I believe, before they were moved, *Mary Squires* was on the left-hand Side of the Fire; *Wells* sat with her Elbow against the Fire-place, on the right-hand Side; this was before they got up to come in one at a Time; after this, their Positions were most of

them altered; and when *Canning* came in, which could not be above a Minute or two after, upon some Occasion, *Wells* was shifted, and got into *Squires's* Side, and *Squires* in her Place. *Canning* fixed upon the old Gypsey, as soon as she came into the middle of them; the Gypsey was sitting in the Corner stooping, I think, with a black Bonnet on: *Canning* said, That is the Woman there, pointing to her: I saw her fix her Eye immediately on that Corner of the Room.

Mr. *Willes*. Was her Face fronting *Canning*?

W. *White*. No, it was cross the Fire-place, as I apprehend.

Mr. *Willes*. Do you think *Canning* could see her Face then?

W. *White*. I can't answer for what she could see: I begged of her, before she went in, for God's sake, to be sure before she fixed upon any body.

Mr. *Willes*. Who did you expect she would have fixed upon?

W. *White*. I expected she would have fixed upon Mother *Wells*, before she went into the Room. When she had fixed upon the Gypsey, one of her Daughters got up, and went to the old Woman, and said, This Gentlewoman says you have robbed her. *Canning* was then standing in the middle of the Room amongst the People. The Gypsey Woman came up to her, and opened her Face, and said, *Me rob you! I never saw you in my Life before; for God Almighty's sake, don't swear my Life away.* When I said there was a Robbery committed, *George Squires* asked me, when the Robbery was committed? (his Mother and two Sisters were then with him) I said, it was on the 1st of *January*: He said, We were in *Dorsetshire* at that Time, at a Place called *Abbotsbury*; we went there to keep our *Christmas*: Then I took an Opportunity to find out Mother *Wells's* Daughter by herself.

Mr. *Willes*. Was *Canning* present?

W. *White*. No.

Mr. *Moreton*. Then what *Wells's* Daughter said, is not Evidence against the Defendant.

Mr. *Willes*. I meant what was said in *Canning's* Presence.

W. *White*. They all said they were at *Abbotsbury*, while *Canning* was in the Room; that is, the Son, two Daughters, and Mother.

Mr. *Willes*. Did they mention keeping their *Christmas* before *Canning*?

W. *White*. No, they did not mention that in the Parlour, but they did to me before *Canning* came; we stayed some Time; then we went before Justice *Taselmaker* at *Edmonton* with them all in a Cart.

Cross-examined.

Mr. *Moreton*. I think you are an Officer in *London*.

W. *White*. I am, but I had a Constable there.

Mr. *Moreton*. Was one *Long*, a Son-in-law to Mother *Wells*, in the House?

W. *White*. I believe he was there with a Cart to carry them: There were a great many People; I did not know *Long*.

Mr. *Moreton*. After you had collected the People out of all the Rooms, you say you went up Stairs?

W. *White*. I did.

Mr. *Moreton*. Did you meet with any Obstruction?

W. *White*. There was a Man made some Obstruction,

struction, and said, he would first see the Warrant; upon which I went to the Constable and fetched it, and went up.

Mr. *Moreton*. In whose Custody did you leave the Prisoners?

W. *White*. With the People that went down with me; the Officer that had the Warrant was in the Parlour.

Mr. *Moreton*. When you went down, did you leave that Man alone?

W. *White*. I believe he stood upon the Stairs till I fetched the Warrant; he was at the Door of the Room, but said he would not open it till he had seen the Warrant.

Mr. *Moreton*. Was that Man's Name *Long*?

W. *White*. There was one *Long* that carried them to Justice *Tashmaker's*; but whether that was he, I cannot tell.

Mr. *Moreton*. The *Long* I mean, is Son-in-law to Mrs. *Wells*.

W. *White*. Then I don't know him.

Mr. *Moreton*. Were they all uniform in giving the Account of being at *Abbotsbury*?

W. *White*. They were.

Mr. *Moreton*. Mention what the old Woman said.

W. *White*. She said, she was at *Abbotsbury* on the 1st of *January*; and *George* and *Lucy* said they were there; and *Mary* said, she was at her Uncle's in the Borough; she said, she was there at *Christmas*.

Mr. *Moreton*. You say *Adamson* and you had no other Conception but that Mother *Wells* was the Thief.

W. *White*. We did think so.

Mr. *Moreton*. Were there any shewing any body to *Caming*, when she came in?

W. *White*. No, Sir, not as I saw; she, of her own accord, voluntarily picked out Mrs. *Squires* as the Person that cut off her Stays.

Mr. *Davy*. We shall now produce several Witnesses, who, at various Times during the Month of *January* 53, were in the very Room in which the Defendant swore she was confined.

Fortune Natus sworn.

F. *Natus*. I live at *Waltham-Cross*, when I am at Home; I have lived there almost two Years.

Mr. *Davy*. Was you there before the Year 52?

F. *Natus*. I was there a good while before that.

Mr. *Davy*. Did you ever live at *Enfield-Wash*, and when did you come there?

F. *Natus*. On the *Monday* Fortnight after my Lord-Mayor's Day, of Sir *Crisp Gascoyne's* Mayoralty, I came from the *Wheat-sheaf* at *Waltham-Cross*, and went to lodge at Mrs. *Wells's* House at *Enfield-Wash*.

Mr. *Davy*. Are you a married Man?

F. *Natus*. I am, Sir; my Wife's Name is *Judith*; she lived with me all the Time.

Mr. *Davy*. In what Room did you lodge at Mrs. *Wells's*?

F. *Natus*. In a Room properly called the Workshop, that is, the Room that goes up out of the Kitchen, about seven or eight Steps to go up.

Mr. *Davy*. Is it a long or square Room?

F. *Natus*. It is a long Room, no Squareness belongs to it, with a Pan-tile Roof.

Mr. *Davy*. How many Windows are there to it?

F. *Natus*. There are two; one facing the Feet of my Bed, it was a single Casement; and the

other at the farther End of the Room, upon the left Hand as I lay, a larger than the other, one half boarded, and the other half Glass, looking into the great Road; and there was a Chimney facing the Foot of my Bed, on the right-hand Side, in the Corner of the Room next the little Window.

Mr. *Davy*. What was your Bed?

F. *Natus*. It was made of Hay and Straw mixed together.

Mr. *Davy*. Had you any Pillow or Bolster, and what was it made of?

F. *Natus*. I had a Sack of Wool for my Bolster.

Mr. *Davy*. Did your Wife lie with you on this Bed?

F. *Natus*. She did, Sir.

Mr. *Davy*. Mention the Furniture of the Room.

F. *Natus*. When I came first into the Room, there was pretty nigh half a Load of Hay, as nigh as I can guess; a large Chest of Drawers on the left-hand Side, about half Way in the Room; two or three Side-saddles, one Man's Saddle; a large Box that had some Pollard in it, it was a deepish Drawer, and formerly did belong to the Chest of Drawers; a Tub to hold some Chaff for Mrs. *Wells's* Horse, and a Tub with some Iron Hoops on it; an old Gun, and a Barrel of a Gun besides; the Gun stood in the Corner upon some Pan-tiles; an old Lanthorn, an old Spit, and an old cross-cut Saw, that stood upright in the Chimney; there was Pullies and a Line that belonged to a Jack, that came through the Hole at the right Hand of my Bed, over my Head; the Hole the Line came through, was large enough to put three of my Fists in, and about a Foot in Length; I used to put a Wisp of Hay in it to keep out the Cold; there was also the Sign of the Crown there, almost at the Feet of my Bed.

Mr. *Davy*. Was the Sign made of Wood or Copper?

F. *Natus*. It was made of Wood.

Mr. *Davy*. Was there any Grate in the Chimney?

F. *Natus*. No, there never was a Grate in the Room since I knew the House.

Mr. *Davy*. Did you observe any Thing else in the Room?

F. *Natus*. I observed a Bar there, that belonged to the Bar in the Kitchen, where they used to keep all their Liquor; it was old, so they brought it up Stairs.

Mr. *Davy*. Were there any Pictures in the Room?

F. *Natus*. I never saw a Picture in the Room in my Life.

Mr. *Davy*. What was over the Chimney?

F. *Natus*. There was an old Iron Casement on the Top of the Chimney; it was all Iron, no Glass at all, to the best of my Remembrance.

Mr. *Davy*. Was there any Lead in it?

F. *Natus*. There was no Lead in it, as I think, only the Frame of a Casement.

Mr. *Davy*. How long did you lodge there?

F. *Natus*. I lodged there ten Weeks, all but three Days, and in no other Place but this Room. I lay out of it but one Night in all the Time, that was on a *Wednesday* Night; my Wife never lay a Night out of it in that Time, except that Night I can't tell, I not being there.

Mr. *Davy*. Was the Quantity of Hay decreased, when you lodged there?

F. *Natus*.

F. Natus. It was; they kept a Horfe, and had some for him out of it constantly, almost every Day.

Mr. Davy. How much Hay might there be left, when you last lay there?

F. Natus. It might be the value of ten or twelve Trusses, if it had been tied up.

Mr. Davy. Was any of the Furniture of the Room taken out while you was there?

F. Natus. None at all, but the Sign of the *Crown*, that was bought by *Ezra Whiffin*.

Mr. Davy. When did he buy that?

F. Natus. I cannot justly say that; I did not see him take it away.

Mr. Davy. How do you know that he bought it?

F. Natus. Because he has now got it hanging up at his Door. There was a large Piece of Wood under the Foot of my Bed, and some Irons in it that belonged to the Sign; he has had them since he bought the Sign, and the Piece of Wood is in the Chamber now. I was there New and Old *Christmas*, and all the Month of *January*, till I was taken up on the 2d of *February*.

Mr. Davy. Look at that young Woman, (*meaning Canning*) did you ever see her there in *January*?

F. Natus. I don't know any thing of her; I never saw her in the House, or at the House; I only had a Glimpse of her at Justice *Tashmaker's*; when they were taken up, I was at Work, and was sent for Home.

Mr. Davy. Did any body besides your Wife and yourself go into that Room?

F. Natus. Yes, one *John Howit*, Mrs. *Wells's* Son; he came there for some Pollard to feed his Mother's Sow and Pigs with, and several Times for Hay, when I was there; and *Sarah Howit*, his Sister, she often came for Pollard to serve the Pigs; she almost always lived at Home: I have seen the Widow *Long* there; her maiden Name was *Elizabeth Wells*; I have seen her there several Times in the Month of *January*; there are two *Longs*; one of them is Mr. *Long's* own Daughter, she never was there: I have seen *Virtue Hall* in that Room.

Mr. Davy. Did *Virtue Hall* lodge in the House?

F. Natus. She was a Lodger there before I knew the House, in one of the best Chambers.

Mr. Davy. Do you remember when the Gypsey first came there?

F. Natus. I cannot well remember the Day punctually that they came there; they came about a Week and a Day before they were taken up.

Mr. Davy. What Rooms did they lodge in?

F. Natus. They lodged up the main Stairs; in one of the best Rooms.

Mr. Davy. Mention, if you can, what Rooms the several People lay in.

F. Natus. I can describe none of them, because I never was much in them: *Virtue Hall* lay along with Mrs. *Wells*: I had been in the Rooms, but never to take much Notice of them.

Mr. Davy. Describe the several Rooms to which the Stair-case leads.

F. Natus. There was one Room on the left-hand Side the Stair-case; there Mrs. *Wells* and *Virtue Hall* lay in one Bed, I believe; the old Gypsey lay in a Room opposite.

Mr. Davy. Where did *George Squires* lie?

F. Natus. I don't know.

Mr. Davy. Have you any particular Reason for remembering the Time of the Gypsey's coming to *Wells's* House?

F. Natus. I am no ways exact to the Day, but by reason she looked so frightful, that I did not care to be at the Fire with her.

Mr. Davy. Had you ever seen *Mary Squires*, or her Son, or Daughters, before the Time you mention?

F. Natus. No, I never had, Sir, in all the Course of my Life.

Mr. Davy. Do you know who came to *Enfield-Wash* with *Mary Squires*?

F. Natus. No, I don't, because I was then at Work; her Son and two Daughters lodged there all the Time she did.

Mr. Davy. Did they board in the House?

F. Natus. No, they went to the Shops to buy their Victuals; they were acquainted with Mrs. *Larney*, who sells Butter, Cheese, Bread, and Bacon; she lives about two Stones-cast from Mrs. *Wells's* House.

Mr. Davy. Is she a married Woman?

F. Natus. She is; her Husband is a Brick-layer, I think, named *John*.

Mr. Davy. Do you remember any Pitcher in the House?

F. Natus. I remember one very well; it was a largish black Pitcher, broken about the Mouth; my Wife made use of it over Night, before we were taken up, to fetch Water from a Pump over the Way, at Mr. *Howard's*, for my Supper: *Virtue Hall*, and Mrs. *Wells*, and *Sarah Howit*, used to go there for Water.

Mr. Davy. Do you remember any Bed-gown Mrs. *Wells* had?

F. Natus. No, I don't remember she ever had any at all.

Mr. Davy. Look at this Pitcher, Handkerchief, and Bed-gown; do you know either of them?

F. Natus. I'll swear to the Pitcher, that is Mrs. *Wells's*; I never saw the Handkerchief and Bed-gown in my Life.

Mr. Davy. Do you remember one *Robert White* coming to *Wells's* House?

F. Natus. I do; he used to come there, as far as I know, under Pretence of courting *Sal Howit*, almost every Night; I have known him five or six Years; he has seen me go to Bed in that Room several Nights.

Cross-examined.

Mr. Nares. What is your Business?

F. Natus. I am a poor labouring Man.

Mr. Nares. Where have you been since you was taken up?

F. Natus. I have been at Work at Mr. *Bell's*, at the *Four Swans* at *Waltham-Cross*.

Mr. Nares. Did you work for him before?

F. Natus. No, I did not, Sir.

Mr. Nares. Are you sure this is the Pitcher that used to go so often to the Pump?

F. Natus. This is it.

Mr. Nares. How came you to go to live at *Enfield-Wash*?

F. Natus. I went there from *London*, being hired by a Farmer at *Waltham-Cross*, and I could not have constant Lodging there.

Mr. Nares. Who directed you to Mother *Wells's* House?

F. Natus:

F. Natus. A Man, whose Name is *Payne*, and my Wife went and asked for Lodging; I was to pay nine Pence *per Week*.

Mr. Nares. Why did not you lodge in the other Part of the House?

F. Natus. There were no Rooms empty there.

Mr. Nares. Was not there a Garret empty?

F. Natus. I don't know, I never was up them.

Mr. Nares. Was not you sometimes disturbed of your Rest by People making a Noise in the Kitchen?

F. Natus. They could not come into the Kitchen but I could hear them; I very seldom heard much Noise; sometimes I slept almost all Night.

Mr. Nares. What Time do the Family use to go to Bed?

F. Natus. The Family generally go to Bed betwixt Nine and Ten o'Clock; I never knew any Harm by the House; the People that belong to the House have got a very bad Character; but from what I know of it, I never saw any Harm in it, and it is a very sober honest House; I never saw any ill Tricks, or Irregularity, all the Time I was there.

Mr. Nares. What Time of the Day did *Robert White* use to come?

F. Natus. He used to come when he left off his Day's Work, may-be about Six or Seven o'Clock.

Mr. Nares. How long did he use to stay?

F. Natus. May-be two Hours, seldom longer.

Mr. Nares. Was there any other Lodger there besides you?

F. Natus. *Virtue Hall* was another.

Mr. Nares. What did she use to do for a Living?

F. Natus. She used to spin.

Mr. Nares. She was a very industrious Girl; was she not?

F. Natus. I cannot say for that, she used to work but a little.

Mr. Nares. Can you remember when the Sign was carried out?

F. Natus. I cannot say when it was really; I do not say what Time I missed it, but only I remember its being there.

Mr. Nares. What Time were the Sign-Irons carried out?

F. Natus. They were not carried out till some Time in *January*, before I was taken up.

Mr. Nares. How long before you was taken up?

F. Natus. It may be more than a Week or ten Days before.

Mr. Nares. Now I would ask you whether you was in Company with *Arthur Newit*?

F. Natus. I have several Times; I have work'd for him.

Mr. Nares. Do you know one *John Jackson*?

F. Natus. I do; he is a Farmer, and lives about a Mile out of *Ware Town*.

Mr. Nares. Do you know *William Hubbard*?

F. Natus. I cannot say I do.

Mr. Nares. Did you ever take an Oath upon this Affair?

F. Natus. The first I ever took was before Sir *Crisp Gascoyne* at the *Mansion-House*.

Mr. Nares. How long is that ago?

F. Natus. I cannot recollect that.

Mr. Nares. Do you think it is more than six Months ago?

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F. Natus. It must be more than that.

Mr. Nares. Are you sure the Girl never was in that Room?

F. Natus. Yes, Sir, I am, the Time I lodged there, which was ten Weeks all but three Days.

Mr. Nares. Did you ever fall in Company with *Mr. Newit* after this?

F. Natus. Yes, several Times.

Mr. Nares. Do you remember what Conversation passed?

F. Natus. He has taxed me several Times with swearing false, and offered to lay a Wager that I lodged in another House at *Enfield-Wash*, besides *Mother Wells's*.

Mr. Nares. Was ever such a Wager laid?

F. Natus. I believe there was; but what I said was Truth.

Mr. Nares. What was the Wager?

F. Natus. I believe it was a Shilling a-piece, I think so; but it was drawn, because he found he was wrong.

Mr. Nares. We have those present that can give an Account of it, so be careful: Say whether or not, upon that Conclusion, you did admit you had lodged at another House?

F. Natus. No, Gentlemen, I am come here to speak the Truth; I never did admit, in their Presence, that I lodged in another Room, or in another House.

Mr. Nares. Did you never admit you had lost your Wager, and that you had laid in another Room?

F. Natus. I never did admit it; I did not lose the Wager at all, because it was drawn.

Mr. Davy. When was you applied to, to lay this Wager?

F. Natus. It is about a quarter of a Year ago.

Mr. Davy. Where was this?

F. Natus. It was at *Mr. Bell's House* at the *Four Swans* at *Waltham-Cross*.

Mr. Davy. What was the Wager?

F. Natus. I cannot say what Money was laid; I down'd with my Money myself.

Mr. Davy. Who was in the Room at that Time?

F. Natus. There were several People there drinking; I cannot say whether they were common Men or Gentlemen.

Mr. Davy. Was the Money staked?

F. Natus. I cannot say whether it was a Shilling; the Money was staked down.

Mr. Davy. Who held the Stakes?

F. Natus. I don't know.

Mr. Davy. Did *Mrs. Bell* hold it?

F. Natus. I don't know that she did; I will not be sure of that; I had some of mine again.

Mr. Davy. Why had you it not all again?

F. Natus. I paid for a Decanter of Beer out of it.

Mr. Davy. Did *Mr. Newit* pay for any out of it?

F. Natus. He paid for none.

Mr. Davy. Did you drink Part of the Beer?

F. Natus. I did, Sir.

Mr. Davy. Was you here upon the Trial of *Mary Squires*?

F. Natus. I had a Subpœna, and did come, and was in the *Old-Bailey Yard*, and up near the Door.

Mr. Davy. What prevented your coming into Court to give Evidence.

F. Natus. Because I was not called; none of the Witnesses were called, never a one.

Mr. Davy. Was there any other Reason?

F. Natus. No other Reason, but they were not called.

Mr. Davy. Was you not assaulted?

F. Natus. I was, at the Place that turns out of the *Old-Bailey* Yard, three or four Times, and I shewed my Subpœna.

Mr. Davy. Who assaulted you?

F. Natus. There was a tallish Man that kept the Gate, pitted very much with the Small-Pox, he was the only Person that turned me out of the Yard.

Mr. Davy. Did any other Person use you ill?

F. Natus. There were several other People, but none touched me to turn me out.

Mr. Davy. Was you alone?

F. Natus. I was with the other Witnesses; they stood upon the Steps; two or three of them were turned out of the Yard.

Mr. Davy. What were the other Witnesses attending for?

F. Natus. For the same as I did.

Mr. Davy. What are their Names?

F. Natus. I cannot say half their Names.

Mr. Davy. Name some of them.

F. Natus. There was the Widow *Long* was one; they wanted to mob her.

Mr. Nares. I must obstruct this; this does no ways affect *Canning*, if it was the Neglect of the Officers; it cannot be proved that she was privy to it.

Judith Natus sworn.

J. Natus. The last Witness is my Husband; he does Husbandry-Work; he did work for Mr. *Payne* at *Waltham-Cross*; and we then lodged at Mrs. *Arnold's*, a Fortnight; she bid us provide ourselves, because we were very poor; and at the Fortnight's End we came to Mrs. *Wells's* House at *Enfield-Wash*, where we lodged ten Weeks, all but three Days, before we were taken up; I cannot tell the Day of the Month when we came there.

Mr. Willes. What Month was it in?

J. Natus. I cannot tell.

Mr. Willes. Was it in *September*, *October*, *November*, or *December*?

J. Natus. I cannot tell.

Mr. Willes. Was it before *New Christmas-Day*?

J. Natus. It was.

Mr. Willes. How long is it ago?

J. Natus. Upon my Word I cannot tell, because I am no Scholar.

Mr. Willes. During the ten Weeks all but three Days, how many Nights did you lie out of that House?

J. Natus. I never lay out of it one Night during the whole Time; my Husband lay out of it one Night, and but one.

Mr. Willes. What Room did you lie in?

J. Natus. We lay in a Room they call the Workshop.

Mr. Willes. In what Part of the House is it?

J. Natus. They go through the Kitchen, and up eight Stairs, as near as I can guess; our Bed was of Hay and Straw, on the right Hand going up; we had a Sack of Wool for our Bolster.

Mr. Willes. On which Side was the Head of your Bed?

J. Natus. It looked into the Kitchen.

Mr. Willes. Was there any Hole near your Bed?

J. Natus. Yes, there was one at the Head of the Bed; we used to stuff it with Hay to keep the Cold out; it was there before we came there.

Mr. Willes. Where did that Hole look into, when it was not stopped up?

J. Natus. It looked into the Kitchen.

Mr. Willes. Describe the Room; is there any Chimney in it?

J. Natus. There is, and a Casement over it.

Mr. Willes. What do you mean by a Casement over it?

J. Natus. There was an old Casement, all to Pieces almost, over the Chimney, when we came into the Room.

Mr. Willes. Was there any Glass in it?

J. Natus. There might be about half a Casement, not much Glass to signify.

Mr. Willes. Was there any Grate in the Chimney?

J. Natus. No, there never was for the Time I was there.

Mr. Willes. Was there any Chest of Drawers?

J. Natus. There was a Nest of Drawers, which I used to put my Bread and Cheese in, because the Mice should not run away with the Cheese.

Mr. Willes. Was this Chest of Drawers on the right or left-hand Side of your Bed?

J. Natus. They were on the left-hand Side.

Mr. Willes. Was the Hole you used to stop with Hay of any Use?

J. Natus. No, none at all.

Mr. Willes. How big was it?

J. Natus. It was about as big as my two double Fists.

Mr. Willes. What was hung over this Hole?

J. Natus. The Jack-line that was at the Head of my Bed.

Mr. Willes. Then cannot you tell the Use of the Hole?

J. Natus. I believe it was for the Jack-line to go through.

Mr. Willes. Pray, what other Furniture was there in the Room?

J. Natus. I believe, as nigh as I can guess, there was about half a Load of Hay, that was there before we came.

Mr. Willes. What was there in the Room besides?

J. Natus. There were Pan-tiles at the farther End of the Room, which had laid there before we came; an old Spit, and an old Lanthorn, just by the Chimney; one Man's Saddle, and two Women's Saddles; there was a Saw, and a Tub which Mrs. *Wells* used to put Chaff in for the Horse, and a Box that she used to put Pollard in for the Pigs, that stood on the left-hand Side.

Mr. Willes. Did she use to keep Pigs?

J. Natus. Yes, Sir, she did, in a little Sort of a Wash-house. She used to go into the Room for Pollard every Day, and feed them with it. There was a Sign of a *Fountain* there; it stood in the Room before we came, behind a Tub where the Chaff was.

Mr. Willes. Was there ever a Gun there?

J. Natus. Yes, there was a Gun.

Mr. Nares. Don't put Words into her Mouth.

Mr. Willes. Was there one Sign or two?

J. Natus. There were two, the *Fountain* and the *Crown*.

Mr. Willes. Where was the Sign of the *Crown*?

J. Natus. They stood together, fronting you as you go up. Mr. *Whiffin* bought the Sign of the

Crown

Crown before Old *Christmas*; the Irons that belonged to the Sign-post were at the Feet of my Bed, and he bought them: He took them away about a Week or a Fortnight before we were taken up, as nigh as I can guefs.

Mr. *Willes*. How long had Mrs. *Squires* lodged there, before she was taken up?

J. *Natus*. She had lodged there a Week and one Day.

Mr. *Willes*. Do you know *George Squires*?

J. *Natus*. I do; I never saw him in my Life before he came to lodge there: There were two Daughters, one is named *Lucy*.

Mr. *Willes*. Where did they use to lie?

J. *Natus*. They used to lie up Stairs in the other Part of the House; she and her two Daughters lay in a Chamber over the Parlour.

Mr. *Willes*. Were there any other young People in the House?

J. *Natus*. There were no body at all in the House but them and ourselves.

Mr. *Willes*. In what Room of the House did *Virtue Hall* lodge?

J. *Natus*. In the Room fronting the Stairs, near where the Gypsies lodged.

Mr. *Willes*. Had there been any Use made of this Hay?

J. *Natus*. They used to fetch it for the Horse.

Mr. *Willes*. Who used to fetch it?

J. *Natus*. *Sal Howit*; she is Mrs. *Wells's* Daughter; and Mrs. *Wells* herself, and *Virtue Hall* used to fetch some, and sometimes Pollard for the Pigs.

Mr. *Willes*. How came *Sal Howit* to be Mrs. *Wells's* Daughter?

J. *Natus*. Mrs. *Wells* had two Husbands.

Mr. *Willes*. How was this House supplied with Water?

J. *Natus*. Sometimes we fetched it from a Gentleman's Pump from over the Way.

Mr. *Willes*. Look at this Pitcher.

J. *Natus*. I cannot swear to the Pitcher; but I have fetched Water myself many a Time in such a black Pitcher; I think it was not broke so much at the Mouth as it is now: One may be like another: I cannot say it is the same; I think it was not quite so big as this.

Mr. *Willes*. Look upon this Bed-gown, examine it well.

J. *Natus*. I do; I never saw this in my Life, before they came and took us up: Mrs. *Wells* had no Bed-gown.

Mr. *Willes*. Look at that young Woman, (meaning *Elizabeth Canning*;) did you ever see her at Mrs. *Wells's*?

J. *Natus*. I never did, before she came with them to take us up, if that was the last Word I was to speak.

Mr. *Willes*. Look at this Handkerchief; do you know it?

J. *Natus*. I never saw it in my Life before.

Mr. *Willes*. Was you subpoena'd at *Squires's* Trial, in order to give Evidence?

J. *Natus*. I was; but they would not let me come in.

Mr. *Willes*. You was taken up with the rest, was you?

J. *Natus*. I was, and carried before Justice *Tasbmaker*, and from thence to Justice *Fielding*. *Canning* cleared me; she said she never saw me before.

Mr. *Willes*. Did you give the same Account as you do now?

J. *Natus*. I did.

Cross-examined.

Mr. *Williams*. Did she charge you with any thing, when you was taken up?

J. *Natus*. No, she did not.

Mr. *Williams*. Did she charge Mrs. *Wells* at all?

J. *Natus*. No, she did not.

Mr. *Williams*. Did you hear her say *Virtue Hall* was by, when Mrs. *Squires* cut the Lacing of her Stays?

J. *Natus*. I cannot say I heard her say it.

Mr. *Williams*. What Countryman is your Husband?

J. *Natus*. He comes from *Gloucestershire*.

Mr. *Williams*. From whence are you?

J. *Natus*. I was bred and born at *Ware* in *Hertfordshire*.

F R I D A Y the 3d of May.

Mary Larney sworn.

M. *Larney*. I live at *Enfield-Wash*, and keep a Chandler's Shop. I have known *Fortune Natus* and his Wife some considerable Time; they have bought Goods of me, that is, Bread, Butter, Cheese and Beer.

Mr. *Davy*. When was the first Time you ever saw them?

M. *Larney*. It was some Time after *Michaelmas* was Twelve-month, between that and *Christmas* they lodged at Mrs. *Wells's* House.

Mr. *Davy*. Did you ever hear them say in what Part of the House they lodged?

M. *Larney*. No, I never did, indeed.

Mr. *Davy*. How long did they remain there?

M. *Larney*. They remained there after the Time they were taken up; for they came back after that.

Mr. *Davy*. Do you remember any other Lodgers Mrs. *Wells* had in her House?

M. *Larney*. *Virtue Hall* used to come sometimes for Things, and I remember the Gypsies coming.

Mr. *Davy*. When was the first Time of your seeing them?

M. *Larney*. It was on a *Wednesday*; and the *Thursday* was Se'nnight after, in the Morning, they were taken up.

Mr. *Davy*. When you saw the Gypsies, how many of them were there?

M. *Larney*. *Lucy* was the first I saw of them; she knocked at my Door, and asked me if I sold small Bread, on the *Wednesday*; I said, Yes; I sold her a Loaf and some Cheese and Small Beer, and lent her a Pitcher to carry it Home; (I live opposite Mrs. *Wells's* House;) in the Evening of the same Day old Mrs. *Squires* came. *George* brought the Pitcher Home the next Morning. He or the Sister came every Day till they were taken up, and had Things of me, and sometimes the old Gentlewoman for Tobacco; I saw them commonly two or three Times a Day; that very Morning they were taken up, they had Tea.

Mr. *Davy*. What is your Husband's Name?

M. *Larney*. His Name is *John Larney*; he is a Bricklayer.

Mr. *Davy*. Do you know whether Mrs. *Wells* keeps any Cattle?

M. *Larney*. She keeps a Horse and a Hog.

Mr.

Mr. Davy. How long have you known her?

M. Larney. I have known her almost forty Years; ever since I can remember.

Mr. Davy. With what did she use to feed her Horse?

M. Larney. I have seen them fetch Grains; and I know she bought Hay, for I saw it brought in, and by the Badness of the Weather it was spoiled.

Mr. Davy. When was it brought in?

M. Larney. In the seasonable Time of Hay-making, before last *Christmas* was Twelve-month.

Mr. Davy. Where did she put it?

M. Larney. As she said then, she put it into the Room called the Shop.

Mr. Nares. I object against that, as legal Evidence.

Mr. Davy. I am not asking any thing Mrs. Wells said since 1752, but what she said before, when it was impossible for her to know of this Affair, when it could serve no Purpose to speak falsely; that is Evidence.

Mr. Nares. There is one plain Rule as to the Evidence of Hearsay; that is, that when you can have that very Person that proves this very Fact, she is the Person to be called; this is not Evidence at all.

Court. The Court are of Opinion that it will be proper for Wells to give her own Evidence.

Mr. Davy. Was you ever in this Workshop at Mrs. Wells's?

M. Larney. No, not till after the People were taken up.

Mr. Davy. Do you remember seeing any Hay carried to the House after that Time you have mentioned?

M. Larney. No, I do not.

Mr. Davy. How much was brought there in the Year 1752?

M. Larney. It was loose upon the Cart; I don't know how much there was of it; I saw it carried to the Door, but did not see it put into the Workshop.

Mr. Davy. What Door did you see it carried to?

M. Larney. Towards the Stable-door, as they call it.

Mr. Davy. Near what Part of the House is the Stable?

M. Larney. The lower Part towards London; it lies in a Line with the House.

Mr. Davy. Is there any Loft over the Stable?

M. Larney. Not as I know of.

Mr. Davy. To what Part of the House was this Hay carried?

M. Larney. I saw it standing against the Stable.

Mr. Davy. Did you see it unloaded?

M. Larney. No, I did not.

Cross-examined.

Mr. Moreton. How was this Hay brought?

M. Larney. It was brought in a Cart, and drawn up to the Stable, which ranges along with the House; I saw no more of it.

Mr. Moreton. What Countrywoman are you?

M. Larney. I was born and bred at *Enfield-Wash*.

Mr. Moreton. How long has Mrs. Wells lived in that House?

M. Larney. She lived there before I can remember.

Mr. Moreton. A good Sort of a House, was it not?

M. Larney. I did not frequent the House.

Mr. Moreton. What is the general Reputation of the House?

M. Larney. I suppose, by the Report, you know what a House it was.

Mr. Davy. We will suppose it to be a most infamous House.

Mr. Moreton. Did you ever see any Gypsies there before?

M. Larney. No, never before that Time, to my Knowledge; I never saw any at Mrs. Wells's before. I was very much surprized, and put the Money I took of her into a Pail of Water, because I had heard they can get the Money again.

Mr. Moreton. Whose Money was you afraid would be so nimble, *Lucy's* or the old Woman's?

M. Larney. I had put *Lucy's* in my Pocket amongst other Money; it was the old Woman's Money I put in the Water.

Mr. Moreton. Do you know *William Smith*?

M. Larney. He lives two or three Miles from me, upon the Chace; he is a Farmer.

Mr. Moreton. Do you know *Samuel Arnot*?

M. Larney. I know no such Name, unless it be he that lives up in the Town.

Mr. Moreton. Do you know Mr. *Howard* and his Wife?

M. Larney. They are People of very good Character, to be sure.

Mr. Moreton. Do you know *Humphry Holding*?

M. Larney. I do; he lives in *Turkey-Street*, about half a Mile from me.

Mr. Moreton. Do you know Mr. *Story*?

M. Larney. I have no Acquaintance with him, or Knowledge of him.

Sarah Howit sworn.

S. Howit. I am Daughter to *Susannah Wells*, and lived at *Enfield-Wash* with her at the Time Mrs. *Canning* said she was confined there.

Mr. Willes. Do you know *Mary Squires*?

S. Howit. I do, upon the Account of her being at our House a Week and one Day, and *George* and *Lucy*; they were all three together; they came on the *Wednesday*, and were taken up the *Thursday* Se'nnight after.

Mr. Willes. Look at that Pitcher; do you know it?

S. Howit. There was a Pitcher that used to go frequently to Mr. *Howard's* Pump.

Mr. Willes. Is this the Pitcher?

S. Howit. I cannot tell; it was a black Pitcher.

Mr. Willes. Did you live there the Time *Fortune Natus* and his Wife were there?

S. Howit. I did.

Mr. Willes. What Time did they come?

S. Howit. I cannot say at what Time they came.

Mr. Willes. How long were they there before *Mary Squires* came?

S. Howit. O! a great while; they were there the Time *Squires* was there, and the Time that *Canning* said she was confined there; and they lay in the Room she says she was confined in, which was the Workshop.

Mr. Willes. What do you mean by Workshop?

S. Howit. I mean the long Room that you go through the Kitchen to go up to it.

Mr. Willes. What did *Natus* and his Wife lie upon there?

S. Howit. They lay on Hay and Straw.

Mr.

Mr. Willes. Can you speak particularly, how long they were there?

S. Howit. They were there two Months.

Mr. Willes. What Use was made of this Room?

S. Howit. There was a great deal of loose Hay in it, and Lumber; the Hay was for an old Horse my Mother had. There was Pollard in a great Drawer, to feed a Sow and Pigs.

Mr. Willes. Do you remember about Christmas-Time, before Squires came there, whether the Room was locked up?

S. Howit. No, there never was a Lock upon the Door in my Memory; I remember it ever since I was born almost; I was born in the House.

Mr. Willes. Was you ever in that Room in that Month of January?

S. Howit. I was almost every Day.

Mr. Willes. Are you sure of that?

S. Howit. I am sure of it.

Mr. Willes. Can you take upon you to swear you was at your Mother's all the Month of December?

S. Howit. Yes, I can.

Mr. Willes. Can you, that you was all the Month of January?

S. Howit. I lay in that House every Night in the Month of January.

Mr. Willes. Do you remember, about a Fort-night or three Weeks before Squires came to your House, that any body was in that Workshop with you?

S. Howit. *Virtue Hall* went into it frequently, as much as I: We were there both together at the Time the Trees (against the little Window, a Casement that faces the Stairs) were lopped.

Mr. Willes. At what Time was it that the Trees were lopped?

S. Howit. I believe it was on the 8th of January; there were *Edward Allen*, *Giles Knight*, and *John Larney*, that lopped them.

Mr. Willes. Was the Casement open or shut?

S. Howit. I opened it myself at that Time.

Mr. Willes. Did any Thing pass between you and them?

S. Howit. There were Words passed, but I cannot tell what the Conversation was.

Cross-examined.

Mr. Nares. Have you lived at this House of your Mother's all your Life-time?

S. Howit. I was bred up there, and lived there some Time, not the greatest Part of my Life.

Mr. Nares. How long have you been absent from thence?

S. Howit. I have been five or six Years from it, and never saw my Mother's House in the Time.

Mr. Nares. How came you to be at Home at this Time?

S. Howit. I was out of Place, and so came Home.

Mr. Nares. How long had you been at Home before the Gypsies came there?

S. Howit. I believe about a Year and a half, or two Years.

Mr. Nares. How do you get your Living?

S. Howit. I go out to get my Bread, to work in the Country, sometimes Harvest-Work; I have no Family Affair with my Mother; I used to be in the Family, when I was not engaged another Way.

Mr. Nares. Do you remember what Quantity of Hay your Mother had at this Time?

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S. Howit. There was a great deal of it; I believe, not a Load.

Mr. Nares. Had she any other Hay for her Horse?

S. Howit. No, she had not; it was carried to the Horse from Time to Time.

Mr. Nares. How much Hay might there be when *Natus* lay there?

S. Howit. There was a great deal.

Mr. Nares. Can't you tell any thing of this Conversation between these Men and you?

S. Howit. I cannot.

Mr. Nares. Did you begin, or they?

S. Howit. I don't know whether *Virtue Hall* began, or who.

Mr. Nares. Who conversed with them most?

S. Howit. I said some Things, but can't tell what; I don't pretend to say one Word that passed.

Mr. Nares. Did they begin with you, or you with them?

S. Howit. I can't tell who began.

Mr. Nares. Were they Acquaintance of yours?

S. Howit. *Edward Allen* went to School with me.

Mr. Nares. What sort of Trees were they?

S. Howit. They are great high Trees.

Mr. Nares. Which lopped the Tree?

S. Howit. *Giles Knight*; they were not all at Work at the same time; my Mother gave them a full Pot to lop the Tree; I saw them drink it.

Mr. Nares. Who had the Lop?

S. Howit. *Larney* had the Lop.

Mr. Nares. Whose Trees were they?

S. Howit. They are *Richard Allen's* Trees; they only cut off some Part that hung over the Place.

Mr. Nares. How much in Quantity was cut off?

S. Howit. I can't tell; I thought there was a Faggot, but I did not see *Larney* make it up; I saw him go by with some of it.

Mr. Nares. Were these People sent there on purpose?

S. Howit. No; two were hedging round the Fields.

Mr. Nares. What did the others do, while *Knight* lopped the Tree?

S. Howit. They stood on the Ground, and looked on.

Mr. Nares. How did *Virtue Hall* and you stand, by the Side of each other at the Window?

S. Howit. *Virtue Hall* looked over my Shoulder.

Mr. Nares. Could the Men see you both?

S. Howit. Yes, Sir; but I was the principal Person that was looking out at the Window.

Mr. Nares. Was there any other Window in the House that looked towards that Part?

S. Howit. No, not directly; there is one, but it stands slanting.

Recorder. Was you present when the Gypsies, her Son and Daughter, and your Mother, were taken up?

S. Howit. Yes, I was.

Recorder. Was you present when *Elizabeth Canning* was brought there?

S. Howit. I was then shut up in the Parlour with the others.

Recorder. Do you remember *Elizabeth Canning* being brought into the Parlour?

S. Howit. I do.

Recorder. Recollect what passed there.

S. Howit. She swore to the Gypsie Woman, and did not see her Face.

Recorder. Are you sure of that?

S. Howit. She had never seen her Face; she swore to her before she saw her Face; I am sure of it.

Recorder. What did the Gypsie Woman say upon that?

S. Howit. The poor Woman did not know it was she that she swore to, till her Daughter *Lucy* said, Mother, she swears you cut off her Stays: then the Gypsie got up and said, Look, Madam, don't say it is me that cut off your Stays; and pushed up her Hat;) Look, for God's sake, (and don't swear to me; don't say it is me, for I am innocent, or to that Purpose; I may not repeat directly the Words in particular.

Recorder. Did she say where she was at the Time?

S. Howit. No, she did not, but *George* did; but what he said, I can't tell.

Recorder. Can you describe in what sort of a Posture the Gypsie sat, when *Canning* came into the Parlour?

S. Howit. She was sat with her Pipe in her Mouth, by the Fire-side, with a Hat and Cloak on, with her Hand upon her Knee.

Recorder. Upon your Oath, whether *Elizabeth Canning* could see her Face at that Time?

S. Howit. She could not.

Recorder. Did she give any Reason, why she desired her not to swear against her?

S. Howit. I did not hear any Reason; after she swore to her, then she shewed herself, and pushed her Hat up.

Mr. Nares. Had *Elizabeth Canning* seen your Mother's Face, before the Time she spoke to the Gypsie?

S. Howit. Yes, Sir; yes, in the Room.

Mr. Nares. Did she charge your Mother?

S. Howit. No, she did not.

Mr. Nares. Did she pitch upon the Gypsie of her own accord?

S. Howit. I don't know whether she did or no.

Mr. Nares. Did you hear any body tell her to pitch upon her?

S. Howit. No, I did not.

Mr. Nares. How came you not to be examined upon the Trial of your Mother?

S. Howit. I was not subpoena'd up; I have but two Subpœna's, one before the Grand Jury, and the other here.

Recorder. What was the Reason you was not subpoena'd up on your Mother's Trial?

S. Howit. I was not; I know not the Reason.

John Larney sworn:

J. Larney. I am Husband to *Mary Larney*; I live at *Enfield* at the Two Bridges; I am a Bricklayer. I was along with *Edward Allen* and *Giles Knight*, near the House of *Susannah Wells*, January 8, 1753. *Giles Knight* lopped a Tree; he told me, if I would come over, I should have the Lops: When we were there, *Edward Allen* flung some Dust into the Window of the Work-shop near the Trees, to *Sal Howit* and *Virtue Hall*, who were within-side.

Mr. Gascoyne. In what Position did they stand?

J. Larney. *Sal Howit* looked over *Virtue Hall's* Head.

Mr. Gascoyne. What Conversation passed upon this?

J. Larney. Upon my Word I can't tell; there were Words passed, but I don't believe there were many; when he *bulled* the Dust in, they bid him be easy.

Mr. Gascoyne. Where was *Knight* at the Time?

J. Larney. He was then in the Tree, and I stood upon the Ground by the Tree.

Mr. Gascoyne. How long did you talk to them through the Window?

J. Larney. It might be the value of ten Minutes.

Mr. Gascoyne. Did they both look out at the Window at the same Time?

J. Larney. They did, and kept talking to us.

Mr. Gascoyne. Who had the Boughs of this Tree?

J. Larney. *Mrs. Wells*.

Mr. Gascoyne. Who carried them to her?

J. Larney. I don't know; I believe they were flung over the Hedge to her; I had the Arms, and she the small Lop.

Mr. Gascoyne. What did you do with them?

J. Larney. I carried them Home, and we burnt them: We had half a Dozen or a full Pot of Beer for lopping the Tree; I don't know which.

Mr. Gascoyne. Who do these Trees belong to?

J. Larney. They belong to *Richard Allen*. This Window looks into the Room properly called the Workshop.

Mr. Gascoyne. Is there ever another Window that looks the same Way as this does?

J. Larney. There is one above upon the Stairs going into the Garret, that belongs to the House.

Mr. Gascoyne. Are you sure it was not that Window at the Garret Stairs, that these two Women were looking out at?

J. Larney. I am very sure it was not.

Mr. Gascoyne. Nor a Cellar Window?

J. Larney. No, it was not. There were three other Windows in the Workshop, and I plaistered them up, and left two, one at the North End, and the other at the East, that they looked out at.

Mr. Gascoyne. What was this Room built for?

J. Larney. It was built for a Carpenter's Shop. *Mrs. Wells's* first Husband was a Carpenter.

Mr. Gascoyne. How far was this East Window from the Ground, that they were looking out at?

J. Larney. I believe it may be about seven or eight Foot.

Mr. Gascoyne. In what Condition is the Wall?

J. Larney. It is Lath and Plaister, very slight; there are a great many Holes in it; that Part towards the South you might shake down with your Hand.

Mr. Gascoyne. Was it in that Condition at the Time you were lopping the Tree?

J. Larney. I can't say that, because People have been up in it, and beating it about.

Mr. Gascoyne. Were there so many Holes in it, when you were lopping the Tree, as there are now?

J. Larney. There was not; but I did not much mind it.

Mr. Gascoyne. Which is the tallest of the two, *Virtue Hall*, or *Sarah Howit*?

J. Larney. *Sarah Howit*, it may be, by two Inches.

Mr. Gascoyne. Recollect, as well as you can, whether you can positively say, who was the undermost, and who the uppermost?

J. Larney. To the best of my Knowledge, *Virtue Hall* stood nearest.

Cross-examined.

Mr. Williams. Whereabouts do you live?

J. Larney. I live opposite Wells's House.

Mr. Williams. Have you been much at her House?

J. Larney. I have often, and all over her House?

Mr. Williams. When was it you were lopping the Trees?

J. Larney. On the 8th of January, I believe, on a Monday.

Mr. Williams. Pray, how came you to be so particular as to the Time?

J. Larney. Because the Arms of the Trees, that I carried Home, set my Chimney on Fire on the 10th, and I christened my Child on the 12th, and Mrs. Wells was at my House at the Christening.

Mr. Williams. What Quantity of this Lop might you have?

J. Larney. About half a Dozen pretty large Sticks, about as big as my Wrist. Knight was busy there, and came and begged a little Small Beer, and said, if I would come, he'd give me the Lop.

Mr. Williams. Had you seen Virtue Hall or Howit that Day before?

J. Larney. I can't say; I may forget, if I had.

Mr. Williams. Was you at the Tree, before they were at the Window?

J. Larney. They came there partly as soon as we.

Mr. Williams. Did they continue there till you had done?

J. Larney. They did partly.

Mr. Williams. How long might you be there in all?

J. Larney. It might be about ten Minutes.

Mr. Williams. Can you recollect what was said at flinging the Dirt up?

J. Larney. I believe she said, Don't, you'll break the Windows.

Mr. Williams. Who stood foremost?

J. Larney. They stood both together.

Mr. Williams. Did they stand a-breast of each other?

J. Larney. No, the Window is not big enough. Virtue Hall looked under Sal's Breast, and Sal stood over the Shoulder of Virtue Hall.

Mr. Williams. Does that Window upon the Stair-case look upon the Trees?

J. Larney. It does.

Mr. Williams. Is it directly over the other Window?

J. Larney. No, it is partly over it.

Mr. Williams. Are you sure they looked out at the lower Window?

J. Larney. I am positive of that.

Mr. Williams. When was the first Time you gave this Account, you have given here, about your having spoke to these Women on the 8th of January?

J. Larney. I never was sworn before.

Mr. Williams. Do you remember the Trial of the Gypsies?

J. Larney. I do.

Mr. Williams. When you heard of that, what did you say about Canning's being confined in that Room? Did you ever say it was true or false?

J. Larney. I have mentioned several Times the Circumstance of the Women looking out at Window.

Mr. Williams. To whom?

J. Larney. To different People.

Mr. Williams. Did you then mention the Day?

J. Larney. Yes, the 8th of January.

Mr. Williams. Did you ever mention it before Mary Squires was tried?

J. Larney. Yes.

Mr. Williams. To many Persons?

J. Larney. Yes.

Mr. Williams. Why was you not subpoena'd up?

J. Larney. My Wife was. I did not know it was very material to give an Account of it; and did not think proper to put myself forward, and I was obliged to get my Bread another Way.

Mr. Williams. Who was in the Tree?

J. Larney. Giles Knight. I was right against the Tree on the Ground.

Mr. Williams. What Year were these other Windows plaistered up in?

J. Larney. In the Year 1750; the Date of the Year is there; I put the Stones up myself.

Mr. Williams. You say the South Side is very rotten; how was it, when you were lopping the Trees?

J. Larney. I did not see it then, the Hedge parted us.

Mr. Williams. When was the first Time you saw Mary Squires?

J. Larney. The Saturday before she was fetched away, and never before, to my Knowledge.

Giles Knight sworn.

G. Knight. I live at Enfield, and have these forty-two Years. I am a Gardener by Trade.

Mr. Davy. How far do you live from Mrs. Wells's House?

G. Knight. About a Mile and a half; I was hedging near her House; I lopped some Boughs of a Tree, within about a couple of Yards from her House, at the North Corner, near a Window.

Mr. Davy. Is there a Window in the Garret of that House?

G. Knight. Yes, there is.

Mr. Davy. Was you ever in the Garret?

G. Knight. No.

Mr. Davy. Did you see any body looking out at that Window, when you was lopping the Tree?

G. Knight. No, but I did out of a Window below that; they were Virtue Hall and Sarah Howit.

Mr. Davy. What Room do they call that, at the Window of which you saw these Women?

G. Knight. I do not know; the Window is about ten Feet high.

Mr. Davy. Who were with you?

G. Knight. John Larney and Edward Allen were.

Mr. Davy. Did Virtue Hall and Sarah Howit both look out together?

G. Knight. Yes; Sarah Howit was looking over Virtue Hall.

Mr. Davy. Had you any Conversation with them?

G. Knight. I had not: I believe Edward Allen spoke to them.

Mr. Davy. Did you hear the Women speak?

G. Knight. I did; but don't know what they said; I think Allen threw a couple of Clods of Dirt in to them.

Mr. Davy. Where did he stand?

G. Knight. Just against the Window.

Mr. Davy. Who had the Lops of the Tree?

G. Knight.

G. Knight. I gave it to *John Larney*; he had the biggest, I don't know who had the rest. *Allen* was at Work with me that Day a hedging in the Field for one *Mr. Allen*.

Mr. Davy. Did you see *Mrs. Wells* at that Time?

G. Knight. Yes; we had some Beer from *Cantril's*; *Mother Wells* paid for it.

Mr. Davy. When was this?

G. Knight. This was on the 8th of *January*.

Mr. Davy. How do you know it to be precisely on the 8th of *January*?

G. Knight. Because it was on the *Monday* after *Old Christmas-Day*.

Mr. Davy. What led you to take particular Notice of the Time?

G. Knight. *Mrs. Picket* had a Cart, loaded with Chalk, broke down on *Old Christmas-Day*, but it came Home that Day.

Mr. Davy. Have you seen any of the other Witnesses, since they have been examined?

G. Knight. No, I have seen none of them.

Mr. Davy. What Time of the Day was it, when the two Women were looking out at the Window?

G. Knight. It was in the Morning I believe, or some Time in the Forenoon.

Mr. Davy. Do you remember the Trial of the old Gypsey here?

G. Knight. Yes, I was here; I was subpœna'd on *Mother Wells's* Side.

Mr. Davy. What prevented your appearing in Court as a Witness?

G. Knight. Because I was not called; I was in the Yard.

Mr. Davy. Was it in your Power to have come in, if you had a Mind?

G. Knight. I did not know for that: I did not know the Way of it.

Mr. Davy. Was you ever a Witness in any Cause before now?

G. Knight. No, I never was, till I went before the Grand Jury upon this.

Mr. Davy. How large was that Window, at which the Women were looking out?

G. Knight. I believe, big enough for me to get out at.

Mr. Davy. How big is the Garret Window?

G. Knight. That is bigger than this below.

Mr. Davy. Is the Garret Window in a direct Line over the other?

G. Knight. I don't know that.

Cross-examined.

Mr. Moreton. Was that directly over the other Window?

G. Knight. No; that above was directly over-against the Tree I lopped.

Mr. Moreton. How many Boughs did you lop off?

G. Knight. Six or seven.

Mr. Moreton. Who had it?

G. Knight. *John Larney*.

Mr. Moreton. What Wood was it?

G. Knight. It was Elm.

Mr. Moreton. Should you have been afraid of setting your Chimney on Fire with it?

Mr. Davy. What Weather was it?

G. Knight. It was frosty Weather.

Edward Allen sworn.

E. Allen. I live at *Enfield High-way*.

Mr. Willes. What Business do you follow?

E. Allen. I am a Costermonger; I go a hedging and ditching: *Richard Allen* is my Brother: He has a Field near *Mother Wells's* House: *Giles Knight* and I were stopping the Gaps round it on the 8th of *January*: There is a Tree that hangs over a Lane by her House; we cut some Boughs off it; *John Larney* was there; he came to have the biggest of the Wood, which he had, and the rest was thrown over to *Mother Wells's*. She gave us a full Pot of Beer for doing it. The Beer was fetched from *Mr. Cantril's*, at the Time *Giles Knight* lopped the Tree. I saw *Virtue Hall* and *Sarah Howit* looking out at a little Window; I tossed up several Chumps of Dirt to them; the Place they were in was a Sort of a *Leantoo*, on the back Part of the House.

Mr. Willes. How high is that Window from the Ground?

E. Allen. It may be about ten Feet to the Bottom of the Window.

Mr. Willes. Do you remember what Words passed between you?

E. Allen. No, I do not.

Mr. Willes. Is there ever another Window belonging to that House, which looks out as that does?

E. Allen. There is one at the Top of the House partly, that may be twenty Foot above the other, where they were.

Mr. Willes. Was you ever in this Room in the *Leantoo*?

E. Allen. Yes, I have twice since this Talk of the Girl's being confined there.

Mr. Willes. What Sort of a Room is it?

E. Allen. It is a long Room, with some Hay and Stuff in it.

Mr. Willes. Do you remember the Trial of *Squires* and *Mother Wells*?

E. Allen. I do.

Mr. Willes. How came you not to come up then, and give Evidence?

E. Allen. I was not ordered to come; I had no Subpœna.

Mr. Willes. When did you first tell this Circumstance of lopping the Tree?

E. Allen. I told it, when I was asked the Question.

Mr. Willes. Have you mentioned these Circumstances before *Squires's* Trial?

E. Allen. I have several Times.

Cross-examined.

Mr. Nares. Were they both at the Window?

E. Allen. They were.

Mr. Nares. Can't you remember what passed between you?

E. Allen. Upon my Word, I do not know.

Mr. Nares. Had she said any Thing to you to provoke you to throw Dirt?

E. Allen. No; we did not throw it in Malice.

Mr. Nares. Was you acquainted with them before?

E. Allen. I was.

Mr. Nares. How did they stand at the Window?

E. Allen. They stood one by the Side of the other.

Mr. Nares. Did you see *Squires* and *Wells* taken away?

E. Allen. I did; I saw them get into the Cart.

Mr. Nares. Did you mention this of seeing them at the Window then?

E. Allen.

E. Allen. I did.

Mr. Nares. To whom?

E. Allen. I cannot tell to what Person particularly; it was to several that were in the Room.

Mr. Nares. Did you go before Justice *Tossmaker*?

E. Allen. No, I did not.

Recorder. Did you hear at that Time, that *Elizabeth Canning* was so long in that Room?

E. Allen. I did.

Recorder. Was you not surprized, when you heard she was confined there?

E. Allen. I was surprized; and said, if she was there, I thought we should have heard something of her, and if I had, I should presently have fetched her out.

Mr. Nares. Whether, at the Time you heard *Canning* had said she was confined in that Room from the 1st of *January* to the Time of her making her Escape, did you tell this Story, that you had been at the Window lopping a Tree?

E. Allen. Yes, I did.

John Cantril sworn.

J. Cantril. I live not above a hundred Yards from *Wells's* House; I keep a Public House: *Giles Knight* and *Edward Allen* came to my House on *Monday* the 8th of *January*; they said they had done but an indifferent Day's Work, for they had been at Play with *Mother Wells's* Daughter, out at the back Window, throwing Clods of Dirt in at the Casement, and they had been lopping of Trees, and a hedging.

Mr. Gascoyne. What is your Reason for being particular to the Day?

J. Cantril. They came to Breakfast; they wanted to know if I had got any small Meat; I said, I should roast a large Piece on the Morrow, which I did, it being the 9th; I seldom roast less than five Stone, to give to my Customers for *Christmas* Beef: I have done it for Years: *Mother Wells* used to buy her Liquor of me sometimes.

Mr. Gascoyne. When did you first see the old Gypsey?

J. Cantril. I never saw her till that Morning she was taken up; then she came into my House to light her Pipe: I think I saw her Son the *Wednesday* before that; he came into my House very sharply, and said, Let's have a Halfpenny-worth of Gin.

Mr. Gascoyne. Had you ever seen him before?

J. Cantril. No, nor but once since.

Mr. Gascoyne. Do you know any Thing about any Hay of *Mrs. Wells's*?

J. Cantril. I saw the Hay loaded in the Field where it grewed, by the *New-River* Side; I was then a fishing, and I saw it unloaded at this very Window, that this young Woman says she got out at. [*He looks at the Model.*] That is the Window at the End of it.

Mr. Gascoyne. What Hay-harvest was this Hay brought in?

J. Cantril. It was the Hay-harvest before the last.

Mr. Gascoyne. Do you know the Stable?

J. Cantril. I do very well.

Mr. Gascoyne. Is there a Loft over that?

J. Cantril. Yes, there is.

Mr. Gascoyne. Can you assign any Reason, why the Hay was not put up there?

J. Cantril. There used to come Bargemen and others, that would rob her when she put the Hay

there, therefore she put it in this Place to prevent that.

Cross-examined.

Mr. Williams. How many Loads did you see loaded?

J. Cantril. I saw but one Load; it was a little Cart, and one Horse to draw it.

Mr. Williams. Had she a Horse?

J. Cantril. She had; but it was the Man's Horse that drawed his Cart, to the best of my Memory.

Mr. Williams. How much Hay might there be of it?

J. Cantril. It is possible there might be half a score Trusses.

Mr. Williams. What Sort of a Window is it, that they put the Hay in at?

J. Cantril. One Part of it was Glass, and the other boarded over.

Mr. Williams. Was it so when they were pitching the Hay in?

J. Cantril. I can't say how it was then.

Mr. Williams. Was the Board on the Side of the Glass, or over it, or under it?

J. Cantril. One half to the Upright in the Middle was boarded, the other Side Glass, to the best of my Memory.

Mr. Davy. Did you know *Natus* and his Wife?

J. Cantril. I did; they used to lodge at *Mrs. Wells's*; but I can't say how long; but I think they had been there, backwards and forwards, about three Months; the Woman used to come to our House for Gin.

Mr. Davy. Do you know in which Room they lay?

J. Cantril. No, I do not.

Ezra Whiffin sworn.

E. Whiffin. I live at the *White-Hart and Crown* at *Enfield-Wash*, a Public House: I was told by a Glazier, he knowing I wanted some Irons to a Sign, that *Susannah Wells* had a Sign sawed down in the Rebellion Time, and she had the Irons to dispose of; I went to her House on the 18th of *January* 1753, and asked her; she said, she could find them; she and I went together through the Kitchen into a Room called the Lumber-room; it had formerly been a Workshop, or a Shuffle-board Room; it is a long Room; it is about seven or eight Steps up out of the Kitchen.

Mr. Davy. Did you take any Notice what was in the Room?

E. Whiffin. I can't say I did; but *Judith Natus* was in Bed in that Room upon some Hay, with a Sheet over it. The Bed was on the right Hand going in. As we were looking about for the Irons, *Mrs. Wells* said, Now I recollect myself, it lies under the Feet of this poor Creature's Bed: We looked and found them in a Piece of Wood there. Then *Fortune Natus's* Wife raised herself up upon her Elbow, and said, What are you going to do, or What are you about? *Mrs. Wells* said, We are only looking for a Piece of Wood. I took it, and set it upon an End, and said, Well, Girl, what must you have? She said, I will not sell the Wood, it is of Use to this poor Creature's Bed; the Irons I'll have a Shilling for: I gave it her directly, and said, I have a Son below Stairs, if you'll let him take it Home, and take the Irons out, he shall bring the Wood again; he took it, and carried it Home, and took the Hooks out,

and carried the Wood back again, and there it is now.

Mr. Davy. What are the Circumstances by which you recollect the Time?

E. Whiffin. I owed Mr. Proffer, a Brewer, at the *White Lion, Ratcliff-Highway*, 11 l. 7 s. and on the 8th of *January* Alexander Livingstone joined in a Note with me; it was upon Demand, but he gave me some Time to pay it; and I was going to borrow five Guineas, to enable me to pay it, of Robert Mitcham, at the *Globe* at *Wormleigh*; so I went directly there, as soon as I had sent my Son Home with the Wood to take the Irons out; but he was gone to *Cambridge*; so I came back and went to *London* that same Day, and carried what Money I had, and that satisfied the Person, and in about three Weeks Time I paid the Remainder.

Mr. Davy. To whom was the Note made payable?

E. Whiffin. To Bomar Lovit, at the *Iron-Gate, Tower-Hill*; he is an Officer; he arrested me on the 8th of *January*, on Mr. Proffer's Suit.

Mr. Davy. Are you sure this was on the 8th of *January*?

E. Whiffin. As I hope to be saved, that was the Day; I have the Note here.

Mr. Davy. Produce it, (*which he did, and the Note was read;*) Alexander Livingstone and I signed this the Day it bears Date.

Mr. Davy. Who was in the Room at that Time besides Mrs. Wells, Judith Natus, and you?

E. Whiffin. No body else as I know of.

Mr. Davy. Did you look about the Room?

E. Whiffin. I did, and saw no body else; I removed some of the Hay, and should have removed a great deal more, had she not found it.

Mr. Davy. A great deal of Hay! How much was there?

E. Whiffin. I believe there might be five hundred Weight, that is, ten Trusses; the Top of it lay as high as I could reach.

Cross-examined.

Mr. Moreton. What is the Glazier's Name?

E. Whiffin. William Metcalf; he painted my Sign, that is, only the *Crown*.

Mr. Moreton. Was it put up in *January*?

E. Whiffin. No, it was not until *February*.

Mr. Moreton. When did he mention these Sign-irons to you?

E. Whiffin. I don't remember that; but it was before the 18th of *January*.

Mr. Moreton. When was your Sign brought Home?

E. Whiffin. I don't know whether it was in *January* or *February*.

Mr. Moreton. Did he mention these Irons before the Sign was brought Home?

E. Whiffin. My Sign stood in my House a Month, I believe, before it was put up; so I cannot tell whether it was before or after.

Mr. Moreton. What Time did you keep *Christmas*?

E. Whiffin. I went by the New Stile, for I dropped the Old Stile, and hope all other People did.

Mr. Moreton. What Day of the Week was the 18th of *January*?

E. Whiffin. It was on a *Thursday*.

Court. Consider that.

E. Whiffin. My Lord, it is true.

Mr. Moreton. Do you know Mr. Harrington?

E. Whiffin. I do.

Mr. Moreton. Had you ever any Talk with him about this Matter?

E. Whiffin. I talked with him about the Time I was in this Room.

Mr. Moreton. When did you talk with him?

E. Whiffin. I don't know the Time; but it was not my Business to tell every body what I knew, but I answered him as I thought proper.

Mr. Moreton. Don't you know what Week it was when you talked with him?

E. Whiffin. No, I do not; I don't know within a Week or a Fortnight of the Time; he asked me Abundance of Questions, and I was not in a Mind to resolve him; I thought he was not a proper Man to ask me Questions, and I answered him just as I pleased.

Mr. Moreton. What Month was it in?

E. Whiffin. I do not know.

Mr. Moreton. What Year was it in?

E. Whiffin. It was some Time in the Year 1753.

Mr. Moreton. How long is it ago?

E. Whiffin. It is above a Year ago.

Mr. Moreton. Was you asked by any body, whether you could fix the Time you went into the Room?

E. Whiffin. I don't remember any body asked me that; but if they did, it was a silly Question.

Mr. Moreton. What was you asked by Mr. Harrington?

E. Whiffin. He talked a great deal more than what became him: He asked me, what Day of the Year? I told him it was the 18th of *January*, and I never told any body any Time else.

Mr. Moreton. Are you sure of that?

E. Whiffin. I am.

Mr. Moreton. Did you say any thing of seeing any body else in the Room at that Time?

E. Whiffin. I don't know whether I did or not.

Mr. Moreton. Or that Judith Natus was in the Room?

E. Whiffin. I might.

Mr. Moreton. Did he ask you, if you saw the Woman's Face?

E. Whiffin. I told him, I did not force my Discourse to him; I told him, I saw Judith Natus in Bed; he asked several Questions, but I resolved him no farther; I said, I saw her Face, and that I knew her plainly.

Mr. Moreton. Was you asked whether she spoke to you?

E. Whiffin. No, I don't remember that.

Mr. Moreton. Do you remember you said you did not hear her speak?

E. Whiffin. No, I don't remember that.

Mr. Moreton. Was you at the Trial of *Mary Squires*?

E. Whiffin. I was subpoena'd up, but was not admitted in.

Mr. Moreton. Did you try to come in?

E. Whiffin. There was a Constable in the Yard that denied my coming into the Yard for a good while, and so he did *Fortune Natus's* Wife a good while.

Mr. Moreton. Was you present, when they were denied?

E. Whiffin. I was not.

Mr. Moreton. Have you been examined before?

E. Whiffin. I have been examined by my Lord-Mayor, and gave the same Account as now.

Mr.

Mr. Davy. Look at the Prisoner; did you ever see her before?

E. Whiffin. No, I never saw her Face before in my Life, as I know of.

Mr. Davy. Upon your Oath, do you believe she was in that Room?

E. Whiffin. Upon my Oath, I did not see her in the Room.

Mr. Davy. Upon your Oath, is she the Woman that lay in that Bed?

E. Whiffin. Upon my Oath, she is not; I have made Oath of that before.

Q. from a Juryman. Where did you buy the Sign?

E. Whiffin. I bought it of Mrs. Wells, but it was a good while before; it was about three Weeks before Christmas was Twelve-months.

Alexander Livingstone sworn.

Mr. Willes. Look at this Note; is this your Hand-writing?

A. Livingstone. My Name at the Bottom is.

Mr. Willes. When did you sign it?

A. Livingstone. I think I signed the Day it bears Date: Ezra Whiffin signed the same Day; he was then arrested by Bomar Lovit.

Mr. Willes. Was there any Mention made of dating it before or after?

A. Livingstone. No, none.

Mr. Willes. Who wrote the Body of the Note?

A. Livingstone. Bomar Lovit did.

Mr. Willes. Did you sign it the same Day it was drawn?

A. Livingstone. I did, at the House of Whiffin at Enfield-Wash; I was a Boarder with him then.

Mr. Willes. How long after Christmas was it that you signed it?

A. Livingstone. It was signed directly after it was wrote, the Day it bears Date; I have no Reason to believe to the contrary. (The Note is shown to the Jury.)

John Whiffin sworn.

J. Whiffin. Ezra Whiffin is my Father. I have been Coachman to a Gentleman at Hertford ever since February 14, 1753; before that I was at my Father's from Old Christmas-Day; I went with my Father to Mrs. Wells's House on the 18th of January, New Stile; he was going to the Globe at Wormleigh, to Mr. Mitcham. When we went into Mrs. Wells's, she was gone over the Way; we stayed there till she came in; then my Father and she went and fetched that Piece of Wood, and I carried it Home and took the Hooks out, and brought the Wood back to her House again.

Mr. Gascoyne. In which Room did you stay while they went for the Wood?

J. Whiffin. I stayed in the first Room on the left-hand Side.

Mr. Gascoyne. Did you see your Father and Mrs. Wells go into that Room where that Wood was?

J. Whiffin. No; I did not go out of the Room where I was, till they came to me again.

Mr. Gascoyne. When did you return the Piece of Wood again?

J. Whiffin. I did in three or four Days.

Mr. Gascoyne. Did you know of the Debt your Father owed Mr. Proffer?

J. Whiffin. I did; and Mr. Livingstone entered his Hand to the Note to pay it to Mr. Lovit.

Cross-examined.

Mr. Nares. Was you at Home with your Father from the Old Christmas-Day, to the 14th of February, 1753?

J. Whiffin. I was.

Mr. Nares. Did you see Mr. Metcalf at your Father's in that Time?

J. Whiffin. I did.

Mr. Nares. Did he paint a Sign for your Father?

J. Whiffin. He did.

Mr. Nares. When was that brought Home?

J. Whiffin. It was brought Home before I was at my Father's; I went there on Old Christmas-Day; it stood then in the Parlour.

Elizabeth Long sworn.

E. Long. I am Daughter to Mrs. Wells; I have been a married Woman; my Husband is dead; my maiden Name was Wells; I used very frequently; every Day in the Year 1753, to go to my Mother's; I lived but three Houses from her.

Mr. Davy. Was you at her House in the Month of January in that Year?

E. Long. I believe I was there every Day in that Month, and all over the House, excepting the Garrets.

Mr. Davy. Who lived in the House the first and second Weeks of January?

E. Long. My Mother, and my Sister, and Virtue Hall, and Fortune Natus and his Wife.

Mr. Davy. When did you see Fortune Natus and his Wife there?

E. Long. I had seen them there from before January; they were there, from first to last, about ten Weeks.

Mr. Davy. Did you use to go up into this Hay-loft?

E. Long. I have for Judith Natus, for her to come to my House to help me to do what I wanted to be done: I have frequently gone into that Room to her; she used to lie there; I have seen her and her Husband in Bed in the Month of January there.

Mr. Davy. Did you ever see any body else in that Room, in the Month of January?

E. Long. No, Sir.

Mr. Davy. Look at that young Woman there, (meaning Elizabeth Canning.)

E. Long. I never saw her there; she never was at my Mother's House, till she came down, and they were taken up.

Mr. Davy. Do you remember the Furniture of that Room?

E. Long. Yes, I do; the Chimney is on the right Hand going up Stairs, at the Foot of Fortune Natus's Bed.

Mr. Davy. Was there a Grate in it?

E. Long. No, there never was in this World; I have remembered it twenty-two Years; there was a great Nest of Drawers, three Women's Saddles, and a Man's Saddle, a Tub that my Mother kept her Chaff in for the Horse, and a great deal of Hay, and a Drawer of Pollard for the Sow and Pigs.

Mr. Davy. Who fed the Horse, Sow and Pigs, during that Time?

E. Long. I know I went in, in January, to fetch some Pollard out of the Drawer, to feed the Pigs;

Pigs; but I went in so frequently, I can't tell the particular Days.

Mr. Davy. Are you sure there were three Women's Saddles and a Man's Saddle in the Room?

E. Long. Indeed, there were.

Mr. Davy. Look at this Pitcher.

E. Long. It looks like my Mother's Pitcher, but I will not be positive; she had such a one with a broken Mouth, which she used every Day.

Mr. Davy. Did you see it in the Month of January?

E. Long. Yes, I have seen our People fetch Water with it in January.

Mr. Davy. Look at that Bed-gown.

E. Long. I never saw this in my Life, till I was at my Lord-Mayor's; my Mother, my Sister, nor I, never wore it; it is none belonging to our Family; my Mother has never a Bed-gown, as I know of; there was no body at my Mother's House had a Bed-gown, that I am sure of.

Mr. Davy. Look at this Handkerchief; do you know it?

E. Long. No, I do not; I never saw that till at my Lord-Mayor's.

Mr. Davy. When did *Mary Squires* come to your Mother's House?

E. Long. She came on a *Wednesday*, and was there, from first to last, a Week and a Day, before she was taken up, which was on a *Thursday*.

Mr. Davy. Had you ever seen her before?

E. Long. No, never in my Life; if I had, I must have known it; her Face is a very remarkable one.

Mr. Davy. Do you remember her Family that came with her?

E. Long. There were two Daughters and a Son; the old Woman called one *Lucy*, the other *Polly*, and the Son *George*.

Mr. Davy. Was you in the House, when *Elizabeth Canning* came down there to take your Mother up?

E. Long. I was coming out of the Parlour, when she was carried into the Kitchen; I had heard a great Disturbance, and I went to my Mother's House, after the Gentlemen were got there.

Mr. Davy. Was the Door going up into the Workshop open, when she sat upon the Dresser?

E. Long. I think it was.

Mr. Davy. Was she removed to any other Part of the Kitchen?

E. Long. Never, as I know of.

Mr. Davy. Did any body ask her, if she knew that Room?

E. Long. Not as I heard; when she was brought into the Parlour, my Mother, Mrs. *Squires*, her two Daughters and Son, and *Virtue Hall*, and my Sister, were sitting round the Fire; she pointed to *Mary Squires*, and said, That is the Woman that cut my Stays off; she was sitting on the right Hand of the Chimney-place.

Mr. Davy. Could you see *Squires's* Face then?

E. Long. The Gentlemen were all before me; I could not see her Face, and she did not turn her Face, as I saw; she had a Hat and Cloak on, and a Clout on her Head, instead of a Cap, and sat holding her Head down.

Mr. Davy. Was she smoking a Pipe?

E. Long. I can't tell whether she was or not.

Mr. Davy. Did she sit upright?

E. Long. I think she did not; she is not an upright Woman. *Canning* spoke twice before *Mary Squires* heard her. One of her Daughters got up, (I don't know which it was,) and said, Mother, the young Woman says you cut her Stays off. Then she got up, and said to the young Woman, Young Woman, you are mistaken; I am a very remarkable Woman, and have got the Evil in my Face, and you may know me by Night or by Day. She shewed her Face by putting her Hand up to her Clout on each Side to make her Face bare.

Mr. Davy. Did you hear the young Woman mention the Time of the Robbery?

E. Long. I can't say I did, or any body else.

Mr. Davy. Did *George*, or *Lucy*, then say where they were on the 1st of January?

E. Long. Not then, as I remember.

Mr. Davy. Did you come as a Witness, when your Mother was tried with Mrs. *Squires*?

E. Long. I came into the *Old-Bailey* Yard, and the People would not let me come in; there were other Witnesses; I subpoena'd them myself.

Mr. Davy. How many Witnesses did you serve with Subpœna's to attend at that Trial?

E. Long. Eight: I had the Subpœna's of a Lawyer, Mr. *Talmastr*; he lives in *Red-Lion-Street*: I delivered one to *Fortune Natus*, and another to his Wife, one to *Mary Larney*, one to *Giles Knight*; I can't recollect them all: Somebody knowed me to be Mother *Wells's* Daughter, and they pushed me out, and would not let me come in; they frightened me very much, and I went back again, and up two or three Pair of Stairs in a House in the *Old-Bailey*, and heard the Mob cry out, *Mother Wells's Daughter!*

Cross-examined.

Mr. Williams. Who was with you at that Time?

E. Long. *Mary Larney* and *Giles Knight* were with me; I saw them go into the Yard with me; I cannot say whereabouts they were.

Mr. Williams. Did *John Larney* go into the Yard?

E. Long. I did not subpoena him.

Mr. Williams. Are you sure *Giles Knight* was refused being in the Yard?

E. Long. I am not.

Mr. Williams. How long had you been parted from your Mother?

E. Long. Not long; I had not been married quite a Year, and I lived at Home a quarter of a Year after I was married.

Mr. Williams. Was you away a Month?

E. Long. I am sure I was not; I lived in that House three quarters of a Year, and don't know I missed a Day in all that Time going to my Mother's House, and used to go into the Workshop sometimes for Ashes to carry Home for my own Use.

Mr. Williams. What January do you speak of?

E. Long. I mean that January the young Woman says; I think it is above a Year ago.

Mr. Williams. What Month is this?

E. Long. I can't justly tell of a sudden.

Mr. Williams. Is it May, or November, or December?

E. Long.

E. Long. May, I think.

Mr. Williams. Was you before Justice *Tasb-maker*, when they were carried there?

E. Long. They did not take me away, and I did not go there at all.

Mr. Davy. Was you often at this Workshop, within a Week, or Fortnight, or three Weeks before your Mother was taken up?

E. Long. I was there every Day; I used to go frequently to Breakfast there.

John Howit sworn.

J. Howit. I am a Carpenter; *Mrs. Wells* is my Mother; I have lived at *Enfield-Wash* about seven Years; I used to go to her House now and then: I was at Work at *Broman-Green*, about seven Miles from thence; having done Work, I was discharged from that Place on the 19th of *January*; about Six o'Clock at Night I came to my Mother's House.

Mr. Willes. Do you know the Hay-loft?

J. Howit. I know the Workshop, and was in it on the 19th, 20th, and 21st of *January*.

Mr. Willes. What led you to go there?

J. Howit. My Mother sent me up to serve the Sow; and I had brought my Tools, and lodged them in that very Room; and on *Sunday* the 20th I went to fetch my Axe and Saw, to cut some Wood for my Wife.

Mr. Willes. Was any body in the Room then?

J. Howit. Yes, *Fortune Natus* and his Wife were.

Mr. Willes. What Business had they there?

J. Howit. They lay in that Room.

Mr. Willes. How do you know they lay in the Room?

J. Howit. Because I saw them in Bed, or what they call a Bed; it was on the right-hand Side going up; they had Sacks to lay their Heads on, and what they thought fit to cover them.

Mr. Willes. Had they a Pillow, or Bolster?

J. Howit. I can't say they had.

Mr. Willes. Look at *Elizabeth Canning*; did you ever see her there in that Room?

J. Howit. No, I never did.

Canning. I never saw him before, as I know of.

Cross-examined.

Mr. Moreton. You say you wanted your Axe and Saw to cut Wood for your Wife: Where does she live?

J. Howit. We live just by the ten-mile Stone, about a Quarter of a Mile from my Mother's.

Mr. Moreton. Did you go Home first to your House, or to your Mother's, on the *Saturday*?

J. Howit. I went to my Mother's first, and there I left my Tools.

Mr. Moreton. Which is nearest your Master's, where you came from?

J. Howit. My Mother's is.

Mr. Moreton. How came you to leave your Tools at your Mother's?

J. Howit. By reason that was nearest, and I was tired of them.

Mr. Moreton. What Time of the Morning of the *Sunday* was it you went for them?

J. Howit. About Nine o'Clock.

Mr. Moreton. Are you sure you spoke to *Fortune Natus* and his Wife, as they were in Bed in that Room?

J. Howit. I am positive of it.

Mr. Moreton. How came you not to be here, when your Mother was tried?

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J. Howit. Because I was never asked any Questions before, nor had I a Subpœna at all.

Mr. Moreton. Had you heard that this Girl said she was confined in this Room?

J. Howit. Yes, but I can't say how long.

Mr. Moreton. Then how came it, you did not come and give Testimony against it?

J. Howit. I was asked no Questions, and I was not to come without; I was up here, but the Mob would not let us come in.

Mr. Moreton. Did you design to come in as a Witness?

J. Howit. Yes, I did; we went to *Mr. Legg's* in *Greene-Arbour-Court*, and had like to have been knocked on the Head, them that had got Subpœna's, and them that had not.

Mr. Moreton. Who was your Mother's Attorney at that Time?

J. Howit. *Mr. Talmash*.

Mr. Moreton. Did you ever go to him, and tell him about your coming Home, and going into that Room three Days together in *January*?

J. Howit. No, I never did.

Q. from a Juryman. We should be glad to know, whether that Drawer was in the Chest of Drawers, or a single Drawer of itself?

J. Howit. It is one of them Drawers, but it was not in it; it was swelled, and would not go in.

Robert White sworn.

R. White. I live at *Enfield*, and am a Day-labourer; I have been at *Mother Wells's* House a great many Times.

Mr. Gascoyne. Was you there in the Year 1753?

R. White. I was, in *Old Christmas*, and *New Christmas* too; I was there commonly four or five Times a Week.

Mr. Gascoyne. What Day in *January* was you there?

R. White. I am not so well learned to give an Account of the Day of the Month.

Mr. Gascoyne. What *Christmas* do you mean?

R. White. I mean last *Christmas* was Twelve-month: *Natus* had quartered at my Brother's, and I knowing him, used to go and keep him Company, and used to stay there sometimes till Eight or Nine o'Clock, and used to come as soon as I had done my Labour, at about Seven.

Mr. Gascoyne. Which Room had you used to be together in?

R. White. I used to be in the Kitchen, at the right Hand going into the House.

Mr. Gascoyne. Do you know the Door that goes into the Hay-loft?

R. White. Yes, I do; it is the Room that *Natus* and his Wife lay in, but I was not in it the Time they lay there.

Mr. Gascoyne. Did you ever see that Door open that goes up into the Hay-loft?

R. White. Yes, I have, and have seen *Fortune Natus* and his Wife both go in, and come out a gain; I remember they did on a *Sunday* Morning in particular.

Mr. Gascoyne. Have you ever seen any body else go into that Room?

R. White. No, Sir.

Mr. Gascoyne. How long might you keep going to this House?

R. White. I believe it might be almost two Months, or nine Weeks.

Mr. Gascoyne. Was you ever in the Kitchen any Time when *Mary Squires* was there?

R. White. No, I never was.

Mr. Gascoyne. Do you know the Day of the Month she came there?

R. White. No, I do not.

Cross-examined.

Mr. Nares. Did you ever see *Mary Squires*?

R. White. I saw her go by the Barn where I labour, about four or five Days before she was taken up; but I did not see her Face then.

Mr. Nares. Did you ever see any of the young ones?

R. White. I saw one of the Daughters once go into the Parlour one *Sunday*.

John Donoval sworn.

J. Donoval. I surveyed the Room (*Elizabeth Canning* said she was confined in) on *Easter-Eve*, the 13th of *April* last.

Mr. Davy. Give the Court the Dimensions of it.

J. Donoval. It is thirty-five Foot, three Inches and a half, from Quarter to Quarter in the Inside of the Room upon the Floor; by nine Foot eight Inches.

Mr. Davy. Is this, that is produced here, a true Model of it, according to its Proportion?

J. Donoval. This Model is exactly in Proportion with it, and there is the Scalé upon the Roof. (There was the Hole for the Jack-line, a Window on the opposite Side to the Stairs, another at the End, and a Chimney at one Corner, a Chest of Drawers, and Saddles, and Jack-pullies, drawn on the Wall, &c.)

George Talmasb sworn.

G. Talmasb. I having some Knowledge of Mrs. *Wells*, and hearing of this extraordinary Story, I went out of Curiosity to *Bridewell* to see her: When I came there, she addressed herself to me, and desired I would be concerned for her, as her Attorney; I did not care to be concerned in it: After that, her Daughter came to my House, with a List of Witnesses to the Number of eight, and desired me to take out Subpœna's for them. I sued them out; I remember one was for *Fortune Natus*, another for *Judith Natus*, and another for *Ezra Whiffin*; I can't pretend to tell all the rest of their Names now. I delivered them to the Woman, and gave her Directions to serve them.

Mr. Willes. When that Trial came on, can you tell why those People did not appear?

G. Talmasb. No, no more than what they told me: I was concerned no more in it.

Elizabeth Mayle sworn.

E. Mayle. I am a Midwife; I brought this Girl, *Elizabeth Canning*, into the World, and laid her Mother of more Children; I am intimately acquainted in the Family.

Mr. Davy. Was you at Mrs. *Canning's* House in *February* last was Twelve-month?

E. Mayle. I was in the Beginning of *February*; I saw the Mother; and the Daughter also.

Mr. Davy. Can you mention the Day?

E. Mayle. It was the 2d or 3d; it was the first Week, I am sure.

Mr. Davy. Where does she live?

E. Mayle. She lives in *Aldermanbury Postern*; the Daughter was then lying on a Bed in her Mother's House.

Mr. Davy. Had you any Conversation with the

Mother, in the Daughter's Presence, about the Daughter's Misfortunes?

E. Mayle. I had.

Mr. Davy. Was the Daughter awake?

E. Mayle. She was: I had Business by the House, and I went in, in order to inquire, if she had heard of her Daughter *Elizabeth*. As soon as I came in, Mrs. *Canning* said, Madam, O Lord; Madam, have you heard of my Misfortune? I said, I had read it in the News-papers in the Month of *January*, and asked her if she had heard of her Daughter; she said, Yes, she is come Home as naked as she was born.

Mr. Davy. Are you sure she mentioned these Words, *Naked as she was born*?

E. Mayle. I am positive of it: I immediately said, O Lord! what, without a Shift on? She said, No, she had a Shift on. Then I asked her, where her Daughter was? She said, behind me; I turned about to the Girl, and said, Lord bless me! *Bet*, how came this about? She said, I was coming over *Moorfields* one Night, and two Men came up to me, one took hold of my two Hands and pulled me along, and the other robbed me: I said, Of what, Child? She said, Of half a Guinea and three Shillings and some *Half-pence*, my Gown and my Cloak. I said, My Dear, don't trouble yourself about these Things, for God Almighty will raise you Friends to get you more; I hope the Men did not use you ill, so as to debauch you: She said, she could not tell, for she had her Fits. Said I, What did they do with you after they had robbed you? She said, They carried me to *Enfield-Wash*. I asked her, where *Enfield-Wash* was? She said, Out of Town. I asked, what they did with her there? She said, they carried her into a House, and as soon as she came in, there was an old Gypsey took a Knife and cut her Stays off, and put her Hand into her Pocket and pulled a Farthing out, and put it in again, and hit her a Slap on the Face, and called her Bitch, and bid her go up Stairs. I said to her Mother, Mrs. *Canning*, have you got this Shift your Child went abroad in? Sure never was such a Case before. I said, I'll tell you if any body has debauched your Child, if you'll let me see it. She immediately reached it, and I looked at it, and said, Mrs. *Canning*, is this the Shift your Daughter went away in? She said, Yes: Then I said, I supposed it was washed since she had been gone: She said, No, how could that be? For she was in a Room where no body came to her.

Mr. Moreton. Was the Prisoner present, and heard all this?

E. Mayle. She was. We stood by her Bed-side. She said, she had been confined in a Room, where she lived upon nothing but Bread and Water. I said, I think the Shift is too clean, except you have had it washed since she came Home. She said, No, it had not been washed. I said, Then, my Dear, you may make yourself easy, for I can see by it, that no Man has debauched your Child; but it is uncommonly clean to be wore so long. Then the Mother said, she never had a Stool all the Time she was gone: Then, I said, she must have a Glyster given her; but I can assure you no Man has debauched your Child in this Shift, unless it has been washed since. She again said, No, it had not.

Mr. Davy. Did the Shift appear to be dirty enough to have been wore three Weeks and some Days?

E. Mayle.

E. Mayle. No, it did not; there were three little Spots of Excrement, about the Bigness of the upper Part of my Thumb: I don't think it was dirty enough to have been wore three Weeks by any clean Woman that ever sat still in a Room, because every Woman must go to Bed and get up; and by sitting by the Fire the Dust will arise.

Mr. Davy. Do you think it had been wore three Weeks?

E. Mayle. I don't think it had.

Mr. Davy. Did you take Notice of the Bottom of it, whether it was draggled?

E. Mayle. I did; I took particular Notice of that; I saw no Dirt there; there was a Hole on the right Side of the Shift down one of the Guffets, but there was no draggled Tail, not at all.

Mr. Davy. How long did it appear to have been wore?

E. Mayle. It seemed as if it had been wore a Week, or such a Matter; I can't tell how long it had been wore.

Mr. Davy. Had you been acquainted much with her?

E. Mayle. I had been acquainted with the Girl from her Birth.

Mr. Davy. How long do you think she might have been in making that Shift so dirty as it was?

E. Mayle. About a Week.

Mr. Davy. Did the Girl herself say any Thing to you on this Occasion?

E. Mayle. Yes; she told me how she had been used, and the Gypsey had cut off her Stays, as I said before. I left her Mother an Order to give her a Glyster: She said, will you examine her Body, to see if she has been hurted? I said, No; I never was before the Face of a Judge in the *Old-Bailey* in my Life, and I did not care to be in dirty Work: Going away, she said to her little Girl, Go and call *Mrs. Woodward* over the Way to me: When she came in, *Mrs. Canning* said to me, Will you say what you said before? I said, Yes, *Mrs. Canning*, with all the Pleasure in Life; if this Shift has not been washed, I'll make an Oath before a Judge no Man had Copulation with her. I went away; I had proposed to bring a Doctor. I returned in about half an Hour; I went to the Bed-side to the Girl, and said, *Bet*, I was very sorry I did not ask you whether your Feet were not very sore in walking barefoot: She said, No, they are not; I had my Shoes and Stockings on, they did not take them from me. This I look upon to be from the Mother's Agony of Mind, that made her say she was come Home naked. I said, What more had you on? She said, My Under-petticoat, and an old Bed-gown, which I found in a Corner of the Room: Then I said, Good-b'ye Child; and went away.

Mr. Davy. Did the Mother seem to be pleased or displeased at what you said?

E. Mayle. She fell down on her Knees, and held up her Hands and said, Thank God, my Daughter is not a Whore.

Mr. Davy. Was her Mother angry with you for any Thing you said or did, then or afterwards?

E. Mayle. She was not then; but she was two Days after, when I came there, as I did not go the next Day before the Doctor, as I proposed. Then there were with her two young Women and an elderly Woman: I said, *Mrs. Canning*, I am come to ask if *Bet* has had a Stool? She said, No. I said, Then she must die, without you have given

her Glysters, and she has Relief that Way; and asked her, why she did not give it her? She said, she had. I asked her, if any Thing came off with it? She said, Yes, a little: I said, If nothing more came off, she is a dead Girl, and all the World can't save her Life: I went and took hold on the Girl's right Hand with my left, and said, Now she seems as cold as Death, and if she has no Passage, she must die, and all the World can't save her.

Mr. Moreton. Was the Daughter there when the Mother was angry?

E. Mayle. Yes, Sir. A young Woman in the Room said, How can you frighten the Girl out of her Life, to tell her she must die, when she has no Fever? Then I turned to another Woman, and said, Did you ever hear there was such a Thing before? I said, there was one Thing in her Favour, she has not been debauched: I said, Reach the Shift to this Gentlewoman, (she was a grave Woman:). I said, Let her judge the Case, and see that your Child has not been debauched: When that was reached out, the old Gentlewoman said, I don't see any Thing like it: I said, Look over it well; do you think this has been worn three Weeks and three Days? No, says she, I don't think it has, I don't think that is likely. *Mrs. Canning* said, she had no Stool all the while: I said, Here is three Spots upon it; I said, behold it. Then *Mrs. Canning* said, *Do you come here to set my other Friends against me?*

Mr. Davy. Who was that other Woman?

E. Mayle. I don't know her Name.

Mr. Davy. Was it *Mrs. Woodward*?

E. Mayle. No, it was not.

Mr. Davy. Was it observed that there were no Marks of her being according to the Course of other Women?

E. Mayle. That old Gentlewoman mentioned it, and *Mrs. Canning* said her Daughter had got Cold, and had been out of Order for three or four Months.

Mr. Davy. What is the Mother?

E. Mayle. She is a fine likely Woman as any, and a Woman that I respect as much as any Woman, and the Girl too.

Cross-examined.

Mr. Williams. What Sort of a Character has she had?

E. Mayle. I never knowed any Ill of the Girl, nor heard any in my Life.

Mr. Williams. Have you been intimately acquainted with her?

E. Mayle. I have, and never heard any Reflection upon her Character; and I don't question but the Mother was very anxious about her Daughter not being debauched.

Mr. Williams. Might not that Matter of Excrement have been from the Day before she was carried there?

E. Mayle. It might, and the Mother told me so then.

Mr. Williams. What was your Reason of being so inquisitive in this?

E. Mayle. I was so, as a Lover of Truth, and a Friend, fearing the Girl had been debauched.

Mr. Davy. Now we shall prove the Defendant's Information before Justice *Fielding*, in order to shew a material Variance, both in that and her Evidence

Evidence on the Trial, particularly in respect to the Time of expending the Water.

Mr. Brogden sworn.

Mr. Brogden. I am Clerk to Justice Fielding.

Mr. Davy. Look on this Paper.

Mr. Brogden. This is the Information of *Elizabeth Canning*, taken before Justice Fielding, the 7th of February, 1753. (*It is read.*)

The Information of Elizabeth Canning, of Aldermanbury Postern, London, Spinster, taken upon Oath this seventh Day of February, in the Year of our Lord 1753.

“ THIS Informant, upon her Oath, saith,
 “ that on *Monday* the first Day of *January*
 “ last past, she this Informant went to see her
 “ Uncle and Aunt, who live at *Saltpetre-Bank*,
 “ near *Rosemary-Lane*, in the County of *Middlesex*,
 “ and continued with them until the Evening;
 “ and saith, that upon her Return Home, about
 “ half an Hour after Nine, being opposite to
 “ *Bethlem Gate*, in *Moorfields*, she this Informant
 “ was seized by two Men, (whose Names are un-
 “ known to this Informant) who both had brown
 “ Bob Wigs on, and drab-coloured Great Coats,
 “ one of whom held her this Informant, whilst
 “ the other feloniously and violently took from
 “ her one Shaving Hat, one Stuff Gown, and one
 “ Linen Apron, which she had on, and also half
 “ a Guinea in Gold, and three Shillings in Silver;
 “ and then he that held her, threatened to do for
 “ her this Informant: And this Informant saith,
 “ that immediately after, they the said two Men
 “ violently took hold of her, and dragged her
 “ up into the Gravel Walk that leads down to
 “ the said Gate, and about the middle thereof,
 “ he the said Man that first held her, gave her
 “ with his Fist a very violent Blow upon the
 “ right Temple, which threw her into a Fit,
 “ and deprived her of her Senses, (which Fits
 “ she this Informant saith she is accustomed and
 “ subject to upon being frightened, and that they
 “ often continue for six or seven Hours.) And
 “ this Informant saith, that when she came to
 “ herself, she perceived that she was carrying
 “ along by the same two Men, in a large Road-
 “ way; and saith, that in a little Time after she
 “ was so recovered, she was able to walk alone;
 “ however, they continued to pull her along,
 “ which still so intimidated and affrighted her,
 “ that she durst not call out for Assistance, or
 “ speak to them. And this Informant saith,
 “ that in about half an Hour after she had so
 “ recovered herself, they the said two Men carried
 “ her this Informant into a House (which, as she
 “ this Informant heard from some of them, was
 “ about Four o’Clock in the Morning, and which
 “ House, as she this Informant hath since heard
 “ and believes, is situate at *Enfield-Wash*, in the
 “ County of *Middlesex*, and is reputed to be a
 “ very bad and disorderly Bawdy-house, and
 “ occupied by one *Wells*, Widow)
 “ and there this Informant saw in the Kitchen
 “ an old Gypsey Woman, and two young Women,
 “ whose Names were unknown to this Informant,
 “ but the Name of one of them this Informant
 “ hath since heard and believes is *Virtue Hall*:
 “ And saith, that the said old Gypsey Woman
 “ took hold of this Informant’s Hand, and pro-
 “ mised to give her fine Cloaths, if she would go

“ their Way, (meaning, as this Informant under-
 “ stood, to become a Prostitute) which this
 “ Informant refusing to do, she the said old
 “ Gypsey Woman took a Knife out of a Drawer,
 “ and cut the Lace of the Stays of her this
 “ Informant, and took the said Stays away from
 “ her, and one of the said Men took off her
 “ Cap, and then the said two Men went away
 “ with it, and she this Informant hath never
 “ since seen any of her Things. And this In-
 “ formant saith, that soon after they were gone
 “ (which she this Informant believes was about
 “ Five in the Morning) she the said old Gypsey
 “ Woman forced her this Informant up an old
 “ Pair of Stairs, and pushed her into a back
 “ Room, like an Hay-loft, without any Furniture
 “ whatsoever in the same, and there locked her
 “ this Informant up, threatening her this In-
 “ formant, that if she made the least Noise or
 “ Disturbance, she the said old Gypsey Woman
 “ would cut her Throat; and then she went away.
 “ And this Informant saith, that when it grew
 “ light, upon her looking round to see in what
 “ a dismal Place she was, she this Informant
 “ discovered a large black Jug, with the Neck
 “ much broken, wherein was some Water, and
 “ upon the Floor several Pieces of Bread, near
 “ in Quantity to a Quartern Loaf, and a small
 “ Parcel of Hay. And saith, that she continued
 “ in this Room, or Place, from the said *Tuesday*
 “ Morning the second Day of *January*, until
 “ about half an Hour after Four of the Clock
 “ in the Afternoon of *Monday* the twenty-ninth
 “ Day of the same Month of *January*, without
 “ having or receiving any other Sustenance or
 “ Provision, than the said Bread and Water,
 “ (except a small Mince-pye, which she this
 “ Informant had in her Pocket) or any thing to
 “ lie on, other than the said Hay, and without
 “ any Person or Persons coming to her, although
 “ she often heard the Name of Mrs. and Mother
 “ *Wells* called upon, whom she understood was
 “ the Mistress of the House. And this Informant
 “ saith, that on *Friday* the twenty-sixth Day of
 “ *January* last past, she this Informant had con-
 “ sumed all the aforesaid Bread and Water, and
 “ continued without having any thing to eat or
 “ drink, until the *Monday* following, when she
 “ this Informant being almost famished with
 “ Hunger, and starved with Cold, and almost
 “ naked during the whole Time of her Confine-
 “ ment, about half an Hour after Four in the
 “ Afternoon of the said twenty-ninth Day of
 “ *January*, broke out at a Window of the said
 “ Room, or Place, and got to her Friends in
 “ *London*, about a quarter after Ten, the same
 “ Night, in a most weak, miserable Condition,
 “ being very near starved to Death. And this
 “ Informant saith, that she ever since hath been,
 “ and now is in a very weak and declining State
 “ and Condition of Health; and although all
 “ possible Care and Assistance is given to her,
 “ yet whatever small Nutriment she this In-
 “ formant is able to take, the same receives no
 “ Passage through her, but what is forced by the
 “ Apothecary’s Assistance and Medicines.

The Mark of

E C

Elizabeth Canning.

Sworn before me, this

7th Day of February,

1753.

H. FIELDING,

Mr.

Mr. Deputy *Molineux* sworn.

Mr. Deputy *Molineux*. I was at Sir *Crisp Gascoyne's* when *Canning* came there, at the Time that *Virtue Hall* was there; Sir *Crisp* was then Lord-Mayor; I and others were desired to go and hear her Examination; after my Lord had concluded his examining of *Virtue Hall*, he turned to *Betty Canning*, and asked her, if she had any thing to say? she said, No, she had nothing at all more than she had said upon the Trial; my Lord said nothing further to her; the Bed-gown and Pitcher were on the Table; *Betty Canning* was rolling up the Bed-gown, in order to take it away, as I apprehended; my Lord said, Child, you must not take that away, you must leave that with me; upon which, she replied, and said, It is my Mother's; it shocked me a good deal, because I had heard it said, that she came Home in a Bed-gown, and that she found it in the Room where she was confined; I mentioned this to several People that very Afternoon, that were very strong Advocates in the Affair.

Mr. *Willes*. Did she demand the Pitcher at that Time?

Mr. Deputy *Molineux*. I don't remember she did.

Cross-examined.

Mr. *Moreton*. I had not asked you a Question, if I had not found you was at the Examination of *Virtue Hall*: Was you there upon the first of her being brought in to be examined?

Mr. Deputy *Molineux*. I was, the first of that Day.

Mr. *Moreton*. Had she recanted that Day?

Mr. Deputy *Molineux*. I had heard that she had; I heard my Lord-Mayor say he had gone through the Examination.

Mr. *Moreton*. Was you there the Day before she was examined publickly, the Day when she recanted?

Mr. Deputy *Molineux*. No, I was not.

Samuel Reed sworn.

S. Reed. I was present the Time Mr. *Molineux* speaks of. I very particularly remember she was going to fold up this Bed-gown; my Lord-Mayor said, Child, you must not have that; she said, It is my Mother's; which struck me very much.

Cross-examined.

Mr. *Nares*. Did any body ask her to explain what she meant by it?

S. Reed. No, Sir.

Mr. *Davy*. We have several Witnessess to call to the Characters of those who have been examined; and desire to know the Pleasure of the Court, whether we shall call them now, or stay till they are attached.

Court. Stay till they are attached.

Mr. *Davy*. Then we have done for the present.

Mr. MORETON, (*now Chief Justice of Chester.*)

May it please your Lordship, and you Gentlemen of the Jury;

I am Council in this Cause for the unfortunate Prisoner *Elizabeth Canning*; and unfortunate she certainly is, whether, upon the whole, you shall think her guilty, or acquit her of the heinous Crime of which she now stands indicted. For guilty of such an Offence, at her Years, she cannot

have been, without having been very unfortunate in a most profligate and abandoned Education; and should you think her innocent, most unfortunate must she surely be thought by all, because she is now brought to answer for a most foul Offence in herself, merely from having done her Duty in prosecuting others for the most unheard-of Violation of her own Person and Property, and the Laws of her Country.—But the more unfortunate such an Accusation, under such Circumstances, renders the Defendant, the more, I am sensible, she will be entitled to that Patience, which you have already shewn in the Progress of this Trial. And, Gentlemen, when I consider how long that Patience and Attention has been already exercised, when I see before me that even short Minutes have swelled to no less than six or seven Sheets, I am too sensible that I have neither Ability nor Experience to do my Client that Justice, which the extraordinary Nature of her Case requires. But, as I have been unfortunately fixed upon for my present Station, I hope, the great Length of the Trial, the great Pains taken by the Gentlemen on Behalf of the Prosecution, the numerous Facts and minute Circumstances that have been laid before you, will be some Excuse, at least, for the many Defects and Omissions that will appear in my opening for the Defendant. And, before I go into the Particulars of the Case, I shall premise and agree with Mr. *Davy* in his opening, that if the Perjury was corrupt and wilfully false; it is one of the most abominable and horrid Pieces of Corruption ever brought into a Court of Justice: A Falsehood the most cruel and impious! So much so, that I will also agree with him, that if it should appear by the Course of the whole Evidence, that the Defendant was never in the House of *Susannah Wells*, and that *Mary Squires* was not the Actor of the Mischief there supposed to be done, *Canning's* Magnitude of Offence deserves even a particular Law, which this Country has not yet thought proper to enact in Cases of Perjury.

But, Gentlemen, you, as a Jury, will guard your Judgments against all Impulses, which must necessarily arise from Considerations of this Nature: From Reflections on the Consequences of the Crime, into the Truth of which alone you are now to inquire. Facts alone are the proper Objects of your Attention: And glad I am, for the sake of Justice and Truth, that a Fact of this Importance, I say, of this Importance (for, in a free Country, the Nature and Circumstances of the Crime, not the Condition of the Criminal, makes every Inquiry more or less important) is to be investigated and determined by a Jury of distinguished Property and Integrity—by a Jury selected by the Prosecutor, in a Manner, I believe, unparalleled in any Prosecution, when the Crown is not directly concerned:—For, I believe, Gentlemen, that you are the selected Choice of the Prosecutor, after no less than seventeen Challenges:—And therefore, surely, the Prosecutor can now have none: The Defendant, I believe, never had any Diffidence of the Impartiality and Ability of any Jury, legally returned from the Citizens of *London*.

And, Gentlemen, in making such Observations as may occur to me to be material for the Defence of my Client, I shall, in the Outset, beg leave to remind you, what the Accusation is against this Girl now at the Bar: It is for wilful, malicious,

and corrupt Perjury, committed in this Court; and that with the aggravated Circumstances of being designed to destroy the Life of an innocent Fellow-Creature. Let me add, that this Crime, Gentlemen, is supposed to be committed, when the Defendant was under the Age of nineteen Years.

This Charge has been fully opened by Mr. Davy, and endeavoured to be supported three Manner of Ways: The *first* (which has been most relied upon, and, I think, with the Prosecutor's Council, is the most material Part of the Case) is the *alibi* Defence of *Mary Squires*, and the positive Proof they have brought of several Persons being in the Place of *Canning's* Confinement, during the Time she says she was there. If both these are proved, beyond all Possibility of Doubt in your Minds, then you must conclude *Canning* could not swear true in the Manner she has.

The *second* Method of proving this heavy Charge, is endeavoured to be made out from the Improbability of the Defendant's own Story; and the *third*, by her own Conduct, in the Delays and Precautions taken in not appearing to make an earlier Defence. Mr. *Willes* makes use of a very remarkable Expression, well known in the Law-books, *fugam fecit*, she has flown from Justice; and from thence would infer, (I mean legally) it is confessing her own Guilt. I am very sorry this Fact was at all observed upon; because, if it had not, I might have been at Liberty to have passed over Circumstances of Persons and Things, which I must now take Notice of, in order to shew, that the Delay of this Day's Trial can, in no humane and impartial Breast, be any Evidence of *Canning's* Guilt;—was a Step that every Person, in her unhappy Situation, would have taken;—was a Conduct that those, who had then the Care of her Defence, would have been void of common Sense, had they not advised it.—For, Gentlemen, in these Days, who would trust the Trial and Test of their Character, and their Liberty depending thereon, to the same Person, both supreme Judge and Prosecutor?

However Popish Legends may have attempted to persuade us, that such Impartiality has existed, —That a Judge has even condemned, and passed Sentence on himself;—Yet, in these happier Times, when Men are at Liberty to see and judge for themselves, such Traditions will never influence any Man, endued with the least reasoning Faculties, not to wish the Provinces of Judge and Prosecutor, at least, may ever be distinct and independent in this Country. I speak this without even the remotest Thought of casting any Reflection on the Integrity and Justice of any of those, who preside in our Courts in these Times.—There never was a Time, when the Subject was equally secure in this Respect: But it does by no means follow from thence, that Failings, inseparable from human Nature, are not to be guarded against by those, who may suffer from them.—And that a Prejudice to our own Cause, is such a Failing, is so obvious to every candid Man's own Breast, —that no Man, with any Pretence to an upright Heart, would trust himself in such a Situation, as the present Prosecutor must have been in, had the present Examination came on, when he so properly presided in the Magistracy of this City.

But what was another known Reason of this Delay?

It is notorious, the Girl was (and from Motives not to be disavowed here, or in any other Court) advised to remove her Cause, from this Place, to the supreme Court of all criminal Proceedings in *Westminster-Hall*.

Was this a Step that looks like an Evasion of Justice? Do those, who hope to elude the Force of Justice, voluntarily approach the most awful Tribunal? Happy might it have been for her, and for the Course of Justice, had her Design and Attempt, in this Particular, been agreeable to the Rules of that Court: For, however satisfied I am, that all here wish, and mean, to do complete Justice; yet the Obstructions, which we have here met with from a licentious Rabble, (the Effect of which on some Men's Minds no one knows) would probably have been avoided, could the Defendant's Choice of a more solemn Trial have been complied with.—But no sooner was one just Cause of Delay removed;—no sooner was the other, as just Reason, not to be complied with, by the Course of legal Proceedings;—than *Canning* immediately submitted to her Defence in the Place she now stands.

If therefore I have wiped off all Aspersions of her Guilt, from a supposed Intent to avoid her Trial,—What Arguments may I not justly raise in Favour of her Innocence, from her Appearance here at all?

If she was conscious of the least Fear of Conviction, —(and what Person, really guilty, is free from these Fears?)—Why did not she make her Flight from Justice? She had not even Gratitude to detain her. No Friends were to suffer, either in Person or Fortune, by her Flight. She was under no Recognizance, either by self or Friends.

In Opposition to even the remotest Apprehension of the Punishment of the Crime of Perjury, (and especially such a Perjury) could the Place of *Canning's* Abode be the Object of a Moment's Doubt? Whether a Servant in *London*, or elsewhere, must be surely very indifferent to one in her Station.

It may possibly be some Comfort, even to be a Servant in *England*, preferably to other Countries. But suppose her only apprized of the Nature of her Crime, and she must know her Residence here of a very short Duration. Under such Circumstances, therefore, can any one doubt, that such a Delinquent would not have made her own Choice of her Place of Exile, especially, when by such Choice she should have avoided the most severe Part of her Punishment, if guilty, —That of Slavery?

I hope therefore the Imputation of her Guilt, at least from this Circumstance mentioned by Mr. *Willes*, is entirely wiped off.

I must now, Gentlemen, beg leave to make two or three Observations, in offering to you my Thoughts on the Prosecutor's own Case, as it stands unanswered by any Facts on our Side. And in this Part, I shall invert the Order laid down by my two learned Friends, Mr. *Davy* and Mr. *Willes*; and begin first with the Improbability objected to *Canning's* own Tale, because (I think) even allowing the Improbability of her Story to be a sufficient Proof to ground a Conviction of Perjury on, I can by no means think there is a greater Share of Improbability in

in the Defendant's Relation, than there is in many Parts of the Account given to contradict the Truth of it.

It would be endless, in this Place, to follow the learned Gentlemen's Example, and to observe, as minutely as they have done, on the several Facts related by *Canning*, and their Evidence to disprove them.

I shall therefore confine myself, on this Head of Improbability, to the general Facts related by *Canning* in her own Story, and to some general Objections, which that Relation has furnished the Prosecutor's learned Council with.

And what are their Objections to the Improbability of her Story? They consist in the Circumstances of *the Time of her Absence, the Nature of the Place of her Confinement, the particular Manner in which she led her Life there, the seemingly surprizing Account of the first Robbery.*—I cannot forbear observing in this Place, to what forced and strange Observations on Facts one of the Gentlemen was driven, in order to keep alive his own Cry of Improbability.

Mr. *Davy*, I think, endeavours to raise five different Objections of Improbability from his Observations. — The first is, It is very strange; says he, that there should appear no Premeditation previous to the Robbery in *Moorfields*.—Mr. *Davy* has had much more Experience; particularly in this Court, than I have had. — I was therefore the more surprized to hear such an Observation come from a Gentleman, who must have heard so many unhappy Wretches tried in this Place, for Crimes that would be doubly shocking, did all the Circumstances appear the Effect of Design and Premeditation in the Authors: And shall it then be urged as an Argument of every Felon's Innocence, that we are not able to shew that his guilty Act was deliberately premeditated? Such Reasoning would, I apprehend, be as effectually serviceable to Villainy as a general Pardon.

The next Improbability is made to arise from the very great Danger which these Robbers (whom Mr. *Davy* must still suppose to be all Coolness and Deliberation) naturally foresaw in carrying *Canning* so far from the Place of her Robbery to her Prison.

But, for my own Part, only suppose any Robbers, for once, rash enough to commit any Robbery at all, between Nine and Ten o'Clock at Night in the middle of Winter, in such a Place as *Moorfields*, (and I would to God every Day did not afford Instances of such unpremeditated Rashness) and where is then the Improbability of the subsequent Attempts?

Is it improbable that such Villains should not at once be satisfied with the trifling Sum of Money, and the Gown and Apron? — Is it in the least incredible, that those, who were either of Mrs. *Wells's* or Mrs. *Squires's* Gang, should be desirous of adding one more Prostitute to the Retinue of this notorious Bawd, or smuggling Gypsey?

Mr. *Davy* was so drove to support the Improbability of *Canning's* Relation in this Part of his Observation, that we are now told, Robbers themselves must be thought so wary and circumspect, that they must even have apprehended immediate Discovery from the Resort of those, who go to see the unhappy Inhabitants of one Side of this Square. What! between Nine and Ten at Night!

If the learned Gentleman has not already gratified this Curiosity, I hope he will, at least, chuse a more seasonable Hour, lest the Keepers there may be led to mistake the Motive of so unexpected and unseasonable a Visit.

We are then to see this Improbability from the known Humanity of Street-Robbers.—These, he thinks, were never cruel on Purpose.—This is, I own, an Observation of great Good-nature. I wish there was the least Foundation in Fact for the Support of it.—But because we cannot assign a Motive or Reason for every Instance of Cruelty and Barbarity these Russians commit, are we to shut out all Belief that such Acts of Violence are committed?

Because, therefore, there is no Design of Murder proved, we must not believe that these humane, these deliberate, these wary Robbers, could be tempted to offer any Violence to *Canning*, that was not absolutely necessary to a supposed premeditated Design of Robbery.

There is one more Observation, and that, perhaps, might afford an Argument of Improbability, and that is the Prisoner's great Caution in husbanding her Water; for now I am accompanying Mr. *Davy* in his Observations at *Enfield-Wash*. But how does this appear, that she did husband her Water at all, in the Manner Mr. *Davy* supposes?

Canning's Evidence, or Relation, at no one Time, or Place, justifies this Observation: All she tells, or swears, is, that the Bread and Water lasted to such a Time; but no where does she relate, how regular she made her Meals. If there is a Possibility, that this Bread and Water was sufficient to sustain human Nature twenty-eight Days, all that Part of the Case, of Mr. *Davy's* eking it out Ounce by Ounce, falls to the Ground.

Another Observation was made, which would appear of some Weight, if founded on Facts, either admitted or proved.

Says Mr. *Davy*, If she had a mind to escape, she might, every Hour of the Day, have pushed out the Plaister-Wall. She did attempt, she says, to open the Window, and could not. But where is there any Proof, or Admission, that she might have escaped every Hour of the Day, if she would? Another Improbability is to arise, that the People never came to see whether *Canning* was there or not.—But this, once more, resting solely on Mr. *Davy's* Imagination, wants a Support of Proof. *Canning* herself says, she once saw a Person look through the Crack of the Door, to see if she was gone.—From whence, therefore, are we to collect, that this Improbability ever did happen? — For might not this Observation through the Crack be repeated a hundred Times, and *Canning* not observe it?

We are now come to the last and great Objection, which is for ever to overturn this Story, on the Foot of Improbability: That is, that *Canning* should return from the *Wash*, without attempting to take any Shelter till she reached her own House. This, I admit, is a Fact related by herself, and she is consistent, in this Part of her Story, on every Relation of it; but I leave you, Gentlemen, to judge, what Inference of Improbability arises from hence.—Is it possible for you to determine, in your own Minds, what would be the Conduct of any one, or more People, in such a Situation? Different Judgments, and different Resolutions, would be acted upon by very different

rent Ideas, under such Circumstances.—And therefore I submit, that no Argument of Improbability can be drawn from this Conduct in *Canning*, that would not equally have furnished Mr. *Davy*'s Speech, had she acted a quite different Part, and made her Story known at the first House she came by.

Mr. *Davy* having now finished his Chain of Observation, and, as he supposes, entirely destroyed all Pretence to Truth in *Canning*'s Narration;—yet thinks it necessary to ask one Question,—Was ever a Story attended with such improbable and incoherent Circumstances? Many very improbable Things, many very incoherent ones, have happened; and therefore I might safely answer to this doughty Question, Yes; I think as improbable, as incoherent Circumstances have been true. But the Guilt or Innocence of the Defendant will not receive the least Light or Assistance from either Question or Answer.

And, therefore, allow such refined Observations their utmost Latitude, (and as they have been thus relied on by the Prosecutor's Council, I have been obliged to take some Notice of them) and let us then see, where just Observations on Facts will turn the Weight of Improbability.

This is a Fact not disputed, *Canning* was certainly missing.—That she gave a particular Account of her Absence on her Return home, *January 29, 1753*, is not disputed.—She was particular in Circumstances of *Place, Persons, and Things*. The remarkable Pitcher now before you in particular.

Now on this State of *Facts* all uncontradicted,—permit me only to ask a few Questions, as the properest Answer that can be given to the Observations on the Head of Improbability.

If *Canning* was absolutely ignorant of the Place she was resolved to charge as her Prison, could she have ventured to mention any one Circumstance she did?

In such a Sort of Room, as the Gentlemen themselves allow she did describe,—even a Chimney would have been a hazardous Particular.—But, that she should descend to such a Pitcher, as now produced, was risking the whole on a Circumstance, that would fail her a million to one.

The very Person of *Squires*, stamped, as Mr. *Davy* says, by God, with a Particularity never to be forgotten—Would *Canning* have ventured to fix on such a Person? Though *Canning* was not equal in her Description of *Squires*'s Deformity with Mr. *Davy*, the Account of the Person who robbed her is too remarkable to proceed from mere Invention.

Now it is certainly most probable, that if any Person at all had been described to *Canning*,—it must have been *Wells*:—For, according to the Prosecutor's Account, *Squires* had come there but a few Days before *Canning*'s Return home; and yet *Canning*'s Description neither did fit, nor would she charge *Wells* on Sight. The Person of *Wells*, even by the Prosecutor, was supposed as unknown by *Canning*, as that of *Squires*. The Name, indeed, of *Wells* or *Wills*, (now too supposed by the Prosecutor to have been named by *Scarrat* to *Canning*) was mentioned by her at her first Return,—and from this Circumstance every body had predetermined Mother *Wells* for the Robber.—Mr. *Willes* assures you, no body dreamed of a Gypsey.—Every body had fixed on *Wells*, as she was

known to be the Mistress of the House, and as the House was infamously known to be capable of harbouring those that were capable of any Villany.—Every body therefore fixed their Attention on *Wells*.—And yet, Gentlemen, the Prosecutor's own Witness, Mr. *Aldridge*, tells you, that *Squires* was directly pitched on by *Canning*.—She could not have been more ready, if she had received her Description from Mr. *Davy*.

But, Gentlemen, Arguments and Inferences on Evidence of this Kind would be endless.—No Deduction from them can, or ought to conclude your Judgment on a Charge of this Kind: Yet the Gentlemen for the Prosecution have throughout grounded all their Arguments on this Head, that some Story was necessary to be forged.—Suppose this granted, in order to argue with them in their own Way, let me ask them,—Could a weak illiterate Woman (however supported) have either invented, or, when invented, be uniform in the Proof of it? Would any one, endued with the most common Share of Understanding herself, or assisted by those who were, have taken a Tale so very difficult to have gained Belief?

Surely, a Description of *Persons, Places, and Things*, really not existing, would as probably have gained Belief, and yet have been much more easily managed, in case of more particular Inquiries.

But, however strange many of the Circumstances of this Tale may seem, I apprehend it is not so destitute of all presumptive Proofs, as has been contended.

I have before said, no one doubts that *Canning* was missing. That the Condition of her Body, on her Return, was most miserable, has been proved by some of the Prosecutor's Witnesses;—will be confirmed by such of ours, whose Characters and Stations place them above all Suspicion of being privy to, or capable of supporting a Fraud of any Kind.

The same will prove, that several Symptoms attending this unhappy Girl's Illness, were unerring Tokens of some most extraordinary Treatment she had received.

The Answer attempted to these uncontradicted Facts, is, All this was practised for the sake of Gain—To become a false Object of Charity, or, more probably, says Mr. *Davy*, to cover the Reproach of Whoredom. To this Answer I will make no other Reply, than ask this one Question,—What Fact of Distress, however uncontroverted, may not be supposed to have proceeded from a Design to deceive and impose?—And, in this Instance, we have had nothing but mere Suppositions to induce your Belief that all *Canning*'s Sufferings were fraudulent.

I will trespass with only one Question more, on the Head of Improbability. *Canning* was missing—Where was she? After more than a Twelve-month's Inquiry—That Inquiry backed with as active a Prosecution as ever was carried on in this Kingdom—That Prosecution made the universal Object of Argument and Curiosity—And yet not the least Surmise of any other Place of Confinement than that alledged by *Canning* herself. To this we have had no other Account than Mr. *Davy*'s bare Opinion—She was secreted somewhere—to conceal a Pregnancy—or to get free of Disorders incident to the Gay and Young.

If this was the Fact, I shall venture to pronounce she might have made more of her Means of Secrecy, than by any Distress she could counterfeit,

terfeit, even in these charitable Days.—But to give such a Supposition, as Mr. *Davy's*, the least Colour of Truth, we must suppose that *Canning*, poor, illiterate, and friendless, has succeeded in an Attempt, that Money, Art, and Friends have scarce ever effected.

I will, therefore, leave this Part of the Prosecutor's Case, upon which, I am sensible, I have taken up more of your Time, and the Court's, than may have been necessary; not only as I think the supposed Motives of all *Canning's* Story, at least, as improbable as the Facts related by her, but also, as I hope this will be the last Prosecution, where I shall hear a Conviction of wilful and corrupt Perjury contended for on the mere Improbability of any Facts, which have been credited by twelve Men on their Oaths, and that too in a Case where the merciful Ear is ever most open. Since, Gentlemen, it is not to be denied, here at least, where I can vouch the Annals of this Place for my Assertion,—That Things, seemingly impossible for human Power to have performed, have been proved true—Things, the most unlikely to be attested as true, if false, have been credited, and yet have been utterly false.

There are two known Instances of this Kind: The one that most improbable Ride from a Place near this City to *York* in one Day, on the same Horse: I had almost said, as improbable a Performance as Mr. *Davy's* Flight round the Atmosphere! Yet this was a certain Fact done, was attested and believed in this Court, and by that Proof the Prisoner was acquitted of a Robbery, which he confessed himself actually guilty of; as soon as acquitted.—Under the other Head, is the well-known Story of a Steward's Son belonging to a Noble Family—If I remember, it was the *Gainsborough* Family; but that is not material. There the Steward was missing, and a large Sum of Money supposed to have been taken from him; his own Son accused himself, his Mother, and his Sister, of the Murder and Robbery, and that they had thrown the Body into such a Pit.—The Pit was searched, and no Body found; and yet, as the Son persisted in his own Accusation, they were indicted, tried, and hanged.—Yet, some Time after, the Father returned, gave a particular Account of his Absence, and the Cause of it.—Now in both these Instances, who, on the first Relation, could either assent to the Truth of the one, or would doubt the Truth of the other?—And yet the one was uncontrovertibly proved to be true, and the other demonstrably false.—I mention these Facts, to shew the great Danger of acquitting or condemning against positive Proof on Oath, on refined Arguments of Improbability, which we see are thus capable of deceiving.

And, indeed, I cannot but express some Degree of Wonder in this Place, that a Point of this Nature should have been thus laboured by the Prosecutor,—as he has contended for, and has endeavoured to produce Proof of Facts, which, if credited, would make all Resort to Supposition useless.—I infer, therefore, that even touching on Suppositions and Arguments of Improbability implies a Diffidence in their Proof of Facts.

But having done with this Part of the Case, which rests on the Head of Improbability, it now remains to examine how the Charge is otherwise supported; and how it is to be answered on our Part. And, after the great Attention you have given, I need not remind you, that the Strefs of

the Proof has been levelled to shew *Mary Squires* was elsewhere; on which Mr. *Davy* has logically concluded, (*ergo*) *Canning* has wilfully sworn false. But this is not a necessary Consequence. How does it necessarily follow, that though *Squires* was elsewhere, *Canning* has maliciously perjured herself? May there not be a Similude in Deformity, that may deceive, as well as there may be in the more admired Part of the Sex?

But having, in general, denied the Truth of Mr. *Davy's* Inference, I shall wave this Part of my Defence so far as to agree with Mr. *Davy*, that *Squires* is so stamp'd, that it is scarce possible to mistake her. *Canning* has sworn she is not mistaken; twelve Men upon their Oaths have believed her; and her Defence now is, that she is not mistaken. It will be as needless as prolix, to go minutely through every Branch of the Prosecutor's Evidence, that is meant to prove the contrary. The Witnessess are many: However, all their Force is direct and obvious to a single Point, *viz.* to prove *Squires* at *Abbotsbury* and other Places, from the 29th of *December* 1752, to the 1st of *February* 1753: When we shall endeavour to prove she was at *Enfield*.

It is not quite immaterial to remark, that *Esther Hopkins* and *Alice Farnham*, the two first Witnessess, are not quite positive, but believe only they are the Persons.

You will observe from hence, that *Abbotsbury* is to be the grand Scene of Contradiction: There all the Witnessess, whether united by a long Course of Smuggling, or only occasionally there, are express and positive: Other Circumstances, surely not altogether common in the Course of a Gypsey's Life, are reserved only for their Residence at *Abbotsbury*. In all other Places *Squires* is attempted to be shewn properly as a Vagrant,—fortune-telling,—staying a Night only in a Place, and lodged in Barns.

But when once brought to *Abbotsbury*, without any Cause opened or proved, they are at once to halt, not as Gypsies, but become, in an instant, remarkable Guests; live in the new Part of the House, instead of lying in a Barn; instead of being Gypsies, that every one avoids, except such as want to deal in Fortune-telling and smuggled Goods, they are now Companions of those of the best Rank in the Place, and at two Balls in one Week. This so ugly and deformed Woman, whom they have brought a Man that subsisted on Charity at *Enfield*, to swear that he chose rather to sit in the Cold, than by the Fire where she was in Company; I say, this extraordinary Piece of Deformity you are to believe at *Abbotsbury* present at all Meetings usual at this Season, and carested as a principal Guest.

One Remark will suffice for all this Particularity of Description at *Abbotsbury*. This Time was necessary to be consumed somewhere, or the *alibi* Evidence, prior in Point of Time, would not defeat the Gypsey's Arrival at *Enfield*, in Contradiction to Evidence, which they are aware we have to produce. You will now observe, that it has been thought necessary to have some Standard to resort to, as a Reason for all this particular Series of Evidence and Recollection, relative to all these three Gypsies.—It happens, that most of the Evidence have chosen the late Change of Stile as their common Object of Memory.—Scarce one, who did not remember this or that particular Fact, by the *Æra* of Old or New *Christmas*.—I wish this

may be the only Scene of Falshood and Confusion flowing from this Law. I was myself against it, as I thought it likely to be productive of Mistakes in Evidence; and don't yet see any Use it ever can be of to the Public.

It is, however, I confess, natural to confirm our Remembrance of particular Persons or Things by remarkable Æras in point of Time. But I much doubt, whether this is not the Occasion of the whole Mistake in this Case; not, perhaps, designed by all, though by others calculated merely to add a Credit to Facts, that a mere positive Averment would fail to establish.

And in the Evidence of the second Witness, *Alice Farnham*, at *Winyard's Gap*, (which was given with great Modesty, and an Air of Truth) there is a Particular, which induces me to believe, that the Year must be mistaken by this Witness. In order to convince you that she was not mistaken in the Persons of the Gypsies,—she recollects they told her they would come and see her again at Old *Christmas*.

It was then the 31st of *December*.—These Gypsies, as you have heard from all their own Accounts, on their Return hither to Winter-Quarters; *Abbotsbury*, a remarkable Point in View; and yet all this must be defeated, if they had then the least Intent of being at *Winyard's Gap* again at Old *Christmas*; but this is very reconcileable, supposing it the Year before, that these Wanderers were in those Parts.—And this is no unnatural Supposition; for the Change of Stile was then enacted into a Law, though it had not taken place; and therefore the first Old *Christmas* was no uncommon Day of Return for these Gypsies, as Dissenters from the New Stile, to fix on. But surely, Gentlemen, if this extensive Scene of *alibi* Proof ought to find Credit with you, it is evident *George* and *Lucy Squires* were the most proper Evidence to support the Truth of it.

To this I desired to appeal, as being the best Evidence, when I observed those two in Court, after all other Witnesses were, by Order, obliged to withdraw.—The Prosecutor's Council saw the Force of this Appeal, and agreed to call these two Witnesses in Succession.—*George* was called.—If *Lucy* had been ventured, and they two had agreed in Points of Facts, of Persons, and Times, as they must have done, if true in the Accounts they gave—I say, if this had been done, I then agreed, and I still say, that I must have submitted, that the Defendant was at least mistaken in her Evidence against *Mary Squires*.

But, Gentlemen, you have heard *George* alone. From his Cross-Examination, the Danger of a manifest Contradiction became too apparent. *George* hardly supported himself.—If *Lucy* was called, and faltered, the whole *alibi* was gone.—Such a Trial was therefore not to be ventured. I re-demanded this Test of the Truth of the *alibi*; but the Prosecutor absolutely refused it.—A Reason indeed was assigned; but, like many others, the Effect of a quick Invention, unsupported by Proof. Both these Witnesses were, at once, made almost Ideots. Nothing of this was mentioned in the Opening, or as an Excuse for not calling them, when at first demanded.

But as *Lucy* was not called, (which I really think would have determined this whole Affair) let me remark a little on the Conduct of *George*. And, Gentlemen, where did there appear any Defect of

Understanding, during his Examination on behalf of the Prosecution? He was clear, quick, and minute, both as to *Times*, *Names*, and *Places*, that were within the Rout to be proved. Of other Places; certainly as remarkable, certainly as natural Objects of Memory, not a Tittle was to be remembered; for to have remembered any Thing, would have given a Clue.

And, therefore, not a Town out of the *alibi*, except *Shaftsbury*, through a Tour from *August* to *December*, from *Surry* quite along the Coast of *Suffex* and *Dorset*, is to be mentioned. Not a Transaction of buying or selling a single Scrap of his Goods, in any one Place out of the *alibi*; and yet it is impossible but their Trade must have been their View and Support, in one Part of their Journey as well as another. But I submit, that some Parts of the Story, in which the Prosecutor has allowed this Witness to be capable of giving his Testimony, afford strong Suspicions of Falshood. I will enumerate some of them, that strike me in this Light: First, that decrepid old Woman's Walk from *Litton* to *Abbotsbury*, and back again to Dinner, and then to *Abbotsbury* the same Evening, seems highly improbable. You are told by other Witnesses, that such a Walk would necessarily take up more Time, than other Circumstances of *George's* Story can possibly allow for it.—Add to this, the Improbability of her being at *Abbotsbury*, and that too at *Clarke's* House, and yet not seen there by one of all her numerous Acquaintance. You observe scarce a Person there, but has known her intimately for many Years. Here, you have heard from many of the Witnesses, there was an Halt of eight or nine Days.—*George* then tells you, that the first Day they went only to *Portersham*, a very small Distance; and from this Place such forced Marches, as amount to the highest Degree of Improbability. I asked him a Reason for this immediate and unusual Expedition.—This was one of the Questions, which you find he did not expect to be asked. At last, it was a Sister's Illness occasioned this Hurry—We received a Letter from her by the Post on that Account. He could not, however, tell where this Letter was received, and, perhaps, that might be forgot: But, Gentlemen, he could scarce receive this Letter at *Portersham*, because that was a mere occasional Resting-place; and if a Letter, that really required and occasioned such Expedition, was received at *Abbotsbury*, I desire to have it accounted for, how they came to attempt no further than *Portersham* the first Day. It is obvious therefore to me, that the particular Stages, this Witness gives an Account of, were not in pursuance of this Letter; but in order to be at *Basingstoke* on the 18th of *January*, for a Purpose that is very material for the Truth of their whole Story, and which I shall take particular Notice of, when I attend them at that Place.

But first let me ask, If such a Letter ever sent,—if a Sister ever sick,—Why not that Sister here, to confirm the Truth of this plain and simple Fact? Is she too of so weak an Understanding, as not to be trusted with this Question? Did you write a Letter to your Brother *George* in *January* 1753, and to what Place? Was you then ill, and did you inform him so by such Letter? An Answer in the Affirmative to either of these Questions, from a Witness whose Character stands, and must stand, unimpeached by any Thing which now appears,

appears; would have had great Weight, with me at least, in confirming this Part of *George's* Evidence.

There is another most remarkable Defect in *George's* Account of this Journey.—From *Coombe* to *Basingstoke* is forty Miles:—He wanted, at first, to make this March in two Days; but he was put right in his Road here by the learned Gentleman's Rota on his Brief, or else they would have been too early at *Basingstoke* for this material Letter:—But, in this three Days March of forty Miles,—not a single Place known;—no Witness called, that ever saw them;—and yet they eat, drank, and lodged, as in other Parts of their Journey.—And yet, to put the Truth of this Narration beyond the Reach of a Doubt, this Witness has repeated his whole Journey, accompanied by an Attorney, not only to refresh his own Memory, but to give his Testimony a Prop and Support, which he was no doubt prudently advised it might stand in need of.

It is, surely, somewhat strange, that the nearer he arrived to his own Home, the less he should be capable of remembering Things and Places himself,—the less he should be able to produce Persons to remember him, his Mother, or his Sister. But, Gentlemen, this is a glaring Objection to his Testimony, both between *Coombe* and *Basingstoke*, and from *Basingstoke* to *Brentford*. But at *Basingstoke* a Circumstance is pretended to have happened, and which, if it really did happen, makes it beyond a Doubt, that they were really at *Basingstoke* on the 18th of *January*.

This is the Letter, supposed to be wrote, by the Direction of *Lucy*, by the Landlady at *Basingstoke*, to her Lover *Mr. Clarke*, whom, you have been told, she danced with at *Abbotsbury*. You have also been told, that this Pledge of *Lucy's* Love was unfortunately delivered to a wrong *Mr. Clarke*, by some Mistake of the *Dorchester* Post-house.—Now, Gentlemen, you will observe, all that makes this Letter, in any Degree, a material Piece of Evidence for the Prosecution, is the Time it was wrote: For, that these Vagabonds may have been in all the Places through which the Evidence has traced them,—that they might dance at *Abbotsbury*,—and that *Lucy*, whose Beauty *Mr. Davy* himself seems to have been so enamoured with, might there also captivate the Heart of *Mr. Clarke*,—is very probable, but intirely immaterial. It was therefore incumbent on the Gentlemen for the Prosecution to have fixed the Time at which this Letter was wrote, without the least Blot of any Suspicion; and not only the Time, but that the Gypsies actually came on this supposed 18th of *January* to *Basingstoke*, directly from *Abbotsbury*; for, otherwise, their being at *Enfield-Wash* on the 1st, 2d, or 3d of *January*, and at *Basingstoke* on the 18th, are not in the least inconsistent: And therefore, Gentlemen, I before took Notice, that a most material Part of this Journey was very imperfectly accounted for by *George Squires*, and not any Witness to assist him quite from *Coombe* to *Basingstoke*. How material therefore would it have been, in this Part of their Case, to have had this wrong *Mr. Clarke*, to whom this Love-Epistle was sent by Mistake?—We should then, at least, have been sure, that it was not of an earlier Date than 1753: And, when I come to observe on the Letter itself, as produced to the Court, I think, some Suspicions, on this Head, will not appear to

be groundless. *Mr. Davy* with great Confidence asserted, that this Piece of Evidence alone was sufficient to detect the whole Imposture. I have allowed how strong it would be, accompanied with some Requisites, that, I submit, do not now accompany it.—An essential one is, that the Letter should, beyond a Doubt, appear to you to be wrote on the 18th of *January* 1753.—*Mr. Davy* and *Mr. Willes* have therefore, on all Occasions, mentioned this Date of the Letter, as a Fact not disputable, or, indeed, to be disputed.—But, Gentlemen, you, on Oath, must, from the Appearance of the Letter itself, at least think this uncertain; for, however often the Date has been repeated 1753, it, in fact, has no other Figures than 175; the Corner, where the fourth Figure should stand, is torn or rubbed off.—That Corner alone, Gentlemen, out of four, though all equally secured by the Fold and Make of the Letter, has suffered by Time. When an Obliteration, or other Accident, happens in so material a Part of so very material a Piece of Evidence, it naturally excites some Suspicion. And here again, how material would it have been to have had the wrong *Mr. Clarke*, who could not, I am sure, have perused so unexpected a Letter without some Degree of Attention? And from him we might possibly have known how the Date appeared, when delivered to him.

'Tis also unlucky for this material Point of Evidence, that the Post-mark is by no means plain enough to give any satisfactory Account of the Time, when this Letter actually passed through the Post. This, I own, is a Defect not in the Prosecutor's Power to have cured; but therefore it was the more incumbent on him to have authenticated the Time and Date of the Letter, by such Means as were in his Power; and therefore, I think, the Absence of *Mr. Clarke* greatly discredits the Authority of this Piece of Evidence; for, as I have before said, on the Truth and Exactness of Time depends the whole Force of this *alibi* Evidence.—I doubt I have appeared very prolix on this Part of the Case: But as the Conduct of the Prosecution seemed to make this so very material, I hope I have not seemed to trespass too much on that Indulgence, which has been so remarkable through this whole Cause.—I shall therefore close my Observations on the other numerous Witnesses to this *alibi* Part of the Case, that however they may agree in general Facts, that *Squires* was at this and that Place, as sworn, such Account may either be false or immaterial in this Prosecution; may be, as other *alibi* Defences too often are, absolutely false, or false in Point of Time; and the one, as well as the other, equally invalidates the whole of this, as relative to, or material in, a Proof of *Canning's* Guilt.

It is therefore one of the Corner-stones to the Credit of this Sort of Proofs, that the several Witnesses should be uniform in all their Circumstances, and particularly in such, which they themselves might not think a necessary or essential Part of the Case which they are brought to prove. But, Gentlemen, you may remember, that in such Circumstances there were many contradictory Accounts: One in particular was most material, either in establishing or overthrowing *George Squires's* Account of his Mother's famous Walk to *Abbotsbury* and back again. To give this a seeming Probability, all the subsequent Witnesses were to bring them into *Abbotsbury* very late in the Evening;

Evening; and yet *John Ford*, one of the Gang's most intimate and old Acquaintance, swore positively, that he kissed *Lucy* before Three o'Clock in the Afternoon at *Abbotsbury*. Mr. *Davy* was aware, that so signal a Token of Remembrance would weigh strongly against some of the former Evidence; and therefore this Witness is directly called *drunk*. There is another of this Sort very material: *Hawkins* at *Litton*, though in and about his House the whole Morning, remembers not a Tittle of this Morning's Walk by the old Woman to *Abbotsbury*.

Having gone through this Range of the Prosecutors's Evidence, and troubled you with such Observations as occurred to me on those Parts which they seemed to lay their greatest Strefs on; I am now in Course brought nearer Home, and am to see how far another Class of Witnesses have produced any substantial Charge against the Defendant. And I hope, Gentlemen, I shall have Occasion to be much less prolix on this Part; because the Evidence, in its own Nature, is much weaker; and whatever Weight it may carry, allowing every Tittle of it to be true, there are scarce any three Persons to be found, who will agree in drawing the same Inferences from the Facts related by the Set of Witnesses I am now come to; that is, Gentlemen, those Witnesses, who have given you an Account of the several Occurrences before Alderman *Chitty*, and at the Time *Canning* was down at *Enfield*, and at other Times, when she has, either in ordinary Discourse, or in Obedience to the Civil Magistrate, made her Confinement and Delivery the Subject of any Description. I will not go through the several Parts of these Transactions, which the Gentlemen for the Prosecution have endeavoured to paint so contradictory to each other, as must necessarily stamp the whole for a Fiction and Forgery. You, Gentlemen, have had these different Accounts, both the written and related, laid before you. Your Understanding and Judgment is too sound for me to imagine myself capable of reconciling you to the Truth of any Contradictions by any Observations. It therefore becomes me only to state this Branch of the Evidence. If it contains any Contradictions in Facts material, I cannot lessen the Force of them: But if you see what is artfully termed by the Prosecutor contradictory Accounts, in the Light I do in this Branch of the Evidence, I really and seriously imagine, that we have been wasting your Time, both on the one Side and the other. For what does it all amount to more than this, that a general Fact, compounded of a Variety of Things done and said, when related on particular Occasions, and at different Times, has not always been minutely and exactly related the same Way? And therefore, from this Sort of Defect alone, which I believe no various Relations of a long Story were ever free from, can any Weight seem proper to be laid on this Part of the Prosecutors's Case? And yet, so far has this been pushed, that you have had a Contradiction endeavoured to be made appear to you, even from the figurative Expression of the unhappy Mother, in describing her Daughter's Wretchedness on her Return. The Midwife telling you, Mrs. *Canning* said to her, Here is my poor Daughter returned as naked as she was born—What! says Mr. *Davy*, did she say, as naked as she was born? The Energy, Gentlemen, of the Question, was to remind you that all *Canning's*

Accounts mentioned a Handkerchief on her Head, and a Bed-gown on her Shoulders. One can really be scarce serious in observing on Attempts of this Kind; and yet, Gentlemen, much of your Time has been taken up with Arguments on such seeming Contradictions. Pardon me in digressing in this Place to one more Remark; that Arguments drawn from such seeming Contradictions have been the only Materials, which the printed Trash of Quacks, Inspectors, and Justices, have supplied on either Side of this Question; and yet, Gentlemen, from this modern Practice of acquitting or condemning in Pamphlets, without Judge or Jury, it is easily foreseen, that not a Trial of any Importance will soon be laid before a Jury in that unprejudiced Manner, which the cautious Jealousy of the excellent Laws of this Country requires.

But to return, and to give one Proof, how far these Contradictions really did carry along with them any Conviction of *Canning's* Imposture; let us see whether those, who now make Inferences of *Canning's* Guilt from such Circumstances, have acted the Part, that Men, supposed thus convinced, would or could have done.

For, Gentlemen, you will observe, that Mr. *Nash*, *Hague*, and *Aldridge*, would now have you believe, that from the 1st of *February*, the Time they attended *Canning* at *Enfield*, they were all satisfied that *Canning* was at least mistaken. I will not ask, whether the Contradictions before Alderman *Chitty*, or elsewhere, were the Ground of their Conviction in this Particular. Satisfied they were, that *Canning* was mistaken; and yet, Gentlemen, they were all at the Trial of *Squires*. These Men, hitherto of unimpeached Characters, saw one Life in great Jeopardy for Felony; another Person trying as Accessary to that Felony; and yet offered no Evidence in Contradiction to that Proof, which they then believed to be false, and saw was likely to be so fatal.

The Reasons for not doing this Act of necessary Justice you have heard. One of these convinced Gentlemen was, if I remember, to attend a City Feast. The other was so terrified with the Perjury, that he could make no Attempts to prevent the fatal Effects of it. But there is something still more particular in the Conduct of Mr. *Nash*: I produced a Letter to him, dated the 10th of *February*, which he acknowledged to be his; and you will observe, this is almost a Fortnight after he tells you that he was convinced that *Squires* and *Wells* were not justly accused.

And yet, Gentlemen, what is the Purport of this Letter? It is wrote to one Mr. *Lyon*, a known and zealous Friend of the Defendant, and it is to inform Mr. *Lyon*, that considerable Contributions might be raised about *Enfield-Wash* for the poor unhappy Girl, and that he wishes them good Luck. Good Luck! Gentlemen, In what? Will you believe Mr. *Nash* wished them good Luck in a Contribution, by the Means of which he must know that Innocence was designed to be arraigned? that an Accusation, he then believed false, would be supported by Perjury? Or, are we now to believe, that Mr. *Nash*, thus convinced, was weak enough to think *Canning* that poor unhappy Girl, as to be a worthy Object of his Recommendation to Charity? Let the former Conduct of these three Gentlemen explain and account for themselves, if it can: But yet see how far they have been positive in Facts, where we have nothing to do

do either with their Observations or Opinions, and which, from henceforth, I think no Man can place any Reliance on. They have all positively sworn, that *Canning* continued fixed to her first Charge on *Squires*; though the Warrant was taken out against *Mother Wells*; though all her Friends, and the City Officer, expected, nay pointed out *Wells* as the Criminal; though *Wells* was continually running her Face close up to *Canning's*, and interrogating her, Is it me? Is it me, Madam? though the more artful Gypsey, who is neither deaf nor blind as yet, during this Transaction kept her Face much concealed, till positively charged by *Canning*. Then, indeed, directly the Mask of her Deformity is produced, and made a Defence, which, to a Person conscious of no Guilt, would have appeared a much more natural Protection, by being never concealed at all.

While we are still on this Scene at *Enfield-Wash*, if you are to suppose *Canning's* Story all a Fiction, nothing but a Design to carry on a Cheat; Why should *Canning* determine on the Gypsey? The Name of the Gypsey had been echoed through all Parts of the House. You cannot suppose *Canning* ignorant of the Life these People lead; never fixed long in a Place.—*Mother Wells* then at her usual Place of Abode,—of an infamous Character,—Facts both agreed to be known to *Canning*: And yet *Canning*, as the Foundation of her Cheat, determines on a Fact, which, if she knew to be false, she must be morally sure would depend on her Evidence alone, and that too (from her own Account) liable to be contradicted by the Testimony of *Virtue Hall*; for, in all her Accounts, she is uniform, that *Virtue Hall* was there, when she was brought in: And if all this was a known Forgery to *Canning*, could she have left such a Witness's Character unimpeached by her Accusation? for could she then imagine, that instead of *Hall's* appearing to confute her, she would appear to confirm the Truth of her whole Testimony?

If Inferences drawn from Facts are in this Inquiry to have their Weight in Opposition to Facts themselves, I only desire this Part of the Transaction may be remembered, when you take the Consideration of this Case, under the Head of *probable* or *improbable*.

Gentlemen, I have hitherto confined myself to Observations and Answers to such Facts, as the Prosecutor himself has made a Part of his Case. And as the Facts we have to lay before you will not require the Illustration of refined Arguments and Observations, I hope not to trespass much more on your Patience. I am sorry my Duty has obliged me to have done it so long already. But, before I give you the general State of our own Evidence, which is all I shall attempt to do in this Part of our Defence for the Prisoner, let me only remark to you the Omission of a Piece of Evidence, so material in the Confirmation of *Canning's* Guilt, that I am sure the Prosecutor's Council could not have omitted it, had they really thought the Story as false, as they have, by other Sort of Evidence, endeavoured to make it; that is, Gentlemen, their not having called *Virtue Hall* here to support the Truth of her Recantation. That they could have had her, is certain; that she might give Testimony, extremely material, on one Side or the other, cannot be denied; that her Word, or her Oath, (I know not which has been relied on) has been deemed void of all

Credit, cannot, I am sure, be asserted; because I am confident, that it must have been used as one Argument, at least, for the Application for that Mercy, which has been shewn to *Mary Squires*. I say, Gentlemen, these are some of my Reasons why I think *Virtue Hall* has gained Credit, since the Time she was sworn here in Confirmation of *Canning's* Story; and therefore, Gentlemen, why is she not now brought here by the Prosecutor to give a Sanction to the Truth of that Recantation on Oath? What, Gentlemen, can the Absence of this Witness be imputed to, but that they were afraid (I do not mean the Council were afraid, but the prudent Management of their Cause was justly afraid) of another solemn and public Examination of this Witness. I think this Observation a just one, or I would not have made it. The Gentlemen have rather chose that I should make it, than risque another Relapse from *Virtue Hall*. But perhaps, whatever may be your Verdict, her Recantation will still serve for Cafes and News-papers.

Mr. Recorder. If she had been here, she has already discredited herself, and cannot be a Witness.

Mr. Moreton continues. With Submission, Sir, I must insist on the Propriety of my former Observation. *Virtue Hall*, by the known Practice and Rules of Evidence, is a legal and competent Witness. Courts of Justice can take no Notice of private Recantations, or of Discoveries supposed to be made to Magistrates in private, so far as to repel the Testimony of a Witness: I therefore rely on the Propriety of my Observation.

And now, Gentlemen, I have gone through the Case, the Evidence, and the Conduct of the Prosecutor. I shall have Occasion to be but very short in stating our Answer to each of them; because, as I before said, I shall trust the Merits of the Defence to absolute Facts, not to refined Observations on them. Many of the Facts, proper on our Part, have been proved by the Prosecutor's own Evidence; such as the Absence of *Canning*, her Return, her Account of herself, her real Condition, her Charge of *Squires* at *Enfield-Wash*, and many more Circumstances, which I have already observed on to you. I wish a Repetition of the same Facts could be wholly excluded from our Evidence, merely for the sake of Time; but I foresee that is impracticable. But, Gentlemen, these Facts being already proved, the Remainder of our Proof is pointed to the absolute Overthrow of the Truth of the Prosecutor's *alibi* of *Mary Squires*, at the Time of *Canning's* Robbery and Confinement. In order to do this, we shall call you many Witnesses, who have lived in and about *Enfield-Wash* from fifteen to thirty Years, People of known and established Credit.

The Prosecutor has had a List of these Witnesses now many Days, and, in that Respect, the necessary Adjournments of this Trial have given him an Advantage and Opportunity of impeaching the Credit of all our Witnesses, if their Characters cannot stand the Test of Inquiry: I say, by a Number of Witnesses, unconnected in any Respect with the Party in whose Behalf they now appear, we shall shew you, that this never to be forgotten Image of *Mary Squires* was seen at *Enfield* on several of the Days, which the Witnesses for the Prosecutor fix her to be in the different Parts of her Journey in the West. We shall not, indeed, have so exact a Diary of the various Motions

of these Vagrants, (I might say Felons, for so they are by Law) or of their various Entertainments; their Companions and Amusements. Whether the Want of such particular Exactness in the Relation of Facts, in themselves, at the Time performed, entirely indifferent, will diminish the Credit of our Account or not, I shall leave to your own Observation. They all, as I have before said, stand free and clear of all Imputation; as to Credit; and they have, almost all of them, some natural as well as particular Account to assign for their Remembrance of the Time of the Abode of these remarkable Strollers at the *Wash*.

Some will tell you of their dealing with them in one Way, some in another. It would be inexcusable to be particular on this Head. — There are those who took Money of them; and from a vulgar Belief of some superior Power in these People called Gypsies, thought it necessary to purify the Money so taken, lest it might be conjured from them by this left-handed Kind of Divinity. There are others, who will tell you, that they have parted with their Money to this very Woman in her Trade of Fortune-telling, — have been Face to Face with this remarkable Impression of Deformity. — And therefore so far the *alibi* proved by the Prosecutors has an express Contradiction in Proof. There are other Ingredients in our Evidence, which afford a Light to those Parts of *Canning's* own Narration, which gives you both her Journey to, and Return from the *Wash*. I only mention all these, in general, because I shall rely on them, when we go into our Proof. Whatever other Observations either the Prosecutor's Case and Proof, or our own affords, (and many they must be which I have omitted) I am satisfied the Care and Diligence of the Gentlemen who are on the same Side with me will amply supply. — Tired, therefore, as I am, in having attempted to go through so very long a Case, — tired, as I am sure you, Gentlemen, must be, by that most laudable and impartial Attention, which you have shewn through this whole Inquiry, — I shall only beg that Attention to a very few general Observations. The Weight and Credit of Evidence is your Province. The Weight and Credit of Arguments and Observations, in Opposition to Facts expressly sworn, you will know how to estimate. — If, on the whole, only a just and rational Doubt should remain on your Judgments, the Policy, the Lenity, the Justice of our Laws, incline to Mercy. In Circumstances which must have been, nay, yet are doubtful, *Squires* has found Mercy.

And tho' I am satisfied there never was a Time, when the most rigid Hand of Justice was more properly required to the Suppression of Perjury; I am as fully convinced there never was a Time, when active and resolute Prosecutions for other reproachful Villanies should be more cautiously deterred by such Proceedings as the present against the now Defendant.

Mr. N A R E S.

May it please your Lordship, and you Gentlemen of the Jury;

Notwithstanding this Cause has taken so long Time already, and no Man upon Earth is more sensible of the great Care that should be taken not to mispend the Time of the Court unnecessarily,

than myself; yet, as it is now become my Duty to make some few Observations, I shall make no Apology for intruding on your Patience somewhat longer, though perhaps, in the Consequence, it may be to little Purpose.

I am not only of Council; but, I will say, greatly concerned for the Prisoner at the Bar; who, to use the Epithet of my learned Leader, may be truly called extremely unfortunate, and that in many Instances; unfortunate in being accused of any Crime, if ever so innocent; unfortunate in having once appeared in this Court as a Witness, and being so unhappy as to be believed; and unfortunate likewise in this Respect, as she is now brought to her Trial for a Perjury in such a Cause, and under such Circumstances, as, I will venture to say, the Annals of Time cannot produce a similar Instance. It is not my Inclination, or my Meaning, to reflect upon any Man: I mean not to reflect upon the Worshipful Magistrate, through whose Lenity, though, perhaps, a mistaken or injudicious one, she now stands accused; though I cannot help observing, that this Prosecution hath been carried on and supported with more Warmth and Spirit than any I ever had the Honour to attend; and if this Warmth and Spirit spring merely from a Zeal of bringing a supposed Criminal to exemplary Punishment, far be it from me to blame or condemn it. — God forbid such a Warmth should ever cool, or such a Spirit grow degenerate.

Thus much I think it material to say for the Prisoner at the Bar, on the Nature and Manner of her Prosecution; that it is totally unprecedented, that, as a Prosecutor who had convicted a Criminal, she should now come to be tried to overturn that Conviction. You know, as well as I, the unfortunate Prisoner was a Witness against *Mary Squires* and *Susannah Wells*; and you know, that they were both convicted; and you will recollect one Circumstance well worth your Consideration, and which I shall endeavour to enforce more strongly hereafter, that it was not on her Testimony only that these Persons were convicted, but her Evidence was supported by the Testimony of another Person; which Person's Testimony you are now totally deprived of, because it hath been artfully insinuated to the World, as many other Circumstances have been, that she hath now recanted all she swore at the Trial, and therefore the poor Prisoner at the Bar dare not venture to call her, for fear she should, by any means, be induced to contradict her former Evidence; which if she did, the Prisoner might be condemned, instead of acquitted, by the Mouths of her own Witnesses. How that Recantation was brought about, I shall hereafter tell you from the Instructions of my Brief: But I cannot help making this Observation at present, that the Gentlemen on Behalf of the Prosecution have not ventured to insinuate, nor attempted to prove, what Means were or could be used by, or what Influence that Woman was or could be under to the poor Prisoner and her poor Relations, to induce her to swear as she did, if all she swore was so gross a Falshy.

And, Gentlemen, however, thro' Tenderness or Lenity, a Magistrate may think, (for the sake of any particular Persons, being convinced in their own private Judgments that such Persons have been wrongfully convicted) that such a Prosecution is laudable; yet, give me leave to say, because

because I can speak it from great Authority, that such Inquiries into the Guilt or Innocence of a Prisoner, after they have been legally convicted, are vastly inconvenient and improper; and although Prosecutions of this Nature may shew Kindness to Particulars, yet they may be attended with Cruelty to Mankind in general, as they tend to interrupt, at least, if not overturn that common Course of Justice, that the Wisdom of this Kingdom, in all Ages, has established; and may, and must serve to intimidate and prevent Numbers of People from commencing Prosecutions to endeavour to bring the Guilty to Punishment, lest, by some strange Alteration of Affairs, they themselves may, in their Turn, be prosecuted.

And, Gentlemen, when I say Prosecutions and Inquiries of this Nature must be attended with great Inconveniency to the Community in general, I speak it from Authority, in a Case in which I was Council for the Prisoner.

There was a Man, whose Name was *Williams*, that was indicted at *Stafford*, for a Robbery committed at *Wolverhampton* Town's End, the 24th of *December*: It appeared in Evidence, the Moment the Prisoner was charged with the Robbery, he told the Prosecutor he was that very Day at *Islington*: The Prosecutor, however, swore to the Man, though it was by Moon-light: After which I called for the Prisoner five Witnesses, four of them from *Islington*, and another from *Redbourn*, near *St. Alban's*. In my Life I never heard so circumstantial an Account; and such a vast Multitude of concurring Circumstances, in point of Time, and Knowledge of the Man, to prove him at *Islington* at the Time the Fact was committed; insomuch that the learned Judge, who tried the Prisoner, asked Mr. Serjeant *Haywood*, who was of Council with the Prosecutor, What he could say to it? for that he never heard so strong a Defence in his Life. In Reply, they called two poor Persons, who swore they saw the Prisoner at *Wolverhampton* the Day the Robbery was committed. The Prisoner was convicted. Soon after, as soon as the Prisoner returned to Gaol, he declared his Brother committed the Robbery; and there being a great Disposition in the Country in general to save the Prisoner, supposing him to be innocent, they directed the Brother to be taken up, and, on being charged with this Robbery, he immediately confessed it, and several other Robberies, for which he was immediately committed to *Warwick* Gaol, and for one of which he was afterwards hanged. This Account was brought to the Judge at *Skrewsbury*, and he was so far prevailed on, as to order the Under-Sheriff of *Staffordshire* to write to his Agent to inquire into the Characters of the *Islington* Witnesses. — The Agent accordingly inquired of the Clergyman of the Parish, and received for an Answer, that they were all Persons of good Character. — This Account was sent directly to me at *Gloucester*, with a Request from many Gentlemen to wait on the Judge with it. This Request I complied with, and the Judge read the Account, but told me he had, notwithstanding, some Reasons to apprehend him guilty; and however he might be inclined to extend his Mercy to this Prisoner in particular, yet he should not do it, as he thought it of the most dangerous Consequence to the Justice of the Nation in general, to try the Guilt or Innocence of a Prisoner, after his Country, on a fair and impartial Trial, had found him guilty. After

this the Man was hanged; and after he was executed, twenty Witnesses might have been produced to have proved him at *Wolverhampton*, when he was sworn to be at *Islington*, and no Person in the Country doubted of his Guilt. This I mention to shew how dangerous these subsequent Trials must necessarily be. Why are they dangerous? because, supposing People wicked enough, either out of Love to the Party accused, or Malice to the Prosecutor, to meditate Revenge on him two or three Years after, (for there is no Time limited to call his Prosecutor to an Account, and to indict him for Perjury) he may be brought to a Trial, when, perhaps, all his Witnesses are dead, and it will be totally impossible for him to support his Testimony. When I have said this, I am sure these Observations will and ought, at least, to weigh with you thus far, that if any Doubt should arise of the Guilt of the Prisoner, you will not give the least Encouragement to this Sort of Prosecution; for, supposing People wicked enough either to be tempted by Rewards, or Promises of Rewards, there is not a Man living safe or secure from some Prosecutions of this Nature.

I cannot help once more mentioning the great Difficulties the Prisoner lies under, in being deprived of the Testimony of the only Person, who could speak to the same Facts the Prisoner did, which would prove her innocent. Every body knows that *Virtue Hall* gave the same Account that the Prisoner did of the Robbery; and what convinces me, beyond all Possibility of Doubt, that what *Virtue Hall* said could not be dictated or taught her, is, she did not only go Step by Step with the Prisoner's Relation, as far as that went,—but after she had left the Story, *Virtue Hall* took it up again, and told you what became of the Stays, and the Conversation that passed after she was put into the Room, and what she feared from too nice an Inquiry into it afterwards. This Witness has not been called.

In order to obviate any Objections or Observations that were expected to be made from not producing her, it hath been thrown out, that if she was produced, she could not be a Witness, at least, on Behalf of the Prosecution, because the Moment she came to charge the Prisoner, she must confess herself perjured: But I beg leave to insist, that such an Objection would only go to the Credit, not to her Competency; and it was so determined in this Court, in an Indictment against one *Murphy* for a Forgery of a Seaman's Will, (*Vide p. 183 of this Volume.*) There was a pretended Will set up and proved in the *Commons*; the very Man who forged the Will, and had sworn in the *Commons*, to obtain the Probate, and to authenticate the Will, was called on Behalf of the Prosecutor, to prove that he forged it by the Directions of the Prisoner. I made the same Objection to his Testimony, as is now hinted at with respect to *Virtue Hall's*; but the Court over-ruled it, and the Man was admitted an Evidence. He came, and told the Court, all he had said upon Oath in the *Commons* was a Contrivance between *Murphy* and himself, and that every Word of it was false; and on his Evidence, supported by some corroborating Circumstances, the Prisoner was convicted. — If there wanted other Arguments or Cases to prove this Sort of Evidence admissible in this Court, I need only mention the common Case of Subornation of Perjury; there the Person who hath been suborned,

suborned, and hath sworn false, is generally, if not always, called to convict the Suborner, and to shew and prove by what Means he was prevailed on.

Virtue Hall then certainly would have been a proper Witness, if they would have called her. I have already mentioned some great Difficulties the Prisoner is put under from her not being produced: I shall mention only one more; the Prisoner may, by this Means, be deprived of an Opportunity of shewing the Court the Methods that were used to bring about this Recantation; and, as she may yet be called, which will make this Account Evidence, and as I apprehend it will be for the Benefit of my Client, I cannot conceal it. And, Gentlemen, I am instructed to say, and have many Witnesses in my Brief to prove those Instructions, that *Virtue Hall's* Recantation was brought about in a very extraordinary Manner: She was called upon in public to declare, whether what she had sworn on the Trial was true or false. And tho' I doubt not but the Magistrate meant well by it, yet, when called upon thus publickly to make Recantation, what did she say? She declared openly, *all she had sworn was Truth*. She was asked the same Question again, and she made the same Answer; upon which somebody or other suggested, it would be proper to take her in private. For God's sake! why in private? I am sure, by the Knowledge I have of the Worshipful Magistrate, he could never intend to seduce her by Rewards or Promises: But this may be the Case; the poor Girl might weakly imagine, that, if she altered her Evidence, she might have some Rewards, though the strict Justice of the Magistrate never could or would have given her the least Foundation for such a Belief. But, as the Poor and the Ignorant are more liable to be led away with false Fears or Hopes, built on the weak Basis of their own Imaginations, the taking her into a private Room was by no means proper. After she had been examined in private, she did return and made the Recantation. But, if she did make that Recantation, why does she not come here, and swear and avow it? I dreaded seeing her appear; because, if all she said was false, it must have been owing to some undue Influence, and in consequence of some deep-laid Plan, Scheme, or Contrivance of the Prisoner at the Bar, or some other Person. Nothing of this Nature hath even been suggested; then what Room can there be for any Presumption of that Nature? What could induce *Virtue Hall*, who had no Friendship, nor even Acquaintance with the Prisoner, to turn Evidence on her Behalf, against her greatest Friend in the World, in whose House she had lived, and, perhaps, been supported? Reward she could not have from the poor indigent Prisoner, or any of her Relations; and therefore the Behaviour of *Virtue Hall*, if she did swear false, is totally unaccountable.

But now, Gentlemen, having said this, in order to take off or counteract the Prejudices that have artfully been raised against the Prisoner; here she now stands at the Bar, and she must be tried, however improperly she may have been brought upon her Trial. I cannot help mentioning, happy she is, that she has got such a Jury to try her; for, according to the best Observations I can make, I never saw a Jury attend with greater Impartiality.

I should now consider what are the Principles the Council for the Prosecutor have laid down, as the Foundation for proving the Prisoner guilty. They say, the Story is extremely improbable, — full of Absurdities, — so ridiculous, that no Person in his Senses could contrive or believe it: But, Gentlemen, let me tell you, under the Direction of the Court, Trials for Perjury are not to be determined by Matters of Improbability. If a Person is indicted for Perjury, and one Witness only is produced to swear directly the contrary, the Person cannot be convicted; because there is Oath against Oath, and the Justice of this Country is never weighing the Credit of Witnesses in golden Scales; but, if there is Oath against Oath, the presumptive Innocence of each is equal. Then consider, the Prisoner hath sworn the Fact; this is to be considered an Oath by one Witness of a Fact, which is only attempted to be contradicted by Circumstances, or by Matter of Improbability.

Mr. *Davy* has said, that no Person living, nay, human Nature itself, is not capable of such Cruelty, as that of putting another Person to Pain, merely through Wantonness. And I have seen an Expression of a very great Writer to that Purpose, tho' in other Terms, "There is no Man upon Earth so wicked, as to play the Platonic with Damnation." Let us consider how far that Principle is applicable to the Prisoner at the Bar. There is a Maxim never controverted, *Nemo repente fuit turpissimus*. I may safely say, no Person leaped from exceeding good to exceeding bad in a Moment; it takes up a great deal of Time to get rid of that natural Modesty, which every Person is endued with; a Man must go by Steps to the Pitch of Wickedness. In what State was this poor Girl before this Transaction? How do the Witnesses on Behalf of the Prosecutor describe her? "A Girl of as good a Character as any in the World; I have known her from her Birth; and I have never heard any Ill of her," was the Language of Mrs. *Mayle*. How could this Girl, from this very Instant, a Girl of a good Character, turn that wicked and abandoned Wretch, that she must be, to give all this false Evidence against a Person she had never seen in her Life? Is it conceivable she could have had any Scheme to injure *Squires*, who was an utter Stranger? It certainly is not. Indeed, could that be conceived, she must be as wicked as Mr. *Davy's* Rhetoric can paint her; but whilst she stands thus accused of Wickedness, she must be acquitted of one dangerous Part of her Character, which hath been laid to her Charge, which is Art or Contrivance; for no one can think her capable of either, who can suppose this a formed Scheme; because, supposing it to be so, it is the only one that could not fail of being detected.

But the Gentlemen have said, and would have you believe, the Prisoner's Friends have taken great Care and Pains, as far as possibly they could, to fix this to be the Place, and to ascertain the Descriptions of it. 'Tis insinuated, a Man went, came back again from meeting her on the Road, saying, It is all right; *There is Hay*. But when that comes to be observed upon, you will find no more Foundation for that Relation, than for some other Evidence that has been given of the Contrivance in ascertaining the Place. But could there be any Contrivance in ascertaining the Person?

Person? It would be a Reflection on your Understandings to intimate that you could think so. *Wells* was the Person pointed out, and the Person all the World thought it must be; her own Character must have convicted her; she could never have set up a Defence like this; the Prisoner must have been sure to have fixed her at that Place, at least during the Time of her Confinement. No Person would have interposed to have saved her from the Gallows. But how did the Prisoner act when she came there? That very Person, who had been thus pointed out to her, and whom she with Safety and Impunity might have accused, if she had had any Scheme or Design of injuring any one, she totally acquits of the Fact of robbing her. It was asked, Did she rob you? Her Answer was, No. In an Instant she said so. One of the Company went so far as to say, *There* was Mother *Wells*. What could be expected from that, but that she would have instantly said, That is the Woman? But what does she say? That is not the Woman that robbed me; there is the Woman that robbed me, (pointing to *Squires*.) A Person, that no one there did, or could direct her to; because it was contrary to every body's Expectation. Then Mr. *Davy* would have you imagine this was a concerted Scheme between her and her Mother to raise Contributions. Let us try this Suggestion upon any one Principle of Nature or Reason. Upon my Word I can scarce think of such a Notion, and keep my Countenance. I remember the Saying of a very great Man, which is the best Answer that can be made to it:

“ The Man that hangs, or beats out's Brains,
“ The Devil's in him, if he feigns.”

Would she go within a Hair's-Breadth, nay to the very Brink of Death, to raise Friends by way of Contribution? Can you a Moment doubt, upon hearing even Mrs. *Mayle's* Account of her, that her Life was in the utmost Danger? Indeed there were no Hopes of her Recovery. If you have any Doubt of that Fact, the Prisoner hath other Witnesses, who could prove it to a Demonstration. What! is this Girl to kill herself, to have a Subscription after her Death, for the Benefit of her Family? It is inconceivable to the last Degree. Then consider how consistently the Mother acted with any Scheme or Design of that Nature. If she intended her Daughter should be almost starved, and should be concealed till this was brought about, why did she advertise her Daughter? which was the only Means to discover her immediately, and mar the Plot, if she knew when she was to return. How could she be (as it was beyond what could be feigned) so particularly affected at the Sight of her, on her Return? These Circumstances must be totally laid out of the Question, before you can believe it a Scheme; or, if she did it designedly, it must be done without any View, either to benefit herself, or any of her Family. But then the Gentlemen have recourse again to Improbabilities: They ask, How could she possibly go from Mother *Wells's* to *London*, without telling her Complaint? Mr. *Moreton* has mentioned many Reasons, why she did so. Mr. *Davy* would have you believe, the only one that could be suggested, was for fear of meeting any of the People belonging to the House; and to answer this, he hath said, why did not she call at Gentlemen's Houses? as she could never conceive she should meet with Mother *Wells* and her Conspirators there. Think of this Objection one

Minute, and you will not want an Answer to it. How was this poor Wretch, in that Condition,—wretched and almost frightful in Appearance,—without Strength (almost) to tell her Story,—to gain Credit, if she had complained? She might as well have attempted to have told her Story to the Winds. She must necessarily argue thus with herself, if she had her Senses: Weak as I am, I must endeavour to get Home before I tell my Complaints; because I must go to the Persons that know me, before I can be credited.

The Moment she came Home, she made known her Story; and that was the proper Time to make it known. But the Manner, in which she related it, I shall observe on hereafter, as it very well deserves your Attention.

Having endeavoured to answer some of the Objections made to the Girl's Story, let us now attend a little to the Witnesses on Behalf of the Prosecution, and consider how far these have been consistent with themselves, and how far they are the best Witnesses that could have been produced, in order to clear up this intricate Affair; because, if it should be obvious (as I dare say it is to every body) that the Prosecutor has it in his Power to clear up this Matter, and yet hath left Witnesses unexamined, who were the only ones capable of doing it in point of Law as well as Reason, every Thing must be presumed, that can be presumed against the Prosecution.

It will take up too much of your Time to go into critical Observations on every Witness; therefore I shall only here and there point out some particular Circumstances, which, perhaps, may have escaped Mr. *Moreton's* Notice, with respect to such Inconsistencies. The Gentlemen of the other Side, conscious to themselves that there have been some gross Contradictions, have endeavoured to persuade you, that supposing some Circumstances in the Account their Witnesses have given are inconsistent, and others entirely false; yet you are not to regard any Thing that does not go to the very substantial Point, which is, whether *Squires* was then at *Enfield-Wash*; and that little Circumstances are always to be overlooked: But give me Leave to tell you, that is not the Way of trying the Weight of Evidence. And I am sure, when you come to consider what the Nature of the Evidence is, you will perceive it absolutely necessary to go out of the common Road in the Examination of the Witnesses, in order to detect the Villany: You will easily think it is absolutely impossible a Set of Witnesses can contradict one another in the very Point they are called for, when they have been half a Year conferring together on that Point only; they know how to swear, as to that Particular; they are upon their Guard, as to that; they know how to answer you. Then how are these Witnesses to be treated? They are to be taken, as far as possible, off their Guard, and to be asked those Things they thought never would be inquired into. It is by this Means that you are to find out the Inconsistency; because Truth is always the same, and always consistent; it will be equally so with respect to the Circumstances attending a Fact, as the very Fact itself.

Gentlemen, I shall begin with *George Squires*, the Son:—What did that Man say? You observe, Mr. *Davy* represented him as a weak, ignorant Man, and almost stigmatized him for a Fool, the Moment he appeared; and for what Reason? 'Tis not difficult to assign the Reason,—because

he was apprehensive that he would make some Blunder: But was there the least Sign of either a weak, an ignorant, or a foolish Man, during the whole Course of his Examination from *Abbotsbury* to *London*? There certainly was not. This Examination he expected, he was apprized of it, and prepared.—Then consider how he appeared, when taken out of the Road from *Abbotsbury* to *London*: Mr. *Moreton* asked him, Where did he set out from? He staggered a good deal, and desired to be asked no more Questions; at last, he went from *Kent*, from his Sister *Mary*.—Pray, what House was she at?—I cannot tell.—Where did you lie? Where did you trade? Or, where did you buy your Goods, or where did you dispose of them? In above an hundred and fifty Miles travelling, he scarce tells you he went into or by any one Town, or notorious Place: What is the Reason he can give no better Account? Why, because he never expected to have been asked about it. In short, such a strange and improbable Account I never heard in all my Life.—Then consider the other Evidence that has been given. Far be it from me, to pretend to say they have not given you an exceeding strong Account of this Woman's being at *South-Parrot*, and coming from thence up to *London*: But there is this Observation to be made; even with respect to these Witnesses; several of them have said, before the Time of *Squires's* Trial, they expected to be called upon as Witnesses, and declared what they could prove; yet not one in twenty either did appear on the former Trial, or were ever asked to appear. But this Observation may be made as to the Number of Witnesses that have been examined, that, wherever a Story is talked of by one or two People, and they have declared that they had seen *Mary Squires* the Gypsey, and that they were acquainted with her, another Person, to whom it is related, recollects he hath seen a Gypsey; and being told that must be the same, would not any body be almost persuaded, in half a Year's Time, that they must mean the same Person? When the Centre is moved, there is a Circle succeeds, and spreads from Man to Man; but supposing the first to be deceived, all the rest might depend upon his Credit; whereas, had they been asked, upon recent Reflection, abstracted from other People's Representations, they never would have spoke with that Degree of Certainty.

But supposing these Observations to be justly made, Mr. *Davy* says, there is one Set of Witnesses that must prove the Prisoner guilty, beyond all Degree of Doubt. We have, says he, some Witnesses, which were the Girl's Friends; they went down to assist her as far as possible, not imagining she would tell a false Story; but when her own Friends turn against her, it is the strongest Evidence in the World, to think she was deceived. The principal Witness called for this Purpose was Mr. *Nash*; and he tells you, the very Instant he came down to *Enfield*, he found the Girl was in the wrong: He said to her, Child, you are mistaken, you can never have been there. After what he hath here sworn, could you conceive that Mr. *Nash*, a Man of Sense, a Man of Prudence, a Man of Justice, could ever, after he was convinced the Prisoner was in the wrong, continue to give any Assistance to the Girl in the Prosecution? I am sure it is casting a greater Reflection upon Mr. *Nash*, than I would chuse to do on any one, to suppose he could act such a Part: But how

do we find him acting? Doth he behave consistently with such Conviction of her being deceived? Ten Days after, he writes to a Person of Fortune and Consequence, (who will be produced) to encourage a Subscription in Favour of the Girl. This Objection, I think, is not to be answered. Then another Friend of the Prisoner's, Mr. *Aldridge*, is called, and he said exactly the same Thing: He was every bit as much convinced; he detested every Thing the Girl had told him; and, in short, he was the greatest Convert that ever could possibly be imagined. I asked him, Have you had any Conversation with Mr. or Mrs. *Howard* since that Time? What does he say? I own I have, and I distributed a Paper in Favour of the Prisoner. And, unless my Instructions are false, he then declared he believed the Story, and earnestly desired they would encourage the Subscription.

I should almost have suspected my Brief, which gives me an Account of the Behaviour of these three Gentlemen, who have now been called against the Prisoner at the Bar, had not they themselves given such an Instance of their own Behaviour in this very Court, as is not to be accounted for. They were all convinced of the Mistake of *Elizabeth Canning*; they have now on their Oaths sworn it; they were all convinced that her Story was a Falshood, from the Beginning to the End; and that the poor Woman, the Gypsey, who then stood in Danger of her Life, was as innocent of what she then stood accused of, as the Child unborn; they were present in Court when this innocent Woman was so unjustly accused: What would you have expected they would have done? what common Humanity and common Honesty would immediately have suggested,—would have interposed, and prevented the Blow which was just then falling upon the Head of the Innocent. Did they act in such a Manner? No, they acted in a Manner which common Humanity would make every one presume they were incapable of acting in, had not they themselves sworn it. In short, one was engaged to Dinner, another was Butler to some great Person, and every one had some trifling Excuse to desert and forsake the poor Wretch, when falling into that Destruction which she did not deserve, and which they only were capable of preventing. What Conclusion can be drawn from such a Behaviour? I will not say, it necessarily follows, that they are in this particular Instance prevailed on to say, what they otherwise would not; but thus far I will say, that they have been, according to their own Account, influenced by trifling and inconsiderable Motives to desert those first Principles of Honesty and Justice, which, notwithstanding all the Temptations on Earth, they ought obstinately to have adhered to.

Let us now consider the other Head of Evidence I proposed to observe on. Has here been any Evidence omitted, that might serve to clear up the Story? Indisputably there has. Why was not *Mary Squires*, the Daughter, called? Why was not Mrs. *Wells* called, in order to shew you that all this was a Falshity? With respect to *Mary Squires*, have you heard a Hint against her Character? She could have spoke materially to the Fact of her Mother's being at another Place. She was at *Brentford*; she wrote to her Brother, giving an Account of her Illness; she would have told you the Time when she wrote this Letter, and in what Manner they went from *Brentford* to *Enfield*; but she has not been called. Why was not *Lucy Squires*

Squires called? She was more concerned in it; she, in short, was the very Person that could have made this appear either a Falshood, to a Demonstration, or thrown such a Damp upon the whole Prosecution, that they could never have gone on with it. She attended her Mother thro' the whole Rout, and could have confirmed every single Circumstance her Brother had related, supposing all true. Why was she not called? I need not mention the Reason, it is so extremely obvious: The Gentlemen on the other Side have Art and Judgment enough not to call a Person to do Mischief; they saw how *George Squires* was baffled and confounded; in short, gave no Sort of Account whatsoever, when taken the least out of the settled Rout. What are they afraid of, but that she might contradict her Brother? which there seems great Reason to imagine must have been the Consequence of producing her. Then why was not *Wells* produced? There may be one good Reason assigned for that; but the same Reason they assign for not producing of her, must weigh greatly with every body as a Corroboration of the Innocence of the Prisoner, and the Truth of her Account.

It may be said, that she was a Woman convicted: But she is now pardoned, and she is a Witness in point of Law. But then they will say, she is a Woman of bad Character, and no Credit can be given to her Evidence: When they say that, they admit her a Woman capable of doing the Act complained of, or receiving Persons who could do it. They were apprehensive this would cut both Ways: For had she been called, and the Prisoner could have contradicted her in any Circumstance of the Story, I am sure you would not only have been induced to have disbelieved what she had said, but to have believed her guilty; and if you did believe that, it would be very hard to direct the Line between the Innocence or Guilt of her and the Gypsey; and you would have been able to have distinguished why one attempts a Defence, the other not; because one is always fixed to a Spot, and could never have set up this Defence; the other is a Vagabond, and it ever will be difficult to fix her Habitation or Residence, for one Day together.

Gentlemen, these are all the Observations that occur to me on the Prosecutor's own Evidence, except one particular Circumstance with respect to the Hay said to be in the Chamber. You have heard it said, there was a great Quantity of Hay; and they would have you believe this Hay was all a feigned Story, founded on the Representation of those who went down before, in order to prevent the Prisoner's giving a false Account. But what does *Adamson* say when he came back? Says he, she says there is Hay in the Room, and the Description is right. Will you, upon your Oaths, say, *Adamson* had told her there was Hay in the Room, and that she had never mentioned Hay to any one before? No. The Meaning of that Part of the Evidence is plain; the Girl had told other People there was Hay in the Room, tho' she had not told it to *Adamson* before; and we shall prove she declared so, in the very first Description she gave of the Room. But Mr. *Adamson* himself will be called in Behalf of the Prisoner, and he will swear he never dictated to her, or gave her the least Intimation to say there was, or was not, Hay in the Room. And as there was Hay in the Room, beyond all Doubt, I

shall only ask this Question, How came this Description of the Room (which is a very extraordinary one) to answer, if the Prisoner never had been there, and all her Story was an utter Falshity? But, Gentlemen, there is one Argument arising from the Prisoner's Evidence, that, to me, seems totally unanswerable: I myself have heard it mentioned; and it hath been artfully, though now it appears falsely, insinuated to thousands, in order to prejudice them against the Prisoner, and to leave no Doubt but she must be convicted, that the Prosecutor would actually shew where she was at that Time. I know the Gentleman who related it. And I call on the Prosecutor now to account but for any four Hours out of the twenty-eight Days, and I shall be convinced all is a Falshity; and that she is not only greatly deceived, but wilfully perjured. Has it been attempted to be proved? I beg leave to say it has not. What Weight then ought this Circumstance to have with you? It ought to have more or less, according to the Time or Opportunity that there hath been to prove where she was. Had the Fact happened but a Week ago, I must confess, it might with Truth be said, there was neither Time nor Opportunity to make the Inquiry. But let us consider the Circumstances of this Case; the Fact committed a Year and an half ago,—talked of before it came to Trial,—from the Time of Trial to this Time; I will venture to say there never was a Fact that hath undergone greater or more particular Inquiry. There have been Accounts published, which have gone all over the Kingdom; and, I believe, I may with Truth say, all over *Europe*. I do not believe there is an Individual in this great City that has not heard of this Affair, nor hath a Company met for one single Evening, where this was not a Subject-matter of Conversation. Then was there not Time or Opportunity to inquire into it? There certainly was; and unless they can shew what has been suggested, I mean where she was, it is one of the strongest Arguments in the World in Favour of the Prisoner. Thus then it stands on the Evidence on Behalf of the Prosecution.

With respect to our Evidence, I shall again take Notice, that, as to the Facts themselves, one Witness hath positively sworn to them; I mean, the Prisoner. You cannot now expect other Witnesses to swear to confirm hers, as to them; there never was but one, and that the Prisoner is now deprived of; therefore all we can do, will be to support her by Circumstances and Probability. And, in the first Place, we shall shew you the utmost Probability for her going there, for two Reasons: Because she is traced in the Road from thence (and not a Tittle of Evidence to say she was further) towards *London*, and not by one Person only, or by Persons who seemed to take no Notice of her; but we have in our Briefs no less than three, who saw her go by dressed in that very particular Manner in which she came Home, tracing her from that very Place towards *London*. One of the Men, at one of the Turnpikes, where she inquired her Way, went farther than merely describing her Dress; he had an Opportunity, by asking her Questions, of seeing her Face; and he will tell you, by the Observations he made then, and by seeing her soon after, he verily believes her to be the same Person.

When she came Home, she gave the Account you have heard: But the Manner in which she gave

gave it, is very well worth your Consideration; it was not given in a wanton Manner, not with that Eagerness or in that Hurry an Impostor would have told it, in order to run through the Chain of her Story, and tell it as soon as she could, fearing she should forget it. How does she tell it? more as if she was desirous of concealing, than of artfully publishing it. You find her at her first Arrival so weak, that she could not run into a long Detail; and when she grew more able to relate it, it came out only by Answers to Questions asked from Time to Time; in which she answered no farther than the Question absolutely required, or obliged her. Is that like a formed Scheme or Story? It seems to me totally otherwise. But what will you say, when this same *Mary Squires*, who, as Mr. *Davy* hath urged, cannot be mistaken for another, who has that remarkable Stamp upon her Countenance, as he hath expressed it, is proved by twenty-five or thirty Witnesses (many of whom are Persons of Figure and Fortune) to be at *Enfield-Wash* on the 16th or 17th of *December*? Was she only seen to go by as a Traveller? No, that is not the Case; many conversed with her; she talked of losing a little Horse, and was lamenting her Loss; she inquired after this Horse of several; of some who were Strangers to her, and of others that had known her for a long Time: With respect to the first, they asked her, how they should know her Horse? she not only described him, but told them that he had a Lock on with her Name: They then asked, what her Name was? she told them, *Mary Squires*. We shall produce some Farmers, in whose Barns she hath lain for three or four Days together, to identify her Person; and no one can suppose but that these Witnesses are as little liable to Mistakes, as any produced on Behalf of the Prosecution. And this Observation you will carry with you during the whole Course of our Examination, that we shall not produce one Witness, who doth not live within ten Miles of *London*, nor one that the Prosecutor hath not long known of; they will be regarded or not, in proportion as their Characters do, or do not, stand impeached; and when I have said this, I defy the Prosecutor to impeach the Character of any one Witness. With respect to the Witnesses on Behalf of the Prosecution, it is absolutely impossible to know their Characters, or, at least, to prove them; because one is picked up at one Place, and another at another; and the Prisoner could never know, before she heard their Testimony, who was to be examined against her. Supposing you believe, from the Girl's Account, from the Witnesses we shall produce, that *Mary Squires* was at *Enfield*, there is an End of all Attempts of the Defence that was set up; and I dare say you will believe it, when we prove to you (which we shall certainly do) from Gentlemen that went down with the Prisoner to *Enfield-Wash*, who had no Reason to think *Mother Wells's* was the Place, any otherwise than they were led to imagine it the Place, from the Account she had given of it; and, however Mr. *Lyon* and Mr. *Adamson* may differ in point of Opinion, yet they must and will tell you, that the Place answered, as far as it could be expected, to the Description that was given by the Prisoner. We are not to catch at nice and minute Circumstances, with respect to the Description of the Room: If you were to make that a Rule of judging of the Truth of the Story, consider how the People that were

in the House vary in their Descriptions. There were also some Pan-tiles, *Judith Natus* says, in the Room: Did any body else mention them but herself? One Man says, there was a Tub in the Room: Did any body else mention it but him? You observe, it is impossible to be conceived, that this poor Girl, who perhaps might be, and indeed there is the greatest Reason in the World to be certain, was in a Fright, should be so very minute and exact with respect to every Particular in the Room. But then it is said, supposing the Prisoner not contradicted in her Account in this Respect, yet it is plain her Mother and she contradict each other; for the Mother was observed to cry out, when her Daughter returned, that she was naked. Mrs. *Mayle* has given you an Account of it, and great Stress hath been laid on this Observation: But if we consider this Expression coolly, is there any Weight in the World to be laid upon the Words of a Parent, who at that Time was inflamed with Indignation that her Child had been used ill? Is it strange or remarkable, that this Mother should aggravate Things? Besides, the Word *naked* was in this Particular a comparative, not a positive Term; and she might certainly be called *naked*, according to the Prisoner's own Account, comparatively speaking, to what she was when her Mother saw her last.

But supposing this a feigned Story, how happened it, that any one Description or Circumstance, mentioned by the Prisoner, should coincide? And there are some Circumstances, all must agree, which amazingly correspond. How came the Chimney in the Corner of the Room? How came this Pitcher to be in the House? It makes no Difference, whether it was in the Room or not. How came it to be there at all, and so exactly to answer what she described the first Moment she came Home? We shall shew you, by Persons that went down, other Circumstances, altogether as surprising, that confirmed her Account. The Gentlemen, as if aware of one, asked, Could any Person get out of the Window? You observe, *White* told you, because he was forced so to do, well knowing that *Adamson* would say so, that he perceived some Lime, or Lath and Plaster, broke from the Wall, as if somebody had got out; should that be the Case, it is the strongest Circumstance in the World. One more I must mention; an Account was given from the first Instant, that her Ear was bloody. A Man, who lived over the Way, came and found either a Piece of Iron; or a Bit of Lead, under that Window, all bloody, and the Handkerchief produced here is stained with Blood; and, if that Circumstance should be proved, it is a very strong one, and such as requires the utmost Consideration. There is but one Observation or two I shall mention, and that is with respect to what has been called the Hinge, or Sort of Criterion, or Touch-stone, upon which you are to try this Narration; and that is the Letter. Mr. *Moreton* has made some strong Observations on it; and extremely strange it is, that this Letter should not appear dated in such a Manner, as to determine the Truth when it was wrote, or sent by the Post. Was this Date (for you will see the Letter) put in any Place where, either by the opening the Letter, or by the Wax coming near it, it might be possibly injured, there would be an End of any Observations that could be made on the Occasion; because you must know, who receive Letters upon Business, that it is impossible

possible to unfold a Letter, sometimes, without tearing a very material Part of it. But how is this? The Date is in the very Corner of the Letter, that Corner which was sheltered by the folding of it, and must have been the last that could have received any Injury; it was not near the Wax or Seal, or liable to any Injury on that Account; and although the Outside was all dusty, this Part, being folded in, was as clean as possible; how therefore this Part of the Letter, in particular, came to be torn off, is a Matter beyond my Comprehension, and; I am certain, you will give this Observation the Weight it deserves.

Then thus it stands upon the Evidence on both Sides: And, Gentlemen, I shall now only mention to you again, that, upon Trials for Perjury, we are not to convict a Person merely upon Conjecture, Improbability, or Argument. I told you before, and, under the Direction of the Court, I shall repeat, that every Person's Oath, though Perjury is assigned in it, is to be considered as one Witness: If a Man forswears himself in an Answer in Chancery, one Witness only contradicting it, is of no Signification, as both are to have equal Credit: She then is the only Person that speaks to the Fact of this Transaction, and that is not controverted but by Circumstances and Arguments: And, if any Witnesses could have been produced, or any Evidence given, that could have cleared up and explained this intricate Affair (for so I will call it, even upon their Evidence given) and the Prosecutor hath omitted so to do, which to me seems plain to a Demonstration, you will then presume in Favour of Innocence, as far as it is possible, and especially against those Persons, by whom the whole might have been explained; and if you have the least Doubt remaining, whether the Person is innocent or not, Charity and Christianity will induce you to take the favourable Side; the Consequence of which will be, that the Defendant will be acquitted.

Mr. WILLIAMS.

We shall lay our Evidence before you, and begin first with Mr. Lyon, the Master of this Girl.

Edward Lyon sworn.

E. Lyon. *Elizabeth Canning* had been my Servant about ten Weeks: On the 1st of *January* 1753, my Wife gave her Liberty to go to see her Uncle, who lived at *Saltpetre-Bank*.

Mr. Williams. Had you known her any Time before?

E. Lyon. I have known her sixteen Years before she was my Servant.

Mr. Williams. Pray, how has she behaved herself?

E. Lyon. Very well: I believe her to be a very honest Person. She not coming Home that Night, we inquired about, and sent to her Mother several Times, but heard nothing of her.

Mr. Williams. Whom did you send?

E. Lyon. I do not recollect any particular Person.

Mr. Williams. Had she ever been guilty of such Neglect before in not coming Home?

E. Lyon. No, not at all. The first Time I saw her afterwards was on the 31st Day of the said Month before Mr. Alderman *Chitty*; she was there, in order to take up a Person that she said had used her ill at *Enfield-Wash*. I being a little thick of hearing, cannot give much Account of what

passed before the Alderman; but there was a Warrant granted, and several of our Neighbours went down to *Enfield-Wash* the next Morning on Horseback; I went in a Coach, with Mr. *Nash*, Mr. *Hague*, and Mr. *Aldridge*; the Prisoner and her Mother went in a Chaise.

Mr. Williams. Did she give you any Description of the Room she had been confined in?

E. Lyon. Not to me, for I was not with her.

Mr. Williams. Give an Account of what passed between you and a Person that met you on the Road.

E. Lyon. Mr. *Wimblebury* came riding on Horseback, and said, they had taken a Number of People in Mrs. *Wells's* House. When we came there, I saw about ten Persons, one Man and the rest Women, sitting round the Fire, in what they call the Parlour. After I had been there some Time, *Elizabeth Canning* came, and was brought in and set upon the Dresser: I went to her, and said, *Bet*, will you take any Thing to refresh you? She said, No. I said, Do not be daunted, for you have Friends about you, and, on the other hand, be careful, and challenge no body in this House without you are positive of them. Sir, said she, I will not. Then, said I, you shall see them. Accordingly she was taken from the Dresser, and led by two into the Room. She saw Mrs. *Wells* first, and said, she had nothing to say to her; and upon seeing Mrs. *Squires*, she said, That is the Woman that cut my Stays off.

Mr. Williams. Did you see *Squires* then?

E. Lyon. I did, very plain.

Mr. Williams. Was she sitting or standing?

E. Lyon. She was sitting first, but she got up out of her Chair.

Mr. Williams. When *Elizabeth Canning* fixed upon her, was she sitting or standing?

E. Lyon. *Squires* was just got out as she charged her, and came towards her.

Mr. Williams. Attend to the Question: Was she sitting or standing up?

E. Lyon. The Room was full of People: I cannot justly say whether it was the Time she was getting out, or got out: Several People got nearer than I did.

Mr. Williams. Have you any Reason to think *Elizabeth Canning* saw her Face, before she fixed upon her Person?

E. Lyon. I believe she saw her Face.

Mr. Williams. Why do you think so?

E. Lyon. I think she would hardly charge her without the Sight of her Face; I have no other Reason.

Mr. Williams. When *Mary Squires* was charged with being the Person, what was done?

E. Lyon. She came up to her, and said, I hope you will not swear my Life away, for I never saw you. Then *Betty Canning* was carried into the Kitchen.

Mr. Williams. Did you hear *Mary Squires* say where she was at the Time?

E. Lyon. I did not hear any Thing of that.

Mr. Williams. Did you hear *Elizabeth Canning*, or any body else, say what Day the Robbery was committed?

E. Lyon. No, I did not hear any body say any Thing of it.

Mr. Williams. Did you see *George Squires* there?

E. Lyon. Yes, I did; he was in the Room before *Canning* came in; he pulled off his Hat to me, as soon as I came into the Room: I said to

him, How came you in this House? He said, I am a Traveller, and came here to lodge: I said, Could you not find a House of better Character? that, however, you must give a farther Account of yourself. Then he sat down.

Mr. *Williams*. When *Canning* came in, was she asked whether she had any Thing to accuse *George* with?

E. *Lyon*. She saw *Lucy* before she did him: She said, That young Woman was in the Room when my Stays were cut off: Then she saw *Virtue Hall*, and said the same of her; but they did nothing to her. After that *George Squires* was brought forward to her: Said she, That Man looks very much like the Man that robbed me in *Moorfields*, but I will not swear to him. He had pulled his Great Coat off in the House, I think, before she came: He had it on before Justice *Tashmaker*; then she said, she verily believed he was the Man, and that was the Coat he had on, which he put her Gown under, when she was robbed in *Moorfields*; but she would not swear to him.

Mr. *Williams*. Did you at any Time receive a Letter from *Gawen Nash*?

E. *Lyon*. I did.

Mr. *Williams*. Did he at coming Home express any kind of Doubt about this Affair?

E. *Lyon*. No: We all came Home together in the Coach; he seemed very well satisfied; I could see but very little otherwise.

Mr. *Williams*. Did he say any Thing at all, whether he was satisfied or not?

E. *Lyon*. I cannot say but he did say something, but I cannot recollect what: I can recollect Mr. *Hague* said, he did not see any Grate in the Chimney, nor Pictures in the Front of it. I said, I never heard that mentioned, but these Things are Moveables, and may be moved: We had a little Talk; after that we had a Beef-steak at the *Three Crowns* at *Newington*, and were good Friends.

Mr. *Williams*. Did Mr. *Hague* say any Thing else?

E. *Lyon*. No, he said nothing else; there was no Matter of Doubt between that Time and the Trial of *Mary Squires*. Mr. *Nash* was once at my House afterwards, and as he was going out of the Door, he made use of a very odd Expression; he said, Mr. *Lyon*, I hope God Almighty will destroy that Model that he made that Face by, and never make another by it; a very odd Expression, I remember it very well, meaning the Gypsey.

Cross-examined.

Mr. *Davy*. Was you at the *Four Kings* last *Wednesday*?

E. *Lyon*. No, Sir.

Mr. *Davy*. I would be glad to know where you live.

E. *Lyon*. I live at *Aldermanbury*.

Mr. *Davy*. What is your Business?

E. *Lyon*. I am a Carpenter.

Mr. *Davy*. How long had *Elizabeth Canning* lived with you?

E. *Lyon*. She had lived with me about ten Weeks.

Mr. *Davy*. Had you any Knowledge of her before?

E. *Lyon*. I knew her in Mr. *Wintlebury's* Service, I believe, near upon two Years. I had before that employed her Father.

Mr. *Davy*. When was the last Time you saw her before the 29th of *January*?

E. *Lyon*. I saw her in the Morning before she went out, on the 1st of *January*.

Mr. *Davy*. Can you tell whether the Door from the Kitchen to the Hay-loft was open or shut, when *Elizabeth Canning* sat upon the Dresser?

E. *Lyon*. I cannot say that, for the Room was full of People.

Mr. *Davy*. Was the Motive of your going down (besides the taking the People up) to make as many Observations as you could?

E. *Lyon*. No doubt of that, Sir.

Mr. *Davy*. Then why did you not observe towards what Part of the Kitchen her Face was directed, when she sat upon the Dresser?

E. *Lyon*. I must have shoved People down, if I had; for the Room was full of People.

Mr. *Davy*. Was you with her in the Parlour?

E. *Lyon*. I was just at, or hardly in the Parlour-door.

Mr. *Davy*. How many People were there between you and *Mary Squires*?

E. *Lyon*. It is impossible I should tell; there might be five or six between me and the People in a Circle round the Fire; the Parlour was almost full of People.

Mr. *Davy*. When they were all in the Room, and *Canning* also there, and you at a Distance, whether you could see *Mary Squires* sitting by the Fire?

E. *Lyon*. No otherwise than this, in a Clift between the People's Shoulders.

Mr. *Davy*. Did you see her sitting?

E. *Lyon*. I did; this was all in a very little Time before *Canning* charged her with robbing her.

Mr. *Davy*. How far is the Chimney from the Door?

E. *Lyon*. It may be ten or eleven Feet.

Mr. *Davy*. Did you see her after *Canning* was in the Room?

E. *Lyon*. I did.

Mr. *Davy*. Had you seen her before?

E. *Lyon*. I had; she was sitting smoking a short Pipe by the Fire, before *Canning* came down.

Mr. *Davy*. Was her Face or Back towards you?

E. *Lyon*. She was side-ways partly to me.

Mr. *Davy*. Did you see her sitting on a Chair, after *Canning* was in the Room?

E. *Lyon*. No, I did not, till after she got up; but saw her sitting by the Fire, between the People, just at *Canning's* coming into the Room.

Mr. *Davy*. How long was *Canning* in the Room before she charged her?

E. *Lyon*. She charged her in a very little Time.

Mr. *Davy*. What did the Gypsey do upon that?

E. *Lyon*. She took her Hat off, and opened the Clout which was upon her Head; her Face was almost hid with them before.

Mr. *Davy*. Could you see the Side of her Head, when you was at the Door?

E. *Lyon*. Not then, but before and after I did.

Mr. *Davy*. How far was *Elizabeth Canning* from you?

E. *Lyon*. She was within about three or four Feet of me.

Mr. *Davy*. Was she in a direct Line between you and *Squires*?

E. *Lyon*. No; she was partly in the Centre
in

in the Half-moon, and *Squires* was upon an Angle.

Mr. *Davy*. Was *Canning* at your right or left Hand?

E. Lyon. She was more to my left Hand.

Mr. *Davy*. Have you any other Reason for believing *Canning* saw the Face of *Mary Squires*, than from your good Opinion of her?

E. Lyon. No otherwise.

Mr. *Davy*. What was the first Thing *Squires* did or said, after she rose from her Seat, to convince *Canning* that she was not the Person who robbed her?

E. Lyon. No otherwise than by telling her, as I have told you.

Mr. *Davy*. Did she desire *Canning* to take Notice of her Face?

E. Lyon. I did not hear; I am thick of hearing at some Times, and I was then; I am more in Winter than at other Times.

Mr. *Davy*. Did you hear *Canning* say at what Time she had been robbed?

E. Lyon. No, I did not.

Mr. *Davy*. Did *Mary Squires* continue speaking after the Words you before mentioned?

E. Lyon. Very little; the Girl was moved away presently afterwards, so that they were in that Position but a very little Time.

Mr. *Davy*. Did Mr. *Hague*, Mr. *Nash*, and Mr. *Aldridge*, and you, return Home together after this?

E. Lyon. We did.

Mr. *Davy*. What was your Discourse coming Home?

E. Lyon. We had very little Talk in the Coach about it.

Mr. *Davy*. Did you return good Friends?

E. Lyon. We did, and were very jocular, as we were when we went down.

Mr. *Davy*. Did you hear or understand any Doubt they had touching this Affair?

E. Lyon. No, I did not.

Mr. *Davy*. Was either of them dissatisfied at the Account she had given, and at her Behaviour when in the House?

E. Lyon. No, none at all; we were as agreeable as we were when we went down.

Mr. *Davy*. Recollect yourself, and seriously answer, whether you had any Conversation with these Gentlemen about *Canning's* Mother dreaming a Dream?

E. Lyon. I never did, nor never mentioned any such Thing.

Mr. *Davy*. Did you ever say any thing about her Mother's going to the Conjurer?

E. Lyon. Going to a Conjurer has been mentioned, but not by me.

Mr. *Davy*. Did the Mother tell you, five Days before her Daughter's coming Home, that a Conjurer had told her she was in the Hands of an old Woman, and would come Home the next Week?

E. Lyon. She had told other People, as I heard; but not me; I never heard it from her Mouth; I never conversed with her about it.

Mr. *Davy*. When did you hear it?

E. Lyon. I don't know.

Mr. *Davy*. When did she return?

E. Lyon. On the 29th of *January*.

Mr. *Davy*. Have you ever talked with her, since her Return Home, of any thing that passed during the Time of her Absence?

E. Lyon. I can say nothing in particular.

Mr. *Davy*. If you have had any Conversation with her about it, it must be particular.

E. Lyon. I know nothing but—how do you do, *Betty*? But as to relating how she was used, or any thing like it, I cannot tell any thing in particular.

Mr. *Davy*. Then what do you remember upon the whole?

E. Lyon. I have often seen her and talked with her since, but cannot remember any particular Part, or Words, that have been related.

Mr. *Davy*. Whether you expressed to her any Surprize concerning the Account she gave to you of her ill Usage?

E. Lyon. She has never given me an Account in a particular Manner; it was always to other Persons.

Mr. *Davy*. Had you any Talk with her, since her Return, relating to a Cunning Man?

E. Lyon. No, none at all, nor don't know she has heard it; one Thing, I think, I recollect; at Mr. *Marshall's* House I was with her, and asked her thus, *Bet*, if you know any thing of this Affair, that you believe you are mistaken in, or such like, I desire you will let me know it; don't deceive us upon any Account. Sir, said she, I have said nothing but what is really true.

Mr. *Davy*. Have you had any Dispute or Falling-out with Mr. *Hague*, Mr. *Aldridge*, or Mr. *Nash*, on Account of this Affair?

E. Lyon. No, not on any Account. Some few Words, that I related, were concerning the Grate and Pictures over the Chimney: Mr. *Hague* was saying there would be some Marks left where they had hung.

Mr. *Davy*. Were you formerly very intimate with them?

E. Lyon. I was with Mr. *Nash* and Mr. *Aldridge*, but not with Mr. *Hague*. I have done Business as a Carpenter for about sixteen Years for the Goldsmiths Company.

Mr. *Davy*. Are you acquainted with them now?

E. Lyon. We have no Conversation now.

Mr. *Davy*. What is the Reason of the Discontinuance of your Acquaintance with Mr. *Nash*?

E. Lyon. My Reason is this, that he did not appear: That he should seem to have something to say, and not say it. I thought it was an odd Thing not to appear, and then to appear afterwards.

Mr. *Davy*. Did that break your Acquaintance?

E. Lyon. It has so.

Mr. *Davy*. Did you ever hear him say, before the Trial of *Squires* and *Wells*, that he did not believe a Word of the Defendant's Story?

E. Lyon. No; not at all, upon no Account.

Mr. *Davy*. Did you ever hear Mr. *Aldridge* say so?

E. Lyon. No: Mr. *Aldridge* I have seen casually pass and repass. Your humble Servant, and so on; but I was not in his Company. When I saw Mr. *Nash* on the Morning of the Trial of the Gypsies, it was, Your Servant, and so on; but no Conversation. I never was with Mr. *Aldridge* since the Time of coming from *Enfield-Wash*.

Mr. *Davy*. Had you used to be frequently with him before?

E. Lyon. No; but casually.

Mr. *Davy*. Have you been as intimately acquainted with Mr. *Nash* since, as before?

E. Lyon.

E. Lyon. I have been at his House. I did not keep from his House on that Account. There was no Difference, as I know of. I never shunned his House on that Account.

Mr. Davy. Did you belong to a Club at his House?

E. Lyon. We had a Club of all the Workmen belonging to the Goldsmiths Company at his House; that is, Plumbers, Bricklayers, and others.

Mr. Davy. How often did you usually meet?

E. Lyon. Sometimes once a Fortnight, sometimes three Weeks.

Mr. Davy. Did you go pretty constantly?

E. Lyon. I did.

Mr. Davy. Have you frequented that Club, and drank there, as you used to do before?

E. Lyon. I declared off upon that very Account, because he did not appear on *Squires's* Trial; and after that, *Mr. Nash* making use of my Name in sundry Places, I resented it.

Mr. Davy. Then I desire to know of you, whether from the Time of your Return from *Enfield-Wash* with *Mr. Nash* and *Mr. Aldridge*, to the Trial of the Gypsey, your Intimacy was the same with them as it had been before?

E. Lyon. I had not seen *Mr. Aldridge*. I had no Dislike against him till afterwards, that Things went in such a Line that were disagreeable. *Mr. Nash* had been at my House, as I observed before. I did not keep from *Mr. Nash* on that Account, till after the Trial of the Gypsey.

Mr. Davy. Are you sure of that?

E. Lyon. I aver it. I know nothing to the contrary. I had no Dislike to him, till after that Trial.

Mr. Davy. During that Period of Time between your Return from *Enfield-Wash*, and the Trial of *Mary Squires*, did you ever hear *Nash* say any thing of his Disbelief of *Canning's* Story, or that he thought it improbable?

E. Lyon. Indeed, I did not.

Mr. Davy. Whether *Mr. Nash*, *Mr. Aldridge*, and *Mr. Hague*, when they went with you to *Enfield*, had not the same Evidence of the Truth of the Story, and all its Circumstances, as you had?

E. Lyon. I know the Coach stopped two or three Times; as for *Mr. Aldridge*, he was very little there; *Mr. Nash* was in the House, and saw as much as I did.

Mr. Davy. Why did not you subpoena those three Persons to give Evidence on the Trial of *Squires*?

E. Lyon. I was not concerned in the Thing, there were other Persons concerned.

Mr. Davy. Who were fixed upon as Prosecutors?

E. Lyon. I don't know.

Mr. Davy. Was you examined before the Grand Jury?

E. Lyon. No, I was not.

Mr. Davy. Did not you, on the 15th of *February*, set your Name to a Paper to encourage Contributions to carry on the Prosecution?

E. Lyon. There was my Name in Print to an Advertisement, when there were several Gentlemen together.

Mr. Davy. Did they make use of your Name without your Consent?

E. Lyon. No, they did not: They mentioned this; they thought, as I was the Master, it would

be more agreeable to put it in; I said, Gentlemen, if that is the Case, put it in.

Mr. Davy. Did not that contain a Reward for the apprehending two Men concerned in carrying her down to *Enfield-Wash*? and did you advance any Money towards paying that?

E. Lyon. I was half a Guinea; the rest were the same. As to paying in particular, that was not mentioned.

Mr. Davy. The Advertisement concludes with these Words: *Whoever will take or apprehend one, or either of them, &c.*

Francis Roberts, *Aldermanbury.*

Edward Lyon, { *Aldermanbury, the Girl's Master.*

Mr. Davy. Did you consent to the Publication of this Paper?

E. Lyon. I did.

Mr. Davy. Whether there was not a Subscription going on, in order to encourage her for her Virtue? Was you one of those?

E. Lyon. I did not go about to get her any Money; there were Persons that did.

Mr. Davy. Did you contribute to the Expence of the Prosecution of the Gypsey and *Wells* at the *Old-Bailey*?

E. Lyon. I did not act; I had no Concern in the Delivery of the Money; the Subscription was not made then; I subscribed nothing to that; what I did was since that.

Mr. Davy. How much did you contribute towards the carrying on the Prosecution of *Squires*?

E. Lyon. No more than that half Guinea then.

Mr. Davy. Did you give Evidence on that Trial of what passed at *Wells's* House?

E. Lyon. I did.

Mr. Davy. Do you think *Mr. Nash*, *Mr. Aldridge*, and *Mr. Hague*, could hear what passed as well as you?

E. Lyon. They could hear better than I.

Mr. Davy. Did you see them in the Room where she says she was confined?

E. Lyon. I cannot tell whether they were in the Room; I saw them in the House.

Mr. Davy. Why were the three not called to give Evidence against *Squires* and *Wells*, as well as yourself?

E. Lyon. I as much believed, that *Mr. Nash*, when I saw him in Court, came upon that Affair, as ever I believed any thing in my Life.

Mr. Davy. Did you at that Time believe he would give Evidence for or against the Gypsey?

E. Lyon. I believed he would against the Gypsey, as I did.

Mr. Davy. Was there no Club-day betwixt your going down to *Enfield-Wash* and the Trial?

E. Lyon. I cannot tell whether there was or not; if there was, I might not be at it. I remember going Home after the Trial was over: *Mr. Aldridge* sent his Servant after me, who said, his Master gave his Service to me, and desired to know how the Affair went: I said, They are both cast. I went directly to *Mr. Nash's*, and drank a Glass of Cyder, but do not know that I saw him.

Mr. Davy. Was you then angry with *Mr. Nash*?

E. Lyon. No.

Mr. Davy. When you was at Justice Tash-maker's, was George Squires there, and how was he dressed?

E. Lyon. He was; he then had his Great Coat on.

Mr. Davy. Was it put on in order for the Defendant to see whether that was the Man or not?

E. Lyon. I don't know that.

Mr. Davy. Did not you say, upon the Trial of Squires and Wells, that she said he looked more like the Man after he had that Coat on?

E. Lyon. She did say to that Purpose.

Mr. Davy. How came the Justice not to commit him?

E. Lyon. Why, we mentioned that it was a Pity they were not all committed.

Mr. Davy. Did you hear George desire he might be committed?

E. Lyon. No, I never did: So different from that, that when the Mittimus was writing, he looked over a Woman (and seemed to quiver a little) to see whether there was a Mittimus making for him, as I took it; but I did not hear him express a Word about it.

Mr. Davy. It seems, you believed the Girl's Story from the first Hearing?

E. Lyon. I did.

Mr. Davy. Did you take any Method, from that Time to this, to satisfy yourself about it?

E. Lyon. I got farther Evidence of the Story as far as I could, in questioning the Girl at Mr. Marshall's, as I mentioned before; I had no Doubt at all.

Mr. Davy. You bid her be careful; do you believe she was careful?

E. Lyon. I believe she was.

Mr. Davy. Then why did you desire her to recollect herself, to see if she was mistaken?

E. Lyon. Because there was such a great Clamour about it, and I was willing to ask her again.

Mr. Williams. Whether you did not give the Gentleman a true Answer before, when you told him you had been instrumental in bringing them to be discovered in the Advertisement of twenty Pounds?

E. Lyon. Yes, I had been, and would have turned out something.

Mr. Williams. My Lord, we are now to read the Letter that Mr. Nash owns to be his Hand-writing. — (To E. Lyon.) Is this the Letter that you received?

E. Lyon. This is it. (He takes it in his Hand.) It appears to have been wrote on the 10th of February.

Mr. Williams. Did not you think he was a Well-wisher to the Discovery of this Affair?

E. Lyon. Indeed I did, and all the Time afterwards, to the Time of the Trial.

Mr. Williams. How old is the Girl now?

E. Lyon. I believe about nineteen Years of Age.

(The Letter read.)

Mr. Lyon, Feb. 10, 53.

I am informed by Mr. Aldridge, who has been at Enfield, that if a Person be appointed there to receive Contribution, some Money would be raised in that Place for the unhappy poor Girl. I wish you Success, and am your's,

Gawen Nash.

Directed on the Back, To Mr. Lyon, Aldermanbury.

VOL. X.

Thomas Colley sworn.

T. Colley. I am Uncle to the Prisoner, and live at Saltpetre-Bank; I am a Glass-blower; on the 1st of January was Twelve-month, she came to my House, and stayed from Twelve o'Clock to about Nine in the Evening. She lived Servant then with Mr. Lyon. After we had supped, I and my Wife went along with her homewards, to the End of Houndsditch; we parted with her there.

Mr. Moreton. How was she dressed?

T. Colley. She had a Sort of a strip'd Gown on; I cannot tell the Name of it.

Mr. Moreton. Was she well and hearty at that Time?

T. Colley. She was.

Mr. Moreton. Where did she say she was going?

T. Colley. She told me she was going to her Master's, and was in her Way there when we left her.

Mr. Moreton. Had you any Reason in the World to doubt but she was going there?

T. Colley. No, I had not.

Mr. Moreton. How near, and what a-kin is she to you?

T. Colley. My Wife is her Father's Sister.

Mr. Moreton. Had you, upon your Oath, any Reason to believe that she was a breeding?

T. Colley. No, I had not.

Cross-examined.

Mr. Willes. What Time did she come?

T. Colley. About Twelve o'Clock at Noon.

Mr. Willes. Did any body come with her that Day?

T. Colley. No, no body.

Mr. Willes. Was she in perfect Health?

T. Colley. I never saw her better, as I know of.

Mr. Willes. What had you to Dinner?

T. Colley. Some of a cold Shoulder of Mutton and Potatoes, which was dressed the Sunday before.

Mr. Willes. Did she eat a hearty Dinner?

T. Colley. She eat as hearty as she could; she seemed to eat as hearty as I did.

Mr. Willes. This being New-year's Day, what did you give her to drink?

T. Colley. She drank some ten-shilling Beer, which I had in the House. I was at Work in the Afternoon.

Mr. Willes. Does your Wife drink Tea in the Afternoon?

T. Colley. She generally does, whether she has Company or not.

Mr. Willes. Have you seen your Niece drink Tea?

T. Colley. I have.

Mr. Willes. Do you think your Wife and she had Tea that Afternoon?

T. Colley. I do really believe they had.

Mr. Willes. Does your Wife generally have Bread and Butter or Toast with her Tea, or not?

T. Colley. She generally chuses Toast and Butter.

Mr. Willes. What Time did you return Home from Work?

T. Colley. At about Seven in the Evening.

Mr. Willes. What had you for Supper?

T. Colley. We had some of a Surloin of Beef roasted.

Mr. Willes. Did your Niece eat of that?

4 K

T. Colley.

T. Colley. She eat a small Quantity of that, but could not eat much.

Mr. Willes. What did she drink after that?

T. Colley. She drank a small Quantity of ten-shilling Beer.

Mr. Willes. How far did you go with her?

T. Colley. I went with her to the End of *Houndsditch*, almost to the *Blue Ball*.

Mr. Willes. Who went with you?

T. Colley. None but my Spouse and her.

Mr. Willes. Did you stop at all by the Way?

T. Colley. We did not.

Mr. Willes. What Sort of a Hat had your Cousin on at this Time?

T. Colley. She had a Sort of a chip, a white Hat.

Mr. Willes. Had you any other Entertainment, than what you have mentioned; either at Noon or Night?

T. Colley. No, we had no other.

Mr. Willes. Had you any Mince-pyes in your House?

T. Colley. No, I had not.

Mr. Willes. Do you know of her buying a Penny Pye?

T. Colley. I cannot tell where she came by that.

Mr. Willes. You are sure you gave her none at your House?

T. Colley. I had none, and gave her none.

Mr. Willes. You don't know what Money she had about her?

T. Colley. My Wife told me, she asked her to go with her into *Rosemary-Lane* to buy a Cloak, when I was at Work; but I cannot tell how much Money she had in her Pocket at that Time.

Mr. Moreton. Was the Toast buttered on both Sides, do you think? Here have been a great many Questions asked in order to force a Stool.

T. Colley. I cannot tell.

Mr. Moreton. When did you hear she was missing?

T. Colley. I heard that the same Evening; her Mother's Apprentice came to my House that same Night, and called and awaked me and my Wife out of our Sleep, as nigh as I can guess, between Eleven and Twelve o'Clock.

Mr. Moreton. How far is *Houndsditch* from *Aldgate*?

T. Colley. It may be about ten Yards; I told the Apprentice I parted with her at the End of *Houndsditch*.

Mr. Moreton. What did the Apprentice say?

T. Colley. He said, the Girl's Master had been at his Mistress's House, and wanted to know where she was, and upon that Account he came to know.

Alice Colley sworn.

A. Colley. I am Wife to the last Evidence, and Aunt to *Elizabeth Canning*; she came on New-year's Day was Twelve-month, about Twelve o'Clock, to our House, having a Holiday, and stayed till about Nine at Night; then my Husband and I went along with her as far as the Corner of *Houndsditch* towards her Master's House; there we parted with her.

Mr. Nares. Was she in good Health?

A. Colley. She was, in all Appearance, as well as I am now, to outward Appearance. I stood and leaned across a Post, and saw her go directly on her Way down *Houndsditch*; then we went Home to Bed, and about Twelve at Night the

Apprentice came, and asked, if *Betty* was here? My Husband said, No, I and my Wife went with her as far as *Houndsditch*, and there parted with her. Then the Apprentice went away, and came about Six in the Morning, and my Sister along with him; she knocked at the Door, and cry'd, *Let me in*, which I did; and the Apprentice went to the Glass-house to my Husband; she told me, *Betty's* Master had been with her once or twice, and they did not know where she was; we were all much surprized.

Cross-examined.

Mr. Gascoyne. Did she look to be very hearty?

A. Colley. She did.

Mr. Gascoyne. What had you for Dinner that Day?

A. Colley. We had the Remains of a cold Shoulder of Mutton and Potatoes.

Mr. Gascoyne. Did she drink Tea?

A. Colley. Yes, she did.

Mr. Gascoyne. What had you with your Tea?

A. Colley. We had Toast and Butter; she eat but a very little, not very heartily; but I cannot say I minded her much.

Mr. Gascoyne. Did you go to an Ale-house?

A. Colley. No, we did not. I took her once or twice to the Glass-house to see my Husband work some Time in the Afternoon.

Mr. Gascoyne. Was that before Tea, or after?

A. Colley. I cannot tell.

Mr. Gascoyne. Was any body else with you that Afternoon?

A. Colley. No, no body but she and I.

Mr. Gascoyne. Did you go with her to *Rosemary-Lane*?

A. Colley. No, I did not.

Mr. Gascoyne. Did you ever separate?

A. Colley. No; only when Supper was ready, I desired her to go and ask her Uncle to come to Supper. She went, and they came together.

Mr. Gascoyne. Did you send her any where else after that?

A. Colley. No, I did not, only to him to an Alehouse, the *Black Boy*, not above seven or eight Doors from me; and he came with her directly in a few Minutes.

Mr. Gascoyne. Did she tell you what Money she had to buy her a Cloak?

A. Colley. No, nor did I see what Money she had.

Mr. Gascoyne. Did you hear your Husband examined?

A. Colley. No, I did not.

Mr. Gascoyne. What Time did you part from her?

A. Colley. We parted with her at *Houndsditch* about half an Hour after Nine.

Mr. Gascoyne. Did you pass by a Pastry-cook's in going?

A. Colley. We did.

Mr. Gascoyne. Did you buy a Pye to treat your Niece?

A. Colley. No, I did not.

Mr. Gascoyne. Is the *Blue Ball* in *Houndsditch* in the Way to her Master's House?

A. Colley. It is.

Recorder. When did you see her first again?

A. Colley. On King *Charles's* Martyrdom, and never till then.

Recorder. Did she complain she had been confined?

A. Colley.

A. Colley. She did, and was in Bed, and very ill; and there was a Gentlewoman talking to her, named *Polly Lyon*; we did not care to ask her many Questions, she being very ill and in a low Condition; she could hardly speak, she was so very faint.

Recorder. Can you tell what it was occasioned by?

A. Colley. By being used very ill, and half starved.

Elizabeth Canning sworn.

E. Canning. I am Mother to the Girl; she was nineteen the 17th of last *September*: In *December* 1752 she lived with *Mr. Lyon* in *Aldermanbury*.

Mr. Williams. Did you know of her going to her Uncle's, *Mr. Colley's*?

E. Canning. I did; she called at my House, (it was on a *Monday*, New-year's Day) and told me, she was going to her Uncle.

Mr. Williams. Was there, or was there not, any Account brought to your House that Night, that she was not come back?

E. Canning. *Mr. Lyon*, her Master, came to my House just after Nine o'Clock, and said, he wondered she stayed so long: I was frightened out of my Wits: I sent my three Children into the Fields to see after her, and I sent my Apprentice to *Mr. Colley's*, her Uncle; they said, they had parted with her after Nine o'Clock at *Houndsditch*. I sent again in the Morning, and I went myself before it was light. *Mrs. Colley* was a-bed then: I said, Let me in, let me in: *Mrs. Colley* got up, and said, O lack, has not she come in yet? I said, No. She said, she left her there. Her Husband was called from the Glass-house; and I was ready to run distracted.

Mr. Williams. From that Time, to the 30th or 31st of *January*, did you hear any thing of your Daughter, or know where she was?

E. Canning. She came Home the Day before *King Charles's* Martyrdom, at a quarter after Ten o'Clock. I had advertised her in the Papers the first Time on my own Head; and then afterwards one *Mrs. Maynard*, a Turner's Wife, came to me, and said, Have you advertised her any more? I said, I did not think to do it; indeed it was out of my Power, it was very hard with me.

Mr. Williams. Did you hear any thing in Consequence of this Advertisement?

E. Canning. One gave me a Shilling, and another gave me a Shilling; so I advertised her two or three Times, and had no Account of her.

Mr. Williams. Upon your Oath, did you know any thing of her during the Time she was gone?

E. Canning. No, I did not.

Mr. Williams. On this Night, what Time did your Daughter come Home?

E. Canning. A quarter after Ten.

Mr. Williams. Where was you when she came Home?

E. Canning. I was partly getting into Bed, and my Apprentice was going to fasten the Door. He called and said, Here is somebody at the Door. I said, Who is it? He said, *Betty*. I said, What *Betty*? He said, Our *Betty*. My little Girl ran screaming up to the Chimney: I said, Feel her, feel her: I thought she was an Apparition. She came in in this Posture, (describing it, which was almost double, and walking side-ways, holding her

Hands before her.) When she came up so, I took her to be an Apparition.

Mr. Williams. What was her Dress?

E. Canning. She had a loose Bed-gown, and a Rag about her Head, and her Ear was bloody, and the Rag was bloody.

Mr. Williams. Did you, before she brought that Bed-gown Home, ever see it before?

E. Canning. No, never in my Life. I never wore such a Thing, so poor as it is with me.

Mr. Williams. Did any of your Neighbours come in, after your Daughter came Home?

E. Canning. After my Daughter came Home, the first that came in was *Mrs. Woodward*; my Apprentice *James* ran and fetched her, and *Polly Lyon* next Door to me; and the third Person was *Mrs. Myers*; then *Mr. Roberts's* Maid, and *Mr. Wintlebury*.

Mr. Williams. Now, when these People were come in, was your Daughter interrogated by them where she had been?

E. Canning. They asked her, where she had been? Her Master *Wintlebury* took her by the Hand, and said, Where have you been? She said, Sir, I don't know, but only by seeing my Mistress's Coach, the *Hertfordshire* Coach: She was not able to say the Place where she had been at.

Mr. Williams. Was she able to give an Account of the Persons?

E. Canning. No; she said, there was an old Woman, and two young ones, and she should know them again if she saw them, she thought.

Mr. Williams. Did she give an Account to you, what Sort of an old Woman it was?

E. Canning. No, she did not.

Mr. Williams. Did she give an Account what befel her, after her Uncle *Colley* had left her in *Moorfields*?

E. Canning. She said, she had been robbed, and by what Sort of Men, but she could not tell who they were; but that it was the same two Men that robbed her, that dragged her away.

Mr. Williams. Who asked her?

E. Canning. We all asked her. She gave an Account, that they pulled her along, and after they gave her a Blow, she could tell no more, and that she was confined where there was Hay in the Room; she said, she lived upon Bread and Water; that from the *Friday* to the *Monday* she had none to subsist on; and she gave an Account of the Mince-pye she bought for her Brother.

Mr. Williams. Did she give a Description of a Pitcher?

E. Canning. She said there was a broken Pitcher of Water, that very Night.

Mr. Williams. What was done to her that Night? Did you put her to Bed?

E. Canning. I did, and it was Five o'Clock in the Morning before I could get any Warmth in her Feet.

Mr. Williams. Look at this Pitcher, (which she did.) Is this your Pitcher?

E. Canning. It never was mine.

Mr. Williams. Did you carry that Pitcher down with you?

E. Canning. I did not. I pull'd off my own Stockings, and put them upon her; and in the Morning you might have wrung the Things about her, she was in such a Sweat. *Polly Lyon* brought

brought some Wine, and Mrs. *Woodward* and she mull'd it, and when she had some poured out, she could not swallow it; she was in an extreme deplorable Condition in regard to her Health.

Mr. *Williams*. The next Day was any body sent for of Skill in a physical Way?

E. *Canning*. Mr. *Bakler* the Apothecary's Man came in that Night; he wiped her Ear, and put a Plaster to it; he gave her some Drops, and then went away. His Master came in the next Morning; he ordered something for her, to give her, in Bottles; he asked her as to the State of her Health.

Mr. *Williams*. What is his Name?

E. *Canning*. His Name is *Bakler*.

Mr. *Williams*. Did the Apothecary give her any Thing in order to cause a Stool?

E. *Canning*. She had no Stool, till she had three Glysters; she continued extremely ill.

Mr. *Williams*. Had you the Advice of any other?

E. *Canning*. We had the Advice of Dr. *Eaton*. I had not Conveniency for her, having but one Room, and the Room which the Boy lay in; so she was carried from my House to a House over the Way.

Mr. *Williams*. How came there to be a Suspicion, that it was at Mother *Wells's* that she was confined?

E. *Canning*. She nominated the Name of Mother *Wills* or *Wells* that Night, she did not know which; that she heard them call it very plain; I believe, Mr. *Wintlebury*, Mr. *Scarrat*, Mrs. *Woodward*, and *Polly Lyon*, all were there at that Time.

Mr. *Williams*. Had any body that was there given her the least Hint of *Wills* or *Wells*, or any Name like it?

E. *Canning*. No Soul ever spoke to her, till her own Mouth mentioned it.

Mr. *Williams*. How was it first known or believed, that this Mother *Wills* or *Wells* lived at *Enfield-Wash*?

E. *Canning*. I don't know, Sir, because she had described it to be upon the *Hertfordshire* Road: Upon this, there was Application made to Mr. Alderman *Chitty*.

Mr. *Williams*. Who fixed it down to be the House of Mother *Wells* at *Enfield-Wash*?

E. *Canning*. I don't know; there were a great many People, and I was so concerned, I did not hear all their Talk.

Mr. *Williams*. Was there any Proposal to go down to *Enfield-Wash*?

E. *Canning*. There was; we went down on the *Thursday* after she came Home; she came Home on a *Monday* Night: There was Mrs. *Myers*, Mrs. *Garrat*, my Girl and me, and a young Child in my Arms: We went in a Chaise.

Mr. *Williams*. Do you recollect any body that met you on the Road before you got down?

E. *Canning*. Yes; Mr. *Adamson*.

Mr. *Williams*. Did he give you or your Daughter any, or what Description of the House of Mother *Wells*?

E. *Canning*. Upon my Oath, he did not.

Mr. *Williams*. Did he ask *Betty* any Questions?

E. *Canning*. His Horse would not stand still: He said, Drive, Coachman, I wonder you stay so long. The Coachman said, the Road was so bad, and such a Load he had, he could not go faster. He asked her, what sort of a Place she

was in, and if she could remember it? and she said, she could. Then he rode on, and we came after. When we came down there, I was only in the Parlour and Kitchen.

Mr. *Williams*. Upon your Oath, did you ever go up in that Room which goes up where your Daughter was confined?

E. *Canning*. I went up one or two Steps, and said, Oh! oh! this is the Place of my Child's Confinement; and a Gentleman shoved me, and said, Get you down, get you down.

Mr. *Williams*. Recollect, when you came back, did Mr. *Adamson* bid her tell what was in the Room, if she could?

E. *Canning*. I don't remember he did.

Cross-examined.

Mr. *Davy*. I think you say, one Mrs. *Maynard*, a Turner's Wife, applied to you to advertise her?

E. *Canning*. She did the second Time, but the first Time I did it myself.

Mr. *Davy*. (He shows her a Paper.) I should be glad to know whose Hand-writing this is.

E. *Canning*. I don't know whose Hand-writing it is.

Mr. *Davy*. When you advertised her, did you carry the Paper to the Press?

E. *Canning*. No; a young Woman did for me; her Name is *Mary Northan*.

Mr. *Davy*. Who wrote the Paper that *Mary Northan* carried to the Press?

E. *Canning*. I believe *Alice Colley*, her Aunt, wrote the first Advertisement; but I am not sure.

Mr. *Davy*. Did you see it, before it was carried?

E. *Canning*. I did, and read it.

Mr. *Davy*. Is this it?

E. *Canning*. I cannot tell.

Mr. *Davy*. Are you acquainted with Mrs. *Colley's* Hand-writing?

E. *Canning*. No, Sir, I am not.

Mr. *Davy*. The first was on the 4th of *January*, and the second was two Days afterwards, was it not?

E. *Canning*. I believe it was.

Mr. *Davy*. Who wrote the second?

E. *Canning*. Indeed I cannot tell, if you would give me all the World.

Mr. *Davy*. Did you write it?

E. *Canning*. No, Sir, I did not; Mrs. *Maynard*, the Turner's Wife, advised me to it.

Mr. *Davy*. Did she write for you?

E. *Canning*. No, she did not.

Mr. *Davy*. Who carried it to the *Advertiser*?

E. *Canning*. *Mary Northan* carried all the Papers.

Mr. *Davy*. Who delivered them to her?

E. *Canning*. I believe I did; I know I did the first.

Mr. *Davy*. Did you, or did you not, deliver the second Paper to be carried to the Press?

E. *Canning*. I did, I think; I am positive they were delivered in my Room, and in my Presence.

Mr. *Davy*. Who were in the Room at that Time?

E. *Canning*. Her Aunt *Colley* was at the first Time.

Mr. *Davy*. Who else?

E. *Canning*. I don't know there was any body, but the young Girl that carried it, and my Children, that Time.

Mr. Davy. Who were in the Room when the second Paper was delivered?

E. Canning. I believe none but the young Woman and my Children then.

Mr. Davy. Who had you the first Paper of?

E. Canning. My Sister *Alice Colley* wrote it in my Room.

Mr. Davy. Do you know her Hand-writing?

E. Canning. I have seen her write twice before; but don't know her Hand-writing. She wrote *Scowerer* instead of *Sawyer*.

Mr. Davy. I see upon it *Scowerer* is struck out, and *Sawyer* wrote: Who had you the second Paper of?

E. Canning. I believe it was done at the *White Lion*, at the End of *Fore-Street*, facing the Gully-hole, by either the Master or somebody there; *Polly Northan* can tell, for she stayed the Writing of it.

Mr. Davy. Now, had you at that Time heard any thing of your Daughter's being in *Bishopsgate-Street*?

E. Canning. Yes; I heard it of a Gentlewoman at an Oil-shop, the Sign of the *Two Jars* through *Bishopsgate*, towards *Cornhill*. She informed me, she heard a young Voice scream out in a Coach; but whether it was a Man's or a Woman's Voice, she could not tell.

Mr. Davy. How long was it before the 6th of *January*, the Time of sending the second Paper, that you had this Account from that Gentlewoman?

E. Canning. I don't know but it was a Night or two Nights before.

Mr. Davy. Then her screaming in *Bishopsgate-Street* was wrote in the Paper by your Order?

E. Canning. It was. I thought I would leave no Stone unturned to find her, and so I told *Polly Northan* of that.

Mr. Davy. Where had you the third Draught of an Advertisement?

E. Canning. That was wrote in my Kitchen by one *Spencer*; he did it by the Directions of the Gentlewoman at the Oil-shop for me, as I was advised by my Friends to do it.

Mr. Davy. Who advised you to put a Reward in?

E. Canning. It was her Uncle bid me do that, and said, he'd pay that, if he stripp'd his Skin.

Mr. Davy. Had you any Knowledge, at that Time, how much Money your Daughter had in her Pocket on the 1st of *January*?

E. Canning. Yes, I had; for I lent her a little Box to put the half Guinea in; for I was to have gone out with her on that Afternoon to buy her a Cloak and a Pair of Mittens.

Mr. Davy. When was that Agreement made to buy a Cloak together.

E. Canning. She made that Agreement with me, before she went from me to go to her Uncle's; she intended to return to me that Afternoon, but they would not let her return till she had a hot Supper, because they had nothing but cold Victuals for Dinner.

Mr. Davy. How much Money had she in her Pocket at that Time?

E. Canning. She had half a Guinea, three Shillings, and a Farthing. I saw the half Guinea put into the Box, and she put the three Shillings loose into her Pocket; and the Night she returned, she gave the Farthing to her Brother.

Mr. Davy. Was Thirteen and Six-pence Farthing all the Money she had?

E. Canning. It was.

Mr. Davy. When you advertised her the last Time, did you know then what Money she had in her Pocket?

E. Canning. Her Brother said, she had changed a Six-pence, and gave every one of them a Penny; and Mrs. *Lyon* told me, she had given her half a Guinea in Gold, and three Shillings in Silver.

Mr. Davy. Did your Child tell you she had changed Six-pence?

E. Canning. Yes; and that she did not give him his Penny, because he huffed her; but I find with his Penny she bought a Penny Mince-pye.

Mr. Davy. Was it a Half-penny or a Penny each she gave them?

E. Canning. I don't know whether it was a Half-penny, or a Penny a-piece.

Mr. Davy. Did she turn out her Pocket to you?

E. Canning. No, she did not. She shewed me the Money; half a Guinea, three Shillings, and a Farthing, is all I saw.

Mr. Davy. Did she tell you it was all she had?

E. Canning. No, she did not.

Mr. Davy. How many Children had you then?

E. Canning. I had five in the whole with her, with the Child in my Arms.

Mr. Davy. Who was to have had the Mince-pye?

E. Canning. My little Boy.

Mr. Davy. How came you to advertise that she had twelve Shillings and Nine-pence Half-penny?

E. Canning. I took it so, that she had but twelve Shillings and Nine-pence Half-penny.

Mr. Davy. Here is by way of Postscript, *Had in her Pocket twelve Shillings, Nine-pence Half-penny.*

E. Canning. I ordered it to be advertised; she had Six-pence more, for what I know.

Mr. Davy. I observe these Words, *twelve Shillings, Nine-pence Half-penny*, are scratched out on this Paper; how came that?

E. Canning. I fixed upon that Sum, thinking she might have changed some Momey to give Half-pence to the Children.

Mr. Davy. Who wrote the third Advertisement?

E. Canning. I can't tell who.

Mr. Davy. How came Part of the Writing on the Paper to be scratched out? And I observe that Part is not printed in the Daily Paper.

E. Canning. I can't give the Reason, if you would give me the World.

Mr. Davy. When it was delivered to *Polly Northan*, was it scratched out?

E. Canning. I don't know.

Mr. Davy. I find in this Paper, *This is the last Time of Advertising*; that also is scratched out, and both these are in different Ink and different Hands.

E. Canning. I don't know that I ordered her to be advertised, *This is the last Time of Advertising*. I could not have advertised her, had I not had Assistance, and my Neighbours put me upon it. I don't know that I ordered any thing to be scratched out.

Mr. Davy. Did you order *Polly Northan* to carry the Papers directly to the Printing-Office, or elsewhere?

E. Canning. To the Printing-Office.

Mr. Davy. After you missed your Daughter so long a Time, you took all the Means in your Power to know what was become of her?

E. Canning. Sure I did. I went to all the Agents and Places where I could think of, fearing some Casualty.

Mr. Davy. Did you go to *Wood-Street Compter*?

E. Canning. The People told me, if there were any Quarrels, they would take all away, Good and Bad together, was the Reason I went there.

Mr. Davy. Did you go to a Conjuror?

E. Canning. I did. They call him the Astrologer.

Mr. Davy. Where does he live?

E. Canning. He lives in the *Old-Bailey*.

Mr. Davy. What is his Name?

E. Canning. I don't know his Name: He had a black Wig over his Face.

Mr. Davy. When did you go to him?

E. Canning. I don't know when I went.

Mr. Davy. How long after your Daughter was missing?

E. Canning. I don't know. It was before she returned.

Mr. Davy. What was done there?

E. Canning. I told him I had lost my Child, and after he had got my Money, he bid me go Home and advertise her; he said, Make yourself easy, she'll come Home again.

Mr. Davy. Did he tell you when she would return?

E. Canning. No, he did not. He only asked me two or three Questions, and wrote, scribble, scribble, scribble along.

Mr. Davy. Did he tell you she was in the Hands of an old Woman?

E. Canning. No, he did not.

Mr. Davy. Recollect yourself.

E. Canning. I don't know whether he did or no: He might, for what I know.

Mr. Davy. Or what Misfortunes had happened to her?

E. Canning. No.

Mr. Davy. Whether he did not tell you she was in the Hands of an old black Woman?

E. Canning. The Word *black* I don't remember. I know he frightened me. When he shut the Door, and lighted the Candles up, he looked so frightful, I was glad to get out at the Door again.

Mr. Davy. What was his first Question?

E. Canning. I think, he first asked me, what I came for? I said, For my Child.

Mr. Davy. What were the other Questions?

E. Canning. I can't recollect them: It was about her going away. I believe he asked her Age.

Mr. Davy. Did he ask what State of Health she was in?

E. Canning. No, Sir.

Mr. Davy. Nor when was the last Time you saw your Daughter?

E. Canning. No.

Mr. Davy. Did he ask any thing about *Bishopsgate-Street*?

E. Canning. I believe I told him that; he bid me advertise her again, makes me think I did.

Mr. Davy. Did you tell him of a Dream you had?

E. Canning. No, I did not.

Mr. Davy. Had not you had a Dream or a Vision about it?

E. Canning. I don't know of any such Thing.

Mr. Davy. Or an Apparition?

E. Canning. No; but I had wandering Thoughts.

Mr. Davy. What did you mean just now, by saying you had wandering Thoughts?

E. Canning. I say, I never had Rest Night or Day, for my Thoughts were wandering.

Mr. Davy. How came you to imagine she was confined by an old Woman?

E. Canning. It never came into my Thoughts that she was; I more thought she was murdered in *Houndsditch*, and throwed into some Ditch there.

Mr. Davy. At this Time, upon your Oath, had you ever heard of the Name of *Mother Wells*, when you went to this Cunning Man?

E. Canning. I never heard of that Name till she came Home.

Mr. Davy. Did you mention the Name of *Mother Wells* to him?

E. Canning. No; I did not. He said, an old Woman, I believe.

Mr. Davy. Did you mention twelve Shillings, Nine-pence Half-penny to the Conjuror?

E. Canning. I believe I did not. I was not there long, for I was all of a Fright when I was there.

Mr. Davy. Was there any other Person there?

E. Canning. I saw no other besides himself; he let me in, and I went by myself.

Mr. Davy. Who advised you to go to him?

E. Canning. A great many of my Neighbours; one gave me Six-pence and another Three-pence, till I got a Shilling, and then I went directly.

Mr. Davy. What are their Names who gave you the Money?

E. Canning. I can't recollect any of them. I believe, a Gentlewoman that lived Cook or Chambermaid, who lodges at a House over the Way, her Name is *Mrs. Johanna*, being out of Place; I was wringing my Hands and tearing about, and she advised me to go to the Cunning Man. There were a Crowd of People about the Door, like a Fair about me.

Mr. Davy. You advertised her as lost or strayed: Why did not you advertise your Suspicions of her being murdered?

E. Canning. I never did.

Mr. Davy. Do you remember your saying, that you had pray'd to God, and had an Answer to your Prayers, so as to assure you that your Daughter would return?

E. Canning. I never had no Answer. I prayed by myself, and gave up Bills in the Church, both at *Aldermanbury* and *Cripplegate*, and at the Meetings and *Mr. Wesley's*. I did not leave a Meeting or a Place, where I could put up a Bill in.

Mr. Davy. Of what Religion are you?

E. Canning. I am of the Church of *England*, and was baptized at *Cripplegate*.

Mr. Davy. Did you not, about a quarter of an Hour before your Daughter returned, mention to the Apprentice, you had prayed for your Daughter's Return, and that she would return presently?

E. Canning. I said to *James*, The last Thing you do, pray for her: He said, he never went to Prayer but what he did. This was just before she came in. I bid him every Night pray for her, and I repeated it.

Mr.

Mr. Davy. Did you mention, that you believed your Daughter would be at Home that Night?

E. Canning. No, I did not.

Mr. Davy. Where has this Apprentice been ever since?

E. Canning. He has never laid a quarter of an Hour out of my House since.

Mr. Davy. Has there been any Care taken to prevent People seeing him, and his being asked Questions?

E. Canning. Here was a young Man came and said, he'd give half a Crown to see him; I was told this was some Scheme or Skit, and thought it would not be convenient, and so it was concluded he should not be seen. There were about a dozen Sawyers there.

Mr. Davy. Did they not impose another Person upon him, instead of the Apprentice?

E. Canning. Yes, they brought over another Sawyer, instead of him, to the young Man.

Mr. Davy. And so bilk'd him out of half a Crown?

E. Canning. They did.

Mr. Davy. How soon after your Daughter's coming in was it, that the Apprentice was sent for these People?

E. Canning. He help'd her into a Chair, and went out directly; and immediately came in Mrs. Woodward, Mrs. Myers, and Polly Lyon; and in two Minutes the House was full.

Mr. Davy. What Things of the Room at Wells's did your Daughter mention that Night?

E. Canning. She mentioned the Chimney and the Grate in the Room, and said, she took the Gown out of the Grate.

Mr. Davy. Did she mention any thing of the Jack-line, or Pulley, or broken Casement?

E. Canning. No.

Mr. Davy. Or Saddles, or Chest of Drawers?

E. Canning. No; she mentioned Hay, and a Pitcher.

Mr. Davy. Did she mention how much Hay?

E. Canning. No.

Mr. Davy. Did she say, she lay upon Hay?

E. Canning. She said, she did now and then, or always, I don't know which.

Mr. Davy. Where did she say the Hay was?

E. Canning. She said, it lay of a Lump in a Corner.

Mr. Davy. Did she mention it was spread out like a Bed?

E. Canning. No.

Mr. Davy. Had your Daughter had a Stool, did she say?

E. Canning. It is a constant Method with her to go a Fortnight without a Stool. I have another little Girl at Home now, that commonly goes sometimes ten and sometimes eleven Days without a Stool.

Mr. Davy. Did you ever mention this to any Doctor before the 1st of January?

E. Canning. When she was little, I mentioned it to Dr. Catridge, who lived in Aldermanbury.

Mr. Davy. Did they use to give her Glysters?

E. Canning. No; they used to give her Physic; that was when she was ill.

Mr. Davy. Was any Method used to occasion a Stool before the 1st of January?

E. Canning. No.

Mr. Davy. Had she her Health perfectly well?

E. Canning. She had; only she was troubled with Pain in her Head.

Mr. Davy. Had she a good Stomach to her Victuals?

E. Canning. She had a very little Stomach always; that they know where she lived.

Mr. Davy. Was she very thirsty?

E. Canning. She drank very little, without it was a Dish of Tea; but not plentiful of that.

Mr. Davy. When your Daughter came Home, and told you this Story, did you think it was a very strange one, or did you believe all she said?

E. Canning. No, I did not think it strange at all. I have known her, at Home, to live upon half a Roll a Day, when Things have gone hard with me.

Mr. Davy. Did she tell you in what Manner she escaped?

E. Canning. Yes; out of a Window, by pulling down a Board.

Mr. Davy. Did she mention any thing of a Pent-house?

E. Canning. No, she did not.

Mr. Davy. How did she look when she came Home?

E. Canning. Her Face was swelled, bloated, and black, and sodden, as if it had lain in Water, and her Arms black. She swallowed nothing hardly.

Mr. Davy. Did she eat any thing that Night?

E. Canning. No, nothing but a little Wine and Water; that she could scarce get down.

Mr. Davy. Were her Teeth loose?

E. Canning. No.

Mr. Davy. Nor no Soreness in her Mouth?

E. Canning. No.

Mr. Davy. Do you know Mr. Scarrat?

E. Canning. I have known him within this Twelve-month.

Mr. Davy. Did Scarrat come the first Night she came Home?

E. Canning. He did.

Mr. Davy. How lately, before your Daughter returned, had you seen him?

E. Canning. I never had any Acquaintance with him before that. I don't know but I might see him go by a good many Times; but I never spoke to him in my Life before; but I hear since, he is a Neighbour.

Mr. Davy. Did he tell you he had formerly been at Mother Wells's?

E. Canning. No, never.

Mr. Davy. Did you never hear him say he had jumped out of the Window himself?

E. Canning. No, I never did.

Mr. Davy. How many Rooms have you got in your House?

E. Canning. I rented the House in my Husband's Time; and before he died, Mr. Roberts took the two Garrets, the Chamber, and a little Room I had below, which he has put to his Compting-house, for which he paid seven Pounds per Year; and after that I desired he'd pay that to my Landlord. So I have but two Rooms.

Mr. Davy. Was any thing mentioned of Enfield-Wash, the Night of your Daughter's Return?

E. Canning. I don't know when it was first mentioned. I believe it was when they came all together the next Morning.

Mr. Davy. Was your Apprentice a Witness upon the former Trial?

E. Canning. No, he was not.

Mr. Davy. Was he subpoena'd?

E. Canning.

E. Canning. I don't know what a Subpœna is.

Mr. Davy. How came you not to mention the Grate, the Pitcher, nor the Bed-gown, on the Trial?

E. Canning. Because it was not asked me.

Mr. Davy. Was *Mr. Adamson* present when your Daughter mentioned the Hay?

E. Canning. He did not see her the first Night, nor till we went down to *Enfield*.

Mr. Davy. Was *Scarrat* there when Hay was mentioned?

E. Canning. I don't know, the House was full of People.

Mr. Davy. Do you know one *Mr. Dod*, a Surgeon?

E. Canning. I do not.

Mr. Davy. Did you ever hear your Daughter say, she was afraid to lie on Hay, fearing there should be a dead Man under it?

E. Canning. I never heard her mention that, to my Knowledge.

Mr. Davy. Did you never say so to any body?

E. Canning. No, not to my Knowledge.

Mr. Davy. Can your Daughter write?

E. Canning. She can a little; it is a sad Hand.

Mr. Davy. Can she write a Letter well enough for you to find out the Meaning of it?

E. Canning. She can hardly write at all.

Mr. Davy. Can she write her Name?

E. Canning. I believe she can; I have seen her write it.

Mr. Davy. How long was she at a Writing-School?

E. Canning. About a quarter of a Year.

Mr. Davy. When did you see any of her Hand-writing?

E. Canning. I do not know that I have seen her Hand-writing these six Years.

Mr. Davy. Look at this Paper, (*it was a Notice of Trial with her Name to it, the Name wrote by her*;) Is this Name her Hand-writing?

E. Canning. I believe it is her scribbling like.

Mr. Davy. Do you think, when your Daughter could write, she would only make her Mark?

E. Canning. I do not know for that.

Mr. Davy. I ask this, my Lord, because in her Information before Justice *Fielding*, there she only makes her Mark, and by this Paper I see she writes an exceeding good Hand. — (*To E. Canning.*) How was your Daughter's Head covered, when she came Home?

E. Canning. With this Rag upon her Head, (*holding the half Handkerchief in her Hand,*) and an old ragged Handkerchief she had in her Pocket tied over that, (*producing it.*)

Mr. Davy. Whether you did not swear upon the Trial of *Mary Squires*, that your Daughter had a Cap on when she came Home?

E. Canning. No, not to my Knowledge; she had no Cap on, to my Knowledge.

Mr. Davy to Thomas Gurney. You hear the Evidence this Woman has given; look at your Minutes, and give an Account of what she said in her Evidence on that Trial, as to the State and Condition in which her Daughter came Home, and particularly how she was dressed.

Gurney. She said, she had nothing on but a ragged Bed-gown and a Cap.

Mr. Davy. Read the Account she gave to that.

Gurney. She said, after she was missing from New-year's Day, she advertised her three Times. She came back on the Day before King *Charles's*

Martyrdom, about a quarter of an Hour after Ten o'Clock; she had nothing but a ragged Bed-gown and Cap on.

Mr. Davy. Were these her own Words?

Gurney. I have here mentioned the Person *she*, where she said *I*. I will not take upon me to say these are the very Words she made use of, or that she made use of no more Words; it is my Method, if a Question brings out an imperfect Answer, and is obliged to be asked over again, and the Answer comes more strong, I take that down as the proper Evidence, and neglect the other: For Instance, here have in the Course of this Trial been many Questions asked, which have not brought out any satisfactory Answer to the Council, which, when asked in other Words, and upon Recollection, have produced more proper Answers, which I have put down. It is not to be expected I should write every unintelligible Word that is said by the Evidence.

Mr. Davy. Are you certain the Witness on that Trial said, she had a Cap on?

Gurney. She did, or I had not put it down; and had she said a Handkerchief, I doubt not but I should have found it in my Minutes.

Alice Colley again.

Mr. Moreton. Look at this Paper, (*which was the first Advertisement sent to the Daily Advertiser*;) Is this your Hand-writing?

A. Colley. I believe it is.

Mr. Moreton. Here is the Word *Scowerer* scratched out, and another Word put for it over it; is that your Hand-writing?

A. Colley. That other Word is not my Hand-writing, nor the *P. S.* at the Bottom is not my Hand-writing.

Mr. Moreton. Look at this other Paper, (*which was the second Advertisement.*)

A. Colley. I did not write that; I never saw it before.

Mr. Moreton. Did you write the first of your own Accord, or did any body dictate to you?

A. Colley. Her Mother did; she told me what to write down.

Mr. Moreton. Were you two alone then?

A. Colley. I believe there were several Strangers by at the Time.

Mary Northan sworn.

Mr. Nares. Do you remember carrying any Papers to be printed in the *Daily Advertiser*?

M. Northan. I carried three.

Mr. Nares. Who wrote the second?

M. Northan. (*She takes it in her Hand.*) I cannot remember indeed who wrote it. I think *Mrs. Canning* sent me to the Corner of *Moor-lane*, at the *White Lion*, there it was wrote.

Mr. Nares. Who wrote the third?

M. Northan. I cannot justly remember that.

Cross-examined.

Mr. Willes. Did you go by yourself, or in Company with any body?

M. Northan. I went by myself.

Mr. Willes. How came you to put in these Words, *any Coachman*?

M. Northan. The Mother gave Directions to put in about the Coach, because she was a sober Body, and we thought she might be forced away in a Coach.

Mr.

Mr. Willes. How came the Circumstance of the Coachman to be inserted?

M. Northan. Because her Mother had been informed by a Gentlewoman in *Bishopsgate-street*, that she heard a Coach drive in great Hast, and a young Person screaming out in it; and that she had no body at Home, or she would have sent and stopped the Coach.

Mr. Willes. Was this Writing on the Back-side one of the Papers on it, when you carried it to the Printer?

M. Northan. I do not know; if it was read to me, I could tell better. (*It is read.*)

Note, *It is supposed she was forcibly taken away by some evil-disposed Person, as she was heard to screech out in a Hackney-Coach in Bishopsgate-Street: If the Coachman remembers any thing of the Affair, by giving an Account as above, he shall be handsomely rewarded for his Trouble.*

M. Northan. This was wrote at Mrs. Canning's House, I believe, but I cannot tell by whom; I did not mention about the Coachman at the *White Lion*.

Mr. Willes. During the Time it was in Mrs. Canning's House, was there any thing wrote in it, or on the Back of it, by any body there?

M. Northan. No, there was not.

Mr. Willes. Can you read?

M. Northan. I can hardly read at all. (*She looks at it.*) There was nothing on the Back-side when I carried it. (*It is read.*)

Elizabeth Canning went from her Friends between Nine and Ten on Monday Night, betwixt Houndsditch and Bishopsgate; fresh-colour'd, pitted with the Small-Pox, high Forehead, light Eyebrows, about five Foot high, well-set, had on a purple masquerade stuff Gown, black stuff Petticoat, a white chip Hat bound round with green, white Apron and Handkerchief, blue Stockings, and leather Shoes.

Mr. Willes. Is this all you mentioned to the Person who wrote?

M. Northan. It is, I believe.

Mr. Willes. Do you know who scratched out these Words? (*Any Coachman, who remembers taking up such a Person, and can give any Account where she is, shall have two Guineas Reward, to be paid by Mrs. Canning, in Aldermanbury-Postern, Sawyer, which will greatly satisfy her Mother.*)

M. Northan. The other is all I gave Directions for; I don't know who scratched this out.

Mr. Nares. I dare venture to say this Alteration was made by the Printer, for I observe he has altered the *English* and Spelling all the way through by the printed Paper; he saw there was some Suspicion of a Coachman put in in a stupid Manner, and he began to alter it on the Back-side, as it is put down.

Mr. Willes. Here is the third Paper; do you know who wrote this?

M. Northan. I don't know; Mrs. Canning sent me to carry it to the Printer.

Mr. Willes. Here are two Lines scratched out in this; how came that?

M. Northan. The Printer scratched them out, and said, they were of no Use.

Mr. Willes. In the third Letter here are two Lines scratched out: Were they so when you carried it? The Words are, *Had in her Pocket twelve Shillings, Nine-pence Half-penny.*

M. Northan. The Printer read it, and scratched them out; he said, it was not material to name the Money.

James Lord sworn.

J. Lord. I have been Apprentice to *Elizabeth Canning's* Mother between Six and Seven Years. I remember her being missing upon New-year's Day was Twelve-month. Mr. Lyon came to our House first about Nine o'Clock, then about Ten, to know whether Mistress know'd whether *Betty* was come Home to her House. Then I was sent directly to her Uncle *Colley's*, at *Saltpetre-Bank*: They were all a-bed: Mrs. *Colley* answered and said, they had left her about half an Hour after Nine o'Clock, upon the other Side *Aldgate* Church, in *Houndsditch*: Then, after that, I came Home and acquainted Mistress with it. There was great Inquiry about the Neighbourhood all Night long almost; I inquired of several Neighbours that Night.

Mr. Williams. When was the next Time you saw her?

J. Lord. On the 29th of *January*, the Night before King *Charles's* Martyrdom, about a quarter after Ten o'Clock, I was just going to make fast the Door, going to Bed; somebody lifted up the Latch; it goes with a Bit of String; Mistress was down upon her Knees a praying to see her Apparition, before she came in.

Mr. Williams. Did you see her down on her Knees before *Elizabeth Canning* came in?

J. Lord. She was down on her Knees some Time before ever she lifted up the Latch.

Mr. Williams. From the 1st of *January* to this Time, did you ever see the Mother on her Knees?

J. Lord. Yes, I have several Times, praying to God to hear somewhat of her, whether she was alive or dead.

Mr. Williams. This Prayer that you mention, and the Position of her being down on her Knees on the 29th, was that any thing particular, or was it no more than what she had done before?

J. Lord. It was the same as she had several Times done since she missed her Daughter?

Mr. Williams. You was giving an Account that *Elizabeth Canning* lifted up the Latch, and you was going to make fast the Door; go on, and give an Account in what Manner she came.

J. Lord. I had the Candle in my Hand, and was going to make fast the Door, and she came in: Mistress was praying: Mistress asked, who was there? I then looked her up in the Face, and thought it was somebody else came to inquire Tidings after her: I did not know her at first: After I had looked her in the Face again, she frightened me, because she looked in such a deplorable Condition. I said to Mistress, it was *Betty*: She said, What *Betty*? I said, Our *Betty*: Upon that Mistress fell in a Fit directly, and continued so some Minutes, I cannot say how long.

Mr. Williams. Upon your Oath, do you think it was a real Fit, or a sham Fit?

J. Lord. I never saw her in a Fit before; it was far from a sham Fit. When *Elizabeth Canning* came in, she was e'en almost spent: I took her by the Arms, and set her down in a Chair: She was e'en almost dead, as black as the Chimney-stock, black and blue: She was dressed up with an old Bit of an Handkerchief round her Head, and an old dirty ragged Bed-gown, what they properly call a Jacket.

Mr. Williams. Did you see what was upon her Head?

J. Lord. She had no Cap, nor Hat, nor Stays on; her Ear was cut, and all bloody.

Mr. Williams. Did it bleed as if it had been fresh cut?

J. Lord. It was a bleeding.

Mr. Williams. Was there any Blood upon the Handkerchief?

J. Lord. There was some Blood upon the Handkerchief that was about her Head: She had an old Handkerchief in her Hand, and a Bit of one upon her Head.

Mr. Williams. What Colour were the Handkerchiefs of?

J. Lord. One was white, but I cannot say for the other.

Mr. Williams. What Condition did she seem to be in with regard to her Health?

J. Lord. She seem'd to be almost spent, just gone; and if it had been much further, I believe she must have dropt down.

Mr. Williams. Who were in the Room at that Time?

J. Lord. There were none but my Mistress and Children in the Room. As soon as my Mistress recovered out of her Fit, I was ordered by Mistress to call Mrs. *Woodward*, *Polly Lyon* and Mrs. *Myers*: They came; she began to say where she had been confined; the Woman was either named *Wills* or *Wells*, at *Enfield-Wash*.

Mr. Williams. Was this that Night?

J. Lord. It was the same Night. So many People came in, I was obliged to keep the Door, to keep People out.

Mr. Williams. Who asked her where she had been?

J. Lord. My Mistress; and she said, she had been at *Enfield-Wash*, and heard the Name of *Wills* or *Wells*, she did not know which; for she heard them go backwards and forwards in the House, and heard them call her by her Name.

Mr. Williams. Did she say how she came to go there?

J. Lord. I was not much in the Room all the Time; I was obliged to keep the Door.

Mr. Williams. Then you cannot give an Account of what she said any further?

J. Lord. I know nothing further than that she is an honest, industrious, sober Girl.

Mr. Williams. Upon your Oath, do you, or do you not, know where *Elizabeth Canning* was from the 1st of *January*, to the Day before King *Charles's* Martyrdom, or any Part of that Time?

J. Lord. No; nor never set Eyes on her, or heard any thing where she was, till she came Home.

Cross-examined.

Mr. Gascoyne. What Time was you sent to *Colley's* House to inquire for the Girl?

J. Lord. It was between Eleven and Twelve at Night when I got there.

Mr. Gascoyne. How came you to sit up so late that Night?

J. Lord. *Mr. Lyon* came to our House, as nigh as I can guess, between Nine and Ten, (which is generally about the Time we go to Bed) and asked Mistress if she know'd any thing of her Daughter? She said, No, she thought she had been come Home to his House. The next Morning Mistress and I both went to *Mr. Colley's* to inquire.

Mr. Gascoyne. Did you not go to *Mr. Lyon's* first?

J. Lord. I think I did not.

Mr. Gascoyne. What Time in the Morning did you go to *Mrs. Colley's*?

J. Lord. I believe we went out about Six o'Clock.

Mr. Gascoyne. What Time did you get Home again?

J. Lord. I believe about Ten, and I went out to inquire after her again; I went one Way, and Mistress another, to the Neighbours about.

Mr. Gascoyne. To what Places?

J. Lord. I cannot tell all the Places; I did not go to any Place in particular.

Mr. Gascoyne. Where did your Mistress go?

J. Lord. I cannot tell; she did not tell me; she was just like a mad Woman.

Mr. Gascoyne. Did she order you to go to any Place?

J. Lord. I had no Directions from her to go to any Place in particular.

Mr. Gascoyne. When did you go to your Work?

J. Lord. I did not go to Work till after Dinner.

Mr. Gascoyne. What Time do you generally dine?

J. Lord. About One o'Clock.

Mr. Gascoyne. Was your Mistress at Home, when you came Home from Work?

J. Lord. I don't know.

Mr. Gascoyne. Was the Door open?

J. Lord. It always is.

Mr. Gascoyne. Was you in the Room when your Mistress first kneeled down, the Night the Girl came Home?

J. Lord. I was.

Mr. Gascoyne. Did she not advise you to kneel down?

J. Lord. She did not.

Mr. Gascoyne. What was you doing?

J. Lord. I was praying to God, in my Heart, that she might hear of her.

Mr. Gascoyne. What particular Conversation passed between you and your Mistress that Night, before she kneeled down?

J. Lord. I cannot say; I did not take Notice of all the Words.

Mr. Gascoyne. Did she say she had more Reasons for praying that Night, than at any other Time?

J. Lord. No, she did not.

Mr. Gascoyne. Upon your Oath, whether she did, before the Time she kneeled down, say she should see her?

J. Lord. No, she did not.

Mr. Gascoyne. Did she say she had any Reason to expect her that Week?

J. Lord. No.

Mr. Gascoyne. Did she say, she had some Knowledge, or somebody had told her she would come Home that Week?

J. Lord. She did not expect her coming Home that Night, or that Week, no more than any other.

Mr. Gascoyne. Do you know any thing of your Mistress's going to a Cunning Man?

J. Lord. I know nothing at all about it: She did not acquaint me with it.

Mr. Gascoyne. What, not of going to a Conjuror?

J. Lord. No; she does not acquaint me with all her Affairs.

Mr. Gascoyne. Did you never hear her mention

tion she had gone, or would go; to a Cunning Man?

J. Lord. No.

Mr. Gascoyne. Did you never hear your Mistress relate a Dream or Vision she had had?

J. Lord. No, not to my Knowledge.

Mr. Gascoyne. Are you sure?

J. Lord. I might, or might not, hear it; I cannot tell; the Care of my Mistress's Business lies upon me, and I have other Things to mind.

Mr. Gascoyne. Give me a direct Answer, whether you ever heard any such Transaction concerning your Mistress's going to a Conjuror, or having been there?

J. Lord. There was some Talk of a Cunning Man; but I did not know whether she had been with one.

Mr. Gascoyne. What was said of the Cunning Man?

J. Lord. I do not know: I remember there was mention made of a Cunning Man that lived in the *Old-Bailey*.

Mr. Gascoyne. What Cunning Man was that that lived in the *Old-Bailey*?

J. Lord. He used to tell Fortunes.

Mr. Gascoyne. How came this Cunning Man to be mentioned?

J. Lord. I believe Mistress or somebody did go to him, but I do not know who.

Mr. Gascoyne. For what did they go?

J. Lord. To hear somewhat of her Daughter.

Mr. Gascoyne. Did you hear this before or after she had been there?

J. Lord. I believe it was after.

Mr. Gascoyne. Who did you hear speak of it?

J. Lord. To the best of my Remembrance, it was my Mistress herself.

Mr. Gascoyne. What Conversation passed upon that, when your Mistress first informed you of it?

J. Lord. I did not hear a Word what he said to her; I heard no more than that she had been there.

Mr. Gascoyne. Was any body by at that Time?

J. Lord. I cannot say who were in the House at the Time, or whether there was, or was not, any body there but ourselves.

Mr. Gascoyne. Did you not inquire what the Cunning Man told her?

J. Lord. No.

Mr. Gascoyne. Did you ever hear any body else in Conversation speak of what was done at this Cunning Man's?

J. Lord. No; nor have I heard to this Time; I always believed he could not tell.

Mr. Gascoyne. Did you ever hear who your young Mistress was with?

J. Lord. No, I never did.

Mr. Gascoyne. Nor any thing about an old Woman?

J. Lord. No.

Mr. Gascoyne. Have you not heard your Mistress say any thing about it?

J. Lord. I have heard her say, she feared some rakish young Gentleman had caught her up, and so carried her away; and I have heard her say, she suspected she was murdered.

Mr. Gascoyne. What was your own Opinion?

J. Lord. I could not tell what to think.

Mr. Gascoyne. Did you ever hear your Mistress say she was taken away in a Coach?

J. Lord. No, I never did.

Mr. Gascoyne. As to the Night she came in, you

say the Door was upon the Latch, and your Mistress fell into a Fit; how came you not to be affrighted when she came in?

J. Lord. As soon as she came in, all the Blood of my Body was in my Face; and when I recovered myself, I said, it was our *Betty*.

Mr. Gascoyne. Was you ever affrighted at the Thoughts of an Apparition before?

J. Lord. No, I never was.

Mr. Gascoyne. How did she appear as to her Face?

J. Lord. She was black and blue on her Face and Arms, like the Stock of a Chimney.

Mr. Gascoyne. Did she look as if she had been beat?

J. Lord. She did, just in the same Manner; her Face and Hands would compare, for Blackness, to a Hat almost.

Mr. Gascoyne. Had she black Eyes?

J. Lord. I did not see that, any more than other Persons are.

Mr. Gascoyne. Did the Black and Blue seem to be Bruises?

J. Lord. The Colour of her Flesh was next a-kin to the Colour of Beating.

Mr. Gascoyne. How long did she continue so black and blue?

J. Lord. I was kept out of the Room, and a Doctor attended her; it was not so proper for me to go there.

Mr. Gascoyne. Can you remember, the Day she went to her Uncle's to Dinner, what Time she was to have come back again?

J. Lord. Yes, towards the Evening, and go with her Mother and buy a Cloak.

Mr. Gascoyne. What Time did she call at your House?

J. Lord. About Eleven o'Clock.

Mr. Gascoyne. When she came Home, what had she on as to Cloaths?

J. Lord. She had a Piece of an old Handkerchief about her Head, and a black Petticoat, I believe an upper one; I think it was the same she went away with. She had nothing over her but that Jacket.

Mr. Gascoyne. How many Petticoats had she on?

J. Lord. I can't say that.

Mr. Gascoyne. Did the Petticoat look clean or dirty?

J. Lord. It looked as if it had been draggled in Country Dirt, with Dirt and Mud.

Mr. Gascoyne. How do you know the Difference between Country Dirt and *London* Dirt?

J. Lord. Because *London* Dirt is black, and the other lighter.

Mr. Gascoyne. Did you see the Ear was fresh bleeding?

J. Lord. It was.

Mr. Gascoyne. Have you ever been examined before you came into this Court?

J. Lord. No.

Mr. Gascoyne. Did you ever make your Affidavit before?

J. Lord. No; I never was examined upon Oath before.

Mr. Gascoyne. Look at this Bed-gown.

J. Lord. This is the Bed-gown she came Home in, the Day before King *Charles's* Martyrdom.

Mr. Gascoyne. Did you ever see it before you saw it upon her, the Night she came Home, on the 29th of *January*?

J. Lord.

J. Lord. No; I never did.

Mr. Gascoyne. Is it your Mistress's?

J. Lord. No; I am positive it is not.

Mr. Gascoyne. What Reason have you to say that is the Bed-gown?

J. Lord. It looks like it; I am almost positive to it. I saw it the next Day after it was pulled off.

Mr. Gascoyne. Did you make your Inquiry any other Day, after the second Day she was missing?

J. Lord. No; I kept on with my Mistress's Business.

Mr. Gascoyne. Upon your Oath, do you believe your Mistress did know where she was.

J. Lord. Upon my Oath, I am positive, if my Mistress had known where she was, she would have fetched her Home, wherever she was.

Mr. Gascoyne. Did your Mistress say, she expected to see her on the Sunday Night?

J. Lord. No, she did not.

Mr. Gascoyne. In what Position was she when the Girl came in?

J. Lord. She was on her Knees by the Bed-side.

Mr. Gascoyne. Did you ever hear she expected her Home that Night, or was told so by the Cunning Man?

J. Lord. No.

Robert Scarrat sworn.

R. Scarrat. I heard *Elizabeth Canning* was come Home on the 29th of *January*, at Night; and as I had never seen her, or spoke to her in my Life, to my Knowledge, I went in out of Curiosity to see her.

Mr. Moreton. Had you heard before, she was missing?

R. Scarrat. I had, the very next Day after she was missing.

Mr. Moreton. What passed after you went in?

R. Scarrat. I was there some Time before she spoke a Word. Mr. *Wintlebury* came in after me: He said, *Bet*, how do you do? She said, O Sir, you don't know what I have suffered. He asked her, where she had been? She said, she had been on the *Hertfordshire* Road. He asked her, how she came to know that? She said, she saw the Coachman, that used to drive her Mistress into *Hertfordshire*, go by. She was asked, how far she might have been in the Country? She said, it might be about nine or ten Miles.

Mr. Moreton. Did she give any Reason for that?

R. Scarrat. I did not hear her. I asked her, if she knew the Name of the Person; and said, I'll lay a Guinea to a Farthing, she has been at *Mother Wells's*, for that is as noted a House as any is: She said, her Name is *Mother Wills* or *Wells*.

Mr. Moreton. Was that Answer after you had said you would lay a Guinea to a Farthing she had been at *Mother Wells's* House?

R. Scarrat. It was. I asked her about the House: She said, she had been confined in a longish, darkish Room, and saw the Coachman thro' the Crack of the Window, and that there were some Boards nailed over it. I asked her, whether the Window fronted the Road? She said, it did not; and when she got out, she turned down a little Lane, and then turned into the Fields on her right Hand. I asked her, if she took Notice if any of those Fields were ploughed up? She said, she believed there was. I asked her, when she was in them Fields, on which Hand was the Road?

She said, on the right Hand coming to *London*. I asked her, when she came out of these Fields, whether she observed coming over a little Brook? She said, she did. I asked her, if she thought it was a Tan-house? She said, she believed it was. I said, it was Mr. *Neal's*, a Tanner, at *Enfield-Wash*.

Mr. Moreton. Did you know that Road?

R. Scarrat. I did very well; and that there was such a House, and what Sort of a Character it bore, that it was a very bad House. She said, she met a Man, and asked her Road to *London*. She said, she had been robbed, and described the Person that cut her Stays off to be a tall, black, swarthy Woman.

Mr. Moreton. Who asked that Question?

R. Scarrat. It was asked, but I can't tell by whom: I said, I had seen *Mother Wells*, and, to the best of my Knowledge, that Description did not answer to her.

Mr. Moreton. Did she tell you any thing else?

R. Scarrat. She said, there were two young Women, one with black Hair and the other fair; stood laughing at her, while her Stays were cutting off.

Mr. Moreton. How did she appear to be for Health?

R. Scarrat. She appeared to be very wake and feeble, sitting on a little Stool: To the best of my Knowledge, she had on a dirty Bed-gown and black Petticoat, and a foul Cap of her Mother's. I went down to *Enfield-Wash* with Mr. *Wintlebury* and Mr. *Adamson* on the 1st of *February*: The People were all taken into Custody.

Mr. Moreton. Did she give an Account of any particular Things where she had been confined?

R. Scarrat. She described a black Jug, broken about the Neck, that might hold about four or five Quarts; and she said, she believed there might be about four Quarts of Water in it, and the Jug was left in the Room when she came away; that she had some Bread, but it was so hard, she was forced to dip it in the Water.

Mr. Moreton. Who was the first that went into the Room?

R. Scarrat. I believe several of her Friends had been up in the Room before she came down.

Mr. Moreton. Upon your Oath, when did you see the black Pitcher first?

R. Scarrat. Upon my Oath, I had never seen it, till I saw her fix upon it in the Room.

Mr. Moreton. Was you there when she was in the Parlour?

R. Scarrat. She was brought into the Parlour, supported by two Men. I was in the Parlour then. We made them all sit down, that is, the People that were taken up. The Room was full of Neighbours and People that went down: *Susannah Wells* was on the left Hand of the Fire, and *Mary Squires* sitting by the Fire, with her Head and Knees together. *Canning* looked very hard at her; and whether any body bid her look up, I can't say; but she fixed upon her, and said, That is the Woman that cut off my Stays, and pointed to her. The Gypsie got up, and said, Dear Madam, don't swear my precious Life away. *Canning* said, I know you very well, I know you too well, to my Sorrow. She was asked, if she knew any body else in the Room, and if she knew a young Man, which was *George Squires*: She said, she did not say she did. She pointed to the Gypsie's Daughter and *Virtue Hall*, and said, the young Woman, meaning

meaning the Gypsey's Daughter, was leaning on the Dresser when her Stays were cut off, and *Virtue Hall* was standing by her, when she went into the Room. She was then carried up the Stairs that front the Door. I saw her in one Room, but did not in the first she went into; that was the last she went into there. Coming down Stairs, she said, there was another Room; when she came into the Kitchen, the Door was shut; she said, Through that Door is the Place where I was confined; then the Door was opened, and she went up.

Mr. *Moreton*. Was you one of the first that went up?

R. *Scarrat*. No, I was not. I saw her there with the black Jug in her Hand. She said, that was in the Room. She looked round, and found a Tobacco-mould, and said, that was there when she was there. She said, an old Cask and a Saddle or two she left there.

Mr. *Moreton*. Was she positive that was the Place?

R. *Scarrat*. She pointed to the Window, and said, she broke out at that Window.

Mr. *Moreton*. Did you go before Justice *Tasb-maker*? What Account did she give there?

R. *Scarrat*. I did: She gave the same Account there, to the best of my Knowledge, as she did here. When the People were taken up, *George Squires* had a Great Coat on, and a slouched Hat; he pulled the Coat and Hat off; he was made to put them on again in the House, before he got into the Cart to go before the Justice; but *Canning* would not swear to him.

Mr. *Moreton*. Had he the Hat and Coat on at the Justice's?

R. *Scarrat*. He had.

Mr. *Moreton*. Upon your Oath, did you not, from the 1st of *January* to the 29th, know where she was?

R. *Scarrat*. I never saw her, to the best of my Knowledge, till she came Home.

Mr. *Moreton*. Do you know, at this Hour, any body that does know where she was?

R. *Scarrat*. No, I do not.

Q. from a *Juryman*. Which Window did she point to, where she said she got out at?

R. *Scarrat*. To the End Window.

Cross-examined.

Mr. *Davy*. Do you know *Wells's* House?

R. *Scarrat*. I do, by passing and repassing.

Mr. *Davy*. Had you ever been in her House before *January 1753*?

Mr. *Moreton*. Though you should stigmatize yourself, let not the Truth go undiscovered.

R. *Scarrat*. I have been there.

Mr. *Moreton*. How long ago is it, that you was in her House?

R. *Scarrat*. It is some Years ago.

Mr. *Davy*. Was you ever in the Hay-loft?

R. *Scarrat*. I never was.

Mr. *Davy*. Are you very certain of that?

R. *Scarrat*. I am.

Mr. *Davy*. Did you never jump out at a Window in that Room?

R. *Scarrat*. No, I never did; I don't like jumping so well.

Mr. *Davy*. Where did you live, when you went there?

R. *Scarrat*. I was then Servant to Mr. *Snee*.

Mr. *Davy*. How often was you there, and when?

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R. *Scarrat*. I was there once or twice, about four or five Years ago.

Mr. *Davy*. With whom?

R. *Scarrat*. With two or three Friends.

Mr. *Davy*. Men or Women?

R. *Scarrat*. Men.

Mr. *Davy*. Were there no Women?

R. *Scarrat*. No.

Mr. *Davy*. Did you never take a Girl there?

R. *Scarrat*. No, never in my Life.

Mr. *Davy*. Was you never there with a Woman?

R. *Scarrat*. No.

Mr. *Davy*. When was the first Time you was in the Hay-loft?

R. *Scarrat*. I never was in it, till the Time I went down with the Girl and them.

Mr. *Davy*. What Rooms in the House had you been in before?

R. *Scarrat*. The Kitchen and Parlour, and no other.

Mr. *Davy*. Was you never above Stairs?

R. *Scarrat*. No, never before in my Life, till I went down with them, and they were taken in Custody. I never knowed there was such a Room, as the Place where the Prisoner was, till then.

Mr. *Davy*. Were there a good many People in the Room, when the Girl told you this?

R. *Scarrat*. Yes.

Mr. *Davy*. How came you to pitch upon the House of Mother *Wells*.

R. *Scarrat*. I judged it might be that House, because I did not know any other House on that Road so likely.

Mr. *Davy*. Did you make that Reply before you asked any Questions?

R. *Scarrat*. I said that, when she said she had been on the *Hertfordshire* Road.

Mr. *Davy*. And would you then have laid so much Odds?

R. *Scarrat*. Though I said it, I don't know that I should have laid it.

Mr. *Davy*. What Name did she say she heard mentioned?

R. *Scarrat*. She said, she heard the Mistress of the House called *Wills* or *Wells*.

Mr. *Davy*. Was the Apprentice by, when she mentioned this?

R. *Scarrat*. I don't know that he was. Mr. *Wintlebury* was the first Person that she spoke to, as I heard. I was in the Room some Time, and some People spoke to her; but she spoke to none, before she did to him.

Mr. *Davy*. Had you any Acquaintance with Mrs. *Canning*, or her Daughter?

R. *Scarrat*. No, I had not.

Mr. *Davy*. What led you to go to *Canning's* House, having no Acquaintance?

R. *Scarrat*. A Maid-servant came into the House where I bedded and boarded, and said, Betty *Canning* is come Home, Betty *Canning* is come Home; which was the Cause of my going there.

Mr. *Davy*. Then you mentioned several Things to her very familiarly?

R. *Scarrat*. I did.

Mr. *Davy*. What were her Answers to them?

R. *Scarrat*. Her Answers were, Yes, — she believed, — or, she was sure, — or to that Effect.

Mr. *Davy*. Did you, in the Examination of this Girl, recollect as many Particulars of the House and about it, as possibly you could?

R. *Scarrat*. I did.

Mr. Davy. Was you able to describe the House, the Road, the Pond, &c.?

R. Scarrat. I did not mention the Pond, nor nothing in the House. I mentioned the Tanner's House, and a little Bridge that crosses the Brook; and asked her about the Road, and the Field, whether it was ploughed up.

Mr. Davy. Did you mention one single Particular, to which she answered in the Negative?

R. Scarrat. That Question is answered; she said the Road was so, and the Fields so.

Mr. Davy. Did it never occur to you, to ask her about any thing that you knew was not there, in order to be better satisfied, whether she had been there?

R. Scarrat. I don't know I thought of such a Thing.

Mr. Davy. How soon after she was taken out of the Chaise was it, that you saw her at *Enfield-Wash*?

R. Scarrat. It was in the Room where the Prisoners were.

Mr. Davy. When she came into the Kitchen, did she immediately fix upon that Door, and say, This is the Door of the Room, wherein I was confined?

R. Scarrat. She said that herself; no body spoke a Word to her.

Mr. Davy. Suppose she had been in the Kitchen, and the Door open, might she not be more positive, than if it was shut?

R. Scarrat. More positive, to be sure, she must be.

Mr. Davy. If you had been with her in the Kitchen before, and the Door had been open, and she had not fixed upon the Room, and after that had been carried to all the other Rooms in the House, should you not have doubted of her Veracity?

R. Scarrat. I don't doubt, but she would have fixed upon that Room at first.

Mr. Davy. Attend to the Question. Supposing it had happened, as I have put it, whether that would have led you to doubt her Sincerity?

R. Scarrat. I should.

Mr. Davy. Did you hear what she said before Mr. Alderman *Chitty*?

R. Scarrat. I did.

Mr. Davy. Did she give the same Account on the Trial of *Squires*, she did there?

R. Scarrat. She did, to the best of my Knowledge; but I cannot remember in particular.

Mr. Davy. Did she, before the Alderman, mention any thing of passing thro' *Bishopsgate-Street*?

R. Scarrat. No, not to my Remembrance.

Mr. Davy. Do you remember, she told him of four, five, or six Pieces of Bread, or twenty-four?

R. Scarrat. I don't remember any particular Pieces of Bread.

Mr. Davy. Do you remember any Question of an old Stool?

R. Scarrat. Not to my Knowledge.

Mr. Davy. Nor an old Table?

R. Scarrat. No.

Mr. Davy. Nor old Pictures over the Chimney?

R. Scarrat. No.

Mr. Davy. Nor Hay?

R. Scarrat. No, not to my Knowledge.

Mr. Davy. Can you remember all the Particulars of her making her Escape?

R. Scarrat. No, I cannot.

Mr. Davy. Was you examined as a Witness on the Trial of *Mary Squires*?

R. Scarrat. I was.

Mr. Davy. In the Evidence you gave, did you not swear, that you had heard her examined before the Sitting Alderman, and that before him she had given the same Account as on that Trial?

R. Scarrat. It corroborated, to the best of my Knowledge. I swore to the best of my Knowledge, she did.

Mr. Davy. Did you do that, in order to make her whole Story the better to be believed?

R. Scarrat. I spoke to the best of my Knowledge, and so I do now.

Mr. Davy. Did you soften your Evidence, by saying you believed?

R. Scarrat. I don't remember that I spoke generally to it. I cannot keep such Things in my Head now.

Mr. Davy. Did you ever hear her mention any Hay in your Life?

R. Scarrat. I never did.

Mr. Davy. Did you not hear her say upon the Trial, there was Hay in the Room?

R. Scarrat. I don't remember she did.

Mr. Davy. Was you in Court the whole Time of the Trial?

R. Scarrat. I was.

Mr. Davy. Have you read the Sessions-Paper since?

R. Scarrat. No, I have not.

Mr. Davy. Did you hear her say before the Alderman, how she made her Escape?

R. Scarrat. I did; in getting out through a Window.

Mr. Davy. As you was in Court all the Time, you must hear what she said of the Manner of making her Escape?

R. Scarrat. She gave the same Account then, as before the Alderman, to the best of my Knowledge. Then I remembered her Evidence before the Alderman a great deal better than I can now.

Mr. Davy. Do you think you could then have repeated every Particular?

R. Scarrat. I cannot say I could; it corroborated, to the best of my Knowledge.

Mr. Davy. Was not the Evidence she gave on the Trial contradictory to what she gave before the Sitting Alderman?

R. Scarrat. I cannot exactly remember it.

Mr. Davy. Did you, or did you not, tell Mr. Alderman *Chitty*, the Person she described could not be *Mother Wells*?

R. Scarrat. I did not mention such a Thing to him.

Mr. Davy. Did she take the Person that cut her Stays off to be the Mistress of the House?

R. Scarrat. She did.

Mr. Davy. Did she know who was the Mistress of the House?

R. Scarrat. No, she did not.

Mr. Davy. Did you know there was a Warrant granted?

R. Scarrat. I did.

Mr. Davy. Against whom was it granted?

R. Scarrat. Against *Mrs. Wells* in particular, for cutting off her Stays.

Mr. Davy. Was you not sure it could not be *Mother Wells*, according to *Canning's* Description?

R. Scarrat. No, I was not. I said, it might not be her.

Mr. Davy. How came you to remember every Particular of what was said at the House of *Canning*, and forget what passed before the Alderman?

R. Scarrat. We were a great while before the Alderman, and I could not contain it in my Head.

Mr. Davy. Did you know the Outside of *Wells's* House?

R. Scarrat. I did.

Mr. Davy. Did you not know whether there was a Pent-house, before you went down?

R. Scarrat. I did not.

Mr. Davy. Did you, or did you not, before Mr. Alderman *Chitty*, hear her say she lay on bare Boards?

R. Scarrat. She said, she had no Bed to lie upon: I don't remember hearing her say she did lie down.

Mr. Davy. Do you remember you heard her say there was a Grate in the Room?

R. Scarrat. I do not remember that.

Mr. Davy. Did you hear her mention a Saddle?

R. Scarrat. To the best of my Knowledge, she described a Saddle and an old Cask; but I cannot say.

Mr. Davy. How did she describe the Room, when you went down with her?

R. Scarrat. To the best of my Knowledge, she said it was a long, darkish Room, but I am not positive; but I am positive she said it was a long, darkish Room, before she went down.

Mr. Davy. Where did she say that?

R. Scarrat. I believe, before Alderman *Chitty*; if she did not there, it was in her Mother's House.

Mr. Davy. Are you positive to all the Questions you asked her at her Mother's, and her Answers?

R. Scarrat. I am.

Mr. Davy. Did you write any of it down?

R. Scarrat. No, I never did.

Mr. Davy. Did she describe the Jug before the Alderman?

R. Scarrat. I believe she did.

Mr. Davy. And the Bread?

R. Scarrat. I believe she did.

Mr. Davy. How many Pieces of Bread?

R. Scarrat. I do not remember how many Pieces; but it was about a Quartern Loaf.

Mr. Davy. Are you still in the Service of Mr. *Snee*?

R. Scarrat. No; I have left it three Years this Month, Old Stile.

Mr. Davy. In what Employment are you now?

R. Scarrat. I work for Mrs. *Waller* in the *Old-Change*. I am a Hartshorn-rasper, and live at Mr. *Carlton's*, a Potter, in *Aldermanbury-Postern*.

Mr. Davy. How long have you lived there?

R. Scarrat. I have boarded in that House about a Year and half: I boarded there before I lodged there.

Mr. Davy. Have you boarded or lodged at any other House, since this Affair at *Enfield-Wash*?

R. Scarrat. No, I have not.

Mr. Davy. How far is Mr. *Carlton's* from Mr. *Lyon's* House?

R. Scarrat. Mr. *Lyon* lives in *Aldermanbury*, and the other is in *Aldermanbury-Postern*; they are about seven or eight hundred Yards Distance.

Mr. Davy. How far is Mr. *Carlton's* from Mrs. *Canning's* House?

R. Scarrat. It is next Door but one.

Mr. Davy. Whose Servant came and told you *Elizabeth Canning* was come Home?

R. Scarrat. It was the Apothecary's Maid.

Mr. Davy. Did you lodge there then?

R. Scarrat. I did; and believe I had bedded and boarded there a Year before.

Mr. Davy. Did you lodge there the whole Month of *January*?

R. Scarrat. I did, and did not lie out of the House one Night.

Mr. Davy. And work'd for Mrs. *Waller* then?

R. Scarrat. I did.

Mr. Davy. Did you work every Day?

R. Scarrat. No, I did not; but I did that Month from the 5th to the 27th, to the best of my Knowledge.

Mr. Davy. Where was you from the 1st to the 5th of *January* 1753?

R. Scarrat. I was backwards and forwards at Mr. *Carlton's*; I eat and drank there.

Mr. Davy. Are you certain you dined at Home from the 1st to the 5th?

R. Scarrat. No, I am not, it being Holiday-Time.

Mr. Davy. Where did you dine the 1st?

R. Scarrat. At Mr. *Carlton's*.

Mr. Davy. What did you do after Dinner?

R. Scarrat. I went to see a Play in *Covent-Garden* House; but being too late, the House was full, we returned Home between Nine and Ten at Night.

Mr. Davy. Who were with you?

R. Scarrat. Mr. *Knowles*, a Coal-merchant, and his Wife. We tried to get in at *Covent-Garden*, then at *Drury-Lane*. When we found we could not, we made the best of our Way to Mr. *Knowles's* House, and there I stayed.

Mr. Davy. How long did you stay there?

R. Scarrat. I might stay there till almost Nine o'Clock; and then I went Home with Mr. *Carlton's* Daughter, who is since my Wife.

Mr. Davy. How long have you been married to her?

R. Scarrat. Better than eleven Months.

Mr. Davy. I hope you had your Health at that Time?

R. Scarrat. I had, to the best of my Knowledge.

Mr. Davy. Was you not under the Care of any Surgeon, or Quack?

R. Scarrat. No, I was not.

Mr. Davy. Was you perfectly well at that Time?

R. Scarrat. I cannot give an Answer for a Cold, or the like.

Mr. Davy. At what Time of the Day did you go out on the 1st of *January* after Dinner?

R. Scarrat. I went out about Three o'Clock.

Mr. Davy. At what Time was you at Mrs. *Carlton's* at Night?

R. Scarrat. I was there before Ten o'Clock.

Mr. Davy. How did you dispose of yourself on the 2d of *January*?

R. Scarrat. I don't know whether I was at Work, or not.

Mr. Davy. I thought you said you did not go to Work till the 5th.

R. Scarrat. I carried Work Home on the 5th; on the 2d in the Evening I was at a Club in the *Old-Bailey*, and I can bring the Club-Book to satisfy you of that.

Mr. Davy. How came you to be so extremely particular at this Distance of Time, where you was on the 1st and 2d of *January*?

R. Scarrat.

R. Scarrat. By looking over Mrs. *Waller's* Book.

Mr. Davy. What led you to be so particular in all these Circumstances?

R. Scarrat. I don't know any thing in particular.

Mr. Davy. Did you expect to have been asked any thing about it in this Cause?

R. Scarrat. I have heard that it should be alledged against me, that I took the Girl away.

Mr. Davy. When was it at first suggested?

R. Scarrat. I cannot remember that; it is since the Time of finding the Bills against the *Abbotsbury* People; but I cannot say the Time I did first hear it.

Mr. Davy. How long have you been acquainted with Mother *Wells*?

R. Scarrat. It is four or five Years ago.

Mr. Davy. Have you been in her House, since you left Mr. *Snee's* Service?

R. Scarrat. No, not in her House, nor near her House since; that is three Years ago.

Mr. Davy. Had you never a Quarrel with Mother *Wells*?

R. Scarrat. No.

Mr. Davy. Upon your Oath, did you never threaten that you would be revenged on her?

R. Scarrat. No; upon my Oath, I never expressed any such Words.

Mr. Davy. Where does Mr. *Snee* live?

R. Scarrat. He has a Country-House at *Edmonton*.

Mr. Davy. How often have you been in the House of Mother *Wells*?

R. Scarrat. I have once or twice.

Mr. Davy. Will you venture to swear, that you have not been there oftener than twice?

R. Scarrat. I may have been there two or three Times.

Mr. Davy. Have you been there no more than three Times, upon your Oath?

R. Scarrat. I cannot say, whether I have or have not: I have called, may-be, three or four Times, I don't know.

Mr. Davy. Upon your Oath, have you not been there five Times?

R. Scarrat. I don't know; I cannot say how many Times.

Mr. Davy. Will you take upon you to say, you have not been there six Times?

R. Scarrat. No.

Mr. Davy. Upon your Oath, will you take upon you to say, you never was there ten Times in your Life?

R. Scarrat. No, I never was.

Mr. Davy. Will you swear you have not been there eight Times?

R. Scarrat. I believe, I have not.

Mr. Davy. Are you positive of that?

R. Scarrat. I believe, I could swear I never was there eight Times in my Life.

Mr. Davy. Was you at *Edmonton* before the 1st of *January* was Twelve-month?

R. Scarrat. Yes; I was, in the *Christmas* Week.

Mr. Davy. What was your Business there then?

R. Scarrat. I went to see some Acquaintance and Friends for my Pleasure, and, I believe, I lay at Mr. *Hubbard's*, a Shoe-maker, two Nights.

Mr. Davy. Had you any Women there?

R. Scarrat. No.

Mr. Davy. How did you divert yourself, while you was there?

R. Scarrat. I did not divert myself there.

Mr. Davy. When did you dance there last?

R. Scarrat. I don't know how long it is ago: I was dancing at the farther *Bell* at *Edmonton*, last *Edmonton* Statute.

Mr. Davy. Who was your Partner?

R. Scarrat. She that now is my Wife.

Mr. Davy. When you came into Mrs. *Canning's* House, what made you be so particular in asking Questions?

R. Scarrat. There were others asked a great many Questions, besides me.

Mr. Davy. Where had you used to ride your Master's Horse to Water, when you lived at *Edmonton*?

R. Scarrat. Sometimes to one Place, and sometimes to another.

Mr. Davy. Did you never water your Horse near Mrs. *Wells's*?

R. Scarrat. I have at the Brook on this Side her House.

Mr. Davy. Did you ever put your Horse up there?

R. Scarrat. I once did; I believe he was hung at the Door; I don't remember any of my Master's Horses being put in the Stable.

Mr. Moreton. Did you ever ride your Horse in at the Window, where the Girl jumped out at?

R. Scarrat. No, Sir.

Mr. Moreton. Are you sure, that between the Hours of Nine and Ten on the 1st of *January* you did not go to see *Bedlam*?

R. Scarrat. No, Sir; I am positive of that.

Mr. Moreton. Tell me the Truth, or perhaps half *Bedlam* will be called to contradict you.

R. Scarrat. No, I did not, Sir.

Mr. Moreton. Was you in *Moorfields* that Night?

R. Scarrat. No, I was not.

Mr. Moreton. Did you take away *Betty Canning* that Night up to *Houndsditch*?

R. Scarrat. No, Sir.

Mr. Moreton. Did you see that Door to the Room open, where *Betty Canning* was confined, when you was there with her?

R. Scarrat. No, I did not, Sir.

Mr. Moreton. If the Door had been open, and she had looked in, and she had not fixed upon the Room, should you have believed her Story?

R. Scarrat. I verily believe I should not.

Mr. Moreton. Was your Situation such, that it was expected of you to be more particular than other People?

R. Scarrat. No; there were a great Number of People there. I did not regard any more than any body else.

Mr. Moreton. Had you any thing to do, to direct Mr. Alderman *Chitty* against whom he should make out a Warrant?

R. Scarrat. No, Sir.

Recorder. Was there any Lock upon that Door leading to the Hay-loft?

R. Scarrat. I believe there was none at all; but I did not take Notice of that.

Mary Myers sworn.

M. Myers. I live in the Neighbourhood, and know the Mother and Daughter.

Mr. Nares. How long have you known the Daughter?

M. Myers. About eleven Years. She is a very sober honest Girl, as any in *England*; she always behaved very handsome to every body.

Mr.

Mr. Nares. Do you remember her being missing on the 1st of January?

M. Myers. I do.

Mr. Nares. When was the first Time you saw her after?

M. Myers. On the 29th at Night, at her Mother's House. There were her Mother, Mrs. Woodward, and Mary Lyon there. Elizabeth Canning was sitting by the Fire-side in a very black, dirty, bad Condition; her Face, Arms, and Hands were black; I took it to be a Cold, or Numbness occasioned by Cold; her Nails were as black as my Bonnet, and her Fingers stood crooked.

Mr. Nares. How was she dressed?

M. Myers. She had a black quilted Petticoat on, all torn about the Knees; she had a Bed-gown on, and a Rag about her Head, I believe it was a muslin Half-handkerchief; she was very low in her Spirits. I kneeled down on my Knees, to ask her what was the Cause of her being in that Condition? She told me, she went on the 1st of January to see an Aunt and Uncle, and stayed with them till Night, and they saw her into Houndsditch; and how she was robbed and stripped in Moorfields by two Men, and they gave her a Blow on her Head, and deprived her of her Senses, and was carried into a House by these two Men; and when she came in, there were an elderly Woman and two young ones; the old Woman took hold of her Arm, and asked her if she would go their Way, and she said, No; that then she went and took a Knife out of a Drawer, and cut the Lacing of her Stays, and took them off, and gave her a great Slap on the Face, and told her she should suffer in the Flesh; and opened a Door, and shoved her up a Pair of Stairs into a Room; and after she was in, she d—d her, and said, if she moved or stirred, or made any Resistance, she would come and cut her Throat.

Mr. Nares. What Time did she say she was carried in there?

M. Myers. About Four in the Morning, as she reckoned.

Mr. Nares. Were there any other People in the Room, besides what you have mentioned?

M. Myers. There were several others.

Mr. Nares. Did you see Scarrat there?

M. Myers. I did not know he was there, till I got off my Knees from talking to her.

Mr. Nares. What did she tell you was in the Room?

M. Myers. She told me there was Hay there, and a Pitcher with Water in it, she believed about a Gallon of it; and that there was a Fire-place in it, and about the Value of a Quartern Loaf of Bread in Pieces.

Mr. Nares. Did she say there was a Grate in the Room?

M. Myers. She did; and that she took the Bed-gown and Rag out of the Grate in the Room.

Mr. Nares. Did she give any Description of the Size of the Room, whether long, round, or square?

M. Myers. No; I cannot say she did. She said she got out at the Window at the End, by pulling down two Boards, and put her Head and Shoulders out, and took out some Part of the Window, and pulled out her Legs, and so dropped down; and that she tore her Ear in coming out. I looked at her Ear, and it appeared to be a great Scratch; there was a great deal of Blood

appeared to be fresh, and dropped of Blood (while I was there) upon her Shoulder. She was asked, how far the House was off? She said; about ten Miles out of Town. She said, while she was in the Room, there was a Stair-case lay close to the Room, and she heard People run up and down in the Nights, and she heard the Name of Mother Wills, or Mother Wells, mentioned. I was close by her, and heard every Word she said; she spoke very low.

Mr. Nares. Had Scarrat spoke to her before she said Mother Wills, or Wells?

M. Myers. I don't know that he had.

Mr. Nares. If he had spoke to her, should you have known it?

M. Myers. I should: I did not hear him speak to her at all then.

Mr. Nares. Tell the Court what she said farther.

M. Myers. She said, she escaped about Four in the Afternoon, and asked her Way to London. She was so low, that I could scarce hear what she said.

Mr. Nares. Did you go before Mr. Alderman Chitty?

M. Myers. No, I did not.

Mr. Nares. Did you go down to Enfield-Wash afterwards?

M. Myers. I did on the Thursday after her Return. There were in the Chaise with me, the Mother and Daughter, and Mrs. Garrat; and several other People went down, some on Horseback. Mr. Adamson was one on Horseback. We met him, as we were going. He had been there. He spoke to the Coachman, and asked him what made him so long in coming; and said they were out of Patience in waiting.

Mr. Nares. Did he say any thing to the Girl?

M. Myers. He said to her, *Bet*, what Sort of a Room was you in? She said, Sir, it is an odd Sort of a Room; there is Hay, and a Fire-place in it. He said again, What do you say? Is there Hay in it, *Bet*? That is all he said, and went away directly.

Mr. Nares. When he spoke to the Girl in this Manner, did he tell her there was Hay?

M. Myers. He did not. We then proceeded on, and came to the House at Enfield-Wash; and *Bet* was carried into the Kitchen, and from thence into the Parlour. The Gentlemen desired her there to be very cautious and careful what she said, and take Time; and after that up Stairs. After she had looked about, she pointed to *Mary Squires*, and said, That is the old Woman that cut my Stays off.

Mr. Nares. Was she sitting or standing then?

M. Myers. I cannot say; there were a great Crowd of People; I could not get to the Sight of her.

Mr. Nares. Did the Description she had given of the old Woman she told you of on the 29th at Night, tally with the old Woman, when you saw her?

M. Myers. Indeed, it did. She then said, These two young Women were in the Room, (that was *Virtue Hall*, and the Gypsey's Daughter.) The old Gypsey Woman said, she never saw her in her Life before, and hoped she was not come to take her Life away, or something to that Purpose.

Mr. Nares. Was the Day mentioned, when Elizabeth Canning said she was robbed?

M. Myers. I don't know that.

Mr. Nares. Did you hear the old Woman say she had been any Distance from *Enfield-Wash*?

M. Myers. No, I did not; but I heard the old Woman say she had lain there but three Nights; and *George* said so too. After that they carried *Elizabeth Canning* up one Pair of Stairs; and into two Rooms; one of them was lock'd, and the Key sent for; she said, none of them were the Room in which she was confined: Then she was carried through the Kitchen and up into another Room; then she said, Gentlemen, this is the Room that I was in; but here is more Hay in it, than there was when I was here.

Mr. Nares. Was you in the Room then?

M. Myers. I was: She took her Foot, and put the Hay away, and shewed the Gentlemen two Holes; and said, they were in the Floor, when she was in it before.

Mr. Nares. Had you heard her mention them two Holes before?

M. Myers. No, I never did. *Mr. Adamson* set his Back against a Window, and asked her what she had ever observed out of that Window? She said, Hills at a Distance.

Mr. Nares. Which Window was this?

M. Myers. That next to the Fire-place. She had told us there was a Pewter Bason there, and a Saddle; but when we came there, there were two Saddles.

Mr. Nares. Did you look out at the Window?

M. Myers. I cannot say I did.

Mr. Nares. When he put his Back to the Window, could she have seen what was to be seen there?

M. Myers. No, she was not so high up to it.

Mr. Nares. Did you find the Pewter Bason there?

M. Myers. We did.

Mr. Nares. Did she mention what Colour the Pitcher was of, at her first mentioning it?

M. Myers. I cannot say she did; but said it would hold a Gallon of Water.

Mr. Nares. Where did you first see the Pitcher?

M. Myers. In the Kitchen.

Mr. Nares. Did you go to Justice *Tashmaker's*?

M. Myers. No, I did not. The other Woman and I were a-cold, so we went over to a Public House.

Cross-examined.

Mr. Willes. Was her Linen dirty when you was with her on the 29th of *January*?

M. Myers. I looked all about the Neck and Shoulders; it was not very dirty, but it was dirty, it was soiled from her Body.

Mr. Willes. Was you by when she was undressed?

M. Myers. No, I was not.

Mr. Willes. Do you know what Number of Petticoats she had on?

M. Myers. No, I do not.

Mr. Willes. Pray, did any of you know *Mr. Scarrat*?

M. Myers. I knew him.

Mr. Willes. Do you believe old *Mrs. Canning* had any Knowledge of him?

M. Myers. I believe she might.

Mr. Willes. Did you hear her call him by his Name?

M. Myers. No, I did not.

Mr. Willes. Why do you think she might know him?

M. Myers. Because he lived in the Neighbourhood, next Door to her but one.

Mr. Nares. Who was there when you was there?

M. Myers. There was *Mrs. Woodward*, *Mrs. Lyon*, and *Elizabeth Canning's* Mother.

Mr. Nares. Did you hear *Scarrat* examine *Elizabeth Canning* where she had been?

M. Myers. No, I did not.

Mr. Nares. Did you observe the Blood to drop very fast from her Ear?

M. Myers. No; it had dropped upon her Shoulder, and another Drop was then at her Ear.

Mr. Nares. Was the Handkerchief then on her Head?

M. Myers. It was.

Mr. Nares. Was there much Blood on the Handkerchief?

M. Myers. There was a pretty deal upon it.

Mr. Nares. Was you at *Enfield-Wash*, when *Canning* was carried into the Kitchen?

M. Myers. I was.

Mr. Nares. Do you remember the Door to be open that leads up into the Hay-loft, when she was there?

M. Myers. I don't remember it was.

Mr. Nares. Upon her being carried into the Kitchen, did she say, she had been there before?

M. Myers. No, I did not hear any thing of that.

Mr. Nares. When *Mr. Adamson* asked, what Prospect there was out of the Window, did not she say, there were Trees near it?

M. Myers. Not as I heard.

Mr. Nares. I think you say, she described the elderly Woman?

M. Myers. I heard her describe the two Girls that were by; one was a black Girl, the other a fair one, and the old Woman, a tall, black, swarthy Woman.

Mary Woodward sworn.

M. Woodward. *Elizabeth Canning's* Mother sent for me the Night she came Home. I went there about half an Hour after Ten, and stayed till about One. There came *Mr. Scarrat*, *Mr. Wintlebury*, and others, after I was there. *Mrs. Canning* asked me, who she should send for? I said, Send for her best Friends. I mentioned *Mr. Lyon* and his Wife, and others. She sent the Apprentice; he returned, and said, he was gone to Bed. There came *Mrs. Myers* and *Polly Lyon*; the latter lives Servant with *Mr. Roberts*.

Mr. Williams. Had you any Conversation with *Elizabeth Canning*?

M. Woodward. I had: The first Word she said to me was, *Mrs. Woodward*, I am almost starved to Death. (She was sitting in the Chimney-corner, and lifted up her Head, and put her Hands together.) I have had nothing, said she, but Bread and Water since New-year's Day at Night, and I have had no Bread ever since *Friday*. I asked her, where she had been? She said, she had been confined in a Room in a House on the *Hertfordshire* Road.

Mr. Williams. Was this before any body came in?

M. Woodward. Upon my Oath, this she said before any body came in. I knowing nothing of

of the Hertford Road, asked her no more of it.

Mr. Williams. Do you remember her mentioning any body's Name?

M. Woodward. I did not observe, through the whole Time I was there, that she mentioned any body's Name. I mulled her a little Wine, but was never out of the Room. I asked her; what was become of her Cloaths?

Mr. Williams. Go on; you need not give a particular Account of the first Robbery in Moorfields.

M. Woodward. She said, about half an Hour after she came to her Senses, she came to a House where she was confined; there were three Women took hold of her; the old Woman asked her, if she would go their Way? She answered, No. Upon that she went to a Dresser or Dresser-drawer, and took a Knife, and ripped the Lacing of her Stays, and after that took up her Petticoats, and looked at them, and took her a Slap on the Face, and said, D—n you, you Bitch, I'll give you that; and turned her up a Pair of Stairs into this Place, where she was confined, with threatening Oaths to cut her Throat; if she heard her cry out. I asked her, what Sort of an old Woman this was? She said, she was a tall, black, swarthy Woman; and the young Women did nothing but laugh at her. I was there with her best Part of half an Hour before the others came in.

Mr. Williams. Was there any thing from your Examination, that could possibly lead her to give her Answer?

M. Woodward. No; nor her Mother never spoke to her, during the whole Time I was talking to her.

Mr. Williams. Did she tell you this of her own Accord?

M. Woodward. She began and went on, after I asked her where she had been confined.

Mr. Williams. Did she say, during her whole Confinement, that she saw any body?

M. Woodward. Not as I remember. She was in a most deplorable Condition; she had an old ragged Bed-gown on, and a Bit of an Handkerchief.

Mr. Williams. Look at this Bed-gown; is this the same?

M. Woodward. I do really believe this to be it; but I will not take upon me to swear it.

Mr. Williams. Had you ever seen it before that Night?

M. Woodward. No; never.

Mr. Williams. Upon your Oath, do you know whether that is her Mother's?

M. Woodward. Her Mother never had such a Thing on her Back in her Life.

Mr. Williams. Look upon this Half-handkerchief.

M. Woodward. This I know is the same she came Home in.

Mr. Williams. You say you mulled her some Wine; did she drink much?

M. Woodward. I gave her about half a Tea-cup full, and about the Value of a Nutmeg in Quantity of Bread soaked in Wine; she rolled it about in her Mouth, and said, Mrs. Woodward, I cannot swallow it, and spit it out. She spoke very faint and low.

Mr. Williams. Do you believe she was really in that bad State of Health, in which she appeared to be?

M. Woodward. I believe she was as bad as she appeared to be; I am sensible of that. She supped about a Spoonful of the Wine; whether she swallowed it all or not, I don't know. She gave an Account of having no Stools in that Time, and the Apothecary did all he could to assist her in that Case.

Mr. Williams. When was she able to go abroad?

M. Woodward. On the Tuesday Se'nnight after she came Home (which was on a Monday) she came to my House, and was there almost three Weeks; she was ill all the Time, and the Doctor and Apothecary came to her; during Part of the Time she was at my House, she was dangerously ill. She was brought in a Man's Arms, and put in a Chair to go to Mr. Fielding's, the Day after she came to my House.

Cross-examined.

Mr. Gascoyne. Did you observe her Ear at all?

M. Woodward. I did not that Night she came Home, but the Apothecary's Man did; the Handkerchief was all bloody; it bled so, that it shocked me, I could not look at it; it was very cold Weather, and the Blood had congealed and was thick upon her Ear; and sitting by the Fire; I fancy, that made her bleed afresh.

Mr. Gascoyne. Do you remember Mrs. Mayle inquiring for the Shift that she came Home in?

M. Woodward. Yes; she saw it, her Mother shewed it her.

Mr. Gascoyne. Do you know it was the Shift she came Home in?

M. Woodward. I do.

Mr. Gascoyne. Do you remember Mrs. Mayle's Observation?

M. Woodward. I do; that was, that she would take her Oath that no Man ever lay with her, for if there had, there would have been Nature on one Side or other.

Mr. Gascoyne. Do you remember whether she observed whether it was clean or dirty?

M. Woodward. Upon my Oath, she did not observe any thing else in my hearing.

Mr. Gascoyne. Was the Shift dirty?

M. Woodward. It was; but not so dirty, as if she had been at hard Work in it.

Mr. Gascoyne. What did you think of it?

M. Woodward. It was dirty.

Mr. Gascoyne. Was it as dirty as if it had been worn by a Person that was dragged from London to Enfield-Wash, and lay upon Hay so long afterwards?

M. Woodward. Yes, it was.

Mr. Gascoyne. Did you ever express yourself to the contrary to any body?

M. Woodward. No, I never did.

Mr. Gascoyne. Whether you ever expressed you were surprized that the Shift was no more dirty, upon being worn so long?

M. Woodward. No, I never said such a Thing.

Mr. Gascoyne. Did you observe any Splashes of Dirt on it?

M. Woodward. I did not; if there had been any, I must have seen them.

Mr. Gascoyne. Were there no Spots on it at all?

M. Woodward. There were no Spots of any kind in the World.

Mr. Gascoyne. Take care, you are upon your Oath.

M. Woodward. I am so.

Mr.

Mr. *Gascoyne*. Did you think the Shift was not so dirty as it might have been, if she had worked in it all the Time?

M. *Woodward*. I think it might have been as dirty in a Week, if she had worked in it all the Time.

Recorder. Did you see Mrs. *Mayle* there?

M. *Woodward*. I did.

Recorder. Did not she say, it could not have been worn above a Week?

M. *Woodward*. No, I never heard her.

Recorder. Whether Mrs. *Mayle* and Mrs. *Canning* did not quarrel?

M. *Woodward*. No, not in my hearing.

Recorder. Was she there above once?

M. *Woodward*. I never knew she was.

John Wintlebury sworn.

I have known *Elizabeth Canning* the Mother about fourteen or fifteen Years; she lives in *Aldermanbury-Postern*, and bears as good a Character as any in the Parish. I have known the Daughter, I believe, twelve Years; she is a very sober Girl as any I know; and I believe the whole Neighbourhood will say so. She lived with me about eighteen Months, about three or four Months before this happened. She always behaved herself in a very sober Manner. I keep a Public House. I have a back Room, where she would commonly be. She very seldom came forward.

Mr. *Moreton*. Did she shew a Disposition to be forward, or gay?

J. *Wintlebury*. Quite different. I don't believe she went out once in a quarter of a Year. When she went away from me, many of the Neighbours would have had her.

Mr. *Moreton*. Do you remember her being missing on the 1st of *January*?

J. *Wintlebury*. I do; and her coming Home on the 29th. I saw her that Night at her Mother's House, sitting by the Fire.

Mr. *Moreton*. How came you to go there?

J. *Wintlebury*. A Neighbour came and told me, she was come Home.

Mr. *Moreton*. Do you know who that Neighbour was?

J. *Wintlebury*. I do not.

Mr. *Moreton*. Was it Mr. *Scarrat*?

J. *Wintlebury*. No, it was not. I went; and when I came into the Room, I met with ten or a dozen People: There was the Girl, in a very bad Condition, with a Handkerchief wrapped about her Head, and, I think, it was bloody on one Side. She was very weak. I took hold of her Hand, and said, *Bet*. She said, O Lord, Sir, you don't know what I have gone through, or something to that Effect. Said I, You are at Home now; and, it is to be hoped, you have Friends to assist you if you have been used ill. I asked her, where she had been? She said, On the *Hertfordshire* Road. I said, How do you know that? She said, she remembered seeing (through some Cracks, when she was in the Room) the Coachman that used to carry Things for me.

Mr. *Moreton*. What Coachman had you used to send Things by?

J. *Wintlebury*. By the *Royston* or *Hertford* Coach. I asked her, how far she was from *London*? She said, about ten or eleven Miles. Then I said, Pray, can you tell whose House you were at? She said, I cannot; but I heard the Name *Wills*, or *Wells*, by People below Stairs.

Mr. *Moreton*. Do you know *Robert Scarrat*?

J. *Wintlebury*. I do.

Mr. *Moreton*. Was he in the Room, when she mentioned the Name *Wills* or *Wells*?

J. *Wintlebury*. He might be; I did not see him then.

Mr. *Moreton*. Do you recollect that *Scarrat* mentioned *Wills* or *Wells* to her?

J. *Wintlebury*. To the best of my Knowledge, he did not.

Mr. *Moreton*. Did you see *Mary Myers* there?

J. *Wintlebury*. I can't remember.

Mr. *Moreton*. Did you see a Woman kneeling by the Side of her?

J. *Wintlebury*. I don't know, indeed. I stayed there but about three or four Minutes, and there were a great many People in the Room.

Mr. *Moreton*. Was you before Mr. Alderman *Obitty*?

J. *Wintlebury*. I was; but that is quite out of my Memory. I don't know the Particulars that passed.

Mr. *Moreton*. Was you at *Enfield-Wash*?

J. *Wintlebury*. I was, with Mr. *Colley*, Mr. *Sparham*, Mr. *Adamson*, Mr. *Lyon*, and Mr. *Hague*. I got down before the Chaise came down, and went to the *Sun*. The Headborough went with a Warrant to *Wells's* before me some Time: After that I went into the House, the Parlour, and Kitchen, and up Stairs, and into another Room out of the Kitchen; it is a long Room, it goes up about four or five Steps: I observed there was a great deal of Hay there; it seemed as if it had been tossed up afresh, it laid very light.

Mr. *Moreton*. Did Mr. *Nash* go in with you?

J. *Wintlebury*. I was in before him an Hour. He, and Mr. *Lyon*, Mr. *Hague*, and Mr. *Aldridge*, came all down together: We were there an Hour before them.

Mr. *Moreton*. Who went down with you?

J. *Wintlebury*. Mr. *Adamson* and Mr. *Scarrat* did. We put up at the *Sun*; and another or two went down on Foot.

Mr. *Moreton*. Who was in the Room with you?

J. *Wintlebury*. Mr. *Adamson* was, and them.

Mr. *Moreton*. What did you observe in the Room?

J. *Wintlebury*. There was an old Chest of Drawers, a Saddle, and a Place where somebody had laid on, and a Rug upon them: I did not disturb it much: I can't tell what was under the Rug; it seemed to be a Parcel of old Sacks. I observed a broken Pitcher.

Mr. *Moreton*. Did she tell you, the Night of her coming Home, of a Pitcher?

J. *Wintlebury*. She did, of a broken one. She described it by being a broken one, and which would hold about a Gallon, or something like that: And when I saw it in this Room, I thought it was the same she described.

Mr. *Moreton*. Look at this Pitcher; do you think this is it?

J. *Wintlebury*. I believe it may be it.

Mr. *Moreton*. Whether or no you know of any of your Friends carrying that Pitcher up into the Workshop?

J. *Wintlebury*. I believe I was the first Person of us that went into the Room.

Mr. *Moreton*. Are you sure there was a broken Pitcher in the Room, when you went in first?

J. *Wintlebury*. I am sure there was.

Mr. *Moreton*.

Mr. *Moreton*. How long did you stay in the Room then?

J. Wintlebury. I stayed but a little Time, and then came down again.

Mr. *Moreton*. Did you see any thing of a Man that obstructed any body from going into this Hay-loft?

J. Wintlebury. No. This was about half an Hour before *Elizabeth Canning* was come. Mr. *Nash*, Mr. *Aldridge*, Mr. *Hague*, and Mr. *Lyon*, were not come then. When they came, they desired me to go and desire them to make haste; then I took my Horse, and went and met the Coach. After this, *Canning* came down, and was brought into the Kitchen, and set upon the Dresser, and after that into the Parlour; there she was desired to fix upon the Person that cut her Stays off: She fixed upon *Mary Squires*.

Mr. *Moreton*. Was you near *Elizabeth Canning* then?

J. Wintlebury. I was; and so were a great many more.

Mr. *Moreton*. Did she see *Squires's* Face before she fixed upon her?

J. Wintlebury. She saw a little of her Face, I suppose. There were about eight or nine People round the Fire. The old Gypsy had a little Pipe in her Hand, sitting crouching, with her Head and her Knees together; and as *Canning* looked round, she said, That is the Woman that cut my Stays off.

Mr. *Moreton*. Had *Elizabeth Canning* given you any Description of the Person, that cut off her Stays, before?

J. Wintlebury. I can't say she had.

Mr. *Moreton*. What was done after *Canning* had charged her?

J. Wintlebury. *Squires* got up, and said, What I, Madam! did I cut your Stays off? *Canning* said, Yes; you cut my Stays off in such a Place in the Kitchen. Then she went and sat down again.

Mr. *Moreton*. Did *Mary Squires* say where she was at the Time those Stays were cut off?

J. Wintlebury. No; she did not mention any thing, as I heard.

Mr. *Moreton*. Did she mention how long she had been at *Wells's* House?

J. Wintlebury. No, not at that Time.

Mr. *Moreton*. What do you mean by saying, at that Time? Did she at any other Time?

J. Wintlebury. She did not at any other Time, to my Knowledge.

Mr. *Moreton*. Did she desire *Canning* not to swear her Life away?

J. Wintlebury. Indeed, I don't know that she did.

Mr. *Moreton*. What was done after this?

J. Wintlebury. Then *Canning* was carried up Stairs, and did not fix upon any of the Rooms: I think there are three of them: They were going to carry her farther, and she said, I was not carried so high; I did not go up above four, five, or six Steps at the most.

Mr. *Moreton*. Who did she say so to?

J. Wintlebury. She said so to me. Upon this she was brought into the Kitchen again, and the Hay-loft Door was open, and she went up there and looked about her, and said; This is the Room in which I was confined.

Mr. *Moreton*. Where was she, when she said this?

J. Wintlebury. This she said as she was going up Stairs. I believe I then had hold of her Hand. When she was in the Room, Mr. *Adamson* put his Back against a Window, and asked her, if she could mention any thing that she could see out at that Window.

Mr. *Moreton*. Could she at that Time see any thing out at it?

J. Wintlebury. Then, I know, she could not.

Mr. *Moreton*. But could she before he had put his Back to it?

J. Wintlebury. He was up Stairs before her.

Mr. *Moreton*. Was Mr. *Nash* in the Room then?

J. Wintlebury. Very likely he was; but I don't know that.

Mr. *Moreton*. What was her Answer to Mr. *Adamson*?

J. Wintlebury. She said there were some Hills a pretty Way off; and one, two, or three Houses on the left-hand Side.

Mr. *Moreton*. Did she give a true Description of the Prospect?

J. Wintlebury. She did.

Mr. *Moreton*. Which Window was this?

J. Wintlebury. This was the Window nearest the Fire-place, in the East. After this Mr. *Adamson* opened the Window: The Girl said, That Window was nailed up, when I was here. I looked at the North Window, where she got out at. That was a little Casement, about 9 by 18, or 10 by 20: There were Boards nailed over this North Window: It seemed to be fresh done, and in a very cobbling Way: The Nails were not drove home, but bent double; it did not seem to be done by a Man; and, I think, Mr. *Adamson* made the same Observation.

Mr. *Moreton*. Did you make that Observation to any body then?

J. Wintlebury. No, I did not. We all went away to Justice *Tasemaker*.

Mr. *Moreton*. Did *Elizabeth Canning* see *George Squires*, when she was first brought in?

J. Wintlebury. No.

Mr. *Moreton*. When did she first see him?

J. Wintlebury. I believe she first saw him when she went into the Parlour, when we went in first; then *George* was in a very great hurry, and seemed much perplexed; and ran up Stairs, and was going to go away; he was bundling up some Stockings: Some People, two or three, went in, and said, Where are you going? you must not go away. And they would not let him go; and brought him into the Parlour again. Then he had a large Great Coat on.

Mr. *Moreton*. Who were there, two or three People?

J. Wintlebury. There was one *Ball*; he is since dead. *George Squires* grew obstreperous, and wanted to get out at the Window, and *Ball* called out for more Help; and then, I think, another Person went in.

Mr. *Moreton*. Was you then in the Room?

J. Wintlebury. I was not. When *Canning* was brought in, she was asked, if she knew that Person? meaning *George*. She said, she could not say it was the Man, but it looked very much like him. He had before this pulled his Great Coat off; then they made him put the Great Coat on. She said, He looks very much like the Man, but I will not positively swear to him.

Mr. *Moreton*. Where was this?

J. Wintlebury.

J. Wintlebury. In the Parlour. She said also, there were two Girls in the Room when her Stays were cut off. We had her out into the Kitchen, and brought them in one by one, and she pitched upon *Virtue Hall* and *Lucy Squires*. Then we went before Justice *Tasbmaker*; there *Canning* was examined.

Mr. Moreton. Did she give the same Account there, as she gave to you?

J. Wintlebury. I don't know that she varied in her Account at all.

Mr. Moreton. Was it the same she gave before Mr. Alderman *Chitty*?

J. Wintlebury. I will not be positive to what she gave before the Alderman; I can remember but a little of that, about how she was robbed.

Mr. Moreton. Was you present at the Trial of *Mary Squires*?

J. Wintlebury. I was.

Mr. Moreton. Did you hear her give her Evidence in this Court?

J. Wintlebury. I did.

Mr. Moreton. Could you observe any material Difference between that and what she did before Justice *Tasbmaker*?

J. Wintlebury. No, I could not.

Mr. Moreton. Had you any Reason at all to doubt her Story?

J. Wintlebury. No, I had none at all.

Mr. Moreton. Did Mr. *Nash* say, as he was going Home, he was not satisfied with *Canning's* Account?

J. Wintlebury. He did not appear to be dissatisfied.

Mr. Moreton. Nor Mr. *Hague*?

J. Wintlebury. No.

Mr. Moreton. Nor Mr. *Aldridge* neither?

J. Wintlebury. No, Sir.

Mr. Moreton. Did you dine at *Newington*?

J. Wintlebury. No, I did not.

Cross-examined.

Mr. Willes. Don't you subscribe towards the Support of *Canning*?

J. Wintlebury. No, Sir.

Mr. Willes. Is yours a Tavern or Ale-house?

J. Wintlebury. An Ale-house.

Mr. Willes. At the Time *Canning* lived with you, was she at all fond of Men?

J. Wintlebury. No, she was not.

Mr. Willes. How old was she, when she came first?

J. Wintlebury. She might be about seventeen Years of Age.

Mr. Willes. What was the Reason she left your Service?

J. Wintlebury. Because she got a better Place; that was the only Reason.

Mr. Willes. Was she employed in your House in serving Customers?

J. Wintlebury. Sometimes; very seldom. She very seldom came into our outward Room amongst the Customers.

Mr. Willes. How came you, on the Trial of *Mary Squires*, to say she had a Bed-gown and a Cap on?

J. Wintlebury. I say now, I did not know whether it was a Cap.

Mr. Willes. Did you call it a Cap or Handkerchief upon that Trial?

J. Wintlebury. I don't know which I then said.

Mr. Willes. Do you know *Robert Scarrat*?

J. Wintlebury. I do.

Mr. Willes. How long have you known him?

J. Wintlebury. May-be a Year and a half, or two Years. He is a Hartshorn-rasper.

Mr. Willes. Has he used to use your House?

J. Wintlebury. Yes, he has as a Customer.

Mr. Willes. Did he use to use your House when *Canning* was your Servant?

J. Wintlebury. No; he may once or so, but I don't believe he did.

Mr. Willes. Did you know him before this Accident happened?

J. Wintlebury. I hardly did.

Mr. Willes. How came you, on *Squires's* Trial, to give no Account of what passed at *Enfield*?

J. Wintlebury. I believe I did not.

Mr. Willes. How came you to omit so many material Circumstances?

J. Wintlebury. I believe the Gentlemen did ask me no more then.

Mr. Willes. Was *White* in, when you first came down?

J. Wintlebury. No, he was not.

Mr. Willes. When she was carried into the Kitchen, and set upon the Dresser, did she say she had been in that Room before?

J. Wintlebury. No, I never heard her say so.

Mr. Willes. Did she say there were Trees grew against that Window, when Mr. *Adamson* had his Back against it?

J. Wintlebury. No, I don't remember it. I remember Mr. *Adamson* turned about and opened the Window, and looked out: She said then, that Casement was nailed up when she was there.

Mr. Willes. Did you make any Remarks, whether there had been Nails to fasten it?

J. Wintlebury. No, I did not inspect into it.

Mr. Willes. Can't you recollect what she said before Alderman *Chitty*?

J. Wintlebury. I remember but little of what passed there.

Mr. Willes to *T. Gurney.* Turn to your Notes of what this Evidence said on the Trial of *Squires*, concerning what passed before Mr. Alderman *Chitty*. Can you swear to them?

T. Gurney. To the Substance of the Evidence I can; though not always to the exact Words.

Mr. Willes. Do you ever put down any thing you don't hear?

T. Gurney. No, never.

Mr. Willes. Give the Court an Account what you have there put down.

T. Gurney. On that Trial this Evidence was asked, if he had heard the Evidence *Canning* had then given? To which he answered, he had; and that she gave the same Account the Night she came Home; but not quite so fully that Night, as she did before the Sitting Alderman on the *Wednesday* after.

Mr. Willes. What did he say passed the Night she came Home.

T. Gurney. He said, he saw her the Night she came Home at her Mother's House; she appeared in a very bad Condition, and had a dirty Bed-gown and Cap on. He asked her how she did? she answered, very bad; and that she had been somewhere on the *Hertfordshire* Road, which she knew by seeing the *Hertfordshire* Coach go backwards and forwards. After which he was asked, if he had heard *Canning's* Evidence then giv'er, as mentioned before?

Mr. Willes to Wintlebury. How long was she before Alderman Chitty?

J. Wintlebury. I don't know.

Mr. Willes. How did she get there?

J. Wintlebury. I believe, she went in a Coach.

Mr. Willes. What Day did she go to Enfield?

J. Wintlebury. On the Thursday after she came Home.

Mr. Willes. How did she go down?

J. Wintlebury. I believe, in a Chaise and Pair. The Chaise would hold four People, and four People were in it.

Mr. Willes. How far is it there?

J. Wintlebury. It is about eleven Miles.

Mr. Willes. Did you see her set out?

J. Wintlebury. No, I did not.

Mr. Willes. What Time did she get down there?

J. Wintlebury. At about Ten or Eleven o'Clock in the Morning.

Mr. Willes. Had she any Refreshment there?

J. Wintlebury. There was a little Wine brought her there. I believe she did not drink a Spoonful of it.

Mr. Willes. Did she go over to Cantril's?

J. Wintlebury. I don't know whether she did or not.

Mr. Willes. How far is Justice Tashmaker's from Enfield-Wash?

J. Wintlebury. It may be three Miles.

Mr. Willes. How far is it out of the Way to London from Enfield-Wash?

J. Wintlebury. It may be an hundred and fifty Yards.

Mr. Willes. When did she return to Town?

J. Wintlebury. She returned the same Night.

Mr. Willes. Was Scarrat your Customer when Canning lived with you?

J. Wintlebury. He was not, as I know of. I did not know him then.

Mr. Willes. Was there any Intrigue betwixt Scarrat and her?

J. Wintlebury. No; she would hardly go to the Door to speak to any body. I believe her quite different from an intriguing Person.

Mr. Willes. How long have you known Scarrat?

J. Wintlebury. I have known him about a Year and a half.

Mr. Willes. Did you hear any Part of what passed before Mr. Alderman Chitty?

J. Wintlebury. I heard a little, but did not take much Observation of it; and she talked so low. I heard her say two Men met her and robbed her in Moorfields.

Mr. Willes. Did what you heard vary from what you heard on Squires's Trial?

J. Wintlebury. No, it did not.

Recorder. You have heard the Note-taker say, you said she was more full before the Sitting Alderman than in the Account she had given before; and here you say you took little Notice of it.

J. Wintlebury. I may forget Things. If I said so then, I might forget since.

Joseph Adamson sworn.

J. Adamson. I have known E. Canning eleven or twelve Years, ever since she was big enough to play about her Mother's Door. I am one of the Persons that went down to Enfield-Wash. I had not seen her for three Months before that Day. Mr. Wintlebury and one Scarrat went down with

me; the last was a Stranger to me: We were the only Men that had Horses. We had been there an Hour and half. They told me, I must go back and prevent the Chaise from stopping. I said, I took the Horse without Leave, and I would not go back. I took the Horse, and went back.

Mr. Moreton. Did you tell Canning there was Hay in the Room?

J. Adamson. I did not, either directly or indirectly, from first to last; nor have I asked her a Question since, only when we were in the Room. After I had spoke to the Coachman to make what Haste he could, they asked me, if we had taken any People up? I said, we had; and some of the People were uneasy to be gone. Then I asked, what Sort of a Place she was confined in? She said, an odd, or a wild Sort of a Place; some Hay, and something else which I can't remember: I think it was a Chimney in the Corner.

Mr. Moreton. Did you mention Hay to her?

J. Adamson. I never did, to my Knowledge. I then rode on; and as her Master Mr. Lyon and others were going from the Ale-house to Mother Wells's, I hallooed to them, and told them what the Girl had told me, that is, that there was some Hay in the Room, and a Fire-place, or a Chimney, I can't tell which. When she came down, I took her out of the Chaise, and set her on a Dresser; she sat there six, seven, or eight Minutes.

Mr. Moreton. Did she make any Observations there?

J. Adamson. She did not. Then we took her into the Room where they all were; (there was a Room full of People;) she turned herself round by the Door, till she came to where Mary Squires sat, and said, That is the Woman that cut my Stays off.

Mr. Moreton. Did any body give her any Intelligence which was Mrs. Wells's?

J. Adamson. I dare say no body did; because her Master gave her a very strict Charge to take Care who she charged.

Mr. Moreton. Do you remember Mrs. Wells's saying any thing?

J. Adamson. I do not. After this, she was carried up the great Stairs, and at the Bottom, she said, I believe this is the Stair-case. (This was just as we came out of the Room.) We went up Stairs into every Room, (I believe there are four of them.) She said, None of them is the Room. Then she was brought down again, and we took her through the Kitchen and up the Stairs into the Hay-loft. She paused a little before she spoke; and the first Word that I remember she said, was, There is more Hay than there was (as I remember) in the Room. Then I cautioned her to be careful, and let go her Arm, and went up towards the Hay, and felt it; and it was quite light; as though it had not lain there a long Time. Some People said, they thought there had been some put lately in. I said, I thought there was not; for I went round the House to make Observation, and did not think there had been any brought in; because, if there had, there must have been some scattered. Then they had got the Jug and Basin, and some other Things that she knew; but I can't say how she came to pitch upon them, because I was making Observations on the Hay. I walked then directly between her and the Casement, and turned round, and set my Back against the Casement, and said, If you

you have been confined in this Room so long, you will be able to give a very good Account of it, and I expect you will. She said, That was nailed up when I was here. What, boarded up? said I. No, said she, but I tried to open it, and could not. She described Fields, and a Hill at a Distance, and some Trees; but the most remarkable Thing was, some Houses to be seen on the left-hand Side the Lane.

Mr. Moreton. Are you sure she said so?

J. Adamson. I am.

Mr. Moreton. Are you sure she could not see them when she spoke?

J. Adamson. I stood so, that I am sure she could not, I stood so betwixt them and her. After the Gentlemen had all looked out to see how the Description answered, I asked her, where she had looked out to see the *Hertfordshire* Coach? She pointed to the Window which was boarded up, and said, That is the Window; and that also is the Window that I made my Escape out at.

Mr. Moreton. Did you look to see whether there was any Reason to think any body had got out?

J. Adamson. I helped Colley, her Uncle, to pull the Boards down. I called all the Gentlemen to see that it was not in the same Condition with the rest of the Things in the Room, with Cobwebs as other Places had. The Wood was fresh split with driving a great Nail through it, and appeared as fresh as it could be; that is, the Crack seemed quite fresh.

Mr. Moreton. Was the Crack before you pulled them down, or done by pulling them down?

J. Adamson. That was before we attempted to pull them down.

Q. from a Jurymen. Was it boarded all over the Window?

J. Adamson. It was boarded like a little Shutter. It was one Piece of Wainscot that went clear across, and covered it all pretty near to the Top. There was a Casement on the right-hand Side; and the other Side had nothing in it.

Mr. Moreton. Did you make any Observations on the Outside of this Window, whether there was the least Appearance of any thing, as though any body had got out there?

J. Adamson. Colley and I went out; there we saw the Surface of the Plaster was scratched off, and we shewed it to several People.

Mr. Moreton. What were their Names?

J. Adamson. I don't know them; but there were a great many People looked at it, and the fresh Pieces of the Mortar on the Ground, then below the Window. Just on the Edge, between the Plastering and Brick-work, it was broke.

Mr. Moreton. Do you remember seeing Mr. Hague and Mr. Aldridge there?

J. Adamson. I do. Mr. Aldridge and I both made Observations on the Girl's pausing a little.

Mr. Moreton. Did Mr. Aldridge seem to shew any Dissatisfaction upon that then?

J. Adamson. No. I observed a large Pitcher in the Parlour, when we first went in. There were six or eight of us went in, two and two; and when there was no Resistance, I and Mr. Colley went behind the House.

Mr. Moreton. Did you see a Pitcher in the Hay-loft or Workshop?

J. Adamson. I did.

Mr. Moreton. Look at this Pitcher; do you know it?

J. Adamson. I suppose that is it, it is like it; I saw it since at the Mansion-House before my Lord-Mayor; it was broken as this is.

Mr. Moreton. Did you carry the Pitcher there?

J. Adamson. No, Sir.

Mr. Moreton. Do you know any body that did?

J. Adamson. No, I do not.

Mr. Moreton. Did Canning make any Observation on the Pitcher, — whether it was, or was not the Pitcher, that was in the Room when she was there?

J. Adamson. I did not hear that; I was making Observations on the Hay then.

Cross-examined.

Mr. Davy. Was the Door that leads up into the Workshop, open or shut, when she went into the Kitchen the first Time?

J. Adamson. I really cannot tell.

Mr. Davy. When she was gone from the Kitchen to the Stair-case of the House, what did she say there?

J. Adamson. She said at the Bottom of it, she believed that was it.

Mr. Davy. How many Stairs were there?

J. Adamson. I cannot tell; there is a Hatch or Door on the top Stair.

Mr. Davy. Upon your Oath, could she not see the whole Flight of Stairs up from the Bottom, where she then stood?

J. Adamson. Upon my Oath, I cannot tell whether she could or not.

Mr. Davy. Was that Stair-case any thing like the few little Steps that lead up into the Hay-loft?

J. Adamson. There is a very great deal of Difference.

Mr. Davy. Did you ask her, how she could make that Mistake?

J. Adamson. I did; and said, You see you was once mistaken in the Stair-case.

Mr. Davy. What was this in Answer to?

J. Adamson. She had said, That was the Corner where the Girl stood and laughed at me, when my Stays were cut off; which she said afterwards was *Virtue Hall*.

Mr. Davy. When you stand at the Bottom of the Stairs leading up into the Workshop, don't you see there are but few Steps?

J. Adamson. I cannot tell whether the Steps are without the Door, or after the Door is open?

Mr. Davy. How long was she in the Kitchen the second Time, before she fixed upon the Room she was confined in?

J. Adamson. I believe she was led up into the Room directly.

Mr. Davy. Was the Door open then, when she came from the other Stairs?

J. Adamson. I believe it was, and some People going up.

Mr. Davy. Did she say, when she was in the Kitchen, (pointing to the Door) That is the Door that leads to the Room I was confined in?

J. Adamson. I do not remember that.

Mr. Davy. Who shook up the Hay?

J. Adamson. I do not know.

Mr. Davy. Upon your Oath, did not you, when you was up there, put your Hand into the Hay?

J. Adamson. Yes; I did, to shew it was light; I set my Foot upon it first.

Mr. Davy. Were Mr. Nash, Mr. Aldridge, and Mr. Hague, in the Room then?

J. Adamson.

J. Adamson. I cannot tell whether they were or not; I believe they were not. They might be all there, or none of them, for ought I know.

Mr. Davy. How much Hay was there in the Room?

J. Adamson. I think, there might be about half a Load, or more; I cannot tell Hay by the Bulk of it.

Mr. Davy. How came *Scarrat* and you to toss up, which should go back to *Canning*?

J. Adamson. It was an indifferent Person said, To end Dispute, you had better toss up. We had some Words after that; and I went, but at last, against my Will.

Mr. Davy. How came you to have Words, after it was decided by Lot?

J. Adamson. After *Scarrat* had won, I said, he was to go.

Mr. Davy. Had any body observed at that Time, that she had not mentioned any Hay being in the Room?

J. Adamson. I had not heard any body mention any thing about it; but when I went, she told me there was some.

Mr. Davy. What did you mean, when you came back, in saying, We are all right, shaking your Hat?

J. Adamson. Going through the *Wash*, my Horse got away from me. (I believe I had my Hat in my Hand.)

Mr. Davy. Was you rejoiced, when she said there was Hay?

J. Adamson. No, Sir.

Mr. Davy. Was you surprized?

J. Adamson. No, Sir.

Mr. Davy. Why did you tell them there was Hay in it?

J. Adamson. Because she said so.

Mr. Davy. Why should you come back to tell them she said there was Hay in it, if she had never observed there was Hay?

J. Adamson. I don't remember any body observed she had not mentioned Hay.

Mr. Davy. Had you heard she had described the Particulars of the Room?

J. Adamson. I had never heard she had given a Description of the Room.

Mr. Davy. Then why did you go to *Enfield-Wash*?

J. Adamson. I went with *Mr. Wintlebury* for Company; he desired I would go with him. The Warrant was gone down before, and we went with an Intent to meet them.

Mr. Davy. Had you been before the Sitting Alderman?

J. Adamson. No, I had not.

Mr. Davy. Did you go down to assist in taking the People up?

J. Adamson. I did not know any body would be taken up.

Mr. Davy. Did you go down to see whether the Room answered the Description?

J. Adamson. I had not heard her describe any.

Mr. Davy. Do you remember your saying these Words, *What, Hay, Bet*?

J. Adamson. I don't remember that I ever mentioned the Word, *Hay*. I remember, she said, *Hay*, and something else; and I said, *And what*? then she told me, a Fire-place.

Mr. Davy. Whether, before you put your Back to the Window, had you not heard, she had given an Account of some Particulars in the Room?

J. Adamson. No, I had not. I did it to see, whether she could give an Account of the Prospect or no.

Mr. Davy. Should not you think it more advisable, for the People to be satisfied with the Account she could give of the Things in the Room, first?

J. Adamson. She was in the Room.

Mr. Davy. Upon your Oath, did she tell you there were Trees to be seen out of the Window?

J. Adamson. Yes, she did, upon my Oath.

Mr. Davy. Where did she stand then?

J. Adamson. She was just by the Casement.

Mr. Davy. Did you fill the Window, so that she could not possibly see Trees?

J. Adamson. I stood so near her, that I believe she could not see out at the Window.

Mr. Davy. Are you sure she could not see Trees?

J. Adamson. I believe she could not.

Mr. Davy. Was you close to the Window?

J. Adamson. No, not close to that, but close before her; which I think would answer the End, to prevent her looking out, better.

Mr. Davy. How far was she from the Window?

J. Adamson. She might be two Yards from it, and I a Yard and a half.

Mr. Davy. Was the Window boarded?

J. Adamson. It was not. I asked her the Question; she said, it had not been boarded up.

Mr. Davy. Did you ever see a Window in the Country, where there have been no Hills to be seen out of it?

J. Adamson. Yes, I have, upon the Sea-coasts.

Mr. Davy. How long had she been in the Room before you tried this Experiment?

J. Adamson. About five or six Minutes.

Mr. Davy. Had she not Time enough to look out there?

J. Adamson. I don't think she had.

Mr. Moreton. When did you hear she was come Home?

J. Adamson. I never heard she was, till the Night before we went down.

Mr. Moreton. Did you go down voluntarily, as a Friend of the Girl, or upon Request?

J. Adamson. No; it was upon the Request of *Mr. Wintlebury*, and others. I was just come off a Journey, and took a Friend's Horse without Leave.

Mr. Moreton. Did you tell *Mr. Lyon* there was a Fire-place or Chimney, as well as Hay?

J. Adamson. Yes, I mentioned both to him.

Mr. Moreton. Did *Mr. Lyon* hear your Observations on the Hay?

J. Adamson. No; he then was engaged in the right-hand Corner of the Room; there they had got the Jug, a Bason, and Tobacco-mould.

Mr. Moreton. Supposing she could see the Trees, could she see the Houses on the left-hand Side the Way?

J. Adamson. No; them she could not see, till we looked.

Mr. Moreton. What is the Character of *Elizabeth Canning*?

J. Adamson. I never heard a bad Character of her before this in my Life. I always looked upon her to be a Girl of a good Character.

Baron Legge. At the Time you stood there, and asked what could be seen out at the Window, and she said Trees, and Hills at a Distance, did she tell you what was betwixt the Trees and the Window?

J. Adamson. I don't remember any thing she said besides.

Baron Legge. Did she mention any Foot-way near there?

J. Adamson. No, not as I remember.

Baron Legge. Were the Boards pulled down from the Window before the Girl came there, or after?

J. Adamson. They were not pulled down till after she came. I asked her, which was the Window from whence she had seen the *Hertsfordshire* Coach? She said, That; and pointed to it. Then I said, Let's see whether we can see the Road out at it or not: Then I went to pull the Board down, and the Man who said he was her Uncle helped: We wrenched it off.

Baron Legge. Could you have seen the *Hertsfordshire* Coach go by, as the Board was then up?

J. Adamson. I might, as it was light over the Board, had I looked over it.

Baron Legge. Were there any Cracks big enough in the Board to look through?

J. Adamson. I cannot say there were.

Sutherton Bakler sworn.

I live at *Aldermanbury-Postern*. I was applied to on the 30th of *January*, the Day after *Elizabeth Canning's* coming Home, to come to her. I attended her, and found her in a very low and weak Condition. She was so extremely low, that I could scarcely hear her speak. She was in Bed, with cold clammy Sweats upon her. She complained of being very faint and sick at Times, with a Pain in her Bowels; and complained of having been coftive all the Time of her Confinement. I ordered her a purging Medicine; but her Stomach was too weak, and could not bear the Medicine she took. Finding that, I ordered a Glyster to be administered on the 30th in the Evening.

Mr. Nares. Did they give it her?

S. Bakler. They did, I think. I also ordered opening Medicines the same Day. She had no more Medicine till the 3d of *February*: Then I ordered another Glyster, that had some little Effect, and brought away some small Quantity, but did not answer the End. I ordered her another on the 5th, that had no Effect at all. She continued still bad. Doctor *Eaton* was sent for upon the 6th. He wrote proper Prescriptions for her for fourteen Days.

Mr. Nares. How long was she before she had her Health tolerably?

S. Bakler. He prescribed diuretic Medicines and gentle Cathartics; and after a Fortnight he did not come past three or four Days, and she was tolerably well in about a Month. Her Face appeared very wan. Her Face used to be of a remarkable red Complexion; but her Colour was quite gone, and her Arms of a livid Colour, spotted. I had known her some Years.

Mr. Nares. Had you ever attended her with Medicines before this?

S. Bakler. No, never.

Mr. Nares. How came she to go to *Enfield*, when the Glysters had not had the Effect?

S. Bakler. I thought she was very unable to bear it, and wondered that she did: I thought it extremely improper. I thought she could not bear the Fatigue.

Mr. Nares. What may you imagine those Symptoms you saw upon her to be owing to?

S. Bakler. I don't know that: She was very much emaciated and wasted, from what she was when I saw her before.

Mr. Nares. Do you think the Confinement you have heard of would not occasion it?

S. Bakler. To be sure, by living upon what she says, she must be very much wasted. Dr. *Eaton* was called in, because they thought her in a very dangerous Way.

Mr. Nares. From the Appearance of her at the Time that you saw her, was there any Appearance of her having been in a Salivation?

S. Bakler. She was very much emaciated and wasted, to be sure; but I never did see a Person as soon as they came out of a Salivation in my Life, or attended one in it.

Mr. Nares. Had she any Appearance of a Woman that had been brought to-bed?

S. Bakler. She looked like a Person half-starved; in a weak, wasting, decaying Way: But what was the Cause of it, I do not know.

Cross-examined.

Mr. Willes. When she complained she had no Stool, what did she say about making Water?

S. Bakler. I believe she did not make Water till the Doctor had attended her, which was not till the sixth Day, by giving her Diuretics.

Mr. Willes. How long did she say she had been without a Stool?

S. Bakler. She said, she had not had any during the Time of her Confinement; but did not say she had not made Water.

Mr. Willes. Did she say she had made Water?

S. Bakler. I do not remember she said she had made Water.

Mr. Moreton. Do you believe, that a Person that is half-starved is not so fat as a Person that is full-fed?

S. Bakler. No, to be sure, Sir; he cannot.

Mr. Willes. What Colour were her Nails?

S. Bakler. Her Arms were black and livid, and her Nails looked of a Sort of a blueish Cast.

Dr. Eaton sworn.

Dr. Eaton. I am a Physician. The first of my attending *Elizabeth Canning* was at her Mother's Request, on the 6th of *February*: Hearing it was a compassionate Case, I attended her. I found her in a very weak Condition, and was very apprehensive she would die: She appeared to me to be in very great Danger for a few Days. She complained of Cholics and Pains in her Bowels, and could scarce keep any thing upon her Stomach. I cannot say she entirely kept her Bed. She took a little Chicken Broth.

Mr. Williams. Did you see any Signs of an Imposture?

Dr. Eaton. No, I saw none at all.

Mr. Williams. Had you heard she had been away from her Friends?

Dr. Eaton. I had. I was very full of Business: I only attended to her: I did not ask Questions about her Confinement. I found she was coftive to a very great Degree. She had had one Stool before I came. I happened to see the Apothecary, and he was relating this Case to me: He was saying what he intended to give her. I said, mild Things, after so long fasting, would be better; and he gave it her, and it had had some Effect. It was seven or eight Days before the Danger began to be over.

Mr.

Mr. Williams. How long did you attend her?

Dr. Eaton. I attended her from the 6th to the 20th of February, the 20th included, every Day; and after that every other Day, for a few Days; the last Time was on the 4th of March: Then she was well enough to go abroad in the Neighbourhood; and I believe she had been abroad a Day or two before that.

Mr. Williams. Have you not had Objects under your Care in Salivations?

Dr. Eaton. I have.

Mr. Williams. Whether that does not leave very remarkable Symptoms in the Mouth, Throat, and Breath?

Dr. Eaton. Yes; it does for some Time after.

Mr. Williams. Was there the least Symptom of this?

Dr. Eaton. Oh! nothing like it, nothing like it; I'll assure you, nothing like it in the World: It was nothing like coming out of a Salivation.

Mr. Williams. Did you observe her Arms or Legs?

Dr. Eaton. I did not take so much Notice of them.

Mr. Williams. If you had not been told the real Case, what should you have imagined it to have been?

Dr. Eaton. I can't but say, the Case corresponded with a Person that had suffered Hunger, Thirst, and Cold, and great Hardship.

Cross-examined.

Mr. Davy. Did you observe her Hands and Legs?

Dr. Eaton. No body desired me to take Notice of her Hands and Legs.

Mr. Davy. When had she her first Evacuation?

Dr. Eaton. She had the first the Day before I came, which was the 6th; then I heard that she had had one the Day before; and I believe she had the next the Day after.

Mr. Davy. Was there any Difficulty after that?

Dr. Eaton. There was; and Medicines ordered pretty commonly, to the 20th. I gave her Diuretics a pretty deal.

Mr. Davy. Had you any Conversation with her?

Dr. Eaton. I had none at all. I was very full of Business at that Time, and I did my Business as well as I could.

Mr. Davy. Did you examine any outward Appearance?

Dr. Eaton. No, I did not. They complained she had too little Evacuation by Urine.

Mr. Davy. How was her Pulse?

Dr. Eaton. She had a singular Pulse: I was afraid of her falling into a Fever, and I ordered that which was material for a Fever.

Mr. Davy. Had you never a Patient in this Condition before?

Dr. Eaton. Many.

Mr. Davy. Did all their Disorders proceed from Hunger, Thirst, and Cold?

Dr. Eaton. No. She was weak and emaciated, and her Stomach weak. When we prescribe for a Person, we attend to all the Circumstances, and ask all the Questions necessary to let us into the concomitant Symptoms. I formed my Opinion from what I found, a low, flashing Pulse, and fluttering. Every Thing corresponded to what they said; and therefore I had no Reason to disbelieve the Story.

Mr. Davy. Whether all the Symptoms you observed in the Defendant, might not arise from another Cause than that which is now assigned?

Dr. Eaton. I'll give you the best Account of that I can. It might possibly in Part arise from other Causes, and it might not.

Mr. Davy. May not a Person be reduced to a low State by a Fever?

Dr. Eaton. To be sure they may: If I am sent for to a Patient, and they tell me they have suffered with Hunger or Thirst, I never doubt it.

Mr. Davy. That is not the Question: Is it not possible a Person may be reduced to the Condition she was, by some other Ailment?

Dr. Eaton. I think it is possible.

Mr. Davy. Might not she be in the Condition you saw her, and yet her whole Story a great Lye?

Dr. Eaton. All I can say, it might proceed from another Cause; but I must beg leave to mention one Thing, and that is, it may proceed from another Cause, as when in a Fever a Person's Stomach is taken away, then that Cause of Hunger comes not by Force, but because they can't eat; but the Consequence was such, it must proceed from her having lost her Appetite some Way or other. A Person may lose their Appetite by a Fever, or by Force. It is plain she had not eat for some Time.

Mr. Davy. If they had not told you that this Girl had been half-starved, and kept from Meat, Drink, and exposed to Cold, should you have concluded, upon your own Observations, that she had been so used?

Dr. Eaton. I should have concluded she had either by Distemper lost her Appetite, or by some other Accident.

Mr. Nares. Is it possible for one to live twenty-eight Days without any more Subsistence than she mentions?

Dr. Eaton. There is no Doubt of the Possibility of a Person's subsisting twenty-eight Days, as in this Case.

Mr. Nares. Did you observe the Defendant's Ear?

Dr. Eaton. There was a Disorder behind her Ear. After I had attended her seven or eight Days, the Surgeon was taken ill, and they had not mentioned that to me till then; upon which I looked upon it: It had inflamed her Face, and threatened it, something like a St. Anthony's Fire, and I ordered a Fomentation for it.

Mr. Nares. What might cause it to be so bad?

Dr. Eaton. I take it, her bad Habit of Body, concurring with this Sore upon her Ear, occasioned that like a St. Anthony's Fire upon her Face.

Mr. Moreton. We are now coming to *Enfield-Wash*.

Robert Beals sworn.

R. Beals. I was ill last Christmas was Twelvemonth. I attend *Stamford-Hill* Turnpike in *Tottenham* Road, towards *Enfield*, betwixt *Tottenham* and *London*: About the Middle of February I heard of this Story, about a Girl being forced away from her Friends near *Moorfields*, to a bad House at *Enfield-Wash*, and had been kept there a Month on a Pitcher of Water and some mouldy Crusts.

Mr. Moreton. How did you hear of it?

R. Beals. My little Children, about eight or nine Years old, brought the Account from School. I said,

I said, upon hearing this, I believed I was at the Gate when the poor Girl came by.

Mr. *Moreton*. Give an Account of what you saw.

R. *Beals*. About the Fore-end of *January*, I was standing at the Gate between Ten and Eleven, or near Eleven at Night; it was a very calm still Night; I heard something of a sobbing, crying Voice; it came from towards *Newington*, going towards *Tottenham*; at first I saw no body; I stood still; it came nearer me.

Mr. *Moreton*. How far off do you imagine it to be, when you heard the Sobbing at first?

R. *Beals*. It may be two or three hundred Yards. At last I perceived there were more than one. As they came near, I saw there were two Men, and a young Person, seemingly by her Voice. I had a large Candle burning; (the Stile is at the End of the Turnpike over the Way.) As soon as they got up to the Light, I saw them more plain. One Man was taller than the other. They went towards the Stile; one, the foremost, began to say, *Come along, you Bitch, you are drunk*; that was said when the Candle began to shine upon them. I put myself a little farther out without-side the Posts, that they might see me. The Woman seemed not willing to go along with them, by her crying and sobbing, but never spoke a Word. The Man behind made a Sort of a Laugh, and said, *D—n the Bitch, how drunk she is!* When they came up to the Stile, the tall one got over first, and the hindmost lifted her over by either one Leg or both Legs; she came down upright on the other Side; then she hung back, and fell on her Breech upon the Step, and cried bitterly. I thought she would go no farther. As I thought they could see me, I expected she would have said something to me, but she did not speak a Word. He before, plucked her up by the Hands at full Length, and said, *D—n you, you Bitch, come along, you are drunk*; the other came on the other Side of her, and they went away together; he laughed, and said, *D—n the Bitch, how drunk she is!* He that came over last jostled her along. I could see them some Way after they got over the Stile. One of them never let go her Hand all the Time I saw them.

Mr. *Moreton*. From what you heard, did you think that she was a Person in Distress?

R. *Beals*. I did; she burst out afresh with sobbing, going off. They were out of my Sight presently.

Mr. *Moreton*. Did you see her Face?

R. *Beals*. I can't say I did: I might see one Side of her Face.

Mr. *Moreton*. How was she dressed?

R. *Beals*. She had something of light-coloured Cloaths on.

Mr. *Moreton*. About what Size?

R. *Beals*. She did not seem to be tall; they both of them stood above her.

Mr. *Moreton*. Had the two Men Great Coats on?

R. *Beals*. I can't tell whether they had or not.

Mr. *Moreton*. What Reason have you to believe this was the Beginning of *January*?

R. *Beals*. I think it was, to the best of my Knowledge. I was not well then: I attended some Nights for my Partner, and fell ill about three Weeks after; and from that, when I came to recollect it, I thought it was about the Beginning of *January*.

Mr. *Moreton*. Do you know *Moses Holloway*?

R. *Beals*. I do.

Mr. *Moreton*. Was he well or ill then?

R. *Beals*. I don't know whether he was well or not. Sometimes I have done Duty for him, and he for me.

Recorder. Are you sure it was the Beginning of *January*?

R. *Beals*. I really believe it was.

Mr. *Moreton*. Why did you not attempt to give her your Assistance?

R. *Beals*. There were two Men with her, and we are fearful in our Business; except they ask us any Questions, we never meddle with such; and I was then alone.

Mr. *Moreton*. When did you give Information of what you heard and saw?

R. *Beals*. I never did till about six Weeks after. At first I thought it might have been one of the Men's Wives, or Sister, or some drunken Girl.

Mr. *Moreton*. Is it a common Thing to see a drunken Woman along with two Men?

R. *Beals*. I never saw one so particular as this.

Cross-examined.

Mr. *Willes*. When was you first taken ill?

R. *Beals*. It was in the Beginning of *February*. I was much troubled with the Rheumatism.

Mr. *Willes*. Do you always attend your Duty?

R. *Beals*. Sometimes I do, and sometimes I do not.

Mr. *Willes*. How far is your Turnpike from *Moorfields*?

R. *Beals*. It is about three Miles.

Mr. *Willes*. How far is it from *Stamford-Hill* Turnpike to *Enfield-Wash*?

R. *Beals*. It is seven Miles.

Mr. *Willes*. Is it possible for a Woman to walk to, or be carried by two Men from your Turnpike to *Enfield-Wash* in a quarter of an Hour?

R. *Beals*. No, Sir, it is not possible.

Mr. *Willes*. Was she walking on her Feet?

R. *Beals*. She was, and went pretty fast.

Mr. *Willes*. Did you imagine she was in a Fit of Convulsions?

R. *Beals*. No, Sir, I took her to be in Liquor.

Mr. *Willes*. Was you near enough for her to have seen you?

R. *Beals*. I was.

Mr. *Willes*. What did the Men say?

R. *Beals*. One said, *Come along, you Bitch, you are drunk*; and the other said, *How drunk the Bitch is!*

Mr. *Willes*. What was the Colour of her Gown?

R. *Beals*. It was a lightish one, it looked so.

Mr. *Willes*. Had she a Gown on?

R. *Beals*. I think she had, I durst to say she had, or else I should have taken more Notice of it.

Mr. *Willes*. Did she keep crying all the Time?

R. *Beals*. She did.

Mr. *Willes*. Was it Crying or Screaming?

R. *Beals*. It was only Sobbing and Crying.

Mr. *Willes*. Was she near enough that she might have cried out to you for Help?

R. *Beals*. Yes, that she was.

Mr. *Willes*. How came you not to tell this to any of your Neighbours before?

R. *Beals*. I did not, till I mentioned it to my Children innocently, not thinking to hear any thing more of it.

Mr.

Mr. Willes. Was it a dark or light Night?

R. Beals. It was a dark Night.

Mr. Willes. Could you distinguish whether she had a Hat or Bonnet on?

R. Beals. I can't say what, she had something on her Head.

Mr. Willes. Had she a Cap on her Head?

R. Beals. I can't say whether she had or not; I believe she had; she appeared to be a young Person, with light-coloured Cloaths on.

Mr. Willes. Had she an Apron on?

R. Beals. I don't remember whether she had or not; I rather believe she had.

Mr. Willes. Don't you keep *Chriftnas*?

R. Beals. Yes, Sir.

Mr. Willes. Don't you know New-year's Day?

R. Beals. We don't keep that.

Mr. Willes. Was you garnished out on this Day with Rosemary, or an Orange on a Skewer?

R. Beals. We don't do no such thing.

Mr. Willes. Is it not a Custom in your Parish, on New-year's Day, to wish one another a happy New-year?

R. Beals. Yes, Sir, it is.

Mr. Willes. Do you remember this Morning you had wished any of your Neighbours such?

R. Beals. No, I do not: Indeed I don't remember what Day it was.

Mr. Willes. Don't you remember any thing to distinguish this to be New-year's Day?

R. Beals. No, I do not; I made no Remark at all, being very ill at the Time.

Mr. Moreton. Do you remember at what Time you begun to attend the Turnpike?

R. Beals. Mine began on the *Sunday* in the Evening, when we come in our Turns; but we often come out of Turn.

Mr. Moreton. Was there any Moon?

R. Beals. I am sure there was no Moon, and a very still Night, and it rained a little.

Mr. Willes. How far may your Road be over?

R. Beals. It is about eight or ten Yards over.

Mr. Moreton. Did you see her go any Part of the Way without a Man holding her by the Hand?

R. Beals. No, I did not.

Mr. Moreton. My Lord, I only mention this as circumstantial: Grant me the Woman was at this Turnpike, I'll not call another Witness. We are now going to call a Person that saw a Person in the Situation that *Canning* returned in on the 29th.

Thomas Bennet sworn.

T. Bennet. I live at *Enfield*, at the ten-mile Stone: I was coming Home from my Shop near Mrs. *Wells's* House, on the 29th of *January* 53; between her House and the ten-mile Stone, between Four and Five in the Afternoon, there was a miserable poor Wretch to look to, in the Gravel-pit Gate-way, a five-acre Field near the ten-mile Stone; betwixt two little Houses, *Richard Wright's* and Widow *Jenge's*.

Mr. Nares. Describe her Drefs.

T. Bennet. She had neither Gown, nor Stays, nor Cap, nor Hat on, only a ragged dirty Thing, a Half-handkerchief like, and a Bit of something that reached down below her Waste, and no Apron on, and her Hands lay before her: She was coming in at that five-acre Field Gate-way.

Mr. Nares. How far is this beyond the ten-mile Stone?

T. Bennet. It is but the Breadth of the five-acre Field, and twenty or thirty Pole on the other Side, and about a quarter of a Mile on this Side Mrs. *Wells's*. She asked me the Way to *London*; I told her; she said she was affrighted by the Tanner's Dog. I bid her turn on the right Hand, and then on the left, and that would bring her to *London*. She was going to turn out of the great Road into the Foot-way.

Mr. Nares. Whereabouts is the Tanner's House?

T. Bennet. That is a little farther nearer *London*.

Mr. Nares. Which Way did she come?

T. Bennet. I can't tell which Way she came; I saw her first coming in there; but she went for *London*: If she had not spoke to me, she would have gone the wrong Way for *London*.

Mr. Nares. How far was she from the Tanner's House?

T. Bennet. She was about half a quarter of a Mile from it.

Mr. Nares. How came you to know this was the 29th of *January*?

T. Bennet. On the 30th of *January*, (which was the Day after I met her) a Man came to me about taking my Son Apprentice: I met him according to Appointment on the next Day, which was on a *Wednesday*, at *Waltham-Cross*, in order to put my Son out Apprentice, but we did not agree; and the Day after, which was on a *Thursday*, I came to *London*; and on the *Friday*, which was next Day, I met Mrs. *Kimpston* near the ten-mile Stone, coming by this very Gate-way; she told me what had happened at Mrs. *Wells's*; then I said, I will be hanged if I did not meet the young Woman near this Place, and told her the Way to *London*.

Cross-examined.

Mr. *Gascoyne*. Which Way was she going?

T. Bennet. Out of the high Road into the Fields.

Mr. *Gascoyne*. Where did you gather up the Word *Half-handkerchief*, upon your Oath?

T. Bennet. I never gathered it up at all; it is what I said at first, and always took it so.

Mr. *Gascoyne*. How do you know she had no Stays on?

T. Bennet. I saw her Shift Sleeves, and she had no Gown on.

Mr. *Gascoyne*. Which Way was she coming from?

T. Bennet. I can't tell that; she met me just coming in at the Gate-way.

Mr. *Gascoyne*. Which is nearest *London*, that Gate-way or the Tanner's House?

T. Bennet. The Tanner's House is.

Mr. *Gascoyne*. Which Way did you direct her?

T. Bennet. I directed her in the Foot-way by the Road-side.

Mr. *Gascoyne*. Where was you the Day the People were taken up?

T. Bennet. That very Day I was at *Hodsdon*, at Mr. *Peirce's*, to put my Son Apprentice to a Butcher.

David Dyer sworn.

D. Dyer. I live at *Enfield-Wash*, about a quarter of a Mile on this Side Mother *Wells's*, right against the ten-mile Stone. I was at my Door three Evenings before Mrs. *Wells* and her Family were taken up; I was chopping some rotten Bushes;

about Four in the Evening I saw a poor distressed Creature come by me out of the common Field, from Mrs. *Wells's*-ward, for *London*.

Mr. *Nares*. Describe how she was dressed.

D. *Dyer*. Upon my Word I can't give any Account of her Cloathing; she had a Thing tied over her Head like a white Handkerchief, with her Hands before her; she walked very weakly. She was a shortish Sort of a Woman, and had a shortish Sort of a Thing about her, it did not come very low about her. I looked at her Face as she came by me: I said, Sweetheart, do you want a Husband? She did not speak to me.

Mr. *Nares*. How soon after this did you see her again?

D. *Dyer*. It was a considerable Time after that; when I saw her, I took her to be the same; when I saw her, I believed her to be the same.

Mr. *Nares*. Stand up, *Elizabeth Canning*. Look upon her, is that the same Person?

D. *Dyer*. I have seen her betwixt that Time and this; this is the young Woman, I think, that passed by me at the Gate-way; I do believe this is she.

Mr. *Nares*. Have you seen the Place she got out at, at Mrs. *Wells's*?

D. *Dyer*. I have many a Time:

Mr. *Nares*. Might she come that Way from her House, where you met with her?

D. *Dyer*. Yes, she might, from either the back or fore Part of her House, that Way.

Cross-Examination.

Mr. *Davy*. Was she a likely Girl in the Face?

D. *Dyer*. The Girl was a likely Girl enough to look at, but her Cloaths were not; she looked as if she wanted some Victuals.

Mr. *Davy*. You did not mistake her for a Blackmoor?

D. *Dyer*. No, I did not.

Mr. *Davy*. Was she not black in the Face?

D. *Dyer*. No, she was not.

Mr. *Davy*. Was she fresh-coloured?

D. *Dyer*. No, I did not see any red in her Face; she looked thin and weakly; she had not much Colour.

Mr. *Davy*. Did she look pale in the Face?

D. *Dyer*. She looked whitely.

Mr. *Davy*. Then she was not red?

D. *Dyer*. No.

Mr. *Davy*. Nor yet black?

D. *Dyer*. No.

Mr. *Davy*. Then she was white?

D. *Dyer*. Yes.

Mr. *Davy*. Was it pretty late at this Time?

D. *Dyer*. It was not dark; I saw her Face very plain.

Mr. *Davy*. Did you take particular Notice of her Face?

D. *Dyer*. I did, I took particular Notice of her, I looked at her very wishfully.

Mr. *Davy*. If she had had black Eyes, should you have seen them?

D. *Dyer*. Yes, I should.

Mr. *Davy*. If she had had a bruised Face, should you have seen it?

D. *Dyer*. I can't say whether she was, or was not bruised.

Mr. *Davy*. How low did that shortish Thing come down?

D. *Dyer*. I can't say.

Mr. *Davy*. Did she walk fast or slow?

D. *Dyer*. She walked very slowly.

Mr. *Davy*. Of what Colour were her Cloaths?

D. *Dyer*. I can't say as to that.

Mr. *Davy*. What was the Colour of that short Thing you mention?

D. *Dyer*. I can't say.

Mr. *Davy*. What the Colour of her Petticoat?

D. *Dyer*. I can't say.

Mr. *Davy*. Was it a red one?

D. *Dyer*. Indeed, I can't tell.

Mr. *Davy*. Did you see a coloured Handkerchief, tied over the white Handkerchief on her Head?

D. *Dyer*. I did not.

Mr. *Davy*. Are you sure the Prisoner is she?

D. *Dyer*. I am pretty sure; I am partly positive; I will not be punctual.

Mr. *Davy*. You say, she had her Hands before her?

D. *Dyer*. She had.

Mr. *Davy*. Had she a pretty Hand?

D. *Dyer*. I did not handle them; they were as other People's are.

Mr. *Davy*. A white Hand?

D. *Dyer*. Yes.

Mr. *Davy*. How soon after this did you see her again?

D. *Dyer*. I can't tell; it was after I heard there had been People taken up at Mother *Wells's*, for confining such a Girl; then I spoke of this.

Recorder. How do you live?

D. *Dyer*. I get my Living by my daily Labour.

Mary Cobb sworn.

M. *Cobb*. I live in *Silver-Street*, at *Edmonton*; I was going Home from *Tanners-End*; I was in *Ducks-Fields*, just at the setting-in of Day-light (as much as I can remember) on the 29th of *January*. On a *Monday* Night, I met a Person; she had a Handkerchief pinned over her Head, it almost hid her Face; she had a black Petticoat, and an old Bed-gown on; it was either a quilted Thing, or it was a printed or flowered Thing; the Flowers seemed to be faded. She wrapped her Arms in it. The first Sight I had of her, she was getting over a Stile, and looked at me, and made a Slip, but did not fall: She came up directly towards me, and looked at me, and I at her: I was afraid, and moved slowly. I turned about, as she came up to me, and looked at her: I thought she would have asked me Charity; I put my Hand in my Pocket, and had no Half-pence. I had a Mind to have spoke to her; but having nothing to give her, I did not. I perceived her to have a young Face. She appeared to be in a very wretched, miserable Condition, as ever I saw a Person in all my Life. She walked creeping along. I could not tell what to make of it, whether she was afraid of me, or what.

Mr. *Williams*. You say, you had a Mind to have spoke to her; what would you have said?

M. *Cobb*. I wanted to ask her, why she walked so?

Mr. *Williams*. How do you recollect it was the 29th of *January*?

M. *Cobb*. When I heard the Affair, it came into my Head, that this was the Person that came down to Justice *Tasbmaker's*; then I heard it was on a *Thursday* Night she got away, and I thought from that, it was impossible; but when it came to be published in the Papers, I found it to be on the same Day of the Month, by looking back.

Mr. *Williams*.

Mr. Williams. What Size did she appear to be?

M. Cobb. Much about a Head shorter than myself.

Mr. Williams. Have you ever seen her since?

M. Cobb. No, I have not.

Mr. Williams. Look at *Elizabeth Canning* now, there she stands.

M. Cobb. The Size answers: I firmly believe this to be the same Person, by the Tip of her Nose; that bears some Resemblance to the Person I saw.

Mr. Williams. Have you any Reason to believe this is not she?

M. Cobb. No, I have not.

Cross-examined.

Mr. Willes. How many Fields are there, called *Ducks-Fields*?

M. Cobb. There are three of them.

Mr. Willes. How far is that Part of the Foot-way, where you met this strange Creature, from the great Road?

M. Cobb. There is nothing but a Ditch parts it.

Mr. Willes. What Time does the Day shut in on the 29th of *January*?

M. Cobb. I can't say I have made Remarks on that.

Mr. Willes. Where was you going to?

M. Cobb. To my own House.

Mr. Willes. What Time was it when you came Home?

M. Cobb. Then the Children had lighted a Candle.

Mr. Willes. Where had you been?

M. Cobb. I had been at *Tanners-End* to Mrs. *Carter's* House, to carry Home a Child's Vest that I had made.

Mr. Willes. What Time did you set out from Home?

M. Cobb. About Three in the Evening.

Mr. Willes. How far is your House from Mrs. *Carter's*?

M. Cobb. About a Mile.

Mr. Willes. How long did you stay at Mrs. *Carter's*?

M. Cobb. There was no body at Home there, and I left my Errand, and I never stopped or stayed, but came away.

Mr. Willes. Did you call any where coming back?

M. Cobb. No. I had another Place to go to, and I was afraid of being too late; so did not go, but returned Home. I met several People, and stopped a little on the Return.

Mr. Willes. How long in all might you be detained, after you went from Mrs. *Carter's*?

M. Cobb. It might be a quarter of an Hour.

Mr. Willes. How many Times might you stop?

M. Cobb. I am in a public Way of Business, and met several People; I think I stopped three or four Times.

Mr. Willes. From the Time you left Mrs. *Carter's* House, to the Time you met this Girl, how long might that be?

M. Cobb. It might be about a quarter of an Hour.

Mr. Willes. Then you met this Woman at three quarters after Three o'Clock?

M. Cobb. It was later than that.

Mr. Willes. How long might you be in going from your own House to Mrs. *Carter's*?

M. Cobb. I do think, by the Length of the

Way, I might be about a quarter of an Hour in going.

Mr. Willes. Was you stopped in going?

M. Cobb. I don't remember I was.

Mr. Willes. Was you above an Hour from your own House, before you met this Girl?

M. Cobb. Yes, Sir, to be sure, I was about two Hours.

Mr. Willes. How far from your own House did you meet her?

M. Cobb. It was about a quarter of a Mile from it.

Mr. Willes. Tell me how you account for having spent two Hours in only going a Mile and three Quarters.

M. Cobb. I proposed to be at Home in two Hours, and I exceeded it about a quarter of an Hour. I really think it was about Five o'Clock.

Mr. Willes. Where is your House?

M. Cobb. In *Church-Street, Edmonton*; but I met her between the five and six-mile Stones from *London*. The six-mile Stone stands near the *Nether Bell*; but the House I lived at then, was beyond the seven-mile Stone.

Mr. Willes. Was her Face brown or white?

M. Cobb. I observed the Tip of her Nose; it was a young Face; she looked very dismal and black, in a dirty Way.

Mr. Willes. Did you see her Hands?

M. Cobb. I did not; they were wrapped up.

Mr. Willes. Did no Words pass?

M. Cobb. I did not speak a Word to her, or she to me. I thought she wanted Charity by her deplorable Condition.

Mr. Willes. What are you?

M. Cobb. I am a Widow.

Mr. Willes. Any Family?

M. Cobb. The eldest of my Children is at Home with me; she is in the twelfth Year of her Age.

Mr. Willes. When did you first mention meeting such a Creature?

M. Cobb. That very Night I heard of the Affair of *Elizabeth Canning's* Confinement; which was the *Friday Night* following.

Mr. Willes. Who told you of it?

M. Cobb. I can't tell who; but several of my Neighbours did.

Mr. Willes. Who first spoke to you to come here to be an Evidence?

M. Cobb. Justice *Tasbmaker* did; that was after the Trial of *Squires*.

Mr. Willes. How long after that?

M. Cobb. I can't tell; it was the Week after; but what Day of the Week, I know not.

Mr. Willes. In what Manner did he apply to you?

M. Cobb. He came to my House, and asked me, if I met such a Person? I told him, as I have told you before.

Mr. Willes. Did he describe any Person to you?

M. Cobb. No, none at all, any more than it was talked on. I told him, I could not take an Oath to swear to her.

Mr. Willes. When was you subpoena'd?

M. Cobb. On *Monday* was a Fortnight.

Mr. Willes. Who served you with it?

M. Cobb. I don't know the Gentleman; he is pretty much pitted with the Small-pox.

Mr. Willes. Was you ever examined on your Oath before?

M. Cobb. No, I never was.

Mr. Willes.

Mr. *Willes*. How long have you been in Town?

M. Cobb. Ever since *Monday* Morning.

Mr. *Nares*. Can you recollect what Time it was when you met this Girl?

M. Cobb. I know it was pretty near dusk.

Mr. *Nares*. What is your Business?

M. Cobb. I am a Mantua-maker.

Mr. *Nares*. How many Children have you?

M. Cobb. I have but two at Home with me; I maintain them with my own Labour.

Mr. *Nares*. My Lord, we have closed the Account of a Person's being seen going and coming. We shall next begin our Defence to the *alibi* of *Mary Squires*.

MONDAY the 6th of May.

(Here *Mary Squires*, *George her Son*, and *Lucy and Mary her two Daughters*, were brought into Court, to be seen by the Witnesses as they were called.)

William Howard sworn.

Mr. *Nares*. Do you know Mr. *Edward Aldridge*?

W. Howard. I do.

Mr. *Nares*. Do you remember any thing about his coming down to you about *Elizabeth Canning*?

W. Howard. The two *Edward Aldridges* came both together twice; the first Time of their coming, I can't say positively to the Day, it was about three or four Days after the People were taken up at Mrs. *Wells's*, as near as I can remember.

Mr. *Nares*. What are these two *Edward Aldridges*?

W. Howard. One of them is a *Silversmith* in *Foster-Lane*; the other is my Neighbour.

Q. from a *Juryman*. What is your Employment?

W. Howard. I live upon a small Fortune, and a little Employment under the Government.

Mr. *Nares*. What Account did they come upon?

W. Howard. They brought me a printed Case of *Elizabeth Canning*, and recommended a Contribution on her Behalf.

Mr. *Nares*. Whether this was *Edward Aldridge* of *Foster-Lane*?

W. Howard. Yes; it was, and the other with him. The second Time of coming was about six or seven Days after the first.

Mr. *Nares*. Did he say, he was dissatisfied with the Story, or that he believed it?

W. Howard. There was not a Syllable of his Disbelief; but I understood him, as though it was a Thing he believed. The printed Case they brought each Time of coming; there were two initial Letters at the Bottom of it, and an Account that *Virtue Hall* had impeached. We were talking about the Girl's being confined: I said, What do you think of it? He said, There was one Thing, I think, the Girl is not clear in, and that is the Description of the Room.

Recorder. What did he say upon the whole?

W. Howard. He said, he thought the Girl had been used ill, and he did believe she was there; but he was not quite clear in her Description of the Room.

Mr. *Nares*. In both the Times, did he express any Dissatisfaction, or could you understand him, that he thought the Girl was an Impostor?

W. Howard. He said nothing at all in Contradiction to the Girl.

Cross-examined.

Mr. *Willes*. Where do you live?

W. Howard. I live right against *Wells's* House.

Mr. *Willes*. Tell us what particular Words the *Silversmith* made use of to recommend a Contribution to you.

W. Howard. I don't remember any more than what I said.

Mr. *Willes*. Then the only Means was, by bringing a printed Case?

W. Howard. And the little Conversation we had about it.

Mr. *Willes*. The first Time you saw him, did he mention any Disbelief of her Story?

W. Howard. No, Sir.

Mr. *Willes*. Could you collect, he either believed or disbelieved her Story?

W. Howard. Every thing that passed the first Time was in Favour of the Girl.

Mr. *Willes*. But it was not so the second?

W. Howard. There was that single Objection made.

Mr. *Willes*. How far is your House from *Mother Wells's*?

W. Howard. About fifty or sixty Yards.

Mr. *Willes*. Did you live at *Enfield* during the Month of *January* that Year?

W. Howard. I did; and have seen all *Wells's* Family pass and repass about their private Affairs.

Mr. *Willes*. What Time in the Month of *January* did you first see *Squires's* Family about the House?

W. Howard. Really, I used to take but very little Regard of any thing in Mrs. *Wells's* House. I can't recollect the Time positively; if I mention a Time, I must guess at it.

Mr. *Willes*. Look at this black Pitcher; do you know it?

W. Howard. I know nothing of it. I can't swear particularly to a broken Pitcher.

Mr. *Willes*. Have you seen them carry such a black Jug as that to your Pump?

W. Howard. I can't recollect any such Thing; I give all my Neighbours Privilege to come for Water.

Mr. *Nares*. What Character does Mrs. *Wells's* House bear?

W. Howard. As bad as can be.

Recorder. Do you remember your first Time of seeing the Gypsies?

W. Howard. I never used to take Notice of them.

Mr. *Just. Clive*. Did you ever know there were Gypsies there, before the Time you saw them?

W. Howard. I never did. I know there used to be bad People.

Mrs. *Howard* sworn.

Mrs. *Howard*. The last Evidence is my Husband. I know the two *Aldridges*; one lives in *London*, the other by us.

Mr. *Nares*. When did you see them both at your House?

Mrs. *Howard*. The first Time that I call to Mind was, I believe, on the *Saturday* or *Monday* after *Wells* and the People were taken up. I remember, I came down Stairs, and they were both in the Parlour. The *Country Aldridge* said, they were come to us; the *London Aldridge* said, it was with a Desire that I and my Husband would contribute. I asked him, whether or no he was of Opinion,

Opinion, the Girl had been used as she had said? He asked the Country *Aldridge*, whether he had any of the Cases? and said, he would shew me one; then I might judge better: He took it out of his Pocket, and the Country *Aldridge* gave it to me.

Mr. *Nares*. Did he say any thing to you, from which you could conclude, that he believed or disbelieved her Story?

Mrs. *Howard*. When he gave it me in my Hand, I asked Mr. *Aldridge*, what he thought of it? The Answer he made, was, as sure as he was alive, he was assured the Girl had been used as she had said in the Case; and that Mr. *Say* printed them gratis for the Use of the Girl, and he should have more to give away.

Mr. *Nares*. Which *Aldridge* was this?

Mrs. *Howard*. This was the *London Aldridge*.

Mr. *Nares*. Was this all the Conversation?

Mrs. *Howard*. He was with me almost half an Hour; and he recommended it to me and my Husband to subscribe, and desired me to get my Friends to do the same: I said, my Acquaintance were chiefly in *London*.

Mr. *Nares*. When did he come again?

Mrs. *Howard*. Within eight or ten Days after he came again, and brought me another printed Case; and there was wrote at Bottom, that *Virtue Hall* had made an Information. He said, it was to raise Money for the Girl; and if we did not assist; the Gentlemen in *London* would not think we wanted to get rid of the bad Company we had about us.

Mr. *Nares*. What did he say about the Girl's being in the Room?

Mrs. *Howard*. Upon my Word, I don't remember he mentioned any thing to me about it then. I never sent for him, or spoke to him, till he came to me in my own Parlour.

Mr. *Nares*. Look at the Woman there, (*meaning Mary Squires*;) do you know her?

Mrs. *Howard*. That is the Woman, I think, I have seen pass and repass; but never was nigh her; to speak to her.

Mr. *Nares*. When was the first Time you saw her, can you recollect?

Mrs. *Howard*. The first Time, to be positive, was the *Sunday* was Se'nnight before she was taken up. I saw her, the Son, and two Daughters, at Mrs. *Wells's* Door: I do think they are the same. It is a great while since; there may be an Alteration; her Daughter *Mary* used to come to our Pump for Water: The first Time I took Notice of them, my Servants told me they were Gypsies; then I bid them not to unbolt the Door.

Recorder. The *Sunday* was Se'nnight before they were taken up was the 21st of *January*.

Mr. *Just. Clive*. How do you know it was the *Sunday* was Se'nnight before?

Mrs. *Howard*. I'll tell your Lordship why I know it was that Day; because on the *Friday* my Servant told me she was there; and she called me out, when the Girl was taking some Linen off the Hedges at *Wells's*; she was in a brown stuff Gown and a speckled Hat; and when she came up to the Frame of my Pump on the *Saturday*, she turned about and made me a Curtsey, and I bowed to her as she went out at the Gate: This was the *Saturday* before the *Sunday* of my first seeing the old Woman, and Son, and two Daughters.

Recorder. What Time of the *Sunday* was it you saw them?

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Mrs. *Howard*. It was in the Afternoon: I was told they were her Son and two Daughters, and I looked wishfully at them.

Mr. *Nares*. Did you see the old Woman after this?

Mrs. *Howard*. I did; I saw her put into the Cart after she was taken up.

Mr. *Nares*. When you saw her put into the Cart, so soon after you saw them at the Door, did you believe it to be the same Person you saw at the Door?

Mrs. *Howard*. Yes, I did believe it then.

Mr. *Nares*. You say, you was told there were Gypsies there before; did you ever see Gypsies there before that Time?

Mrs. *Howard*. No, not to my Knowledge. That was the Reason I cautioned my Servants to have nothing to say to them; but let them come, as the rest of the Neighbours, for Water; for we refuse none, unless they give Offence: But I cautioned my Servants not to let her into the House.

Cross-examined.

Mr. *Willes*. How far might they be off at the Time you saw them first?

Mrs. *Howard*. As nigh as I can guess, not above fifty or sixty Yards: I was within my own Gate; which faces it exactly.

Mr. *Willes*. Are you short-sighted?

Mrs. *Howard*. Yes, I am.

Mr. *Willes*. When did you first see one of the Gypsey's Girls come for Water to your Pump?

Mrs. *Howard*. It was that *Saturday* Morning.

Mr. *Willes*. Which Daughter was it?

Mrs. *Howard*. I do think it was *Mary*.

Mr. *Willes*. Which Parish-Church did you go to on the *Sunday* Morning?

Mrs. *Howard*. We go to *Enfield* Church.

Mr. *Willes*. Have you Service all Days of the Week?

Mrs. *Howard*. I believe we have; but I am not able to walk so far.

Mr. *Willes*. Do you keep King *Charles's* Martyrdom?

Mrs. *Howard*. No; but I keep my Son's Birthday; as the Stile is altered, that comes to be the 29th of *January*.

Mr. *Willes*. Was that the *Monday* immediately after the *Sunday* you saw her; or not?

Mrs. *Howard*. No; it was the *Monday* was Se'nnight:

Mr. *Willes*. What did the Daughter fetch the Water in?

Mrs. *Howard*. I have seen her several Times at the Pump in that Time; and I have seen them come with a Pail and a large Pitcher: One Time in particular she was met by another, and they took it and carried it for her: One Morning I saw her with a very little black Pitcher.

Mr. *Willes*. Can you speak of its being broke about the Neck?

Mrs. *Howard*. I don't know.

Mr. *Willes*. Are you a Church-woman or a Dissenter?

Mrs. *Howard*. I am a Church-woman.

Mr. *Nares*. How near was you to the Girl when you observed her?

Mrs. *Howard*. As near as I am to that Gentleman, (*pointing to a Person about three or four Yards off.*)

Mr. *Nares*. Then you was near enough to distinguish the Girl?

Mrs. *Howard*. I was. She made me a Curtsey, and looked me full in the Face, and I her: I think she looked fatter in the Face than she does now.

Mr. *Nares*. Did you think it was a Gypsey's Face?

Mrs. *Howard*. I thought as other People did.

Mr. *Nares*. Was you near enough to know *Mary Squires* as she passed and repassed?

Mrs. *Howard*. Yes, I was. She was in the Foot-way, and I within my Gate.

Mr. *Nares*. From what you observed of her then, do you think her to be the same Person?

Mrs. *Howard*. I do; but can't be positive.

Recorder. Are you positive?

Mrs. *Howard*. No, I am not: I never conversed with her, or she with me.

Recorder. Was your Husband with you that *Sunday*?

Mrs. *Howard*. No, he was not; he was gone to Church.

Recorder. Did you tell him, when he came from Church?

Mrs. *Howard*. I think I did.

Recorder. Can you be positive to your Sight forty or fifty Yards off.

Mrs. *Howard*. I was more positive when I saw her pass and repass, than I was on that *Sunday*.

Recorder. Can you be particular to the Days you saw her pass and repass?

Mrs. *Howard*. No; I can't, my Lord.

William Headland sworn.

Mr. *Nares*. Where did you live last *Christmas* was Twelve-month?

W. Headland. I can't really say where I was then: I believe I was at *Enfield*, because my Father lives there.

Mr. *Nares*. How old are you?

W. Headland. I was twenty Years of Age the 30th of last Month.

Mr. *Nares*. Do you remember being at your Father's about a Year and a half ago?

W. Headland. I know I was there when I came out of Place: I had not been in Place these two Years till last *Christmas*: I did live at *Henbam-Hall*, with *Henry Headland*, my Cousin; that is thirty-eight Miles from *London*.

Mr. *Nares*. During the Time you was there, was there any Talk about *Canning* and the Gypsey?

W. Headland. Yes; that was in last *January* was Twelve-month: I remember *Wells* being taken up; I was at Home then.

Mr. *Nares*. How far is your Father's from Mrs. *Wells*'s House?

W. Headland. There is only a Lane and two Fields part us.

Mr. *Nares*. Do you know the Window where it is supposed the Girl got out at? What does that Window front?

W. Headland. It is by the Corner of the Lane; you may see into the Road.

Mr. *Nares*. Where does the other Side look to?

W. Headland. There is only a little Window, which looks into the Field.

Mr. *Nares*. Did you find any Thing, and when, near that Place?

W. Headland. One Day I was going to the Shop, and there were a Parcel of People come about *Wells*'s House: I went there, and found a Piece of Lead, just at the Corner of the Window that

joins to the House; it looked as if it came out of some Window.

Mr. *Nares*. How near to the House did you take it up?

W. Headland. Within a Yard, or thereabouts, under the Window that fronts the Road: I doubled it up as soon as I found it, because I thought I would carry it Home.

Mr. *Nares*. What made you take such Notice of it?

W. Headland. Because it was bloody; and I heard *Bet Canning* had torn her Ear.

Mr. *Nares*. For God's sake tell me the true Reason, upon Oath, why you took Notice of that Lead.

W. Headland. Because I heard the young Woman had torn her Ear against the Casement, or something.

Mr. *Nares*. Was it bloody when you picked it up?

W. Headland. It was all bloody; I believe it was Blood. I carried it Home, and gave it to my Mother.

Mr. *Nares*. Did you tell your Mother why you brought it Home?

W. Headland. I did.

Recorder. When did you hear *Elizabeth Canning* had torn her Ear?

W. Headland. I do not know.

Recorder. What Day did you pick up this Lead?

W. Headland. I cannot tell.

Mr. *Nares*. Whether ever you saw *Mary Squires* the Gypsey?

W. Headland. Yes, Sir.

Mr. *Nares*. Look about the Court:

W. Headland. That is the Woman, (*pointing to her*;) I know her from a thousand.

Mr. *Nares*. Did you see that Gypsey Woman at any Time before you took up the Lead?

W. Headland. Yes, Sir.

Mr. *Nares*. How long before?

W. Headland. Indeed I cannot say how long before; but I saw her on the 9th of *January*, I know.

Mr. *Nares*. Why do you think it was the 9th of *January*?

W. Headland. Because it was on a *Tuesday*, *Waltham* Market-day.

Mr. *Nares*. Had you ever seen her before?

W. Headland. That was the first Day.

Mr. *Nares*. Where did you see her?

W. Headland. I saw her under Mr. *Loomworth Dane*'s back Wall, telling a young Man his Fortune.

Mr. *Nares*. Where does Mr. *Dane* live?

W. Headland. At the Sign of the *Bell*, at *Enfield* Highway. A young Man came from a Coachman; he was in a silver-laced Hat; I stood looking at her; she said, Go along, Boy, left your Master should want you. I stood leaning against a Tree, and then went a little farther; and could not hear what they said.

Mr. *Nares*. How could you tell she was telling his Fortune?

W. Headland. Because I saw her lay hold of his Hand.

Mr. *Nares*. Are you sure it was so early in *January* as the 9th?

W. Headland. I am.

Mr. *Nares*. Did you see her any Day after?

W. Headland. Yes, I saw her on the 12th, in Mrs. *Wells*'s House: I went there to carry two Pails

Pails of Water; there were the Gypsey's two Daughters; one of them had a Pair of Pumps on, and was buckling them up.

Mr. Nares. Look about the Court, and see if you see her.

W. Headland. That is the Girl, (pointing to Mary Squires;) I am sure it is one: If you were in your brown camblet Gown, I should know you better; I then could swear to it.

Mr. Nares. Do you believe this is her?

W. Headland. I do really believe it is.

Mr. Nares. What did you carry that Water for?

W. Headland. It was two Pails of Wash for a Sow that was big with Pigs.

Mr. Nares. Where did you carry it from?

W. Headland. From my Mother's.

Mr. Nares. How do you know it to be the 12th?

W. Headland. Because it is Epping Market-day.

Mr. Nares. What Day of the Week is that on?

W. Headland. It is on a Friday.

Mr. Nares. Did you see her any Time after this?

W. Headland. Yes; I was in Madam Johnson's Walk, and saw her coming down a Field. I spoke to her, and said, You are ganging Home, it is very cold. She said, So it is.

Mr. Nares. Did you see her after that?

W. Headland. Yes; I saw her getting into the Cart, when she was taken up.

Mr. Nares. Was she the first or last that got into the Cart?

W. Headland. She was the first, I believe, but I am not sure.

Mr. Nares. Was you in Court when Mrs. Howard was examined?

W. Headland. No, Sir.

Mr. Nares. From what you observed of her before, and from what you observed since, are you sure this is the same Person?

W. Headland. I am sure it is the same.

Cross-examined.

Mr. Willes. What Business is your Father?

W. Headland. He is a Gardener.

Mr. Willes. Where had you lived, before you came Home to your Father, before January was a Twelve-month?

W. Headland. I worked at several Farm-houses.

Mr. Just. Clive. Had you been a hired Servant, or worked by the Day?

W. Headland. I worked with one Man a matter of two Years.

Mr. Just. Clive. Before you came Home to your Father, who did you work with then?

W. Headland. I cannot tell indeed; I might be out of Place, for what I know.

Mr. Willes. What Time of the Year is Christmas in? — What Month is it in?

W. Headland. I do not know what Month in particular?

Mr. Just. Clive. There are twelve Months; pick out which Christmas is in.

W. Headland. Indeed, I cannot rightly say what Month it is in?

Mr. Willes. How many Days are there in a Week?

W. Headland. There are seven, if you put Sunday in.

Mr. Willes. What, is not Sunday one of your Days?

W. Headland. Yes; but some People make but six Days in the Week.

Mr. Willes. Who are they?

W. Headland. The Jews do not.

Mr. Nares. You say you worked with one Man two Years, before you came Home to your Father; how long did you live in one Place together?

W. Headland. I have lived half a Year, and three quarters of a Year together.

Mr. Nares. Tell who you lived with three quarters of a Year.

W. Headland. I cannot rightly tell.

Mr. Nares. Can you tell any Master you lived with two Years?

W. Headland. I worked for one Mr. Long for half a Year together; he lives at Freezy-Water. I worked for Farmer Allen, at Enfield Highway, right against the Black Horse; I have worked many Times for him.

Mr. Just. Clive. How long together?

W. Headland. It might be a quarter of a Year together, or less.

Mr. Nares. Who did you work with first?

W. Headland. Mr. Allen.

Mr. Nares. Did you ever live as a hired Servant in a Family with any body?

W. Headland. Yes; I lived in Featherstone-Street, at Squire Feast's Brew-house, with one Mr. King, ten or eleven Weeks.

Mr. Nares. Did this Master you lived with keep Christmas?

W. Headland. I reckon he does.

Mr. Nares. Cannot you tell what Month Christmas is in?

W. Headland. I can hardly tell.

Mr. Nares. Tell as well as you can.

W. Headland. I cannot tell.

Mr. Nares. Is it in Winter or Summer?

W. Headland. It is in Winter.

Mr. Nares. Is it before or after January?

W. Headland. I cannot tell.

Q. from a Juryman. Can you read and write?

W. Headland. I can read and write too, a little.

Mr. Just. Clive. Where did you find this Lead?

W. Headland. I found it at the End of the Wall, by the Window fronting the Road.

Mr. Just. Clive. What Sort of a Bit of Lead was it?

W. Headland. It was a Piece of Window Lead.

Lord-Mayor. Explain what you mean by Window Lead.

W. Headland. It was such as they put the Glass into.

Mr. Just. Clive. Was it one single Piece?

W. Headland. No; there were two or three Pieces of it, all joined together; so I bent it together, and put it into my Pocket, and gave it my Mother.

Mr. Just. Clive. What did you say to her, at the Time you gave it her?

W. Headland. I bid her take it, because, they say, Bet Canning had tore her Ear at the Window; but it is lost since.

Mr. Willes. How long before Squires was taken up, and put into the Cart, was it that you first saw her?

W. Headland. She was taken up on a Thursday, and if she had stayed till Friday, it would have been three Weeks.

Q. from a Juryman. Whether you shewed this Piece of Lead to any body after you picked it up, besides your Mother?

W. Headland. No, I shewed it to no body.

Elizabeth

Elizabeth Headland sworn.

Mr. Nares. Did your Son, at any Time, bring any thing Home to you, which he said he found?

E. Headland. Yes, Sir, it was a Piece of Window Lead; there was a Piece of Solder on it. It was a small Time after the People were taken up.

Mr. Nares. What Account did he give you of it?

E. Headland. I looked at it; there was some Blood upon it; he said, he picked it up a little Way off from Mrs. Wells's Window, where it was supposed the Girl got out at; I wrapped it up in a Piece of Paper, and laid it on a Shelf.

Mr. Nares. How came it not to be here?

E. Headland. I brought it to London with me at Michaelmas Time, and carried it down again before Christmas; I laid it in a Table-drawer; and when I went to look for it last Friday was a Week, I could not find it, but I found the Piece of Paper it was wrapped in. This is really Truth.

Cross-examined.

Mr. Willes. Was it two or three Days after they were taken up?

E. Headland. Indeed, I cannot tell.

Mr. Willes. Was it the Day they were taken up?

E. Headland. No, it was not; it was some Time after.

Mr. Willes. Was the Blood wet or dry upon the Lead?

E. Headland. It was dry.

Mr. Willes. This Son of yours, how has he spent his Time, where has he lived? He says, he is twenty-one Years of Age.

E. Headland. He is. He has lived in Service some Part of his Time, and sometimes he has lived at Home; he has gone to drive Plough, and to Day-labouring Work.

Mr. Willes. Has he been a dutiful Sort of a Boy, or one that you can say much in his Favour?

E. Headland. I have no Occasion to give the Boy an ill Word.

Mr. Just. Clive. When did he come Home from Service?

E. Headland. He has not been out these three Years, till within this half-year; he has been at Home a Year and half, I believe; but used to be out at Hay-making, and Harvest-work.

Mr. Just. Clive. How long had he lived at Home with you, before the People were taken up at Wells's?

E. Headland. He had been at Home all the Winter long, and, I believe, from the Michaelmas before.

Mr. Just. Clive. Where was the last hired Service he was in, before January was Twelve-month?

E. Headland. Upon my Word, I can't tell; he was two Years ago with a Gentleman at Hackney; but he did not live there above two Months.

Samuel Story sworn.

Mr. Nares. Are you of any Business?

S. Story. I live upon my Fortune, at *Waltham-Abbey*, in *Essex*.

Mr. Nares. Look at that old Woman, (*meaning Mary Squires*;) Did you ever see her before?

S. Story. I have divers Times: That is the Gypsey. I do not know her by Name.

Mr. Nares. Tell us, when you think you first saw her?

S. Story. I have seen her several Times at a House in *White-Webbs-Lane*, that is since pulled

down, going to the Chace; that used to be my constant Road to ride out, two or three Times a Week. Then I lived in *Turkey-Street, Enfield-Wash*. I have been moved from thence about a Year and half. I have seen her both before and since I removed. The last Time I saw her was on the 23d of *December 1752*, except the Time I saw her in *Newgate*.

Mr. Nares. Where did you see her?

S. Story. She was standing within the Door of Mrs. Wells's House.

Mr. Nares. What Reason have you to think it was on that Day?

S. Story. It was the *Saturday* before *Christmas* Day; a very fine frosty Morning; which induced me to take a Walk to see Mr. Howard, who lives directly over-against Mrs. Wells's. I walked the Horse-pad, because it was better beaten; and my Feet are a little tender. When I came over-against Mrs. Wells's House; I saw the Gypsey at the Door. Curiosity led me a little out of the Path, to see if it was the same Gypsey I had seen in the House in *White-Webbs-Lane*.

Mr. Nares. Did you go close to her?

S. Story. Not very close; I might go, perhaps, within ten Yards of her.

Mr. Nares. Was you so near her, as to form any Judgment whether it was the same Person?

S. Story. I was; I was certain it was the same Person.

Mr. Nares. Did you see her after that?

S. Story. No; I never saw her afterwards, till I saw her in *Newgate*, about the 14th or 15th of *March*.

Recorder. Upon the Oath you have taken, is this the same Person?

S. Story. Upon my Oath, it is. When I came to see her in *Newgate*, it was on a *Friday*. I was denied Admittance then, but I went to Alderman *Glynn*, and begged the Favour of an Order; and then I saw her.

Mr. Nares. Who denied you?

S. Story. The Keeper did.

Mr. Nares. Was you then satisfied it was the same Woman?

S. Story. I was then, and am now, well satisfied, that this is the same Woman.

Mr. Nares. Have you any other Reason, so as to be certain it was the 23d of *December* you saw her?

S. Story. I have. I observed it was a hard Frost in the Morning; and the Weather altered about Noon to Sleet and Rain, by which it was very wet, and the Wind and Weather drove on my right Side, as I was going Home; and I being subject to the Rheumatism, was taken with it; and the St. *Anthony's* Fire seized me about the *Monday* or *Tuesday* following; then I sent for an Apothecary, and he attended me afterwards. So I am very positive as to the Day, for I never went out after that *Saturday*, when I came Home, for near two Months after.

Cross-examined.

Mr. Willes. Did you find Mr. Howard at Home?

S. Story. I did.

Mr. Willes. How long did you stay there?

S. Story. I believe I might stay best Part of an Hour there.

Mr. Willes. While you was there, did you hear there were any Gypsies at that Time there?

S. Story.

S. Story. No; we had no Talk about them, as I remember.

Mr. Willes. Was it in your going there, or Return, that you saw her?

S. Story. It was in my going there.

Mr. Willes. Was she standing without the Door, or within?

S. Story. She was just within, at the Threshold of the Door.

Mr. Willes. Did you look fronting or side-ways?

S. Story. The Door is opposite to Mr. Howard's. I went a little farther out of my Way, to see whether it was the same Gypsey that I had seen in *White-Webbs-Lane*.

Mr. Willes. How long was it before this, that you had seen her before?

S. Story. I saw her when I lived in *Turkey-Street*, and I moved from thence on the *Michaelmas* before. I had seen her at Times for three Years together.

Mr. Willes. Can you name any particular Time before this?

S. Story. I remember I had seen her in the Spring of the Year.

Mr. Willes. Did you ever converse with her?

S. Story. No, I never did, Sir.

Mr. Willes. Was you ever in the same Room with her?

S. Story. No.

Mr. Willes. At this Time you went a little out of your Way, did you say any thing to her, or she to you?

S. Story. I did not.

Mr. Willes. What did she appear to be doing?

S. Story. Nothing at all.

Mr. Willes. Had she a Pipe in her Mouth?

S. Story. No, she had not. She had a dirty Clout or Handkerchief over her Head.

Mr. Willes. Who used to be with her in *White-Webbs-Lane*?

S. Story. There used to be two younger Women with her at Times, which, I have heard since, are her Daughters.

Mr. Willes. Was there a Man?

S. Story. Yes, there was.

Mr. Willes. At this Time, at *Wells's*, did you see any of these young People with her?

S. Story. I did see a young Girl with her.

Mr. Willes. Look at these two young People, and see whether either of these are them.

S. Story. I cannot swear to their Faces. The Girl's Back was towards me then, talking to the old Woman; she stood without the House. I cannot swear to the Girl.

Mr. Willes. When was it you first recollected these Circumstances of having seen her there?

S. Story. In my Illness the Apothecary told me what had happened at Mrs. *Wells's* House.

Mr. Willes. Can you tell what Day it was?

S. Story. That I cannot, to two or three Days; it was after they were taken up.

Mr. Nares. It comes out now, which I did not know before, that you had seen this Woman two or three Years before that.

S. Story. I had, and took Notice of them as a Parcel of Gypsies. They used to have two Asses and a little Horse; I have seen the Horse grazing in *White-Webbs-Lane*, as I have rode through there; and the two Asses, I have met with them on the Road, and the two young Women and a Man; but their Dress is so altered now, that I could not know them. They used to have a per-

fect Gypsey's Dress, with Blankets over their Shoulders, and Handkerchiefs over their Heads, (you might see their black Locks through them,) following the two Asses. The last Time I met them, I believe, might be at the Beginning of *December*, just against *Durant's* House.

Mr. Nares. I believe, you was rather too ill to go out, to be a Witness when the Trial of *Squires* came on?

S. Story. I was; I thought I should have died.

Recorder. Was you ever of any Business?

S. Story. I was a Finisher of Clock Dial-plates.

Recorder. Was you acquainted with Mr. *Lyon* before?

S. Story. I have seen him before at *Newington-Green*; I rented a House that he built.

William Smith sworn.

Mr. Nares. Where do you live?

W. Smith. I live in *Ranton-Row*, at *Enfield*; I am a Farmer.

Mr. Nares. What do you rent per Year?

W. Smith. An hundred and five Pounds per Year, and have these twenty Years; it belongs to the Duke of *Portland*.

Mr. Nares. Look, if you see *Mary Squires* in Court.

W. Smith. Yes, Sir; I see her.

Mr. Nares. Did you ever see her before?

W. Smith. Yes, I have.

Mr. Nares. Tell us where you remember to have seen her about a Year and a half ago.

W. Smith. I saw her in my Cow-house on the 15th of *December* 1752.

Mr. Nares. Had she been about the Country some Time?

W. Smith. She had a pretty while; I saw her several Times.

Mr. Nares. Have you seen her before that Time?

W. Smith. I have.

Mr. Nares. How came she in your Cow-house?

W. Smith. They came to ask for Lodgings; I was not at Home.

Mr. Nares. Who do you mean by *They*?

W. Smith. The Company that was with her.

Mr. Nares. Who did they ask?

W. Smith. My Housekeeper; her Name is *Swain*.

Mr. Nares. When did you first see them about your House?

W. Smith. The next Day in the Morning, which was the 15th of *December*.

Mr. Nares. Had you any Conversation with them?

W. Smith. I had none at all.

Mr. Nares. Are you sure this is the Woman?

W. Smith. I am, that was in my Cow-house; there were two Men and two Women with her; she called them her Sons and Daughters.

Mr. Nares. Do you see any Man in Court that is like her Son?

W. Smith. I did not take so much Notice of them, as I did of her; because I have seen her often.

Mr. Nares. What Reason have you to think it was the 15th of *December*?

W. Smith. I was out the Day before at Dr. *Crow's*, stamping of Apples; and when I came Home, my People told me, the People that had laid there before, came to ask for Lodging again. They had lodged in our Cow-house and Barn before that.

Mr. Nares. Are you sure of that?

W. Smith. They have asked me before this; and used commonly to come about once a Year, for a pretty many Years together.

Mr. Nares. Has this Woman herself asked you for Lodging?

W. Smith. She has. I have known her a pretty many Years, and have seen them about the Country; they lost their Horse the while they were at my House; I think, they said it was a little black one; the Son asked my People, in my Hearing, whether they saw him, or no.

Mr. Nares. How long did you see them afterwards?

W. Smith. They lay at my House till the Sunday after. They were there three Nights and two Days, and lay in my Cow-house; they came on the 14th, but then I was not at Home.

Mr. Nares. How long, from that Time, was it before you saw them again?

W. Smith. I was at Home once when the Son came, as they called him, to ask for the Horse.

Mr. Nares. Was you examined on the Trial of *Mary Squires*?

W. Smith. Yes, Sir.

Mr. Nares. Did you then swear she was the same Woman?

W. Smith. Yes.

Mr. Nares. Do you now believe she is the same?

W. Smith. I do.

Cross-examined.

Mr. Willes. Was you examined when *Mary Squires* and *Susannah Wells* were tried?

W. Smith. I was.

Mr. Willes. How long after *Wells* was taken up?

W. Smith. It was soon after.

Mr. Willes. How soon?

W. Smith. Within a Fortnight or three Weeks after.

Mr. Willes. Was you examined in this Place, where you are now?

W. Smith. I don't know.

Mr. Willes. Where was it?

W. Smith. I don't know where; but I am sure I was examined.

Mr. Willes. Had you any Conversation with the Gypsey on the 15th of *December*, in the Morning?

W. Smith. No, I only went and looked at them; she did not speak to me.

Mr. Willes. Then you cannot say you know the Faces of the two Men, and two young Women?

W. Smith. No, I do not.

Mr. Willes. How long before that *December* might it be, when they were there before?

W. Smith. May-be it was a Twelve-month before.

Mr. Willes. Did you ever see them at Mrs. *Wells's* House in your Life?

W. Smith. No, Sir.

Mr. Willes. How far is your House from Mrs. *Wells's*?

W. Smith. It is near two Miles Distance.

Mr. Willes. What had you been doing the Day they came to your House?

W. Smith. I had been stamping Apples to make Cyder with, at Dr. *Crow's*.

Mr. Willes. Were the Apples your own Apples?

W. Smith. They were. I went there for the Use of his Press; he gave me Leave.

Mr. Willes. How long had these Apples been gathered?

W. Smith. I believe, about two Months.

Mr. Willes. Do you keep your Apples so long before you grind them?

W. Smith. Yes, and longer too.

Mr. Willes. When did they go away?

W. Smith. On the *Sunday* Morning, the third Day.

Mr. Willes. Did you know where they were going?

W. Smith. No, I did not.

Mr. Willes. Did you see her, after that Time, till you saw her in *Newgate*?

W. Smith. No, Sir.

Mr. Willes. Was you any Time in *January* at Mrs. *Wells's*?

W. Smith. No, Sir; I seldom go by there.

Mr. Willes. Had they any thing to sell?

W. Smith. No, not as I saw.

Mr. Willes. Did you ask Dr. *Crow* Leave to use his Press?

W. Smith. He was then dead, I believe; I asked his Gardener; the Family were not in the Country then.

Mr. Willes. Why do you fix upon that Day, you stamped your Apples on, to be the 14th of *December*? Did you make any Minute of the Day?

W. Smith. I know it was that Day; I did make a Minute; I sold some Corn that Week, and delivered it the same Week, and I set it down in my Book.

Mr. Willes. Don't you sell Corn almost every Week?

W. Smith. I do.

Mr. Willes. What Day of that Week did you sell your Corn?

W. Smith. It was on the *Saturday*.

Mr. Willes. Where is that Book?

W. Smith. It is at Home.

Mr. Willes. Why is it not here?

W. Smith. I did not know I should have Occasion for that here.

Mr. Willes. Is your House farther from *London* than Mrs. *Wells's*?

W. Smith. Much about alike for that.

Mr. Willes. Is it in the Way to Mrs. *Wells's*?

W. Smith. No, it is out of the Way, on the left Hand.

Mr. Willes. Is it in the Road to *Basingstoke*?

W. Smith. I know nothing of the Place.

Mr. Nares. You say you was not examined in the Place you are now in, at the other Trial; do you know whether it was in this Court or no, you was examined?

W. Smith. I was examined.

Mr. Nares. Was it when *Squires* and *Wells* were tried, or at any other Time?

W. Smith. I think it was then.

Mr. Just. *Clive*. Was you ever examined in this Court?

W. Smith. I never was, but once.

Mr. Just. *Clive*. Was you ever examined in a Court of Justice, at any Time, but when you was examined about the Gypsey and *Wells*?

W. Smith. No.

Mr. Just. *Clive*. Where was you examined?

W. Smith. Some Gentlemen examined me about it.

Mr. Just. *Clive*. Was it in this Court, or at *Hicks's-Hall*?

W. Smith. I don't know *Hicks's-Hall*.

Mr.

Mr. Nares. Was the old Gypsey in Court at the Time?

W. Smith. No, she was then in *Newgate*.

Court. This must be before the Grand Jury at *Hicks's-Hall*, when the Bill was found.

Loomworth Dane sworn.

L. Dane. I keep the *Bell* at *Enfield-Wash*; I have lived there two Years and a half; but I have lived near there about twelve Years and a half.

Mr. Nares. Do you remember ever seeing *Mary Squires* there? Look, and see if you see her in Court.

L. Dane. That is the Woman, I am sure, (pointing to her.) I cannot say I ever saw her before Winter was Twelve-month.

Mr. Nares. What Part of the Winter did you see her?

L. Dane. I cannot remember the first Time; but I am sure I saw her on Old *Christmas-Day*, and, I believe, I saw her before.

Mr. Nares. What Reason have you to remember the Day?

L. Dane. My Man came to me, and I promised him a Holiday on the Old *Christmas-Day*.

Mr. Nares. When did you promise him that?

L. Dane. I promised it him on New *Christmas-Day*.

Mr. Nares. Had he one on the New?

L. Dane. Yes, Sir. On the Old *Christmas-Day* I went up to my Shop, (I keep a Collar-maker's Shop;) while I was there, Farmer *Norton* came and asked me, if I had ever a Collar that would fit his Horse; I measured his Horse, and put it down in my Book; he said, he would come and settle with me on the *Sunday* following. I fitted it, and carried it Home, and left it that very Day, as I went to Dinner.

Mr. Nares. What Book did you set it down in?

L. Dane. In my Day-book; it is a Piece of Paper sewed together.

Mr. Nares. Could you have remembered it without that Circumstance?

L. Dane. I cannot say I could.

Mr. Nares. Where is that Book?

L. Dane. I believe I can produce it; it is not here; but I am sure it was Old *Christmas-Day*.

Mr. Nares. Did you take particular Notice of her that Day?

L. Dane. Yes, Sir, I did. I was filling a Barrow of Gravel, from a Heap at my Door, to lay down in the Yard; I stood resting myself; she came by me, and I looked very wishfully at her. As she went by me, the Wind blew up her Gown, and there was a great Hole in the Heel of her Stocking. I saw her till she got into the Field.

Mr. Nares. Did you see her when she was in Confinement?

L. Dane. I did, and when she was taken up, and saw her go into the Cart.

Mr. Nares. From what you observed on her going by, did you believe it was the same Person?

L. Dane. Yes, Sir, I am sure of it.

Mr. Nares. Are you sure now this is the same Person?

L. Dane. Yes, Sir, I am. I saw her in *Newgate*, and was sure of it then.

Cross-examined.

Mr. Willes. Did you ever converse with her?

L. Dane. No, never at all.

Mr. Willes. How near was she to you when she walked by?

L. Dane. I believe it might be two or three Yards off.

Mr. Willes. Have you a Coach Road goes by your House?

L. Dane. Yes, Sir, the *York Road*.

Mr. Willes. Do you know *William Headland*, that has been examined?

L. Dane. I do.

Mr. Willes. Did you see any body with her?

L. Dane. No, I saw no body with her.

Mr. Willes. Was that the only Time?

L. Dane. I believe I saw her several Times, but cannot fix upon the Days.

Mr. Willes. Did you see any young People with her?

L. Dane. I saw her Son several Times.

Mr. Willes. How long after?

L. Dane. I cannot say how long.

Mr. Willes. Did you ever see her Daughters with her?

L. Dane. No, only when they were taken up.

Mr. Willes. Was it a very high Wind that Day?

L. Dane. It was.

Mr. Willes. What had she on her Head?

L. Dane. I cannot tell.

Mr. Willes. Was her Face covered over?

L. Dane. No, it was not.

Mr. Willes. How did she walk?

L. Dane. She went crouching and cringing.

Mr. Willes. Which Way was her Face?

L. Dane. It was then towards the Town; I looked at her very wishfully.

Mr. Willes. Then you cannot say you saw her before?

L. Dane. I believe I did.

Mr. Willes. Do you know *Elizabeth Headland*? What is her Character, a good or bad one, in the Neighbourhood?

L. Dane. I never heard she robbed any body.

Mr. Willes. Is it as good as the rest of her Neighbours?

L. Dane. I cannot say that; hers is not so clear as some People's are; but I never heard she was a Thief.

Mr. Willes. What is her Son's Character?

L. Dane. I know no Ill of him.

Mr. Willes. Do you know *David Dyer*?

L. Dane. Yes, Sir, I do.

Mr. Willes. What is his Character?

L. Dane. He is a very honest Man.

Mr. Nares. I own the Boy has given a strange Account; but did you ever hear any Harm by him?

L. Dane. No, never in my Life.

Mr. Nares. In what Particular is the Mother's Character supposed to be bad?

L. Dane. I do not know, not I.

Mr. Nares. How far does *David Dyer* live from you?

L. Dane. He lives opposite me.

Mr. Nares. What is his Business?

L. Dane. He is a Shepherd.

Mr. Nares. Did you ever hear any Harm of him?

L. Dane. No, never in my Life: He has a good Character.

Samuel Arnot sworn.

S. Arnot. I live at *White-Webbs*, on *Enfield Chace*; and have lived there these fourteen Years.

Mr.

Mr. Nares. What are you?

S. Arnot. I am a labouring Man.

Mr. Nares. Do you know such a Person as *Mary Squires*?

S. Arnot. Yes, Sir.

Mr. Nares. Look, and see if you see her.

S. Arnot. That is the Woman, (*pointing to her.*)

Mr. Nares. How long have you known her?

S. Arnot. The first of my seeing her was on a *Friday Morning*: She asked me, if I saw a little brown Horse? This was, as near as I can guess, about nine or ten Days before *New Christmas-Day*.

Mr. Nares. How came you to fix upon that Time?

S. Arnot. I had been at a Place called *Clay-Hill*, and met her in the Bushes: She asked me if I saw this Horse, and said his Legs were tied, and he had a Clog upon him: Then I turned back again, and asked, what Sort of a Clog? She said, her Name was *Squires*.

Mr. Nares. For what Reason did she tell you that?

S. Arnot. Because I might give her an Account of the Horse, if I light of him.

Mr. Nares. Upon your Oath, are you sure this is the Woman?

S. Arnot. Upon my Oath, I am, Sir.

Mr. Nares. Did you ever see her any Time but that?

S. Arnot. I never saw her after that Time till I saw her in *Newgate*; but do not know the particular Day I saw her there.

Mr. Nares. How long was it after you had seen her before?

S. Arnot. It was, I believe, a quarter or half a Year after.

Mr. Nares. Was you certain then it was the same Person?

S. Arnot. I was, Sir; and, to the best of my Knowledge, I believe now it is the same.

Cross-examined.

Mr. Willes. What is your Employ?

S. Arnot. I follow labouring Work: I work sometimes at *Chebbunt*, and sometimes at other Places.

Mr. Willes. Have you any Family?

S. Arnot. I have a Wife and three Children.

Mr. Willes. Why are you positive as to the Time?

S. Arnot. Because it was on a *Friday Morning* that I saw her; and on the *Sunday* following I met her again, and asked her if she had found her Horse; and she said, No.

Mr. Willes. Why do you apprehend it was nine or ten Days before *New-Christmas* you had this Conversation with the Gypsies?

S. Arnot. I think *New-Christmas* was the *Sunday* Se'nnight following.

Mr. Willes. Are you sure *Christmas-Day* was on a *Sunday* that Year?

S. Arnot. No; it was on a *Monday*. I say, it was the *Sunday* was Se'nnight before *New-Christmas* that I saw her.

Mr. Willes. Was there any body with her at that Time?

S. Arnot. There were a Man, two Women, and two Children with her, this second Time; there was no body with her the first Time.

Mr. Willes. Had she either of the Times a Horse or Ass with her?

S. Arnot. No; neither.

Mr. Just. Clive. Who carried the Children?

S. Arnot. They walked on Foot.

Mr. Willes. How old might they be?

S. Arnot. Four, or five, or six, or seven Years old.

Mr. Willes. What was the Colour of the Horse she inquired after?

S. Arnot. A little brown one, with his Legs tied together.

Mr. Willes. Do you know Farmer *Smith*?

S. Arnot. I do; his House stands about two or three Pole from mine.

Mr. Willes. Did these two Children seem to be Gypsies Children?

S. Arnot. I did not observe their Colour; they seemed to belong to that Gang.

Mr. Willes. Do you know of their lying in Farmer *Smith's* Cow-house?

S. Arnot. I do; they did, to the best of my Knowledge.

Mr. Willes. If those People had lain there, do you think he would not have remembered there being two Children with them?

S. Arnot. His Remembrance is nothing to me.

Mr. Nares. Did you see them at Farmer *Smith's*?

S. Arnot. I never saw them in the Cow-house: I know no otherwise, than as I met them on the Chace, and heard they lay there; and it being so near my House, I could hear them talk in the Cow-house. On the *Sunday Morning* I met her betwixt *Clay-Hill* and *White-Webbs*: I asked her, whether she had found the Horse or not? She said, she had not.

Mr. Just. Clive. Was it then that the Man, two Women, and two Children, were with her?

S. Arnot. It was.

Mr. Just. Clive. Look about the Court, and see if you see the two Women that were with her.

S. Arnot. I cannot swear to any Person besides her, really: I did not take Notice of the two Women; I did not converse with them.

Mr. Nares. Did the Notice you took of her, the first Time you saw her, give you such an Idea of her Person, as to ask her, of your own Accord, whether she had found her Horse?

S. Arnot. It did.

Recorder. What particular Reason have you to imagine that these two Children were with them at Farmer *Smith's*?

S. Arnot. I don't know that: I heard a Noise of the Voices of small People; I cannot say they were Children, young or old.

Recorder. Could you distinguish the Voice of Children?

S. Arnot. I could, to be sure; but I did not see the old Woman.

Baron Legge. You say, you first of all saw the old Woman on a *Friday*; when was it you saw her next?

S. Arnot. On the *Sunday* after the *Friday*.

Baron Legge. Did you see her the next *Sunday* after that *Sunday* again?

S. Arnot. No.

Elizabeth Arnot sworn.

E. Arnot. I am Wife to *Samuel Arnot*: We have lived where we do fourteen Years.

Mr. Nares. Do you know *Mary Squires*?

E. Arnot. Yes, Sir.

Mr. Nares. Look about the Court, and see if you can see her.

E. Arnot.

E. Arnot. There she is; I am sure it is her.

Mr. Nares. When was the first Time you remember to have seen her?

E. Arnot. It was about a Week before New Christmas.

Mr. Nares. How came you to fix upon that Time?

E. Arnot. To the best of my Knowledge, it was: I know it was about a Week before the first New Christmas.

Mr. Nares. Where did you see her?

E. Arnot. I saw her lying in Farmer *Smith's* Cow-house, close to my House: I saw her come out of the Cow-house into the Lane on the Chace. She asked me, if I saw a little Horse of hers? I said, I had not. This is the Truth.

Mr. Nares. Was your Husband with you at that Time?

E. Arnot. He was not.

Mr. Nares. Did you see any others in Company with her?

E. Arnot. I saw several more, but I did not take Notice of them: I saw her Son on the Chace, whistling for his Horse.

Mr. Nares. Did you see her after that?

E. Arnot. No, never, only in *Newgate*, till now.

Mr. Nares. What Time was that you saw her in *Newgate*?

E. Arnot. I don't know the Time; I never kept the Account of that.

Mr. Nares. Was it before or after her Trial?

E. Arnot. It was after her Trial.

Mr. Just. Clive. Should you know the Son, if you was to see him?

E. Arnot. I took so little Account of him, I can't say whether I should know him or not.

Mr. Nares. Did you ever see a Woman like the old Woman in your Life?

E. Arnot. No, never before I saw her.

Mr. Nares. Did you think the Woman you saw in *Newgate*, was the same Person you saw inquiring for her Horse?

E. Arnot. The very same Person.

Mr. Nares. Do you think this is the same Person here, you saw there and in *Newgate*?

E. Arnot. The very same.

Cross-examined.

Mr. Willes. How long was she with you inquiring for her Horse?

E. Arnot. It might be some Minutes, before she turned her Back, and went to look for him.

Mr. Willes. Did you see her in the Cow-house?

E. Arnot. No, I did not: I saw her coming out of it.

Mr. Willes. Did she mention the Colour of the Horse?

E. Arnot. She did not.

Mr. Willes. What did you say to her?

E. Arnot. I told her I had not seen him.

Mr. Willes. Was this the only Space of Time you had to see her Face, till you saw her in *Newgate*?

E. Arnot. It was.

Mr. Willes. How long were you talking together?

E. Arnot. It might be two or three Minutes.

Mr. Willes. Do you swear absolutely that was the Person?

E. Arnot. I do, Sir.

Mr. Nares. Did you change a Word with the Son?

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E. Arnot. I did not.

Mr. Nares. Was you near the Cow-house?

E. Arnot. My House joins almost to it: She came out of the Farmer's Yard, and said, Good Woman, did you see a little Horse of mine?

Mr. Nares. Did she come towards you before she spoke to you?

E. Arnot. No; I was going for a Pail of Water, and she came out to go to look for her Horse.

Mr. Just. Clive. How came you to say that Man was her Son?

E. Arnot. She said, it was her Son that was calling her Horse.

Sarah Star sworn.

Mr. Nares. Do you know *Mary Squires*?

S. Star. I do; that is the Gypsie, (*pointing to her.*) I live next Door to *Mrs. Wells's* House at *Enfield-Wash*: My Husband rents a Farm there.

Mr. Nares. How long have you lived there?

S. Star. I have lived there three Years this *May*.

Mr. Nares. When was the first Time you saw the Gypsie?

S. Star. She was at my House on the 18th or 19th of *January* was Twelve-month.

Mr. Nares. By what do you recollect the Day?

S. Star. My Husband was gone to *Hertford* for a Load of Pease for a Gentleman in Town: The Note is in Court, as far as I know, with the Date on it: *Mr. Miles*, the former Attorney, had it of me.

Mr. Nares. Did you ever see her at any other Time?

S. Star. I never saw her before or after, till she was taken up.

Mr. Just. Clive. How near do you live to *Mrs. Wells's* House?

S. Star. My House is as near to her House, as it is across the Sessions-house Yard.

Mr. Nares. What Conversation passed between you?

S. Star. At first she came and asked at the Door, if I had any Delft to mend, or China? My Man and Boy were at Dinner: I bid them give her an Answer, because I was busy. Then she came into the Kitchen to me, and asked to buy some Pork of me, and brown Bread: I said, I had but that Piece of Bread in the House, and more need to buy than to sell. Then she asked me to sell her some Chitterlings, I having some, and black Puddings, lying on the Table: I gave her a good Piece of Chitterling to get rid of her.

Mr. Nares. How long might this Conversation take up?

S. Star. I had rather set a lesser Time than it was. I do believe she was three quarters of an Hour with my Men and me, that is, in my Sight and Hearing. She offered to tell my Servants their Fortunes, and to tell me mine. She was some Time in the Porch with my Servant; but I believe she was in my Sight three quarters of an Hour.

Mr. Nares. Did she tell any of them their Fortunes?

S. Star. After she found she could not tell me mine, she said, Don't be scared at me; for I have been before Dukes, Lords, and Earls, and I hurt no body, Madam; I will not hurt you. She did not tell any of my Servants their Fortunes, in my Hearing. I wanted to get rid of her, for I was terribly scared, seeing such a strange Gypsie

Woman; though I have seen hundreds of Gypsies at one Time or other: The Man took her into the Porch, then the Boy bolted the Door, so we got her out. I saw her when she was taken up and put into the Cart; and I saw her in *Newgate* after that.

Mr. Nares. Are you sure this is the same Person?

S. Star. Yes, Sir.

Cross-examined.

Mr. Willes. How are you certain as to Time, so as to fix it to be the 18th or 19th of *January*?

S. Star. Upon this Account; my Husband was gone for a Load of Pease, and the Note was dated the 18th or 19th of *January*.

Mr. Willes. Where is that Note?

S. Star. It was delivered into Mr. Miles the Attorney's Hands, and I have not seen it since.

Mr. Willes. How long is it ago since you delivered it to him?

S. Star. I believe it may be above a Twelve-month ago.

Mr. Willes. What did you look upon him to be at that Time?

S. Star. I took him to be a Lawyer, concerned for *Elizabeth Canning*.

Mr. Willes. Where was your Husband when you gave him that Note?

S. Star. I can't tell.

Mr. Just. Clive. When did you deliver this Note to Mr. Miles?

S. Star. Indeed I can't tell. I know my Husband took the Pease up one Day, and delivered them the next; that is the Reason I say the 18th or 19th of *January*.

Mr. Nares. We have not got the Paper to produce.

Baron Legge. Did you deliver that before or after the Trial of *Mary Squires*?

S. Star. After, a great while.

Mr. Willes. How came you not to appear here on *Squires's* Trial?

S. Star. They did not require it.

Daniel Vass sworn.

D. Vass. I am a Day-labouring Man; and live in *Turkey-Street* in *Enfield* Parish, and have lived there almost fourteen Years.

Mr. Nares. How near is that to *Mother Wells's*?

D. Vass. About a quarter of a Mile, as near as I can guess.

Mr. Nares. Have you ever seen *Mary Squires*?

D. Vass. I have seen that Woman that was in *Newgate*; I don't know her Name.

Mr. Nares. Look about you, and see if you can see her.

D. Vass. There she is, (*pointing to her* :) She is remarkable enough: She has now a red Cloak on.

Mr. Nares. Where did you see her first?

D. Vass. The first Time I saw her going along the Causeway behind my House; it was on Old *Christmas-Day*, by the New Stile the 5th of *January* 53. I was then in my own Yard.

Mr. Nares. How near was you to her?

D. Vass. Perhaps I might be four or five Yards from her.

Mr. Nares. Had you any Conversation with her?

D. Vass. I never said any thing to her, or she to me.

Mr. Nares. How came you to take such Notice of her?

D. Vass. By reason she stopped; and I thought she would have come into the Yard, but she did not; if she had, I should have told her there was no body in the House.

Mr. Nares. Was there any body in the House then?

D. Vass. No, Sir.

Mr. Nares. Had you a full Sight of her Face at that Time?

D. Vass. I had, certainly.

Mr. Nares. Was she alone?

D. Vass. She was, without she had got any body under her Cloak: I saw no body with her.

Mr. Nares. Did you see her any Time else?

D. Vass. Only in *Newgate*.

Mr. Nares. Did these Observations you made of her, furnish you with a sufficient Remembrance of her Person, to recollect she was the same?

D. Vass. I am sure she is the same; now I am sure of it, Sir. It is the same Person, but not the same Cloaths.

Mr. Just. Clive. What coloured Cloaths had she on then?

D. Vass. She had a brick-coloured Gown on, an old red Cloak, and a whitish-coloured one over that, and an old black Beaver Hat; it was not a black Hat as Women commonly wear.

Mr. Nares. What Reason have you to fix upon Old *Christmas-Day*?

D. Vass. By reason I went to work with a Master I have worked for almost eleven Years, and he did not chuse I should work on that Day.

Mr. Nares. Why did he not chuse you should work?

D. Vass. By reason he thought it was *Christmas-Day*, and ought to be kept.

Mr. Nares. Are you certain that was the same Day you saw this Woman?

D. Vass. I am, Sir; that was the same Day; my Door was locked when I came Home, and I did not know where my Wife was gone with the Key, and at that Time the Woman came by.

Cross-examined.

Mr. Willes. Did you ever see her before?

D. Vass. No, Sir; nor never saw her again, till I saw her in *Newgate*.

Mr. Willes. How long did she stop there?

D. Vass. Perhaps a Minute, or half a Minute.

Mr. Willes. When you went into *Newgate*, did you go by yourself, or with other Persons?

D. Vass. I did not go by myself; if I had, I should not have found her; but we went but one at a Time up to her.

Mr. Willes. Was she brought out among a Number of other Persons, or was she singled out?

D. Vass. She sat upon the Bed, but I knew her long before I came at her.

Mr. Willes. Were there any other Prisoners there?

D. Vass. I did not know who were the Prisoners.

Mr. Willes. Was she sitting by herself?

D. Vass. She sat by herself on one Side the Bed.

Mr. Willes. Were there any other People shewed to you in that Corner of the Room, besides the Gypsy herself?

D. Vass. There was no other Person sitting on the Bed, nigh her, as I know of.

Mr.

Mr. Willes. Were there any other People in the Room?

D. Vafs. There were a great many; but I knew the Woman when I saw her, and should from a thousand.

Mr. Just. Clive. Who desired you to go into the Room?

D. Vafs. I don't know who it was; it was by the Gentlemen.

Mr. Just. Clive. Did any body come up from the Country with you?

D. Vafs. Yes, there were nine or ten of us came up in a Coach together.

Mr. Willes. Did you all go into *Newgate* together?

D. Vafs. I don't know how many did when I did, or how many went in together.

Mr. Willes. Was not the Purpose of your going up, to see if you could find out the Gypsey?

D. Vafs. No, no; I was carried up to see if I could find out the same Woman that I had seen before.—A blind Man can't see her; but a Man, if he has but half an Eye, might know that Woman if he sees her again.

Mr. Nares. Upon your Oath, did any body point out to you that this was the Gypsey?

D. Vafs. No, no, I did not want them to do that.

Mr. Nares. Did any body tell you how she was dressed?

D. Vafs. No, certainly.

Mr. Nares. Was there any other Woman there?

D. Vafs. There were in the Room.

Mr. Nares. Did you, of your own Accord, say which was the Woman?

D. Vafs. Certainly.

Mr. Just. Clive. How near do you live to Mother Wells's?

D. Vafs. As near as I can guess, about a quarter of a Mile off.

Mr. Just. Clive. Have you ever been in her House?

D. Vafs. I have several Times.

Mr. Just. Clive. Was you there the Beginning of *January*?

D. Vafs. No, nor I had not been in the House above two Years, till they were taken up.

Mr. Willes. Had you used to go there at any Time?

D. Vafs. I have been in the House divers Times formerly; then she sold Beer; then a poor Man might take a Pint of Beer there, as well as at another House.

Recorder. Who was the first Person that applied to you to go to *Newgate*?

D. Vafs. I am sure I don't know the Gentlemen's Names one from another.

Recorder. Have you heard their Names?

D. Vafs. I have heard a good many of the Gentlemen's Names that are on the Girl's Behalf; if I were to hear their Names, perhaps I might know them.

Mr. Just. Clive. Do you know Farmer *Smith*?

D. Vafs. I do, very well.

Mr. Just. Clive. Do you know his Cow-house?

D. Vafs. I never was in his Yard.

Jane Dadwell sworn.

J. Dadwell. I live in *Turkey-Street* at *Enfield-Wash*.

Mr. Nares. How long have you lived there?

J. Dadwell. I have lived there two Years?

Mr. Nares. What is your Business?

J. Dadwell. I keep a Shop; I sell Butter, Cheese, Coffee, and Tea; and those Sort of Things.

Mr. Nares. Do you know *Mary Squires*?

J. Dadwell. I do; this is the Woman, (*pointing to her.*)

Mr. Nares. When did you first see her?

J. Dadwell. The first Time was at our Shop; the Time I can't tell; but I can tell one Day in particular, that was the *Thursday* in *Christmas* Week.

Mr. Nares. Which *Christmas*?

J. Dadwell. The New *Christmas* Week.

Mr. Nares. Upon what Account did she come to your Shop?

J. Dadwell. She came for Coffee, Tea, and Butter; but I can't tell what particular Weight she had any one Day.

Mr. Nares. Had she been at your Shop before that?

J. Dadwell. She had several Times before that.

Mr. Nares. Why do you fix upon that Day?

J. Dadwell. We dressed a Piece of Meat for our Customers, as I usually do at *Christmas*: This was dressed on *Christmas-Day*; the Customers came on *Tuesday* Night and *Wednesday* Night; and this of her coming was after my Customers had been there.

Mr. Nares. What Reason have you to think it was after they had been there?

J. Dadwell. I was in my back House washing my Dishes (that had been used when my Customers were there) when she came in.

Mr. Nares. Did you see her any Time after that?

J. Dadwell. I can't say particularly whether she was or not at my House after that.

Mr. Nares. From her coming so often to your Shop, can you be certain of her Face?

J. Dadwell. I know it very well.

Mr. Nares. Did you see her in *Newgate*?

J. Dadwell. I did.

Mr. Nares. Was she shewn you there, or did you know her of yourself?

J. Dadwell. I knew her immediately, and then she owned she had been at my Shop.

Recorder. Did she own she had been at your Shop that *Thursday*?

J. Dadwell. No: She knew me, and owned she had been at my Shop, but did not fix upon any Time.

Mr. Nares. I need not ask you any more as to your Certainty of the Person then: Are you sure now this is the Person?

J. Dadwell. Yes, Sir, I am.

Cross-examined.

Mr. Willes. Was you ever examined before?

J. Dadwell. I was.

Mr. Willes. By what Person was you examined?

J. Dadwell. I don't know the Gentleman.

Mr. Willes. How long is it ago?

J. Dadwell. It is a Twelve-month ago last *Christmas*.

Mr. Willes. How long is it since you was examined before the Grand Jury?

J. Dadwell. I don't know.

Mr. Willes. Was you ever examined upon Oath?

J. Dadwell. I was, but not upon such Things as these.

Mr. Willes.

Mr. Willes. Was it upon the *Abbotsbury* Men for Perjury?

J. Dadwell. I don't know what it was about; it was about this Affair.

Mr. Willes. When did you recollect any of these Circumstances, about your washing your Dishes?

J. Dadwell. I gave this Account to the Grand Jury, and told the same as I have now.

Mr. Nares. Is the Account you tell now true?

J. Dadwell. I am sure it is.

Mr. Willes. When was it you first recollected it to tell those Circumstances of her being there?

J. Dadwell. I can't recollect the Day of the Month; after they were taken up, the Lawyer came to me, and I told it him.

Mr. Willes. Don't you wash your Dishes every Day?

J. Dadwell. No, I do not; but I know in particular it was that Day: One of my Neighbours came in, and asked me, what strange Woman that was?

Mr. Willes. Did she stay any Time in your Shop?

J. Dadwell. She sat down and smoked a Pipe there.

Mr. Willes. At the Time you saw her in *Newgate*, what Day did *Squires* say it was that she was at your Shop?

J. Dadwell. She did not say what Day, but she said she knew me: I asked her whether she knew me.

Mr. Nares. Then this Affair had made a great deal of Noise in the Country.

J. Dadwell. Yes, it had.

Mr. Nares. And the Lawyer desired you to recollect the Time, did he not?

J. Dadwell. Yes, he did.

Mr. Nares. You say she smoked a Pipe; where did she sit?

J. Dadwell. She sat down by the Fire.

Mr. Nares. Who is that Neighbour that came in, and asked about the strange Woman?

J. Dadwell. She was one of the Witnesses, but is since dead.

Mr. Nares. Was she examined when you was before?

J. Dadwell. She was; her Name was *Anne Parsley*.

Mr. Willes. Was you by when she was examined?

J. Dadwell. No, I was not; there was but one examined at a Time.

Recorder. How old are you?

J. Dadwell. I am threescore Years of Age.

Recorder. Are you no more?

J. Dadwell. I am not.

Recorder. Have you seen Gypsies at *Enfield-Wash* before this?

J. Dadwell. I have, such as are called Gypsies.

Recorder. Had any of them used to come to your Shop?

J. Dadwell. No, none of them.

Mr. Willes. Were they and this Woman alike that you had seen before?

J. Dadwell. No.

Recorder. What was her Errand the first Time she came to your Shop?

J. Dadwell. She came and asked if we had any China to mend.

Recorder. Had she any body with her?

J. Dadwell. I never saw any body with her.

Recorder. Did she tell you where she lived?

J. Dadwell. She said she lived up yonder, and said no more.

Tobias Kellog sworn.

T. Kellog. I am a Husbandman, and live at *Enfield* in a little House of my own.

Mr. Nares. How long have you lived there?

T. Kellog. Twenty-six Years, come *Michaelmas*.

Mr. Nares. Do you know *Mary Squires*?

T. Kellog. I have seen her.

Mr. Nares. Look about, and see if you see her now.

T. Kellog. I see her, Sir.

Mr. Nares. When was the first Time you saw her?

T. Kellog. The first Time was in *January*, something better than three Weeks in *January* was Twelve-month.

Mr. Nares. What Day in *January*?

T. Kellog. I cannot say to the Day.

Mr. Nares. Have you any Reason to say you saw her before?

T. Kellog. I have not.

Mr. Nares. Where did you see her?

T. Kellog. She was on the other Side the Way, where I was at Work in Mr. *Fletcher's* Barn, at *Bulls-Cross*; she was walking up *Turkey-Street* Green, in the Foot-path.

Mr. Nares. What have you to charge your Memory with, as to the Day?

T. Kellog. I can't say but it may be a Day or two before Old *Christmas-Day*?

Mr. Nares. Was it before Old *Christmas*, or after?

T. Kellog. It was rather before Old *Christmas*.

Mr. Nares. Are you certain of it?

T. Kellog. Yes, I am.

Mr. Nares. What Day of the Month was Old *Christmas-Day* on?

T. Kellog. It was on a *Friday*, and I believe I saw her on the *Thursday*; but I can't say to the Day of the Month.

Mr. Nares. Are you sure it was three Weeks in *January*?

T. Kellog. I mean so, and better.

Baron *Legge*. From what Period, or Time, do you reckon your three Weeks in *January*?

T. Kellog. I say, near a Month.

Baron *Legge*. Was it the Beginning of *January*?

T. Kellog. No, there were two or three Days past the Beginning.

Mr. Nares. What do you mean by three Weeks in *January*?

T. Kellog. I said three Weeks, very near a Month in *January*.

Baron *Legge*. How long was it before *Squires* was taken up?

T. Kellog. I reckon it about a Month before the Time she was taken up.

Mr. Nares. When you say, better than three Weeks, or near a Month, do you mean before *Squires* was taken up?

T. Kellog. I mean so.

Mr. Nares. Are you sure you saw her then?

T. Kellog. I am sure.

Mr. Nares. How far is Mr. *Fletcher's* Barn from *Mother Wells's*?

T. Kellog. His House is very near a Mile from it; but the Barn is about a quarter of a Mile.

Mr. Nares. Did you see her Face then?

T. Kellog. I did.

Mr. Nares.

Mr. Nares. Did you see her after that ?

T. Kellog. I did, twice, walk by my Barn-door. She asked me for a Bit of Tobacco ; I said, I used none, and away she went : I saw her four Times in all, with the Time she was taken up. She was at my Barn-door the Day before she was taken up, about One o'Clock, and asked the Man that was in the Barn with me, (whose Name is *John Rowley*) for a Bit of Tobacco : Then she came into the Barn, and said to him, Young Man, I'll tell you your Fortune ; and told him, there is one young Man has a very great Enmity to him, and asked him to cross her Hand with four Half-pence to tell him his Fortune : He said, If I do, I must go on the Highway for it : Then she turned her Leg over the Board, and away she went.

Mr. Nares. Is *John Rowley* here ?

T. Kellog. No, he is not.

Mr. Nares. Where does he live ?

T. Kellog. At *Enfield Highway*.

Mr. Nares. Are you sure this is the Woman that asked you for Tobacco, and that afterwards offered to tell *Rowley* his Fortune ?

T. Kellog. It is the same.

Mr. Nares. Have you seen her since that Time ?

T. Kellog. No, I have not till now ; but she is a very remarkable Woman.

Mr. Nares. What makes you fix it to be the Day before Old *Christmas-Day* ?

T. Kellog. I have no particular Reason.

Cross-examined.

Mr. Willes. Had you any Conversation with her the first Time ?

T. Kellog. No, I had none at all.

Mr. Willes. Had you ever in your Life seen her before ?

T. Kellog. No, Sir.

Mr. Willes. Did she continue walking when you saw her ?

T. Kellog. She was walking along.

Mr. Willes. Did you see any Gang of Gypsies about the Town, besides her ?

T. Kellog. No, I did not see any.

Mr. Willes. How long was the second Time after the first ?

T. Kellog. It was about a Week after.

Mr. Willes. Had you seen any Gypsies with her at any Time ?

T. Kellog. No, Sir.

Mr. Willes. Should you have recollected the Person of that Gypsey, if it had not been for that of coming into the Barn, and asking for Tobacco ?

T. Kellog. Yes, if I had not seen her a second Time, I should have remembered her Face.

Recorder. Was you in *Newgate* to see her ?

T. Kellog. I was not.

Mr. Willes. How long is *New Christmas-Day* before the Old ?

T. Kellog. Eleven Days.

John Frame sworn.

J. Frame. I lived with 'Squire *Parsons*, and have a Year and half ; but I am out of Place at present.

Mr. Nares. Where does he live ?

J. Frame. He lives in *James's-Street*, *Grosvenor-Square* ; but he lived in *Turkey-Street*, *Enfield*, in the Country ; and I lived with him there as a Footman and Gardener.

Mr. Nares. During the Time you was there, did you see *Mary Squires* there ?

J. Frame. Yes, Sir.

Mr. Nares. Do you think you should know her now ?

J. Frame. There she is, I am sure, (*pointing to her.*)

Mr. Nares. When did you first see her ?

J. Frame. On the 11th of *January* was *Twelve-month*.

Mr. Nares. Where did you see her ?

J. Frame. I was at Work in Master's Garden, and she came and talked with me through the *Palisadoes*, pretending to tell me my Fortune.

Mr. Nares. How came you to think it was the 11th of *January* ?

J. Frame. Because my Master and Mistress went to Town on the 9th of *January*, and this was after they went.

Mr. Nares. Tell us the Conversation as well as you can.

J. Frame. She said a great many Things to me. She told me, I little thought of coming into that Country once ; and she wanted me to give her three Pence : I gave her three Half-pence ; but she did not tell me what she would have told me if I had given her more. When I gave her the three Half-pence, she bid me put it in my Hand, and put it through the Pales. She took it out and went away.

Mr. Nares. How long might you converse with her at this Time ?

J. Frame. It might be four or five Minutes.

Mr. Nares. Was your Fortune good or bad ?

J. Frame. She told me it would be good Fortune.

Mr. Nares. Are you sure this is the Woman ?

J. Frame. I am sure it is.

Mr. Nares. Did you ever see her before ?

J. Frame. I had seen her about a Year before : I lived then at one Mr. *Woodcock's* at *Enfield Clay-Hill* ; he is since dead : I had then but very little Talk with her ; Master was at Dinner, and I could not stay.

Mr. Nares. Did you ever see her at any other Time ?

J. Frame. Not to take much Notice of her : I saw her two or three Times between that and seeing her in *Newgate*.

Mr. Nares. Are you sure the Woman you saw at Mr. *Woodcock's*, is the same Woman that told you your Fortune at Mr. *Parsons's* ?

J. Frame. I am very sure of it.

Mr. Nares. And are you sure this is the same Woman, that is here ?

J. Frame. I am very sure of it : I saw her several Times after the Time I mentioned, but not to take Notice of her, any farther than seeing her walking in the Street : I knew she was in that Part of the Country from that Time, to the Time she was taken up.

Mr. Nares. You say you saw her in *Newgate* ?

J. Frame. I did.

Mr. Nares. Was you certain of her then ?

J. Frame. I was very certain, and I am sure this is the same now.

Mr. Nares. Was you before the Grand Jury ?

J. Frame. I was.

Mr. Nares. How long is that ago ?

J. Frame. I can't tell ; it was about this Time *Twelve-month*, I think.

Mr. Nares. Did you give the same Account before the Grand Jury, as you have now ?

J. Frame.

J. Frame. I did.

Mr. Nares. Was that true?

J. Frame. It was, and so is this.

Cross-examined.

Mr. Willes. Were there any other Gypsies with her?

J. Frame. No, Sir.

Mr. Willes. When you saw her about a Twelve-month before, were there any others with her?

J. Frame. No, none as I saw; she then only just opened the Gate.

Mr. Willes. Was she in Company with any others in *Newgate*, or shewed by herself?

J. Frame. By herself.

Mr. Willes. How long had your Master and Mistress been down at that Time?

J. Frame. I cannot tell; they were up and down very often.

Mr. Willes. If they have been up and down very often, how can you fix upon their going up this Time, more than any other?

J. Frame. By reason my Master and Mistress gave me and my Fellow-Servant leave to go out on the 1st of *January*.

Mr. Willes. Had not your Master and Mistress been in Town between the 1st of *January* and the 9th?

J. Frame. Yes, they had.

Mr. Nares. Have you Reason to believe it, because your Master and Mistress were down at *Christmas*?

J. Frame. Yes, Sir.

Mr. Nares. How long had they been there at that Time?

J. Frame. I believe, a Month; and I am sure they gave me leave to go out on the 1st of *January*.

Recorder. How was the Gypsey dressed?

J. Frame. She had a reddish Sort of a Gown on, I think, to the best of my Remembrance.

Mr. Just. Clive. What other Cloaths?

J. Frame. A lightish-coloured Cloak.

Mr. Just. Clive. Do you know *Mary Jewel*?

J. Frame. She saw her something before me the same Day; her Fortune was told her; she gave her some boiled Beef: She is gone away from thence.

Joseph Gould sworn.

Mr. Nares. Where do you live?

J. Gould. I live in *Turkey-Street*, in the Parish of *Enfield*: I am a Day-labouring Man.

Mr. Nares. How long have you lived there?

J. Gould. Thirty-seven Years.

Mr. Nares. Tell me whether you know *Mary Squires*?

J. Gould. That is the Woman that sits there.

Mr. Nares. Are you sure of it?

J. Gould. I am.

Mr. Nares. When did you first see her?

J. Gould. To the best of my Knowledge, it was the 8th or 9th of *January* 1753, that is, a Year ago last *January*.

Mr. Nares. Where did you see her?

J. Gould. I saw her in a Walk we call *Trotts-Walk*, leading up to *Bulls-Cross*, about a quarter of a Mile from *Mrs. Wells's* House, or something better.

Mr. Nares. Had you any Conversation with her?

J. Gould. No: I took Notice of her; I thought I never saw such a Woman in my Life before for Features.

Mr. Nares. Had you heard *Mother Wells* had Gypsies lodged at her House?

J. Gould. I had.

Mr. Nares. Did you see her after that?

J. Gould. Yes, I saw her twice afterwards.

Mr. Nares. About what Time?

J. Gould. As nigh as I can guess, about eight or nine Days before she was taken up; and another Time, about four or five Days before she was taken up.

Mr. Nares. Are you sure the Prisoner is the same Person you saw on the 8th or 9th of *January*, and the other Times after that?

J. Gould. I am, Sir.

Mr. Nares. By what do you remember the Time?

J. Gould. *Mr. Parsons* and his Lady went to Town on the 9th, (I live next Door to him) and my Wife was at Work there on the *Monday*.

Mr. Nares. What Day of the Week was the 9th?

J. Gould. It was on a *Tuesday*; I knew of their going.

Mr. Nares. By what did you know of that?

J. Gould. It was the Time they went away after *Christmas*.

Mr. Nares. Did you see the old Woman in *Newgate* after this?

J. Gould. I did.

Mr. Nares. Was she shewed you, or did you find her out?

J. Gould. She was shewed me: There were a great many People in the Room; she was by the Fire-side.

Mr. Nares. Do you mean any body pointed at her, and said, that was the Woman?

J. Gould. No, Sir, on the first Sight, at coming into the Room, I knew her again, without being told.

Mr. Nares. Are you sure the Woman you saw in *Newgate*, is the same you see now?

J. Gould. Yes, Sir.

Cross-examined.

Mr. Willes. How far was you off from her when you saw her on the 8th or 9th of *January*?

J. Gould. Close by her.

Mr. Willes. Was it the same Day that *Mr.* and *Mrs. Parsons* went to Town?

J. Gould. I cannot tell whether it was the same Day or no.

Mr. Willes. Was any body with her at that Time?

J. Gould. No, Sir.

Mr. Willes. Had you any Conversation with her?

J. Gould. No, Sir.

Mr. Willes. When was you told that *Mother Wells* had got Gypsies lodged at her House?

J. Gould. That was before I saw her the first Time.

Mr. Willes. Who told you so?

J. Gould. To the best of my Remembrance, *Virtue Hall* did: I heard her tell other People so.

Mr. Willes. What Day was this?

J. Gould. I cannot tell the very Day.

Mr. Willes. When did you first recollect this of *Mr. Parsons's* going to Town, in order to assist your Memory?

J. Gould. After I had seen the old Gypsey in *Newgate*.

Mr. Willes. When you saw her there, were there

there no other People in that Part of the Room but her?

J. Gould. Upon my Word, I don't remember there were any, besides the People that went with me.

Mr. Willes. When you saw her, four or five Days before she was taken up, were there any body with her then?

J. Gould. She came into a Public House where I was.

Mr. Just. Clive. Where did you see *Virtue Hall*, when she was relating this?

J. Gould. At a Place called the *Two Bridges*; there were several People there then.

Mr. Just. Clive. Can you tell any of their Names?

J. Gould. I cannot: Then they told me that Person was *Virtue Hall*, and they called her by her Name: I did not know her before.

Mr. Willes. How long was this before the People were taken up?

J. Gould. It was some Time before.

Mr. Just. Clive. Did you use the House of *Mother Wells*?

J. Gould. I never did use it; I have kept a Farm fifteen Years next Door to it.

Mr. Nares. What is the *Two Bridges*? A House of that Name, or what?

J. Gould. No, it is in the Street.

Recorder. How was the Gypsey dressed?

J. Gould. Upon my Word I cannot certainly tell: She had a Cloak, and a Hat tied over her Head, and smoaking a Pipe.

Mr. Just. Clive. Was she brisk and nimble, or was she feeble?

J. Gould. No, not brisk.

Mr. Just. Clive. Was your Wife with you when you saw *Virtue Hall*?

J. Gould. No.

Mary Gould sworn.

Mary Gould. I am Wife to the last Evidence, and live in *Turkey-Street*.

Mr. Nares. Do you know *Mary Squires*?

M. Gould. I know the Gypsey Woman. I did not know her Name when I saw her.

Mr. Nares. Look about, and see if you see her.

M. Gould. Yes, Sir, there she sits; I am sure that is the Woman.

Mr. Nares. When did you see her at *Enfield*?

M. Gould. I saw her on the 11th or 12th of *January 1753*, at my Door in *Turkey-Street*: I am not certain which Day of the two; it was either on a *Thursday* or *Friday*, I am sure.

Mr. Nares. In what Manner did she come?

M. Gould. My Door was bolted: She called at it, and I opened it: She asked me, if I had any China to mend? I said, No. She said directly, You will not live long. I said, Mistress, I shall not give any thing, for I don't want to hear my Fortune told. I shut the Door, and watched her out at the Window, and saw her go into *Mr. Harrington's Yard* and out again. I was a little surprized at her, because I thought she was a very ordinary Woman. I saw her another Time before she was taken up, and that was as I sat at Work at my own Window; that was the Week before she was taken up: She asked me, if I had any China to mend then? and I told her, No.

Mr. Nares. Are you sure it was the same Person that spoke to you those two Times?

M. Gould. I am very sure.

Mr. Nares. What Reason have you to think the first was the 11th or 12th of *January*?

M. Gould. By reason 'Squire *Parsons* went to Town on the *Tuesday* that Week. I used to be there almost every Day: I was there on the *Monday*, the Day before they went, which was the 9th.

Mr. Nares. Upon your Oath, was it in that Week *Mr. Parsons* went to Town?

M. Gould. I am sure it was, and I am sure this here is the same Woman.

Mr. Nares. Did you ever see her before that Time?

M. Gould. I don't particularly know that I have.

Cross-examined.

Mr. Willes. How do you know *Mr. Parsons* went to Town on the 9th?

M. Gould. Because I was much there: I was there on *New-year's Day*; they were to have gone on that Day, but *Madam* was not very well, so it was put off till *Tuesday*.

Recorder. Did you know *Virtue Hall*?

M. Gould. I had seen her, but I had but little Knowledge of her.

Mr. Willes. Was you ever in *Mother Wells's House*?

M. Gould. I have.

Mr. Willes. Did you ever see the old Gypsey there?

M. Gould. No, I never did.

Mr. Just. Clive. Do you remember when your Husband saw *Virtue Hall* near the *Two Bridges*?

M. Gould. I told him, I had been affrighted by a Gypsey; and he made answer and said, *Virtue Hall* told him, there were Gypsies at *Mother Wells's House*.

Mr. Just. Clive. How was she dressed when you saw her?

M. Gould. She was dressed in the very same Dress as she was when I saw her in *Newgate*, with a Clout about her Head, and a plain Cap under it; a brown Sort of a Gown, I cannot tell the Colour of it, but it was not a Snuff-Colour; it was a yellowish Sort of a Gown; she was in a very tight Sort of a Dress, considering her Trade.

Humbry Holding sworn.

Mr. Nares. Where do you live?

H. Holding. I live in *Turkey-Street*, and have these eighteen Years: I am a Gardener.

Mr. Nares. Do you know *Mary Squires*, the Gypsey?

H. Holding. I do.

Mr. Nares. Look about, and see if you can see her.

H. Holding. There she is.

Mr. Nares. When was the first Time you saw her?

H. Holding. It was on the 8th of *January 1753*.

Mr. Nares. Why do you think it was on that Day?

H. Holding. Because a Gentleman, whom I work for, came Home on the 9th.

Mr. Nares. What Gentleman is that?

H. Holding. That is *Mr. Parsons*: The Gypsey came and asked me, if the Family was at Home? I said, Aye.

Mr. Nares. Had you any other Conversation with her?

H. Holding. No, I had not.

Mr.

Mr. Nares. Did you see her any other Time after this?

H. Holding. I saw her on the 11th of *January*, that was on a *Thursday*, in the same Week; then I was nailing up Vines for Dr. *Harrington*.

Mr. Nares. What Conversation passed?

H. Holding. She asked me, if there was any China to mend? I told her to ask at the Door. She asked at the Door, and somebody said, No; I cannot say who, but I heard the Words very plain; I was then at the End of the House.

Mr. Nares. By what do you remember this to be the Day?

H. Holding. I remember it, because I was not paid for that Work, and it was set down in my Book.

Mr. Nares. Did you see her after this?

H. Holding. I saw her again, when she was carried away to Justice *Tasemaker's*.

Mr. Nares. Are you sure this is the same Woman you saw before?

H. Holding. It is the very same Woman, I am certain of it; I could pick her out of a thousand.

Cross-examined.

Mr. Willes. What did you set that Work down in?

H. Holding. In my Pocket-book.

Mr. Willes. How came you not to bring your Book here?

H. Holding. I had not Presence of Mind to bring it with me.

Mr. Willes. Did you work for 'Squire *Parsons* then?

H. Holding. No, I did not, because he had hired a Person in the House.

Mr. Willes. Are you sure Mr. *Parsons* went away on the 9th?

H. Holding. I live, as it were, on the Spot; I know he went away on the Morrow after I saw her.

Mr. Willes. How long might the Gypsie be in asking those Questions?

H. Holding. She was not long with me.

Mr. Willes. How near might you be to her, when you was nailing up the Vines, on the 11th?

H. Holding. About half the Length of this Court.

Mr. Willes. Was there any Fence parted you?

H. Holding. No, none but the Gate, and I believe that was open.

Mr. Willes. Before that Time had you heard of any other Gypsies being at Mother *Wells's*?

H. Holding. As to that, I cannot say, for I never was at Mother *Wells's* in my Life.

Mr. Willes. Were there any body with her then?

H. Holding. No, there were not.

Mr. Willes. How long had 'Squire *Parsons* been in the Country that *Christmas*?

H. Holding. I don't know; but I know when he came out of the Country.

Mr. Willes. How come you to remember the Day of going out of the Country, better than when they went down?

H. Holding. By reason they are very good to the poor People when they are in the Country.

Mr. Willes. Are you used to work for Dr. *Harrington*? What is his Method of paying?

H. Holding. He pays sometimes in a quarter of a Year, and sometimes in half a Year.

Mr. Willes. Don't he pay you the Day you do his Work?

H. Holding. He very seldom does; and if I am not, I book it.

Mr. Willes. How came you to remember this particular Minute of the 11th, more than any other Minute? Was this any uncommon Thing?

H. Holding. No, it is what I did always, when I was not paid.

Mr. Willes. Was you ever examined upon Oath before?

H. Holding. Yes; but I could not fully give an Account, because then I could not resolve myself of the Time.

Mr. Willes. How long after this Time did you work for Dr. *Harrington*?

H. Holding. Not for a considerable Time.

Mr. Willes. Did you work there the next Day, or the Day before?

H. Holding. No, I did not.

Mr. Willes. How many Months after this Time was it that you was examined, and could not recollect yourself?

H. Holding. I cannot justly say how long it was after.

Mr. Willes. Cannot you tell the Day of the Month you was examined at the Mansion-House?

H. Holding. I cannot tell the Month, if I was to die.

Mr. Willes. Was you ever examined upon Oath any where else?

H. Holding. I was at the *Fleece* in *Edmonton*, by the Justices.

Mr. Willes. Can you remember the Day you was examined there?

H. Holding. I cannot.

Mr. Willes. Had you any Friend with you, when you was at the Mansion-House?

H. Holding. I had a Scrub Lawyer with me, and, I believe, there are a great many of them in Town.

Mr. Willes. What was his Name?

H. Holding. The Man is dead.

Mr. Willes. In what Way do you make your Minutes in your Book?

H. Holding. I write so much *per Day*.

Mr. Willes. Tell us the little Line you made on the 11th of *January*?

H. Holding. I put down the Day of the Month, so much *per Day*; that is, my Wife puts it down, as soon as I come Home: I can read, but I cannot write.

Mr. Willes. Were there any other Persons with you when you was examined at the Mansion-House?

H. Holding. There were, may-be, half a Dozen.

Mr. Nares. Upon your Oath, was it the 11th of *January* you worked for Dr. *Harrington*?

H. Holding. Upon my Oath, it was put down that very Night.

Mr. Nares. Does your Wife always set down your Work in the Book?

H. Holding. She always does.

Mr. Nares. When you was examined before my Lord-Mayor at the Mansion-House, had you seen your Book to refresh your Memory?

H. Holding. I told them there, I could not recollect it till I saw my Book.

Mr. Nares. Was you desired to recollect, the Day you was examined before my Lord-Mayor?

H. Holding. No.

Mr. Nares. Nor before the Commissioners neither?

H. Holding. No, Sir.

Baron Legge. When you could not recollect that, for Want of your Book, at that Time, how came you not to bring it now?

H. Holding. Upon my Oath, I had no Presence of Mind to bring it: I did not know it would be looked into.

Baron Legge. Do you remember how this Woman was dressed, when you saw her?

H. Holding. I cannot say as to Particulars; she was dressed very poorly.

Baron Legge. Give the best Account you can.

H. Holding. She had a Hat on her Head, and a Sort of a darkish yellowish Gown; but, as to her Face, I know it from five thousand.

Baron Legge. What Sort of a Hat?

H. Holding. A straw Hat.

Mr. Just. Clive. Was it a straw Hat, or a Bonnet?

H. Holding. I cannot say which.

Baron Legge. Was it a black, or white one?

H. Holding. Blackish it looked to be.

Baron Legge. How near was you to her?

H. Holding. As near as I am to your Honour.

Baron Legge. Had she a Cloak on?

H. Holding. She had a short one, but I cannot tell the Colour.

Baron Legge. What Sort of Health did she appear to be in? Did she appear to be a strong or weak Woman?

H. Holding. She did not appear to be very strong.

Baron Legge. Did you see her in *Newgate* afterwards?

H. Holding. I did, and knew her again: She was sitting on the Feet of the Bed.

Baron Legge. Were there any other Women with her?

H. Holding. I saw none, but us that went from *Enfield*, as I remember. — We were admitted in by Order of Sir *Richard Glyn*.

Sarah Vass sworn.

Sarah Vass. I am Wife to *Daniel Vass*: I live at *Enfield*, in *Turkey-Street*.

Mr. Nares. How long have you lived there?

S. Vass. Either thirteen or fourteen Years, come *Michaelmas*.

Mr. Nares. Do you know *Mary Squires*?

S. Vass. I do; that is the Woman, (*pointing to her*.)

Mr. Nares. When did you see her?

S. Vass. I saw her on the 11th of *January* was Twelve-month.

Mr. Nares. Where did you see her?

S. Vass. At my own House.

Mr. Nares. What was her Business there?

S. Vass. She came to tell me my Fortune at the Door.

Mr. Nares. Did she tell you your Fortune?

S. Vass. No, I would not let her.

Mr. Nares. Did you see her at any other Time?

S. Vass. Yes, several Times.

Mr. Nares. How came you to think this was the 11th of *January*?

S. Vass. I can give you a good Reason for it: I chare at *'Squire Parsons's*, in washing and ironing: They took Coach and went to *London* on *Tuesday* the 9th of *January*, and I returned Home directly when they took Coach, and I saw the Gypsey two Days after that.

Mr. Nares. Are you sure of it?

S. Vass. I am certainly sure I did: After that I saw her several Times.

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Mr. Nares. Did she ever ask you to tell you your Fortune after this?

S. Vass. Yes, she did the Day before she was taken up: Then she came into my House; I was drinking a Dish of Tea; she came in and sat down by me, and asked me for a Pipe of Tobacco; I went to my Husband's Mug in which he keeps his Tobacco; she took hold of my Hand, and asked me to tell me my Fortune, but I refused her: Then she asked me for a Dish of Tea, and I gave her two Dishes of Tea.

Mr. Nares. How long did she stay?

S. Vass. I believe she might stay about a quarter of an Hour. She asked me, what Gentleman's House that was over the Way? I said, *Madam Gibson's*. She asked me, whether they would admit her? I told her, I thought they would not.

Mr. Nares. Are you very certain that is the same Woman you saw before, on the 11th of *January*?

S. Vass. I am sure she is the same.

Mr. Nares. Did you see her when she was taken up?

S. Vass. I did not, but I saw her in *Newgate*.

Mr. Nares. Are you certain this Woman, that sits here, is that Woman?

S. Vass. I am certain that is the same Woman, I am positive of it.

Cross-examined.

Mr. Davy. Did you ever see any Gypsey at *Enfield-Wash* like her?

S. Vass. No.

Mr. Davy. Do you think it possible for any Person, that has good Eyes in his Head, to mistake her for another Woman?

S. Vass. No, indeed, I should think not.

Mr. Davy. How often have you seen her?

S. Vass. Twice at my House, and several other Times; I saw her twice sitting in a *Chandler's Shop*.

Mr. Davy. By what Name was she called?

S. Vass. She went by the Name of the Gypsey Woman.

Mr. Davy. Where did they say she lodged?

S. Vass. At *Mother Wells's*.

Mr. Davy. Did you hear she lodged there on the 11th of *January*?

S. Vass. No, not till afterwards.

Mr. Davy. How long afterwards?

S. Vass. As nigh as I can guess, it was three or four Days after.

Mr. Davy. Was you at Home when they were taken up? Before that Time did you hear she lodged at *Mother Wells's*?

S. Vass. Yes, before that.

Mr. Davy. Who told you where she lodged?

S. Vass. I went to a Shop, and inquired of the Woman (her Name is *Mrs. Dadwell*) who she was, and where she lodged; they said, at *Mother Wells's*.

Mr. Davy. When did you hear this?

S. Vass. As nigh as I can guess, it was three or four Days, or a Week, after the first Time I ever saw her.

Mr. Davy. What is *'Squire Parsons*?

S. Vass. He is a Gentleman that took a Country-House, and he was there all the Summer to and fro; now he lives in Town; he had Lodgings in Town, and used to be backwards and forwards pretty often in the Summer; in the Winter he was at *London* pretty much.

Mr. Davy. How long does he usually stay in the Country?

S. Vass. He very seldom comes down in Winter; sometimes, may-be, he'd stay a Month or six Weeks.

Mr. Davy. Who does your Husband work for?

S. Vass. He works for Farmer Yarrow, and has a good many Years.

Mr. Davy. Does he work for him every Day of the Week?

S. Vass. He does, except it happens to be a Holiday.

Mr. Davy. Did you ever see the Gypsey go in or out of Wells's House?

S. Vass. No, I never did.

Mr. Davy. Did you ever see any body with her?

S. Vass. No, Sir.

Mr. Davy. Did you ever see that young Man or Woman? (*meaning George and Lucy Squires.*)

S. Vass. I saw them once since this.

Mr. Davy. Do you know *Fortune Natus*?

S. Vass. Yes.

Mr. Davy. Do you know *Virtue Hall*?

S. Vass. I do.

Mr. Davy. Did you ever see them going into Wells's House?

S. Vass. No, never.

Mr. Davy. Nor coming out?

S. Vass. No, Sir.

Mr. Davy. Did *Natus* and his Wife lodge at Mother Wells's?

S. Vass. I heard afterwards they did, but not before.

Mr. Davy. Did you see *Natus* and his Wife in January?

S. Vass. I don't know that I did.

Mr. Davy. Nor in the *December* before?

S. Vass. No, Sir.

Mr. Davy. Then, when did you see them?

S. Vass. Since the great Hurliburly.

Mr. Davy. Did you not say, you saw them often?

S. Vass. Yes, but never before that Time.

Mr. Davy. Did you ever see *Virtue Hall*, before she was taken up?

S. Vass. No, I never did.

Mr. Nares. Did your Husband work on Old Christmas-Day?

S. Vass. No, Sir; he went to work, and his Master refused him, and would not let him work.

Baron Legge. How long have you known *Natus* and his Wife?

S. Vass. Now I know them, but I did not before this Thing happened.

Baron Legge. How was *Mary Squires* dressed?

S. Vass. She was in a light-coloured Cloak, a beaver Hat, and a brick-coloured Gown.

Anne Johnson sworn.

A. Johnson. I live at *Enfield*.

Mr. Nares. How long have you lived there?

A. Johnson. Going on to twenty-seven Years.

Mr. Nares. What do you do for your Living?

A. Johnson. I spin for my Living, since my Husband died.

Mr. Nares. What was his Business?

A. Johnson. He used to sell Fish.

Mr. Nares. Do you know *Mary Squires*?

A. Johnson. I do; I saw her at my Door.

Mr. Nares. Look about, and see if you see her.

A. Johnson. There she sits, (*pointing to her*;) I am sure that is she.

Mr. Nares. When did you first see her?

A. Johnson. It was at my Door, *January* was a Twelve-month.

Mr. Nares. How came you to think it that Time, more than any other Time?

A. Johnson. I am sure of it; it was the 18th of *January*.

Mr. Nares. How do you know it?

A. Johnson. By carrying Home my Work; I carried it Home two Days before, which was the 16th.

Mr. Nares. Who do you work for?

A. Johnson. Mr. *Smitberam*; I have worked for him many Pounds.

Mr. Nares. How do you know by carrying Home that Work in particular?

A. Johnson. That was the first I carried Home in the New Year, which is the Reason I remember when it was.

Mr. Nares. Where did you see *Mary Squires* on the 18th of *January*?

A. Johnson. She came to my Door, and asked me, if I had any China to mend? I told her, I had not. Then she asked me, if I had any blue and white Ware to mend? I said, I had none but what I could mend myself. Then she asked me for some Victuals.

Mr. Nares. Was she alone?

A. Johnson. Yes, I saw no body with her.

Mr. Nares. Did you give her any Victuals?

A. Johnson. No, I did not.

Mr. Nares. Did you see her any Time after this?

A. Johnson. I saw her twice after; she was four Times at my Door in all.

Mr. Nares. Did you see her all the four Times?

A. Johnson. I saw her three of them; the next Time she begged for some Victuals, and to light her Pipe; I gave her no Victuals.

Mr. Nares. What, the next Time?

A. Johnson. She asked me the next Time to let her light her Pipe.

Mr. Nares. Are you sure this is the same Person?

A. Johnson. I am sure it is.

Mr. Nares. How soon was it you saw her after?

A. Johnson. This was all in ten or eleven Days, I think, the last Time I saw her was two Days before she was taken up to be brought away.

Mr. Nares. Did you see her when she was taken up?

A. Johnson. No, I did not.

Mr. Nares. Did you see her in her Confinement in *Newgate*?

A. Johnson. I did.

Mr. Nares. Did you know her then?

A. Johnson. I did, and I am sure she is the same Woman.

Cross-examined.

Mr. Willes. How many Years have you spun for Mr. *Smitberam*?

A. Johnson. Two Years and a half.

Mr. Willes. How often in a Year did you use to carry Home your Work?

A. Johnson. I don't know; I spin for another Man; sometimes him, and sometimes the other.

Mr. Willes. Do you always set it down?

A. Johnson. No, but they set us down.

Mr. Willes. Is Mr. *Smitberam* here?

A. Johnson.

A. Johnson. I don't know.

Mr. Willes. Did you ever see his Book?

A. Johnson. Yes, I have: That Day I am sure to be the 16th of *January*; and he set it down.

Mr. Willes. What Day of the Week do you carry Home your Work?

A. Johnson. I don't know that; sometimes one Day, and sometimes another.

Mr. Willes. Can you tell what Day of the Week this 16th of *January* was?

A. Johnson. I can't say whether it was *Tuesday* or *Wednesday*, but it was a snowy Day.

Mr. Willes. Have you ever heard there were Gypsies at Mother *Wells's*?

A. Johnson. I have several Times.

Mr. Willes. What Sort of a Dress was she in?

A. Johnson. She had a light-coloured Cloak on, and a red one over that, and an old black Hat, and a Thing pinned close to her Face, (it was a Clout or Handkerchief) and an old brown Gown.

Mr. Nares. Had you heard of Gypsies being at *Enfield*, before she came to your House?

A. Johnson. I had; I had been asked if she had been at my House, and told my Fortune.

Grace Kirby sworn.

Grace Kirby. I live at *Enfield*.

Mr. Nares. How long have you lived there?

G. Kirby. I have lived a Twelve-month last *Christmas*, or a little after, about a Week or a Fortnight.

Mr. Nares. Do you know *Mary Squires*?

G. Kirby. Yes, Sir.

Mr. Nares. Look about the Court, and see if you see her.

G. Kirby. That is she, Sir, (*pointing to her.*)

Mr. Nares. Do you remember seeing her there?

G. Kirby. Yes, she came to my Door about a Fortnight before she was taken up at *Mrs. Wells's*.

Mr. Nares. Are you sure it is so long as a Fortnight?

G. Kirby. Thereabouts, it may be a Day over or under; I believe it was no more than that either Way.

Mr. Nares. What did she come to your Door for?

G. Kirby. She asked me, if I sold Potatoes? I told her, I had none, nor did not know where they were sold.

Mr. Nares. Did you take much Notice of her?

G. Kirby. I did; so much, that I knew her again when I saw her.

Mr. Nares. Where did you see her again?

G. Kirby. The next Time I saw her was in *Newgate*.

Mr. Nares. Did you know her then?

G. Kirby. Then I was certain sure she was the same Person.

Mr. Nares. And are you certain sure this is the same Person here?

G. Kirby. I am, Sir.

Mr. Nares. What Reason have you to think it was about the Time you have mentioned?

G. Kirby. Because I had been but a very little Time in my House: I had lived in the same Parish, about half a Mile further.

Mr. Nares. What Time did you come to that House?

G. Kirby. It was some Time after *Christmas*.

Mr. Nares. Were there any body with her?

G. Kirby. No, there were none.

Mr. Nares. How was she dressed?

G. Kirby. I don't know that.

Cross-examined.

Mr. Davy. How soon after your coming to that House did you see her?

G. Kirby. I can't say to any Time.

Mr. Davy. How soon after *Christmas* did you come to live there?

G. Kirby. I cannot say; it might be a Week; or it might be a Fortnight.

Mr. Davy. Why do you believe this?

G. Kirby. Because I have recollected my Memory.

Mr. Davy. How soon after did you recollect your Memory?

G. Kirby. The next Day.

Mr. Davy. Was you desired so to do?

G. Kirby. I was considering with myself, when it was that I saw that Woman.

Mr. Davy. When did you consider?

G. Kirby. I don't know: I did consider it.

Mr. Davy. How far do you live from *Mrs. Wells's* House?

G. Kirby. About half a Mile.

Mr. Davy. Are you sure it was eight Days before they were taken up, that you saw her?

G. Kirby. I cannot tell.

Mr. Nares. Tell as near as you can.

G. Kirby. As nigh as I can guess, it was a Fortnight, within a Day over or under.

Mr. Nares. How many Days is a Fortnight?

G. Kirby. There are fourteen.

Mr. Nares. Do you believe what you have said, that about a Fortnight was the Time?

G. Kirby. Yes, Sir.

Wife Basset sworn.

Mr. Nares. What is your Husband's Name?

W. Basset. It is *John*: We live in *Green-Street* at *Enfield*, and have lived there twenty-one Years.

Mr. Nares. Do you know *Mary Squires*?

W. Basset. I do; I have seen her twice.

Mr. Nares. Look about the Court, and see if you see her.

W. Basset. That is she.

Mr. Nares. When did you see her before?

W. Basset. She came to my House, and asked me to let her light a Pipe, and I gave her a Breakfast.

Mr. Nares. When was this?

W. Basset. It was either the 21st or 22d of *January* was Twelve-month.

Mr. Nares. What do you recollect the Day by?

W. Basset. Because I killed a Hog on the *Thursday* before New *Christmas*, and that Day a young Woman that lived with me went to Service; and that Day Month I saw the Gypsy.

Mr. Nares. What do you compute your Time from?

W. Basset. I take the Account Day by Day from the killing the Hog.

Mr. Nares. What Day of the Week do you reckon it was?

W. Basset. It was of a *Monday*, to be sure; that I am very certain of.

Mr. Nares. Had you any Conversation with *Mary Squires*?

W. Basset. She came and opened the Door, then came in, and asked me to let her light her Pipe:

Pipe: I gave her a Penny for telling me my Fortune.

Mr. Nares. Did she offer to tell you your Fortune?

W. Basset. She began to tell me.

Recorder. Are you a married Woman?

W. Basset. I am; it was a little Foolishness that belongs to Woman-kind.

Mr. Nares. Then she offered to tell you; you did not offer it.

W. Basset. I did not: She said, if I would cross her Hand with a Penny, she would tell me my Fortune.

Mr. Nares. Upon my Word, that is cheaper than she has done to any body else as we have heard of: Did she tell you your Fortune?

W. Basset. I had a little of her Nonsense.

Mr. Nares. Was it good or bad?

W. Basset. I don't know; I cannot say for that.

Mr. Nares. How long was she about telling your Fortune, and lighting her Pipe?

W. Basset. I can't tell the exact Time: I gave her some Tea, and let her sit down and warm herself.

Mr. Nares. Did you take so much Notice of her as to know her again?

W. Basset. I did; and this is the Woman.

Mr. Nares. Did you see her after this?

W. Basset. I saw her in *Newgate*, and told her the same that I do now; and she said, What signifies that, did I wrong you of any thing?

Mr. Nares. Did you say to her, what Time you saw her at your House?

W. Basset. Yes, I did; and she said it was not the right Time: But I said it was, and I stood to that Time.

Mr. Nares. Are you sure it was that Day?

W. Basset. It was that Day indeed.

Cross-examined.

Mr. Willes. Is that the only Reason you have to remember it, because you killed a Hog on the Day you mention?

W. Basset. That is the only Reason.

Mr. Willes. In what Manner was you introduced into her Presence in *Newgate*, and how was she sitting?

W. Basset. She was sitting smocking her Pipe by the Fire-side.

Recorder. Was it a Month before you saw her at your House, that you killed a Hog, or not?

W. Basset. I killed my Hog on the *Thursday* before *New Christmas*, and that Day my Servant went to her Place; and I saw the Gypsey, a Month after I killed my Hog, at my House.

Mr. Willes. Was she alone, or in Company, when you saw her in *Newgate*?

W. Basset. There were a great many People with her, her two Daughters, and several People that were carried up to see if they knew her or not.

Recorder. Are you sure she told you it was not right, when you mentioned the Day?

W. Basset. I am.

James Pratt sworn.

J. Pratt. I live at *Chefbunt*, about two Miles from *Enfield*; but I did live at *Enfield*.

Mr. Nares. What are you?

J. Pratt. I am a Day-labouring Man.

Mr. Nares. Have you seen *Mary Squires*?

J. Pratt. Yes, Sir.

Mr. Nares. Look about, and see if you can see her.

J. Pratt. Yes, that is she, (*pointing to her.*)

Mr. Nares. When was the first Time you saw her?

J. Pratt. The first Time I saw her was in *William Smith's* Cow-house, on a *Thursday*. When she came there, she asked me Leave to lie there, (I work there as a Day-man;) I told her to go to the House, and ask Leave there; she went up to the Door.

Mr. Nares. Did you hear her ask Leave?

J. Pratt. No, I did not hear her, but she lay there.

Mr. Nares. How long did she continue there?

J. Pratt. Three Days; she went away on the *Sunday*.

Mr. Nares. Did you see her in the Time?

J. Pratt. I did several Times.

Mr. Nares. What Day of the Month did she come there?

J. Pratt. To the best of my Remembrance, (I cannot be positive no longer than as to the House I lived in; I went out of it three Days before *New Christmas*) it was before I went out of the House to go to *Chefbunt*, where I now live; but I cannot recollect any Day of the Month.

Mr. Nares. Are you sure it was before you went to your new House?

J. Pratt. I am sensible it was.

Mr. Nares. Had you ever any Conversation with her?

J. Pratt. I can't say but I had.

Mr. Nares. Were there any other Persons with her?

J. Pratt. There were a Man and two Woman-kind, one a young Girl like, and the other may-be thirty and better.

Recorder. Were there any Children?

J. Pratt. I can't tell.

Mr. Nares. Can you tell the Time of the Day you had this Conversation?

J. Pratt. It was on a *Friday*, some Time of the Day, but can't tell the Hour: She complained that she lost a Horse, a little Poney, and asked me, whether I saw it? but I had not seen him.

Mr. Nares. Did she any otherwise describe the Horse but by a little one?

J. Pratt. Yes, she did; but I have forgot: I remember she said, he had a Clog on, and that her Name was on the Clog.

Mr. Nares. Did she tell you, upon your Oath, what her Name was?

J. Pratt. Yes, she did; but I did not take much Notice of it.

Mr. Nares. Should you know it when you hear it?

J. Pratt. I believe I should; I think she said her Name was *Mary Squires*, and that *that* Name was on the Clog.

Mr. Nares. Had you any other Conversation with her?

J. Pratt. Yes; on the same Day she told me it was her Belief, I was the Man that had the Horse.

Mr. Nares. Why did she say so?

J. Pratt. Because I worked in the Yard, and the Horse was missing, and I happened to speak a Word to the Man that was with her: I asked him, what he would give me to help him to his Horse again? so he went and told her directly.

Mr.

Mr. Nares. Do you think you should know that Man?

J. Pratt. I can't be positive.

Mr. Nares. Look about, and see if you see any body like him.

(He looks round; and as his Eye passed over George Squires backwards and forwards, George held down his Head.)

A Juryman. I see George hold his Face down, as the Witness looks towards him.

Mr. Davy. George, when Witnesses are ordered to look for you, hold up your Head; I myself saw you this Time; it does not look well.

J. Pratt. It is hard saying, I will not swear in that.

Mr. Nares. Had you any other Talk with her?

J. Pratt. Yes, Sir: After she told me about having the Horse, she said, she had got a very good Friend not far off, and she would go to him, and if she wanted a Guinea or two, she could have it; and she would go to the Cunning Man, and would have the Horse, if he was above Ground.

Mr. Nares. How came she to talk of going to a Cunning Man, when she would be looked upon to be a Cunning Woman herself?

J. Pratt. I don't know that.

Mr. Nares. Did she ever undertake to tell you your Fortune?

J. Pratt. No, she did not.

Mr. Nares. Upon your Oath, is this the Woman you saw at that Time?

J. Pratt. Upon my Oath, that is the Woman, that is the Woman.

Mr. Nares. Did you ever see her after that, before you saw her in *Newgate*?

J. Pratt. No: When I saw her in *Newgate*, I was turned up Stairs; the Door was opened; there were several People at the Door; they bade me look in; I knew her immediately, the very same Moment; I said, That is the Woman that I came after.

Cross-examined.

Mr. Davy. Was there any other Woman in *Newgate* but her?

J. Pratt. Not that I saw: I said, That is the Woman, and so it was, certainly.

Mr. Davy. Were there other People at *Enfield* with her, when you saw her there?

J. Pratt. There were.

Mr. Davy. Were any of them like her in the Face?

J. Pratt. No, none of them.

Mr. Davy. Something like her?

J. Pratt. No.

Mr. Davy. Was you ever in a Court of Justice before?

J. Pratt. No.

Mr. Davy. Was you ever upon your Oath before?

J. Pratt. No, Sir.

Mr. Davy. Will you venture to say, as you are upon your Oath, that this is the Woman, and no other, and you are not mistaken?

J. Pratt. Upon my Oath, this is the Woman, I am positive in my Conscience, and I am sure that was no other Woman; this is the Woman I saw at that blessed Time.

Mr. Davy. Did you ever see a Woman like her in your Life?

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J. Pratt. No, never in my Days:

Mr. Davy. How came she to tell you her Name was upon the Clog?

J. Pratt. Because she had lost the Horse; and she desired me, if I should see the Horse, or find the Clog, to let her know; and told me, her Name was *Mary Squires*, and that it was upon the Clog.

Mr. Davy. Do you know how large the Clog was?

J. Pratt. No, I never saw it.

Mr. Davy. Do you remember she told you the Name was *Mary Squires*?

J. Pratt. I am certain of it.

Mr. Davy. Was it not *Sarah*?

J. Pratt. I am sure it was *Mary Squires*.

Lydia Farroway sworn.

Mr. Nares. Where do you live?

L. Farroway. I live at *Enfield-Wash* with Mr. *Howard*.

Mr. Nares. How long have you lived there?

L. Farroway. I came there on the 1st of *August* was Twelve-month, and lived with them a Year and a quarter, and upwards.

Mr. Nares. Was you there on *Christmas* was Twelve-month?

L. Farroway. I was.

Mr. Nares. Tell us, as near as you can, when you first saw the Gypsey.

L. Farroway. I saw her more than once or twice.

Mr. Nares. Tell us the first Time.

L. Farroway. I will, as near as I can; but I must begin with another Time, not the first: As I was going with my young Master to School about the latter Part of *January* was Twelve-month, I saw her at a Gentleman's House, talking to the Maid; to say to the Day of the Month, I cannot.

Mr. Nares. Do you know when the Gypsey Woman was taken up?

L. Farroway. That was on a *Thursday*, to the best of my Remembrance; and the *Tuesday* was Se'nnight before I saw her.

Mr. Nares. Name the Gentleman's Name that belongs to that House?

L. Farroway. It was Mr. *Mackhouse's*, a Quaker, just on this Side the *Bell*.

Mr. Nares. Did you see her before that?

L. Farroway. I saw her once or twice before; but how long before, I can't say.

Mr. Nares. Are you positive you saw her once or twice before?

L. Farroway. Upon my Oath, I am positive I saw her once or twice before.

Mr. Nares. Look about the Court, and tell me if you see her any where here.

L. Farroway. That is the Woman, I am positive to her, (*pointing to her*.)

Mr. Nares. Did you see her after that?

L. Farroway. I did; I saw her get into the Cart when she was carried away, and I saw her after that in *Newgate*.

Mr. Nares. Did you think that was the same Woman, when you saw her get into the Cart?

L. Farroway. I did; she was the first Woman that got into the Cart.

Mr. Nares. Are you sure the Time you mention you saw her talking to a Maid-servant, was in *January*?

L. Farroway. It was, I am sure.

Mr. Nares. Are you sure that Woman is the same which you saw in the Cart?

L. Farroway. I am sure of it.

Mr. Nares. Was that the same Person which you saw in *Newgate*?

L. Farroway. It was; and this is the Woman sitting here.

Mr. Nares. How came you to fix upon the *Tuesday* was Se'nnight before she was taken up?

L. Farroway. Because I had been making some Pyes against my young Master's Birth-day, which was the 29th of *January*; and we made them before the Time, that they might be cold, to be heated again.

Mr. Nares. Did they come to your Master's Pump at all?

L. Farroway. One of the Daughters did; I saw her there two or three Times.

Mr. Nares. About what Time?

L. Farroway. About the Time I saw her Mother.

Mr. Nares. Are you the Person that went and told your Mistress that the Gypsy Girl was in the Yard?

L. Farroway. I am, Sir; and my Mistress went to the Parlour Window to see her.

Mr. Nares. What Day of the Month was this?

L. Farroway. I can't tell that, nor I can't tell the Week.

Cross-examined.

Mr. Willes. Are you sure your young Master's Birth-day is on the 29th of *January*?

L. Farroway. I am sure it is.

Mr. Willes. What Pyes were you making?

L. Farroway. Mince-pyes.

Mr. Willes. Why did you make them so long before-hand?

L. Farroway. I made them so long before-hand, that we might warm them by the Fire on his Birth-day.

Mr. Nares. Had you ever seen *Mary Squires* in any body's Shop at any Time?

L. Farroway. I can't say I had.

Mr. Willes. When was the first Time you saw her?

L. Farroway. To say the first Time, I can't; but the Time I can be positive of, was the 23d of *January*.

Mr. Willes. Is the Birth-day the 29th by Old Stile or New?

L. Farroway. It was on a *Monday*, and by the New Stile.

Mr. Willes. Did you see the Gypsy first, or her Daughter come for Water first?

L. Farroway. To the best of my Memory, I saw the Gypsy first.

Mr. Willes. Which of her Daughters was it that came to the Pump?

L. Farroway. I can't say which.

Mr. Nares. You say you saw the Gypsy before you saw the Daughter, but can't fix upon that Time?

L. Farroway. No, I can't indeed.

Margaret Richardson sworn.

Mr. Nares. Where do you live?

M. Richardson. I live in *Green-Street* now, but did live in *Turkey-Street, Enfield*.

Mr. Nares. How long have you lived in *Green-Street*?

M. Richardson. Ever since last *Michaelmas*; I lived in the other thirteen Years.

Mr. Nares. Do you know *Mary Squires*?

M. Richardson. I know this Woman, (*pointing to Mary Squires*.)

Mr. Nares. Where did you see her?

M. Richardson. I saw her at Mrs. *Waterhouse's* in *Turkey-Street*, in the New *Christmas Week*, as near as I can guess.

Mr. Nares. What is her Business?

M. Richardson. She sells Butter, Cheese, Flour, and all manner of Things for poor Folks.

Mr. Nares. What did she go to buy there?

M. Richardson. I can't say nothing to what she came to buy; she was smoking a Pipe when I went in there.

Mr. Nares. Are you sure this is the same Woman?

M. Richardson. I am sensible and certain sure this is the same Woman.

Mr. Nares. Was you long in that Shop?

M. Richardson. I sat down there, I believe, a quarter of an Hour; and I took particular Notice of her, because I never saw the like before, and I was surprized.

Mr. Nares. Was you in the same Room with her?

M. Richardson. The Shop and House is all one Room; the Fire-place is there; I left her there when I went away.

Mr. Nares. Did you ever see her at any other Time?

M. Richardson. I saw her come by my Door in *Turkey-Street* on Old *Christmas-Day*: My Dog had like to have fell upon her; but my Husband was in the Yard, and he prevented him.

Mr. Nares. Are you sure that was the same Woman you saw in the Shop?

M. Richardson. I am positive it was.

Mr. Nares. Are you sure this was on Old *Christmas-Day*?

M. Richardson. I am.

Mr. Nares. Did your Husband work on Old *Christmas-Day*?

M. Richardson. No; as he played the New *Christmas-Day*, he was resolved to make Holiday on that; so he was at Home.

Mr. Nares. Did you ever see her after?

M. Richardson. Not till she was out of *Wells's* House, and put into the Cart; then I shook Hands with Mother *Wells*, and told her she had done for herself: My Husband was the Man that drove the Cart: The Gypsy was the first that got into it, and *Wells* the next, and *Virtue Hall* the next. I saw them all go off.

Mr. Nares. Did you ever see her in Custody?

M. Richardson. No, I did not.

Cross-examined.

Mr. Willes. So you told Mother *Wells* she had done for herself; what was her Reply?

M. Richardson. She said, she should return again.

Mr. Willes. Then she and you are very good Friends?

M. Richardson. No.

Mr. Willes. How came you to insult her?

M. Richardson. I never had a Quarrel with her, upon my Oath.

Mr. Willes. Then how came you to say so?

M. Richardson. Because she had been in a great many

many Broils and Troubles, and no body thought she would have got out of them.

Mr. Willes. Do you know which is Old *Christmas-Day*, and which is New *Christmas-Day*?

M. Richardson. You must tell me, my Memory cannot be so good.

Mr. Willes. Which comes first?

M. Richardson. Why, the New *Christmas-Day*.

Mr. Willes. How many Days Difference?

M. Richardson. Some call it nine, but there may be more.

Mr. Willes. How old are you, good Woman?

M. Richardson. I don't know justly.

Mr. Willes. What Day of the Week was Old *Christmas-Day*?

M. Richardson. It was of a *Tuesday* or *Wednesday*, I can't remember which.

Mr. Willes. Is *Christmas-Day*, *Holy Thursday* or *Good Friday*?

M. Richardson. I can't resolve no such Thing; I am no Scholar; I can't pretend to know such Things.

Mr. Willes. What Month is *Christmas-Day* in?

M. Richardson. I can't say that neither, because you put me to a Stop.

Mr. Willes. Is it the 25th of *February*?

M. Richardson. I don't know justly, indeed.

Mr. Nares. You put the poor old Woman in a Hurry.

Recorder. Don't be affrighted: Can you tell what Month *Christmas* is in?

M. Richardson. I cannot.

Recorder. In what Season of the Year is it?

M. Richardson. To be sure I can tell that, it is in Winter.

Recorder. Don't be terrified; you are come here to tell the whole Truth, and nothing but the Truth, and not to tell a particular Story, but to answer all such Questions that the Court shall think proper to ask you.

Mr. Willes. Pray, why do you keep *Christmas* Holidays?

No Answer.

George Clements sworn.

Mr. Nares. Where do you live?

George Clements. I live at *Enfield Highway* with Mr. *Hamilton*; I entered Yesterday after I went Home.

Mr. Nares. Did you live with Mr. *Star* any Time?

G. Clements. Yes, Sir; I came away last *Michaelmas*; he lives down the *Marsh-Lane* by Mrs. *Wells's*.

Mr. Nares. How long did you live with him?

G. Clements. About a Year and a quarter.

Mr. Nares. Do you know *Mary Squires*?

G. Clements. I do; that is the Woman that sits there in a red Cloak.

Mr. Nares. Are you very sure of it?

G. Clements. I am sure.

Mr. Nares. Do you know Mrs. *Wells*?

G. Clements. I do; my Master lives but about a hundred Yards from her House.

Mr. Nares. Do you remember the Time she was taken up?

G. Clements. I do.

Mr. Nares. How long had you seen *Mary Squires*, before Mrs. *Wells* was taken up?

G. Clements. I had seen her about a Fortnight before that.

Mr. Nares. Where did you see her?

G. Clements. She came into my Master's House, and wanted to tell my Mistress her Fortune.

Mr. Nares. Did she come in of her own Accord?

G. Clements. She opened the Door, and came in, as I was sitting at Dinner. My Mistress would not let her tell her Fortune; she was afraid of her, and gave her a Bit of black Pudding to get rid of her. She asked my Mistress to let her have a Pound of pickled Pork.

Mr. Nares. Did she want any thing else?

G. Clements. I don't remember any thing else.

Mr. Nares. How long did she stay in the Kitchen?

G. Clements. I can't tell how long.

Mr. Nares. Did you see her after this?

G. Clements. I did, about two or three Days after, as she was going up into the Walk to *Turkey-Street*; it was a very cold Day.

Mr. Nares. Was any body with her?

G. Clements. No, no body.

Mr. Nares. What do you call that Walk?

G. Clements. There is no Name to it, as I know of. I said to her, It is a very cold Day. I remembered that was the Woman I had seen at my Mistress's.

Mr. Nares. Did you ever see her afterwards?

G. Clements. No, only when I saw her in *Newgate*, and then she knowed me.

Mr. Nares. How do you know that?

G. Clements. I asked her, whether she knew me? She said, she did.

Mr. Nares. Did you ask her that of your own Accord?

G. Clements. I did; and she said to me, I asked your Mistress to let me have a Pound of pickled Pork, and what Harm did I do you if I was there?

Mr. Nares. Was you before the Grand Jury?

G. Clements. No, I was not.

Cross-examined.

Mr. Willes. Why do you know it was a Fortnight before they were taken up?

G. Clements. She came to our House on a *Thursday*: My Master was gone to *Hertford* to fetch a Load of Pease, and he carried them to *London* on the *Friday*.

Mr. Willes. What Day of the Month?

G. Clements. I can't tell the Day of the Month. This *Thursday* Fortnight before she was taken up, then I was spreading Dung in the Marsh.

Mr. Willes. Do you ever slide on the Ice?

G. Clements. No, I never could slide in my Life.

Mr. Willes. Have you seen Boys slide on the Ice?

G. Clements. I have.

Mr. Willes. Do you remember a Pond near Mrs. *Wells's* House?

G. Clements. Yes, I used to water my Horses there.

Mr. Willes. Morning and Night?

G. Clements. Yes.

Mr. Willes. Do you know the Window that they suppose *Canning* made her Escape from?

G. Clements. I do.

Mr. Willes. Could you, by looking out of that Window, see that Pond?

G. Clements. I could very plainly.

Mr. Willes. How many Yards might it be from the Window?

G. Clements. It may be about eight Yards:

Mr. Willes.

Mr. *Willes*. Do you recollect whether there was frosty Weather that *January*?

G. *Clements*. Yes, there was.

Mr. *Willes*. Was that Pond froze over then?

G. *Clements*. It was; we were forced to break the Ice for the Horses to drink.

Mr. *Willes*. Have you ever seen the Boys slide on the Ice on that Pond?

G. *Clements*. I have.

Mr. *Willes*. How many have you seen there sliding together?

G. *Clements*. Two or three at a Time.

Mr. *Willes*. What Day of the Year is New *Christmas-Day* of?

G. *Clements*. I can't say that.

Mr. *Willes*. What Month is it in.

G. *Clements*. *December*.

Mr. *Willes*. The Beginning or latter End?

G. *Clements*. The 25th.

Mr. *Willes*. What Day is Old *Christmas-Day* of?

G. *Clements*. It is eleven Days after.

Mr. *Nares*. Are you sure it was on the *Thursday* Fortnight before *Wells* was taken up, that you saw *Mary Squires*?

G. *Clements*. I am sure it was; and that same Day my Master went to *Hertford*.

Mr. *Willes*. Do you know *William Headland*?

G. *Clements*. I do.

Mr. *Willes*. Is he a sober Youth, or not?

G. *Clements*. I know no Harm of the Boy.

Mr. *Willes*. Whether, amongst the Boys of the same Age, is his Character a good or bad one? If he has a good Character, upon your Oath say so; if not, upon your Oath say it.

G. *Clements*. I am sure I never heard any body give him a bad Character.

Hannab Fensham sworn.

Mr. *Williams*. Where do you live?

H. *Fensham*. I live at *Enfield*.

Mr. *Williams*. Are you a married Woman?

H. *Fensham*. I am; my Husband's Name is *John Fensham*; he is a Gardener.

Mr. *Williams*. How long have you lived at *Enfield*?

H. *Fensham*. Fifteen or sixteen Years.

Mr. *Williams*. Look at that old Woman, take a full View of her.

H. *Fensham*. I know her; I have seen her before.

Mr. *Williams*. When?

H. *Fensham*. On the 16th of *January* 1753, I mean after New *Christmas-Day*, I saw her in *Trotts-Walk*, on the Side of *Madam Crow's* Garden, in *Enfield*, pretty near the Highway.

Mr. *Williams*. What was she doing?

H. *Fensham*. I met her in the Walk.

Mr. *Williams*. What Time of the Day?

H. *Fensham*. In the fore Part of the Day.

Mr. *Williams*. What Day of the Week?

H. *Fensham*. I can't recollect what Day of the Week.

Mr. *Williams*. Have you ever seen her since the 16th?

H. *Fensham*. I have several Times seen her pass and repass?

Mr. *Williams*. What was her Business?

H. *Fensham*. I don't know that, except it was going to the *Chandler's* Shop.

Mr. *Williams*. Do you know the Time she was taken up?

H. *Fensham*. I was not there then.

Mr. *Williams*. Did you see her often between the 16th of *January* and 1st of *February*?

H. *Fensham*. I did divers Times.

Mr. *Williams*. Did you see her after she was taken up?

H. *Fensham*. I did in *Newgate*, and I recollected her then.

Mr. *Williams*. Look at her again; are you certain this is the same Person?

H. *Fensham*. Yes, Sir, I am certain of that.

Mr. *Williams*. What may be your Reason for recollecting the 16th of *January*?

H. *Fensham*. There was a Snow on the 15th at Night, and the 16th it was wet; and walking along, I had like to have fell, as my Pattens were on: She stopped and looked at me, and I at her: When I came Home, my Neighbour said, This Snow is come in the right Season, Yesterday was the 15th; then I said, This must be the 16th; and not only that, but I went to the Almanack, and looked that very Day.

Mr. *Williams*. Did she speak to you?

H. *Fensham*. No, nor I to her; but her Person is so particular, that I can swear she is the same.

Mr. *Williams*. What did she appear to be?

H. *Fensham*. A Gypsey, which I had heard of before: I was asked, if I had seen the Gypsey, because she went up and down telling Fortunes.

Mr. *Williams*. Was you asked before or after this?

H. *Fensham*. It was two or three Days after, and then I knew her.

Cross-examined.

Mr. *Willes*. What is the Reason you know it to be the 16th?

H. *Fensham*. Because it was a great Snow on the 15th at Night.

Recorder. Did you see any Company with her at any Time?

H. *Fensham*. No, I did not.

Mr. *Willes*. Did you look directly to the Almanack?

H. *Fensham*. No, Sir, not till the 16th at Night.

Mr. *Willes*. Are you very well skilled in Almanacks?

H. *Fensham*. Why not? I can read and write a little.

Mr. *Willes*. Do you know what Day of the Week it is by the Almanack?

H. *Fensham*. I can, I think so; my Head is good enough for that.

Mr. *Willes*. Look in this Almanack, and tell me what Day of the Week it is?

H. *Fensham*. (She takes it in her Hand, which was a common Sheet Almanack, folded up into a Book.) I can't see by this, it is so small.

Mr. *Willes*. Look at it again, and take your Time.

H. *Fensham*. I cannot see without my Spectacles, (she puts them on) you shall not fool me so.

Mr. *Willes*. Tell me by this the Day of the Week for the 14th of *December*.

H. *Fensham*. This is not such an Almanack as I look in; I look in a Sheet Almanack; I cannot tell by this.

Mr. *Willes*. Give it me again, if you cannot tell. All the Reason you have to fix it is, that the Snow fell on that Day upon which you referred to your Almanack; and now you have shewn your Skill in Almanacks.

Mr.

Mr. Williams. How long was it after New Christmas? Was it a Fortnight, or three Weeks, or a Month?

H. Fenham. It was not much above a Fortnight after.

Mr. Williams. Do you know which is Sunday in the Almanack? (She takes it again.)

Mr. Williams. Look in the Month of January. (She tells down from the 1st to the 7th Day, and said that was Sunday, which happened to be Tuesday.)

Elizabeth Sherrard sworn.

Mr. Williams. Where do you live?

E. Sherrard. At Ponder's-End; that is about a Mile and half from Enfield. I keep a Room, and pay my Rent myself.

Mr. Williams. Do you remember seeing the Gypsey about Enfield?

E. Sherrard. I do; I saw her three Days running before New Christmas, Thursday, Friday, and Saturday.

Mr. Williams. Look about, and see if you see her here. (She could not see her; she went down and looked about, and up again twice; the last Time she pointed to her.)

E. Sherrard. Why, this is the Woman.

Mr. Williams. What Thursday, Friday, and Saturday do you mean?

E. Sherrard. I mean immediately before New Christmas.

Mr. Williams. Where did you see her?

E. Sherrard. In Mother Wells's House. I went there, and went into her Parlour, and when I came out again, I saw the Gypsey stand at the Kitchen Door. I turned back again, and asked Mrs. Wells, who she had got in her House? She said, Lodgers. On the Friday I went into the Marsh-Lane, and saw her standing at the Window; and on Saturday I went down to Chestnut, and she was standing then at the Door.

Mr. Williams. How did you come to go to Mrs. Wells's?

E. Sherrard. She asked me to come in, that is, my Neighbour Wells did; she wanted to see me; because I had not been well.

Mr. Williams. Had you any Acquaintance with her?

E. Sherrard. No, nor never went near her House.

Mr. Williams. Have you ever seen the Gypsey since that Time, before To-day?

E. Sherrard. No, Sir, I never saw her but them Times, and this Time.

Mr. Williams. Did you see any body there that belonged to her?

E. Sherrard. There were two young Wenches in the Parlour, and a young Man in the Kitchen; but whether they were her Son and two Daughters, I cannot tell.

Mr. Williams. Had you any Conversation with her?

E. Sherrard. No, I never changed a Word with her; I don't like to have to do with them, I don't like them so well.

Cross-examined.

Mr. Davy. Look at that Man, (meaning George Squires;) Is that the Man?

E. Sherrard. I did not see his Face.

Mr. Davy. Did you see the two young Women's Faces?

E. Sherrard. I did; but whether I know them or not, I don't know; for they have changed

their Habits to be sure; that is one of them, (pointing to Mary the Daughter.)

Mr. Davy. Lucy, shew your Face.

E. Sherrard. Yes, this is the other: I think I can swear to them.

Mr. Davy. Do you swear they are the same?

E. Sherrard. They are very much like them.

Mr. Davy. You went down twice to look at the old Woman; did you see her Face the first Time?

E. Sherrard. Yes, I did, but did not mind her till afterwards.

Mr. Davy. I hope you mind what you say; you know the Consequence of Perjury: You are before God, and a Court of Justice; therefore attend to me: Did you see that old Woman upon your going down the first Time from off the Place you now stand?

E. Sherrard. I did not know her, because she is clean; she is not so nasty and dirty as she was before.

Mr. Davy. Then the second Time you did recollect her: You say she is the same Woman?

E. Sherrard. Yes; I do.

Mr. Davy. Did you see her Face the first Time going down?

E. Sherrard. No, I did not see her Face, because I did not take so much Notice.

Mr. Davy. Did not you see her Face, or did not you know her Face?

E. Sherrard. I did see her Face; but being clean, she is quite altered.

Mr. Davy. The Man that swore you said, you were to swear to the whole Truth, and nothing but the Truth: You have one Foot in the Grave, and the other out, be careful what you say: Was she cleaner the first Time than she was the second?

E. Sherrard. She is all the same, but I did not take so much Notice; and being cleaner, she is altered.

Mr. Davy. Do you swear to her by her Complexion, or Features?

E. Sherrard. By her Complexion and Features both.

Mr. Davy. Did you ever see such another Woman in your Life?

E. Sherrard. No, I never did.

Mr. Davy. What Day of the Month is New Christmas-Day?

E. Sherrard. I cannot tell indeed; because I can neither write nor read.

Mr. Davy. What Month is it in?

E. Sherrard. I cannot tell.

Mr. Davy. Was it in June, or July?

E. Sherrard. I cannot tell.

Mr. Davy. Was it in June?

E. Sherrard. I cannot tell.

Mr. Davy. Was it in April?

E. Sherrard. No, no; it was not in April.

Mr. Davy. What Month then?

E. Sherrard. It might be in June, for whatever I know: I know that is the Woman to be sure.

Alderman Scott. Was it in Winter, or in Summer?

E. Sherrard. It was in Winter.

Mr. Davy. Is New Christmas before Old Christmas, or after?

E. Sherrard. Nay, New Christmas is before Old Christmas, I am sure.

Mr. Davy. Did you keep New Christmas? Where you live, do you go to Church?

E. Sherrard. Yes, I know it by going to Church, and every thing.

Mr. Davy. Did you go to Church on Old *Christmas-Day*?

E. Sherrard. Yes.

Recorder. What Day of the Week was New *Christmas-Day*?

E. Sherrard. It was on the *Tuesday*, was it not? It was *Monday* or *Tuesday* howsoever.

Mr. Davy. Do you go to Church every *Sunday*?

E. Sherrard. I very seldom miss when it is fair Weather.

Mr. Davy. Did you go to Church the *Sunday* before New *Christmas-Day*?

E. Sherrard. I did on *Christmas-Day*, and the *Sunday* before.

Mr. Davy. How many Days were there between?

E. Sherrard. You can make it but two Days, be it how it will.

Mr. Davy. Are you sure?

E. Sherrard. It was about three Days; it was no more, nor could be any more.

Mr. Davy. How came you to know it was before New *Christmas*?

E. Sherrard. Why, I'll tell you how I came to know: *Mrs. Wells* bid me come, and said she would give me something for a *Christmas-Box*: When I came there, she asked me to come in; I did, but did not stay but a very little Time: When I came to the Parlour Door, I saw the old Gentlewoman standing at the Kitchen Door.

Mr. Davy. What did she give you for a *Christmas-Box*?

E. Sherrard. She did not give me no great Matter.

Mr. Davy. There is no Harm in saying what it was.

E. Sherrard. It was a small Matter; I had but a Penny.

Mr. Davy. Then she gave you a Penny for your *Christmas-Box*?

E. Sherrard. Yes, Sir.

Mr. Davy. Had you ever a *Christmas-Box* of her before?

E. Sherrard. No.

Mr. Davy. Did she give it you before or after *Christmas-Day*?

E. Sherrard. It was three Days before.

Mr. Davy. Did any body else give you a *Christmas-Box*?

E. Sherrard. Yes, Sir.

Mr. Davy. Had you ever a Farthing given you before *Christmas-Day*?

E. Sherrard. Yes, Sir.

Mr. Davy. From whom? tell me that.

E. Sherrard. At *Mr. Pickel's*, and all the People that are able; they always give me something at *Christmas*, and to all their poor Neighbours.

Mr. Davy. What Business are you?

E. Sherrard. I work for my Living, as other People do.

Mr. Davy. Is it usual to give before *Christmas* or after?

E. Sherrard. We always go before *Christmas*.

Mr. Davy. Do all give before *Christmas*?

E. Sherrard. No, some give after *Christmas*.

Mr. Davy. Who are they?

E. Sherrard. The Gentlemen at *Bushy-Hill* do.

Mr. Davy. Where do the People live that give before *Christmas*?

E. Sherrard. All the People at *Enfield* do.

Mr. Williams. Then you have *Christmas-Boxes* given you before *Christmas*? Then, I believe, you know pretty well when *Christmas* comes.

E. Sherrard. Yes, Sir.

Mr. Williams. What, you are a poor Woman? Those People give it you before *Christmas*, in order to spend at *Christmas*?

E. Sherrard. Yes, Sir; only the Quakers, at *Bushy-Hill*, give it after *Christmas*.

Mr. Williams. When *Christmas* comes, you know it, don't you?

E. Sherrard. Yes, I do, Sir.

Recorder. Do you know New-year's Day?

E. Sherrard. I do.

Recorder. When does that happen?

E. Sherrard. That is the Week after *Christmas-Day*.

Recorder. How many Days are there after New *Christmas-Day* to New-year's Day?

E. Sherrard. A Week.

Recorder. Was you ever in the Workshop at *Mrs. Wells's*?

E. Sherrard. No, never in my Life; I never heard of it before.

Mr. Williams. Did you never hear there was such a Place as the Workshop at *Mrs. Wells's*?

E. Sherrard. No, indeed I did not.

Mr. Nares. On *Saturday Night* *Mr. Moreton* received a Letter in Court, giving an Account that there was one *Mrs. Edwards*, who could give some Light into this Affair: Upon that he desired she might be subpoena'd. She was not in our original Briefs, and, I declare, I have stuck to that very strictly, not to admit any Witnesses that are not in the Brief. We are totally in the Judgment of the Court, whether she shall be called or not. The Letter is anonymous.

Mr. Davy. The Gentlemen have been so candid as to shew me this Letter: I have not, to this Moment, attempted to oppose any thing, or the asking any Questions. What has been done in this Case, I have not done it. I have been in the Search of Truth: But after your Lordship has tied us down very strictly, without any Possibility of Release, I hope the Rule extends general without Exception. I submit it as an Objection, with regard to the general Rule of Practice; but, I imagine, the Court will not think it proper, considering what has been done.

Mr. Nares. *Mr. Davy* mentions he has not objected to any Evidence; I don't know any Evidence that has been called he could object to, on our Side. We have not objected, or stopped them, in any Instance: But here is a poor Girl on her Trial; I would submit it, how far the Court thinks this Agreement binds.

Baron Legge. I will tell you my Opinion as to this Matter: I thought it a right Proposal, when made, on both Sides, that you should go on, according to your Briefs, stated at that Time, in regard to the Trial; and as it has come to an unusual Length, there was an absolute Necessity for such an Agreement, and to depart from it is an unprecedented Thing; therefore we must ward against all the Mischiefs that can arise from it; the worst that can arise is a growing Evidence upon an anonymous Letter; there is no Foundation on either Side for it, and we are not to admit of it.

Mr. Just. Clive. I am entirely of the same Opinion with my Brother: Upon this Evidence it

it will be left with the Jury, upon which Side the Evidence is most conclusive.

Mr. Nares. It was my Duty to mention it, as Mr. Moreton desired she might be subpoena'd; therefore I hope the Court will excuse me. We will call Mr. Salt to prove the Examination of *Elizabeth Canning* before Justice *Fielding*.

Mr. Davy. Mr. Salt cannot explain away a written Evidence taken before a Magistrate: I object to his Evidence.

Mr. Nares. Then we will call to the Confession of Mother *Wells*.

Mr. Davy. My Lord, I object to that: She is a very proper Evidence herself, she has been branded in the Hand; if they will produce her, she is within a few Yards of the Court.

Mr. Nares. This Girl is indicted for what she gave in Evidence against *Susannah Wells* and *Mary Squires*; she is now called upon for a Perjury in swearing upon that particular Trial. Now these two Persons were convicted; therefore, I take it for granted, we are at Liberty to give in a Circumstance to prove what she said, in Evidence on the Indictment. All that *Wells* had said at that Time was Evidence against *Wells*, and all that *Squires* had said was Evidence against herself. We are now come to establish her Evidence, standing at the Time she was examined; and, if we can prove from their own Declarations, that *Canning* and *Squires* were there, we have a proper Right to call in such Evidence, in order to corroborate that Girl's Testimony; for it is that Testimony that she gave upon the Trial that is to be admitted.

Mr. Davy. I will beg leave, in order to give Light to this Objection, to put the Case more familiarly: Suppose a Person had sworn on a particular Day that I was at *York*, and that I said I was at *York*; now my saying I was at *York*, is no Reason at all for their swearing I was there. I can only give them Authority to say, I said I was at *York*; but I am the proper Person to be examined to the real Fact. Mrs. *Wells* is here to swear whether she was or was not in her House, and she is a competent Witness to that Fact.

Mr. Just. *Clive*. This is an Indictment for Perjury, for a Testimony she gave at a Trial betwixt the Crown and the two Prisoners *Squires* and *Wells*; and in Strictness the Testimony, to wit, *Susannah Wells's*, would not in the Course of the Trial have affected *Squires*, or *Squires's* have affected *Susannah Wells*; but this is an Indictment for Perjury, in the Testimony that this Girl, *Canning*, gave of them both; therefore, I think, either are proper Witnesses of what she said.

Baron *Legge*. To be sure, what they said is Evidence against the Person that did say it: When you have made use of those which were not produced in Evidence at the Time, that could not have been Evidence against the Accessary and not the Principal; how will you produce that?

Mr. Nares. In the first Place, their not being called as Witnesses can be no Objection in not calling them now, because it has been done several Times: I do not call every Witness in my Brief; if I have fifty in my Brief, and fifty swear to the Fact, I would call them: When that Person which is a Witness is called upon, should not she have the Benefit of every Circumstance that will confirm the Testimony? Or, will the Court exclude her, because the Persons concerned in the

Prosecution did not think proper to call the other Witnesses that they might have called?

Baron *Legge*. The Indictment was laid jointly against *Mary Squires* and *Susannah Wells*; was it not, Mr. *Ford*?

Mr. *Ford*, Clerk of the Arraignment. They were both tried together, and the Indictment on the same Piece of Parchment.

Mr. Davy. This only sets forth the Indictment of *Mary Squires*, not a Word of *Susannah Wells*; she is not mentioned in it.

Baron *Legge*. Would you produce that which originally had been Evidence against *Squires*?

Mr. Nares. The same Witnesses were examined on the whole Trial all through, and they were found both guilty at the same Time, and the Jury were charged with both at the same Time; the Assignment of the Perjury is, that she was in *Susannah Wells's* House, and robbed in her House.

Baron *Legge*. Then the Evidence of *Susannah Wells* is Evidence to that Account.

Mr. Just. *Clive*. This is an Indictment against Principal and Accessary, whereby they are complicated in the same Indictment; it is against *Squires* as Principal, and *Wells* as Accessary after the Fact: So far is extremely clear, that she never could have been convicted as Accessary, unless there had been a Robbery; and she knowing of that Robbery, therefore she was interested at this Trial, as it was one and the same Indictment, and their Case submitted to the Consideration of the same Jury. I think, that if *Susannah Wells* has given in any Testimony, that there was a Robbery, considering the Nature of the Trial, as it comes before the Jury, it is the same as if *Squires* had declared it herself.

John Ward sworn.

J. Ward. I have known *Susannah Wells*, I believe, twenty Years.

Mr. *Williams*. When did you see her lately?

J. Ward. I seeing in a News-paper an Account of her being taken up, and put into *Clerkenwell* Bridewell, and living in *Southwark*, the first Time I came cross the Water, I thought I would go and see her. (I had had a Notion that she was dead, for I had not seen her for above twelve Years.) I went to see her in Bridewell. The first Word she said to me was, Who thought of seeing you here? My Reply was, By seeing your Name in the News-papers.

Mr. *Williams*. How long was this after she was taken up?

J. Ward. It was just after she was taken up; I cannot say to the Day of the Month; it was before the Trial of *Squires* and her. I asked her, how she came to keep the Girl there a Fortnight?

Mr. *Williams*. What did you mean by *there*?

J. Ward. I understood by the Paper, the Girl was kept at her House.

Mr. *Williams*. What was her Answer?

J. Ward. She said, she was there twenty-eight Days. I asked her, what Room she kept her in? She said, You know the Room very well.

Alderman *Dickinson*. Had you been acquainted with her, and did you know the Rooms in her House?

J. Ward. I had been acquainted there twelve or thirteen Years ago, (but not since I have been in Business for myself,) and have been all over the House.

Mr.

Mr. *Williams*. Did you understand what Room she meant?

J. Ward. No, Sir.

Mr. *Williams*. Did you see her after this?

J. Ward. I did, on the *Sunday* following; then I met her in the *Bridewell-Yard*. We never drank together the first or second Time. I asked her, how she thought to get off of this *Affair*? She said, she must take her *Trial*.

Baron *Legge*. How came you to go a second Time?

J. Ward. Because my Wife had a mind to see her: We both lived at *Waltham-Abbey* before I married. Mr. *Jones* went with me the first Time.

Mr. *Williams*. Where do you live now?

J. Ward. I live in *Maid-Lane*, *St. Mary Overy's* Parish, *Surrey*. I am a *Breeches-maker*.

Mr. *Williams*. Are you a *House-keeper*?

J. Ward. Yes, Sir; I have lived there near the Spot thirteen Years, and have carried on *Business* fourteen Years.

Baron *Legge*. So you asked her, how she kept the Girl a *Fortnight* there, without knowing in what Room?

J. Ward. Yes, my Lord.

Baron *Legge*. Did she form her Answer out of the *News-paper*?

J. Ward. Not as I know of.

Cross-examined.

Mr. *Davy*. What *Business* carried you there?

J. Ward. By seeing her Name in the Paper, I went to see if it was the same Woman, out of Curiosity, not having seen her above twelve Years.

Mr. *Davy*. How far did you live from *Enfield-Wash*?

J. Ward. I lived at *Waltham-Abbey*.

Mr. *Davy*. Had you had a great Desire to know whether she had been dead or alive, you might have gone to *Enfield-Wash*, and have known that.

J. Ward. I wish I had never gone to have seen her.

Mr. *Davy*. Had you any other *Business* there?

J. Ward. No, none at all; only I had some at *Saffron-Hill*, with a Man that works with me; and I had also some *Business* in *Shoe-Lane*, and Mr. *Jones* went with me.

Mr. *Davy*. What *Business* had he there?

J. Ward. He went with me as a Friend and Acquaintance; he had never seen her in his Life before.

Mr. *Davy*. Did not you ask her, what she was there for?

J. Ward. No, I did not.

Mr. *Davy*. Did not you ask her more Questions than that you just mentioned?

J. Ward. No.

Mr. *Davy*. Do not you, upon your Oath, believe she meant to let you know, she was charged for keeping the Girl in her House twenty-eight Days?

J. Ward. No, I did not understand her so.

Mr. *Davy*. Did not she tell you she was innocent of the Charge?

J. Ward. No, Sir.

Mr. *Davy*. Did not she, before the *Trial*, say she was innocent of it?

J. Ward. No, Sir; what I told you is all Truth.

Mr. *Davy*. How long did you take the *Confinement* to be, when you read the *News-paper*?

J. Ward. I took it to be a *Fortnight*.

Mr. *Davy*. What are the Words you made use of?

J. Ward. I said, How came you to keep the Girl there a *Fortnight*?

Mr. *Davy*. Where did you mean?

J. Ward. I meant in her own House; and she said, twenty-eight Days.

Mr. *Davy*. How came you not to give Evidence of this when she was tried?

J. Ward. I did not know I should be wanted: The Reason I came now was, I was with my Friend drinking a Tankard of Beer, and he threw his Skits, and said, Mother *Wells* had been an old *Procurer* of mine; and the People in the House heard this *Affair* talked over, and they went and brought some People from *Aldermanbury*, who came to me, to whom I related it again.

Mr. *Davy*. I insist upon Mrs. *Wells's* being produced to know if he knows her.

Mr. *Nares*. That you never intend.

Baron *Legge*. You say you saw it in the *News-paper*, and you asked her, how she came to keep the Girl a *Fortnight*? She said, Why, she was there twenty-eight Days. Suppose it was to be said, I saw in the *News-papers* you sat five Days in the *Old-Bailey*: The Answer would be, We sat ten, if the *News-papers* were ten.

Mr. *Nares*. Did you ask this with any Apprehension of becoming a Witness against her?

J. Ward. No, not in the least.

Mr. *Davy*. Did you ever make *Affidavit* of this before?

J. Ward. It was just when they were going to file a Bill against the *Abbotsbury Men*.

Mr. *Davy*. How long is it ago?

J. Ward. Before the *Trial* of the *Abbotsbury Men*; the Gentlemen asked me to make it, which I did before Sir *Robert Ladbroke*.

Mr. *Davy*. Was you examined then before the *Grand Jury*?

J. Ward. I was.

Richard Jones sworn.

Mr. *Nares*. Did you go with *John Ward* to *Clerkenwell Bridewell*?

R. Jones. Yes, Sir, he asked me to go with him to see Mother *Wells*, and said, he knew her in the Country.

Mr. *Nares*. When did you go with him?

R. Jones. I think it was about the Beginning of *February* was Twelve-month.

Mr. *Nares*. What Conversation passed between *Ward* and Mother *Wells* there?

R. Jones. He asked her, how she came to be so vile as to shut up the Girl a *Fortnight*? A *Fortnight*, said she, she was there eight and twenty Days.

Mr. *Nares*. What did he say to her upon that?

R. Jones. I cannot tell.

Mr. *Nares*. Did he ask her any thing more?

R. Jones. No, nothing more, as I know of.

Cross-examined.

Mr. *Davy*. Was any thing said about a *News-paper*?

R. Jones. No, he told me, he had read it in a *News-paper* of Mother *Wells's* being in *Bridewell*.

Mr. *Davy*. How came you to go with him?

R. Jones.

R. Jones. I went with him to keep him Company.

Mr. Davy. Did he say any thing to her about seeing it before in the News-paper?

R. Jones. Not as I know of.

Mr. Davy. Not a Word?

R. Jones. No, not as I know of.

Mr. Davy. Did not she say she was innocent?

R. Jones. No, nothing at all about it.

Mr. Davy. Did not she say she had never seen the Girl in her Life?

R. Jones. No, she did not say she had, or had not.

Mr. Nares. Where do you live?

R. Jones. I live in *Shoe-Lane*; I am a Brafs-founder; I have a Wife and Family there.

Mr. Nares. How long have you lived there?

R. Jones. About ten Years.

Mr. Nares. Are you a House-keeper?

R. Jones. I keep a House of 20 l. per Year.

Mr. Nares. I have in my Brief some Witnesses of Credit and Character that were near the Gypsey when she was tried, and heard some Confessions which she made at that Time. How far your Lordship thinks these Witnesses are proper, I leave to your Lordship.

Mr. Davy. I wave that, I have no Objection to that.

Baron Legge. Whether any thing said in Court is any Evidence, unless said to the Court. There is here a manifest Difference between what is said in Court, and to the Court; for what is not said to the Court, is the same as said any where else.

Mr. Nares. It is no Part of the Evidence given, but Observations she made upon the Evidence given against her.

Mr. Just. Clive. That is giving Evidence of that which is no Evidence.

Mr. Nares. We are now going, my Lord, to impeach the Credit of some of the Witnesses: We begin with *Judith Natus*.

Nathaniel Crumphorne sworn.

N. Crumphorne. I live at *Waltham-Cross* in *Hertfordshire*; I have been a House-keeper there above seven Years.

Mr. Williams. What is your Business?

N. Crumphorne. I am a Cordwainer.

Mr. Williams. Do you know *Judith Natus*?

N. Crumphorne. I do, she is Wife to *Fortune Natus*; they live at *Waltham-Cross*.

Mr. Williams. Did you know them when they lived at *Enfield-Wash*?

N. Crumphorne. No, I did not.

Mr. Williams. When did you see *Judith Natus*?

N. Crumphorne. I saw her at my House on the 21st of *April* last. She came to know if one *Thomas Pain* wanted a Person to pick up Stones. I said to her, Mrs. *Natus*, how can you have the Conscience, knowing this innocent Creature *Betty Canning* was at Mrs. *Wells's* House, that you should go and be an Evidence against her? The Answer she made me was, *Indeed, Mr. Crumphorne, I cannot say but she really was there, when we lodged there.*

Mr. Williams. Did she come to your House accidentally?

N. Crumphorne. She came to ask if Mr. *Pain* wanted a Person to pick up Stones.

Mr. Williams. Who was by at the Time?

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N. Crumphorne. My Neighbour and my Wife were.

Cross-examined.

Mr. Davy. Then they did lodge at *Wells's*, did they?

N. Crumphorne. She said so.

Mr. Davy. When did you understand by her that she and her Husband lodged there?

N. Crumphorne. She told me so on the 21st of *April*; but I cannot tell when they lodged there.

Mr. Davy. Did she tell you they all three lodged in one Room?

N. Crumphorne. I can say nothing at all about that.

Mr. Davy. There is the little Word *but*, are you sure that was mentioned? I will read it without that Word,—*Mr. Crumphorne, I cannot say she really was there, when we lodged there.*

N. Crumphorne. She said the Word *but*.

Mr. Davy. Are you sure she said that Word?

N. Crumphorne. She said it indeed.

Mr. Davy. What did you understand by it?

N. Crumphorne. What I understood by it was, that she really was there, when she lodged there.

Baron Legge. When was it you had this Conversation?

N. Crumphorne. It was on the 21st of *April* last.

Mr. Nares. Then what you charged her with was, how could she in her Conscience swear so, knowing the Innocency of *Canning*?

N. Crumphorne. Yes, and the Words she said were, *Indeed, Mr. Crumphorne, I cannot say but she really was there, when we lodged there.*

Baron Legge. How many Days before this Trial began was it that she said so?

N. Crumphorne. It was a Fortnight ago Yesterday.

Elizabeth Crumphorne sworn.

E. Crumphorne. *Nathaniel Crumphorne* is my Husband. *Judith Natus* came to our House on the 21st of *April* last.

Mr. Nares. Did you send for her?

E. Crumphorne. No, I did not, nor I did not want to see her. She came to ask for a Person about picking up Stones. My Husband said to her, How could you be so cruel, knowing *Elizabeth Canning* was confined when you was there, to go to swear as you did? Her Answer was, *Indeed, Mr. Crumphorne, really she was there, when we lodged there.*

Mr. Nares. Tell the Words as near as you can.

E. Crumphorne. She said, *Indeed, Mr. Crumphorne, she actually was there, when we lodged there.*

Mr. Nares. Did she say she was confined there?

E. Crumphorne. No, Sir.

John Jackson sworn.

J. Jackson. I have lived at *Edmonton* fourteen or fifteen Years. I saw *Fortune Natus* lay a Wager, at the *Four Swans* at *Waltham-Cross*, that he was at *Wells's* House all the Time of *January* 1753, and it was proved he lay at another House one Night.

Paul Stevens sworn:

P. Stevens. I live in *New-Prison-Walk, Clerkenwell*: I am a Publican, and have lived there between twelve and thirteen Years.

Mr. Nares. Do you know *Susannah Wells*?

P. Stevens. I do; I have seen her in *Bridewell*, and at her own House.

Mr. Nares. Do you know *Mary Squires*?

P. Stevens. I do.

Mr. Nares. See if you see her here.

P. Stevens. That is the Woman, (*pointing to her.*) I saw her in *New-Prison*, about three or four Days after she was taken up and carried there. There was a Gentleman or two and I went down to see the People on the Common Side in the Prison. She was sitting by the Fire-side in the Kitchen, in the Master's Side. We had a Bottle of Wine there. She began to speak and resolve some Questions. She acknowledged she was at Mrs. *Wells's* House, but said, For what I am here for, I am innocent of, that is, Cutting off her Stays; but to be sure the Person was there, I believe. She said, she never was guilty of robbing the Girl.

Mr. Nares. How long did she say she had been there herself?

P. Stevens. She said, she had been there a Fortnight and three Days, I think.

Mr. Nares. What Girl do you mean?

P. Stevens. I mean *Elizabeth Canning*.

Cross-examined.

Mr. Davy. Then she said, she did not cut her Stays off?

P. Stevens. She put her Hands up and said, As God is my Saviour, what I am sent here for, I am innocent of; but she said, she believed the Person was there.

Mr. Davy. Did she say she saw the Person there?

P. Stevens. No, she did not. She said, she herself was there a Fortnight and three Days, and the Girl was there in the Time.

Mr. Davy. Answer my Question, Did she say she ever saw *Elizabeth Canning* at *Wells's* in her Life?

P. Stevens. No, she did not.

Mr. Davy. Did she make use of the Word *believe*?

P. Stevens. She said, she was sure she was there.

Mr. Davy. Did she acknowledge she was there?

P. Stevens. She did; she came into a free Way of speaking at last, more than at first.

Mr. Davy. Did she say, she was there not above a Fortnight and three Days in the whole?

P. Stevens. She did not say she was there more.

Mr. Nares. Did she acknowledge she was there a Fortnight and three Days?

P. Stevens. She did.

Mr. Just. *Clive*. Did she say she saw her there?

P. Stevens. She said, she was in the House sure enough; she believed she was, and positively, almost, sure of it.

Mr. Just. *Clive*. What did you go to the Gaol for? Was it to get this Confession from her?

P. Stevens. No.

Mr. Just. *Clive*. Who were those Gentlemen that you went with?

P. Stevens. Mr. *Martin* and Mr. *Dudley*.

Mr. Just. *Clive*. Did you give Evidence here upon the Trial?

P. Stevens. No.

Joseph Haines sworn.

Mr. Williams. Are you a House-keeper?

J. Haines. I live at *Ware* in *Hertfordshire*. I have been a House-keeper above forty Years there.

Mr. Williams. Do you know *Fortune Natus*?

J. Haines. I do. I have known him six or seven Years, or more.

Mr. Williams. Do you know his Wife?

J. Haines. I do, she was bred and born in the Town.

Mr. Williams. What kind of a Character does he bear? Do you look upon him to be an honest Man?

J. Haines. No.

Mr. Williams. Do you believe his Oath is to be taken?

J. Haines. I believe it is not. I know it is not fit to be taken. He is a very dishonest Man.

Cross-examined.

Mr. Davy. What is your Business?

J. Haines. I am a Barge-master. I am an Owner of Part of two Barges.

Mr. Davy. Did you ever hear any body speak well of him in your Life?

J. Haines. No, not lately. When he came to our Town, he turned a bad Man; when he worked at *Fatham's-Hall*, he went on better; but when he came to our Town, he deceived a great many People.

Mr. Davy. How long is that ago?

J. Haines. That is ten or twelve Years ago.

Mr. Davy. How long is it since you heard a good Character of him?

J. Haines. I have not heard a good one of him for almost three Years.

Mr. Davy. Do you think, if he was to come into a Court of Justice, and not to get a Farthing by it, that he would perjure himself?

J. Haines. I think he would say any thing to get a Shilling.

Mr. Davy. Suppose he could not get a Shilling by it?

J. Haines. He would try for it.

Mr. Davy. Do you think he would rather swear false than Truth, tho' he did not get a Shilling by it?

J. Haines. I think he would, he hates Truth.

Mr. Davy. You say, you believe he hates Truth. I do not know what you mean. Is he a bad Rogue?

J. Haines. No body will give him a good Character about us.

Mr. Davy. Do you know his Wife? Is she a bad Wretch too?

J. Haines. She is a bad Body.

Mr. Davy. A drunken Beast?

J. Haines. You have guessed right as any Man in *England*. You give a very good Guess.

Mr. Davy. What, have you not made it up with him?

J. Haines. He once brought me a forged Note.

Mr. Davy. Are you at Law?

J. Haines. No, Sir.

Paul Chapman sworn.

P. Chapman. I live at *Ware*, and have done these twenty Years.

Mr. Williams. What are you?

P. Chapman. I am a Bricklayer.

Mr. Williams. Do you know *Fortune Natus*?

P. Chapman. I do.

Mr. Williams. What is his Character?

P. Chapman. He has a very bad Character.

Mr. Williams.

Mr. Williams. Do you think he is to be credited upon Oath?

P. Chapman. I believe he is not to be believed upon Oath.

Cross-examined.

Mr. Willes. How long has he left Ware?

P. Chapman. I believe he has left Ware three or four Years.

Mr. Willes. Have you seen him since he left Ware?

P. Chapman. No; I have not till now; he behaved very ill there.

Thomas Green sworn.

T. Green. I live at Ware in Hertfordshire. I am a Farmer. I have lived there thirty Years, and have been a House-keeper almost as long.

Mr. Nares. What do you rent per Year?

T. Green. I rent 600*l.* per Year.

Mr. Williams. Do you know Fortune Natus?

T. Green. I do.

Mr. Williams. What is his general Character?

T. Green. Really, in my Conscience, he has a very indifferent one.

Mr. Williams. Is he to be believed upon Oath?

T. Green. I make a Query whether he is—I believe not.

Mr. Just. Clive. Did you ever hear him swear himself?

T. Green. No, I never did.

Cross-examined.

Mr. Davy. One Question, Yes, or No? Do you believe, that in a Case where he was not interested a single Shilling, he would perjure himself?

T. Green. I have Reason to think he would say any thing for Hire.

Recorder. Give a Reason why he would say any thing for Hire.

T. Green. He has never injured me, nor robbed me; but he was a Parishoner of Ware, and he eloped, and left a Child to the Work-house.

Baron Legge. Is his Character so bad, he would wantonly perjure himself?

T. Green. That I cannot answer for.

Mr. Nares. My Lord, I will now call Justice Tashmaker to shew, that *Virtue Hall's* Confession was taken, not in the hearing of *Canning*. Mr. *White* says, they were taken in the hearing of one another.

Mr. Davy. This is applying to the Jury Matter foreign to the Case. With your Lordship's Leave, I will say, the Jury are not to know that such a Person ever existed as *Virtue Hall*.

Mr. Moreton. The Jury are not to take Notice there is such a Person as *Virtue Hall* in being; but we have a Right to call what Evidence she gave in the Court here. You have heard *Canning's* Evidence, and called the Minuter here to prove it. If your Lordship thinks I have no Right to call the Justice of the Peace to prove she gave her Testimony when the Parties accused were not by, that is, when *Wells* and *Squires* were not by; I would call Justice Tashmaker to prove what she said, who was in the Room when she was examined.

Mr. Willes. I think it would have been extremely right, if *Canning's* Evidence was not taken down in Writing.

Baron Legge. The Perjury is assigned upon the Evidence she gave at the *Old-Bailey*. The Question is not, Who was by when the Deposition was made before a Justice of Peace? That is no Way in Issue in the Case.

Mr. Just. Clive. We are of Opinion it can be no Evidence to call Justice Tashmaker.

Mr. Nares. My Lord, *Ezra Whiffin* swears, that on the 18th of *January* he was in the Room where *Canning* was confined, to buy some Sign-Irons. We will call the Man who painted the Sign, to shew that he was not there at the Time.

William Metcalf sworn.

W. Metcalf. I am a Glazier, Painter, and Plumber, and live at *Enfield Highway*.

Mr. Nares. Do you know *Ezra Whiffin*?

W. Metcalf. I do. I remember I carried a Sign Home to his House, on the 8th of *January* 1753, Old Stile, and set it down directly in my Book.

Mr. Nares. Where is that Book?

W. Metcalf. It is at Home. I could easily have brought it, had I had an Order so to have done. But I can satisfy you another Way. I have a Pocket-book in my Pocket, and I took it from this Pocket-book, and put it in my Day-book. (*He produces the Pocket-book.*)

Mr. Nares. Tell me, by looking into that Book, the Day you brought the Sign Home?

W. Metcalf. It was on the 8th of *January*, O. S. I wrote this myself in his own House, with his Pen and Ink.

Mr. Nares. Upon your Oath, is it your own Hand-writing?

W. Metcalf. Upon my Oath, it is.

Mr. Nares. What Day was it, New Stile?

W. Metcalf. It was on the 19th, N. S. He told me he had spoke to one Mr. *John Garret*, a Blacksmith, to make the Irons to hang it upon. I went directly to the Blacksmith, and asked him, whether he had done them? He told me, he would not do them at all, till such Time as *Whiffin* had paid what was due already.

Mr. Nares. Did you go back again then to *Whiffin*?

W. Metcalf. No. About ten or fourteen Days after I saw *Whiffin*, and asked him, if he had got the Irons? He said, he had got none. Then I said, You are very much to blame you did not go down to Mother *Wells's*, to see for her Hooks, because they were the same that the Sign hung upon; and I thought they might be in the same Piece of Wood, which was sawed off when the Sign was taken down.

Mr. Nares. Did he say he had been for them?

W. Metcalf. No, he did not, but he said he would go.

Mr. Nares. Had he the Hooks when you spoke to him?

W. Metcalf. That I do not know. He did not say he had been at Mother *Wells's*, or that he had got them.

Mr. Nares. When was it hung up?

W. Metcalf. I do not know.

Cross-examined.

Mr. Willes. The 1753, which is in black Figures, when was it wrote in this Book? I observe it to be in a different Ink.

W. Metcalf.

W. Metcalf. That was wrote on *Saturday* was Se'nnight, I believe; that was taken from the other Book. I took that Date out of my other Book; for I set it down in my Pocket-book without the Date at first.

Mr. Moreton. I observe in this, here is *October 17*, do you mean Old Stile or New Stile?

W. Metcalf. I mean Old Stile. All that is set down, is set down by my Clock.

Mr. Moreton. When you made that Entry, did you mean it according to Old Stile or New?

W. Metcalf. To the Old.

Recorder. Why did not you bring your Book here?

W. Metcalf. I did not know it would be wanted.

To her Character.

Mr. Marshall sworn.

Mr. Marshall. I have known *Elizabeth Canning* the younger almost ever since she could go alone; since she has grown up, she has come to my Shop almost every Day. She bears a very good Character. I never knew a Girl behave more modestly in my Life. I am one of her Bail; and if I had not believed her to have been entirely honest, I would not have been Bail for her.

Cross-examined.

Mr. Davy. Look at this Paper; it has your Name to it; was it done with your Consent?

Mr. Marshall. It was not; but when it was done, I did not contradict it.

Mr. Davy. Here is an Attestation of all the Facts she had sworn, why did you suffer it to be printed?

Mr. Marshall. I did not contradict it.

Mr. Davy. Did you ever declare that you was ignorant of the Things that you here attest?

Mr. Marshall. As to the Facts, they put my Name in to attest her being a harmless Girl; the Contents I never saw, till I saw them in Print.

Mr. Davy. You have said here, *The Truth of the above-mentioned Facts, we, whose Names are under-written, being also ready to attest*—Did you ever take any Pains to satisfy the World that you were not able to attest these Facts?

Mr. Marshall. I had nothing to do with the printing the Papers. My Attestation was only to tell of the Girl's Absence.

Mr. Davy. Did you give any of these Papers away?

Mr. Marshall. I believe I did.

Mr. Davy. Do you know of their being scattered about at the Time of the Trial of *Wells* and *Squires*?

Mr. Marshall. I have heard they were delivered about, but I did not do it. I said, it was a bad Thing to distribute them about then.

Mr. Davy. Upon your Oath, did you consent to the Publication of it?

Mr. Marshall. Upon my Oath, I did not.

Mr. Davy. Was your Name put to it without your Consent?

Mr. Marshall. It was.

Recorder. Did you see your Name to them, before you distributed them about?

Mr. Marshall. Yes, I did.

Mr. Davy. Whether the Intent of publishing these Papers was not to inflame the World against the Gypsey?

Mr. Marshall. No, I believe not.

Mr. Nares. Did you believe the Truth of these Papers that you distributed?

Mr. Marshall. My Belief was, that the Girl had been so long missing from her Friends.

Mr. Davy. I am to tell the Jury from the Prosecutor, I have nothing against the Girl's Character, exclusive of this Fact.

Mr. Nares. Then we need call no more to her Character.

Mr. Davy. I have only to call Witnesses to the Support of *Natus's* and *Whiffin's* Characters.

TUESDAY the] 7th of May.

Mr. Moreton. We last Night finished this long Trial in Behalf of the Defendant. I am very sensible, that, perhaps, there never was a Case came before a Court of Justice, in which it was more proper, I hope I need not say more necessary; for some of the Counsel concerned to have made Observations from the material Part of the Evidence given on both Sides.

That is what is the Province of a Counsel, to observe how far our Evidence answered the Evidence given on the Behalf of the Prosecution.

It has been among the many Misfortunes of the Defendant, that it has been impossible for any one of her Counsel to have attended thro' this whole Trial. *Mr. Williams*, whose proper Province it was to have replied, has necessarily been absent, during great Part of the Evidence; therefore it is impossible for him to discharge his Duty in that.

It has likewise been my Misfortune to be absent, and it has also been *Mr. Nares's* Misfortune to be absent, so that we could not attend upon that Part of the Evidence. I mention this, that I may lay in my Claim with your Lordship, who has been so very acute and attentive, that whatever Observations are proper to be made, the Jury may carry the Facts along with them, as well as the Prosecutor's Charge; and that your Lordship will be so kind to supply what we have been obliged to omit. I make no Doubt but you will do so, because no greater Accuracy, and no greater Attention can be shewn, than has appeared in your Lordship through the Course of this Trial; therefore my Client will not suffer thro' this Absence.

Recorder. You may assure yourselves I shall, and I hope you will be present, when I sum up to the Jury; and I shall not take it in the least amiss to be instructed, if I make any Mistake whatsoever.

Mr. Moreton. When once the Case is in your Hands, I am very sure it is in safe Hands.

Mr. Davy. I desire it may be proved to the Jury, that the Days of the Arrival of the Letters from *Basingstoke*, are *Mondays*, *Wednesdays*, and *Fridays*.

Thomas Ravenbill again.

Mr. Willes. As you are an Officer in the Post-Office, you can tell what Days of the Week the Post comes into Town from *Basingstoke* in *Hampshire*.

T. Ravenbill. It comes in on *Mondays*, *Wednesdays*, and *Fridays*, and no other Days.

Cross-examined.

Mr. Moreton. What Post-road does it lie in?

T. Ravenbill. It comes in the *Portsmouth* Mail; it is in the Western Road.

Mr. Moreton. Does the *Portsmouth* Bag come thro' *Basingstoke*?

T. Ravenbill.

T. Ravenbill. I cannot tell that.

Mr. Davy. Whether the *Portsmouth* Bag does not come thro' *Basingstoke*? Or, whether there is not some every Day's Post comes thro' *Basingstoke*?

T. Ravenbill. Upon my Word I cannot tell. *Basingstoke* Bag comes in three Days a Week.

Mr. Moreton. That Letter is not proved ever to have been in *Basingstoke* Post-Office; it remains still to be proved, that there is an every Day's Post comes thro' *Basingstoke*.

Mr. Davy. Do the *Basingstoke* Letters ever come in on any other Days besides *Mondays*, *Wednesdays*, and *Fridays*?

T. Ravenbill. No, they come in only on those three Days.

Mr. Davy. When does the *Salisbury* Post come in?

T. Ravenbill. That comes in the same Days.

(*Mr. Davy produced the Almanacks back to 1749, which proved the 19th of January was never on a Monday, Wednesday, or Friday, since January 1749, till the Year 1753.*)

Mr. Willes. There is one *Anne Johnson*, who swears she saw *Mary Squires* at *Enfield-Wash* on the 18th of *January*; and she has sworn, that she works for *Mr. Smitheram*; and that she carried Home her first Work for that Year on the 16th of *January*; and that her Master constantly put the Work carried Home down in a Book; and we have that Book to prove it was carried Home on the 23d of *January*.

Thomas Smitheram sworn.

Mr. Willes. What is your Business?

T. Smitheram. I keep a Boarding-School at *Enfield Highway*, and I keep a Shop likewise.

Mr. Willes. Did you employ one *Anne Johnson* to spin Yarn for you?

T. Smitheram. I did.

Mr. Willes. Have you a Book in which you set down the Work as it is brought Home?

T. Smitheram. I have; but it is seldom under my Management; I leave it to my Family.

Mr. Willes. Do you, or some of your Family, put down the Time when you deliver out Work to be done?

T. Smitheram. Yes, Sir.

Mr. Willes. Do you always put down the Time when you have it brought Home?

T. Smitheram. Yes, Sir; one Column is to put down the Delivery, and the other when brought Home spun.

Mr. Willes. Look in it to the Year 1753, and tell whose Hand-writing that first Article is.

T. Smitheram. It is my Daughter's Hand-writing; her Name is *Anne Hudgel*.

Mr. Willes. I see in it, here is *January 16, one Pound S. fine, delivered*.

T. Smitheram. That is the Work delivered out.

Mr. Willes. Is there a Mark upon the first Column that signifies it was the Time of the Delivery of it to be spun?

T. Smitheram. Yes, here is *Anne Johnson's* Name on the Top.

Mr. Willes. Here is *January 23, one P. S. fine, returned*.

T. Smitheram. That is my Hand-writing, the delivering out, but the receiving is not mine.

Mr. Willes. Was that the same Yarn that is returned?

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T. Smitheram. I take it so to be. I did not receive it myself.

Cross-examined.

Mr. Moreton. In this last Entry, is the Word returned your Writing?

T. Smitheram. It is.

Mr. Moreton. When was that Word wrote?

T. Smitheram. The very same Day. The Reason of it is this, I had heard she had sworn what she did, and I looked in my Book, and I said, You are mistaken; and the old Woman was so angry, she brought Home my Work, and would spin no more for me; then I clapped that Mark upon it, *Returned*. She returned it unfinished.

Recorder. When you heard what she swore — Where did she swear?

T. Smitheram. Before the Grand Jury. She came to our House, and I looked in the Book after she had sworn. I said, You brought your Work Home on the 23d, and you are mistaken, or to that Effect.

Recorder. Was that Yarn you delivered to her on the 16th, the same she returned on the 23d?

T. Smitheram. I cannot tell that; it is possible sometimes they may change it.

Alderman Dickinson. Did she return the same Weight?

T. Smitheram. She did, for ought I know; I did not take it in.

Anne Hudgel sworn.

Mr. Willes. What are you?

A. Hudgel. I am Daughter to *Mr. Smitheram*. I generally keep this Book; it is a Day-book; I make Marks when delivered out, and when brought Home.

Mr. Willes. Look for *Anne Johnson's* Account.

A. Hudgel. The first Entrance is my Father's, and that of being brought Home spun is mine, on the 23d of *January*. After we heard she was concerned in this Affair, and had sworn to the 18th Day of the Month, we told her it was the 23d.

Mr. Willes. Can you recollect what Time it was that you told her she was mistaken?

A. Hudgel. I cannot tell.

Mr. Willes. Did you ever tell her she was wrong?

A. Hudgel. No, Sir; but I heard my Father tell her so, though I was not in the same Room.

Mr. Willes. Had you no Conversation with her about it?

A. Hudgel. No, Sir.

Cross-examined.

Mr. Moreton. Did not this Woman apply to you to see the Book?

A. Hudgel. When she brought the Work Home undone, she would see the Book to see me cross it out, though she could not read.

Mr. Moreton. Did she ever apply to you to see the Time when she brought the Work Home?

A. Hudgel. I do not remember she ever did.

Mr. Moreton. She has sworn she did.

A. Hudgel. Very likely she might, but I do not remember it, nor that she did till after the Time she swore before the Grand Jury.

Mr. Moreton. Do you think she would forswear herself?

A. Hudgel. I do not know that she would.

Mr. Willes. Did not your Father tell her the Wool was not brought Home till the 23d?

A. Hudgel. Yes, Sir.

Mr. Davy. My Lord, we now call Witnesses to the Support of the Characters of these two People which they have impeached; that is, *Ezra Whiffin* and *Fortune Natus*.

Thomas Smitheram again.

T. Smitheram. I have known *Ezra Whiffin* a Year and a half.

Mr. Willes. What is his general Character?

T. Smitheram. I never heard but he was a very honest Man.

Cross-examined.

Mr. Moreton. Have you not known many honest Men mistaken in point of Time, at a Year's Distance?

T. Smitheram. I do not know but I have.

John Barnes sworn.

J. Barnes. I am High Constable of *Edmonton* Hundred. I know *Ezra Whiffin* very well, and have these three Years and a half; he was two Years a Neighbour of mine. I believe him a very honest Man.

John Smart sworn.

J. Smart. I am an Attorney. I knew *Ezra Whiffin* all the Time I lived at the Coffee-house at *Enfield*.

Mr. Willes. How long is that?

J. Smart. I have known him about three Years. I never heard any Harm of his Character.

Thomas Bell sworn.

T. Bell. I live at *Waltham-Cross* at the *Four Swans*.

Mr. Willes. How long have you known *Fortune Natus*?

T. Bell. I have known him about fifteen Months; he has been a Servant to me about thirteen Months.

Mr. Willes. Did you ever know him before that?

T. Bell. No, Sir.

Mr. Willes. How has he behaved since he worked for you?

T. Bell. Very honestly, very civilly, and very industriously.

Mr. Willes. Do you look upon him to be an honest Man?

T. Bell. Indeed I do. He assists to brew, and goes out with a Load of Hay. He always behaved very honestly. When I go out, if I bid him do such Things, I am sure to have them done.

Mr. Davy. Do you think he would forswear himself?

T. Bell. I do not think he would.

Mr. Willes. During the thirteen Months he has been with you, has he been faithful and honest?

T. Bell. During the whole Time I do not know he has told me a Lye. I have eight Servants about my House, and I should be glad to find the Fellow of him.

Mr. Moreton. The Gentlemen have called some fresh Evidence in. I do not think to give it any Answer; therefore it must rest upon these People's given Testimony.

Here the material Things are, to support the Letter supposed to be wrote at *Basingstoke*, and to contradict *Anne Johnson*.

They endeavour to support the Letter by producing the Man again from the Post-Office, who tells you, the Post comes in only on *Mondays*, *Wednesdays*, and *Fridays*, from *Basingstoke*. Then they have produced some old Almanacks to shew the 19th of *January* was never on a *Monday*, *Wednesday*, or *Friday*, since *January* 1749, to the Date 1753. But they have not proved the Letter was put in at *Basingstoke* yet: That remains to the Jury; and the Post-mark, I own, my Eyes are not good enough to distinguish. This might have been made clear, if the Man that received it had been called; and if he had shewed he had received that Letter at the Time mentioned, that would have carried up this Evidence, that I could have had nothing to say against it; but whether it was ever put into the Office at *Basingstoke* or not, that must be left to the Jury; it is a very easy Thing to have a Letter dated, and it might be the 9th, or the 29th, still there is no Conclusion.

Now, as to contradicting *Anne Johnson*, a poor old Woman. What does she swear? She swears she did apply to these People to be set right, and she was informed by their Book; therefore she would never have referred to that Piece of Evidence, if she had not been mistaken in what she swore; it is only a Mistake.

Now, after we are done, I do think it is a great Misfortune for my Client, that the other Gentleman, who should have made a proper Reply, was obliged to attend elsewhere; and was I to do it, I must do it very imperfectly; and so I rest it in your Hands.

MR. DAVY.

May it please your Lordship, and you Gentlemen of the Jury;

After so unusual a Time taken up in this Trial, I wish I could dispense with giving you any farther Trouble.

But, Gentlemen, it is my Duty to recall your Attention to the Evidence, which was produced to maintain this Indictment—to reply to what has been urged by way of Defence—and to make such Observations upon the whole, as may convince you, that the Evidence for the Prosecution stands unanswered, and is the most indubitable Proof of the Defendant's Guilt.

Before I enter upon this Undertaking, which, I am afraid, will engage more of your Time than would be found necessary, if the Conduct of this Prosecution was in abler Hands than mine, I cannot avoid taking Notice of the great Indulgence with which this Cause has been already favoured. For, although five long Days have been employed in this Inquiry, yet hath not the least Hint of Impatience dropped, either from the Court, or the Jury.

To the Honour of this Country be it remembered, its Judges always administer impartial Justice upon the most deliberate and careful Examination; and never think any Time mispent, which may conduce to the Discovery of Truth. There was indeed a particular Necessity for a very solemn Examination in the present Case, because this was become an Affair, not only of great Importance and public Expectation, but also of no less

less Intricacy and Difficulty, — arising, not so much from the Nature of the Question, as from the Clouds of Darkness, in which it was enveloped by those, who, merely in Opposition to the Prosecutor, adopted the Crime of Perjury, and formed a Faction to support it.

But such is the Force of Truth, and so strongly does it shine forth in this Prosecution, that its Opposers must now hide their Faces, and reflect with Shame, that they have contaminated themselves with the Guilt which they are no longer able to conceal.

Gentlemen, as in the Outset of this Cause I desired you to divest yourselves of all Prejudices, which you might have received in the Defendant's Favour; so now, out of Humanity, I would caution you against falling into the like Error on the other Side, on Account of some Accidents which have happened during the Course of this Trial.

The Insolence of Mobs about this Court, attempting to over-awe and intimidate Justice, you all have observed, and some of you have felt. Although the Design of these Outrages was easily discovered, yet it would be very hard that such Misbehaviour, however occasioned, should affect the unhappy Person at the Bar. She has enough to deprecis her, without the additional Load of others Guilt; and God forbid we should attempt to call in the Aid of Prejudice against her! We desire this Cause may be tried singly upon its own Merits, and that there may be no Ingredient in your Consideration, but what fairly results from the Evidence on both Sides.

You will take Care, for your own Sakes, to discharge your Duty, as Jurymen, considering the Obligation upon your Conscience, the Notoriety of this Cause, and the Freedom with which Men will hereafter deliver their Sentiments concerning it. You will consider, the Eyes of the World are now upon you; and the Circumstances of this Cause are so peculiar, and have been so much the Subject of Controversy, that the History of this Transaction hath travelled wherever the *English* Language is understood. And, I doubt not, your serious and solemn Determination, upon this important Occasion, will answer the Ends of Justice, will gratify the universal Curiosity, and will prove a lasting Honour to yourselves.

Gentlemen, when you reflect upon the Nature and Circumstances of the Offence this Woman stands accused of, — together with the Purposes it was intended to serve, — the Fulness of the Evidence produced to prove it, — and the weak, if not the wicked, Defence attempted in Answer to it; you will be fully satisfied, how much it concerns the *Public* to bring this *Delinquent* to Justice.

Of all the Crimes the human Heart can conceive, PERJURY is the most impious and detestable. But the Guilt of this Person is so transcendent, that it seems even to defy Aggravation.

To call upon the GOD OF TRUTH in the most solemn Manner, and upon the most awful Occasion, to attest a FALSHOOD — to imprecate the Vengeance of Heaven upon her guilty Head — to prostitute the Law of the Land to the vilest Purpose — to triumph in the Ruin of an innocent Fellow-Creature — to commit a MURDER WITH THE SWORD OF JUSTICE; — and then, having

stripped her own Heart of Humanity, by all the Arts of Hypocrisy, to insinuate herself into the Compassion of others, is the peculiar SIN of this Person, not yet twenty Years of Age!

One would wonder, indeed, at the FOLLY of an Attempt to impose so gross, so absurd a Falshood upon the World, if we did not live in an Age wherein nothing is too incredible and fantastical to be well received. — Let it be but a *Novelty*, and a Subject of Admiration, and it cannot fail to make its Way with the Bulk, *the most ignorant Part*, of Mankind.

How this strange Story obtained Credit so far, as to prevail with a Jury to convict two innocent Women, you have seen in the Course of this Trial. For that there was false Evidence given in that Cause by *one* Witness at least, appears now confessed *even by his own Testimony*. SCARRAT (of whom I shall have Occasion to speak more hereafter) swore upon the Trial of *Squires*, that *Canning's* Information before Alderman *Chitty* thoroughly corresponded with her then Evidence: But he now owns, he does not know what Account she gave before the Alderman; and, upon his best Recollection, he admits, in Effect, that her Information to Mr. *Chitty* was, in many Respects, *different* from her Evidence upon the Trial. And yet this was one of the most *material* Questions in the whole Cause.

It is no Wonder, therefore, that this Story, with all its Absurdities, so supported by *Prejudice* and *Perjury*, obtained Belief. And, that it was not fatal to the poor Wretch destined for a Sacrifice, was entirely owing to the Interposition of a MAGISTRATE, whose only *Motive* to it was Compassion, whose only *Reward* the bitterest *Invectives*.

Gentlemen, in this Indictment there are as many Assignments of Perjury, as there are Circumstances in the Defendant's Evidence, from the Time of the pretended Robbery in *Moorfields*; so that, if any Part of her Relation is false, she is guilty of Perjury within this Indictment. However, we do not mean to cavil, and catch at little Circumstances; for the Proofs we have offered are sufficient to satisfy all Mankind, that the whole of this Story is a Fiction from the Beginning to the End.

Gentlemen, as this was a Case of universal Inquiry, the Prosecutor was desirous of giving all the Satisfaction in his Power: For though the indubitable Evidence of the GYPSEY's Innocence, without any farther Proof, would have been sufficient to justify his own Conduct, and to convict the Defendant, yet his Regard for the Public called upon him to detect the whole Imposture; and, if possible, to put an End to all the Disputes and Troubles, to which this mysterious Transaction hath given Rise.

To answer these Purposes effectually, there hath been a great Variety of Proof laid before you, under several Heads of Evidence; of which I will beg leave to remind you, in the Order they were given.

Our first Head of Proof was to the ALIBI of *Mary Squires*.

With regard to this, and the Answer attempted to be given to it by the Defendant's Witnesses, you will be pleased to recollect the Certainty or Incertainty

Incertainty of the Evidence on both Sides, as to the Identity of the *Persons* sworn to, and the Exactness of the *Times* in which the Witnesses swear to have seen them. For a Mistake in either of these Matters will account for a Variance in the Testimony, without impeaching the Credit of the Witnesses, which I am always willing, as far as I can, to avoid.

In the first Place, as to the *Identity* of MARY SQUIRES.

She is not only so extremely remarkable, that it is almost impossible to mistake her for another, but several of the Witnesses for the Prosecution have known her a considerable Time, from two to thirty Years past, and have often seen her: It is impossible, therefore, for these People to mistake with regard to this *Person*; and if they did not see this *very* Woman, they are certainly guilty of Perjury.—Besides, the Witnesses for the Crown swear *not only* to the *old Woman*, but likewise to her *Son* and *Daughter*, for they were seen *all together* through the whole Journey; by which Means they are less liable to Mistake, than the Witnesses for the Defendant.

Are all the Witnesses to this Head of Proof, *forty-one* in Number, wilfully and corruptly sworn?

Through the whole of this Cause hath the least Reflection been thrown upon the Character of any one of them?

Has it been even suggested, that they have any Interest to serve, or any Passion to gratify, which could lead them to so much Wickedness and Danger?

Are they not Strangers to the Defendant, and most of them to one another, living at remote Distances?

They have all been separately examined; and I refer to your own Observation, whether effectual Care has not been taken to prevent any Communication between them, so as that no one Witness could possibly know another's Testimony.

And yet what an amazing Congruity is there in the whole of their Evidence!—Not a material Circumstance varied from!—But the Testimony of each Witness corresponds so exactly with what went before it, that it demands Credit, and authenticates the Evidence of the former.

Consider too the Variety and Weight of the Circumstances sworn to, and the Correspondency of Events happening in Consequence of them.—The Dancing at *Abbotsbury*,—the Fidler there,—who and who were Partners,—the wet Night at *Portersham*,—the heavy Rains that fell the next Day,—and the Waters being out at *Dorchester*, two Days after.—

How notorious are these Facts, and how easily disproved, if false!

Was it ever known, that any Number of false Witnesses pre-concerted Circumstances, which ten thousand People were capable of contradicting?

Is it conceivable, that there should be a perfect Harmony in the Evidence of such a Number of perjured Witnesses, concurring in Circumstances of public Notoriety?

Then the parting with *Clarke* at *Ridgway*,—the Piece of Nankeen pawned with the Landlord for a Reckoning, and produced in Evidence with the Man's Name upon it,—the skinning the dead Horse, mentioned by several Witnesses, — the

Letter from *Lucy Squires* at *Basingstoke*, alluding to the Particulars of the Journey with *Clarke*, and to the Weather, “*hoping he received no Illness from it.*”—

Were these Circumstances all pre-concerted, or did they really happen at some other Time, than that to which they have been applied by the Witnesses?

Examine then into the Certainty of the Evidence with regard to *Time*.

Besides the Impossibility, that all the Witnesses, speaking with such absolute Certainty, and referring to collateral Matters incapable of misleading them, should mistake in this Respect; there are two Facts before you, which prove the Times of the Gypsies being at *Abbotsbury* and *Basingstoke* to Demonstration.

The Time, referred to by the *Abbotsbury* Witnesses, is ascertained by the Books belonging to the EXCISE-OFFICE. Every one knows with what Preciseness these Books are kept,—that not only the Days, but the very Hours of each Officer's Visits, are regularly entered in his Accounts;—that all his Acts and Entries are scrutinized and chequed by a Supervisor,—and the Books transmitted to the *General Excise-Office* in LONDON.

Now the Book of *January 1753*, belonging to the *Excise* at *ABBOTSBURY*, has been produced in Evidence from the *General Excise-Office*; by which it appears, that *Andrew Wake* was placed at *Abbotsbury* in the room of *Ward*,—the Officer stationed there, who was ill and incapable of Duty; and that *Wake* began to officiate in the *Excise-Office* at *Abbotsbury* on the 1st of *January*, and continued to the 14th.

Wake swears, and is confirmed in it by all the Witnesses from *Abbotsbury*, that he came to *Gibbons's* House, to officiate as Exciseman in the room of *Ward*, on the *very Day* the GYPSIES came there.

Here then is no Possibility of Mistake; and if the *Abbotsbury* Witnesses are perjured, all the rest of the Witnesses must be so too; for the whole Evidence refers to the Journey from *South-Parrôt* to *Abbotsbury*, and from *Abbotsbury* to *Enfield-Wash*; and all the Facts sworn to are like so many Links of a Chain, depending one upon another.

It is also remarkable, that this very *John Gibbons*, who has *now* given Evidence of this Fact, was produced as a Witness upon the Trial of *Mary Squires* in *February 53*; and he *then* gave the *same Evidence* he has given now, and *with the same Circumstance relating to the Exciseman*. For, being asked, on that Trial, by what Circumstance he recollected the Day of the GYPSIES coming to *Abbotsbury*, this was his Answer, “*There came an Exciseman, one Andrew Wicks or Weeks, to officiate there for one John Ward, who was sick, and I put the Day of the Month down, when he came there; for the Excise-Office is kept at my House.*”

It is also observable, that *Gibbons* was indicted for Perjury in that Evidence. What but the Consciousness of Truth could now encourage him to repeat the same Evidence, and run the Hazard of a second Prosecution?

Another Circumstance equally demonstrates the Time of the Gypsies being at *Basingstoke*.

The Letter wrote there by the Witness, Mrs. *Morris*, for *Lucy Squires* to *Clarke*, bears Date the

18th of *January*, and she swears *that* was the Day on which it was written.

On the *Outside* there appears the *Mark* of the *General Post-Office* in *LONDON*; and if this Letter went from *Basingstoke* on the 18th, it must come to *London* on the 19th, for there is no Post-Road from *Basingstoke* to *Abbotsbury*, but by way of *London*. But the Post-Mark not being very legible, the Clerk of the *Western Mail*, belonging to the *General Post-Office*, is called to clear up this Matter.

He tells you, that the Post comes in from *Basingstoke* on no other Days, but *Monday, Wednesday, and Friday*;—that by the nicest Observation he is able to make (and he produces some Stamps belonging to the Post-Office to verify his Observation) this Letter came into *London* on the 19th or 29th of *January*, and he gives you his Reasons for saying so.—The only remaining Doubt then is, as to the Year; for the last Figure being torn off, there being only three Figures 175-, the Council for the Defendant have thought fit to rely upon it as a capital Objection, insinuating as if it had been torn off on Purpose to mislead you; but at the same Time they admit, that if the whole Date had appeared perfectly, the Fact intended to be proved by it would have concluded irresistibly upon them.

Now it happens very fortunately, that this Defect can be supplied by another Evidence, which proves itself; and that is the *Almanack*.

I have all the *Almanacks*, since 1749, now in my Hand, which I desire you will examine yourselves; and by them it appears, that no 19th of *January*, since *January* 49, has happened upon a *Monday, Wednesday, or Friday*, except in 1753, when it happened on a *Friday*; and by the three Figures, which remain in this Letter, the Year's Date must be either 1750, 51, 52, 53, or 54.

To this Circumstance you will be pleased to add another,—that all the Witnesses mention the Days of the Week, as well as the Days of the Month; and if you trace them in all their Testimony, from *Friday* the 29th of *December*, at *South-Parrot*, to *Wednesday* the 24th of *January*, at *Enfield-Wash*, you will find the whole Evidence refers to the Gypsies being at *Basingstoke* on *Thursday* the 18th of *January*.

This Observation will entirely remove the only Doubt of the Post-Officer, whether the Post-Mark is the 19th or 29th of *January*. For the Days of the Week, sworn to by all the Witnesses, correspond exactly to their being at *Basingstoke* on a *Thursday*; and the *Almanacks* will inform you, that the 29th of *January* has not happened on a *FRIDAY* for several Years past.

From all which it appears, that the Witnesses are as little liable to Mistake in point of *Time*, as in respect of the *Person* of *Mary Squires*. And therefore, upon the whole of this Evidence, I will venture to say, no Man living can doubt that these Gypsies were at *Abbotsbury* on the first of *January*.

For, through the whole Chain of Evidence to prove it, I appeal to your own Observation, whether all the Circumstances have not been supported by the best Testimony and the clearest Proofs, in their Nature they are capable of receiving? And whether it would not be as unreasonable for one to doubt the Fact they conduce to prove, as it would be to believe the Story they are intended to contradict?

Surely there never was such a Variety of Circumstances so clearly and completely proved in any Case,—surely there never was a Case standing so little in need of it!

But, sufficient as it may be thought for the Defendant's Conviction, this is far from being the best Part of the Case. For though this fully proves the Defendant was not robbed by *Mary Squires*, yet it goes no farther. But the rest of the Evidence for the Crown entirely overthrows the Defendant's whole Story, and evinces, to the utmost Degree of Certainty, that she is an Impostress.

To the Evidence of Mr. Alderman *Chitty*, Mr. *Nash*, Mr. *Aldridge*, and Mr. *Hague*, you'll be pleased to apply an Observation, I took the Liberty to mention in the opening, and which I apprehend to be very reasonable, That, if the Defendant was really confined in this Room at *Wells's* twenty-eight Days, there being Light enough to see every Part of it, she could not possibly fail of giving an exact Description of it; much less could she mention Things that were not there.

Now the Account she gave, before she was carried down to *Enfield* on the 1st of *February*, is liable to Objection both in respect to its *Defectiveness*, and its *Falsity*.

To try the Truth of any Relation, when its Authenticity must depend upon the Credit of the Relator, we should inquire, whether at all Times, in all Places, and upon all Occasions, he tells the same Story, with all its Circumstances, in the same uniform, invariable Manner.

The Gentlemen of Council for the Defendant, aware of the Force of this Observation, have, with great Judgment, endeavoured to apply it in their Client's Favour, in respect to some few Particulars pretended (but far from being sufficiently proved) to have been described by her, upon the 29th of *January* at her Mother's, and upon the 1st of *February*, with regard to the Prospect from the Window.

In the first Place, her Description is extremely defective.

When she was asked by Mr. Alderman *Chitty* to enumerate all the Particulars in the Room, by which her Veracity was to be tried, and when it so much concerned her to recollect the whole, she omitted several material Things, which could not possibly escape her Observation for a whole Month together.—The *Jack-line* and *Pulley*, and the broken Casement over the Chimney, entirely forgot.—The three Saddles are not one of them mentioned,—nor the Chest of Drawers. And, instead of mentioning half a Load of Hay, she in Effect denied there was any; for Part of her Complaint, which melted the Hearts of her Friends, as they themselves have sworn, was the Want of any thing, but the cold, bare Floor, to lie upon.

Can it be pretended, that any Alteration had been made, between the Time of her pretended Escape, and her going there again in three Days after? On the contrary, is it not fully proved, that all these Things had been there, unmolested, for a very long Time? Had they not Marks of Antiquity,—Marks which could not be made, but by PROVIDENCE ITSELF, or by the Creatures he formed for the Purpose? When the Chest of Drawers was removed, in order to see if it had been newly put there, it rended from the Wall a thousand Cobwebs, covered with Dust.

The same Observation occurred, upon removing the broken Casement from off the Chimney Ledge;

— *that* also appeared to have been fixed there by many Generations of *Spiders*.

And it is remarkable, that the Defendant herself was so struck with the Force of these Objections, and found herself so much in Danger of immediate Detection, that she *then* pretended to recollect some of the Things, — particularly *one* of the Saddles, which you are to suppose she had forgot.

This proves, at least, that the Things had not been put there to deceive her. And to satisfy you that her not having mentioned them in her Information, did not proceed from Hurry or Surprise, Mr. Alderman *Chitty* swears, she was under Examination *above an Hour*, with all her Friends, and none else, about her; — and that, after recounting all the Particulars she thought fit to mention, she, apprized of the Danger of omitting any thing, was again asked, “ whether there was any thing “ else in the Room?” To which she coolly and deliberately answered, — “ NOTHING BUT THE “ THINGS IN THE PAPER.”

But, what Excuse soever may be invented for the *Defectiveness* of her Description, who can account for its *Falsity*? How came she to swear to an *old Stool* or two, an *old Table*, *old Pictures* over the *Chimney*, and a *Grate* in the *Chimney*?

Is it not most certain, none of these Things were, or had been, in the Room? The Proofs, that some of them had not, are so strong, and of such a Nature, that one is tempted to say, The Finger of God points out the Discovery of this Imposture.

Had this Woman been *once* in this Room, even five Minutes together, could she possibly have mistaken it for a *little, square, dark Room*? She might as well have called it an Amphitheatre, or a Ship; for no Description could be more unlike. And yet, you must either think she was actually there, with her Eyes open, Light shining through two Windows and a thousand Holes, and a Month's Leisure for Observation, or else that she is guilty of Perjury. For no Charity can impute *all this* to Mistake.

Gentlemen, the pretended *Manner* of her *Escape* is another Proof of her Guilt.

At first she swore she escaped, “ by making a “ Hole, and removing a Pane of Glass, and so “ *sliding down over a Pent-house*.” But when she afterwards went down to make Observations, seeing the *Wall perpendicular* from both Windows, and that there was no *Pent-house* or *Shed* near it, she cut the Knot she could not untie, and *boldly* swore, “ SHE JUMPED OUT OF THE WINDOW.”

Was there no other Evidence in the Cause, *this alone* would be sufficient to falsify her whole Story.

But she was so unlucky, as to give still further Proofs of her own Guilt; and not only contradicted herself, but aided the Detection of her Mother's Evidence.

Her Account of being carried between two Men, one at each Arm, through *Bishopsgate-Street*, is totally *irreconcilable* with her being *stunned* by a *Blow* in *MOORFIELDS*, which “ *threw her into a “ Fit, wherein she remained insensible for four Hours “ after.*”

The Mother had advertised her being heard to *scream* in *Bishopsgate-Street*.

Is it not marvellous that *Bishopsgate-Street* should be mentioned by both Mother and Daughter upon the same Occasion, when they had *not* seen each other, and this too merely by the Force of Imagination! For the *Daughter*, you see, had no Foundation for saying it; and *what* led the *Mother* to it, I shall speak of, when I come to observe upon her Evidence.

The multiplying *four, five, or six Pieces of Bread* into *four and twenty*, will not be thought a trifling Mistake, when we are tracing the several Marks of Falshood, to detect so strange a Tale.

When she applied for a Warrant against the Woman who had taken her Stays, did she give any Description of *Mary Squires*, who, you see, is marked so, as to distinguish her from all the rest of the Creation? The Defendant had told her whole Story in the hearing of *honest* Mr. SCARRAT, who had been acquainted with Mrs. *Wells*, but did not discover, by any Description of the Defendant's, that *Wells* was not the Woman who had robbed her. For *Scarrat* was present, when a Warrant was granted against *Wells* for the Felony.

By what Name will you call him, if he knew this to be a Mistake, without attempting to rectify it?

One of her own Witnesses proves, that when she was going up the *great Stair-case*, she said, “ THESE ARE THE STAIRS, UP WHICH I WAS “ CARRIED.”

This was *after* she had been in the *Kitchen*; for they all agree she was first carried into the *Kitchen*, but took no Notice there, that it was the Place wherein she had been robbed of her Stays, or that it was contiguous to the Room in which she had been confined. — They all agree likewise, that she went up the *great Stair-case*, into all the Rooms of the House, to which it led, without the least Intimation, that the Room sought for was upon a *lower Floor*, and but *six* or *seven* Steps from the *Ground*.

Her Behaviour upon this Occasion staggered the Faith of her Friend ADAMSON. Even *He* thought it a strange Mistake.

Gentlemen, the next Evidence we troubled you with, was out of her *own Mouth*. That Witness, though unfit to be believed in any thing else, may fairly enough be admitted to give Testimony against *herself*; for the best Kind of Evidence is Confession.

Before Mr. Alderman *Chitty* she swore, she had not drank up all the *Water*, even at her coming away, but left some of it behind her.

Before Mr. *Fielding* she swore, she drank it all up on the *Friday*.

In this Court she swore, that she drank up the last Drop about *half an Hour* before her *Escape*.

Let Faction, in the Mask of Charity, suggest Mistake and Inadvertency, to palliate these Self-contradictions as much as the Defendant can wish; yet what Regard is due to *her* Oath, who can be drawn in to swear so rashly?

Shall one, detected of so gross Prevarication, be believed, upon her single Testimony, in the most marvellous Tale which was ever heard!

Shall *that Tale*, patched up with irrelative Circumstances, stand a Moment in Competition with the indubitable Proof of its Falsity?

Our next Evidence was the positive Testimony
of

of eleven Witnesses, in absolute Contradiction to the whole Story of the Defendant's Confinement.

It was proved by most of those Witnesses, each Witness referring to several Circumstances, and each Circumstance supported by other Testimony, that *Natus* and his Wife lay in this very Room every Night of the Month of *January 53*.

Is it even attempted in the Defence to deny this? No other Answer is given to it than by attacking the Characters of *Natus* and *Whiffin*, which I shall observe upon hereafter, though it does not depend merely upon their Credit.

White, the Officer, swears he saw *Natus's* Wife coming out of this Room, as if just out of Bed, in the Morning, when he went down with Mr. Alderman *Chitty's* Warrant to apprehend the People of the House. The Bed of Straw, with a Sack of Wool for the Bolster, was particularly described by him, and many others.

Is there any Answer given, or even attempted, to any Part of the Evidence, which relates to the cutting the *Trees*? and yet that Evidence is totally incompatible with the Truth of the Defendant's Story. So is the Evidence with regard to the Sign-Irons bought by *Whiffin*, and taken out of this very Room, while *Natus's* Wife lay in the Hay-Bed; which also stands clear of Contradiction.

Permit me now, Gentlemen, to make a general Observation, which goes to all the Witnesses for the Crown;—*that their Behaviour*, and the *Manner* of their giving Testimony, from first to last, carries with it the Air of Sincerity and Candour.

Was there a single Witness produced, who seemed in the least inclined to suppress the Truth, or who hesitated, prevaricated, or was pinched at any Question? Did they not, every one of them, speak out fully, clearly, and openly, so as even to force your Assent to the Evidence? But to how few of the Defendant's Witnesses may the like Observation be applied? I appeal to your *Senses*, whether Truth is not visibly marked in this Prosecution.

This, Gentlemen, I think, is in general the Substance of the Evidence for the Crown.

I have recollected it as well as I could, without troubling you with every minute Circumstance, which might possibly lose its Force by a tedious Repetition. And when I reflect that all this Weight of Evidence is to prove *that false*, which in itself is impossible to be true, I have more Need to apologize for having already taken up so much of your Time.

But, Gentlemen, how well supported soever this Charge against the Prisoner is, she had yet a Right to give the best Answer to it in her Power; to which you have attended with unwearied Patience. And this Defence, if what has been attempted deserves to be so called, I must now beg Leave to consider and reply to.

In order to bespeak your Approbation of what was to follow, the Gentlemen, who are of Council for the Defendant, were pleased to make their first Address to your Passions; they hope, that if this Case should appear doubtful, if you can impute the Defendant's Evidence to a *Mistake* with regard to the Person of *Mary Squires*, your Compassion will incline you to acquit her.

In this I agree with them most heartily; and so far as your Humanity, under the Regulation of

Reason, can afford her any Assistance, I wish her the full Enjoyment of it. If it should lead you to acquit her, I shall, for my own Part, and I hope every body else will, cheerfully acquiesce under your Verdict.

But you will remember, that when Men suffer their Compassion to silence the Calls of Reason and Justice, they prostitute the brightest Ornament of human Nature;—that the most *deserving* Object of our tenderest Concern is the Commonwealth;—and that whenever we extend Compassion to any one, at the Expence of the PUBLIC, we are guilty of the highest Injustice, and answerable for it to Society.

I could wish indeed, for her own Sake, that the Defendant's Title to Humanity from others, had received no Interruption from the Want of it in herself.

When a poor, friendless Wretch, the Object of no one's Pity, stood at this Bar, upon Trial for her Life; the least Remains of Humanity would have suggested to this Defendant to relax a little of her Severity towards her.—If there was a *Possibility of Mistake*, Compassion would have inclined her to doubt at least; but if there was no Possibility of it at that Time, why should it be suggested *now*?

Surely, the Defendant can have no Pretence to this Plea, having disowned it herself, upon the most solemn Occasion.—She swore *positively* to take away an innocent Woman's Life; and being now called upon to answer for it in a criminal Prosecution, 'tis too late to pretend she was mistaken.

It is objected, with an Air of great Seriousness, that the Evidence for the Prosecution is insufficient, because there is no Proof *where the Defendant really was* during the Month of *January*.—An Objection which has been founded in the Ears of the Multitude, who have been fooled into a Conclusion, that if the Prosecutor could not prove this, she must have been confined at *Wells's*.

I am sorry the Defendant's Council have no better Opinion of this Jury, than to imagine that they are to be captivated by such an Objection.

It was incumbent on the Prosecution to prove she was *not* at *Wells's*; and if she was *not* there, it is of no Consequence where she was.

However, if it could be fully proved, tho' it be merely a Question of Curiosity, I should be glad of it, for the Sake of silencing every Clamour. But her Friends, to do them Justice, have been so faithful to her, that this Secret is yet impenetrable.

I am strongly inclined to include Mr. *Scarrat* in this Compliment; though I cannot conceive so highly of him, as to suppose he would retain this Secret at the Expence of his Interest; and therefore, when he finds the divulging it consistent with his own Safety, he may, perhaps, chuse to oblige the Public with this Discovery, rather than satisfy Justice in a *Way* that may be more inconvenient to him.

This Man's Behaviour, throughout the whole of this Affair, according to his own Account of it, will save me from the Imputation of a rash Suggestion. He, who thought fit, at first, to help her to a Description, by which her Evidence was afterwards to be authenticated, and to perjure himself in order to corroborate *that* Evidence, may fairly be presumed a *principal Agent* in the whole Contrivance.

Where was she? is a Question we are not concerned to resolve: But if you desire to be further satisfied in it, ask *Scarrat*: If he refuses to inform you—ask the *Mother*: If she too refuses it—I would refer you to her *Conjurer*: And if he would reveal so much of his Art, as to inform you what led him to tell Mrs. *Canning*, that her Daughter was *in the Hands of an old Woman, and would soon return*, you would not be far from unravelling this Mystery.

But, in all likelihood, the Time is not far off for an ample Discovery.

The Defendant has been hitherto very well supported by her *Managers*, (that being the Name by which her Friends have thought fit to call themselves in their late Advertisement.) But when she shall be delivered up to Justice, and find that those People can no longer protect her; when she shall seriously reflect upon the Distress to which her Guilt has reduced her; Conscience, perhaps, may prompt her to atone in some Measure for the Mischiefs she has occasioned, and she may, at the same Time, hope to obtain some Remission of Punishment, by the Gratification of an universal Curiosity.

But, say the Gentlemen, why not call *Lucy Squires* to confirm her Brother's Evidence? She was a Fellow-Traveller with him and her Mother through the whole Journey; and therefore they insist, that our not producing her, which they call a *Concealment*, is the strongest Proof in the World that the Evidence of her Brother was false.

Was she concealed? You saw her every Day during the whole Trial; she is yet in Court; and if you think it would be material, in a Case of so much Consequence, you have a Right even now to her Evidence.

But the true and only Reason of our not calling her, is her gross Stupidity: Before her Brother was examined, I confess it was our Intention to have called her to the same Facts; but finding that, in the Course of his very long Cross-examination, he had fallen into many Blunders, and being told that *Lucy* was, if possible, still more stupid than him, we did not think it prudent to risque the Credit of any Part of our Case upon the Evidence of such a silly Creature.

The Objection to the Brother's Evidence, from his being so much more exact in the Particulars of his Journey from *South-Parrot* towards *London*, than from *London* downwards, will have no Weight, when you consider that his Memory, as to the former, has been refreshed by his having since travelled that Road with Mr. *Willis*, and others, *five Times*, in order to ascertain the Places particularly; and that his not having re-travelled any Part of the Road through which he had gone before he reached *South-Parrot*, is the probable and natural Reason of his Incapacity to describe the other Part of his Journey.

You may easily conceive, in what an irregular Manner *Gypsies* dealing in smuggled Goods traverse the Country. They avoid Market-Towns as much as possible; for, being Vagabonds, they are aware of the Danger of falling into the Hands of the Civil Magistrate.

But why not call *Virtue Hall*, in order to support her Recantation from her Evidence against *Squires*? The learned Gentleman, who made that Objection,

supposes the Omission to arise from our Apprehension she would have relapsed. If that be really his Opinion, I should be glad to know, why she was not called for the Defendant? For, they know, she has attended the Trial every Day.

There are two Reasons why we did not produce her as a Witness. One of which has been mentioned by the learned Recorder; that by Law she was not admissible as a Witness to retract her own Evidence on the Trial of *Squires*.

Upon the Trial of *Titus Oates* in the first Year of King *James* the Second, (I mean his first Trial, *Vide* Vol. iv. p. 47.) the Council for the Crown would have produced one *William Smith*, in order to prove, that what he had sworn at a former Trial was false, and that he was persuaded to it by *Oates* the Defendant. My Lord Chief-Justice *Jefferys* (who would have been glad to have hanged *Titus Oates*, and who of all Men living could least be suspected of Partiality towards him) rejected the Evidence; and being told by Sir *Robert Sawyer*, the then Attorney-General, that the like Evidence had been admitted in former Trials, the Chief-Justice (who, with all his Faults, has been ever esteemed a great Lawyer, and, I am sure, in this Instance did no Dishonour to his moral Character) said, “*he hated such Precedents in all Times,—that he could not believe a Villain in one Word he said, when he owned that he forswore himself; and that he ought never to be received as a Witness.*” And in his Opinion all the Judges of the King's Bench concurred.

But I had another Reason for not calling *Virtue Hall*.—As an honest Man, I dared not; nor could I reconcile it to the Hopes of supporting my own Character an Hour longer. For how immoral and treacherous would it have been to produce a Witness, to prove she had been perjured in a former Trial; when by that very Evidence she would have exposed herself to Punishment!

Besides, what Degree of Credit could be given to a Witness offering such Testimony?

Gentlemen, there is a Reflection thrown upon Mr. *Nash*, Mr. *Hague*, and Mr. *Aldridge*, for their not appearing on the Trial of *Mary Squires*; as their Testimony would have been extremely material upon that Occasion, and, in all Probability, would have prevented her Conviction.

I must confess, that their Conduct, in this Respect, is not strictly justifiable; nor are the Reasons assigned for their Absence sufficient. *This* seems to be their own Judgment afterwards, when, sensible of their Neglect, they made the best Atonement in their Power. Mr. *Nash* was so affected when he found the Woman was convicted, contrary to his Expectation, that he declares he was very uneasy, and should never have forgiven himself, if she had been executed.

Finding she was convicted, what was the Behaviour of these Gentlemen? They readily assisted in an Application to the Throne for Mercy; and, in all likelihood, the Facts disclosed in their Affidavits materially contributed to the saving the Convict's Life.

The Council for the Defendant have thrown another Reflection on Mr. *Nash*, on account of the Letter which he wrote on the 10th of *February* to Mr. *Lyon*. These are the Words of that Letter:—“*Mr. Lyon*, I am informed by Mr. *Aldridge*, “*who has been at Enfield, that if a Person be appointed there to receive Contributions, some* “*Money*

“ Money may be raised in that Place for the unhappy poor Girl. I wish you Success, and am yours.”

The Gentlemen, by Mistake, (for I dare say they would not misrepresent it knowingly) have taken Notice of this, as proposing Contributions to carry on a Prosecution. But you see there is not a Word about a Prosecution, for it is only to raise Money for the unhappy poor Girl.—What does this prove, besides Mr. *Nash's* Compassion and Friendship to the Defendant, in distressed Circumstances, whether her Story were true or false? She was poor, and under Affliction; and whether that Affliction was the Consequence of Guilt or Innocence, his Humanity felt for her.

But there is a wide Difference between assisting the Girl, and assisting to carry on a Prosecution. This Letter shews, at least, that Mr. *Nash* did not then bear the least Ill-will either to her, or her Mother: And seeing there is no Evidence, that he has since had any Reason to alter his Sentiments; What, but his Duty to the Public, brings him here? What should induce him to appear in a Court of Justice, and perjure himself, to ruin a poor, unhappy, innocent Creature, who never offended him?

It is not pretended, that he can propose any Sort of Interest to himself, or the Gratification of any Passion whatever, by so foul a Villainy. And I defy Malice itself to suggest any thing to the Prejudice of his Character. He, as well as Mr. *Hague*, and Mr. *Aldridge*, being Citizens of extensive Acquaintance, it is very likely their Characters are not unknown to you—and if so, their Credit must remain unshaken.

Gentlemen, having now gone through the several Objections which were made by the Defendant's Council, I must intreat your Patience while I observe upon the Evidence which hath been offered on her Behalf.

Through the whole Defence, they have not attempted to prove a single Fact in express Contradiction to any Part of our Evidence, except to the *Alibi* of the Gypsy.

Neither have they attempted to impeach the Character of any one of our Witnesses, except *Natus* and his Wife, and also *Ezra Whiffin*, by a little Side-reflection, which is now wiped away.—All the other Witnesses for the Crown stand clear of Imputation.

It is also observable, upon considering every Part of the Defence, that the Defendant may be guilty of the Perjury charged in this Indictment, if all her own Witnesses speak Truth; but that she cannot be innocent, unless fifty of ours are perjured.

For, is there one Circumstance in the whole Defence, which necessarily infers a Belief of her Story? Or, is there one in the Charge, which does not clearly infer the contrary? So that, if you convict this Woman, you find a Perjury upon the fullest Proof that ever came before a Court of Justice; but if you acquit her, you must disbelieve Facts uncontradicted, yet sworn to by Witnesses of irreproachable Characters.

If these general Observations are not justified by the Evidence you have heard on both Sides, I shall be very ready to retract them; for nothing is more remote from my Intention, than to mislead you.

All the Evidence for the Defendant tends to prove,—That she was missing from the 1st to the 29th of *January*:—That she was in good Health on the 1st, and very ill on the 29th:—That she was seen upon the Road between *London* and *Enfield-Wash*, on the 1st of *January* at Night, between two Men:—That she was seen in the same Road upon her Return Home:—That on the Night of her Return, and three Days afterwards, when she went down to *Enfield* with her Friends, she told her Story with such Clearness and Consistency, as ought to induce a Belief of it:—That *Mary Squires* was really at *Enfield-Wash* on the 1st of *January*:—That *Squires* and *Wells* have confessed both the Robbery and Confinement:—That *Natus* and his Wife, and *Ezra Whiffin*, are a Set of Wretches not fit to be believed:—And lastly, That the Defendant herself bears an exceeding good Character.

What of all this is material, namely, the Defendant's being met upon the *Enfield* Road,—the *Contra-alibi* (if I may be allowed the Expression) of *Mary Squires*,—the Confession of *Squires* and *Wells*,—and the Defendant's Account of herself, I shall take Notice of, when I apply myself to the Witnesses produced to prove these several Matters. And you will find, upon Consideration, that it was not the Defendant, but other Persons, who were met upon the Road the 1st and 29th of *January*, supposing their own Witnesses swear truly;—that the Evidence to encounter our Proof of the *Alibi* is extremely weak, uncertain, and improbable;—that the pretended Confession of *Squires* and *Wells* was neither more nor less than a Declaration of their Innocence;—and that the Defendant's Behaviour upon her supposed Return, and afterwards at *Enfield*, is a further Confirmation of the Charge against her.

As to the rest of the Evidence; Whether the Defendant was missing from the 1st to the 29th of *January*, concludes nothing to the Purpose, unless it be proved she was at *Wells's*. Nor is it material to this Cause, that the Defendant was in an ill State of Health on the 29th of *January* and afterwards, unless it were also shewn, that her Disorder was the Effect of such ill Usage, as she pretends to have endured.—But you observe, by the very Witness, the Physician, produced for that Purpose, that her Illness might proceed from other Causes.

The Characters of *Natus* and *Whiffin* I shall take Notice of, when I come to that Part of the Case.

The only remaining Evidence for the Defendant, was to her own good Character, to which several Witnesses appeared;—but, thinking it immaterial, and for the saving Time and Trouble, I was ready to admit it. And because such Admission should be taken in the strongest Terms against us, I am willing this young Woman at the Bar should be considered (*exclusive of the present Charge*) as a modest, virtuous, honest, creditable Girl, fit to be believed in any thing, as far as any body should be believed upon the like Occasion.

But there is a Time, Gentlemen, wherein People begin to be wicked: With some it happens early, with others late: Some are misled by ill Example and bad Education, and others by various Accidents.

What was the Cause of this unfortunate young Creature's deviating from the Path of Virtue so far, as at last to plunge herself into all this Guilt

and Misery, does not clearly appear: She was meanly, though not wickedly brought up, and had lately, you see, been a Servant in an *Ale-house*, where we may suppose, at least, that she was not much strengthened in Virtue. I do not pretend to say, there is any direct Proof of her Want of Chastity; but I think it may fairly enough be conjectured as the Incentive of her present Guilt; but whatever has been the Cause of it, she has been proved guilty of Perjury, and as she once bore a fair Character, it is probable that she did not fall into this Sin at once. Which, I think, is all that can be inferred from her good Character.

I have no Objection to the Evidence of Mr. and Mrs. *Colley*, the Uncle and Aunt: For the Defendant might have parted with them at *Houndsditch* in good Health on the 1st of *January*, and they not see her again till the 29th.

But Mrs. *Canning*, the Defendant's Mother, who is called to prove several Circumstances, has said enough to create a Jealousy, at least, that neither her Daughter's Perjury, nor the *Motives* to it, are *unknown* to her.

First, with regard to the Papers that were sent to the Office, in order to be printed in Advertisements; in one of which it was said, that the Defendant had in her Pocket *Twelve Shillings and Nine-pence Half-penny*. She tells you, that in the Morning her Daughter had half a Guinea, three Shillings, and a Farthing:— That she lent her a Box to put the half Guinea in, and that the Girl took her Money out, and shewed it her. Why then did the Mother propose to advertise, as if her Daughter had just twelve Shillings and Nine-pence Half-penny? Why not insert half a Guinea, three Shillings, and a Farthing? Because the little Brother had told her, she had changed some Money, and had given to each of the Children a Penny; and so computing what remained of the thirteen Shillings and Six-pence Farthing, she reckoned that the Girl must have twelve Shillings and Nine-pence Half-penny in her Pocket when she parted with her Uncle at *Houndsditch*. Now, if this be true, the Defendant's Account of the Money is false: She swore, that the Men robbed her of half a Guinea and three Shillings. The Farthing, you observe, was not taken from her; for she brought it Home, and gave it, the same Night, to one of her Brothers. The Mother, being pinched at this obvious Objection, endeavoured to remove it by lessening the Force of the Evidence she had given before; and by way of Recollection says, she is not positive whether the thirteen Shillings and Six-pence Farthing were not shewn to her *after* the Half-pence had been given to the Children. And if it was *after*, then the Mother is in Hope she has entirely removed the Objection, and left the whole Sum of thirteen Shillings and Six-pence in the Daughter's Pocket, which was the Sum she swore to have been robbed of. But with all the Mother's Cunning and sudden Recollection, Truth is too hard for her; for by forgetting a little Circumstance, (Mr. *Fielding's* "pretty Incident of the "Penny Mince-pye,") she is in the same Dilemma as before. For, supposing the Half-pence had been given to the Children before she had shewn the half Guinea, three Shillings, and a Farthing, yet the Mince-pye was bought after she parted with her Uncle, as was sworn by the Defendant:

Now, out of what Money was the Pye paid for? And if she had no Half-pence, and only half a Guinea, three Shillings, and a Farthing, before she bought the Pye, then how could she be robbed of half a Guinea and three Shillings in *Moorfields* afterwards? Thus that *pretty Incident*, "which her learned Advocate, in his Pamphlet, says, "possibly saved this poor Girl's Life," leads to a Detection of her Guilt upon the Evidence of her own Mother.

The Mother mentions another strange Circumstance. "She thought the Girl had been murdered by the *Jews*, and thrown into *Houndsditch*." Why then did she advertise her lost, strayed, or missing by her Friends? Why no searching for the Body? Was there a human Creature sent to inquire about it? Besides too, the very next Witness, the Apprentice, swears; what stands in flat Contradiction to the Mistress, "That Mrs. *Canning* told him, she thought her Daughter had been snapped up by some rakish young Gentleman."

The screaming out of a Coach, in *Bishopsgate-Street*, seems to be one of the *wandering Thoughts* she speaks of; for, though it is pretended she received Information of that Matter by the Woman of the Oil-shop, yet they have not thought fit to produce this Person; which, in a Case where every Circumstance is material, is an Omission one cannot account for to the Credit of the Defence.

But it seems, as if the Thoughts of both Mother and Daughter *wandered* towards the same Objects; for the Daughter dreamt of *Bishopsgate-Street*, while she was in a convulsive Fit.

Then as to the *CONJURER*; to whom, by the bye, there was not a Word mentioned about being murdered by the *Jews*.

She was introduced to this illustrious Personage with great Solemnity: The Lights, the Skeleton, the Magic Instruments, the Wand, the Circle, and all the Apparatus proper to inspire a poor ignorant Woman with Awe, and engage her to a *Discovery* of what she wanted to know, were all before her.

She was so terrified, that, you find, she hardly remembers one Word she said to him; and yet she must have said *something* very material, instructing him to give her so good an Account of her Daughter.

At last she recollects, that she did tell him something about *BISHOPSGATE-STREET*, though she does not remember the Particulars. But she must have gone much further, before the Doctor could have found out, that her Daughter was in the Hands of an old Woman; that she should advertise her once more, and she would come again. Whether she really had this Intelligence from the Conjuror, or, in order to carry on the Plot, thought fit to invent it for the Amusement of her credulous Friends, who had lent her Money for his Fee, is not easy to say: But either Way the Inference is, that she knew *more* of her Daughter, than is consistent with the Defendant's Innocence.

For, if what the Daughter swore had been true, how could the Mother, at one Time believing her murdered by the *Jews* at *Houndsditch*, and at another that she was snapped up by some rakish young Gentleman, be so suddenly undeceived, and discover she was in the Hands of an old Woman, and would return?

When one considers the whole of this Woman's Evidence together, — the several Advertisements, — the Conference with this pretended Conjuror, — her wandering Thoughts, — the putting up Bills in the Church, and the Meeting-houses of Presbyterians and Methodists, to pray for her Daughter's safe Return, (by which the pious Congregations were predisposed to Charity) — the nightly repeated Prayers to the same Purpose with the Apprentice at Home, — particularly the praying with him on the 29th of *January* for the Daughter's Apparition, (never mentioned till that very Evening) — that Prayer answered in the same Moment by the Daughter's suddenly rushing into the Room, — her Mother's pretended Surprize at seeing her, "Feel her, feel her, 'tis an Apparition!" and then fainting away; — all these Things put together, together too with the Account the Daughter gave before Mr. Alderman *Chitty* about *Bishopsgate-Street*, though they do not directly prove, yet surely they create something more than a Suspicion, that the whole was a Contrivance.

To support the Defendant's Evidence, as to the Manner of her Escape out of Window, Mrs. *Canning* the Mother, *James Lord* the Apprentice, and Mrs. *Myers*, have sworn, that her Ear (which the Defendant said was scratched in breaking out of the Window) was bloody, when she returned Home. The Mother says, the "Ear was then bleeding." *James Lord* says, "it was all over bloody, and the Handkerchief bloody." And Mrs. *Myers* says, "the Blood then dropt from her Ear upon her Shoulder."

This was six Hours after the Time of her leaving *Enfield-Wash*; and, according to the Defendant's own Evidence, she wrapped a white Linen Handkerchief round her Head, which she found in *Wells's* Room, and wore it, instead of a Cap, all the Way to her Mother's: Now, if her Ear bled at the Rate those Witnesses would have you believe, the Handkerchief must have been extremely bloody in *one* particular Place. That Handkerchief has been produced to shew to the Witnesses under another Head of Evidence, and is now before you. Does it not give the Lye to these three Witnesses? It has indeed the Marks of little Spots of Blood upon it, but in *different* Places, all over the Handkerchief, and not at all corresponding with their Testimony, but rather like Dots made by a Finger on Purpose.

But it being a good while since Mrs. *Canning* had the Possession of this Handkerchief, I do not wonder at her forgetting in what Manner she had dressed it up, seeing her Want of Memory has betrayed her into a flat Contradiction to the Evidence she herself gave upon the Trial of *Squires*. For she now swears her Daughter came Home with two Handkerchiefs on her Head, and that "she had no Cap on;" but upon that Trial, she said nothing of the Handkerchief, but swore, that, upon her Return, "she had a Cap on."

Gentlemen, it is an Objection to the Credit of the Apprentice, that he has been hid, till he is brought here as a Witness, lest he should make Discoveries; for when Mr. *Biddulph* went to the House in order to ask him a few Questions, another Person was imposed upon him in his Stead.

It will be material to another Part of the Evidence afterwards, to recollect *Lord's* Description of the Defendant upon the 29th of *January*, that

"she was black and blue as if beaten," and that "her Arms and Face were as black as his Hat." He also tells you, what is contradictory to all the rest of the Evidence, that on her first coming Home, before Mr. *Scarrat* or any body came in, she said she had been confined at *Enfield-Wash*. If you consider the whole Tenor of the Evidence for the Defendant, you must be convinced that this Lad has sworn falsely, and that he was hid for a very iniquitous Purpose.

The Name of Mr. *Scarrat*, the next Witness, I have had Occasion to mention once or twice already, in Terms not much to his Advantage.

He came to the Defendant, *before she was asked* any Questions; — one of the Witnesses says, it was *before she answered* any Questions.

What brought *him* there, a total Stranger both to the Mother and Daughter? for, if you can believe him, he had never spoke to either of them in his Life.

He says, he was prompted merely by Curiosity, upon hearing, in the Neighbourhood, that *Betty Canning* was returned Home: And the Moment he came in he asked her, "where she had been confined!"

Ready to satisfy this *Stranger* at once, she told him she had been confined somewhere on the *Hertfordshire* Road, for she remembered the Coachman's going by.

The next Question was, "How far from *London*?" She answered, "Near *nine or ten Miles*."

Without further Inquiry, *SCARRAT* instantly replied, "I'll lay a Guinea to a Farthing she has been at Mother *Wells's*:" She immediately said, "I think I did hear the Name of *Wills* or *Wells*:" And he then helped her to a perfect Description of *Wells's* House, and the Places about it.

Mr. *Scarrat* proceeds to ask her various Questions, in order (as he says) to be satisfied, whether she really had been there. He asked her about the Prospect from the Window, — the plough'd Land, — the Brook, — the Tanner's, — and every remarkable Thing he could recollect; and to every Question she answered in the Affirmative.

If *Scarrat* really meant to be satisfied whether she had been at *Wells's*, seeing she answered affirmatively to every Question, why did he not put *one Question* at least, to which her answering *Yes* would have convinced him, she had *not* been there? The Reason of that Omission may be easily collected from the rest of his Behaviour.

Being asked, whether he knew Mrs. *Wells's*, he would have you think he only knew her House by passing and repassing. Was you never there? Why, "he believes" — he is not sure — "he has been there *once or twice*." No oftener? — Upon your Oath, have not you been there more than twice? "I believe I have been there *two or three Times*." — Four Times, Sir? "He might have been there *three or four Times*." At last it came up to *ten*. "He could not say but he had been there *ten Times*!" But, says he, I had never been in the Hay-loft. In this I believe him, because the Defendant appears to have been helped to no Description of it. — If he had been there, he might have asked some Questions about that too, which she would also have answered in the Affirmative: But though he might have never been in this Hay-loft, yet he had been all round the House, and must have known by the Outside, that

that there was such a Room, and where the Windows were.

He swears further, that as soon as the Defendant went into the Kitchen at *Wells's*, she pointed to the Door leading to the Workshop, though it was shut, and said, "This is the Door leading to the Room in which I was confined." But *Scarrat*, not knowing what the other Witnesses had sworn, after having outrun them all, was reduced to the Necessity of giving Evidence against the Defendant, by answering this Question, *viz.* If she had ever been before in the Kitchen with the Door of the Workshop open, and yet had taken no Notice of it, and had never pretended to recollect the Place till after she was in the Workshop, and this too after she had been in every other Room of the House, supposing all this, what he would have thought of her? Little dreaming of what had been proved; he answered; it would have led him to disbelieve her whole Story.

This is the Man, who was present at Mr. Alderman *Chitty's* granting a Warrant against Mrs. *Wells* for a capital Felony; who knew by the Description she could not be the Person meant, and yet he never dropt the least Hint to prevent it: And now he denies bearing any Ill-will to Mrs. *Wells*, his old Acquaintance, or that he ever vowed Revenge against her.

This is the Man, who, though an entire Stranger to *Canning*, first helped her to a perfect Description of the Places about *Wells's* House, which gave Credit to her Story; and afterwards, in order to give her Credit with a Jury to convict two innocent Women, by way of *Corroboration*, as he terms it, committed Perjury.

Mary Myers and Mrs *Woodward* say, the Defendant's Shift was neither draggled, nor dirty. Yet this was the Shift, you are to suppose she had on, when two Men had dragged her twelve Miles, for six Hours together, through dirty Roads, in *January* — which Shift she wore for a Month in a filthy Room, and upon her Return through the same dirty Road.

Had this been true, not only the Shift would have been draggled and dirty, but her Petticoat, Shoes, and Stockings must have been extremely so — Why were they never produced?

Mr. *Lyon*, Mr. *Wintlebury*, and Mr. *Adamson* are next called to prove what passed at *Enfield-Wash*.

The first of these Witnesses, being an exceeding honest Man, and cautious of what he swears, has done the Defendant so little Service by his Evidence, that he might very well have been spared. He tells you, that he himself has no other Reason for believing what the Defendant said, than because she said it; for that he never made the least Inquiry about it, but swallowed the whole Story at once upon the Credit of this Servant of his, without supposing it possible she should tell him a Lye. Had his Head been as good as his Heart, he would certainly have required some Reason for assenting to the most wonderful Story he ever heard in his Life.

But as much as I admire his Goodness, I cannot help being sorry for his Credulity; because I am apprehensive, his being so easily to be imposed on, might have encouraged the Defendant at first to invent this ridiculous Excuse for absenting so long from his Service.

Mr. *Wintlebury* endeavours to account for the Defendant's saying there was more Hay in the

Room, than when she had been confined there, by swearing that it appeared to have been tossed up, and hollow towards the North Window. But this stands contradicted by almost every Witness.

He says also, That *George Squires* endeavoured to go away in a Hurry, and that he would have avoided an Examination. Though this is not much to the Purpose, yet it is a very suspicious Evidence; for *Squires* was so well guarded, it was hardly possible for him to escape; and, there being no Charge against him, nor the Defendant so much as pretending to have ever seen him before, what had he to apprehend, which should make him attempt it? Besides, you find, he voluntarily and readily gave a full Account of himself and his Mother, the Moment his Mother was charged with the Robbery, by declaring that they were at *Abbotsbury* on the 1st of *January*, and for several Days after.

Mr. *Adamson* owns the Defendant made no Observation in the Kitchen: And yet you find, even by her own Witnesses, that she could have seen near two Thirds of it from the Room in which she is supposed to have been confined. None of them deny this; and some admit, that the Hole between the Hay-loft and the Kitchen was so large, that she might have looked through the Kitchen into the Road. Now, if she had been in this Hay-loft for a whole Month together, was it possible, when she was brought to the Kitchen again, she should forget, that it was contiguous to the Hay-loft, and leading to it by only five or six Steps? Whereas you find by this Witness, that when she was first brought into the House, seeing the Stair-case which faces the Street-door, she immediately said, she believed, "that was the Stair-case she was carried up."

It appears incontestably, that this Stair-case is at a considerable Distance from the Hay-loft, and has no sort of Communication with it. And *Adamson* himself allows, it is not at all like the little Flight of Steps leading from the Kitchen; — that it struck him, for he thought it *strange* she should make such a Mistake. How contradictory to each other are the Testimonies of this Man and *Scarrat*! Observe here the good Effects of a separate Examination.

When she was carried into the Hay-loft, did she immediately say, (what she must have known before she got up three of the Steps, if she had ever been there before) This is the Place? No. — But when she was in the Room, and *after a Pause*, she recollected, (having seen every other Room of the House) "This is the Room, but there is more Hay in it." *Adamson* tells you, it occurred to him to search about the House, whether there had been any Hay lately carried there; but that there was no Appearance of any, — not a single Blade could be found.

Not recovered from the Amazement into which her owning the Stair-case had thrown him, and having yet received no Proof of her Sincerity, he devised a most ingenious Trial, to satisfy himself that the Defendant had been really confined in the Hay-loft. And this was by asking her concerning the *Prospect from the Window*. But this sagacious Gentleman had not thought of the Experiment, until she had been in the Room for the Space of five or six Minutes, to furnish herself with Observations.

And, after all, what was her Answer? "*Hills and Trees at a Distance.*" The Chances were so

so many in her Favour, that Hills and Trees might be seen from any Country Window, that she might have ventured this, *before* she was carried there. But if Mr. *Adamson* had not been overfond of removing Doubts, he would certainly have required a more ample Description of a Prospect she pretended to have had for a Month together. The Trees were almost peeping in at the Window, and must have been seen by her, as well as the Hills, as soon as she entered the Room. — But besides these, there were many other Things (as you find by the Witnesses) observable from the Room. A Hedge, and a Ditch broad enough for a Foot-way, just under the same Window, — several Fields, both plowed and in Grass, and a Variety of other Things proper to be mentioned in Answer to such a Question, of such a Tendency. And yet, you observe, the Answer of “ Hills and Trees at a Distance,” was sufficient with Mr. *Adamson* to destroy the glaring Proof she had just before given him of her Insincerity.

He also swears, he helped to pull down the Boards from the Window, and that Mr. *Colley* assisted in it. This was a Fact so very material, tending to destroy one of the capital Objections to the Defendant's Credit, that one should have expected the fullest Evidence to prove it. *Colley* had been before called to Facts infinitely less material, but he has not mentioned a Word of this. From whence one might fairly conclude, that *Colley's* Account of this Matter would have done the Defendant or Mr. *Adamson* no Service.

The Willingness of *Adamson* to reconcile all Difficulties, and regain for the Defendant a forfeited Credit, appears by his riding back to ask her about the Hay. To obviate this Objection to himself, he has ventured to deny even his saying to her, “ What! Hay, Bet!” But he dares not disown his riding back to inform himself about it; and another of the Defendant's Witnesses, who was then with her, swears to the very Words. That other Witness was material to several Facts, as well as Mr. *Adamson*; and as one of them must be forsworn (unless the *Doctrine of Mistake* is to prevail universally) it will be of equal Advantage to the Prosecution, give up which you please.

Beals, the Turnpike-Man, was the next Witness to prove his seeing the Defendant on the 1st of *January* carried by two Men in the Road towards *Enfield*. But what does he prove? Most clearly, that he never saw her there; which appears past all Doubt, even by the Defendant's own Testimony. She swore, she was stripped of her Gown and Apron in *Moorfields*, and had neither of them on when she arrived at *Wells's*; but *Beals* swears, the Woman he saw had a light-coloured Gown and an Apron on: So that, of all the Women in the World, whoever it was, certainly it was *not Elizabeth Canning*.

There is another Reason, why she could not be the Person. *Canning* was insensible, in a convulsive Fit, and therefore unable to walk a Yard; but the Woman *Beals* saw, so far from being borne by two Men, was walking very fast, “ nimbly going along the Road, sobbing and crying;” whilst one of the Men was pulling her on, saying, “ Come along, you are drunk;” the other following, “ Lord, how drunk she is!” — Could this be *Elizabeth Canning*? Were the Cries he heard, like the Screams of a Woman in a convulsive Fit?

Could *Elizabeth Canning*, in her then Condition, without either Gown or Apron, be the Person this Witness describes? How many Impossibilities must be swallowed to suppose this Woman guiltless!

But even these are not the only Proofs it was not the Defendant, whom *Beals* is supposed to have seen on the Road. For, if you consider the Place and Time of the Night, you'll find another Impossibility to contend with.

What *Beals* has given an Account of, was at *Stamford-Hill* Turnpike, about four Miles from *Moorfields*. According to the Defendant's Evidence, she was robbed in *Moorfields* between Nine and Ten, and she arrived at *Wells's* about Four in the Morning: So that this Journey of Eleven Miles (the Distance between *Moorfields* and *Wells's*) must have taken up above six Hours; at which Rate of travelling, she could not have reached this Turnpike till almost Twelve o'Clock. But what *Beals* saw was betwixt Ten and Eleven, which was but an Hour after the Defendant was first attacked in *Moorfields*. Is it possible that two Men could have carried her, in such a Condition, four Miles in one Hour?

Besides, the Witness is uncertain as to the Day of the Month. He swears only to the “ *Fore-end of January*,” but is not able, by any Circumstance whatever, to fix it to the first Day of the Month. Whereas *New-year's Day* being a very remarkable Time, it is probable he would have been able to recollect it particularly, had that been the Day.

Such was the Evidence of the Defendant's being seen upon the Road, between *London* and *Enfield-Wash*, on the 1st of *January*. Let us now examine the Proof of her being seen in her Return Home upon the 29th.

Thomas Bennet, the first Witness called to this Fact, says, that about a quarter of a Mile from Mrs. *Wells's*, and twenty Poles below the ten-mile Stone, he met a Woman, “ miserably poor, without either Gown, Stays, or Hat, yet with something about her, not a Gown:” — That she appeared to be a Stranger to the Road, for she inquired the Way to *London*, and told him, “ She had been frightened by a Tanner's Dog.”

Had he omitted this last Circumstance, there had been nothing to detect him of Falshood by; and the Fact would then have depended merely upon his Credit, which, *probably by Appearance*, could not have weighed much, unsupported by other Proofs. But the Incident of the Tanner's Dog has quite defeated his Evidence; for it was impossible she could tell him of this, in her Way from *Enfield-Wash* to *London*, before she was come so far as the Tanner's. She might, indeed, have met a Dog, and been frightened by him; but how could she, a perfect Stranger, know he belonged to a Tanner? This Witness tells you, the Tanner's is an hundred Yards on this Side of the ten-mile Stone, but he met the Woman twenty Poles below the ten-mile Stone: — And it was not the Witness, but the Defendant, who called it a *Tanner's Dog*.

This will not be thought too nice an Objection to the Credit of one deposing a Fact not very credible in itself, and which you will find to be false, when coupled with the Evidence of the subsequent Witnesses. And in a Case of this extraordinary Nature, — where the Defendant's

Attorney (not the present Attorney, to give him his Due) had advertised for Evidence, it became necessary narrowly to watch every Circumstance coming from the Mouth of a Witness in so low a Station of Life.

The next Witness was *David Dyer*. He says, he saw a "poor distressed Creature" pass very slowly by him on the 29th of *January*;—that he said to her, "Sweetheart, do you want a Huf-band?" Being asked to give an Account of her Cloathing, he says, *She had a white Handkerchief on her Head*. In this he goes too far; for, according to her Mother's Account, the white Handkerchief was covered by a coloured one, which she had taken out of her Pocket, and which, from the Smallness of the white one, must have totally concealed it.

Willing to fix every Circumstance, he swears to something that may answer to the Bed-gown,—"A shortish Thing about her, that did not come very low;" and that he saw the Woman soon afterwards, and took her to be the same Person with the Prisoner at the Bar. But being called upon to describe her, as she appeared to him upon the Road, this Witness, unacquainted with what the rest had sworn, (another good Effect of a separate Examination) proves most clearly, that the Person he saw, if any one he saw, was not *Elizabeth Canning*. Her Face, says he, was very pale,—not black, but *whitish*.—He looked earnestly at her, and particularly observed her, and did not only admire her Face, but her *Hands* too—they were *delicately white*.

Refer yourselves to the Description given of her at her Return Home, particularly by the Apprentice: "*She was black and blue, as if beat, her Arms and Face as black as his Hat.*" Could this be *pale Woman with a white Hand*, whom *Dyer* met upon the Road?

Mary Cobb, the only remaining Witness to the Defendant's being on the *Enfield Road* on the 29th of *January*, swears she met her *creeping along*, in the Middle of the three *Ducks-Fields*, between the five and six-mile Stones. This is said to be a Mistake, and that it is between the six and seven-mile Stones. Take it either Way: If she met her between the five and six-mile Stones, it was near five Miles from *Wells's*;—if between the six and seven-mile Stones, it was near four Miles from thence; for *Wells's* House is about the Midway between the ten and eleven-mile Stones.

Now, by comparing this Woman's Evidence with what the Defendant has sworn, you will find it impossible to be true.

The Defendant swore she set out from Mother *Wells's* at Four o'Clock, and that the Clock struck Ten, as she was going over *Moorfields*: So she was six Hours travelling eleven Miles, (the Distance between *Wells's* and *Moorfields*) which is less than at the Rate of two Miles an Hour.

Reckoning from the Time the Defendant herself has fixed for her setting out, it must have been past Six before she had *crept* to the Middle of the three *Ducks-Fields*, supposing it to be but four Miles from *Wells's*, and if five Miles, then it must have been half an Hour later. Now, at what Time did this Witness see her? She says it was duskish. The 29th of *January* was the Day after a New Moon, so there could be no Moon-light; and if it was duskish, it could not be so late as Five o'Clock. A great deal of Pains was taken, in the Cross-examination of this Witness, to fix the

Time of her being at the Place, where she is supposed to have met the Defendant. At Three o'Clock she left her own House,—she had a Mile to go to one Mrs. *Carter's*,—she had been there, but I think stayed not a Minute,—she called no where on the Road,—she might indeed be detained a little by Acquaintances, who met her, but made no considerable Stop any where,—and met *Canning* within a quarter of a Mile of her own House, on her Return Home;—so then she must have walked a Mile and three quarters, and no more, from Three o'Clock, and make very little Stay. How late could it possibly be then? Let this Woman creep as slow as she pleases, let her be as slow in Walking as she appears in Invention, she could not eke out the Time so as to meet the Defendant. Even Five o'Clock will not do—duskish will not answer—It must have been past Six before *Canning* could possibly come to that Place, by her own Calculation. But this Mrs. *Cobb* has even ventured to swear to a perfect, an absolute Remembrance of the Defendant's Face, *by the Tip of her Nose!* By what Light could she make so nice an Observation, after Six in the Evening, on the 29th of *January*?

Upon the Testimony of these three last Witnesses I shall only make this further Observation, that, if it were possible to admit they saw any Person in the Manner they have sworn, it appears, by every Circumstance, they all saw one and the same Person, and the Evidence of *Dyer* fully proves, that Woman was not the Defendant.

These, Gentlemen, are the Objections which have occurred to me on that Part of the Case, relating to the Defendant's having been seen on the *Enfield Road* on the 1st and 29th of *January*: By which it appears, that her Friends have reaped no great Benefit from their advertising for Evidence.

The next Attempt was to answer the Proofs we gave of the Gypsies being at *Abbotsbury* on the 1st of *January*; in my Observations upon which, I shall not take up much of your Time. Indeed I cannot take upon myself to enter minutely into the Evidence, because I was unavoidably absent Yesterday, when most of the Witnesses to it were examined. But from the Notes of my learned Friend, the Gentleman whom I have the Honour to assist, I am authorized to say, the Defendant has had no better Success in this Part of her Case, than in the rest.

Are the Witnesses to prove the Gypsy's being at *Enfield* before the 24th of *January* so very certain, both as to the Person of *Mary Squires*, and the exact Times of seeing her there, as to leave no Possibility of Mistake? If so, this will rest merely upon the Credit of the Witnesses; otherwise it will not admit of Dispute. For it is most certain, that the Witnesses for the Crown cannot possibly be mistaken in either of these Respects.

It is observable, that none of the Defendant's Witnesses pretend to have ever seen *Mary Squires* with either of her two Children; whereas every one of our Witnesses swears directly to all their Persons.

With what Uncertainty do the Defendant's Witnesses speak also to Point of Time! Some of them do not know one Day, and some not one Month from another, and some are ignorant whether *Christmas* is in *June* or *January*.—One keeps the Day of the Month by his Clock,—another

thér refers herself to the Almanack, without being able to distinguish by it what Day of the Week such a particular Day of the Month was. The Experiment was made upon her Cross-examination, and an Almanack was put into her Hand, —she understood nothing by it. But, says she, I swear from the Assistance of a *Sheet* Almanack; yet what had been shewn her, was the same cut into Leaves, and bound up.

Gentlemen, those who pretend to be positive as to Time, either refer to Circumstances inconclusive, or to Papers and Books, not one of which has been produced. It was material for them to be exact, and they saw the Necessity of being so. Why then did they produce no written Evidence to ascertain Facts of such Consequence, since by their own Account this was to be had? —Is it not apparent, no Diligence has been wanting in this Defence to lay before you every Circumstance that could be construed in their Favour? To what Cause can such Omission be ascribed? Persons speaking merely upon Memory are very liable to mistake; and in a Cause of so much Spirit, the Zeal of Witnesses may urge them to strain the Truth at least, even where they would not venture at direct Perjury. Falshood is glossed with Doubtfulness, and Doubts are raised to Certainty.

An Instance of this was exemplified in the Evidence of *Anne Johnson*, who swears she saw *Mary Squires* at *Enfield* on the 18th of *January*. Was it possible for any Witness to be more positive than this Woman? She remembers the Time perfectly; it was just two Days after she carried her Work Home to Mr. *Smitheram* her Master, who entered in his Book the Time of its being both delivered out and returned.

Here was a Reference to a written Memorandum, and the producing it would have fixed the Time past Doubt. Yet this, like all the rest, was thought proper, by those concerned for the Defendant, to be left merely upon the Credit of Memory. But, by Accident, We got Access to Mr. *Smitheram's* Book of Accounts; and he and his Daughter, in whose Hand-writing the Entries were, have been so kind this Morning, as to produce the very Book which *Anne Johnson* referred to; by which it appears, that the Work was carried Home on the 23d of *January*. So that the Time of her having seen *Mary Squires*, two Days after, must have been on the 25th, which was the Day after *Squires's* coming to *Enfield*, according to the Account of all our Witnesses.

I do not mean by this to impute any thing more than Mistake to this *Anne Johnson*. But it shews how uncertain Memory is, how positively Witnesses, warmed into a Contention for Victory, will depose Facts, which they should relate with some Degree of Doubtfulness; and shews indeed the Reason, why no Books or Papers are produced.

Sarah Star swears to the 18th or 19th of *January*, and refers to a Note of Hand of the same Date, which she delivered to Mr. *Miles*, the Defendant's then Attorney. But neither the Note itself, nor Mr. *Miles*, nor the Person, who, *Star* says, brought the Note to her, is produced.

In short, for 'tis Time to make an End; nothing conclusive appears.

Grace Kirby, another Witness, ready as the rest to fix an early Time of seeing *Squires*, upon her Cross-examination is not certain of having seen her, till within eight Days before *Squires's* being apprehended, which was on the 1st of *February*.

Wife Basset is sure of the Time, because she killed a Hog on the *Thursday* before New *Christmas-Day*; and she has no other Reason for fixing the Time, but because it was the *Monday* was a Month after; which brings it to the 22d of *January*.

How vague and uncertain is all this Evidence, compared with the clear, determinate, positive, absolute Testimony, that *Mary Squires* was at *Abbotsbury* on the 1st of *January*! I should be ashamed to take up more of your Time in Observations upon this Part of the Defence.

They next call *Ward* and *Jones* to prove, that *Susannah Wells* confessed the Defendant's Confinement.

Ward, having just read the News-paper relating the Particulars of the Defendant's Story, went to see Mother *Wells* in *Clerkenwell* Bridewell, and *Jones* went with him as his Friend. One of them (*Ward*, as I recollect) asked *Wells*, "How came you to keep the Girl a Fortnight?" To which *Wells* answered, "It was twenty-eight Days." The next Question was, "In what Room was she?" The Answer was, "You know the Room very well." This was the whole Conversation tending to a Confession: But such a Confession, I may venture to say, was never before given in Proof.

Wells, at every other Time, both before and after this pretended Confession, stoutly denied every Article of the Charge. It is therefore most likely she did not mean, at this Time, to admit it. And if you consider the Occasion of *Ward* and *Jones* going there, and the very Words of the Conversation, you will find that *Wells* really confessed nothing, but only corrected *Ward's* Mistake by the Charge against her. The News-paper had mentioned, that *Wells* had confined the Girl twenty-eight Days, *Ward* had mistaken it for a Fortnight, and *Wells* set him right. The whole of which, taken together, amounts to just as much as if *Wells* had more fully answered, *viz.* You are mistaken as to Time, for I am charged with having confined her twenty-eight Days.

Her Answer to the other Question naturally bears the same Construction, — "You know the Room very well." What Room did he know? That which he had read an Account of, and in which the Girl had said she was confined.

This is the natural and the only sensible Exposition of the Words. If *Wells* intended to confess the Crime she was accused of, something more would have been said, explaining the Motives and Design of such an extraordinary Transaction. The same Curiosity; which carried these two Witnesses to *Bridewell*, would certainly have urged them to further Questions; and the same Candour, which this pretended Confession supposes at this Time in *Wells*, would as certainly had led her to explicit Answers.

If, on the contrary, *Wells* did not intend a Confession, how infamous was it in these Men, by a pretended Mistake of a Fortnight instead of twenty-eight Days, to ensnare her into an Answer, which by an equivocal Interpretation should amount to a Confession, and leave it unexplained, in order to be furnished with Evidence?

If this was the only scandalous Part of the Defence, it would require more Observation than I shall trouble you to make.

To as little Purpose was the Attempt by *Paul Stevens*, a Publican, to prove the Confession of *Mary Squires* in *Clerkenwell* Prison. This Witness went

went there with two or three Gentlemen to see her, about three or four Days after her Commitment. But who these Gentlemen are, or why they do not appear to support this Man's Evidence, we know not. The whole Confession amounts to no more than this, namely, "*What I am here for, I am innocent of;*" and afterwards speaking of being at *Wells's* House, "*I believe, whilst I was there, Elizabeth Canning was there.*" This, and this alone, they call a Confession; to procure which, they treated her with a Bottle of Wine. Severities had been tried before to no manner of Purpose: She had been complaining, that they had buffeted her about, because she was not willing to answer Questions. But good Words and a Bottle of Wine opened the old Woman's Heart, and she frankly confessed to these civil Gentlemen,—What?—that she was innocent of the Charge against her. But she *believed*, whilst she was there, *Elizabeth Canning* was there. She never said she *knew*, but she *believed*. It is plain she never saw her; for if she had ever seen her, it could not rest upon her Belief. And the Witness himself is so doubtful of the Words spoken, that nothing, besides the Innocence of *Squires*, and the Perjury of *Canning*, can be collected from it. At first, *Stevens* was positive, that the Words were, "*I believe, while I was there, Canning was there.*" Then the Witness *believes* these were the Words—and then the Words were, "*To be sure Canning was there, as I believe.*" And several Times afterwards the Witness varied the Expression, and could never fix it.

What a Confession is here proved! A steadfast Declaration of her own Innocence, coupled with a Belief, touching a Transaction, which, if innocent, she must be ignorant of.

This poor Woman was a Stranger to *Wells*, having never seen her till the 24th of *January*, when she came to lodge in her House. Eight Days after, she (with all the People of the House) was apprehended on the Accusation of *Canning*, that she had been robbed and confined there.—*Wells* bore an infamous Character universally; — *Canning's* Complaint was favoured by several Persons of Credit and Reputation; and therefore *Squires* was inclined to believe the Girl had been robbed by somebody, and that her Story might be partly true. But her own Innocence she persisted in;—so there's an End of all Pretence of Confession.

They next call Witnesses to impeach the Evidence of *Natus* and his Wife.

Nathaniel Crumphorne says, that *so lately* as last *Friday* Fortnight, the 21st of *April*, he asked *Judith Natus*, "*How came you to have the Conscience, knowing this poor, innocent Creature was at Mother Wells's, to go and be against her?*" And that *Judith Natus* answered, "*Indeed, Mr. Crumphorne, I cannot say but she really was there, when we lodged there.*"

Considering these Words as an Excuse, in answer to *Crumphorne's* Reproach for giving Evidence against *Canning*, you will have no Difficulty in believing the very reverse of what that Witness intends; and considering the Time of this Conversation, it looks as if this *Crumphorne* was tampering with the Witness to swear what in Truth she could not. *Crumphorne* is certain to every Word spoken, and indeed it was very material he should be so; for by striking out the single Word

but, the Sense would be intirely altered, and then the Answer would be proper to the Question. And that *Crumphorne* goes too far in swearing to the very Expression, appears by the next Witness, his Wife, who gives Evidence of these Words only, "*Indeed, Mr. Crumphorne, she really was there, when we lodged there.*" The former Part of the Words, "*I cannot say but,*" is intirely left out. So that it remains doubtful, what were all, and the particular, though few, Words made use of upon this Occasion. You will therefore apply your Attention to the Substance of this Conversation, that *Judith Natus* was reproached with giving false Evidence, and that she was justifying herself.

That *Natus* and his Wife lay at *Wells's* during the Month of *January*, is supposed even by this very Witness. Now I should be glad to know in what Part of the House they lay. It appears, that every other Room in the House, except the Hay-loft, was wholly occupied by the rest of the Family. And if they lay in the Hay-loft, it could not be while the Defendant was there, because she swore, "*she did not see a human Creature during all the Time of her Confinement, but once through a Crack of the Door.*"

Further to discredit *Fortune Natus's* Evidence, one *Jackson* is called to prove the Proposal of a Wager by *Natus*, at the *Four Swans*, whether he had not lain out of *Wells's* House a single Night during the Month of *January*. This was intended to contradict *Natus*, as having, in his Evidence, denied proposing any such Wager. But in reality *Natus* was so far from denying it, that he himself gave an Account of his having lain out of the House *one Night, and no more*. And his Wife, you may remember, gave the same Account. This Circumstance, so confirmed by the Defendant's Witness, would add Credit to *Natus*, if he stood in need of it.

The next Evidence is to the Impeachment of *Natus's* Character, by three Persons swearing with such Rancour and Malice, as is sufficient to overthrow all Pretence of Credit in themselves.

One of them, in effect, says, he believes *Fortune Natus* is so infamous a Fellow, that without the Temptation of Interest, or any Passion to indulge, but merely for the sake of giving false Testimony, and from his Propensity to Lying, he would perjure himself in a Court of Justice.

But let not human Nature bear the Reproach of such a Character. There cannot be a Man on this Side Hell so abandoned by his Maker, as that rash Witness would have you to think. The Earth has never bore such a Monster, as to fall in Love with naked Falshood. What Devil incarnate was ever heard of, who did not incline to Truth, till he was warped by some particular Temptation to leave her? For has not the Author of Nature created her lovely in the Eyes of all Mankind? Let any Man breathing ask his own Heart, whether he was ever persuaded to embrace a Falshood, till she was robed in the Garb of Truth to deceive him? It would be a Contradiction in Terms to say otherwise. The Witness, who is capable of representing *Natus* in such Colours, must be conscious of the Truth of this Observation, and feel himself impelled to such a horrid Misrepresentation either by Avarice or Revenge, or some Passion which he dares not avow.

But see the real Character of this *Natus*, by one who

who knows him better. — Mr. *Bell*, his Master, says, he has known him very well for fifteen Months past, and that he is his Servant; — that he is a very honest, civil, and industrious Man; — that he never once caught him in a Lye in his Life; — that he has now eight Servants, and would be glad to have his Fellow.

The same Man may indeed have several Characters, as different People are differently affected to him. And perhaps it would be a good general Rule, to take the Medium betwixt the two Extremes of any Character whatever. But surely there never were two such Extremes as these concerning the same Character before; and considering the Nature of the Evidence, and who are the Witnesses, I may very safely rest upon the Credit of *Natus's* Testimony, especially as it has been so well supported by many other Witnesses, attesting such a Number of Circumstances to confirm it.

Another Witness, Mr. *Metcalf*, was called to contradict Mr. *Whiffin*, as to the Time of his receiving the Sign-iron. But *Metcalf's* Evidence is so very uncertain and indeterminate; that it proves nothing. He swears to a Transaction upon the 8th of *January*; but when he is called upon to assign his Reason for being particular to the Day of the Month; all he can say is, that he keeps his Reckoning by his Clock, and is ignorant whether his Account is according to the Old Stile; or New.

But Mr. *Whiffin's* Evidence is sufficiently supported by several Circumstances, the Time is fixed beyond all Doubt, and there now remains no Stain upon his Character.

Gentlemen; I think I have taken Notice of all the material Circumstances on both Sides, two only excepted; which I did not sooner recollect.

One is, the Defendant's claiming the Bed-gown, before sworn by her to have been found at *Wells's*, in the Grate in the Chimney. This then lay, together with the Pitcher, on a Table at the Mansion-House; and she would have taken them both away; but that was objected to, because they did not belong to her, and that they might be deposited in some public Place, for the sake of further Discoveries: Upon this (relinquishing the Pitcher) she insisted on taking away the Bed-gown, for "*That was her Mother's.*" — It has been proved; that there was no Grate in the Chimney at *Wells's*.

And I should have added to the Observations upon the Evidence of the Mother, who proved the Defendant's Hand-writing to some Papers now before you, that the Innocence of the Defendant having been most cogently inferred from her supposed Simplicity, and she having been represented as a poor, silly, illiterate Creature, incapable of inventing such a Story, to furnish her Advocates with so excellent an Argument, she set her Mark to her Information before Mr. *Fielding*, as if unable to write her Name; which Information is also before you. I dare say, it was not *then* imagined that this *Marks-Woman* had received so good an Education. Who would have thought, upon reading the Pamphlet, which that good Magistrate was pleased to oblige the World with, containing the Information at large, with such ingenious Remarks upon her Stupidity; — who would have dreamt, that this "*Child in Years, more so in Understanding,*" was able to write a very fair, legible Hand?

And this may serve as a Specimen to shew what mean Artifices have been made use of to deceive Mankind.

Gentlemen, you have now before you the whole Merits of this Cause; the Subject of universal Controversy, which it is hoped your Verdict will put an End to.

Permit me; therefore; to remind you briefly of what you must necessarily believe, in order to acquit the Defendant of the Charge against her.

In the first Place, you must believe a most astonishing Story of several Incidents, every one of which is to the highest Degree improbable. You must also believe; that above forty Witnesses to the *Alibi* of the Gypsey are all guilty of Perjury; although there is a greater Combination of Circumstances to add Credit to their Evidence; than was ever before required to satisfy a human Inquiry. To this End, you must also believe, that all these Witnesses conspired to this Perjury, and preconcerted every Circumstance with so much Art and Contrivance, as to defeat the Possibility of Detection upon a separate Examination; and all this you are to suppose, although the Evidence to contradict them is infinitely less clear, less certain, and less conclusive.

But if, notwithstanding, you can prevail upon yourselves to suppose *Mary Squires* to have been at *Enfield*, when we proved her elsewhere, or (which is as hard to suppose) that the Defendant mistook her for another, you have yet more Difficulties to reconcile. For you must further suppose, either that Mr. *Alderman Chitty*; Mr. *Nash*; *Hague*; *Aldridge*, together with many of the Defendant's own Witnesses to several Circumstances; are absolutely perjured; or else you must yield your Assent to a new Train of Events, as many and as wonderful; as those in the Defendant's Story.

You must, moreover, believe all the ten Witnesses, confirming *Natus's* Evidence, likewise guilty of Perjury; although no Attempt has been made to disprove their Testimony, except only (what I hope is sufficiently answered) with respect to *Natus* himself, and also as to the Time of *Whiffin's* buying the Sign-iron.

And upon what Foundation are you to suppose all this? — Upon the Credit of *Elizabeth Canning*; proved to be self-contradicted in no less than three Instances, relative to a single Fact; or, upon the Evidence of her Witnesses, who have given no Answer to the Charge. For it is observable, that not one of the Witnesses for the Crown, except to the *Alibi* of *Squires*, is contradicted by those for the Defendant; and yet; if their Evidence be true, she must be guilty.

These; Gentlemen, are the Remarks occurring to me upon the various Circumstances in this very long Trial. Many of them may, perhaps, have been unnecessary or improper, whilst some, which I may have omitted, should have been enforced; but whatever Errors are imputable to me in the Course of this Prosecution, I solemnly protest, that the mis-stating or misapplying any Facts has been intirely foreign to my Intention throughout the Cause; in the Merits of which I have at no Time been engaged, otherwise than, as I conceived, the Duty of my Profession directed me: And this Duty I have discharged to the best of my Abilities.

Mr. Nares. I only beg leave to mention one Thing. There has been one Reason attempted to be given, why a very material Witness is not produced, the Want of which Witness is attended with the utmost Inconveniency to the Prisoner at the Bar; that is, *Virtue Hall*: By her not being called we can give no Evidence relative to her; that is, as to what she has said, and the Means used in her Recantation. Mr. Davy has given this as a Reason, because she is not in Law a Witness; but I beg leave to say, that according to all the Cases, and common Practice every Day, she is a Witness; it only goes to her Credit, and that goes to the Jury. You know the Case of *Cartwright at Hertford*; he confessed he had perjured himself in four or five different Courts. I should be glad if the Court would deliver their Opinions on it.

Mr. Baron Legge. I believe Witnesses have very often been called, that have declared they have been perjured in other Instances; but I will never admit or suffer a Person, that will say they have been perjured in another Affair, and I knew it before they were sent for. When she swears true, I cannot tell; but that she has sworn false once, I must know.

Mr. Nares. In the Case of Subornation of Perjury they are admitted every Day.

Mr. Baron Legge. They are admitted; but it goes so much to their Credit.

Mr. Recorder. I remember, that in the Trial of *Titus Oates*, Lord Chief-Justice Jefferys would have been glad to have hanged him, but would not suffer a perjured Person to be examined against him. What must such Set of Witnesses swear? Why, they must set out in saying they have been perjured before. Then what is the Consequence, but that they must destroy their own Credit?

Mr. Baron Legge. When a Witness stands up and tells us she has once sworn false, what Credit can be given to her Testimony?

Mr. Davy. I have known such Witnesses examined more than once: The Jury have a Right to call and examine her, but I have no Right to call her, neither has the Defendant.

Mr. Recorder.

Gentlemen of the Jury, *Elizabeth Canning*, the Prisoner at the Bar, stands indicted for Perjury, in swearing that *Mary Squires*, — [See the Indictment, the Perjury assigned, and the Averment mentioned before in this Trial.] — But as this is a Trial of unusual Length, and of great Expectation, I shall state the Evidence in the clearest Manner I have been able to collect it; and if, in the stating the several Facts which have been laid before you, during the Course of this long Proceeding, I should accidentally disclose my own Opinion, I must desire that it may have no Weight, or make the least Impression on you, in determining your Verdict, otherwise than as the Weight of the Evidence justifies it. As this Indictment is founded upon the Evidence given by *Elizabeth Canning* against *Mary Squires*, on whose Testimony she was capitally convicted, *Thomas Gurney*, the Short-hand Writer, is called, who says, that upon the 22d Day of February; *Mary Squires* was tried in this Court; and upon that Trial, *Elizabeth Canning* swore, That on the first Day of January, in the Year 1753, she had been at Saltpetre-Bank to see her Uncle and Aunt, and stayed there till about Nine at Night; — that her Uncle and

Aunt came with her to Aldgate; when they parted; — that she was then alone, and so came down Houndsditch, and over Moorfields by Bedlam Wall, where two lusty Men, both in Great Coats, laid hold of her, and took half a Guinea in a little Box out of her Pocket, and three Shillings that were loose; — that they afterwards tied her Hands behind her, and dragged her to Wells's House at Enfield-Wash, where they arrived about Four o'Clock in the Morning; — that she saw there the said Gypsy Woman Squires sitting in a Chair, who took her by the Hand, and asked her if she chose to go their Way, saying, that if she did, she should have fine Cloaths; but she refusing, *Mary Squires* then took a Knife out of a Dresser-Drawer, and cut the Lace of her Stays, and took them from her; — that *Mary Squires* gave her a Slap on the Face, and pushed her up Stairs out of the Kitchen into a Room called the Hay-loft, and shut the Door, and threatened her, if she stirred or moved, to cut her Throat; — that when Day-light appeared, she could see in the Room a black Pitcher, not quite full of Water, about twenty-four Pieces of Bread, a Fire-place, and a Grate; — that she continued there a Month by the Weeks, all but a few Hours; — that she broke down a Board that was nailed up at the Inside of the Window, and got out on Monday the 29th of January, about Four o'Clock in the Afternoon; — that she took out of the Grate in the Chimney an old Sort of a Bed-gown and Handkerchief, which she tied over her Head instead of a Cap; and got to her Mother's House in Aldermanbury, about a quarter after Ten o'Clock at Night.

In order, therefore, to prove that the Evidence she then gave was false, a great Number of Witnesses have been called to prove *Mary Squires* at a different Place, at the Time on which *Elizabeth Canning* has sworn to her robbing her at *Wells's at Enfield-Wash*.

The first of these Witnesses is *Esther Hopkins*, who says, that she keeps a Public House at *South-Parrot*, which is some Miles beyond *Abbotsbury* in *Dorsetshire*; is positive she saw *Mary Squires*, her Son and Daughter, at her House, on the 29th of December 1752; that they lodged at her House that Night; the Reason of her remembering it, that two Gentlemen that Day had been there, who left their Reckoning unpaid; that *Mary Squires*, her Son and Daughter, went away next Morning; is particularly positive to *Mary Squires*, having never seen such another remarkable Woman; that she is more positive to the Son than to the Daughter, for he had a Bag which he carried under his Arm. They all travelled on Foot.

The next Witness was *Alice Farnham*, who lives at *Winyard's Gap*, ten Miles beyond *Abbotsbury*. She says, that she saw *Mary Squires* at *Winyard's Gap*, about Eight or Nine o'Clock, on the Saturday Morning next after New Christmas, with her Son and Daughter; the Reason of her being so positive to *Mary Squires* is, that having seen the Picture of *Mother Shipton*, she thought she resembled that Picture. They all stayed about an Hour at her House, and had a Quart of Beer, and some Bread and Cheese, and when they parted with her, said, that they would come and see her again at Old Christmas; that they all went towards *Abbotsbury*, which is ten or eleven Miles from *Winyard's Gap*; that she had seen them come into *South-Parrot* the Day before, and seeing they were Gypsies, her Mother asked, if she was not frightened. This she remembers was on a Saturday, because she had a Mind

a Mind to have gone that Day to *Crookborne* Market to buy some Things against Old *Christmas*, but her Mother would not let her go. She saw a Bag under the Son's Arm, and the Daughter dressed very neat in a white Holland Gown. Has never seen them since; but is very positive to them. That they had a Mug of Beer, and paid for it.

The next Witness, who undertakes to prove the whole Journey to *Enfield-Wash*, is *George Squires*, who is Son to *Mary Squires*, who says, he was at *South-Parrot* on *Friday* next after *New Christmas-Day*; and they put up at the *Red Lion* there, and stayed one Night only: That (they set out from *Newington* near *Southwark* about seven or eight Weeks before *Michaelmas* preceding) from *South-Parrot* they all went to *Winyard's Gap*, and then to *Litton*: That they lay there upon *Saturday*, and he left his Mother and Sister there, and went to *Abbotsbury* on *Sunday*, to see some Friends he had there, and particularly to see *William Clarke*: That he and *Clarke* went to *Litton* for his Mother and Sister the *Monday* following, and at *Litton* the Sister, *Clarke*, and he, dined together; his Mother being gone towards *Abbotsbury* to see for *Clarke* and him; but upon her Return dined with them. After Dinner they all set out for *Abbotsbury*, and arrived there upon the *Monday* Night, being the 1st of *January*, and lay there, at the Sign of the *Ship*, at one *Gibbons's*; they danced till Twelve o'Clock at Night, and several People were with them. His Partner was *Gibbons's* Sister, and having been at *Abbotsbury* before, he knew several there. *Clarke* danced with his Sister; and that his Mother, his Sister, and himself, stayed at *Abbotsbury* from the 1st to the 9th of *January*. That the 1st of *January* being a wet Day, one *Andrew Wake*, who was then an Excise-man at *Abbotsbury*, borrowed his Great Coat of him, in order to make his Survey. That on *Tuesday* the 9th of *January*, his Mother and Sister and himself left *Abbotsbury*: *Clarke* went with them to a Place called *Portersham*, about a Mile and a half from *Abbotsbury*. The next Day they went to *Ridgway*, about five or six Miles from *Abbotsbury*. *Clarke* and he lay together, and lay there at the Sign of the *Ship*, at one *Bewley's*, where there happened to be a Horse which had just died; and his Money being short, he left a Piece of Nankeen for his Reckoning, his Mother and Sister being then with him. From thence, on *Thursday* the 11th, they all went to *Dorchester*, and there they had an Account of his Sister *Mary's* Illness, and then they determined to hasten to her; and the Waters being very much out, he carried his Mother upon his Back, and a Miller took his Sister on a Horse behind him through the Water. They travelled on Foot almost the whole Night, and arrived at a Village called *Chettle*, which is four Miles beyond *Blandford*, and on the *Saturday* following they all lay at *Martin* in a Barn belonging to Farmer *Thane*. On the *Sunday* after they all went to *Coombe*, and lay there at one *Greville's*, the Sign of the *Lamb*, who is since dead. On the *Monday* following he does not recollect where they lay, neither can he recollect where they all lay till his Arrival at *Basingstoke*, and when they got there, they put up at the *Spread-Eagle*, where the Woman of the House, at his Sister's Request, wrote a Letter to *Clarke* at *Abbotsbury*. They lay that Night at a Place called *Old Basing*, (their usual Way of travelling being

about ten Miles a Day). From thence they went to *Bagshot*, and lay at the Sign of the *Greyhound* there; and from thence to *Brentford*, where they all arrived and lay there upon the *Saturday*; and on the *Sunday* he went to *London* to see his Sister *Mary*, and on the *Monday* he brought her to *Brentford* to one Mrs. *Edwards's*, where they all stayed till *Tuesday*, and on *Tuesday* they all went to the Sign of the *Seven Sisters* at a Green near *Tottenham*, and on *Wednesday* they all arrived at Mrs. *Wells's* at *Enfield*, whom he never saw before, but was recommended there. That before they went to Mrs. *Wells's*, they called at another House, where they were recommended to a House at *Chefbunt*; but that being too far, they went to *Wells's*, where he left his Mother and Sisters. That in two or three Days after he went to *London* to receive some Money, and returned next Day, and found his Mother and Sisters at *Wells's*. His Mother and Sisters lay in the Room over the Parlour, and he lay in a little Room fronting the Stairs, and *Wells*, her Daughter, and *Virtue Hall* lay in a Room on the left Hand, and one *Fortune Natus* and his Wife lay in a Room some few Steps out of the Kitchen. That, during the Time they were at *Wells's*, they bought their Chandlery Ware of one *Larney*, and it being Herring Time, they lived very much upon Herrings, which they bought of an old Man who carried them about to sell. That, during the whole Time he was at *Wells's*, he never saw the Prisoner *Canning*, neither had he ever seen her before his Mother was arrested, which was on *Thursday* the 1st of *February*. Upon his Cross-examination he says, that he cannot recollect where he was the *Christmas* before he set out towards *Dorsetshire*, neither can he recollect the several particular Places through which he travelled, except *Lewes* and *Salisbury*, and some other principal Towns in the West of *England*. He gives an Account of the whole Journey from *South-Parrot* to *Enfield*, except four Days, which is from their Arrival at *Coombe* till they got to *Basingstoke*.

Then, to confirm the Account which *George Squires* has given, they call a great many Witnesses. The first is *John Fry*, who is a Tiler and Plaisterer, and lives at *Litton* in *Dorsetshire*. He says, that he saw a Gypsey the 30th of *December* at one *James Hawkins's*, a Public House; that it was on a *Saturday*. He remembers it, because it was *New Christmas* Time, and the *Monday* following was *New-year's Day*. Is very positive both to *Mary Squires*, her Son, and her Daughter. The Part of the House he saw them in was the Kitchen, and has known *Mary Squires* for thirty Years.

Francis Gladman is called next. He is sure that he saw *Mary Squires*, her Son and Daughter, at *Litton*, in the Morning of the 1st of *January*, for he shaved *George Squires* the *Sunday* before. He remembers the Day particularly, because he was one of the Ringers who rung in the *New Year*. That *Mary Squires* was asked whether she could tell Fortunes, and she said, No. Then he asked her, whether she could speak *Spanish* or *French*? who answered, she could not. The next Witness is

James Angel, who says, that he saw *Mary Squires* and her Daughter at *Hawkins's* at *Litton* on the 31st Day of *December*: But he did not see *George Squires*, because he was gone to *Abbotsbury*. He remembers it, because the *Monday* following he

was called to ring-in the New Year. He did not see *Mary Squires* in the Evening, because she was gone to *Abbotsbury*, which was three Miles from *Litton*. The next Witnesses is

James Hawkins, who remembers that *Mary Squires*, her Son and Daughter, came to his House at *Litton* on *Saturday* the 30th of *December*, and they stayed there all *Sunday*, except *George*, who went to *Abbotsbury* on the *Sunday*; and that *George Squires* and *William Clarke* returned from *Abbotsbury* about Ten or Eleven o'Clock on *Monday Morning*; and after they had dined, they all set out for *Abbotsbury* about Two o'Clock the same Day.

William Clarke is called next, who lives at *Abbotsbury*, and is very well acquainted with *Mary Squires*, her Son and Daughter. He says, that *George Squires* came to him at *Abbotsbury* on *Sunday* the 31st of *December*; he stayed with him there till *Monday Morning*. That he asked *George* after his Sister *Lucy*, who told him, that his Mother and she were at *Litton*. That they both together went to *Litton* next Morning, where they arrived about Three o'Clock. *Mary Squires* was not there upon their first Arrival, because she went towards *Abbotsbury* to meet her Son *George*. That upon her coming back to *Litton*, they all dined together upon a boiled Fowl, and after Dinner he went with them to *Abbotsbury*, and it being the 1st of *January*, they had a Dance at *Gibbons's*, the Sign of the *Ship* there. That *Lucy Squires* was his Partner, and one *Arnold* played on the Music. Is very sure, that both *Mary Squires*, her Son and Daughter, were at *Abbotsbury* upon that Day, and is as sure that they all continued there till *Tuesday* the 9th of *January*, for he saw them there every Day; and upon that *Tuesday* he set out with them on their Journey, and went with them to *Portersham*, and then to *Ridgway*, where he left them at one *Bewley's* House there. That they had Beef-steaks for their Supper, and when he parted with them, *George* borrowed six Shillings of him. That he, the Witness, desired *Lucy* to write to him, and told her how to direct to him. That he has known *Mary Squires*, her Son and Daughter, four Years.

The next is *John Gibbons*, who keeps the Sign of the *Old Ship* at *Abbotsbury*. He says, he knows *Mary Squires*, her Son and Daughter. Has known *Mary Squires* for three Years. Is very positive they were all at his House the 1st of *January*, 1753, in the Evening, dancing. That *George* danced with his Sister, *Lucy* with *Clarke*. That they all stayed at his House from that Time till *Tuesday* the 9th of *January*; and remembers, that while they were there, the Exciseman borrowed *George's* Great Coat to go his Rounds. That they and *Clarke* went away together on *Tuesday* the 9th of *January*. He was a Witness at the Trial of *Mary Squires*, but doth not remember he was asked about the Dancing on the 1st of *January*.

George Clements is called next, who confirms what the other Witnesses have sworn about the Dancing at *Gibbons's*, in every Circumstance. That he saw *Mary Squires*, her Son and Daughter, at *Abbotsbury*, the 2d and 3d of *January*. The *Sunday* following he dined with them at *Gibbons's*. That *Clarke* and they set out together the *Tuesday* following. That he knows them all very well, remembers *Mary Squires* many Years. The next is

Melchisedech Arnold, who is a Blacksmith, and lives at *Abbotsbury*. He saw *Mary Squires*, her Son and Daughter, at *Abbotsbury* the 1st of *Ja-*

nuary, at the *Old Ship* there. Remembers the Dancing that Night, and played on the Fiddle. That *Clarke* was *Lucy's* Partner, and *George* was *Mary Gibbons's* Partner. That he saw them all several Times during the Week they were there, and remembers all the several Circumstances mentioned by the other Witnesses.

John Ford is called next, who is a Carpenter, and lives at *Abbotsbury*; is Uncle to *Gibbons*, who keeps the *Old Ship*, which is the Excise-Office; saw *Mary Squires*, her Son and Daughter, there every Day during their Stay there, which was from the 1st of *January* to the 9th; knows *Mary Squires* as well as his own Mother; that he sells Bread, and they bought their Bread of him during the whole Time they stayed. The next is

Daniel Wallace, who is a Mercer at *Abbotsbury*: He is very positive that he saw *Mary Squires*, her Son and Daughter, at *Abbotsbury* on *Sunday* the 7th of *January*, and that *George Squires* bought Sugar of him; that seeing *Mary Squires*, on the Day of his having bought a new Jack, she asked him to dine with her that Day. Then they call

Hugh Bond, who is a Schoolmaster at *Abbotsbury*; who says, that on the 31st of *December*; being Holiday-time, he went to see his Wife, who was ill in *Devonshire*, and he returned to *Abbotsbury* on *Monday* the 8th of *January*. That he lodged at the *Old Ship*. Is very positive that he saw *Mary Squires*, her Son and Daughter, there that Night, and saw them there next Morning, the 9th of *January*. That he had some Conversation with *George Squires*, along with one *Wake* an Exciseman, who officiated for one *Ward* an Exciseman, who was then sick; and *Wake* lay at the *Ship* in the same Bed where *Ward* used to lie, and that *George Squires* lay in another Bed in the same Room. Then

John Bailey is called, who is a Carpenter at *Abbotsbury*. He says, he has known *Mary Squires* ten or fifteen Years, and has known *George* and *Lucy* three Years. Is very positive that he saw them all at the *Old Ship* there on *Monday* the 1st of *January*; that they continued there from that Time till *Tuesday* the 9th; and that he shaved *George* twice within that Time, and remembers it particularly by his Brother's setting out on the 1st of *January* for *Bristol*, in order to go to Sea. The next is

Thomas Anson, who lives at *Abbotsbury*. He has known *Mary Squires*, her Son and Daughter, about four Years, and is very sure he saw them at the *Old Ship* there on *Friday* the 5th of *January*, and is sure they are the same Persons he had seen four Years before; that *Clarke* was with them, and it was reported that *Clarke* and *Lucy* were Sweet-hearts. Then they call

John Hawkins, who is a Weaver at *Abbotsbury*, who remembers seeing *Mary Squires*, her Son and Daughter, at *Abbotsbury* the 1st of *January* at *Gibbons's*; is certain that they all continued there from the 1st to the 9th of *January*, having seen them every Day; and he particularly remembers the Dancing, and *Arnold's* playing on the Fiddle. Then

Andrew Wake the Exciseman is called, (who is mentioned by some of the former Witnesses.) He says, that he was ordered to officiate as Exciseman at *Abbotsbury* during the Illness of one *Ward*, who was taken sick there. That he went to *Abbotsbury* on *Sunday* the 31st of *December*, to *Gibbons's*, the Sign of the *Ship*, which is the Excise-

Excise-Office; was in Company with *George* and *Lucy Squires*, and *Clarke*, at that House, and on that Day; and that *George* and he lay in the same Room; and that he saw *Mary Squires*, was in Company with her and *Lucy*, and in the same House, on the *Wednesday* following. He also remembers the Dancing at *Gibbons's* on the 1st of *January*, and that *George* and *Lucy* and *Clarke* danced there on that Evening, and particularly remembers that *Arnold* played on the Fiddle; and he being a Dealer in Cyder, he surveyed him; and this Witness being at that Time out of Order, he borrowed a Great Coat of *George*; and that *Mary Squires* ordered something for him to take; and says, that he left the Excise-Books with *Ward*, when he went away from *Abbotsbury*, which was on the 14th of *January*. He then refers to those Books, and swears to the Entries and the Journal. Says, that when he went to Bed at *Abbotsbury*, he always went to his own Room through that where *Mary Squires* and *Lucy* lay, and that he generally saw them every Night during his Stay there. He afterwards went to *Dorchester*, where he saw in the News an Account of *Elizabeth Canning's* being robbed by *Mary Squires* on the 1st of *January*, and that she was found guilty; and that he then immediately said, she could not be the Woman, because he saw her on that Day at *Abbotsbury*. He then went to *Lewes*, and there he received the Commissioners of Excise Orders to attend the then Lord-Mayor in *London*; and upon his Arrival there he went to *Mary Squires*, then in *Newgate*, who immediately knew him, and seemed rejoiced to see him, and put him in mind of all the several Circumstances before-mentioned; and concludes with saying, that she is the same Person that he saw at *Abbotsbury* at the Time he has sworn to. The next is

Francis Aldborough, (who is produced to confirm the Evidence of the last Witness, with respect to the Entries in the Books returned to the Excise-Office by the Excise-Officers out of the Country,) and he produces the Books, by which it appears that the last Witness *Andrew Wake* officiated for *John Ward* (who was ill) during that Time of which *Wake* has given you an Account. The next Witnesses are

William Haines, and *John Haines* his Son, who both prove, that *Mary Squires*, her Son and Daughter, were all at *Portersham* (which is a few Miles off *Abbotsbury*) on the 9th of *January*, and that *William Clarke* was with them, and that they lodged at the Sign of the *Chequer* there: That he invited them to his House, which they refusing, he and one *Chipman*, who was with him, went to them at the *Chequer*: That the Reason of the Father's being so certain of the Day of the Month is, because he went to *Abbotsbury* the Day before, which was the 8th. He is very positive to *Mary Squires*, and has known her for thirty Years. — The Son confirms the Testimony of his Father, in remembering them at *Portersham*, and remembers also his seeing *Mary Squires* at *Abbotsbury* on the 6th of *January*, and that it was wet Weather. From *Portersham* they went to *Ridgway*, which is four or five Miles from *Portersham*. To prove their Arrival at *Ridgway*,

Francis Bewley is called, who keeps a Public House there, who swears, that he saw this Family at *Ridgway* on *Wednesday* the 10th of *January*, about Ten or Eleven o'Clock in the

Morning; that they had Beef-steaks there; that he remembers a Woman whose Horse died there, that he supplied her with another in its Place, and remembers this particular Circumstance of the Horse being drawn out of the Stable to be skinned, and that at that Time *Mary Squires* came into the Yard, and it was a remarkable wet Day; that *Clarke* bargained with a Turnip-man for an Horse to carry him back to *Abbotsbury*. Remembers that *Mary Squires* and her Family being short of Money, desired he would take a Waistcoat they had for the Reckoning, which he did, and which Witness produced it, and has kept it ever since; and that he remembers them both by those Circumstances, as well as by the dead Horse, the Wetness of the Weather, and by its being *Blandford* Sessions, which is always held on the 10th of *January*. Then they call

Thomas Mockeridge, who is the Man that sold Turnips, and whose Horse *Clarke* hired to return to *Abbotsbury*; and he remembers all or most of the above-mentioned Evidence, as to *Mary Squires*, her Son and Daughter, being at *Ridgway* on the 10th of *January*; that they were at one *Bewley's*, the Sign of the *Ship* there; that he remembers *Mary Squires* above three Years before that Time, and is very positive as to the Circumstance about skinning the Horse. The next is

John Taylor, who lives at *Fordington* near *Dorchester*, who swears, that he saw *Mary Squires*, her Son and Daughter, there on *Thursday* the 11th of *January*. Remembers that the Rains had been so great on the 10th, that they could not go along the high Road, but were obliged to go through his Yard; that a Miller's Boy carried the Daughter through the Water on his Horse, and that *Mary Squires* walked through great Part of the Water, and there were three little Rivers to cross. They all told him they lay at *Ridgway* the Night before, and asked him their Way to *Chettle*. The next Witness is

Thomas Hunt, who was threshing in a Barn at *Chettle* on the 12th of *January*, and says, that he knows, and saw *Mary Squires*, her Son and Daughter, there on that Day; that there being no Public House there, he, at their Request, got them Lodgings in an Out-house belonging to Mr. *Watts*, where they lay on Straw, and stayed there till between Nine and Ten o'Clock next Morning; it was very wet Weather, and it was on or about Old New-year's Day. From *Chettle* they went to *Martin*; to prove which

John Elderton is called, who says, that he is Servant to one Farmer *Thane*, who lives at *Martin*, and is positive that *Mary Squires*, her Son and Daughter, by Consent of his Master, lay in an Out-house belonging to his Master; that he saw them all there at Four in the Afternoon on the *Saturday* Se'nnight after Old *Christmas-Day*, and he saw them about Eight o'Clock next Morning; and that his Master saw them at the same Time, of which he would have given Evidence, but was prevented by his being taken ill at *Salisbury*. This last Witness is confirmed by

William Hort in the Circumstances and Facts before-mentioned, with this further, that *Lucy* was next Morning mending some China. The next is

John Blandford, who is a Blacksmith, works for Farmer *Thane*, and is positive that he saw *Mary Squires* at Farmer *Thane's* Barn at the Time the other Witnesses swear to. Then

Joseph Hayter is called, who is a Maltster at *Coombe*, who says, that he met them all upon the Road between *Martin* and *Coombe* on the 14th of *January*, being the *Sunday* next after *Old Christmas*; is positive to *Mary* and *George Squires*, having seen them before; he met them about Eleven o'Clock in the Forenoon, and upon his Return to *Coombe* the same Day, he saw them all at one Mrs. *Greville's*, the Sign of the *Lamb* there. This last Witness is confirmed by

Mary Greville, who was Sister to *Thomas Greville*, who was prosecuted for Perjury, for what he swore at the Trial of *Mary Squires*, but is now dead; and she swears, that she saw them all at *Coombe* on the 14th of *January* at her Mother's, Mrs. *Greville's*, the Sign of the *Lamb* there, and that they lay there that Night, and went away the next Morning. They are also proved to be at *Coombe* on the 14th of *January* by four other Witnesses, the first of whom is

George Towil, who saw them there on the 14th of *January* at Mrs. *Greville's*, the Sign of the *Lamb*.

Richard Aimer, who saw them at Mrs. *Greville's* the Morning they went away, which was the 15th of *January*: And by

Robert Merchant, who saw them there the 14th of *January*: And by

Martba Waters, who saw them there the same Day, and that she asked them to tell her Fortune. From thence they went to *Basingstoke*, which was about forty Miles; and they were four Days in travelling thither; but there is no Evidence laid before you of the several Places through which they went in getting there: But this Chasm will not be very material, if you give Credit to the several Witnesses whose Evidence I have already laid before you; for if you believe that *Mary Squires* was at *Abbotsbury* on the 1st of *January*, which is the Day on which the Perjury is assigned, it is impossible that she could have been at *Enfield* on the same 1st of *January*, which the Defendant swore she was.

Mary Morris is called next, who says, that she lives at *Basingstoke*, and is positive that she saw *Mary Squires*, her Son and Daughter, at her own House there, the Sign of the *Spread-Eagle*, on the 18th of *January*, and has this particular Reason for remembering it, which is, that *Lucy Squires* desired she would write a Letter for her to one *Clarke* at *Abbotsbury*. The Letter was produced, and she swears it was the same she wrote, and which she sent by her little Boy to the Post-Office. She says, that they stayed at her House about four or five Hours, and from thence they set out for *Old Basing*, which is about two Miles from *Basingstoke*. She is very certain as to their Persons, and says that *Mary Squires* had lain once at her House. From thence they went to *Brentford*, and to prove them there,

Elizabeth Edwards is called, who says, that she lives at *Brentford*; that *Mary Squires*, her Son and Daughter, came to her House there on *Saturday* the 20th of *January*; is sure they came on that Day; recollects the Time, because one of her Neighbour's Children was christened on that Day; and on the next Day, being *Sunday*, *George Squires* went to *London* to fetch his other Sister, and brought her on *Monday*, and on *Tuesday* they all went away; is positive to *Mary Squires*, because some Time after she saw her in *Newgate*. The next is

Susannah Burwill, who is Daughter to the last Witness, and confirms her Mother's Evidence in every Particular. From thence they went to a Place called *Page-Green*; to prove which, they call

William Tredget, who keeps the *Seven Sisters*, a Public House at *Tottenham*, four Miles from *London*; is very sure that he saw *Mary Squires*, her Son and Daughter, at *Page-Green* on the 23d of *January*, who told him they wanted Lodgings; that his Wife and he were together; she recommended them to lodge at a Farm-house in that Neighbourhood; and says, that he is certain as to the Person of *Mary Squires*, having seen her three Years before, and had taken Notice of her as the most uncommon Face he had ever seen, and went to see her when in *Newgate*. They then call

Mary Tredget his Wife, who agrees with her Husband in every Circumstance of his Evidence. And the next Day, as appears by the Evidence of *George Squires*, they all arrived at *Enfield*.

The next Piece of Evidence is to prove the Letter sent by the Post, which *Mary Morris* says in her Evidence she wrote to *Clarke* at the Request of *Lucy Squires*; and to prove this, they call

Thomas Ravenhill, who is Clerk of the Western Road, and he proves the Letter to be sent from *Basingstoke* to *London* by the Mark of the Post-Office in *London*; it was sent to *Dorchester*, which is the Post-Town to which *Abbotsbury* is nearest; and that the whole Postage through *London* from *Basingstoke* to *Abbotsbury* amounted to Sevenpence.

The Evidence next proper to be laid before you is that of Mr. Alderman *Chitty*, who was the Sitting Alderman at *Guildhall* upon the 31st of *January* 1753; which was the Day on which *Elizabeth Canning* laid her Information before him of the Treatment she had met with at *Wells's*. The Account she then gave, appears by the Notes he took, which he produced, and which have been already read in Evidence; so that by comparing the Information she laid before him, and the Evidence she gave at the Trial of *Mary Squires*, you will find they differ in many remarkable Circumstances, both as to the Size of the Room she was confined in, the Furniture of it, as well as the Bread and the Water she swears she found and left there. As to the Size of the Room, she swore before him, that it was a square, dark, or darkish Room, furnished in the Manner you have heard; that there was some Water left in the Pitcher when she made her Escape; and that she found in the Room no more than four or five Pieces of Bread, amounting to the Quantity of about a Quartern Loaf: So that, by comparing the Information she then gave, with the Evidence she gave at the Trial of *Mary Squires*, you will find that there is a manifest Contrariety in those two Accounts in many Particulars. The next Witness is

Mr. *Garven Nash*, who says, that upon seeing a very extraordinary Paragraph in the News-paper relating to *Elizabeth Canning*, and being an Acquaintance of Mr. *Lyon*, (who was her Master) he went to Mr. *Lyon* on the 31st of *January* 1753, and hearing that *Elizabeth Canning* was to be examined before Alderman *Chitty* that Day, he went with Mr. *Lyon* to hear the Account she gave; and remembers that being asked by the Alderman, what Sort of a Room she was confined in, her

Answer was, That it was a little, square, dark; or darkish Room, and that there were some Boards nailed before the Windows, through which she saw the *Hertford* Stage-Coachman, who used to carry her Mistress; that there was in the Room a broken Stool, and an Iron Grate in the Chimney, and a few old Pictures over it. She said, that she lay on bare Boards, and that there were several Pieces of Bread which were blue and mouldy, and amounted to about the Quantity of a Quarter Loaf. The Account she gave of her Escape was by pulling down a Board nailed on the Window, and that she hurt her Ear by a Nail in getting out. She said, she heard the Name of Mother *Wells* during her Confinement, and therefore concluded she had been at her House; but she never mentioned the Name of *Virtue Hall* before Alderman *Chitty*. Upon this, the Alderman granted his Warrant, which being backed by a *Middlesex* Justice, *Alaridge*, *Lyon*, *Hague*, and himself, went to *Enfield*, to see it executed. That when they went to *Wells's*, they saw several People in the Parlour there, and having taken a View of several Rooms in the House, they saw a labouring Man there, and asking him if there were not some other Rooms in the House, he pulled a Button off a Door, and opened it, which led up seven or eight Steps into the Hay-loft or Workshop. He is very confident that there was no Lock on the Door, or even the Marks of one, when he went into the Room: It appeared a very long one, and not resembling the Description which *Canning* had given of it, he wondered where the Room was in which she was confined; and upon acquainting his Companions with the Variety of Things he had observed there, (and of which she had not made the least Mention) particularly of the Quantity of Hay, the Nest of Drawers, the Tub or Pollard, the three old Saddles, the Bed made of Hay, where some poor People seemed to have lain, together with the Jack-line and Pullies, the little Chimney, where there did not appear to have been either Hearth or Grate, nor any Pictures over the Chimney, nor the Appearance of any; though he says there was a Window which commanded the great *Hertford* Road, through which might be seen a great Watering-Pond, which was within nine or ten Feet of the Window; and that this Window was in the East Part of the Room, but had not (as he could observe) the least Appearance of ever having been boarded up, and was large enough for him to get out of, and was so near the Ground, that he shook Hands with his Wife out of it when she stood on the Ground, the Casement of which opened and shut very easy, and the Room was light; and if he had hung his Body out of that Window, his Feet could have been at most not above three Feet from the Ground. The East Window looks over a Lane, and Trees grow within Reach of it; and then observing that there was a good deal of Hay, which *Elizabeth Canning* had not mentioned, he told the Company with him, that he was sure that could not be the Room. Afterwards they had an Account brought them, that *Wells*, and *Mary Squires*, and the rest, were secured; upon which, they went to *Wells's*, and being impatient for the Arrival of *Elizabeth Canning*, who was then on the Road, *Adamson* went to meet her, and asked her upon the Road, whether there was any Hay in the Room? who answered, there was a little Hay there; at which

he seemed very much pleased. And a very little Time after this, *Elizabeth Canning* was brought to *Wells's*; and being brought into the Parlour, where the Prisoners then were, she was desired to fix on the Person who robbed her, and she instantly fixed on *Mary Squires*, (but at this Time *Mary Squires* was in such a Situation in the Room, that neither *Canning* nor he could see her Face.) Upon which, *Lucy Squires* said to her Mother, The young Woman (meaning *Elizabeth Canning*) charges you with robbing her. *Mary Squires*, upon that, came across the Room to her, and said, Madam, do you say I robbed you? Pray, look at this Face; for if you had seen it before, you must have remembered it; for God Almighty never made such another. And upon *Canning's* saying that she robbed her on New-year's Day, *Mary Squires* said, Lord! Madam, I was on that Day an hundred and twenty Miles off. Upon which the Witness asked, Where? Her Answer was, That she was at *Abbotsbury* in *Dorsetshire*; and that she could bring a hundred People to prove it, who had known her for twenty, thirty, and forty Years. There was one *Judith Natus* then in the Room, who said, that she, *Judith Natus*, had been in the House ten or eleven Weeks, and that *Mary Squires* had been in the House but a very little Time; and that *Judith Natus* then said, that she had never seen *Canning* before. When she was taken into the Room called the Hay-loft, she said, she remembered a little Hay there, the Pitcher, and a Tobacco-roll; but being asked about the Chest of Drawers, the Tub wherein the Pollard was, and several other Things in the Room, she made no Answer. And being asked, why she did not endeavour to escape out of the East Window, she said, she thought it was fastened. And upon the whole, this Witness tells you, that upon comparing what he had observed at *Wells's*, with the Account which *Canning* gave before Alderman *Chitty*, he was of Opinion, that her Evidence was designedly false, or at least that she was grossly mistaken. On his being asked, why he did not give this Evidence at the Trial of *Mary Squires*? his Answer was, That he was that Day obliged to leave the *Old-Bailey*, to attend the Goldsmiths Company, (having an Employment under them); and being fully satisfied of the Innocence of *Mary Squires*, concluded that she could not be found guilty; and that he declared the Substance of what he has now sworn to several People before that Trial; and being extremely uneasy after her Conviction at his not giving Evidence upon her Trial, he went to Sir *Crisp Gascoyne*, then Lord-Mayor, to whom he disclosed the Whole or the Substance of the Evidence he has now given. The next Witness is

John Hague, who went with the last Witness to *Enfield*, and having told him what passed before Alderman *Chitty*, agreed to go with him, *Aldridge*, and *Lyon*, to *Enfield*. He confirms the Account which *Nash* has given in every Particular; but with this Addition, that during the Time that *Elizabeth Canning* was in the House, till she was carried into the Parlour, (where *Mary Squires*, *Wells*, and the rest were) she never mentioned her being robbed. He says, indeed, that *Elizabeth Canning*, on being asked whether she saw the Person who robbed her, pointed to *Mary Squires*; but he was surprized at her doing so, because, in the Situation *Mary Squires* then was, he thought it impossible she should see her Face. Says, he heard

heard *Mary Squires* express herself (when she was charged with the Robbery) in the Manner *Nash* has mentioned. He describes the Room in the same Manner *Nash* has done; that there was not the least Appearance of a Grate ever having been there, or Pictures over the Chimney. Agrees with *Nash* as to the Windows, Trees, Hay, and Bed there, and likewise the Chest of Drawers, &c. which appeared to have been above a Year there, and that there was only a Button on the Door, and no Lock, no Pent-house under either of the Windows; and then finding that what he saw did not correspond with the Account which *Canning* had given, said to her with some Warmth, Zounds, Child, I cannot think you have been here at all. Upon which *Nash*, *Aldridge*, and he told *Lyon*, that they thought her whole Story was false, which he thinks to be the Reason they were not subpoena'd to give Evidence at the Trial of *Mary Squires*, though he owns he was in Court during the whole Trial. He says, that *Elizabeth Canning* charged *Virtue Hall* and *Lucy Squires*, as being present when her Stays were cut off; but they both very solemnly affirmed at that Time, that they never saw her in their Lives, before she so charged them. He says, he was so greatly affected by the Evidence which *Elizabeth Canning* had given, that he had not Spirits to desire to be called to contradict her. And says farther, that upon *Mary Squires's* being convicted, he could not rest till he applied to the late Lord-Mayor, to acquaint him with the Account he has now given; and that his only Motive in so doing, was that of rescuing the Innocent from Oppression.

The next is *Edward Aldridge*, who is a Silver-smith in *Foster-Lane*, who went with *Nash*, *Lyon*, and *Hague*, the 1st of *February* 1753, and who agrees with the two former Witnesses in every Particular as to the Description of the Room, and is of Opinion, that when *Elizabeth Canning* was first carried there on that Day, that she did not seem to know where she was; and that when she was first taken into the Parlour, *Wells* asked her, if she knew her? Her Answer was, that she did not. And that *George Squires* asked her the same Question as to her knowing him; to which she gave the same Answer: But says, that she charged the old Woman in the Corner of the Chimney (meaning *Mary Squires*) as the Person who cut off her Stays; but is of Opinion, that *Elizabeth Canning* could not at that Time see her Face; and is positive in remembering what *Mary Squires* said as to her being very remarkable in her Person, and of her being at *Abbotsbury* at the Time when *Elizabeth Canning* swore she was robbed. He then made his Observations on the Room called the Hay-loft, and recollects seeing all the Particulars there which *Nash* and *Hague* have mentioned in their Evidence; and says, that from all the Observations he could make, he is convinced that it was not a Place of Confinement. He says, that he went to *Wells's* as a Friend of *Canning's*, at his own Expence; and after laying all the Circumstances attending this extraordinary Case together, he saw one Mr. *Hall*, of *Theobalds*, and told him, that he thought *Elizabeth Canning* was mistaken; for he was sure she never had been at *Wells's*. He says, he was at the *Old-Bailey* Part of the Time of the Trial of *Mary Squires*, but went away to dine with the Goldsmiths Company, concluding that she must have been acquitted, as being quite

innocent of the Robbery with which she was charged. The next Witness is

William White, one of the Marshal's Men, who is one of those who went to *Wells's*, in order to execute the Warrant, and took *Wells*, *Mary Squires*, and the rest into Custody. When they were secured, they desired they might look over their Goods, which they did in his Presence: But he saw no Stays amongst them. He then went into the Hay-loft, where he observed about twelve or fifteen Trusses of Hay, which seemed to have been there a considerable Time; and he also observed all the other Things in the Room, which the other Witnesses have mentioned, and concluded as they did, (for the Reasons you have heard from them) that *Elizabeth Canning* was mistaken. He went under the North Window, out of which she says she escaped; but there were not the least Marks or Footsteps to be seen of any body's getting out of that Window, neither was there the Appearance of any Shed or Pent-house. Was present when *Elizabeth Canning* fixed on *Mary Squires*, and heard both *Mary Squires*, her Son, and her Daughter say, that they were at that Time in *Dorsetshire*; and the other Daughter said, that she was at that Time at her Uncle's in the Borough. The next Witness is

Fortune Natus, who is a poor labouring Man, (and is mentioned by some of the other Witnesses.) He says, that he came to lodge at Mrs. *Wells's* about a Fortnight after Sir *Crisp Gascoyne* was sworn Lord-Mayor, and that he and his Wife lay in the Room called the Workshop or Hay-loft; that his Bed was made of Hay and Straw, and his Bolster a Sack of Wool; and describes the Situation of both Windows in the Room, and that one of them looked into the great Road. He says, that he and his Wife continued in that Room from the 27th of *November* to the 2d of *February* following, except one Night, during which Time he had a very good Opportunity of observing every thing in it; and says, that there was no Grate in the Chimney, but remembers the Nest of Drawers, the Side-saddles, the Tub with Pollard, and many other Things, which he specifies particularly in his Evidence. He mentions the Sign of the *Crown*, which was at the Feet of his Bed, which he says was bought by *Whiffin*; but is positive that there were no Pictures over the Chimney; and says, that he is sure that he lodged there the whole Month of *January*, and continued there till the Warrant was executed on the 2d of *February*, and after; and that he never saw *Elizabeth Canning* there, or any where else, before that Day. He says, that during that Month of *January*, *Wells's* Son and Daughters used frequently to go into this Hay-loft, where he and his Wife lay, for Hay and Pollard, as they wanted; and says, that during his Stay there, *Virtue Hall* was a Lodger in the House; and says, that *Mary Squires*, her Son, and Daughters, had been there no longer than a Week and a Day before they were taken up; and when he is asked why he is so particular, his Answer is, that *Mary Squires's* Person was so remarkable, that it struck a Sort of Terror in him. He remembers the Pitcher, and says, that his Wife, and all *Wells's* Family, used to bring Water in it from Mrs. *Howard's*, which was opposite to *Wells's*; but says, that he never saw a Bed-gown at *Wells's*. He

He was subpoena'd to give Evidence at the Trial of *Mary Squires* and *Wells*, and attended in the Yard at the *Old-Bailey*; but was assaulted there, and was (with some other Witnesses, who attended there on the same Occasion) turned out of the Yard three or four different Times. Then

Judith Natus (who is Wife to the last Witness) is called in, who agrees with the Evidence her Husband has given in every Particular; that they lodged at *Wells's* ten Weeks all but three Days, and continued there till they were all taken up, which was on the 2d of *February*. She is rather more exact than he is as to the Signs; for she says there were two Signs, one the Sign of the *Fountain*, and the other was the Sign of the *Crown*; and that *Whiffin* bought the Sign of the *Crown* some Time (as she believes) before *Old Christmas*, and afterwards bought the Irons of both the Signs, which were not taken away till about a Week before *Mary Squires* and the rest were taken up. When she is shewn the Bed-gown and Handkerchief, she swears that she never (to her Knowledge) saw them before. She remembers all the several Things in the Room, of which her Husband has already given a very exact Account; and says, that she gave the same Account she does now before *Mr. Fielding*; but was so insulted by the Mob at the Time when she attended at the *Old-Bailey* upon the Trial of *Mary Squires* and *Wells*, that she was not able to give Evidence. The next is

Mary Larney, who keeps a Chandler's Shop at *Enfield-Wash*, who says, that she remembers the two last Witnesses lodging at *Wells's* about the Time they have told you. She says, that the first Time she saw *Mary Squires* was on *Wednesday* the 24th of *January*, and she did not see her after till the *Thursday* Se'nnight following; and that during the Time that *Mary Squires* was at *Wells's*, *Lucy Squires* used to buy Chandlery Ware of her.

Sarah Howit is the next, who is *Wells's* Daughter, and swears, that she lived with her Mother that same Month of *January* which *Elizabeth Canning* has fixed on to be the Time of her Confinement; and says, that *Mary Squires* and her Family came to her Mother's on *Wednesday* the 24th of *January*, and remained there till they were taken up. She is positive that *Fortune Natus* and his Wife lodged at her Mother's, in the Hay-loft, both before and after they were all taken up; and that they had been there considerably above two Months in the whole; mentions the Hay and Pollard there, and the Use they were put there for. She is very certain that she lay at her Mother's the whole Months of *December* and *January*, during which Time *Virtue Hall* and she went very frequently into the Hay-loft. Remembers a particular Circumstance of Trees growing against the East Window of that Room, and that upon the 8th of *January*, *Edward Allen*, *Giles Knight*, and *John Larney* lopped them, and at that Time *Virtue Hall* and she both looked out of the Window, the Casement of which, she, the Witness, opened, and that the Trees belonged to one *Richard Allen*. She was present when *Elizabeth Canning* fixed on *Mary Squires* as the Person who robbed her; but says, that at that Time *Mary Squires* was in such a Situation, that it was impossible for her to see her Face. The next Witness is

John Larney, (who is produced to give an Account of the lopping the Trees mentioned by

the last Witness) who says, that he very well remembers that he, *Allen*, and *Knight*, went together on the 8th of *January* 1753, for that Purpose; and that *Knight* lopped them, and told him, that he should have the Lops; and that at the same Time *Sarah Howit* and *Virtue Hall* were looking out of the Window of the Workshop, and that *Allen* flung Dirt at them, which they desired he would not do. He says, he had the Arms of the Trees, and *Wells* had the Spray. He says, that he plaitered up two of the four Windows in the Workshop, and there remained only two, *viz.* one on the East, and the other on the North; that the Window on the East was not above seven or eight Feet from the Ground, and that the Wall was so very thin, being only Lath and Plaster, that any one might have pushed it down. He is very positive to the 8th of *January* being the Day on which the Trees were lopped, because his Child was christened, and he set his Chimney on Fire with the Lops which he burnt on that Occasion. He lives opposite to *Wells's*, and gave this Account before the Trial of *Mary Squires*.

Giles Knight is called next, who says, that he lopped the Trees mentioned by the former Witnesses, and is very positive that he lopped them on the 8th of *January*. Remembers that Circumstance of *Virtue Hall* and *Sarah Howit* looking out of the Window of the Workshop at the same Time, and of Dirt being flung at them, and that *Larney* had the Lops, and *Wells* the Spray, for which she gave them some Beer. Remembers an Accident of one *Mrs. Picket's* Cart breaking down that Day; and says, that the Window out of which the Women looked at that Time was large enough for him to get out of. The next Witness is

Edward Allen, who (as the two former Witnesses swear) was with them at the Time of the lopping the Trees which were near the Workshop, and is very positive to the 8th of *January*; as the other Witnesses have sworn; and particularly remembers that *Virtue Hall* and *Sarah Howit* looked out of the Window of the Workshop or Hay-loft at the same Time; and confirms what they have said in every Circumstance.

John Cantril is called next, who keeps a Public House a little Distance from *Wells's*, and says, that upon this 8th of *January* *Knight* and *Allen* came to his House, and said they had been at Play, throwing Clods at *Sarah Howit* and *Virtue Hall*, who were looking out of a Casement that Day at *Wells's*: He is very particular to that Day, because it happened on a *Monday*, and the *Tuesday* following he had a Piece of Beef, which he intended to roast for his Customers, being *Christmas* Time; and says, that he remembers that *Fortune Natus* and his Wife lodged at *Wells's* between two and three Months. The End of producing this remarkable Piece of Evidence, as to that Circumstance of lopping the Trees on the 8th of *January*, is, that (if these Witnesses swear true) it is impossible that *Canning* could have been alone, or even at all in the Workshop or Hay-loft at *Wells's*, upon the 8th of *January* 1753, which she swore she was, upon the Trial of *Mary Squires* and *Wells*. The next Witness is

Ezra Whiffin, who is referred to by some of the former Witnesses, as being the Person who bought *Wells's* Sign-irons. He lives at *Enfield-Wash*,

Wash, and having Occasion for some Sign-irons, and hearing that *Wells* had some to dispose of, he went to her on the 18th of *January* 1753, who told him they were in the Room called the Hay-loft; he went with her there, and looking about for the Irons, *Wells* said, Now I recollect, the Irons are under the Feet of this poor Creature's Bed, (pointing to the Bed where *Natus's* Wife then lay.) She then took up from under the Bed a Piece of Wood, to which the Irons were then fixed. He agreed to buy the Irons, which his Son took out of the Wood, and brought the Wood back to her. He gives you a Reason for his remembering the Day so particularly, because he was on that 18th of *January* going to a Place called *Wormleigh*, to borrow five Guineas of a Man who kept a Public House there, in order to make up a Sum he then owed his Brewer, (for which he had given a Note, in which one *Livingstone* joined with him) who had arrested him for it. Then *Livingstone* is called, who confirms *Whiffin* in that Circumstance of the Note.

John Whiffin, the Son of *Exra Whiffin*, is called next, who swears that he went with his Father to *Wells's* on the 18th of *January*; and is positive to his taking the Sign-irons out of the Wood by his Father's Orders, and returned the Wood to *Wells* in about three or four Days after. The next Witness is

Elizabeth Long, who is one of *Wells's* Daughters, and lives only three Doors from her Mother, and used to go there every Day. She is very certain that her Sister, and *Virtue Hall*, and *Fortune Natus* and his Wife, lived at her Mother's the whole Month of *January* 1753. She says, she has known the Room called the Workshop above twenty-two Years, and believes she went into it almost every Day during that whole Month. She is very positive to the Hay-bed, the Chimney, (in which there was no Grate) the Pollard, and the rest of the Things mentioned by the other Witnesses. Swears to the Pitcher being her Mother's; but as to the Bed-gown and Handkerchief, she never saw them till she saw them at the Lord-Mayor's. She was in the Parlour at her Mother's when *Canning* was brought in, in order to fix on the Person who robbed her, and gives the same Account of her Behaviour there which you have heard from the other Witnesses. She says, she was in the *Old-Bailey* Yard, together with *Larney* and *Knight*, when her Mother and *Mary Squires* were tried; but they were not suffered to continue there, or give their Evidence. The next is

John Howit, who married *Wells's* Daughter, and is very positive that he was in the Workshop on the 19th, 20th, and 21st of *January* 1753, having some Tools there which he had Occasion to make use of; remembers *Fortune Natus* and his Wife lodging there at that Time, but never saw *Canning* till the Trial of *Mary Squires*. He was at the *Old-Bailey* at the Time of that Trial, but was very near being killed there by the Mob.

Robert White is called, who very well remembers *Fortune Natus* and his Wife lodging at *Wells's* about the Time you have heard.

The next Piece of Evidence laid before you, is the Model of this Hay-loft, or Workshop, (to shew you that it is not a little, square Room, as *Canning* described it before Alderman *Chitty*) which is produced by *John Donoval*, who is a

Surveyor; and it appears to be thirty-five Feet three Inches long, and nine Feet eight Inches over.

Elizabeth Mayle, a Midwife, is called next, who says, that in the Beginning of *February* (being a few Days after *Elizabeth Canning* came Home) she went to make her Mother a Visit, and seeing *Elizabeth Canning* lying on her Bed there, and to all Appearance very ill, and inquiring into the Cause of her Illness, her Mother told her the Condition her Daughter came Home in. *Elizabeth Canning* then told her the whole which had happened to her; and on the Witness's asking her, whether she had been debauched? she answered, that she had lost her Senses, or was in Fits, and could not tell. Upon which she inquired for the Shift she came Home in, and upon its being produced, she asked, if that was the Shift she went away in? and upon being told it was, she immediately said, that she supposed it had been washed since it came Home; but the Mother saying it had not, she said, she thought it appeared a good deal too clean to have been worn so long; for it was uncommonly clean for so long wearing: That upon looking on the Shift, she assured the Mother, that her Daughter had not been debauched, if she had worn no other Shift: But she says, that, in her Opinion, the Shift could not have been worn three Weeks; nay, thinks that a Week's Wear would have made it as dirty as it then appeared; for it was not the least draggled. That there were only three little Spots upon it, which appeared to be Excrement. She said, she made her a few Visits after, and ordered her a Glyster; and on the last Visit she made her, she mentioned the three Spots on her Shift as having the Appearance of Excrement; at which her Mother was very angry, and told her, that she came to set her Friends against her. On being asked the Character of *Elizabeth Canning*, she gave her a very good one. The next Witness is

George Brogden, Clerk to Mr. *Fielding*, and he is produced only to prove the Information, which she swore to before Mr. *Fielding*, and to which she set her Mark; and by that Information it appears, that the Water in the Pitcher was consumed on the *Friday*; but in her Evidence she swears it was consumed the same Day she escaped.

Deputy *Molineux* is called next, who swears, that being with Sir *Crisp Gascoyne*, then Lord-Mayor, at the Mansion-House, some Time after *Mary Squires* was convicted, that *Elizabeth Canning* and *Virtue Hall* were there together; and after Sir *Crisp Gascoyne* had examined *Virtue Hall*, he asked *Elizabeth Canning*, if she had any thing to say? who answered, No. And the Bed-gown and Pitcher being then upon the Table, *Elizabeth Canning* was rolling up the Bed-gown, in order to take it away. My Lord-Mayor then said, she must not take it: Upon which, *Elizabeth Canning* said, It is my Mother's. This surpris'd the Witness very much, because he had heard, that, upon the Trial of *Mary Squires*, she swore, that she had found it in the Chimney at *Wells's*. The next and last Witness is

Mr. *Reed*, who swears, that he was present at the Mansion-House at the same Time which the last Witness mentions, and remembers the several Circumstances mentioned by him, as aforesaid.

Here concludes the Evidence given in Support of this Indictment.

The Council for the Defendant have made many Observations upon the Evidence you have heard, which it is unnecessary for me to repeat; but, upon the whole, insist upon it, that as this Matter has undergone a very strict Examination by a solemn Trial, that therefore any future Inquiry is unprecedented, and consequently improper: However, in order to oppose or contradict a good deal of the Evidence you have already heard, they have called several Witnesses; the first of whom is

Edward Lyon, who says, that *Elizabeth Canning* was his Servant, and continued in his Service till the 1st of *January* 1753; that he has known *Elizabeth Canning* above sixteen Years, and that she always behaved well; that the first Time he missed her was on the 1st of *January* 1753, and that she never had been absent before; upon which he went to her Mother's, but could hear nothing of her. The first Time he saw her after that was upon the 31st of the same Month, when she was under Examination before Alderman *Chitty*; but being thick of hearing, did not know what had passed. He says, that a Warrant being granted, he went to *Enfield-Wash*, with *Hague*, *Nash*, and *Aldridge*. When they arrived there, he was told, that several Persons were secured at *Wells's*; and when he came to *Wells's*, he saw several Women in the Parlour there. That some Time afterwards *Elizabeth Canning* arrived there, and was set upon the Dresser in the Kitchen. He says, he cautioned her very particularly not to charge any one but those she was very sure of. She promised him she would not. She was soon afterwards carried into the Parlour, where they all were. She saw Mrs. *Wells* first, and said, she had nothing to charge her with; but upon seeing *Mary Squires*, she said, she was the Woman who cut her Stays off. He believes she saw her Face before she charged her, (because otherwise he thinks she hardly would have charged her.) Upon this, *Mary Squires* came up to her, and said, she hoped she would not swear her Life away, for she never saw her before: But says, that *Elizabeth Canning* did not at that Time mention the Day upon which she was robbed. She said, that *Lucy Squires* and *Virtue Hall* were in the Room at the same Time she was robbed; and that when she saw *George Squires*, she said, he looked very like the Man who robbed her in *Moorfields*; but she would not swear to him. At this Time he had no Great Coat on; but when he was with his Great Coat on at Mr. *Tasbmaker's*, she was more positive to him, saying, that was the Great Coat, under which he put her Gown when he robbed her in *Moorfields*. He said, for his Part, he never had any Doubt of the Truth of what *Canning* had sworn at the Trial of *Mary Squires*; and says, that he several Times, and with the utmost Seriousness, desired *Elizabeth Canning* would tell the Truth, and not deceive him; and owns that this Affair has been the Means of his breaking off his Acquaintance with *Nash*, *Hague*, and *Aldridge*. He denies his contributing any thing towards the Prosecution of *Mary Squires*. The next Witness is

Thomas Colley, who married *Elizabeth Canning's* Aunt; and says, that upon the 1st of *January* 1753, *Elizabeth Canning* dined at his House upon Mutton, and drank Tea in the Afternoon, eat Toast and Butter, and supped upon cold roast Beef. She lived at that Time with Mr. *Lyon*,

and that he and his Wife went with her at Nine o'Clock that Night, and left her at the End of *Houndsditch*; and about Twelve o'Clock at Night her Mother's Apprentice came to his House, to inquire for *Elizabeth Canning*, which made him conclude she did not get Home.

His Wife, Mrs. *Colley*, is called next, who gives the same Account that her Husband has, with this Addition, that she did not see her from the 1st of *January* till the 30th, when *Elizabeth Canning* was at her Mother's, and complained she was very ill. The next Witness is

Elizabeth Canning, the Mother of the Defendant, who says, that her Daughter had been some Time in Mr. *Lyon's* Service, and that upon the 1st of *January* 1753, she called upon her in her Way to her Uncle *Colley's*; and that pretty late that Evening Mr. *Lyon* called upon her, to inquire for her Daughter. This surprised her a good deal; upon which she sent to *Colley's*, who sent her Word, that they had parted with her at *Houndsditch* at Nine that Night; and says, that she never heard of, or saw her from that Time till the Night before the 30th of *January*, when she came to her House about a quarter after Ten that Night, (though she advertised her three several Times.) She says, that when she came into her House, she was in a most deplorable Condition, her Hands black and blue, and her Face bloated, had on the Bed-gown now produced, and two ragged Handkerchiefs on her Head, neither of which she had ever seen before; her Ear was bloody; that she sent for Mrs. *Woodward*, and some other Neighbours, who came to her; and on her Daughter's being asked, where she had been? she answered, she could not tell, but had seen the *Hertford* Coach from the Place where she was. She said, that she remembered an old Woman and two young Women. She gave an Account of her being robbed, and carried away, and her Confinement; and said, she had nothing at all to support her from the *Friday* before she made her Escape. She gives an Account of her Daughter's Illness, and that she sent for a Physician and an Apothecary. She remembers that her Daughter, on the Night she came Home, mentioned the Name of *Wells* or *Wills*. She mentions the Money her Daughter had in her Pocket at the Time of her going to *Colley*, which I think was between twelve and thirteen Shillings. She says farther, that during her Daughter's Absence, she was advised to go to a Conjuror, who bid her be easy, for she would certainly come Home again, and believes he told her she was in the Hands of an old Woman; but says, that her own Apprehensions were, that she was murdered by the *Jews*, and thrown into *Houndsditch*. She says, that she told her she lay in Hay during her Confinement; that she has only a very moderate Stomach, and has known her frequently to be fourteen Days without going to Stool. Upon this Witness's being asked, whether she did not swear, at the Trial of *Mary Squires*, that her Daughter had a Cap on her Head when she came Home? she answered, she did not; but upon the Short-hand Writer's being asked that Question, his Answer was, that she did, at that Trial, swear, that her Daughter had a Cap on her Head at that Time. At this Time some Notices were produced, and proved to be signed by the Defendant, signifying her Intention to take her Trial at some of the Times mentioned

in some or one of those Notices, and her Name wrote in a very legible Hand; though in the Information before Mr. *Fielding*, nothing more appears but her Mark. After this, a Witness is called, who speaks only to the several Advertisements in the News-papers. The next Witness is

James Lord, (who is Apprentice to *Elizabeth Canning's* Mother) who agrees as to the Time of her being missing, and was sent to several Places to inquire for her; but he did not see her from the 1st to the 29th of *January 1753*; and on that very Night his Mistress went upon her Knees, to pray that she might see even the Apparition of her Daughter; and very soon afterwards the Latch of the Door was lifted up, and *Elizabeth Canning* came in. When he first saw her, he did not know her, she was in such a miserable Condition, much the same as her Mother has mentioned, and particularly her Ear bleeding fresh, (though she had then walked ten Miles) and was almost spent. He went for Mrs. *Woodward*, and others of the Neighbours; and she then told them, that she had been at Mrs. *Wells's* at *Enfield-Wash*, and said, that she had heard People go to and fro in the House, and mention the Name of *Wells* or *Wills*. Then

Robert Scarrat is called, who says, that hearing, on the 29th of *January 1753*, that *Elizabeth Canning* was come Home late that Night, he went to her Mother's, late as it was, to see her. She had a Bed-gown on her; and having heard her asked where she had been, and hearing her Answer, that she had been at a Place from whence she had seen the *Hertford* Coachman, and about nine or ten Miles from *London*, he immediately said, he would lay a Guinea to a Farthing that he guessed where she had been, and then said, he was sure she had been at Mother *Wells's*; upon which she said, she was sure she had heard that Name mentioned in the House where she was confined. She then described the Room to be a longish and darkish Room, (which does not agree with her Description of it before the Alderman.) She then described the Fields through which she passed in her Return Home, a little Brook, and a Tanner's Yard; said that she met a Man, who directed her in her Road to *London*; and described the Woman who cut her Stays to be a tall, swarthy, black Woman, and two young Women in the Room at the same Time. He says, that he went to *Enfield-Wash* the 1st of *February*, and was present when *Elizabeth Canning* was brought into the Parlour, and saw her point to *Mary Squires*, saying, That is the Woman who cut my Stays off; upon which *Mary Squires* said, Dear Madam, take care how you swear my precious Life away; to which *Elizabeth Canning* said, I know you too well to my Sorrow. And on being asked whether she knew any other in the Parlour, she said, that she did not know *George Squires*; but that *Lucy Squires* and *Virtue Hall* were in the Room when her Stays were cut off. He says, that she mentioned some of the Things which were in the Room she was confined in, and pointed to the Window out of which she escaped. Upon his Cross-examination, he says, he never was in the Workshop at *Wells's*, till this 1st of *February*; but owns (with some Difficulty) that he might have been in the House near ten Times, and that he has known *Wells* for about three or four Years. He says, that he heard *Canning* give her Information before Alder-

man *Chitty*, and heard her give Evidence at the Trial of *Mary Squires*, and thinks that her Evidence on the Trial did not vary from her Information before the Alderman; but will not take upon him to give an Account of the Particulars of her Evidence before the Alderman. He owns, that when he was in Service at *Edmonton*, that he rode his Master's Horses to *Wells's*; but disowns his having any Quarrel with her, or saying that he would be revenged on her. And says, that he believes there was no Lock on the Door of the Room called the Workshop. The next is

Mary Myers, who says, that she has known Mrs. *Canning* and her Daughter some Time, and that the Daughter is a very sober Girl. She gives an Account of the Time when *Elizabeth Canning* was missing, and of her Return to her Mother's between Ten and Eleven o'Clock at Night on the 29th of *January*. She tells you the Company she saw there, and the Condition she was in, which was very bad. She says, that she gave the same Account of her being robbed in *Moorfields*, and her being carried to *Wells's*, and of her Treatment there, which you have already heard, and is much the same Account which she gave at the Trial of *Mary Squires*: That she then gave a particular Account of her Escape, which you have also heard; and that she tore her Ear, and the Blood dropped upon her Shoulder after she returned to her Mother's. This Witness says, that she went with *Canning* to *Wells's* on the 1st of *February*, and gives you an Account of her fixing on *Mary Squires* as the Person who robbed her, and what *Mary Squires* then said, as is before mentioned by the other Witnesses then present; that she fixed on the Workshop as the Place of her Confinement; but said, there was at that Time more Hay in it; and that *Adamson* put his Back against one of the Windows there, to try if she could give an Account of the Prospect, which she did, by describing Hills at a Distance. She says, that she looked at *Canning's* Shift, and that it was dirty. Cannot tell the Reason of *Scarrat's* being at Mrs. *Canning's* the Night her Daughter came Home; but says, he lived in that Neighbourhood. The next Witness is

Mrs. *Woodward*, who says, that she was at Mrs. *Canning's* the Night that *Elizabeth Canning* came Home, and was the first Person that came there. She came Home about half an Hour past Ten, the 29th of *January*, on *Monday* at Night, and saw *Scarrat* and *Wintlebury* there; and at *Elizabeth Canning's* Request, she sent for her Master and Mistress *Lyon*, and that *Elizabeth Canning* said to the Witness, Oh! Mrs. *Woodward*, I have been almost starved; I have had only Bread and Water, and have not had even Water since last *Friday*. She was asked where she had been, and said she had been confined in a Room on the *Hertford* Road. She then gave a very particular Account of her being robbed, and of the Treatment she met with from *Mary Squires* at *Wells's*, and of her being confined there. She agrees with the other Witnesses in the Account they gave of the deplorable Condition she was in, and believes her to be as ill as she then appeared to be. That she went with *Elizabeth Canning* to *Enfield-Wash* on *Thursday* the 1st of *February*; and upon *Tuesday* after that, she was so ill, they were forced to put her in a Chair, to carry her to Mr. *Fielding's*. The next Witness is

John Wintlebury, who has known *Elizabeth Canning's*

Canning's Mother about fourteen or fifteen Years. He says, she is a very honest Woman, and that her Daughter *Elizabeth* lived with him as a Servant about eighteen Months; that he saw her the Night she came Home, when she was in a very bad Condition, and had nothing on but a Bed-gown, and a Piece of a Handkerchief upon her Head; that her Ear was bloody; that upon taking her by the Hand, she said, Lord! Sir, you do not know what I have undergone; that then she gave an Account where she had been, by seeing the *Hertford* Stage Coachman: That he was with her when she gave her Information before Alderman *Chitty*, but cannot be particular as to what passed there: That he went on the 1st of *February* to *Wells's* at *Enfield-Wash*, and went into the Room called the Workshop, and observed a good deal of Hay there, which appeared to be fresh tossed up; and says, he arrived there at least an Hour before *Aldridge*, *Hague*, or *Nash*: That upon *Elizabeth Canning's* being carried into the Parlour, she fixed upon, and charged *Mary Squires*, as the Person who cut her Stays off; to which *Mary Squires* made no Answer; but, on the contrary, denies that *Mary Squires* even desired her not to swear her Life away, (which is a Circumstance the other Witnesses have very particularly sworn to): That when *Elizabeth Canning* saw the Door of the Workshop opened, she said, This is the Room I was confined in. He was present when *Adamson* set his Back to one of the Windows of the Room, and examined her about the Prospect; and says, that the North Window seemed to be fresh boarded up. That when he observed *George Squires* in the Parlour, *Elizabeth Canning* thought he was very like one of the Men who robbed her in *Moorfields*; and among eight or nine Women then in the Parlour, she fixed upon *Virtue Hall* and *Lucy Squires*, as being present when her Stays were cut off. He says, he cannot be so particular as to the Account she gave before Alderman *Chitty*, as to that which she gave before Mr. *Tasemaker*; and thinks that the Account she gave before Mr. *Tasemaker* corresponded exactly with the Evidence she gave at the Trial of *Mary Squires*. Upon his Cross-examination, he owns, he did not give so particular an Account at the Trial of *Mary Squires* as he does now; and says, he took little Observation of the Evidence given by her before Alderman *Chitty*. The Witnesses called next is

Joseph Adamson, who has known *Elizabeth Canning* for eleven Years; but had not seen her for three Months, till he went to meet her going to *Enfield-Wash*. He denies his giving her any Information of there being any Hay in the Room; but that she of her own Accord said there was. That when she was taken into the Parlour, she fixed upon *Mary Squires* as the Person who cut off her Stays; and when she was carried into the Workshop, she said, the East Window was fastened up, and she could not open it; and that he made the Experiment by setting his Back to the Window, to know whether she could give any Account of the Prospect; and he observed that the Wood which covered the North Window seemed to be fresh cracked. The next Witness is

Sutherland Bakler, Apothecary, who says, that he saw *Elizabeth Canning* on the 30th of *January*; that she was in Bed, and in a very low Condition; that he administered some Medicines to her, being Glysters; and then Dr. *Eaton*, a Physician,

was sent for; but before the Medicines which the Doctor prescribed had any Effect, she went to *Enfield-Wash*, which was on the 1st of *February*. He says, she appeared to be half-starved, and she did not make Water till after the 6th of *February*. And then they call

Dr. *Eaton*, who says, that he attended *Elizabeth Canning* on the 6th of *February*; that he found her very weak, and that she complained of a Cholic in her Stomach and Bowels; that he thought her in Danger seven or eight Days, but upon the 4th of *March* she was quite recovered; and thought the Symptoms of her Illness proceeded from Hunger, Thirst, Cold, and great Hardships; though he says, that her Disorder might have proceeded from other Causes, and thinks she had a bad Habit of Body. The next Witness is

Robert Beals, who, upon the 1st of *January* 1753, kept the Turnpike on *Stamford-Hill*, which leads from *Moorfields* to *Enfield*; who says, that he was very ill the *Christmas* before; and that the *February* following, his two Children, which are very young, (not above eight or nine Years old) told him, that a Woman had been forced away from *Moorfields* to *Enfield-Wash*, and had been confined there above a Month; upon which he said, Lord! I was at the Gate when she was carried through; and says, that about Ten or Eleven o'Clock at Night, the Beginning of *January*, he heard a sobbing Sort of a Cry about three hundred Yards distant from him; that there appeared to him to be two Men and a Woman; that they did not come through the Gate, but as they were going over the Stile, heard one of the Men say, Come along, you Bitch, you are drunk; and the Woman seeming very unwilling to go over the Stile, one of the Men attempting to lift her over, she fell down, and cried bitterly, but never spoke; one of them held her, and the other pushed her along. She appeared to be a Woman in great Distress, and sobbed and cried bitterly; but, notwithstanding this Distress, he never mentioned it for above six Weeks; and he says, he durst not venture to stop the two Men, because he was alone. He cannot take upon him particularly to say that this was upon New-year's Day; but says, the Gown the Woman then wore was white, though he says there was no Moon that Night. The next Witness is

Thomas Bennet, who lives at *Enfield*, opposite to the ten-mile Stone; and he says, that upon the 29th of *January*, coming towards *London*, between Four and Five o'Clock in the Afternoon, he met a Woman, who appeared miserably poor, at a Gate-way between *Wright's* and *Jenge's*, about a quarter of a Mile on this Side Mrs. *Wells's*; that she had neither Gown, Stays, Cap, or Hat on; that she inquired the Way to *London*, which he directed her: He remembers it by a Circumstance of binding an Apprentice that Day; but says, that he never mentioned this till the *March* following.

David Dyer is called next, who says, that about the same Time he met a poor distressed Creature, and asked her, if she wanted a Husband? and looking upon the Defendant, believes her to be the same Person; that he saw her about Four of the Clock in the Afternoon. She did not appear black in the Face, or at all bruised; but, on the contrary, very pale and thin. Then they call

Mary Cobb, who says, that about three Miles on this Side *Wells's*, in a Field called *Ducks-Field*,

just at the shutting in of Day-light on the 29th of *January*, she met a Woman in a miserable Condition, dressed in a poor dirty Bed-gown, a black Petticoat, and a Bit of an Handkerchief on her Head, who was near falling as she was getting over a Stile; that some Time afterwards, hearing of this Affair, and recollecting the Person she had so met, she concluded that she must be *Elizabeth Canning*; and now, upon looking at her more minutely, believes it was her; for she then observed something particular about the Tip of her Nose, by which she is more certain of her now; that Justice *Tasemaker* asked her about this Affair, to whom she gave the same Account she now does. The next Witness is

William Howard, who is produced in order to shew, that the Witness *Aldridge* had once a different Opinion of *Elizabeth Canning* to that which he has now disclosed in his Evidence. He says, that *Aldridge* and his Brother, a little Time after *Mary Squires* was taken up, brought him the Case of *Elizabeth Canning*, and recommended her as an Object of Compassion, and proposed a Subscription to support her; and that he came to him a second Time on the same Subject; but when he came the second Time, he said, that the Girl (meaning *Elizabeth Canning*) was not so clear in her Description of the Room where she said she was confined. Then

Mrs. *Howard*, his Wife, is called, and confirms what her Husband has said as to *Aldridge's* desiring him to subscribe. She lives opposite to *Wells's*, and believes that she saw *Mary Squires* pass and repass several Times in the Month of *January*; and thinks, that she saw *Mary Squires* and her Family at *Wells's* Door the Sunday Se'n-night before they were taken up, and believes her to be the same Woman now in Court. She owns that she is short-sighted, and that *Mary Squires* and her Family might be fifty Yards Distance from her, when she first saw them; but she thinks that she has seen them pass by her House within the Distance of thirty Yards. The next Witness is

William Headland, who says, that, to the best of his Memory, he was with his Father (who lives at *Enfield-Wash*) some Time before *January* was Twelve-month, and was there when *Wells* and the rest were taken up; and says, that he took a Piece of Lead up, which lay under the Window from whence *Elizabeth Canning* escaped: It was bloody, and he heard that it was the Lead which tore her Ear when she escaped. He cannot tell the exact Day he took it up, but he gave it to his Mother. He says, that he saw *Mary Squires* the 9th of *January* at *Enfield-Wash*, telling Fortunes; and also saw her there on the 12th, doing of the same; and her two Daughters were with her at *Wells's*; remembers it by its being Market-day. He saw her get into the Cart when she was taken away, and saw her in Court, and believes her to be the same Woman he saw there. He says, that he is twenty-one Years old; but though he is so particular in his Account of *Mary Squires*, &c. he gives but a very uncertain Account of himself: For he can scarce (if at all) give an Account with whom he has lived for several Months past before he returned to his Father; neither can he tell us in what Month *Christmas* is; he says indeed, that he lived with one *Allen*, as an hired Servant, ten or eleven Weeks.

Elizabeth Headland, the last Witness's Mother, is called, who only proves, that her Son gave her the Piece of Lead at or a little after the Time that *Mary Squires* and the rest were taken up, and the Blood on it was dry; but she has now lost or mislaid it. The next Witness is

Samuel Story, who (upon looking at *Mary Squires*) says, that he knows her very well, and has seen her several Times, and particularly at an House in *White-Webbs-Lane*, near *Enfield Chace*; and that he saw her on the 23d of *December* 1752, at *Wells's* Door; and says, that his Curiosity led him to see if she was the same Woman he had seen before, and therefore he went within ten Yards of her, and thinks her the same; and afterwards went to see her in *Newgate*, and is still of the same Opinion; and says, that he has occasionally seen her for three Years together, but never spoke to her. He says, that he has seen two young Women with her, and that they all used to wear Blankets, and travel with two Asses and a little Horse. Then

William Smith is called, who lives at *Enfield*, and is a considerable Farmer there. He says, that he saw *Mary Squires* in his Cow-house on the 15th of *December* 1752, and has seen her and her Family about the Country several Times. They came at that Time to inquire for a Lodging. He saw *Mary Squires* next Morning, and there were two young Men and two young Women with her, whom he cannot remember. They lay in his Barn, and were there three Nights and two Days, and had a little black Horse with them, which they lost. He afterwards saw her in *Newgate*, and is positive to her. He is positive that he saw her the 15th of *December*, because he sold some Corn on the 16th. The Witness called next is

Loomworth Dane, who keeps the Bell at *Enfield-Wash*, and says, that he never saw *Mary Squires* till Winter was Twelve-month; and that upon Old *Christmas-Day*, which was the 5th of *January*, as he was standing on an Heap of Gravel, he is sure he saw her at *Enfield-Wash*; for his Servant having an Holiday that Day, he kept Shop; and one *Norion* bought a Collar of him for his Horse, which he entered in his Book, (which Book is not produced) and that is the Reason which he gives of his remembering the Time. He saw her when taken up and put into the Cart, and also in *Newgate*, and is sure she is the same Woman. He is asked about Mrs. *Headland's* Character, (whose Evidence you have heard) which, he says, is not a very good one. The next Witness is

Samuel Arnot, who is a Labourer, and lives on *Enfield Chace*, and says, that upon a *Friday*, about nine or ten Days before New *Christmas*, *Mary Squires* asked him (telling him her Name) for a little brown Horse, which she had lost; and says, that he saw her the *Sunday* after, and that a Man, two Women, and two Children were with her, which Children were not above four or five Years old, and he believes they all lay at *William Smith's*; that he afterwards saw *Mary Squires* in *Newgate*, and is of Opinion that she is the same he then saw. Then they call

Elizabeth Arnot, Wife to the last Witness, who says, that she saw *Mary Squires* in Farmer *Smith's* Cow-house at *Enfield*, about a Week before New *Christmas*, and that she then inquired about her Horse, which she had lost, and that she saw her afterwards in *Newgate*. The next is

Sarah Star, who lives next Door to *Wells's*, and says, that she saw *Mary Squires* at her own House on the 18th of *January* was Twelve-month; but had never seen her before: That she then offered to mend China, and stayed at her House three quarters of an Hour, and wanted to tell her and her Servants their Fortunes, and terrified her very much. She afterwards saw her in the Cart when taken up, and in *Newgate*, and believes her the same Person. She believes she saw her on the 18th of *January*, because she thinks her Husband sold a Load of Pease that Day, and that there was a Note given on that Account; but that Note has not been produced. Then

Daniel Vass is called, who says, that he saw *Mary Squires* go by his House near *Enfield* on Old *Christmas-Day*; she went the Foot-way, and he was then in his own Yard; he looked pretty much at her, and she seemed surpris'd at his doing so. He did not look at her above a Minute, and never saw her before; but he went to her when in *Newgate*, though in a different Dress; yet is sure she is the same Person he saw go by his Yard. The next is

Jane Dadwell, who keeps a Shop at *Enfield*, who says, that she saw *Mary Squires* at her House on *Thursday* the 28th of *December*; knew her very well, for she had been there several Times before; is particular to that Day, because she dressed Meat on *Christmas-Day* for her Customers, and she was then in her Back-house washing her Dishes. She went to see her in *Newgate*, when she owned that she had been at her Shop. The next called is

Tobias Kellog, who lives at *Enfield*, and says, that he saw *Mary Squires* at *Enfield* some Time before Old *Christmas*, (though he is so ignorant, that he cannot tell on what Day of the Month Old *Christmas-Day* was;) but says, he believes he saw her there a Month before she was taken up; he thinks that he saw her three or four Times; that she asked him for Tobacco, and would have told him his Fortune; and that she told one *John Rowley* his Fortune. Then one

John Frame is called, who, in *January* was Twelve-month, lived as a Servant with Mr. *Parsons* in *James's-Street*, *Grosvenor-Square*, who had a Country-House at *Enfield*; and being at Work in the Gardens there on the 11th or 12th of *January* was Twelve-month, *Mary Squires* spoke to him through the Palisadoes, and wanted to tell him his Fortune, which she told him: He is positive to the Time, because his Master and Mistress went to *London* on the 9th of that Month; and says, that he saw her about a Twelve-month before at *Enfield*, and saw her in *Newgate*, and thinks her the same Person. The next is

Joseph Gould, who lives at *Enfield*, and says, that he saw *Mary Squires* on the 8th or 9th of *January* 1753, about a quarter of a Mile from *Wells's*; and hearing from *Virtue Hall* that there were Gypsies at *Wells's*, he took particular Notice of her; and he saw her afterwards in *Newgate*. Then

Mary Gould, his Wife, is called, who says, that she saw *Mary Squires* the 11th or 12th of *January* was Twelve-month, who asked her, if she had any China to mend, and told her she would not live long. She says, she saw her about a Week before she was taken up, and saw her when she (the Witness) was at Work at Mr. *Parsons's*; and also saw her in *Newgate*, and believes her the same. The next Witness is

Humphry Holding, who says, that the first Time he saw *Mary Squires* was on the 8th of *January* 1753; that he is a Gardener, and was at Work at Mr. *Parsons's*, and that the Family went to *London* on the 9th of *January*; and that he saw *Mary Squires* the Day before, who asking him if the Family were at Home, he answered; that they were; and says, that he saw her afterwards on the 11th, when he was pruning Dr. *Harrington's* Vines, and he set down his Day's Work in a Book, because he was not paid for it. She also inquired if the Family had any China to mend. He is desired to produce his Book, which he had not about him; and says, that he was examined two or three Times, but could not possibly recollect the Time of seeing her, because he had not his Book wherein he sets down his Work. He says, that he saw her at Mr. *Tasbmaker's*, and in *Newgate*. Then

Sarah Vass, Wife of *Daniel Vass*, a former Witness, is called, who was a Charewoman at Mr. *Parsons's*, and saw *Mary Squires* on *Thursday* the 11th of *January* 1753: She fixes on that Day, because Mr. *Parsons* went to *London* on the 9th, which was on *Tuesday*; and that she would have told her her Fortune. She also saw her passing by the Day before she was taken up; she then asked her for a Pipe of Tobacco, and had then some Conversation with her; and afterwards saw her in *Newgate*, and is certain she is the same Person. The next Witness (whose Evidence is something particular) is

Anne Johnson, who has lived at *Enfield* some Years, and gets her Living principally by Spinning. She says, that she saw *Mary Squires* on the 18th of *January* 1753, at her Door. The Reason of her fixing upon that Day is, because she spins for one Mr. *Smitheram*, and swears that she carried her Work to him two Days before she saw her, (which was the 16th.) She says, that she saw *Mary Squires* three several Times before that, and in the Compass of ten or eleven Days; and afterwards saw her in *Newgate*. This Witness has also told you, that when her Work was given her to do by Mr. *Smitheram*, and also when she carried it to him after it was done, that it was entered into a Book kept by Mr. *Smitheram*, or by some of his Family, for that Purpose. It was therefore thought proper to call Mr. *Smitheram*, and to inquire whether a Book was kept for that Purpose; and he tells you, that he did employ the Witness *Anne Johnson* in the Business she has mentioned; and he produces a Book, in which are two Columns, in one of which is entered the Yarn which he delivers out, and in the other, that which he receives after it is spun; and upon producing that Book, it is observable, that it is entered, that on *January* the 16th one Pound of Yarn is delivered to *Anne Johnson* to be spun; and in the second Column in the same Book, one Pound of Yarn is entered to be returned on *January* the 23d, by the same Person, *Anne Johnson*, who spun it; so that it is impossible (if Credit is to be given to this Book, to which she herself refers) that she could have seen *Mary Squires* on the 18th of *January*; because she did not carry Home her Work (as appears by the Book) till the 23d of that Month; which is an Observation you will think worthy your Notice, and especially as this is the only written Evidence, referred to by the Defendant's Witnesses which has been produced. They then call

Wife,

Wife, the Wife of *John Bassett*, who says, that she saw *Mary Squires* at *Enfield-Wash* on the 21st or 22d of *January* 1753, and remembers it by a Circumstance of killing an Hog, and of a Servant's leaving her Service at that Time; that she saw her in her own House, and gave her a Penny to tell her Fortune. She saw her afterwards in *Newgate*; and upon a Conversation with *Mary Squires* there, about seeing her, *Mary Squires* told her, she wronged her. The next is

James Pratt, who says, that he saw *Mary Squires*, a Man, two Women, and some Children in Farmer *Smith's* Cow-house, about three Days before New *Christmas*, as near as he can remember, where they continued about three Days; and that *Mary Squires* then complained of the Loss of her Horse. Then they call

Lydia Farroway, who was a Servant to Mr. *Howard* at *Enfield-Wash*, and says, that she saw *Mary Squires* there upon the *Tuesday* Se'nnight before she was taken up, and remembers it by this Circumstance, that she was on that Day making Pies for her young Master's Birth-day; and saw her afterwards in *Newgate*, and thinks she can be certain to her. The next is

Margaret Richardson, who says, that she saw *Mary Squires* at *Enfield* last *January* was Twelve-month, in a Chandler's Shop there, and stayed with her a quarter of an Hour, and left her in the Shop; and she also saw her on Old *Christmas-Day*; remembers it, because her Dog was going to lay hold on her, which her Husband prevented. She appears to be very ignorant; for, being asked in what Month *Christmas* is, she says, she does not know. Then

George Clements is called, who is Servant to Mr. *Star* at *Enfield*, and says, that he saw *Mary Squires* there a Fortnight before she was taken up, and that she wanted to tell his Mistress her Fortune, which frightened her; and says, that he saw her two or three Days after, but no body was with her either of the Times. He afterwards saw her and knew her in *Newgate*, and she asked, what Harm had she done him? The next is

Hannab Fensham, who says, that she saw *Mary Squires* alone at a Place near *Enfield* on the 16th of *January* 1753, and saw her several Times afterwards passing and repassing; and saw her afterwards in *Newgate*.

Elizabeth Sherrard is the next, and she says, that she saw *Mary Squires* at *Wells's* on *Wednesday*, *Thursday*, *Friday*, and *Saturday* next before New *Christmas*; and says, that she saw a young Man and two Women with her, which she believes to be her Son and Daughters. She appears very ignorant, and can scarce give an Account at what Season of the Year *Christmas* is. The next Witnesses is

John Ward, (who is produced in order to prove a Confession made by *Susannah Wells*, at the Time of her Confinement in *Bridewell*, before she and *Mary Squires* were tried) who says, that he went to see her in *Bridewell*; upon her shewing some Surprize at seeing him, he told her, that he saw her Name in the News, and then asked her, how she came to keep the Girl a Fortnight? She, upon that, said, she was there twenty-eight Days. He then asked her, what Room she was in? Her Answer was, that he knew the Room very well, (though he says, that he had not seen it for twelve Years before.) You will consider in what Light this Evidence appears;

for, as it is laid before you by the Defendant to prove *Wells's* Confession of the Fact charged upon her, the Question is, whether it can have that Effect? And in order to determine that, you will observe, he tells her, that the Reason of his Visit was, because he saw her Name in the News-papers, and then asked her, how she came to keep the Girl a Fortnight? Upon which she said, it was twenty-eight Days. Now it is very notorious, that the Account which the Defendant herself gave of her Confinement, as well as the Account given of it in the News-papers, was twenty-eight Days; so that you will take it into your Consideration, whether you will believe this to be a Confession, or whether she spoke from the News-papers, in order to rectify the Witness's Mistake in charging her with confining the Girl (as he then called the Defendant) a Fortnight, when it appeared by the News-papers to be twenty-eight Days. Then

Richard Jones is called, who was with the last Witness to see *Wells* in *Bridewell*, and agrees with him as to the Conversation which passed relating to the Defendant's Confinement in the Terms you have heard. The next Witnesses they call, are

Nathaniel Crumborne, and *Elizabeth* his Wife; and they are produced to prove a Conversation between those Witnesses and *Judith* the Wife of *Fortune Natus*, relating to the present Defendant, which seems very extraordinary; for they tell you, that upon the 21st of *April* last, *Judith Natus* was at their House, and that *Nathaniel Crumborne* said to her, that as she knew that *Elizabeth Canning* was at *Wells's*, how could she go against her? And that the Answer she made was, Indeed, Mr. *Crumborne*, I cannot say but she really was there when we lodged there. I mention this as a very extraordinary Piece of Evidence; because, if what is sworn by this Evidence is true, the Consequence must necessarily be, that not only this *Judith Natus* and her Husband, but many Witnesses, whose Evidence I have already stated to you relating to that Fact of her being there, must be absolutely and wilfully perjured. The next is

Paul Stevens, who is called to prove a Confession which he says *Mary Squires* made in *New-Prison*, and there he says, that *Mary Squires* owned she had been at *Wells's*; but at the same Time said, that she neither cut the Defendant's Stays off, or robbed her; but said, that *Betty Canning* was at *Wells's* about a Fortnight and three Days, and that she was there at the same Time. Now this, as well as all other Confessions, must be taken intire; and if so, it is certain that *Mary Squires* disowns the Robbery, though she owns (if she made this Confession) that *Betty Canning* was at *Wells's* at the Time she was there. This Confession also (if she made it) must appear something wonderful, when you consider the former Evidence.

Then, in order to discredit *Fortune Natus*, they call three Witnesses, viz. *Joseph Haines*, *Paul Chapman*, and *Thomas Green*: The first of them says, that he has in general a bad Character: The second says, that both he and his Wife have but very indifferent Characters, and ought not to be believed upon Oath; but it seems that there has been some Difference between *Chapman* and him about a Note: And the last Witness says, that he believes *Fortune Natus* would swear any thing for Hire. Then, to discredit *Ezra Whiffin*, they have called

William Metcalf, who is a Glazier and Painter, and

and he says, that upon the 8th of *January*, Old Stile, which is the 19th, New Stile, *Whiffin* having employed him to paint his Sign, it was brought Home that Day, and then the Witness told *Whiffin*, that Mrs. *Wells* had got her Sign-irons to sell; and therefore concludes, that if *Whiffin* had bought her Sign-irons on the 18th, which he swore he did, (which was the Day before) he would naturally have told him so. Upon his Cross-examination, he tells you, that he remembers this Circumstance by an Entry in a Book, a Copy of which he produced; but he owns, that the Figures 1753 in that Copy were wrote so late as last *Saturday*. Now to establish the Characters of *Whiffin* and *Fortune Natus*, the Council for the King have called some Witnesses. The first is

Mr. *Smitheram* (who has been called before) who says, that he has known *Whiffin* a Year and an half, and that his general Character is a very good one, and that he does not believe he would forswear himself. Then

Mr. *Barnes* and Mr. *Smart* are called, who both have known him between three and four Years, and agree in giving him the Character of a very honest Man. As to *Fortune Natus's* Character,

Thomas Bell, is called, who says, that he has worked for him about fifteen Months, and that he has always behaved honestly and well, and does not believe he would be guilty of Perjury; and says further, that he has eight Servants, and does not think he has so good a Servant, or one he values so much as he does *Fortune Natus*.

I have now laid before you the Evidence given both on one Side and the other, with all the Exactness I have been able: And as the Verdict you are to give is attended with great Expectation, you will weigh and consider the Evidence you have heard with the utmost Care and Impartiality, and not suffer yourselves to be influenced either by popular Clamour, or by any Apprehensions of the Consequence of doing the Public and yourselves that Justice which is expected from you. 'Tis certain that this Trial has been carried on by different Sets of People, who have interested themselves in it with uncommon Zeal, and whose Passions have led them into the greatest Extremities, as well as the highest Extravagancies, according to the Part they have supported, which has drawn it into an unusual Length, and has given it the Appearance of greater Intricacy and Difficulty than otherwise it could have met with. As you have heard all the Witnesses examined with the utmost Accuracy, and carefully attended to their Evidence; your Verdict will, at least it ought, to give a general Satisfaction in clearing up those Doubts, which this extraordinary Affair has occasioned.

I believe there never happened a greater Contrariety of Evidence (not to give it a worse Name) during the Course of any Trial, than there has in this: However, it is generally so ordered by Providence, that Truth is attended with so strong a Connection and such an invincible Uniformity, that it seldom, if ever, fails in having its due Weight.

It may not be amiss just shortly to recapitulate, and take a View of the Evidence as it has been given, and how it has been applied.

The first Fact they, who are concerned for the Prosecution, undertake to prove, is, that *Mary Squires*, her Son and Daughter, were, upon the

29th of *December*, at a Place called *South-Parrot* in *Dorsetshire*; and that she and they travelled from thence through *Abbotsbury*, (where they stayed from *Monday* the 1st of *January* to the *Tuesday* Se'night following) then arrived at *Wells's* on *Wednesday* the 24th of that Month; and their whole Journey through the several Counties they passed, proved by thirty-eight different Witnesses, confirmed by many Circumstances, who don't appear to have the least Correspondence together, or to act in Concert on this Occasion; but, on the contrary, most of them utter Strangers to each other.

You will then compare *Elizabeth Canning's* Information before Alderman *Chitty*, with the Evidence she gave at the Trial of *Mary Squires*, as to her Description of the Room, as well as the Account she gave of what was in it, and consider how, and in what Particulars, she differed. Then the Principles upon which *Nash*, *Aldridge*, and *Hague* went upon; first in giving her Credit, and then in disbelieving her whole Story after they had taken a View of the Room, and considered the different Accounts she gave, as well as their Opinion how easily she might have escaped, if she had been there. There is another very remarkable Circumstance, which you must remember is proved by four Witnesses, I mean that of lopping the Trees which grew at the Window of the Room she swears herself confined in, which was done on *Monday* the 8th of *January*, at which Time she swore herself in that Room. There is also something very particular as to the Shift she had on, in which she swore she was, at that Season of the Year, dragged to *Wells's*, and worn twenty-nine Days. Besides this, her setting her Mark only to the Information she gave before Mr. *Fielding*, and writing her Name in a fair legible Hand to the Notices she gave of taking her Trial. And added to all this, her attempting to take away the Bed-gown at the Time of her being at the then Lord-Mayor's, insisting upon its being her Mother's. When you have laid this Evidence together, and weighed it with proper Attention, you will then take her Defence into your Consideration, and determine whether she has answered the Crime with which she is charged to your Satisfaction. In the first Place, you will consider, whether the Evidence she gave against *Mary Squires* can possibly be true; and in the next Place, whether you think it probable. As to the first, there is no Sort of Evidence even to assist you in determining whether it is possible for human Nature to subsist for twenty-nine Days together upon no more than a Quartern Loaf, and a Pitcher of Water of the Size you have seen. If you should think this possible, you will then take the Probability of her Defence into Consideration. Her Master *Lyon* tells you, that he differed from the rest of his Companions who went with him to *Enfield*, and that, for his Part, he had no Doubt of the Truth of what she had sworn; and many other Witnesses she has called are of the same Opinion, for the Reasons you have heard them give. Then her Mother, and the Neighbours whom she sent for upon her Daughter's Return, have described her Dress, and have given you an Account of the miserable wretched Condition she was then in, as well as the Account she then gave of her Confinement, and the Place where she was. The Evidence of *Beals*, who kept the Turnpike at *Stamford-Hill*,

is very observable, who says, that he believes *Elizabeth Canning* was dragged through the Turnpike on the 11th of *January*; yet says, that he never spoke of it till six Weeks after; and then closes this Part of her Defence with the Evidence of three Witnesses, who swear that they met her on the Road (as they believe) on her Return from *Enfield-Wash*. And then, to induce you to believe that she was not mistaken in the Person of *Mary Squires*, from whom she swore she met with this severe and cruel Treatment, she has called twenty-seven Witnesses, who all swear, that they saw *Mary Squires* in and about *Enfield* in the Months of *December* and *January*; which, if true, thirty-eight Witnesses, who positively swear to her being in other Places, must be wilfully perjured; but you must remember, that some few of those twenty-seven Witnesses have appealed to written Evidence, such as Entries in Books, none of which (as I recollect) have been produced, except that of *Smithcrum*, which was referred to by *Anne Johnson*, by which it manifestly appears how greatly she was mistaken in her Evidence; and it is very remarkable, that there are not two of these twenty-seven Witnesses who can swear they saw her at the same Time. And, last of all, you will consider the Confessions of *Wells* and *Mary Squires* after they were in Custody; and what *Judith Natus* said a few Days ago relating to this Affair, on which I made such Observations as have occurred to me.

And now, Gentlemen, the whole rests for your Determination; and as it is very observable that you have attended to the Evidence with the greatest Application, and your Characters being such as will not suffer you to deviate from the Paths of Truth and Justice, I can make no Doubt but that you will acquit yourselves as honest Men. If therefore you are of Opinion that the Defendant is guilty of this Perjury, you will find her so; if innocent, you will acquit her.

The Jury withdrew at twenty Minutes after Twelve o'Clock in the Morning, to consider of their Verdict, and returned at fifteen Minutes after Two, and brought in their Verdict, Guilty of Perjury, but *not Wilful and Corrupt*.

Upon which the Recorder told them, "That he could not receive their Verdict, because it was partial; and they must either find her guilty of the whole Indictment, or else acquit her."

Upon which they were sent out again at twenty-five Minutes after Two, and returned at forty-one Minutes after Two; and brought in their Verdict, Guilty of *Wilful and Corrupt Perjury*.

Upon which she was committed by the Court to the Custody of the Keeper of *Newgate*.

On the *Monday* following, the 13th of *May*, she was called to the Bar, in order to receive Sentence; when her Council delivered into Court Affidavits of two of the Jurymen, Mr. *Frome*

and Mr. *Russell*, setting forth that the Verdict given was not according to their Consciences, which were read.

Upon which Mr. *Manning*, the Foreman of the Jury, was sent for by the Court, and asked how this Matter was? who gave the following Account, how they were divided.

"The Foreman then acquainted the Court, "That all of them, *but those two*, were of Opinion she was guilty of the whole Indictment, "but the said *two* did not think she was wilfully guilty, yet nevertheless, thought she was guilty; "but believing somebody had seduced the Girl, "and forged the Story, for her to tell and stand "by, (in short, they all believed so:) And upon "such Belief they found, and gave their Verdict, "Guilty, but *not Wilful*: But were informed "by the Recorder, that he could not take that "Verdict, for they must either acquit her, or "else find her guilty of the whole Indictment.

"That when they withdrew to consider again "of the Charge, the said *two Men* declared they "could not come in to find her guilty of the "whole Indictment; but upon arguing the Case "with them, and telling them, they might as "well find her guilty of the whole Indictment, "they said, they could not agree to it, unless the "rest of the Jury would consent to recommend "her to the Court for Mercy. That then they "all agreed to find her guilty of the whole "Indictment; which they all agreed she was "guilty of before, except the said *two*; and "accordingly gave in their Verdict, *Guilty of "Wilful and Corrupt Perjury*."

Upon which the Prisoner's Council insisted upon a new Trial, which the Court would not agree to. — The Court were divided, and the Recorder read the Act of Parliament concerning the Crime of Perjury, wherein it empowers the Court to sentence the Parties found guilty of the said Crime. — Her Council still insisted it was Law, and that they had a Right to a new Trial, and quoted the Case of *Ashley and Simons the Jew*; where the Jurymen made Affidavits, that the Verdict recorded was by Mistake, and was not what they meant or intended to bring in, and thereupon a new Trial was granted; and farther, that they had something to offer in Arrest of Judgment.

Then the Recorder said, — "As this Case is "so much become a Party Affair, (which I am "sorry to see) I had rather put it off till next "Sessions, that it may be argued before the "same Judges that tried her, who may come "down next Sessions on Purpose." Then the Court agreed to put it off till the first Day of next Sessions, which began *May 30, 1754*.*

At the Session of Oyer and Terminer holden for the City of *London* at *Justice-Hall* aforesaid, on *Thursday* the 30th Day of *May*, 1754, before the Right Hon. *Thomas Rawlinson*, Esq; Lord-Mayor

* After the Court had deferred giving Sentence till the following Sessions, the Friends of *Elizabeth Canning* drew up the following Queries, and laid them before Council.

QUERIES proposed to SOLLOM EMLYN, Esq; Counsellor at Law, (Editor of Hale's Pleas of the Crown, Folio, and of State Trials, 6 Vols. Folio, 1742; and who wrote that admirable Preface prefixed to the last.)

Query 1. Is not *E. C.* surrendering herself voluntarily, when she had nothing to lose by going away, an Argument of her Innocence?

Answer. As a Person's flying from Justice is a Presumption of Guilt, so a voluntary Surrender is, by Parity of Reason, a Presumption of Innocence; but then it is but a Presumption, which may be overthrown by direct positive Evidence.

Q. 2. Is it agreeable to Law, that a Jury, once charged with the Evidence, may be permitted to go at large, before they have delivered in their Verdict?

Mayor of the same City; Sir *John Willes*, Knt. Chief Justice of his Majesty's Court of *Common-Pleas*; Sir *Thomas Dennison*, Knt. one of his Majesty's Justices of the Court of *King's-Bench*; *Edward Clive*, Esq; one of the Justices of his Majesty's Court of *Common-Pleas*; *Henry Legge*, Esq; one of the Barons of his Majesty's Court of *Exchequer*; Sir *Sidney Stafford Smythe*, Knt. one other of the Barons of his Majesty's Court of *Exchequer*; Sir *John Barnard*, Knt. *William Benn*, Esq; Sir *Robert Ladbroke*, Knt. *Francis Cokayne*, Esq; *Robert Alsop*, Esq; Aldermen of the said City of *London*; *William Moreton*, Esq; Recorder of the same City; *Stephen Theodore Janssen*, Esq; *Marshe Dickinson*, Esq; *Robert Scott*, Esq; Sir *Richard Glyn*, Knt. and *William Alexander*, Esq; other the Aldermen of the same City; the Defendant was brought to the Bar, to receive Judgment.

Her Council argued for a new Trial, and to support their Arguments, again quoted the Case of *Ashley and Simons the Jew*, and insisted, That was a Precedent in their Favour. — Judge *Willes* acquainted the Court, “ A new Trial could not be granted, for in the Case of *Ashley and Simons* the Judge there took a wrong Verdict, which was not the Meaning of the Jury; — but in this Case the Verdict was General, and they all abide by it *but two*, who are but weak Men, first to consent and give in their Verdict according to their Oath, and then to recant.” — On which the Motion was over-ruled. — Then the Court were proceeding to Sentence, when Sir *John Barnard* stood up, and recommended her for Mercy, and that her Sentence might only be six Months Imprisonment, for he believed she was not guilty alone; in which seven other Aldermen joined.

Then Judge *Willes* told them, he had observed that Collections had been made for her amounting to considerable Sums of Money; and if her Sentence was only to remain in *Newgate*, there would be such Sums collected, and such Assemblies of an Evening, as would render her Sentence rather a Diversion than a Punishment. — Nor the Pillory he no ways judged safe, fearing much Mischief might be done. — And concluding, that he thought her notoriously guilty. In which Opinion all the other Judges joined, with my Lord Mayor, the Recorder, and two Aldermen, *viz.*

For Transportation.

The Right Hon. *Thomas Rawlinson*, Esq; Lord-Mayor of the City of *London*.

Sir *John Willes*, Knt. Chief Justice of his Majesty's Court of *Common-Pleas*.

Sir *Thomas Dennison*, Knt. one of his Majesty's Justices of the Court of *King's-Bench*.

Edward Clive, Esq; one of the Justices of his Majesty's Court of *Common-Pleas*.

Henry Legge, Esq; one of the Barons of his Majesty's Court of *Exchequer*.

Sir *Sidney Stafford Smythe*, Knt. one other of the Barons of his Majesty's Court of *Exchequer*.

William Moreton, Esq; Recorder of *London*.

Stephen Theodore Janssen, Esq; } Aldermen.

Marshe Dickinson, Esq; }

For Six Months Imprisonment only.

Sir *John Barnard*, Knt. }

William Benn, Esq; }

Sir *Robert Ladbroke*, Knt. }

Francis Cokayne, Esq; }

Robert Alsop, Esq; }

Robert Scott, Esq; }

Sir *Richard Glyn*, Knt. }

William Alexander, Esq; }

Aldermen.

Then

A. I am of Opinion, that though a Jury once charged, may, by Consent of Parties, be discharged wholly from trying the Cause; yet I do not apprehend that the Law will allow them to go at large, in a criminal Case, while the Trial is depending: For though in a long Trial such a Confinement may be inconvenient, yet I cannot find that the Law has provided any Remedy for it; it being in the Eye of the Law a less Inconvenience, than exposing the Jury to be tampered with before they have brought in their Verdict; yet I see not but that they may take Refreshment, and retire to Rest in a Place provided for them, provided that they be guarded by a sworn Officer, that no body be admitted to speak to them.

Q. 3. Is it not necessary upon an Indictment for Perjury, not only to prove that the Fact sworn to is false, but also that the Defendant knew it to be so at the Time of swearing?

A. I think it to be very clear, that a mere mistaken false Oath, without wilful and corrupt Design, is not Perjury, within the Meaning of the Indictment; for the Indictment charges it to be done *falsely, wilfully and corruptly*. Nor did I ever know, hear or read of any one convicted of Perjury, without Evidence to prove a corrupt Design, Plot or Confederacy, or else that the Party must needs know it to be false; as in this Case, if it were proved that *E. C.* was elsewhere at the Time she pretended to be at *Enfield*; for in this she could not swear false through Mistake, as she might with respect to the Person of the Gypsey. Nor is it sufficient that even this Evidence be but of equal Weight with the Defendant's Oath; for that would be but Oath against Oath, which determines nothing, unless it be of superior Weight and Credit; for else, by turning the Tables, the Witnesses might equally be convicted on the Defendant's Oath.

Q. 4. Does the Law require that a Jury charged upon such Indictment, must necessarily bring in their Verdict Guilty or Not Guilty generally?

A. Certainly the Law requires no such Thing; for the Jury may, if they please, bring in their Verdict Special, or Guilty as to Part, and Not Guilty as to other Part. Indeed, if it be only verbosely worded, and amounts in Substance to a General Verdict, it may be right in the Court to tell them, it would be more proper to find it General; but then Care should be taken so to explain it to them, that they may not by a General Verdict find the Defendant guilty of more than they believe or intended to find him.

Q. 5. Does not a finding the Defendant Not Guilty of wilful Perjury, amount to an Acquittal, although they should also find the Party Guilty of swearing falsely, not wilfully?

A. If the Jury really believed the Party innocent of wilful forswearing, this is in Effect a General Verdict of an Acquittal, for this is the only criminal Part of the Indictment; and the swearing falsely, if not with Design and knowingly, is, as I conceive, not criminal in Law: And after this, to find a General Verdict of Guilty, is quite the contrary to their first finding.

Q. 6. Suppose the Jury, through Surprise, Inadvertency, or Mistake, find such a Verdict, is there any Remedy to prevent Judgment in such Case?

A. This is extremely difficult, unless some Error can be shewn upon the Face of the Record, which may be Cause for arresting Judgment. Perhaps the suffering the Jury to go at large in the midst of the Trial may be such a Cause, as being a Mis-trial.

In the Case of Simons, the Polish Jew, upon Affidavits of the Jury, that they did not mean to give such Verdict as was entered (as here, that they did not mean to find the Defendant guilty of that Part of the Indictment, which charges her with wilful and corrupt Perjury, but only that she had in some Part sworn falsely, though not wilfully) the Court did set aside the Trial. — If this be really the Case, the Jury ought however, for disburthening their own Consciences, to make such Representations to the Court, and leave the Effect to them.

When *Elizabeth Canning* addressed the Court with the following speech, with a low Voice, — “that she hoped they would be favourable to her; that she had no Intent of swearing the Gypsy’s Life away; and that what had been done, was only defending herself; and desired to be considered as unfortunate.” Then the Recorder spoke thus:

MR. RECORDER:

Elizabeth Canning, you now stand convicted (upon the clearest Proof) of *Wilful and Corrupt Perjury*; a Crime attended with the most fatal and dangerous Consequences to the Community, though (as yet) it is not punished with Death. Your Trial has taken up a great deal of Time, and the several Witnesses have undergone the strictest Examination; and I think I may venture to affirm, that there is not one unprejudiced Person, of the great Numbers who have attended it, but must be convinced of the Justice and Impartiality of the Jury in the Verdict they have given.

It is with Horror I look back, and think of the Evidence you gave at the Trial of *Mary Squires*, whom you knew to be destitute and friendless, and therefore fixed upon her as a proper Object to make a Sacrifice of, at the dreadful Expence of a false Oath; this you preferred to the making a plain Discovery to those who had a Right to know where you really were those twenty-eight Days of your pretended Confinement at *Wells’s*; and in this you were encouraged to persist, as well by that misapplied Charity, which was bountifully given you in Compassion to your supposed Sufferings, as by the Advice of your mistaken Friends, whom you had deluded and deceived into a Belief of the Truth of what you had falsely sworn.

This audacious Attempt, and that calm and deliberate Assurance with which you formed a Scheme to take away the Life of one (though the most abject) of the human Species, together with your Youth, and the Character you then had, as well as your seeming Inexperience, imposed upon many, and gained you a Credit which must have exceeded your highest Expectations; and being thus abandoned, and thus encouraged, you not only wickedly persevered, but even triumphed over those who would not suffer their Judgments to be misled by so gross an Imposition.

But when at last People had a little recovered their Surprise, and this almost miraculous Tale of yours came to be temperately canvassed and tried, by comparing your own original Information with the Evidence you had given at the Trial, and found to vary in so many material and significant Circumstances; then that Resentment you had raised began to subside, and give way to that most necessary Inquiry (which the worthy Magistrate who then presided in this Court so charitably undertook, and) which in its Consequence not only saved that Life, which by your false Testimony was intended to be taken away, but gave rise to this Prosecution, which must both expose the Guilty, and convince the Doubtful. And as evil Actions have sometimes been productive of unforeseen, nay, even good Effects; so this Iniquity of yours will, I hope, instruct

Mankind not to suffer their Credulity to get the better of their Reason, by giving way to those very early Impressions, which the Artifice of Falshood too often makes.

I shall add but very little more; for I would avoid aggravating your Guilt, which is sufficiently manifest by your Trial, or saying any thing which may increase the Affliction of one whom I must call unfortunate: But as I attended both your Trial, as well as that of *Mary Squires*, it may be expected that I should declare my Thoughts as well of one as the other; I therefore, in the most solemn Manner, affirm, that I always thought your Evidence false, and that the Witnesses produced in your Defence were most grossly mistaken.

The Policy of foreign Countries punishes Offences of this Magnitude with Death, and upon this most rational Principle, that when a Life is attacked by a false Oath, maliciously and deliberately taken, the Punishment to which such a supposed Criminal is thereby exposed, falls upon the Person guilty of so horrid an Attempt: But it is your particular Happiness that you are in a Country, where severe and sanguinary Laws are not so familiar; and though many may expect, and the Court surely could, in this Case, justify the most severe and exemplary Punishment which the Law can inflict; yet you will soon be convinced, that your Sentence is in no Degree adequate to the Greatness of your Offence. The Judgment therefore of this Court is,

That you shall be imprisoned in the Gaol of *Newgate* for one Month; and after the Expiration of your Imprisonment, you shall be transported to some of his Majesty’s Colonies or Plantations in *America* for the Term of Seven Years; and if within that Term you return, and are found at large in any of his Majesty’s Dominions of *Great-Britain* or *Ireland*, you shall suffer Death as a Felon, without Benefit of Clergy.

The following Affidavits were soon after made and published by two of the Jurymen †.

“*Joseph Russell* and *Richard Frome*, two of the Jury for trying the Issue between our Sovereign Lord the King and *Elizabeth Canning*, Spinster, upon an Indictment for Perjury, at, &c. each speaking for himself, and not one for the other, jointly and severally make Oath and say, That these Deponents, and the rest of the Jurors sworn to try the said Issue, agreed in their Verdict first delivered to the Court, and which said Verdict was unanimously agreed to be reduced into, and was accordingly reduced into Writing; and was, that the said *E. Canning* was guilty of Perjury, but not wilful and corrupt; as these Deponents, or either of them, did not apprehend or believe, that she the said *E. Canning* knew or believed the Facts by her sworn in her Evidence against *M. Squires*, upon the Trial of the said *M. Squires*, were not true when she so swore the same. But these Deponents say, they were induced to join in and agree to the Verdict that is recorded, believing that the Words *wilful and corrupt* were mere Matter of Form, and understanding it to be the Opinion of the Court that the

“ said

† From the *Refutation of Sir Crisp Gascoyne’s Address to the Livory*, page 44, 45.

“ said Jury could not bring in their Verdict in
 “ the Manner they did at first, and not from an
 “ Opinion or Belief that the said *E. Canning* had
 “ any Intent to charge the said *M. Squires* falsely,
 “ or maliciously and deliberately to cause or
 “ procure the said *M. Squires* to be untruly
 “ convicted. And these Deponents further say,
 “ that they are very uneasy in their Minds, and
 “ dissatisfied in their Consciences, by finding
 “ that the Verdict delivered by them, and recorded
 “ as aforesaid, is understood and imports a Con-
 “ viction of the said *E. Canning* of deliberate
 “ wilful and intended Perjury, in swearing Facts
 “ which she knew to be false.

JOSEPH RUSSELL.
 RICHARD FROME.”

“ *Joseph Russell*, one of the Jurors sworn to
 “ try the Issue between our Sovereign Lord the
 “ King and *E. Canning*, Spinster, upon an Indict-
 “ ment for Perjury, at the Sessions of Oyer and
 “ Terminer holden for the City of *London*, the
 “ 24th Day of *April* last and the following Days,
 “ at *Justice-Hall* in the *Old-Bailey*, in the Suburbs
 “ of the said City, maketh Oath, and saith,
 “ That when the said Jurors went out of Court
 “ to consider of their Verdict, they began to
 “ examine, from the Notes taken by them in
 “ Court, the Evidence on Behalf of the Prose-
 “ cution; and that when they had proceeded
 “ therein so far as the Testimony of about twelve
 “ or fourteen Witnesses, (to the best of this
 “ Deponent’s Remembrance as to the Number
 “ of such Witnesses) making their Observations
 “ on those whose Testimony either appeared to
 “ deserve Credit, or to be exceptionable, an
 “ Officer (whose Name this Deponent doth not
 “ know) came (as he said) from the Court, to
 “ know whether the Jury were agreed in their
 “ Verdict: Whereupon *William Parsons*, one of
 “ the Jury, said, How can they think we can
 “ agree on a Verdict in so short a Time? Others
 “ of the Jury said, You find the Court is im-
 “ patient, there is a Perjury in the two In-
 “ formations that lie on the Table: Others
 “ declared that was not the Thing they were
 “ come to yet: And one (the Foreman, to the
 “ best of this Deponent’s Remembrance and
 “ Belief) said, If you can make those two Ex-
 “ aminations one Thing, there is no Perjury;
 “ but as one mentions *all the Water to be drunk*
 “ *up-on one Day*, and the other mentions its being
 “ *made an end of on a different Day*, there is a
 “ Perjury: Whereupon it was urged by several
 “ of the Jury, that that was not a wilful and
 “ corrupt Perjury: And it was then (without
 “ further Examination of the Evidence in Behalf
 “ of the Prosecution, or any Examination of the
 “ Evidence in Behalf of the Defendant, or once
 “ reading of the Indictment, or any Mention
 “ being made of the criminal Import thereof)
 “ unanimously agreed to bring in the Defendant
 “ Guilty of Perjury, but not wilful and corrupt.
 “ And he this Deponent then speaking to the
 “ Foreman said, Mr. Foreman, as we have agreed
 “ of a Perjury, but not wilful and corrupt, write
 “ it down, for fear you should make a Mistake
 “ in giving of it in; which the Foreman did
 “ accordingly. And he this Deponent took the
 “ same out of his Hand to read it, and finding it
 “ to be as aforesaid, returned it again. And this
 “ Deponent farther saith, that such Verdict as

“ aforesaid was delivered by the Foreman to
 “ the Court; who being dissatisfied therewith,
 “ directed the Jury to go out a second Time.
 “ And this Deponent further saith, that he cannot
 “ remember particularly what passed or was said
 “ in Court between the Jury’s delivering in their
 “ first Verdict, and going out a second Time to
 “ re-consider it: But saith, that he this Depo-
 “ nent did not see, nor does he believe, that
 “ there was any Copy of the Indictment against
 “ the Defendant *E. Canning* before the Jury; nor
 “ did he hear the Meaning or Purport of such
 “ Indictment once mentioned by a single Person
 “ on the Jury whilst they were considering of
 “ their Verdicts, or either of them: Nor did he
 “ this Deponent at that Time, nor doth he now
 “ believe, that the Defendant *E. Canning* is guilty
 “ of wilful and corrupt Perjury, in swearing
 “ falsely against *Mary Squires*; but saith, that
 “ on comparing and considering the Evidence,
 “ as well on the Part of the Prosecution, as in
 “ Behalf of the said Defendant *E. Canning*, he
 “ then did, and doth now believe, that *Mary*
 “ *Squires* was at the House of Mother *Wells*, at
 “ *Enfield-Wash*, and that she the said Defendant
 “ *E. Canning* was wronged at *Enfield-Wash*. And
 “ this Deponent further saith, that whilst the said
 “ Jury were out a second Time considering of
 “ their Verdict, several of them were for bringing
 “ in the Defendant *E. Canning* Not Guilty, al-
 “ ledging that they did not believe her guilty of
 “ wilful and corrupt Perjury, or of any other
 “ Perjury or Crime, than that of her Variations
 “ in her several Examinations in regard to the
 “ Time of her having drank up her Water as
 “ aforesaid: But the Foreman of the Jury de-
 “ claring they could not bring in the said *E.*
 “ *Canning* Not Guilty, because they had already
 “ found her Guilty of Perjury; it was upon that
 “ Account, and for that Reason and no other,
 “ as this Deponent believes, agreed by the said
 “ Jury, by their said second Verdict, to bring in
 “ the Defendant *E. Canning* Guilty of a Perjury
 “ (no other Reason, Argument or Motive what-
 “ soever being mentioned, to the best of this
 “ Deponent’s Knowledge, Remembrance or Be-
 “ lief, by any one of the said Jury.) And this
 “ Deponent further saith, that he should not have
 “ been induced to join in and agree to such
 “ Verdict, had he known or considered that it is
 “ the Act of the Mind, and not an undesigned
 “ Mistake (to which every one from the Imper-
 “ fection of human Nature is liable) that con-
 “ stitutes the Offence whereof the said *E. Canning*
 “ was indicted; or if he had then considered (as
 “ he ought) that whether the last or Remainder
 “ of the Water was drank on the *Friday* preced-
 “ ing the Day the said *E. Canning* escaped from
 “ *Enfield-Wash*, or but a few Hours before she
 “ made her Escape, it could have no Tendency
 “ to prove the said *M. Squires* guilty; or if she
 “ was guilty, could not aggravate or lessen her
 “ Guilt. And this Deponent further saith, that
 “ when the Jury agreed to such second Verdict,
 “ they agreed earnestly to recommend *E. Canning*
 “ to the Mercy of the Court (which Recommen-
 “ dation was unanimously agreed to by all the
 “ Jury, and not objected to by any one, to this
 “ Deponent’s Knowledge or Belief.) And this
 “ Deponent further saith, that whilst the Jury
 “ were considering of their said Verdicts, he doth
 “ not remember to have heard, nor doth he
 “ believe,

“ believe, any one of the said Jury declared his
 “ Belief that the said Defendant *E. Canning* was
 “ guilty of *wilful and corrupt Perjury*, the Crime
 “ whereof she stood indicted: And that he this
 “ Deponent would not, nor hath he any Reason
 “ to apprehend or believe, that any one of the
 “ said Jury would have agreed to their said first
 “ Verdict; or upon bringing in of the second,
 “ would (in Pursuance of what was previously
 “ and unanimously agreed to as aforesaid) have
 “ recommended the said *E. Canning* to the Mercy
 “ of the Court, had they believed her guilty of
 “ a Crime so heinous in its Nature, and so dan-
 “ gerous in its Consequences, as wilful and
 “ corrupt Perjury, with an Intent to take away
 “ the Life of an innocent Person, which, in the
 “ Opinion of this Deponent, deserves a more
 “ severe Sentence than that passed on the said
 “ *E. Canning*, rather than a Mitigation thereof.
 “ And this Deponent further saith, that after the
 “ said Jury had delivered in their said second or
 “ last Verdict, and before they came out of
 “ Court, *Thomas Ford*, Clerk of the Arraignment,
 “ asked him this Deponent, what he thought of
 “ it now? to whom this Deponent immediately
 “ declared, that he this Deponent believed the
 “ Girl (the said *E. Canning*) was wronged at
 “ *Enfield-Wash* more than ever he did before:
 “ Which Circumstance he this Deponent repeated
 “ in Court on the 13th Day of *May* last, when
 “ he made his first Affidavit relating to the
 “ Verdict of the said Jury, in the Hearing of
 “ the said *Thomas Ford*, who in no wise contra-
 “ dicted the same. And this Deponent further
 “ saith, that the said *William Parsons*, on the 12th
 “ Day of *May*, declared, in the Hearing of
 “ *Richard Frome*, one of the said Jury, *Thomas*
 “ *Hunt*, and him this Deponent, that the Sentiments
 “ of him the said *William Parsons*, respect-
 “ ing the said *E. Canning* and the said Verdicts,
 “ were the same as those of this Deponent as
 “ above stated; but that the said *William Parsons*
 “ had consulted a Friend, who had advised him
 “ not to make any Affidavit, for which Reason
 “ he declined it, or to that Effect. And this
 “ Deponent further saith, that he this Deponent
 “ is an utter Stranger to all the Persons who have
 “ had, or now have, the Direction and Manage-
 “ ment of the Defence of *E. Canning*, (the said
 “ *Thomas Hunt* only excepted, whom this Depo-
 “ nent knew during his Clerkship, being then
 “ his Neighbour, but had not spoken to the said
 “ *Thomas Hunt* during *E. Canning*’s Trial, or for
 “ twelve Months before:) But he had been with
 “ the Mother of the said *E. Canning*, and had
 “ declared to her, and in public, his Dissatis-
 “ faction and Concern at the said Verdict of the
 “ said Jury, and his utter Ignorance of the
 “ Import and Consequence thereof at the Time
 “ he joined in the same: After which the said
 “ *Thomas Hunt* came to him this Deponent, in
 “ order to draw up and settle the Affidavit made
 “ by this Deponent and *Richard Frome*, another
 “ of the Jury, on the said 13th Day of *May* last:
 “ And saith, his making the present Affidavit
 “ proceeds from his own Motion and Free-will;
 “ and that it is made with a strict Regard to
 “ Truth, as well as a sincere Desire to prevent,
 “ as far as in him lies, the said *E. Canning*’s

“ suffering that Infamy and Punishment which
 “ he is fully satisfied she has in no wise merited.

Sworn the 10th Day of
 June, 1754, “before
 me, at my House,

JOS. RUSSELL.”

ROBERT SCOTT.

There were several Pamphlets published at that Time *pro* and *con*, and several Advertisements and Paragraphs published in the public News-papers, relating to this *mysterious Affair*; the Substance of which in general were,—Some asserting not only the Improbability, but the Impossibility of her Story:—Others, That she was with Child, and concealed herself whilst she lay in:—Some, that she was an Enthusiast, and inflamed with wine, whilst in *Newgate*:—Others, that she would have discovered the whole Secret, if she had not been tutor’d and buoy’d up by the Methodists, &c.—And some, that it was a Scheme laid and contrived by some artful Person, to raise Money.—However, no one put their Names to these Publications against her, yet it drew the two following Advertisements; one from the Clergyman that attended her in *Newgate*, and the other from herself*.

“ June 7, 1754.

“ The many Falsities daily propagated in
 “ relation to the Story of *Elizabeth Canning*,
 “ oblige me to acquaint the Public, that soon
 “ after the Commitment of that unhappy Girl
 “ to *Newgate*, I was requested by one of her
 “ Friends to visit her as a Clergyman. I have
 “ visited her often, without giving Notice of my
 “ coming; and always found the Appearance of
 “ Order, Decency, and Sobriety, both in the
 “ Prisoner and her few Attendants. I have con-
 “ versed with her alone, and in the Presence of
 “ her Friends, on the Crime for which she was
 “ indicted; I have read to, and prayed with her
 “ and them; and as she professed herself a
 “ Member of the Church of *England*, she always
 “ joined cordially and earnestly in the devotional
 “ Offices of the Liturgy; nor have I been able
 “ to discover any thing that could give Occasion
 “ to a Charge of Enthusiasm. On the contrary,
 “ the Appearance, the Conversation, and the
 “ Behaviour of *Elizabeth Canning* have, to the
 “ best of my Observation, been always such, as
 “ indicated a Mind not unsettled in the Principles
 “ of Religion, or conscious of flagrant Guilt.

WILLIAM REYNER,

Rector of *St. Mary Magdalen, Old Fish-street.*”

“ June 27, 1754.

“ After being forced, by the most confident
 “ Assertions, to summon a Physician and a Mid-
 “ wife upon my Trial, to clear my Character
 “ from the foulest Aspersions, whose Examina-
 “ tion was made unnecessary by the Testimony
 “ of a Midwife called on the Part of the Prose-
 “ cution; after being prevented examining the
 “ far greater Number of the Cloud of Wit-
 “ nesses ready to appear to my Character, by the
 “ express Declarations of Council retained against
 “ me, that they had nothing to alledge to my
 “ Prejudice but the single Crime for which I was
 “ indicted; after the Public has been assured
 “ that

* *Vide the Refutation of Sir Crisp Gascoyne’s Address to the Livery*, page 47, 49.

“ that *Elizabeth Knott*, who was convicted of
 “ single Felony, was a principal Witness to
 “ prove my Return from *Enfield*, when she was
 “ not subpoena’d or examined, or intended to be
 “ subpoena’d or examined, to that or any other
 “ Fact; after having been represented by the
 “ *Inspector*†, as a Person inflamed with Wine,
 “ and made drunk with Enthusiasm, and as rising
 “ from my Seat, and coming toward a Justice
 “ of the Peace with all the Appearance of begin-
 “ ning an instant and full Confession; § Assertions
 “ that have been publicly proved to be false:
 “ After these Things, there seemed some Room
 “ to hope, that the Torrent of Abuse against me
 “ would have stopped of itself. But being in-
 “ formed that a Report has been diligently
 “ propagated, and prevailed, that I had squeaked,
 “ and declared I would confess or reveal the
 “ whole, upon Condition I was pardoned, and
 “ permitted to conceal Names; and that I had
 “ for Answer, If I expected any Mercy, I must

“ name Names; I am compelled to declare,
 “ and do in the most serious Manner, and with
 “ the strictest Regard to Truth, hereby declare,
 “ that I remain at this Instant of Time fully
 “ persuaded, and well assured, that *Mary Squires*
 “ was the Person who robbed me; that the
 “ House of *Susannah Wells* was the Place in
 “ which I was confined twenty-eight Days; and
 “ that I did not, in my several Informations or
 “ Examinations before the different Magistrates,
 “ or in my Evidence on the Trial of the said
 “ *Mary Squires* and *Susannah Wells*, knowingly,
 “ in any material, or even in the most minute
 “ Circumstance, deviate from the Truth. As
 “ Witness my Hand, this 24th Day of June, 1754.

ELIZABETH CANNING.”

Witness, BENJ. DRAYTON.

However, the Jury’s recommending her to
 Mercy had no Effect, for *Elizabeth Canning* was
 transported in August 1754, (at the Request of
 her Friends) to *New-England*.

† A News-paper published at that Time.

§ Two Justices went to *Newgate*, after the second Verdict, to examine her, viz. Mr. *Thomas Smith* and Mr. *Lediard*, (two *Westminster* Justices.) But she said, she did not chuse to answer them any Questions. See the *Refutation of Sir Crisp Gascoyne’s Address to the Livery*, page 48.

The Case of ASHLEY and SIMONS the Jew, quoted in the foregoing Trial*.

HENRY SIMONS, a Native of *Ostrog*
 in *Volbinia*, near the *Ukraine* in *Poland*,
 landed at *Harwich* in *Essex*, August 8, 1751, from
Holland, with one *Hyam Levi* and another Jew;
 but before they were permitted to go on Shore,
 were examined by the proper Officer, and on a
 Belt round *Simons’s* Body, with a Purse fastened
 to it, were found a large Quantity of Ducats,
 with which he was permitted to pass to *London*;
 and after staying some Days in that City, in order
 to buy Goods, he set out in his *Polish* Dress, on
 the 28th, for *Bristol*, to traffick there. The first
 Night he reached *Cranford* Bridge, (beyond
Hounslow) in *Middlesex*, and put up at the *White-*
Hart Inn, kept by one *Goddard*; where *Simons*
 ordered some Bread, Butter, and Beer for Supper,
 and then told the People of the House in the best
 Manner he could (for he spoke very bad, if any,
English) that he wanted a Lodging, and would
 pay for it; and shewed them his Arms and
 Bosom, that he was clean, and pulled out Money,
 to shew they need not fear their Reckoning;
 whereupon a Bed was ordered for him; and,
 being fatigued, he went early to Bed, and the
 Maid locked his Chamber Door; but very early
 in the Morning he was robbed of five hundred
 and fifty-four Ducats, by two Men, who held a
 Knife to his Throat, and threatened to kill him
 if he made a Noise. On coming down Stairs
 that Morning, he complained heavily of his being
 robbed and ruined, but was only laughed at and
 ridiculed by the Servants of the House; on
 which he returned penniless to *London*; and

acquainting some Friends of it, they got a War-
 rant to apprehend *Goddard* for robbing him; but
 on going down to take *Goddard*, found he was
 gone out of the way to avoid being apprehended;
 but he surrendered against the Sessions; and at
 the *Old Bailey*, in 1751, in Alderman *Cokayne’s*
 Mayoralty, *Goddard* was indicted, for “ that he,
 “ in his own Dwelling-house, on *Henry Simons*
 “ did make an Assault, putting him in corporal
 “ Fear, &c. and stealing from him one leather
 “ Girdle, Value one Penny, and five hundred
 “ and fifty-four Pieces of foreign Coin, called
 “ Ducats, Value two hundred and fifty Pounds.”
Simons swore, that *Goddard* was one of the two
 Men that came into his Chamber, took hold of
 him in Bed, and assisted in the robbing of him;
 but on the Evidence of *Goddard’s* Niece, his
 Servants in the House, one *Thomas Ashley* a Gar-
 dener†, and several neighbouring Gentlemen and
 Innkeepers appearing, and giving him a good
 Character, he was acquitted.

Upon *Goddard’s* Acquittal, he (that *September*
 Sessions) preferred a Bill of Indictment at *Hicks’s*
Hall against *Simons* for Perjury, in swearing an
 Information before Justice *Chamberlayne*, for a
 Robbery against the said *Goddard*; which Bill
 was found by the Grand Jury of *Middlesex*.
 Whereupon a Warrant was obtained from Sir
Crisp Gascoyne, Alderman of *London*, for appre-
 hending him in *London*, which Warrant lay dor-
 mant till *October* 7 following; though he was
 publicly seen about *London*, asking Alms in his
Polish Dress, and had Charity collected for him.

* The Case of *Ashley* and *Simons*, being a very extraordinary one, quoted in the last Trial, and probably may again, on some future Occasion, we shall give the Indictment, and the Affidavits of the Jurymen, to shew how a new Trial came to be granted in a criminal Case; but previous thereto, we shall insert the Case of *Simons* and *Goddard*, as an Introduction to it, to render the whole Affair compleat.

† This *Thomas Ashley*, the Gardener, a Witness for *Goddard* on his Trial, was himself tried in *April* 1752, in Alderman *Winterbottom’s* Mayoralty, for Perjury, for the Evidence he gave at that Trial; and was found Guilty, and sentenced to stand once in the Pillory at the *Sessions-House* Gate for One Hour, to be imprisoned for Twelve Months, after which to be transported for Seven Years.

On October 6, Simons set out for *Harwich* in order to get over to *Holland*, with a meer Trifle in his Pocket, (poor *Jews* paying nothing for their Passage) in his Way Home to *Poland*; how he was apprehended and brought to Trial by Mr. *James Ashley* for a Misdemeanour, will appear afterwards. — In the mean time, it may be sufficient to mention, that some Friends of *Simons* removed the Indictment against him for Perjury, by *Certiorari*, into the Court of *King's-Bench*, at *Westminster*; where, on the 10th of *December*, 1751, he was tried for Perjury by a Special Jury of Gentlemen of the County of *Middlesex*, and acquitted.

The Warrant for apprehending *Simons* on this Charge of Perjury, lay dormant (as before-mentioned) in *Goddard's* Sollicitor's Hands, till *October* 7, when it was called for by Mr. *James Ashley*, an Acquaintance of *Goddard's*, who saw *Simons* on the Road near *Ilford* in *Essex*, on the 6th. — This Warrant, on the Perusal of it, being found for *London* only, the Words *Essex* and were added to it, to make it of Force both in *Essex* and *London*; and with this Warrant Mr. *Ashley* set out, with Mr. *Newman*, and apprehended *Simons* near *Witham* in *Essex*, and brought him to *Chelmsford*, where it was discovered that Sir *Crisp Gascoyne* was no Justice of the Peace for *Essex*; and therefore the apprehending *Simons* on that Warrant in *Essex* illegal: However, the Warrant (after erasing *Essex* and) was backed by the Rev. Mr. *Tindall*, a Justice of the Peace for the County of *Essex*, (on Alderman *Gascoyne's* Hand being proved) though Mr. *Tindall* declined committing him, but advised *Ashley* to carry him to the original Jurisdiction: Whereupon *Simons* was carried to *London*, and committed to *New-Prison*, on the Charge against him of Perjury; and whilst there, Mr. *Ashley* lodged a Detainer against him for putting into his Pocket at the *Saracen's Head Inn* in *Chelmsford* three Pieces of foreign Gold, called *Ducats*, with an Intent to charge the said *Ashley* with a Robbery. However, after *Simons's* Acquittal of the Perjury, he was bailed out on *Ashley's* Detainer; and at the *Lent* Affizes at *Chelmsford* in *Essex*, *March* 12, 1752, the Trial of *Simons* came on before Mr. Justice *Foster*, on the following Indictment.

The Indictment sets forth,

ESSEX. } “ That *Henry Simons*, on the 5th of
 } “ *September*, in the twenty-fifth Year
 “ of his Majesty's Reign, did, in Form of Law,
 “ before *Richard Chamberlayne*, Esq; one of his
 “ Majesty's Justices of the Peace for the County
 “ of *Middlesex*, make his Information in Writing,
 “ by which he did, amongst other Things,
 “ charge and accuse one *Joseph Goddard*, and one
 “ other Person, by the Description of another
 “ Person unknown, of the Crime of Felony and
 “ Robbery, to wit, That the said *Joseph Goddard*,
 “ and the same Person unknown, had lately
 “ before feloniously stolen and carried away
 “ from the said *Henry Simons*, in the Dwelling-
 “ House of the said *Joseph Goddard*, five hundred
 “ fifty-four *Ducats*.

“ Count I. That the said *Henry Simons*, wickedly
 “ devising to vex and aggrieve one *James Ashley*,
 “ of *London*, Merchant, on the 8th of *October*,
 “ in the same Year, with Force and Arms, at
 “ *Chelmsford* in the County of *Essex* aforesaid,
 “ did, secretly and subtilly, put and convey into

“ the right-hand Pocket of the Coat which the
 “ said *James Ashley* had on and wore, three Pieces
 “ of foreign Coin of Gold, called *Ducats*; and
 “ the said *Henry Simons* did afterwards, in the
 “ Presence of divers of his Majesty's Subjects,
 “ falsely charge and accuse the said *James Ashley*,
 “ that he was the same Person who, with the
 “ above-named *Joseph Goddard*, was so, as afore-
 “ said, supposed to have committed the Felony
 “ and Robbery above specified, and to have
 “ stolen and carried away the said five hundred
 “ and fifty-four *Ducats* from the said *Henry Simons*,
 “ with Intention unjustly to cause the said *James*
 “ *Ashley* to be apprehended, and to have it
 “ believed, that he was the same Person who,
 “ with the said *Joseph Goddard*, was so, as afore-
 “ said, supposed to have committed the Felony
 “ and Robbery aforesaid.

“ II. That the said *Henry Simons*, on the said
 “ 8th of *October*, at *Chelmsford* aforesaid, further
 “ wickedly intending to aggrieve the said *James*
 “ *Ashley*, did, privily and subtilly, put and con-
 “ vey into the right-hand Pocket of the Coat
 “ which he then wore, three other Pieces of
 “ foreign Gold Coin, called *Ducats*; and the
 “ said *Henry Simons* did afterwards falsely charge
 “ and accuse the said *James Ashley*, that he had
 “ feloniously taken from him the said *Henry*
 “ *Simons* the same three *Ducats* last-mentioned,
 “ and divers other *Ducats*, with Intention to
 “ cause it to be believed and suspected, that the
 “ said *James Ashley* had been guilty of Felony;
 “ and to cause him to be apprehended and arrested
 “ for the same.

“ III. That the said *Henry Simons*, on the same
 “ Day and Year last aforesaid, at *Chelmsford*
 “ aforesaid, with Force and Arms, did make an
 “ Assault upon the said *James Ashley*, and into
 “ the right-hand Pocket of the Coat which he
 “ then had on and wore, three other Pieces of
 “ foreign Gold Coin, called *Ducats*, he the said
 “ *Henry Simons* did then and there privily, and
 “ without the Knowledge of him the said *James*
 “ *Ashley*, unlawfully put and convey, and cause
 “ to be put and conveyed, with a most malicious,
 “ wicked, and cruel Intention, then and there
 “ falsely to charge and accuse, and to cause it to
 “ be thought and believed, that the said *James*
 “ *Ashley* had robbed him the said *Henry Simons* of
 “ the same.

“ IV. That the said *Henry Simons*, on the same
 “ Day and Year last above-mentioned, with
 “ Force and Arms, at *Chelmsford* aforesaid, upon
 “ the said *James Ashley* did make an Assault, and
 “ into the right-hand Pocket of the Coat which
 “ the said *James Ashley* then and there had on
 “ and wore, three other Pieces of foreign Gold
 “ Coin, called *Ducats*, did privily, and without
 “ the Knowledge of him the said *James Ashley*,
 “ unlawfully put and convey, and cause to be
 “ put and conveyed; and that he the said *Henry*
 “ *Simons* did afterwards, then and there, most
 “ falsely and maliciously charge and accuse the
 “ said *James Ashley* with having robbed him the
 “ said *Henry Simons* of the said three *Ducats*,
 “ with Intent unjustly and wrongfully to subject
 “ the said *James Ashley* to the Pains and Penalties
 “ inflicted by the Laws of this Kingdom for
 “ such-like Offences.”

To this Indictment *Henry Simons* pleaded *Not Guilty*.

Simons had before moved the Court of King's-Bench for a Special Jury, which were as follows:

The Special Jury.

John Morley, of Halsted, Esq;
 John Godsalve, of Great Baddow, Esq;
 Robert Clarke, of Little Baddow, Esq;
 Daniel Stratton, of Bromfield, Esq;
 John Olmius, of Boreham, Esq;
 George Dodson, of Shenfield, Esq;
 Thomas Brograve, of Great Baddow, Esq;
 John Hornby, of Ingatestone, Esq;
 Samuel Ruggles, of Bocking, Esq;
 Peter Godfrey, of Woodford, Esq;
 Pculton Allen, of Barking, Esq;
 Henry Hall, of Hutton-Hall, Esq;

And on the Evidence of Mr. Ashley, Mr. Newman, Isaac Hubbard the Constable, Richard Taylor, and others, he was convicted after a Trial of twelve Hours; the Jury going out about Nine at Night, and not returning till Two in the Morning.

Henry Simons, thus found guilty, and being upon Bail, his Friends, instead of bringing him into Court within the four first Days of the next Easter Term, which began the 15th of April, according to the Condition of the Recognizance, moved the Court of King's-Bench, that Judgment might be respited; and prayed for a Rule, That the Prosecutor might shew Cause, why a new Trial should not be granted: Which the Court did not then come into, there not being then sufficient Reason shewn. Whereupon the following Affidavits were made soon after:

The Jurymen's Affidavits at large.

1. John Merley, of Halsted, in the County of Essex, Esq; saith, he served on the Jury at the Trial of this Cause, at the last Assizes, held, &c. as Foreman of the said Jury; and this Deponent, on the Evidence given on the said Trial, was of Opinion, that the Defendant did put three Ducats into the Prosecutor's Pocket; but did not find the same was done with any Intent whatsoever. — The Deponent saith, the Jury did agree to give their Verdict, That the Deponent was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: But the Deponent hath lately been informed, That the Verdict of the Jury recorded finds the Defendant guilty upon the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats: Whereas this Deponent, and the rest of the Jury, did not find the same was done with any such Intent, or any Intent whatsoever. — The Deponent saith, That the said Verdict, as it now stands, is contrary to the Intent of the Deponent; and therefore the Deponent hath made this Affidavit.

2. John Godsalve, of Great Baddow, in the County of Essex, Esq; saith, he served on the Jury at the Trial of this Cause, &c. That the Deponent, on the Evidence given to him on the said Trial, was of Opinion, That the Defendant did put three Ducats

into the Prosecutor's Pocket; but the same was not done with Intent to charge the Prosecutor with Felony, or Robbery, or other Offence, with any evil Intent. — The Deponent saith, That the Jury did agree to give a Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such Verdict was intended to be given: The Deponent apprehended, That he and the rest of the Jury had given such Verdict: But the Deponent hath since been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats: Whereas the Deponent and the rest of the Jury did not find, that the same was done with such Intent, or any Intent whatsoever. — The Deponent saith, That the said Verdict, as it now stands, is contrary to the Verdict then given in Court. — Saith, he could not rest satisfied with such Verdict, and therefore the Deponent made this Affidavit.

3. Robert Clarke, of Little Baddow, in the County of Essex, Esq; saith, That he served on the Jury at the Trial of this Cause last Assizes, held at Chelmsford, in the County of Essex; and that he was of Opinion, that the Defendant put three Ducats into the Pocket of the Prosecutor; but that the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, or with any evil Intent. The Deponent saith, That the Jury did agree to give their Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: This the Deponent apprehended he and the rest of the Jury had given such Verdict: But the Deponent hath been informed, that the Verdict, as taken down and recorded, finds the Defendant guilty upon the third Count in the Indictment, which, the Deponent is informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and accuse, and cause it to be thought and believed, that the Prosecutor had robbed the said Defendant of the said three Ducats: Whereas the Deponent and the rest of the Jury did not find, that the same was done with such Intent, or any Intent whatsoever. — The Deponent saith, That the Verdict, as it stands, is contrary to the Intent of the Deponent. — The Deponent saith, he could not in his Conscience rest satisfied with such Verdict: Therefore the Deponent made this Affidavit to explain what Verdict he did intend to find.

4. Daniel Stratton, of Bromfield, in the County of Essex, Esq; saith, he served on the Jury at the Trial of this Cause, at the last Assizes, held, &c. That this Deponent, on the Evidence given to him on the said Trial, was of Opinion, that the Defendant put three Ducats in the Prosecutor's Pocket; but that the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, with any evil Intent.

Intent. — The Deponent saith, That the Jury did agree, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given. The Deponent apprehended he and the rest of the Jury had given such Verdict: But the Deponent hath lately been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats: Whereas the Deponent, and the rest of the Jury, did not find the same was done with such Intent, or any Intent whatsoever. — The Deponent saith, The Verdict, as it now stands, is contrary to the Intent of the Deponent. — Saith, he could not rest satisfied with such Verdict; and therefore the Deponent made this Affidavit.

5. *John Olmius, of Boreham, in the County of Essex, Esq;* saith, he served on the Jury at the Trial of this Cause, &c. — That this Deponent, on the Evidence given on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket; but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence.* — Saith, That the Jury did agree, that the Defendant was guilty of putting the said three Ducats in the Prosecutor's Pocket, *by reason it was sworn to that Effect;* and such only was the Verdict intended to be given. The Deponent apprehends such Verdict was given: But the Deponent hath been informed, that the Verdict, as recorded, finds the Defendant guilty upon the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of *putting the said three Ducats into the Prosecutor's Pocket, with a most malicious and cruel Intention, falsely to charge, and cause it to be thought and believed, that the Prosecutor had robbed the said Defendant of the said three Ducats:* Whereas the Deponent and the rest of the Jury did not find the same was done *with any ill Intent whatsoever.* — The Deponent saith, when the Jury came into Court, there was such a Croud and Noise within and without the Court, that the Deponent could not hear distinctly what the Judge, who tried the Cause, said or explained to them. — Saith, that he did not understand the Nature of the third Count of the said Indictment. — Saith, that the Verdict, as it stands, is contrary to the Intent of this Deponent. — The Deponent saith, he could not in his Conscience rest satisfied with such Verdict; and therefore did, together with *Peter Godfrey and Poulton Allen, Esquires,* two others of the Jury, lately wait on the Judge, who tried the Cause, and explained to him what Verdict they intended to find: And also acquainted him, that, by reason of the Noise in the Court, the Deponent could not understand the Judge's Explanation of the said third Count of the said Indictment, or the Nature thereof.

6. *George Dodson, of Shenfield, in the County of Essex, Esq;* saith, he served on the Jury at the Trial of this Cause, at the last Assizes, held, &c. That this Deponent, on the Evidence given him

on the said Trial, was of Opinion, *That the Defendant put three Ducats into the Prosecutor's Pocket; but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, with any evil Intent.* — The Deponent saith, the Jury did agree to give their Verdict, That the Defendant was guilty of putting three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: The Deponent apprehended he, and the rest of the Jury, had given such Verdict: But the Deponent hath lately been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said *three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats:* Whereas the Deponent, and the rest of the Jury, did not find the same was done with such Intent, or any Intent whatsoever. — And the Deponent saith, that when the Judge, who tried the Cause, did explain to the Deponent, and the rest of the Jury, the Nature of the Indictment, the Deponent did reply, *We find guilty of No Intent:* But cannot say, whether the Judge heard him. — The Deponent saith, that the Verdict, as it now stands, is contrary to the Intent of this Deponent. — Saith, he could not rest satisfied with such Verdict; and therefore made this Affidavit.

7. *Thomas Brograve, of Great Baddow, in the County of Essex, Esq;* saith, that he served on the Jury at the Trial of this Cause, at the last Assizes, held at *Chelmsford,* for the County of *Essex;* and this Deponent, on the Evidence given to him and them on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Pocket of the Prosecutor; but that the same was not done with an Intent to prosecute the said James Ashley for Felony or Robbery: The Deponent apprehended he and the rest of the Jury had given such Verdict:* But the Deponent hath lately been informed, that the Verdict of the Jury, as taken down and recorded, finds the Defendant guilty upon the third Count in the Indictment, which, this Deponent is also informed, is finding the Defendant guilty of *putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge and accuse, and cause it to be thought and believed, that the Prosecutor had robbed the said Henry Simons the Defendant of the said three Ducats:* Whereas the Deponent and the rest of the Jury did not find, that the same was done with Intent as aforesaid. — The Deponent saith, that the said Verdict, as it now stands, is contrary to the true Intent of this Deponent: Therefore the Deponent maketh this Affidavit to explain what Verdict they did intend to find.

8. *Joseph Hornby, of Ingatestone, in the County of Essex, Esq;* saith, he served on the Jury at the Trial of this Cause, &c. And that it appeared to the Deponent, on the Evidence given on the said Trial, *That the Defendant did put three Ducats into the Prosecutor's Pocket; but on the Evidence given to the Deponent by Crisp Gascoyne, Esq;* Alderman of *London,* it appeared to the Deponent, *That the same*

same was not done with a malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats, or with any evil Intent. — The Deponent saith, that the Jury agreed to give their Verdict, That the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect; and such was the Verdict intended to be given: And the Deponent apprehended, that such Verdict was given.—The Deponent saith, that, when the Jury came into the Court to bring in their Verdict, *there was such a Croud and Noise in the Court, that the Deponent could not hear what the Judge, who tried the Cause, said or explained to them.* — Saith, he did not understand the Nature of the third Count of the Indictment, for the Reasons aforesaid.

9, 10. Peter Godfrey, of Woodford, and Samuel Ruggles, of Bocking, in the County of Essex, Esquires, severally make Oath, that they severally served on the Jury, at the Trial of this Cause, the last Assizes, &c. and say, that these Deponents, on the Evidence given them on the said Trial, were of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket, but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, or any evil Intent.* — The Deponents say, the Jury did agree to give their Verdict; that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect.—The Deponents apprehended, that they, and the rest of the Jury, had given such Verdict: But the Deponents have been informed, that the Verdict of the Jury, as is recorded, finds the Defendant guilty on the third Count in the Indictment, which, the Deponents are also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats: Whereas, when these Deponents, and the rest of the Jury, came into Court, there was such a Croud and Noise, that the Deponents could not hear distinctly what the Judge, who tried the Cause, said or explained to them. — Say, that they did not understand the Nature of the third Count of the said Indictment, for the Reasons aforesaid; the Deponents say, that the Verdict, as it now stands, is contrary to the Intent and Meaning of these Deponents. — This Deponent, Peter Godfrey, for himself, saith, he could not rest satisfied with such Verdict; therefore this Deponent did, together with John Olmius and Poulton Allen, Esquires, two others of the Jurors, wait on the Judge, who tried the Cause, and explained to him what Verdict they intended to find; and also acquaint him, that, by reason of the Noise in the Court, this Deponent could not understand the Judge's Explanation of the said third Count of the said Indictment, or the Nature thereof.

11. Poulton Allen, of Barking, in the County of Essex, Esq; saith, that the Deponent served on the Jury at the Trial of this Cause, &c. That the Deponent, on the Evidence given to him on the said Trial, was of Opinion, *That the Defendant*

did put three Ducats into the Prosecutor's Pocket; but the same was not done with Intent to charge with Robbery, or Felony, or any other Offence. The Deponent saith, that the Jury did agree to give a Verdict, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, by reason it was sworn to that Effect.—The Deponent apprehended, he and the rest of the Jury had given such a Verdict: But the Deponent hath lately been informed, that the Verdict, as is recorded, finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge and accuse, and cause to be believed, that the Prosecutor had robbed the said Defendant of the said three Ducats: Whereas the Deponent, and the rest of the Jury, did not find the same was done with such Intent, or any ill Intent whatsoever.—The Deponent saith, when the Jury came into Court to give their Verdict, there was such a Croud and Noise, that the Deponent could not hear distinctly what the Judge, who tried the Cause, said to them. — The Deponent saith, he did not understand the Nature of the third Count of the said Indictment, which the Deponent could not, for the Reason aforesaid, hear the Judge explain. —The Deponent saith, that the said Verdict, as it stands, is contrary to the Meaning of this Deponent.—The Deponent saith, that he could not be satisfied with such Verdict: Therefore the Deponent did, together with Peter Godfrey and John Olmius, Esquires, two other of the Jurors, wait on the Judge, who tried the Cause, and explain to him what Verdict they intended to find; and also acquaint him, that, by reason of the Noise in the Court, the Deponent could not understand the Judge's Explanation of the said third Count of the said Indictment.

12. Henry Hall, of Hutton-Hall, in the County of Essex, Esq; saith, he served on the Jury at the Trial of this Cause, the last Assizes, &c. That the Deponent, on the Evidence to him given on the said Trial, was of Opinion, *That the Defendant did put three Ducats into the Prosecutor's Pocket, but the same was not done with Intent to charge the Prosecutor with Robbery, or Felony, or any other Offence, with any evil Intent.* — The Deponent saith, that the Jury did agree, that the Defendant was guilty of putting the said three Ducats into the Prosecutor's Pocket, as sworn to that Effect; which was the Verdict intended to be given. The Deponent apprehended, he and the rest of the Jury had given such Verdict: But the Deponent hath been informed, that the Verdict recorded finds the Defendant guilty on the third Count in the Indictment, which, the Deponent is also informed, is finding the Defendant guilty of putting the said three Ducats into the Prosecutor's Pocket, with a most malicious, wicked, and cruel Intention, falsely to charge, accuse, and cause it to be believed, that the Prosecutor had robbed the Defendant of the said three Ducats: Whereas the Deponent, and the rest of the Jury, did not find the same was done with any such Intent, or with any Intent whatsoever. — The Deponent saith, that the said Verdict is contrary to the Intent of this Deponent. —The Deponent saith, he could not rest satisfied with

with such Verdict; and therefore he made this Affidavit.

John Morley, of Halsted, Esq;	} Sworn 23d of April, 1752, by Richard Rayment, Commissioner, at their own Houses.
Rob. Clarke, of Little Baddow, Esq;	
Tho. Brograve, of Great Baddow, Esq;	
John Godsalve, of Gr. Baddow, Esq;	
John Olmius, of Boreham, Esq;	} Sworn the same Day, by the said Commissioner, at the Saracen's Head Inn, Chelmsford.
Daniel Stratton, of Bromfield, Esq;	
George Dodson, of Shenfield, Esq;	} Sworn 22d of April, by Brown Chambers, Commissioner, at their own Houses.
Henry Hall, of Hutton-Hall, Esq;	
Poulton Allen, of Barking, Esq;	} Sworn 22d of April, before Judge Wright.
Peter Godfrey, of Woodford, Esq;	
Samuel Ruggles, of Bocking, Esq;	
John Hornby, of Ingatestone, Esq;	} Sworn 27th of April, in Court.

An Affidavit tending to prove the Jury's due recording Henry Simons's Conviction in public Court.

Cornelius Norton, of Red-Lion-Street, Clerkenwell, in the County of Middlesex, Solicitor for the Prosecutor in this Cause, maketh Oath, and saith, He was present in Court when the Jury, who tried this Cause, publicly delivered their Verdict: The Deponent saith, The Account thereof, and the whole Transaction relating thereto, is hereafter impartially set forth, according to the best of the Deponent's Knowledge and Belief.—First, the Deponent saith, That about One of the Clock of the next Day, after this Cause was tried, the Jury, who tried the same, having assembled together, came into open Court, and, having been called over, respectively answered to their Names: They were asked by the Associate, Whether they did abide by the Verdict they gave his Lordship in private? To which the Foreman of the Jury, or one of them, answered, They did. Upon which the Associate replied, Then this is the Verdict, You find the Defendant guilty. By which this Deponent understood, they found the Defendant guilty generally on the Indictment. For immediately thereon, the Honourable Mr. Justice Foster, who tried the Cause, got up, and told the Jury, That he apprehended they could not find the Defendant guilty of the whole Indictment; for that the Prosecutor had not given Evidence to support the first and second Count laid in the Indictment: But he thought there was Evidence to support the third Count: And then the said Mr. Justice Foster took great Care and Pains to explain the Difference between the several Counts, and declared it, as his Opinion, That, if they found the Defendant guilty of the said third Count, they should acquit him of the rest.—Whereupon George Dodson, Esq; who was one of the Jury, declared himself to the Court, That they found the Defendant guilty of No Intent, or to that Effect.—To which the Honourable Judge replied, Then you must acquit him; for it is the Intent constitutes the Offence, or to that Purpose: And recommended it to the Jury to go out, and

reconsider of their Verdict.—In Answer whereto one of the Jury replied, My Lord, we have considered it as much as we could consider it.—The Deponent saith, He believes that thereupon the Judge read, or ordered to be read, the said third Count; and asked the Jury, *If they believed the Witnesses?* and some one or more of them answering, *They did;* the Judge said, Gentlemen, you must connect the whole Evidence together. Whereupon the Jury appeared to the Deponent to consider of what the Judge said to them; and in a short Time, as the Deponent apprehends, brought the Defendant in *guilty of the third Count in the Indictment*, and acquitted him as to the rest: And the Verdict recorded in that Manner.—The Deponent saith, That, after the Verdict so recorded, they were desired to hearken to it: The Associate said, Gentlemen of the Jury, you find the Defendant *guilty of the third Count in the Indictment*, and acquit him of all the rest.—In Answer to which, they some one or more of them answered, *Yes;* and withdrew from the Bar seemingly well satisfied.—Saith, He stood very near to the Jury, when they delivered their Verdict, and heard distinctly the whole that passed on that Occasion: And the Deponent *does not remember, in his Conscience, that there was a great Croud or Noise in the Court at that Time.*—Saith, That the whole Transaction above related is impartially set forth, as the Deponent believes: And that, if the Deponent hath made any Mistake therein, positively saith, it is not by Design: And humbly submits the Truth thereof to the honourable Judge who tried the said Cause.

Sworn before
Judge FOSTER.

C. NORTON.

These Affidavits of the Jury being obtained, another Application was made to the Court of King's-Bench; whereupon the Court was pleased to make a Rule for Mr. Ashley to shew Cause, why a *new Trial should not be granted?* which being spoke to by Nine several Counsel, who took up the Court several Days in the Hearing, the Court was pleased to adjudge a *New Trial*.*

Accordingly a second Trial came on for the same Fact, at Chelmsford Assizes, July 12, 1752, before Mr. Justice Dennison, by a Special Jury, on the same Indictment.

The Names of the Special Jury.

Walter Vane, Esq;
Thomas Smith, Esq;
Robert Andrews, Esq;
Samuel Savill, Esq;
Thomas Stubbing, Esq;
Joseph Clarke, Esq;
Thomas Sewell, Esq;
Matthew Howland, Esq;
Bennet Clere-Rand, Esq;
John Lawton, Esq;
Talesmen, { George Mead, Esq;
 { Samuel Pilbrow, Carpenter.

* "Which (says J. Ashley) is the first Precedent of the Kind to any Person who had been convicted of a criminal Offence." See Ashley's Case and Appeal, page 23. In the same Page he adds, "In the mean time, Actions having been brought (by Simons) against me (J. A.) as the Prosecutor, Isaac Hubbard the Constable, Richard Taylor and John Newman, on account of altering the Warrant, and thereby ignorantly detaining the said Henry Simons in Custody, till the Warrant was properly backed (by a Justice of Peace for the County of Essex;) this Cause was tried before the Lord Chief Justice Lee, at Guildhall, London, July 9, 1752; when the Jury gave a Verdict for Two Hundred Pounds against me, (J. A.) Richard Taylor, and John Newman; and the Costs were taxed at 70l.

The Evidence for the Prosecution was much the same as in the former Trial. And the Defendant called no Witnesses to invalidate what the Prosecutor's Witnesses had proved; but set up for a Defence, that *Ashley* was seen in *Duke's-Place*, shewing some Ducats, and desiring to know the Value of them. On which Mr. *Ashley* was called, and swore he had not been in *Duke's-Place* for seven Years, had never seen a Ducat (till those produced at *Chelmsford*) and contradicted what *Simons's* Witnesses had sworn. Then several *Jews* were called to his Character; who said, he was a very honest, religious Man; very poor, and obliged to pawn his Veil through Necessity. Upon the whole, on this second Trial, the Jury acquitted *Simons*.

There were at this Time several Pamphlets and Paragraphs in the News-papers published on both Sides about this *mysterious Affair*, which has never yet been cleared up: However, it is certain, *Simons* found great Friends, who assisted him in six Trials, in less than a Twelvemonth, viz.

1. *Simons* against *Goddard*, for a Robbery, *Sept.* 1751.
2. *Goddard* against *Simons*, for Perjury, *Dec.* 10, 1751.
3. *James Ashley* against *Simons*, for a Misdemeanor, *March* 12, 1752.
4. *Simons* against *Thomas Ashley*, for Perjury, *April* 1752.
5. *Simons* against *James Ashley*, &c. for false Imprisonment, *July* 9, 1752.
6. *James Ashley* against *Simons*, (a second Trial) for a Misdemeanor, *July* 12, 1752.

The Expence of these Trials cost *Simons's* Friends about 1300*l.*

Four of these Trials were common ones, not worth inserting here. The only two proper for this Work, would have been the Second for *Perjury*, and the Fifth for *false Imprisonment*; but we cannot find they were ever published, or even taken down in Short-hand.

LI. *The TRIAL of Stephen M'Daniel, John Berry, James Egan, (otherwise Gahagan) and James Salmon, at Justice-Hall in the Old-Bailey, on Saturday the 1st of March, 1755, before the Right Honourable Stephen Theodore Janssen, Esq; Lord-Mayor of the City of London; the Honourable Sir Richard Adams, Knt. the Honourable Mr. Justice Wilmott, William Moreton, Esq; Recorder, and others of His Majesty's Justices of Oyer and Terminer, for the said City and County, for being Accessaries before a Felony committed by Peter Kelly and John Ellis, in the County of Kent; for which they were tried and convicted at the Assizes held at Maidstone, August 13, 1754.*

London Jury.

<i>Richard Heavysides,</i>	<i>Randolph Baileys,</i>
<i>Gamaliel Gardner,</i>	<i>John Keen,</i>
<i>Nathaniel Norton,</i>	<i>Henry Knight,</i>
<i>Samuel Nesbit,</i>	<i>William Basson,</i>
<i>Ebenezer Gardner,</i>	<i>John Brewin,</i>
<i>John Poperton,</i>	<i>John Pricklow.</i>

STEPHEN M'Daniel, *John Berry, James Egan* (otherwise *Gahagan*) and *James Salmon*, were indicted, for that, at the Gaol-Delivery for our Sovereign Lord the King at the County Gaol at *Maidstone* for the County of *Kent*, on *Tuesday* the 13th of *August*, in the twenty-eighth Year of our said Sovereign Lord the King, *Peter Kelly* and *John Ellis* were, in due Form of Law, indicted for a Robbery on the King's Highway on *James Salmon*, by putting him in corporal Fear and Danger of his Life, in the Parish of

St. Paul Deptford, in the County of *Kent*, and taking from him one Linen Handkerchief, Value 4*d.* two Pair of Leather Breeches, one Clasp-knife, one Iron Tobacco-box, one Silver Pocket-piece, one Guinea, and one Half-crown; and that the said *Peter Kelly* and *John Ellis* were tried and convicted for that Robbery; and that the said *M'Daniel, Berry, Egan, and Salmon*, on the 23d of *July*, 1755, in the City of *London*, were Accessaries before this Felony was committed; and feloniously and maliciously did aid, abet, assist, counsel, hire, and command the said *Ellis* and *Kelly* to commit this Robbery, against the Peace of his Majesty, his Crown and Dignity.

There was a second Count in the Indictment, as an Offence at Common Law.

At the Desire of *Berry*, the Witnesses were examined apart.

Joseph Cox sworn.

(*He produced the Copy of the Record of the Conviction of Peter Kelly and John Ellis*)

Q. Where had you this?

Cox. I had it of Mr. *Knap's* Clerk.

Q. Is it a true Copy?

Cox. It is; the Clerk and I examined it with the Record; I looked over the Record on the File, while the Clerk read this; after that the Clerk read the Record, while I looked over this. (*It is read in Court, the Purport of which is*)
 " That *Peter Kelly* and *John Ellis* were tried on
 " the 13th of *August*, 1754, at *Maidstone* Affizes,
 " before *Sir Dudley Ryder*, Knt. and *Sir Michael*
 " *Foster*, Knt. for the said Robbery on the De-
 " fendant *Salmon*, and found guilty."

Thomas Blee sworn.

Thomas Blee. I have known the Prisoner *Berry* eight or nine Years, and *M'Daniel* twelve Months last *November*. I never had any great Acquaintance with *Salmon*, till through *Berry* in the Month of *June* last. I have known *Egan* four or five Years, by his coming backwards and forwards to *Berry's*.

Q. Did you know *Peter Kelly* and *John Ellis*?

Blee. I did; I believe they are now in *Maidstone* Gaol; they were when I came away last *Monday*.

Court. Tell the Court the first Time you had any Conversation with them.

Blee. I lodged at *Berry's* House, and worked for him; *Berry* said to me, in the Beginning of *July*, Go to Mr. *M'Daniel*, (he lived then in *Scrub's-Court*, *Holborn*) and tell him I want to speak with him. I went, and he and I came back together to *Berry's* House. They both said, *Tom*, Money grows scarce, you must give a sharp Look-out for a Couple to go upon the *Scamp* now, and if you cannot get two, you must get one.

Q. What did they mean by going upon the *Scamp*?

Blee. That is to go upon the Highway. I told them, as *Kidden's* was so bad an Affair, I did not chuse to be concerned more. He was convicted last *January* was Twelve-month; and executed at *Tyburn*. *M'Daniel* said, D—n your Eyes, if you don't, it shall be the worse for you. Then *Berry* said, I might go about my Business; so I went away. The next Morning *Berry* called me into his Room.

Q. Where did he live?

Blee. At a Place called the *George-Yard*, at the upper End of *Hatton-Garden*. He then said, Go up to Mr. *M'Daniel's* House, and desire him to meet me in the Fields about Eleven o'Clock. I did, and we went into the *Spaw-Fields*; and *Berry* came to us. They both said to me, Go and look about the Fields, and we will sit down on the Grass, and see if you can pick up a Couple of idle Fellows, that will do for the Purpose, and introduce yourself into their Company.

Q. What did they mean by that Purpose?

Blee. To go upon the *Scamp* were the Words they said: Accordingly we three went into the Fields several Days, but could not meet with any body fit for the Purpose. I remember one Day in particular, it was *Monday* the 15th of *July*, that Day they ordered me to go into the Fields,

and said they would come, and I sat there two Hours before they came nigh me; then *M'Daniel* came to the Top of the Hill, and bid me come to the Sign of *Sir John Oldcastle*, a Public House, and said, my Master was there; he and I went there, and down to the Bottom of the Yard; and, in the farthest Arbour but one, on the left-hand Side, there sat *Berry* and *Salmon* the Breechemaker. *Berry* bid me sit down, which I did; there we all discoursed together about doing this Robbery: *M'Daniel* said, We'll do the Thing somewhere towards *Blackbeath*; then he and *Berry* had a sort of a Wrangle whether they should not have it done between *New-cross* Turnpike and *Deptford*, just facing the four-mile Stone.

Q. Was there any particular Reason to have it done in that Place?

Blee. Yes, they said; there is a Reward of twenty Pounds that is given by the Inhabitants of *East-Greenwich* for apprehending Highwaymen and Footpads: *Berry* said, Suppose we have *Egan* concerned with us; then they talked about his being the *Fence*, as they call it.

Q. What did they mean by that Word?

Blee. That is, to buy the Goods after *Salmon* had been robbed of them: *M'Daniel* made an Objection to *Egan's* being in, because he thought five would be too many to be concerned in the Reward: *Berry* said, We cannot cleverly do without him, and if there are five of us concerned, it will be pretty nigh twenty Pounds each, if a Constable should come in: And they all three, that is, *Berry*, *M'Daniel*, and *Salmon*, concluded that *Egan* should be concerned as a *Fence* in the Robbery: And *Berry* said, he would go and let *Egan* know of it that Night; and said to me, Now, *Tom*, you may go home about your Business, we will not be seen to walk along the Streets together; so I went away and left them. The next Morning I went out again, to see if I could find any body for the Purpose, but I could not that Day; the next after, which was on a *Wednesday*, Mr. *Berry* called me into his Room, and ordered me to go and tell *M'Daniel* to come to him to the *Bell Inn* in *Holborn*; I went, and *M'Daniel* and I went to the *Bell* together; there were *James Egan*, *James Salmon*, and *Berry*; we were all five together; they bid me come and sit down, which I did, and drank Part of a Pot of Beer; then we all concluded that the Thing should be done.

Q. Where is the *Bell Inn*?

Blee. It is in the City of *London*, just beyond *Bartlet's-Buildings*, on the right-hand Side.

Q. What Thing was to be done?

Blee. That if I could get a Couple to go on the Highway, that *Salmon* should be the Person to be robbed; and *Berry* and *Salmon* talked about making two Pair of Breeches that *Salmon* was to be robbed of, and to mark them under the Pocket or Waistband with some particular Mark; to the best of my Knowledge it was to be *J. S.* Then *Berry* and *M'Daniel* said, they must have a particular Handkerchief too: Then *M'Daniel* put his Hand into his Pocket, and pulled out this Handkerchief that I have now in my Hand: *James Salmon* said, he had got a Handkerchief at Home, that he would mark so as to swear to it; which he was to mark with four Oilet-holes, one at each Corner. *Berry* said, they should want a Tobacco-box; *M'Daniel* said, he had got a very remarkable one, that any body might swear to, which I have fetched

fetched forty Halfpenny-worths of Tobacco in for *M^r Daniel*, and I know it to be the same now; (*taking it in his Hand*) *M^r Daniel* said, he would give it to *Salmon* to be robbed of: Then they said, they wanted a Halfpenny, and would have it marked; *M^r Daniel* said, he had got a Pocket-piece; which Piece I saw his Wife buy for Three-pence and a Halfpenny-worth of Gin some Time before: He said, that would do; and it should be marked with a Shoemaker's Tool, and he gave it to *Egan* to mark it: *Egan* said, he had got a Tool that he used to stamp the Shoes with, that he would mark the Piece with: Then they bid me go Home about my Business, which I did. The next Morning *Berry* called me up into his Room again, he gave me Three-pence, and ordered me to go down to the *Fleet-Market*, to see if I could pick up two Men or Lads there.

Q. Did he say any thing more at that Time?

Blee. He said, to do the Thing. I knew what he meant; accordingly I went down to the Market, and met with *Peter Kelly* and *John Ellis*.

Q. Did you know them before?

Blee. I did; I knew them to be very bad Lads, that is, Pick-pockets. I gave them some Gin, but had no Discourse with them that Day about the Thing: The next Morning *Berry* called me into his Room again, and gave me Three-pence more, and bid me go down to the *Fleet-Market* to them, and be sure to have a little Talk with them, and told me what to say; and that was, to tell them, I knew where to get a brave Parcel of *Lullies*.

Q. What is the Meaning of that?

Blee. He meant, to get a Parcel of Linen, if they would go with me to *Deptford*. I went and met them there, and told them as *Berry* ordered me; that is, I told them I knew where to get a brave Parcel of *Lullies*, if they would go to *Deptford* with me.

Q. Did you tell them *Berry* told you so?

Blee. No, I did not; if I had, they would not have agreed to go; they both agreed to go with me any Time I thought proper; then I left them for that Day, and bid them a good Night.

Q. You say you knew *Kelly* and *Ellis* before; What are they?

Blee. *Ellis* is a Chimney-sweeper, about twenty Years of Age; and the other about twenty-one, by their Looks. The next Morning *Berry* called me into his Room again; I came Home pretty late over Night, so I had not seen him then: He ordered me to go and tell *M^r Daniel* to come to him to the Sign of the *Plumb-Tree*, in *Plumb-Tree-Court*, *Shoe-Lane*, at the Bottom of *Holborn-Hill*; accordingly *M^r Daniel* and I went there, there were *Berry* and *Salmon*. *Berry* told *Salmon* I had got two Men, *Ellis* and *Kelly*, and they had agreed to go along with me any where, where I thought proper; as I had told him before, that Morning. *Berry* bid me drink once, and go about my Business.

Q. Did *Salmon* say any thing to it then?

Blee. No, he did not; the Reason they chose I should go by myself was, because People should not take Notice of me. I went away, and left them three all together.

Q. Did they say so?

Blee. They did.

Q. When did they say that?

Blee. When *Berry* and he gave me this Great Coat I have now on, to disguise myself.

Q. When was this?

Blee. It was on a *Friday*; I remember it was Market-day at *Smithfield*, and I had been there to *Kelly* and *Ellis*. I saw them in the *Fleet-Market* on a Pea-cart, betwixt Five and Six o'Clock: I asked them, if they would have a Glass of Gin; and gave them each a Glass, and bid them Good-bye: About two Hours after I met them again in the Market, and asked them, if they would go to *Deptford* or not? they said, Yes. *Kelly* asked me, if I had got ever a Bag to put the Linen in? I said, we did not want a Bag, I would tell them more of that another Time; and left them then. At Night, it being *Saturday*, *Berry* called me into his Room, and asked me, if I had seen them and talked with them? I said, I had: He said, that was very well. He said, When you get up in the Morning, come into my Room before you go out, which was the *Sunday Morning*: I got up, and went in; he then gave me Six-pence to treat them with. I went out into the *Brick-Fields*, and found them, and treated them with some Gin and Beer; and we agreed to go to *Deptford* to steal some Linen, and I bid them a Good-bye for that Time; and said to them, I would meet them on the Morrow Morning. I left them in the *Sparw-Fields*, and went to *M^r Daniel's* House and dined there: I told *M^r Daniel* I had got two Lads that I believed would suit for the Thing, and told him who they were; and said, I would let him know more of it on the Morrow, for I should see them again To-night or To-morrow; he said, that was very well. At Night I saw *Berry*, and told him what had passed between the Lads and I; he said, it was very well, he should see *Egan* To-morrow Morning; then I went to Bed. The next Morning, which was *Monday* the 22d of *July*, about Five o'Clock, *Berry* called me into his Room again, and bid me go and tell *M^r Daniel* not to be out of the Way, and he also gave me Three-pence to go down to the *Fleet-Market* to treat *Ellis* and *Kelly* with some Gin. I went down, and there I met with them, and gave them each a Halfpenny-worth; and told them I would fix a Day when we should go down to *Deptford*: Then I left them, and went to *M^r Daniel's* House. About Nine that Morning there came *Berry* and *Egan* up into his Room; *Berry* said, G—d d—n you, *Mack*, you and my Lord mind nothing but that G—d-d—d Tea-kettle; you don't mind to look after Business.

Q. What did he mean by my Lord?

Blee. He meant me; it was a Nick-name they gave me. *M^r Daniel* answered, He is just come from the two Lads, as he tells me. I said, If *Egan* has a Mind to go, he shall go and see them; he and I went down into the *Fleet-Market*, there were the two Lads sitting on a Pea-cart; I put my Hand into my Pocket, and gave them a Halfpenny each to go and get some Gin. *Egan* stood not above three or four Yards from them at the same Time, leaning against a Post; then he went one Way, and I another; I went through *Plumb-Tree-Court*, and met *Egan* in *Shoe-Lane*; then he went to *M^r Daniel's* House again. *Egan* said there to *M^r Daniel* and *Berry*, By G—d they'll do very well, they are two pretty Lads.

Q. from *Berry*. Where was this?

Blee. You know well enough, it was at *M^r Daniel's* House: Then *Berry*, *Egan*, and I came

came down Stairs; we parted with *Egan* at the End of the Court. *Berry* and I went over to the *Plumb-Tree*; and, as we went by *Salmon's* Door in *Shoe-Lane*, *Berry* beckoned him out, and he went with us. I stayed and drank Part of one Pint of Beer, and then went away by *Berry's* Order, and left them together. On the *Tuesday* Morning *Berry* and I went to the *Plumb-Tree* Alehouse again; he bid me go over, and tell *M^cDaniel* he wanted to speak with him; I went and told him, and he came: Then I went out of the House, to see if I could find the two Lads again; I found them in the *Fleet-Market*, and discoursed with them; they said, they were going to work (as they called it) in the *Artillery-Ground*.

Q. What Work?

Blee. It was picking of Pockets. I came back and acquainted *Berry* and *M^cDaniel* with it. *Berry* gave me Three-pence in Halfpence, and they bid me go out directly to them, and keep them Company: *Berry* always found the Money. They both said, they would come into the *Artillery-Ground* about Two o'Clock to see the Lads: The *White* Regiment marched that Day: I went and walked up and down with them. About half an Hour after Two I saw *Berry* in the *Artillery-Ground*, (I was to take no Notice to *Berry* and *M^cDaniel*, or they to me) and presently after, walking round by the *Artillery-House*, I saw *M^cDaniel*; after that I left the Lads, and went to *Berry*, as he stood at the *Artillery-Gate*, and said to him, Mr. *Berry*, do you think they will do?

Q. from *Berry*. What Time of the Day was this?

Blee. It was about Three o'Clock.

Q. What was *Berry's* Answer to that?

Blee. He said, Do! d—n me, I have done less than they over; for *March* and *Newman* were less: He put his Hand in his Pocket, and gave me Six-pence; and bid me be sure not to leave them.

Berry. Here is a Man in Court will contradict that, (*pointing to one that stood near him.*)

Court. Don't you know, at your Request, all the Evidences for the Prosecution were put out of Court, to be called in one at a Time; at which Time yours were put out also? How came this Witness in again? He must go out, and come in when he is called. (*He went out, but did not come in again to give Evidence on *Berry's* Defence.*)

Blee. I went with the Six-pence round the *Artillery-Ground*, and met with *M^cDaniel*; he said he was going to *Berry*. I asked him if he thought the two Lads would do? he said, D—n your Eyes, I have done less than they over at *Kingston*.

Q. Had he had a Sight of them?

Blee. He had, as we passed him before; he and *Berry* went into the Ground, on Purpose to see them. Then I left *M^cDaniel*, and went and gave the Boys Part of a full Pot of Beer; then I bid them Good-bye, and told them I would see them again the next Morning, which was the 24th. I went Home, and got up in the Morning, and told *Berry* I was going to them; he gave me Three-pence. Then I went down into the *Fleet-Market*, and told them, I believed the Thing would be done on the *Friday*; this was on the *Wednesday*: If not, I would let them know farther. Then I left them, and at Night I went Home, and told *Berry* I had been again along

with *Ellis* and *Kelly*. He said, D—n you, don't go to deceive us; do you come up to the *Bell* in *Holborn* by-and-by, and tell *M^cDaniel* I want him. I went to *M^cDaniel's* House, and left word what *Berry* ordered me; for *M^cDaniel* was not at Home. Then I went to the *Bell*, and *Berry* met me just at the Door: Just as I was going into the House, he said, Here is Three-pence; go away to the *Artillery-Ground*, be sure to be there about Two o'Clock: This was on *Thursday* the 25th, in the Morning. He said, Don't come in, for Mr. *Bagley* is there; I don't desire he should see you.

Q. Who was that Mr. *Bagley*?

Blee. He was a Neighbour of *Berry's*. I went away to the *Artillery-Ground* at the Time; and walked about an Hour and a half before I saw either *Berry* or *M^cDaniel*; but walking by the *Artillery-Ground*, I saw *M^cDaniel*; he told me he had been at Dinner along with somebody in the *Artillery-House*, and said, Where the D—l is *Berry*? I said, I never saw any thing of him. About half an Hour after that, there was Hue-and-Cry after a Pickpocket. *M^cDaniel* came to me, and said, G—d d—n me, the chief Person is a ducking in the *Pyed-Horse* Yard; follow him, and give him some Gin, for they have almost killed him. I followed him (it was *Ellis* the Chimney-sweeper, the biggest of the two Lads) cross *Moorfields*; I saw the People go from him, and there were but two or three People behind him; I gave him a Penny or Three-half-pence, I don't know which. Then I went back to *M^cDaniel*, and told him he was very safe; then he and I came out of the *Artillery-Ground* together: As we were coming out of the Ground, we met one they call *Plump* (his Name *Brebrook*) and another Fellow they call *Doctor*, that was Turnkey at *Clerkenwell* Bridewell. *Plump* seeing *M^cDaniel* and I together, said to me, G—d d—n you, you Rascal, you deserve to be hanged for that Affair of *Kidden*. *M^cDaniel* said to me, Come along, don't be afraid of any body. We went over *Moorfields* together. He ordered me to go to his Wife, which I did; and after that I went down the *Fleet-Market*, to see if *Ellis* was safe; I found them both, and told them I would meet them the next Morning: They said, they had no Money to pay for their Lodging; I said, Here is Three-halfpence for you, go and lie in the *Brick-Field* To-night. Then I went Home to Mr. *Berry's*; he told me he had been at the other End of the Town about some Business, and he could not come into the *Artillery-Ground*. If this Affair of *Ellis's* being ducked had not happened, the Robbery of *Salmon* was to have been committed on the *Friday*.

Q. When was it fixed to be on the *Friday*?

Blee. That was determined to be on the *Wednesday*.

Q. By who?

Blee. *Berry* and I pitched upon the Thing in the Morning, and he was to go and let the rest know.

Q. Where did you consult this?

Blee. We did it in his Room, before we went out to go to the *Bell*.

Q. What did he say to you about it then?

Blee. He bade me tell the Lads we should go to *Deptford* to steal the Linen on the *Friday*.

Q. Who did he mean by the rest, which he said he would let know it?

Blee.

Blee. He meant *Egan, Salmon, and M^r Daniel.* On the *Thursday* Night I told *Berry* of *Ellis's* being ducked; he said, *M^r Daniel, Egan, Salmon,* and he had agreed, that it should not be done on the *Friday,* lest the Lads should be apprehended on the *Saturday,* and kept all Day on *Sunday* in the Watch-house; and somebody might come to them, to whom they might tell something about my being concerned with them, and so by impeaching me I might be apprehended; so he said they had fixed it to be on the *Monday.* On which Morning I got up by *Mr. Berry's* Orders; he gave me Two-pence or Three-pence (I cannot be positive which) to go to the *Fleet-Market* to meet them, and bid them stay till Nine o'Clock, and say I would come to them again; which I did, and returned, as *Berry* ordered me, to him at the *Plumb-Tree* Alehouse: There was *Salmon* and he; he sent me out for *M^r Daniel;* I went to him, and he bid me tell *Berry* he was shaving himself, and he would come when he had done. I went, and told *Berry;* he changed a Guinea, and gave me five Shillings, and bid me not to be extravagant: He gave me that, as he said, to *flash* to the Boys; to shew it to them, and say, I made that last Night: I was to pull it out all at once. He gave *Salmon* Half a Crown to be robbed of.

Q. Was it in one Piece?

Blee. No; it was two Shillings and Six-pence.

Q. Who were present at this Time?

Blee. There were *Berry, M^r Daniel, and Salmon.* Then *Berry* said to me, Now go away as fast as you can; and I said, At what Place shall I stop for you to see you are going, that we may be both sure? I said, I will stop at the *Bell* in the *Borough,* and call for a Glass of Gin; then you may know and be sure that we are going to *Deptford.* I left them, and went to the two Boys.

Q. About what Time was this?

Blee. It was about half an Hour after Nine in the Morning. I went with the Boys to a House in *Little-Britain;* there I called for some Beer, and Bread and Cheese; and pulled off my Coat, and said, I must go to the *Fence* to get some Money, for the Woman has not paid me all. Then I left my Great Coat, and went to *Berry;* and told him to hasten away, for the Boys wanted to go. *Berry* bid me return to them directly, and said, he would be over the Water Time enough for us. I went to the Boys again, and called for another Pot of Beer, to delay the Time. After we had drank that, we went out, to go to *Deptford.* When we came to the *Bell* in the *Borough,* we went in; and in the right-hand Box there sat *Berry* and *Salmon;* there I gave the Boys each of them a Halfpenny-worth of Gin; I was not to take Notice of *Berry* or *Salmon.* After we came out, *Kelly* said, D—n your Eyes, there is that old thief-catching Son of a B—h, your old Master. Said I, Never mind it, I don't belong to him now. Then we went down the *Borough* Market; they bought a Breast of Lamb for their Dinners, and we went to the *Black Spread-Eagle* in *Kent-Street* (which was the House the Prisoners and I had appointed for them to come to the next Day.) We had the Lamb fried for our Dinners; from thence we went to *Deptford.*

Q. What Time did you set out from *Kent-Street*?

Blee. We set out from thence about half an

Hour after Twelve o'Clock: I had made them almost drunk. After we went from thence, it was too soon in the Day; we could do nothing till it was dark, I told them, so we would go over into the Fields, and go to Sleep: So, to prolong the Time, we went into the Fields, and all three of us went to Sleep: They slept pretty heartily. When I thought it proper Time to awake them, I did; and away we went for *Deptford.*

Q. What Time did you set out after this Sleep?

Blee. I cannot tell the Time.

Q. Was it dark?

Blee. No, it was not. We were in *Deptford* an Hour before Dark. I went with them to the Sign of the *Ship,* the House that *Berry* and *Salmon* had appointed to come to. I called for a Pint of Beer at the Door, and bid them stay there; and said, I had a Relation in the Town, near the *Water-Gate,* which I wanted to see: I left them, and went to see for *Berry* and *Salmon.* I found *Berry;* he and I went into a Public House, I think it is the *Duke William's Head;* he called for a Pint of Beer, and bid me return to the two Boys, and *Salmon* should come to the House. I went to them, (they were still at the Door;) I said, Come, let us go into the House; I expect my Cousin to come to me.

Q. Had you let the Boys into any Knowledge of this Affair, before you came to this Place?

Blee. No, I did not: Only I had told them it was to steal some Linen; they went for no other Intent. Then I went in, and called for a Pot of Beer, and Bread and Cheese; we eat the Bread and Cheese, and drank the Beer; and called for another Pot of Beer: In the mean time in came *Salmon.* He first went and leaned against a Dresser for about half a Minute, and then came and sat down in the Box near us, and began to discourse about going to *London,* (it was then dusk.) I saw *Berry* go by the Window; he beckoned his Finger, and I went out to him. He said, Be sure follow *Salmon,* when he comes out. I went in again, and *Salmon* presently went out. I changed Half a Crown, and asked the Lads if they would have any Gin. When *Salmon* first came in, *Kelly* said, There is that old Blood of a B—h, the Breeches-maker in *Shoe-Lane;* his Son and I have been picking of Pockets together many a Time. I said, Never mind that; what is that to us? I knew the Place where he was to stop at; it was just by the four-mile Stone: This was agreed upon before. The two Boys and I went on; and by the four-mile Stone, by a Gate, *Salmon* stood making believe he was making Water. D—n me, said *Kelly,* there is the old Breeches-maker, he is *suckey,* let's scamp him.

Q. What Reason did you give *Kelly* and *Ellis* for your going after *Salmon*?

Blee. I said, We will take a Walk, till it is Time to steal the Linen.

Q. Was it light or dark?

Blee. The Moon shone. *Kelly* said, when he came up to *Salmon,* G—d d—n you, what have you got there? *Salmon* said, Gentlemen, take what I have got, don't use me ill. He had the Breeches under his Arm, and he gave them to me; they were in a blue and white Handkerchief, and I gave them to *Kelly.* I said to *Kelly,* What Money have you got? *Salmon* said, Here, Gentlemen, what Money I have got is in my left-

hand Waistcoat Pocket, in a Tobacco-Box. (He had told me before what Money he had got would be there.) *Kelly* put his Hand into his Pocket, and took the Tobacco-Box out, and a Clasp-Knife and Fork; then away we walked on for *London*, and came into *Kent-Street* as fast as we could, and lodged there all Night, at a House where I paid the Lodging-money at going down, by *Berry's* Order, to induce the Lads to come there again.

Q. What Time did you get to *Kent-Street* after the Robbery?

Blee. I believe we got there about Eleven o'Clock; the People had no Clock in the House.

Q. What Money did you take from *Salmon*?

Blee. We looked at that coming along; I knew what was in it before: There were two Shillings and Six-pence, and a Pocket-piece with *Skilion* on it, or some such Name, and a punch'd Mark in the middle of it. (*Mr. Cox produced the Things mentioned.*)

Court. Look at this Tobacco-box.

Blee. This is the very same, it is riveted within-side; I have had this Box a hundred Times in my Hand before.

N. B. *The Box was an oval Iron Box, with a Rose, and Garter round that; and a Lion and Unicorn (as on the King's-Arms) in Basso-Relievo on the Lid.*

Court. Look at this Pocket-piece.

Blee. This is the same Piece which I mentioned before.

Court. Look at the two Pair of Breeches and Handkerchief.

Blee. These are the same Breeches and Handkerchief.

Court. Look at this Knife.

Blee. It is the same Knife.

N. B. *The Clasp-Knife and Fork were made to fasten together in the Handles.*

Q. What was done the next Morning, when you lay in *Kent-Street*?

Blee. We got up the next Morning about Seven o'Clock, and went over the Way to the Sign of the *Black Spread-Eagle* (the House that *Berry* ordered me to go to.) I called for some Beer, and said to *Kelly* and *Ellis*, Sit down, and I will go get you something for Breakfast. I went out with that Pretence, and went to the *White Bear* in the same Street, where *Berry* ordered me to come to let him know. There sat *Berry*, *Egan*, and *Salmon* at the Door on the Bench. *Berry* said, That Son of a Whore *M'Daniel* is not come yet; now we must wait for him: Go you back, and *Egan* shall come after you directly. *Egan* and I walked up the Street a little Way together. I said, Stop there a Bit, while I go over to that Shop to buy a Lamb's Liver for Breakfast; he said, he would go on. He went on before, and called for a Pint of Beer; I came after with the Liver. I said to *Ellis* and *Kelly*, as I was going to cut the Liver, That Man deals in *Rag-Fair*, (meaning *Egan*;) at the same Time I knew he did not: But I was to say so when he came in. I said, May-be he will buy the Breeches; shall I ask him? Yes, said they, with all our Hearts. I said to him, Master, will you buy some Leather Breeches? He said, Let me look at them; if you and I can agree, I will buy them. After he had looked at them, he said, What will you have for them? I said, Six Shillings. He said, I will give you Five. He put his Hand into his Pocket,

and gave *Kelly* a Shilling Earnest; and said, he had not so much Money about him, but he would come in an Hour or two, and pay the rest of the Money; and he would leave the Breeches in our Care till he came back. I said, My Friend, will you eat a Bit of Liver and Bacon before you go? He said, I don't care if I do. He sat down by the Fire-side, and said, Landlord, let us have a Halfpenny-worth of Tobacco; and said, God bless me, I don't know what I shall do; I have lost my Tobacco-box. (This he was to say, to get the Tobacco-box of them.) I said to *Kelly*, Let us sell him the Box, may-be he will buy it. *Kelly* said, No, let us ding it; it is such a remarkable one, may-be it may be known.

Q. What did he mean by dinging it?

Blee. He meant to sling it away; I said, No, let us sell it: Then *Kelly* said, Master, I will sell you a Tobacco-box, if you will buy it: Said he, Let me look at it; he looked at it, and asked, What he would have for it? *Kelly* asked Six-pence for it; he said, No, he would not give it. I said, We will not have dry Money, we will have some Beer: Then *Egan* said, He would give a full Pot of Twopenny for it; then *Kelly* said, he should have it: After he had eat his Breakfast, he went out, and goes to *Berry* and *Salmon*. I went backwards with the two Boys to play at Skittles to detain them, but the Ground was so wet we could not play; so we found another Pastime, called the Devil and Taylors. I kept them there an Hour and half; then I said, If the Man does not come, let us sell the Breeches. I said, I will go and be shaved; and I left my Great Coat, and went to the *White Bear*; but when they came there, they did not like the People of the House, because when *M'Daniel* came they did not like him. I went out of the House, and saw *Berry* come out of the *Elephant and Castle*; they beckoned me over, I went and called for a Pint of Beer; *Berry* said to me, You may drink with us; and said, D—n you, where is your Great Coat? (which is the same I have now) he bid me turn back and fetch it, and said, *M'Daniel* and *Egan* shall go.

Q. Who were there?

Blee. There were all the four Prisoners there, sitting in the Box going in on the left-hand Side, drinking: I went back again to *Ellis* and *Kelly*, and said, The Barber is busy, and cannot shave me, I must come again in five or six Minutes: I said, The Weather is cold, I must put my Great Coat on; I put it on, and went to the *Elephant and Castle* to them again. *Berry* bid me go to the *Bell* in the *Borough*, and stay there till he came, and to get shaved. I went away; and, as I was going, *Egan* and *M'Daniel* went out: I got shaved, and went to the *Bell* in the *Borough*; and called for a Pint of Beer, and drank it. About an Hour after *Berry* came in, and we had another Pint; then he and I went Homewards together: We went as far as *Ludgate-Hill*, there we saw one *Mr. Rogers* coming along; so he said, Leave me, don't be seen with me, and I left him. At Night when *Berry* came Home, I said to him, Master, be so good as to lend me some Money to go to the Fair To-morrow? He said, That is right, *Uxbridge* Fair is To-morrow the 31st; he lent me Eighteen-pence, saying, it was to go to *Billinggate* to buy Shrimps with: I went to the Fair,

Fair, and came back again on the 1st of August. Berry bid me not be afraid; saying, he would always keep a good Look-out: And they always said, if I was taken up, Salmon should never appear against me.

Q. You say you went to the *White Bear* in Expectation of seeing the Prisoners, and after that to the *Elephant and Castle*; when you came in there, what did you see?

Blee. I saw Mr. Berry, Salmon, and Egan; M'Daniel was down in the Yard at my first going in, but he came in before I went away.

Q. Recollect yourself, whether you saw them eat or drink?

Blee. I drank Part with them, but I had breakfasted before I got there; I know Berry told me they had a Rasher of Bacon; and he said I had had a better Breakfast than they.

Q. Where did he tell you this?

Blee. He told me so at the *Bell* in the *Borough*.

Q. Was you at the Trial of Kelly and Ellis in Kent?

Blee. No, I was not.

Q. Where was you at the Time of the Trial?

Blee. I was taken up on the *Friday* before, being the 8th Day of the Month.

Q. What Day was the Robbery committed?

Blee. It was on the 29th of *July*.

Cross-Examination.

Q. You have given an Account of several Meetings and Conversations you had with Kelly and Ellis before the Robbery was committed; was not the Conversation about stealing Linen?

Blee. It was.

Q. Was there any Mention made about a Robbery on the Highway?

Blee. No, none; I said what Berry ordered me to tell them.

Q. for Berry. You say Kelly and Ellis went with you under a Notion of stealing of Linen, and Kelly accidentally pitched on Salmon, and proposed to you to commit a Robbery on him.

Blee. No, he did not till we just got up to him; then he said, There is the old Breeches-maker, let us scamp him.

Q. Before that, had you proposed to him to commit a Robbery upon Salmon?

Blee. No, Sir.

Q. Whether Mr. Berry had any Conversation with Kelly or Ellis?

Blee. No, none at all; he did not chuse to be seen in it.

Q. Nor none of the other Prisoners?

Blee. No, they had not.

M'Daniel. He mentioned that he had been four or five Times up in *Holborn*; I never was there with him in my Life.

Blee. He was several Times.

M'Daniel. He mentions he was at the *Plumb-Tree* in *Shoe-Lane*; I never was there with him in my Life.

Blee. Yes, he was several Times.

Q. from Berry. What Lodging did you lie in at my House?

Blee. Sometimes in Berry's Hay-loft, and sometimes in the Room adjoining to his: I lay in that Room till all the Money was gone of *Kidden's* Reward; then I was forced to lie in the Hay-loft.

Q. from Berry. He says I lent him one Shilling and Six-pence to go to *Uxbridge* Fair; what Time was that?

Blee. It was on the *Tuesday* Night, the Day after the Robbery; *Uxbridge* Fair is on the 31st.

Berry. *Uxbridge* Fair is always the 20th Day of the Month.

Blee. That is Old Stile.

Q. from M'Daniel. Ask him, if he has not had a Quarrel with me, and swore he would be revenged on me.

Blee to the Question. No, never; M'Daniel once got a long Knife, and threatened to cut my Throat.

Berry. Because I took his Brother, that was transported, he always swore he would be revenged of me.

Blee. I never swore so; he did not take him.

Salmon. I have never been at the *Bell* in *Holborn* these five Years.

Blee. He was there as I have mentioned.

Q. from Egan. I want to know, if it can appear by any Man or Woman that I have been in a House with Blee.

Blee. There are several will prove that.

George Holewright sworn.

George Holewright. I live in *Scroop's-Court*, facing *St. Andrew's Church*, *Holborn*.

Q. Do you know either of the four Prisoners at the Bar?

Holewright. I know three of them.

Q. Which are they?

Holewright. M'Daniel, Salmon, and Berry. I do not take upon me to know Egan.

Q. Do you know Blee the Evidence?

Holewright. I do.

Q. How came you to know M'Daniel?

Holewright. I have known him and Berry some Years; M'Daniel kept the Sign of the *Angel* in *Scroop's-Court*.

Q. Where did he lodge about July last?

Holewright. He and his Wife, as he calls her, came into my House on *Asb-Wednesday* was Twelve-month. He gave me a Crown Earnest, and they continued there about four Months; he lodged there till he was taken up at *Maidstone*.

Q. Did you ever see the Evidence Blee coming to him amongst the rest?

Holewright. Yes, many Times; he was a very handy Man amongst them, and a very willing Fellow.

Q. Have you seen him often with M'Daniel?

Holewright. I have seen them together many Times. Blee used to come there to wash the House, and clean the Dishes; and he used to come often to ask for his Master Berry. They used to be generally together.

Q. He has said, in July last he was at M'Daniel's Lodgings in *Scroop's-Court*; do you recollect yourself that he was there in that Time?

Holewright. The last Time I saw M'Daniel was on the *Friday* Night; and on the *Saturday*, the Day after, he was gone down to *Maidstone*; but then I thought he was gone down to *Coventry*: And I saw Blee at my House much about that Time. They were very busy together; but I never did expect to be called upon in Court about these Things, and have made no Account of this; I cannot be exact as to the last Time Blee was there.

Q. Was you ever in the *Artillery-Ground*?

Holewright. I was, and saw Blee there, running backwards and forwards; that was, I remember,

on a *Tuesday*: I don't know in what Month; but it was when the *White* Regiment marched.

Q. In what Manner did *Blee* appear there?

Holewright. I think he had a Great Coat on; running backwards and forwards, I said, *Tom*, what are you at? He said, Hold your Tongue, hold your Tongue; I saw him cross several Times.

Q. Did you see either of the Prisoners there?

Holewright. I did not see any of them, as I remember.

Q. You say *M^cDaniel* went down to *Maidstone* Assizes; did he tell you he was going there?

Holewright. No, he never mentioned a Word to me of that; he said he had taken a Man in *Smithfield* for a Murder, and he expected to have the Reward; and said, he should go to *Coventry* one Day or another.

Q. Did you know the Prisoners at the Bar were acquainted together?

Holewright. I have seen *M^cDaniel* and *Berry* together especially, *Salmon* the least: I have seen them all together, except *Egan*; him I never saw to my Knowledge.

Q. Have you seen *Blee* with them?

Holewright. I have seen him with all three of them; he was a sort of a Runner to them, as I thought.

Q. Did they appear as of one Company when you have seen them together?

Holewright. Very often; and if any thing was to be done, *Blee* used to run backwards and forwards; and there was whispering together, but it was nothing to me.

Q. Had you ever an Opportunity of hearing their Discourse?

Holewright. No, I never had.

Q. from *Berry*. Where have you seen us drinking together?

Holewright. At *M^cDaniel's*, when he kept the *Angel* in *Scroop's-Court*.

Q. How long is that ago?

Holewright. It is about five Years ago.

Q. from *Berry*. Have you seen me lately?

Holewright. I have seen you lately at the *Union-Arms* in *Union-Court*. I have seen them all three there.

Q. from *Berry*. How long is that ago?

Holewright. That may be about seven or eight Months ago.

Berry. We have been in *Gaol* seven Months.

Q. from *Berry*. Did you ever see me up at your House where *M^cDaniel* lived?

Holewright. No, I never saw you within my Door; I have seen you about the Door in the Court, once, twice, or three Times.

Anne Pattey sworn.

Anne Pattey. I know *Egan* and *Salmon*. I live Servant at the *Plumb-Tree* in *Plumb-Tree-Court*.

Court. Look about the Court; do you see them?

A. Pattey. I don't see them.

Court. Go down, and look about till you find them out.

A. Pattey. *Egan* is lame on his right Leg. (She goes down and looks at *Egan*, but said she did not know that to be him.)

N. B. He is a lame Person.

Q. Do you know *Blee*?

A. Pattey. I think I do; he was once at our House; he came and had two half Pints of Beer,

my Master drew him one and I another; he stood with his Back towards me.

Q. Did you ever see *Blee* and *Salmon* together?

A. Pattey. No, I cannot say I have.

James Kirby sworn.

James Kirby. I live in *Cross-Street*, *Hatton-Garden*.

Q. Do you know any of the Prisoners at the Bar?

Kirby. I know three of them, *Berry*, *M^cDaniel*, and *Salmon*.

Q. Where have you seen them?

Kirby. I have seen *Berry* and *M^cDaniel* at the *Two Brewers* on *Saffron-Hill*; on the 8th of *July* they were drinking at the Door.

Q. Did you see any of the others in Company together?

Kirby. I have seen *M^cDaniel* and *Salmon* at the *Union-Arms* in *Union-Court* drinking together; I believe it was in the same Week, may-be a Day or two after the other; they were busy together in Discourse.

Q. Did you ever see *Blee* in Company with them?

Kirby. *Blee* came in that Evening at the *Union-Arms* just as *Salmon* went out, and stayed there some small Time; *M^cDaniel's* Wife came in, and they settled something that *Blee* had sold for her.

Q. Did you ever see them together after that Time?

Kirby. I saw *M^cDaniel*, *Berry*, and *Blee* smoaking at the *Union-Arms* in a Trifle of Time after; may-be the next Week after the 8th Day of *July* last.

Q. From any thing that you saw pass, do you think they were acquainted together?

Kirby. They were very well acquainted; *Blee* appeared to me to be *M^cDaniel's* Man.

Q. By what do you think he was *M^cDaniel's* Man?

Kirby. I have seen him come several Times to the *Union-Arms* to fetch Beer for his Master.

Q. Did he use to appear as if he shaved often?

Kirby. No, his Beard was very long most of the Time I knew him.

Q. How was his Beard at that Time you saw him last at the *Union-Arms*?

Kirby. It was very long at that Time.

Q. Did you ever see them three together any other Time?

Kirby. No, never but once; but I have seen two of them together, by Turns, several Times.

Q. Did you hear of *Salmon's* being robbed?

Kirby. No, not a Word of it, till I was told of it by the Constable.

Q. from *Salmon*. How many Times have you seen me at the *Union-Arms*?

Kirby. I saw *Salmon* once in the Kitchen with *M^cDaniel*, and another Time sitting at the Door, and *Blee* came while he was with *M^cDaniel* drinking, and fetched both away in a great Hurry: Before *Blee* came, they had got three Dogs, and were talking about them; this was a little after the 8th of *July*.

Q. from *Berry*. What Month was this in?

Kirby. It was in the Month of *July*.

Q. from *Berry*. Was it in the Middle or the Beginning of the Month?

Kirby. I cannot say within a Fortnight.

Q. What Apparel was *Blee* in, when you saw him there?

Kirby. In his usual Apparel.

James Price sworn.

James Price. I know John Berry; he lived in George-Yard, where I now live. I have seen M^cDaniel frequently with him there. I have also seen Egan with him there.

Q. Do you know any thing of Salmon?

Price. Salmon came into the Yard in August last, and asked me if I had seen Berry; I directed him to the Hat and Tun, where I had seen him go.

Q. Do you know Blee?

Price. I had a Warrant against him and young Berry. Berry kept Blee from me in his House.

Q. At what Time was that?

Price. I believe it was about a Year ago; I believe I had the Warrant in the latter Part of February. I remember about the Beginning of August I saw Berry, M^cDaniel, and Egan, at the Two Brewers, at the Bottom of Saffron-Hill.

Q. Have you often seen them together?

Price. I have often seen M^cDaniel and Berry together.

Q. Did they seem to be acquainted?

Price. They appeared to me to be very well acquainted, for they were almost always together.

Q. from Berry. How many Times may you have seen M^cDaniel and I together?

Price. I believe a hundred Times and more, I dare swear; they were seldom ever apart; you would seldom see one without the other.

Q. How long had you a Warrant in your Hands to search after Blee?

Price. I believe I had it six Months; I could not get at him: This was about the Time that Kidden was taken up, and they were afraid of bringing the Affair out.

John Samms sworn.

John Samms. I know Berry, M^cDaniel, Egan, and Salmon.

Q. Do you know any body at your left Hand?

Samms. Yes, that is Tom Blee.

Q. Do you know whether any of them were acquainted together, and who?

Samms. I have seen Berry, M^cDaniel and Egan together, at the George on Saffron-Hill.

Q. At what Time?

Samms. For these two Years past.

Q. When was the last Time?

Samms. I cannot say in particular; I saw them, I believe, in February or April.

Q. Did they appear to be tolerably intimate?

Samms. Egan has come and asked me many a Time, whether Berry was at Home.

Q. Did you ever drink with them?

Samms. I have two or three Times; M^cDaniel has come and asked me many a Time, whether I had seen Berry, (my Stable was opposite to Berry's) I have directed M^cDaniel where to find him.

Q. Have you any Reason to think they were acquainted with Blee?

Samms. I have; Blee lodged in Berry's House; they all seemed to know Blee. I have seen Blee with them all together, except Salmon.

Q. Where have you seen them?

Samms. In George-Yard.

Q. When have you seen them there?

Samms. I cannot say the Times when; I have seen them divers Times together.

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Q. What were they doing?

Samms. They were talking together.

Q. from Berry. Was you ever up Stairs in my House to see what Beds I had?

Samms. I know my Lord (that is, Blee) always went up Stairs; and when Berry turned his Wife out, Blee used to lie there.

Q. from Berry. When he had neither Shoe or Stocking to his Foot, was he fit to lie with me?

Samms. I know, when Berry has turned his Wife out, he has took Blee in, and locked the Door.

Q. to Kirby. Look at this Tobacco-box; did you ever see this before?

Kirby. Yes, I have, I am pretty sure of it.

Q. Whose Property is it?

Kirby. I think it belongs to M^cDaniel; I remember the Time when Salmon and he were drinking at the Union-Arms together; when Salmon was gone, there was some Tobacco left upon the Table; this Box was taken out by M^cDaniel to put the Tobacco in; it is a very remarkable one, I am pretty positive it is the same.

Q. When did you see it?

Kirby. I believe it was the same Week the 8th of July was in.

John Brayder sworn.

Q. Look at this Pocket-piece; do you know it?

John Brayder. (He takes it in his Hand.) I sold a Piece once pretty much like this; there was on one Side of it wrote Skilling; but there was not this Mark on it when I sold it, (meaning the Mark which Blee said Salmon made in the middle.)

Q. Do you take it to be of the same Specie of that you sold?

Brayder. Yes, it was; there was the same Writing on one Side of it.

Q. Who did you sell it to?

Brayder. I sold it to a Woman.

Q. Was any body with that Woman when she bought it?

Brayder. Yes, one Blee was.

Q. Should you know him if you was to see him again?

Brayder. I should.

Court. Turn about, and see if you can find him.

Brayder. This is the Man, (pointing to him.)

Q. to Blee. Was you by when this Man sold such a Pocket-piece as this?

Blee. I was; he sold it to M^cDaniel's Wife, or Company-keeper; she gave him Three-pence and a Halfpenny-worth of Gin for it.

Q. Where was she when she bought it?

Blee. It was by the Two Blue-Posts in Holborn, in the Beginning of July.

Q. to Brayder. What Time was it you sold that Piece you mention?

Brayder. I don't know the Time, but I believe it was in the Cherry Season.

Q. What did you sell it for?

Brayder. The Woman gave me Three-pence and a Half-penny Dram for it.

Joseph Cox again.

Joseph Cox. I have known M^cDaniel two or three Years; I never saw the other till I saw them all together at M^aidstone Assizes; I went down on the 14th of August.

Q. What was your Business there?

Cox. I am chief Constable of the lower Half-hundred of *Black-Heath*; and I had an Information about the 3d or the Beginning of *August*, that a Breeches-maker had been robbed in the Parish of *Deptford*, where I live, by three Foot-pads, and that two of them were taken by *M'Daniel* and others, and sent to *Maidstone* Gaol; and the third Person, whose Name was *Thomas Blee*, I was informed kept Company with *M'Daniel*; and after two or three Days searching; I very fortunately took that third Person, with the Help of a Constable of *Greenwich*, on *Friday* the 9th of *August*, in *Newgate-Street*, very early in the Morning I took him directly to the Water-side, in order to carry him to *Greenwich*. When we got him into the Boat, he said he would discover all he could concerning the Robbery on the Breeches-maker. I bid him not do it then, because of the Watermen in the Boat, till we came to a Magistrate. We took him before a Justice of Peace; there he made an Information: This is it. (*Produced one.*)

Q. Do you know whose Writing it is?

Cox. The Name is *Thomas Blee's* Writing, I saw him write it; the other is Justice *Bell's* Writing.

Q. Was it read over to him before he signed it?

Cox. He read it over, and I myself read it over to him before he signed it.

Q. When was it taken?

Cox. It was taken on the 9th of *August*, but not sworn to till the 13th; it was read over to him before the Justice; and the Justice and *Blee* signed it in my Presence.

It is read to this Purport:

Kent, } *The Information of Thomas Blee, of the*
to wit. } *Parish of St. Andrew, Holborn, Breeches-*
maker, taken upon Oath, &c.

“ This Informant saith, that about four Weeks
“ or upwards ago, *Stephen M'Daniel* and *John*
“ *Berry* desired him to look out, and they gave
“ him Money to that Intent, to get into Com-
“ pany with two Lads, or Men, which he should
“ afterwards betray, by getting them into a
“ Robbery, and they share the Reward given
“ upon their Conviction; and in order thereto,
“ they did go frequently with the Informant into
“ the adjacent Fields, but could not meet with
“ any. And this Deponent saith, that he has
“ met *Stephen M'Daniel*, *John Berry*, *James*
“ *Salmon*, Breeches-maker, and *James Egan*, of
“ *Drury-Lane*, Cordwainer, in order to concert
“ and put this their said Scheme into Execution;
“ and that he the said Deponent met with *John*
“ *Ellis* and *Peter Kelly* (now Prisoners in the
“ County Gaol at *Maidstone*) in the *Fleet-Market*,
“ and as he knew them to be Persons of bad
“ Life and Conversation, introduced himself into
“ their Company; after treating them, he asked
“ them to go with him to *Deptford* to steal some
“ Linen, which they agreed to do on the *Thursday*
“ following; but after that put them off till the
“ *Monday* following, by the Direction of the
“ said *M'Daniel*, *Berry*, *Salmon*, and *Egan*, who
“ had all at different Times seen the said *Ellis*
“ and *Kelly*, and approved of them for that
“ Purpose; and judged it most fit to have the
“ Robbery committed on the *Monday* Morning,
“ lest they should be detained near *London* on the

“ *Sunday*, and some Circumstances might render
“ their Schemes abortive; and that they met at
“ the *Bell* in *Surry* as they went.

“ And this Deponent saith, that it had been
“ concerted between them, that the intended
“ Robbery should be between *New-cross* Turn-
“ pike and *Deptford*, to intitle them to the
“ Reward offered by the said Parish: That he
“ took the said *Ellis* and *Kelly* to a Public House,
“ known by the Sign of the *Ship*, where they
“ had promised to come to him: And after
“ staying there some Time, he left *Ellis* and
“ *Kelly* at the *Ship*, and went out to look for
“ *Berry* and *Salmon*; he found *Berry*, who coun-
“ selled this Deponent to return to *Ellis* and
“ *Kelly*, and said, that *Salmon* should follow him
“ immediately; that he returned, and *Salmon* did
“ come into the House at the Sign of the *Ship*,
“ and stayed there near an Hour. During which
“ Time, he, this Deponent, treated them with
“ Bread, Cheese, Beer and Gin; and *Salmon*
“ going away in the Evening, they followed,
“ and agreed to rob him in the first Place that
“ *Salmon* stopt at, which was the four-mile Stone,
“ under a Pretence to urine, but it was in order
“ that they might overtake him, that being
“ thought the most convenient Place; that they
“ came up with the said *Salmon* there: And
“ this Informant, without his, or either of the
“ said *Ellis* and *Kelly*, producing any Weapon,
“ took from under the said *Salmon's* Arm two
“ Pair of Leather Breeches, which had been
“ purposely marked, particularly on the Waist-
“ band or Pocket; and that he took out of
“ his Pocket a Clasp-Knife, and a Tobacco-box,
“ which Tobacco-box was, he says, *M'Daniel's*;
“ but as it was a particular and very remarkable
“ one, he lent it to the said *Salmon* on this
“ Occasion, which had in it two Shillings and
“ Six-pence in Silver, and a Silver Pocket-piece,
“ which he had submitted himself tamely to be
“ robbed of; and after they had left this said
“ *Salmon*, they went and lodged in *Kent-Street*,
“ and in the Morning he took them to the
“ *Spread-Eagle*, where he had agreed with the
“ said *M'Daniel*, *Berry*, *Salmon*, and *Egan*, to
“ take them; that about Seven in the Morn-
“ ing, the said *Egan* came in accordingly; and
“ that this Deponent told the said *Ellis* and *Kelly*,
“ *Egan* dealt at *Rag-Fair*, and he asked the said
“ *Egan* if he would buy the said Leather
“ Breeches, and he agreed to pay five Shillings
“ for them; that he gave them a Shilling in
“ Part; after that he called for a Pipe of To-
“ bacco, and said that he had lost his Box,
“ with Intent to buy that which they had taken
“ from *Salmon*; that he bought it of them for
“ a Pot of Twopenny; then he went out to
“ get the Remainder of the Money for the
“ said Breeches, and went to another Ale-house
“ in *Kent-Street* to *M'Daniel*, who immediately
“ went with *Egan*, and secured the said *Ellis*
“ and *Kelly* with all the Things, except the said
“ Tobacco-box, which *Egan* had purchased of
“ them, as he believes. And this Deponent
“ farther saith, that he has several Times been
“ in Company with the said *M'Daniel*, *Berry*,
“ *Salmon*, and *Egan*, and they have all severally
“ encouraged him, and said, if he should be
“ impeached, they would say nothing against
“ him; and they promised to share the Reward
“ and Subscription-Money raised, between the
“ said

“ said *Berry*, *Salmon*, *M^cDaniel*, *Egan*, and this
 “ Deponent; and that this was contrived to
 “ convict the said *Ellis* and *Kelly* on Purpose to
 “ get the Reward.

“ Sworn before me, ——— BELL.”

Cox. As soon as this was taken, the same Night I obtained a Warrant against *M^cDaniel*, another against *Berry*, another against *Salmon*, and another against *Egan*. I was advised to attend the Trial of *Ellis* and *Kelly*, and not to discover that I had *Blee* in Custody till after the Trial; and in order that he did not make his Escape, *Thomas Warren* went down to assist me. When I came to *Maidstone*, I informed myself as soon as I could, who was on the Back of the Bill of Indictment of *Ellis* and *Kelly*. Their Trial came on the 15th of *August* at Night: I came into Court very soon after the Trial began; *Blee* was then in my Custody, but nobody knew it then at *Maidstone*; he was brought down in the Night, and stopped short of the Town. When I came in, I heard *Salmon* giving Evidence against *Ellis* and *Kelly*; he said, that he went in at the *Ship* at *Deptford*, and had a Pint of Beer; that he saw three Men drinking in a Box, and *Ellis* and *Kelly*, the then two Prisoners at the Bar, were two of the three Persons, and the other was a carrot-bearded Fellow; that after he had drank his Pint of Beer, in the Dusk of the Evening he went out, in order to go Home to *London*; and having got as far as the four-mile Stone, opposite to which at a Gate he stopped to make Water, in the mean time the three Men came up, and one of them d—d him, and asked, where he was going? He said, he desired him not to swear, and said he was going to *London*; upon that, one of them, the carrot-bearded Fellow, snatched the Bundle from under his Arm, and punched him on the Breast. The Judge was pleased to ask him, if it was light enough to see their Faces, and whether he was sure the Prisoners were two of the Men? Yes, he said, it was light enough to see their Faces, and he was sure they were two of the People that robbed him. Then he went on, and said, that *Kelly*, one of the Prisoners at the Bar, drew a Knife, and said, D—n him, let us search him; and took out of his Pocket an Iron Tobacco-box, in which was a Guinea in Gold, two Shillings and Six-pence in Silver, and a Silver Pocket-piece, and likewise a Clasp-Knife and Fork out of his Pocket: He said, the Bundle contained two Pair of Leather Breeches marked with *J. S.* and a Figure of 4 under the right Pocket; and that the Handkerchief had an Oilet-hole at each Corner; and all those Goods were produced in Court, and he looked at them, and said, they were the Goods he was robbed of, and that they were his Property.

Q. Are these produced here the same?

Cox. These are the same Goods; they were delivered into my Care, and have been ever since. The Judge was pleased to ask him, how he knew the Pocket-piece? He said, by a particular Mark it had in the middle. His Lordship was pleased to ask to see it, and it was delivered to him by the Constable of *Greenwich*.

Court. Look at that Pocket-piece and Tobacco-box.

Cox. I am sure they are the very same Things he swore he was robbed of. I asked the Judge what he was pleased to have done with the

Things? His Lordship bid me take care of them till the Persons were tried. He was pleased to ask the Prisoners, if they would ask *Salmon* any Questions? *Kelly* desired *Salmon* might be asked, whether he saw him draw a Knife? *Salmon* said, Yes, you did draw a Knife; but I suppose you will deny all the rest presently. *Kelly* said, that cannot be, because he had never a Knife. There was one Circumstance which I had forgot; When the Judge had asked him, if it was light enough to see their Faces, he also asked him, if he could know the carrot-bearded Man, and if he had ever seen him before? He said, No, he had not to his Knowledge.

Q. Did you see either of the other Prisoners there?

Cox. I saw *M^cDaniel*, *Salmon*, and *Egan*.

Q. Did they all give Evidence?

Cox. They did.

Q. from *Berry*. Did you see me in Court?

Cox. I did not; I saw him at *Maidstone* in the Time of the Assizes. After *Salmon* had done, *Egan* was the next Evidence: He said, he dealt in old Cloaths; that on the 30th of *July* he went into *Kent-Street* to the *Lock-Hospital*, to see if they had any old Cloaths to sell; but they not being up, he went into the *Black Spread-Eagle* to get him a Pint of Beer; that he observed three Men sitting in a Box drinking, and as he was telling the Landlady his Business, one of them, a carrot-bearded Fellow, not taken, (for they did not know he was taken then) asked him, if he would buy two Pair of Breeches? He said, Yes, if they could agree for the Price; and that they did agree for five Shillings; and that he gave *Kelly* one Shilling Earnest to bind the Bargain, till his Wife should come with more Money, or something of that Sort; and he was asking the Landlady for a Halfpenny-worth of Tobacco; and as he was saying he had lost his Tobacco-box, one of the Men offered to sell him one; (I have forgot which of the Prisoners he said that was.) He said, he bought it of him for a Pot of Twopenny, (indeed they sell no other Liquor at that House:) He said, as he was looking at the Breeches, he knew them to be *Salmon's* Property, having heard that *Salmon* was robbed over-night; and after some Time he went out, under Pretence to get the rest of the Money, but meeting with Mr. *M^cDaniel*, an Acquaintance of his, and knowing him to be an Officer, he told him the Story, and *M^cDaniel* said, he need not give himself the Trouble to look for an Officer, for he could do as well as a Constable; and so he returned back with him, and took *Ellis* and *Kelly* at the *Black Spread-Eagle*; and upon searching them took out of *Kelly's* Pocket a Silver Pocket-piece, the same that was then produced, and a Shilling, and a Clasp-Knife. The Judge was pleased to ask him, how he knew the Breeches belonged to *Salmon*? He said, by a particular Mark they had. He was asked, how he knew the Mark? He said, he had bought Breeches of him for himself, and, I think, his Son, twelve Years, and knew his Mark particularly well. The Judge asked the Prisoners, if they would ask that Witness any Questions? And *Kelly* desired he might be asked, if the carrot-bearded Man and he did not wink at each other before he offered to sell him the Breeches? And *Egan* also said, what gave him the greatest Suspicion that the Breeches were stolen was, because he had seen one of the two

Prisoners ducked for picking of Pockets in the *Artillery-Ground*. *M'Daniel* was the next Witness; he said, he met *Egan*, an Acquaintance of his, and *Egan* knowing him to be an Officer, told him the Story; and he went with him and took *Ellis* and *Kelly*; and upon searching *Kelly*, he found upon him a Silver Pocket-piece, the same that is now produced in Court, a Shilling, and a Clasp-Knife, (I suppose the Fork was then lost) He said, that was all he had to say, only there was a Drummer in the Room when he was taken, whom he ordered to assist him, which he did.

Q. Did he say any thing about the Tobacco-box?

Cox. I don't remember that he did. The Moment the People were called into Court to give Evidence, I had fixed my Eye pretty steadily on Mr. *Berry*, whom I asked to go with me to drink a Glass of Wine, (he was in the other Court) which he did, and I secured him at the *Bell*; then I went to secure the others according to my Warrants. As soon as they had given their Evidence, the Cryer ordered them to go out. We secured them; upon searching *M'Daniel*, I found this Knife upon him, (*produced in Court a singular long sheath'd Knife of the Dutch Sort*;) I was told of it before. As soon as they were secured, I was forced to get Leave to put them in the Mayor's Gaol. I asked *Salmon* in particular, if he knew one *Thomas Blee*? He did, as he had done before in Court, say he knew no such Man. I said to him, I am sure you must know him; he as positively denied it again: The next Day when he was carried before the Justices, (I believe there were twenty or thirty of them) *Blee* was brought Face to Face to him; he looked at him, and then declared he never saw that Man in his Life before. I asked *M'Daniel* that Night, if he knew *Tom Blee*? He denied he knew any such Person. I asked *Egan* the same, and he as positively denied it as the rest, at the Time *Berry* was in Custody at the *Bell*. I remember, as we were going along to the *Bell* to drink a Glass of Wine, he asked me what I thought would be the Fate of *Ellis* and *Kelly*, and who was to pay the Expence of the Prosecution, for it was very considerable; upon that I could not help observing, that if they were convicted, there would be sufficient to pay the Expence very handsomely; and if they were acquitted, the Prosecutors, I said, I believed must bear the Expence themselves; he said he knew that, and for that Reason if this Affair was well over he never would be concerned again; by that Time we had got to the *Bell* the Discourse dropped, and I took him in Custody. When I had secured the others in the Mayor's Gaol, I went and fetched *Berry* from the *Bell*; after I had got him into that Gaol, I asked him, if he knew *Tom Blee*? He said, he did not know any such Person. I put them in separate Rooms that Night, and set a Man in each Room with them. The next Day when *Berry* had been carried before the Justice and was committed, he and I walked together from the *Bell* to the Gaol; in going along he said, he hoped the Gentlemen would not admit *M'Daniel* an Evidence, (for at that Time it was thought he would get to be an Evidence) because he had saved himself once before by the same Means; but, said he, If the Gentlemen will admit me an Evidence, I can do for *M'Daniel* and another Man, (whom he named) that is not in Custody; whom I know not whether I should name.

Court. Name that Person.

Cox. It is *Ralph Mitchel*. I asked him, if he would tell me any Particular that he would alledge against him? He said, he could write to me in a few Days; but he never did. As to *M'Daniel*, the next Morning after he was apprehended, he desired to speak with me in the Room where he was confined; I took Mr. *Warren*, one of the Constables of *Greenwich*, with me, and went to him. He said, he had rather speak to me by myself; with that Mr. *Warren* withdrew: He there cried a good deal, and begged of me to be his Friend, and get him committed for farther Examination; for he said he could make a very great Discovery relating to the Public, and could put five hundred Pounds into my Pocket. I told him I would acquaint the Gentlemen with what he said. Accordingly I did, and used my Endeavour to prevent his being committed for farther Examination; he was afterwards committed upon the Warrant.

Q. from *Berry*. Did you see me any way busy about the Affair?

Cox. *Berry* kept *M'Daniel*, *Salmon*, and *Egan* Company; and because it was to be my Place to take them, I kept Company with them all four for two Hours.

Q. from *Berry*. Was I busy in preferring the Bill?

Cox. I don't know that he was.

Q. from *Berry*. Was I not sitting in *Nisi Prius* Court to see the Trials there?

Cox. Yes, he was. When I talked with *Berry* afterwards, he denied knowing *Blee*, and pretended to be a Stranger to them all; and said, he came down into that Country about Horses. As for *Egan*, he denied he knew *Blee*, or ever saw *Berry*. Some Time after, I had some Talk with him again; then he declared he never saw *Berry* in his Life till he saw him in the *Gravesend* Boat.

Q. Can you recollect whether there were any Inquiry made by the Judge, whether they knew one another upon their Oaths?

Cox. There was nothing said of that Sort, that I remember.

Q. from *M'Daniel*. Whether or no I did not go to 'Squire *Bell*, to charge *Blee* with a Robbery after he was taken?

Cox. I know but little of that; but here will be an Evidence that can give a very good Account of that.

Elizabeth Pragnell sworn.

Elizabeth Pragnell. I live at the *Ship* in the *Broad-Way*, *Westminster*. I remember seeing *Blee* at our House on the 29th of *July* in the Evening, in Company with two Lads, each of them dressed in blue-and-white striped Waistcoats very dirty; and I saw those two Lads at our House the next Day, being the 30th; I have heard since one was named *Kelly*, the other *Ellis*. On the 29th, in the Evening, they came and sat down at the Door, and called for a Pint of Beer; I believe they were there the best Part of an Hour. The Evidence *Blee* inquired for somebody, I don't know who it was. He went out, and came in again in a little more than half an Hour. Then the two Lads said to him, Will you pay for this Pint of Beer? He said, Yes, come in, and we will have a Pot of Beer; then they came in, and called for a Pot of Beer; one of them went over the Way to a Shop for some Bread and Cheese; he

he brought some in, and they eat it; they stayed, I believe, about an Hour and half, and went away when it was dark. *Salmon* also came in, with a Bundle under his Arm in a Handkerchief, when they were there; he called for a Pint of Beer, and pitched himself against the Dresser, facing them, and looked at them, then went and sat down in a Box with his Back toward them: He went out a little before them; I remember *Blee* went out two or three Times.

Q. What Liquor had *Blee* and the Lads?

E. Pragnell. They had two Pots and a Dram; I cannot say whether it was a Quartern or not: *Blee* changed Half a Crown, and paid for the Liquor. On the Forenoon the next Day, the two Lads that were with *Blee* were brought in again by a Constable, and a Drummer, named *Cornack*, to assist him. The Man that I took to be the Constable, which was *M^cDaniel*, called for a Pint of Beer; he asked me, whether I knew them two Boys to have been there over-night? I said, Yes. Then he asked me, if I knew that Man at the Door? I said, Yes; he had a Pint of Beer at my House the last Night, (that was *Salmon*.)

Q. Did he mention *Salmon's* Name, or say he knew him?

E. Pragnell. No, he did not.

James Cornack sworn.

James Cornack. I am a Drummer; I was quartered at the *Black Spread-Eagle* in *Kent-Street*. On the 30th of *July* last, I came down Stairs between Eight and Nine in the Morning; I observed three Men sitting together in a Box; one of them had a carroty Beard, which was *Blee*; they had had some Victuals, and there was some Drink before them.

Court. Look about, and see if you see *Blee* here.

Cornack. There he stands, (pointing to him;) his Beard is now much about the Length it was then, (it might be six Weeks Growth,) the other two were the two Prisoners that were cast at *Maidstone*. *Blee* said, I think I will go out, and get shaved; he went out. In about eight or ten Minutes after that, in came *M^cDaniel*, with a darkish-coloured Coat on; he laid hold of *Kelly*, and said, Come out, you Blackguard Dog. I said, What makes you abuse the Lad in this Manner? He said, D—n him, I have got a Warrant against him, I am an Officer; they have robbed a Man just against the four-mile Stone near *Deptford*; I desire you would aid and assist me. I said, If that is the Case, I will. He took a Piece of Rope out of his Pocket, and tied them together. Now, said he, I will take care of them; do you step down to the *Elephant and Castle*, you will see two Men, one in a light Surtout Coat, and his own curled Hair; I will pay you for your Trouble. I went there; there sat *Berry* the Prisoner, and *Salmon* was coming in from making water. I said to *Salmon*, I believe you are the Gentleman that I want; there is a Gentleman at my Quarters that wants to speak with you: *Berry* said, Go along with him. *Salmon* went with me; coming along the Street, I said, What is the Matter? What has happened? Said he, I happened to be at *Deptford-Yard* last Night, and had taken some Money, and had some Breeches with me; there were three Chaps stooped me, and robbed me of a Guinea in Gold, Half a Crown in Silver, a Tobacco-box, and two Pair of Leather

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Breeches tied up in a Handkerchief; and if the Breeches are mine, they are marked with *J. S.* and a Figure of 4 on the right Pocket; and the Handkerchief has an Oilet-hole at each Corner. We went in; there stood the Bundle on the Table, and *Egan* sitting in a Box opposite the Lads. *M^cDaniel* asked *Egan*, what he had in that Handkerchief? He answered, it was no Business of his, for the Handkerchief and the Things in it were his; for he had bought them of the Lads. I made him open the Handkerchief, we found it marked at each Corner as *Salmon* had said, and the Breeches *J. S.* 4: *M^cDaniel* searched *Kelly*, and I saw him take a Clasp-Knife out of his Pocket, a Shilling, and a Silver Pocket-piece; he gave him the Shilling back again, and said the Pocket-piece was marked in the middle, and shewed it me, and desired me not to be mealy-mouthed when I came before the Justice; this he said once or twice. They tied the Things all up in a Handkerchief, and we set out with them to a Justice of the Peace at *Greenwich*.

Q. Did you see ever a Tobacco-box?

Cornack. No, I did not.

Court. Look at this Pocket-piece.

Cornack. I think this is the same; it has much the same Mark; it is hard for me to swear it; but I believe it is the same. Going along, *M^cDaniel* said to the Lads, You have made a good Hand of it, if you have spent the Guinea already; the Lads said, they never took a Guinea from him. *M^cDaniel* said to me, One of them has got Money in his Stocking, but let them keep it, poor Things, they'll want it; he wanted them sadly to confess the Robbery, and told them, if they would not, they would certainly be hanged.

Q. What were his Words, as near as you can recollect?

Cornack. He said, You Dogs, I would have you confess when you come before the Justice; it will be the better for you; and tell me where the other Fellow is gone to: They said, they could not tell any thing about it, and would give him no Answer; they said to him they wanted to go to some *Bridewell*, which I do not know. He said to them, if they would confess, he would do all in his Power for them, and he would untie them when they came into *Deptford*, and they should go by Water. We came to the *Five Bells* at the End of *Deptford* Road, there *M^cDaniel* called for a Pint of Beer; the People brought the Beer out. *M^cDaniel* asked the Lads, if that was the House they had been drinking at the Night before? They said, No, but they had been drinking at the Sign of the *Ship*; we drank the Beer, and then set out again: *Egan* and *Salmon* followed at a Distance. When we came to *Deptford*, *M^cDaniel* took the Lads in, and desired *Egan* and *Salmon* to stay at the Door; he called for a Pint of Beer.

Q. How came *Egan* to follow you?

Cornack. I don't know; he came from my Quarters.

Q. Did *M^cDaniel* charge him to assist?

Cornack. Not a Word as I heard. When he and *Salmon* were at the Door, *M^cDaniel* asked the Landlady if she saw them Lads there the Night before? She said, Yes, they were there the Night before, and had some Bread and Cheese; then he said to her, Did you see that Man that is now at the Door? (meaning *Salmon*.) She said,

Yes, he was here at the same Time, and they went out about ten or twelve Minutes Distance one of another. Said *M^cDaniel* to me, Take Notice of what this Landlady says, and don't be mealy-mouthed when you come before the Justice. Then we set out and went to *Greenwich*; and in the Clerk's Office they wanted *M^cDaniel* to be bound over to prosecute; *M^cDaniel* said he could not, for he had a Bit of an Estate left him in the Country, and he could not be there at the Time of the Assizes; then the Justice's Clerk was pleased to bind me over. We stayed at *Greenwich* and had some Beer, and were pretty merry till almost Nine at Night; coming Home all together, they let me and *Egan* go before. *Egan* swore by the Great G—d and the Sweet Jesus, he would not appear against them at the Assizes. Said I, You are bound over as well as I, and I cannot see you can be off from going down. He said, O! by J—s it is only changing my Parish; it has cost me three Shillings To-day, and the Breeches may go to the D—l, for I will never appear against them. We parted about Ten that Night; I went to my Quarters; *M^cDaniel* told me to come to his House in *Union-Court*. I went in about a Week after, but could not hear of such a Person; I went to the *Union-Arms*, and found the Landlord knew something of him, and I found he lived in *Scroop's-Court*; I went and asked there for him, but never could find him at Home, although I went there three or four Times; his Woman always told me he was gone into the Country. I saw him once, but that was by mere Chance; he was then dodging me, or somebody else, at the End of *Parliament-Street*.

Q. Was you at the Assizes at *Maidstone*?

Cornack. I was; when I came there, I could not find any of them; they kept out of my Sight, I imagined, for fear I should come in for Part of the Reward. At last I happened to meet *Egan* in the Street: I said, What, have you done the Thing? (I meant, found the Bill :) He said, No, we shall not do it this Day or two; thinks I, I'll watch you: I did, and by-and-by came *Salmon* and *M^cDaniel*, and, I think, *Egan*, and one *Sergant*, a Constable; they and I went into the Clerk's Office to get the Bill of Indictment drawn, *Berry* did not go in, I followed them. When they came in, the Clerk said, Are you all here? Yes, said *M^cDaniel*, we are all here. Said the Clerk, There are six of you. There are but five of us, said *M^cDaniel*. Said the Clerk, Is there not a Drummer? Oh! said *M^cDaniel*, I had forgot him. After we had prepared the Bill of Indictment, I went to the *Cock* at *Maidstone*, there sat *Berry*; I did not recollect him at that Time; said he, How do you do, Drummer? I said, You have the Advantage of me, I cannot say I know you. No, said he, don't you know that Morning when you went to the *Elephant and Castle* in *Kent-Street* for *Salmon*? Then I said, I believe you are the Gentleman that sat there in the Box. Yes, said he, I am: Then he asked me, what I thought of those Lads, will they be convicted? I said, it appears very plain against them. Then he said, If they are not, I must either beg my Bread, or go upon the Highway myself.

Q. from *Berry*. Were there any Company by at this Time?

Cornack. No, there were not; *Berry* was sitting by himself; he generally was by himself, except he was with his Companions.

Q. Are you certain he said these Words to you at that Time?

Cornack. I am positive of it he did.

Mary Huffy sworn.

Mary Huffy. I live at the *Elephant and Castle* in *Kent-Street*, I am Servant there; my Mistress's Name is *Jane Smith*. There came three Men into our House, and after that came in *M^cDaniel*; they had a Rasber of Bacon for Breakfast. I don't know the others Faces.

Q. When was this?

M. Huffy. It was in the last Summer-time.

Thomas Sergant sworn.

Thomas Sergant. (He is shewn the *Tobacco-box*.) I have seen such a one; I made a Remark that the Unicorn's Horn was broke off the Box, when *M^cDaniel* shewed it me above a Year ago; this I see is broke as that was. His Box has been sent to my House many a Time, to be filled with Tobacco; it is near a Year ago since I saw it; this is like it, but I cannot tell this is it.

Q. How came *M^cDaniel* to shew it you?

Sergant. He shewed it me as a Piece of Curiosity; saying, Here is an old Thing, a curious Thing. I said, It is not perfect now, here wants the Horn to the Unicorn.

Henry Sergant sworn.

Henry Sergant. I know all the Prisoners very well; I was at the taking them all at *Maidstone* Assizes last.

Court. Give an Account what you know of them.

Sergant. *M^cDaniel* said I was a young Constable, and I should have my Share of the Reward; he should take the Money, and he would see me paid.

Q. What Reward did he mean?

Sergant. The Subscription-Money of our Parish, for the two Lads that were tried, *John Ellis* and *Peter Kelly*; I carried them down.

Q. Did you produce these Goods there?

Sergant. I did.

Q. Where had you them?

Sergant. I had them of Justice *Bell*, who sent for me, I being a Constable.

Q. What passed when he said, You are a young Constable?

Sergant. The Prisoner *Berry* said, We shall have a good Supper if the Prisoners are convicted; and if they were not, he thought he must beg his Way home. As I was going along the Road with *Ellis* and *Kelly* to *Maidstone*, they told me there was one *Tom Blee* concerned with them in the Robbery; and also where he lived, and what Sort of Cloaths he wore. I took it down in Writing; the Justice desired me to go and take him; I said, I would give Directions to a Thief-catcher, which I did to *Ralph Mitchel*; but he refused to act in it.

Q. Was you upon the Trial?

Sergant. I was.

Q. Was *Salmon* a Witness?

Sergant. He was; he swore he lost these Things. Also *Egan* and *M^cDaniel* were both examined upon it.

Q. from

Q. from Berry. Did you see me concern myself at all in the Affair, or was I upon the Back of the Bill?

Sergant. No, he was not on the Back of the Bill; he had no Business there, if he could have trusted his Friends with the Money. I heard *M^r Daniel* and him both say they would share the Reward.

Q. from Berry. Did not you see me sitting at the *Cock* all the while?

Sergant. No, he walked about with us.

Q. to Blee. You say *Berry* gave you a Crown, what Money was it?

Blee. He gave me a Half-Crown and two Shillings and Six-pence that Day I went with the Lads to *Deptford*.

Berry's Defence.

On the 25th of *July* I was out of Town all Day, and returned the *Sunday* following; and stayed at Home all Day the *Sunday Blee* tells you he was with me, and I gave him a Crown. If your Lordship will indulge me to put it off till next Sessions, then I can bring Witnesses to prove he falsely accuses me. I went out on the 5th of *August* to *Bromley Fair*; I saw *Blee* with a Saddle on his Back; he is a pilfering Sort of a Fellow. I went and took him by the Collar, and said, I would chastise him; he said, *Mr. Berry*, I can tell you a great deal if you will not hurt me. I said, If you can tell me a great deal, tell me where my Goods are. I heard on the 12th of *August* that he was taken up at *Greenwich*; I went there, and took *M^r Daniel* over there, to see if he was taken, on purpose to have charged him with my Goods. My Son is gone, he has pushed him away, and I have never seen him since, and they would never give me any Answer that they had got him. I asked *Mr. Sergant*, if he had got him? He would not tell me. They never took him to give any Evidence before the Justice. People may go a thieving for ever, if they may get off in this Fashion.

M^r Daniel's Defence.

I was called out about the 30th of *July* to go over to the *King's-Bench*; I met this Man *Egan*, he desired me to go and take a couple of Thieves in *Kent-Street*; I said, What have they done? He said, I believe they have broke open some House, and stole these Things. I went with him to the *Elephant and Castle* in *Kent-Street*, and stayed there some Time, till we sent for *Mr. Salmon*; and when he came, *Egan* came with him to me. I said, Is the Man come? He said, Yes; then I went with *Egan* to the *Black Spread-Eagle*, there were these two Men sitting; one of them said, I believe I have done now. I turned him about, and searched him, and took these Breeches from under their A—s, and also from one I took this Pocket-piece. After this I said to *Salmon*, The only Way to save Expence is to examine them before Colonel *Bell*. In carrying of them down, the least of the two said, I wish I could be admitted an Evidence, I would be glad; I said, You Dog, where is the rest of you, where is the other Fellow, what is his Name? This Lord *Blee* lived along with me six or seven Months, I never knew his Name; when he told me my Lord, I guessed directly; one of them wanted to be admitted an Evidence before Justice *Bell*,

and he would not admit either of them. After that I heard my Lord was taken, I goes down to *Greenwich*, and went to *Mitchel* at *Deptford*; and said, Here, *Cox* has taken the other Fellow, *Ralph*, will you come up, and see if he has got him? He was afraid of being taken upon some Warrants, and would not go; so I went to the Colonel myself, the Clerk was there, and he was very ill; he said to me, *Mr. M^r Daniel*, he is not taken, if he was he would be brought to me. After that I stopped a Man that had murdered another at *Coventry*; I brought him to *Hicks's-Hall*, the Justices committed him to *New-Prison*. The Gentlemen told me, I must go down to *Coventry* along with him. I went down to *Mardstone*; there I said I could say nothing to the Robbery: The Drummer could say as much as I could as to the Pocket-piece and Tobacco-box. As God Almighty is in Heaven, I know no more of them than your Lordship there; I have taken a great many Thieves, and have ventured my Life, and been shot at by them. I never had my Name brought in Question; I have been offered Money to let Prisoners go, but I never would do it: I could have had three-score Pounds to have done it.

Salmon's Defence.

That Fellow that swore I had been at the *Bell* in Company with him has sworn false; I never was in Company with him in the whole Course of my Life, nor I have not been in that Alehouse these five Years.

Egan's Defence.

Please to ask where the *Bell* is? I do not know where it is; I have no Knowledge of that Man in the World, (*locking towards Blee.*)

Q. to Berry. Have you any Evidences to call to your Character?

Berry. Call *Henry Warrington*. (*He was called, but did not appear.*)

Berry. I lived seventeen Years in the Yard where this Man lives, that is, *James Price*; will you please to call him?

James Price again. I have known *Berry*, I believe, five Years.

Court. He calls upon you for a Character; what Character can you give him?

Price. A very bad one, my Lord.

Berry. Please to ask him, what he can say as a Stain upon my Character?

Price. It will hurt you if you insist upon it.

Q. to M^r Daniel. Will you call any Witnesses?

M^r Daniel. There is a Man that has known me these nine or ten Years, and that I have the best of Characters; that is *Mr. Holewright*.

Court. Do you chuse he should be examined to your Character?

M^r Daniel. Yes.

G. Holewright again. I believe I have known *M^r Daniel* eight or nine Years, or longer; he never did me any Injury in his Life-time; but as for the rest of it, I believe he is bad enough.

Q. to Salmon. Have you any Witnesses to call?

Salmon. No, my Lord; I have not had Time to fend for any.

Q. to Egan. Have you any Witnesses to call?

Egan. No, my Lord; none of my Acquaintance know that I am in Trouble.

The Jury found them all four guilty of all the Facts charged against them in the Indictment; but whether the Facts charged were within the Statutes of the 4th and 5th of *Philip and Mary*, and the 3d and 4th of *William and Mary*, they knew not*; and therefore prayed the Assistance of the Court. Whereupon the following Special Verdict was found:

“ We find the Record of the Conviction of *Peter Kelly* and *John Ellis* prout.

“ We find, that before the committing the said Robbery, the Defendants, *M'Daniel*, *Berry*, *Egan*, (alias *Gabagan*) and *Salmon*, and *Thomas Blee*, did maliciously and feloniously, and with Intention to procure to themselves the Rewards allowed by the Statute for the apprehending of Robbers on the Highway, and some further Rewards offered by the Inhabitants of the Parish of *Greenwich*, and other adjoining Parishes, all meet at the *Bell Inn* in *Holborn*, in *London*; and that they all agreed *Blee* should procure two Persons to commit a Robbery on the Highway upon the Defendant *James Salmon*, in the Parish of *St. Paul Deptford* in *Kent*, which is an adjoining Parish to the said Parish of *Greenwich*; and for that Purpose did maliciously and feloniously contrive and agree, that the said *Blee* should inform such Persons, that the said *Blee* would assist them to steal some Linen in the said Parish of *St. Paul Deptford*.

“ That the said *Blee*, in Pursuance of the said Agreement, and with the Privity of the said Defendants, did engage and procure the said *Peter Kelly* and *John Ellis*, in the said Indictment named, to go with him to *Deptford* to steal Linen, but did not at that Time tell the said *Kelly* and *Ellis*, or either of them, of the said intended Robbery on *Salmon*, nor at any other Time before the said Robbery was committed; and in consequence of such Agreement, and with the Privity of all the said Defendants, the said *Ellis* and *Kelly* did go with the said *Blee* to *Deptford*.

“ And that the said *Blee*, *Ellis*, and *Kelly*, being at *Deptford* aforesaid, and the said *Salmon* being then and there waiting in the King's Highway, in pursuance of the Agreement aforesaid; they, the said *Blee*, *Ellis*, and *Kelly*, did all feloniously assault the said *Salmon*, and did take from his Person the said Goods mentioned in the Indictment, on which the said *Ellis* and *Kelly* were so convicted as aforesaid.

“ And we find, that none of the said Defendants ever had any Conversation with the said *Kelly* and *Ellis*, or either of them, before the said Robbery was committed: But we find, that before the said Robbery was committed, the said *M'Daniel*, *Egan*, and *Berry*, saw the said *Kelly* and *Ellis*, and told the said *Blee* that they would do very well for the Purpose of robbing the said *Salmon* as aforesaid: But

“ whether the Defendants, or any of them, are guilty of feloniously and maliciously committing, aiding, abetting, assisting, counselling, hiring or commanding the said *Kelly* and *Ellis*, or either of them, to commit the Felony and Robbery above-mentioned, or whether the said Defendants, or any of them, are guilty of feloniously and maliciously moving, procuring, abetting or counselling the said *Kelly* and *Ellis*, or either of them, to commit the said Felony and Robbery, in Manner and Form as in the second Count of the said Indictment is charged against them, we know not, and pray the Advice of the Court. And if the Court is of Opinion they are Guilty, we are of Opinion they are Guilty; but if the Court are of Opinion that they are Not Guilty, then we are of Opinion they are Not Guilty.

<i>Richard Heavysides,</i>	<i>Rand. Bayleys,</i>
<i>Gam. Gardner,</i>	<i>John Keen,</i>
<i>Nathaniel Norton,</i>	<i>Henry Knight,</i>
<i>Samuel Nesbit,</i>	<i>William Basson,</i>
<i>Ebenezer Gardner,</i>	<i>John Brewin,</i>
<i>John Poperton,</i>	<i>John Pricklow.</i>

TRINITY VACATION, 28 Geo. II.

June 19, 1755.

At Serjeant's-Inn Hall in Chancery-Lane, before all the Judges.

The Special Verdict argued †.

The King against *M'Daniel*, *Berry*, *Egan* and *Salmon*.

C A S E.

PETER *Kelly* and *John Ellis* were indicted for a Robbery on the Highway, committed near *Deptford* in *Kent*, on *James Salmon*; on which Indictment they were tried, and were capitally convicted.

The Defendants were indicted as *Accessaries before the Fact*, to the Robbery committed by *Kelly* and *Ellis*.

The Judges at the *Old-Bailey* directed a Special Verdict to be found on the last-mentioned Indictment.

Which Verdict first finds the Record of the Conviction of *Kelly* and *Ellis* prout.

It also finds, “ That the Defendants, *M'Daniel*, *Berry*, *Egan*, and *Salmon*, together with one *Blee*, with an Intention to procure to themselves the common Reward given by Act of Parliament, and an additional Reward offered by the Parishes of *Greenwich* and *Deptford*, for apprehending Highwaymen, met together at the *Bell* in *Holborn*; and there they agreed, that *Blee* should procure two Persons to rob, and that he should inform them that he would assist them in stealing some Linen in the Parish of *Deptford*.

It finds also, “ That *Blee* did procure and engage, with the Privity of the Defendants, the said *Kelly* and *Ellis* to steal the said Linen; but that he did not acquaint them of any Intentions to rob *Salmon*.

* 4 and 5 *Phil. and Mar. c. 4.* which says, Every Person that shall maliciously command, hire, or counsel any Person or Persons to commit or do any Robbery in or near any Highway in this Realm of *England*, and be thereof convicted, shall not have the Benefit of Clergy.

3 and 4 *Will. and Mar. c. 9.* That all and every Person or Persons that shall comfort, aid, abet, assist, counsel, hire or command any Person to rob another, shall be excluded from the Benefit of the Clergy.

† These Notes were communicated by a Gentleman of the *Temple*.

It finds also, "That the Defendants never had any Conversation with *Ellis* and *Kelly* before the Commitment of the Robbery; but that the Defendants saw them, and said they would do: And if, upon this Case, the Judges shall be of Opinion they are so, then the Jury find them so, &c."

Mr. HUME CAMPBELL.

I have the Honour to attend your Lordships on this very solemn Occasion, as Council on the Part of the Crown, against the Defendants, *Mr Daniel, Berry, Egan, and Salmon*; and as this is a Case which concerns the Lives of four unhappy Subjects, and the public Safety in general, I hope I shall be excused, if I observe a Minuteness somewhat singular before this Assembly.

That I may observe some Degree of Method, I shall consider the Charge against the Defendants under two Heads:

I. Whether all or any of them are *Accessaries before the Fact* in the Felony for which *Ellis* and *Kelly* have been convicted?

II. If they are, whether they are deprived of their Clergy?

The first of these includes three Propositions:

1. That a Robbery was committed, in which *Kelly* and *Ellis* were Principals.
2. That the Principals, which is sufficient to draw the Accessaries to Trial, have been convicted.
3. That such Things have been done by the Defendants, as will make them *Aiders, Commanders, and Abettors* in the Robbery.

The first of these is sufficiently established by the finding the Record of the Conviction: For wherever a Deed operates by way of *Estoppel*, and the Jury find it *prout*, your Lordships must consider it as an *Estoppel*. In the present Case the Jury have found the Record *prout*; and by that it appears, that a Robbery was committed by them on *Salmon*, one of the Prisoners. The Verdict finds likewise, that *Salmon* agreed at the *Bell* that *Blee* should procure Persons to rob him. It finds too, that *Ellis, Kelly, and Blee* did feloniously assault, and in the Highway take from the Person of *Salmon*, the Goods mentioned in the Indictment. Upon this Point, nothing in the Verdict appears contrary to the Record of Conviction; and you cannot construe the latter Words of the Verdict, so as to destroy the first*. This appears from the Case of *Monson v. West, Moore's Reports* 431. (N. B. S. C. in *Popham* 110.) The Case was this: In Assize, the Tenant pleaded no Tenant to the Freehold, and so no Disseizin, *nisi les parols entiel volunt*, gives the Tenant Title; upon which Verdict there was Judgment for the Demandant, and Error brought and assigned, that the Jury did not find the Demandant seized, and that the Tenant disseized him, as the Custom is, as appears from the Book of Entries, which says, that the Assize shall find Seizin and Disseizin; also that the Verdict was imperfect, by reason of the *Nisi*, &c. After divers Arguments, the Judgment was affirmed; for finding the Disseizin implies Seizin also; and the *Nisi*

the Court looked upon as nugatory, because the Verdict is complete before upon the Point on which the Jury were charged, viz. the *Seizin* and *Disseizin*. *Vaughan* 77. *Rowe v. Huntington*.

If a Jury, by their Verdict, shall take upon them to collect the Contents of a Deed, and yet by the same Verdict find that Deed *in hæc Verba*, the Court is not to regard the Collection they have made of the Substance of the Deed; but the Deed itself †.

2 *Bulstrode* 56. *James v. Harris*. Action for Words. The Jury found, that the Defendant spoke these Words of the Plaintiff, viz. *Thou art a Thief, and I will prove thee so*; but that they were spoke in the Absence of the Plaintiff. *Sed per tot Cur*. The latter Part of the Verdict shall not stand, for the Issue is the Words, and that they have found. *Brooke Tit. Verdict*, pl. 96. abridged from 11 *H. 6.* 42. *N. H.* brought a Writ of Error against *A*, and assigned for Error, that the Wife of the said *A*, who had obtained a Judgment against him upon a Writ of Maintenance, died such a Day at *C*, pending the Writ and before the Judgment. The Defendant pleaded, that his Wife is still alive at *W*, &c. The Inquest was taken at Bar, and the Wife appeared in Evidence, declaring herself to be the same Woman who was said to be dead, and was known by others in the Court. The Jury found, that the Wife was dead, as the Plaintiff had assigned for Error: And all the Court were astonished at this Verdict, which found the Woman dead, when she appeared at the Bar alive; and the Record of the Writ of Maintenance was viewed; and by that it appeared, that at the Day of *Nisi Prius* in the said Writ of Maintenance, the Wife appeared in her proper Person, which Day was four Days after the Day the Verdict finds she died. *Cheine*.

It is proved by this Record, that the Wife was alive four Days after the Verdict says she was dead: It seemed to him, that this Verdict is nothing to the Purpose, but is a Jeofail to try a Thing which is contrary to the Record.

Afterwards *Cheine* assembled all the Judges; and their Opinion was, that the Verdict was nothing to the Purpose, and is a Jeofail: For a Matter of Record before the Justices shall not be put in Averment, but shall be tried by the Record itself; and though the Verdict has found contrary to that which is proved by the Record, it is nothing to the Purpose; for the Verdict cannot defeat the Record, nor is it of so great Force as the Record: And if the Court had been apprized of the Record before Inquest taken, the Inquest ought not to have been taken, because of the Record; and she was proved to be alive four Days after she was alledged to be dead: But if the Record had not proved her alive, then the Plaintiff would have been intitled to Judgment.

But in the present Case, no Contradiction is here found, not even by Implication: For, though it may be said, that here was no Robbery, because *Salmon* was consenting, yet in all Robberies there is some Degree of Assent, and that is to avoid the Injury which is threatened the Person robbed.

* When an Act inflicts a Penalty for a second Offence, the Indictment for the second Offence must recite the Record of the first Conviction; and upon the Evidence, the Record of the first Conviction must be proved: But the Matter of the first Conviction shall never be re-examined, but must stand for granted. 1 *H. H.* 686. *Burn's Justice*, in Introduction, p. 27.

† For that Collection derives its Authority from the Deed; and therefore must of itself fail and come to nothing, when it is opposite to the Deed of which it is a Collection. *Gilbert's Law of Evidence*, p. 98.

If a Man is feloniously assaulted, and made to swear to bring Money to such a Place, and he does it; this is determined to be a Robbery, though done with the Assent of the Person robbed. And your Lordships cannot, without shaking the Principles of Law, say there is no Robbery committed, when it is found by the Jury that there is.

I apprehend, my Lords, it is a Rule in Law, that Accessaries shall not be tried till the Guilt of the Principals is established, and the Reason is, to avoid contradictory Verdicts upon the same Fact. [Vide *Brooke Coron.* 117. 40 *Aff.* p. 8. *Fitz. Coron.* 33.] There would be a Subversion of all Law, if Accessaries, who cannot be tried till the Guilt of the Principals is established, should upon their Trial be allowed to controvert whether there has been a Robbery or no. I hope, therefore, it is plain that there was a Robbery committed upon *Salmon*; for as to the putting in Fear, the Common Law did not require it, only required a taking by Violence. It is found, that *Salmon* was assaulted, and he might be put in Fear.

I come now, my Lords, to the second Part of the first general Question, *viz. That the Principals have been convicted.* This is found by the Verdict; it is also found, that *Blee* was one of the Robbers. It may be said, perhaps, that the Defendants were only Accessaries to *Blee*, and he to *Kelly* and *Ellis*; whereas they are indicted for being Accessaries to *Kelly* and *Ellis*. But I apprehend that by the Law, a Man may be Accessary to one or more. 'Tis found, that the Agreement was, that *Kelly* and *Ellis* should commit the Fact, and *Blee* procure them: Therefore it does not follow, that the Defendants were Accessaries to *Blee*. I admit, that, if the Defendants had been indicted as Accessaries to *Blee*, not to *Kelly* and *Ellis*, there might have been some Doubt, but now there can be none: For when the Principals are convicted, the Defendants cannot say, We were Accessaries to Three; but the Question is, Were you not Accessaries to Two?

'Tis found, that the original Fact was committed by *Kelly* and *Ellis*; and, as to the Pretence of stealing Linen, that was the Artifice by which these poor Lads were to be entrapped; it was not the Fact intended to be committed, nor was it the Fact which was committed: For the Agreement at the *Bell* was, that *Blee* should procure two Persons to rob *Salmon*, and that he should inform them, he would assist them in stealing some Linen in the Parish of *Deptford*.

* This *Joshua Cornwell* was Footman to *Nicholas Fenwick*, Esq; and in *October* Sessions, in *Sir Richard Brocas's* Mayoralty, 1730, "He, and *Thomas Rivers*, of *St. Botolph Aldgate*, were indicted at the *Old-Bailey*, for *burglariously breaking the House* of the said *Nicholas Fenwick*, and stealing divers Pieces of Plate, to the Value of 85*l.* and Holland Shirts to the Value of 20*l.* and other Goods, on the 8th of *September*. The Loss of the Goods was proved by *Mr. Fenwick* and others, though no breaking open the House appeared; but he found Part of his Plate by the Direction of *John Girst*, an Accomplice, who swore, That after divers Consultations with *Cornwell*, one *Sunday* Evening, about robbing *Mr. Fenwick's* House, it was agreed, that he and *Rivers* should do it on the *Tuesday* following. Accordingly, *Girst* and *Rivers* came to *Mr. Fenwick's* House about Two o'Clock in the Morning, and found *Cornwell* standing in his Shirt, with the Door open, peeping out for them; that they went in, and *Cornwell* opened the Door of the Beaufet, and there was a Candle burning in a Silver Candlestick, and *Cornwell* took out the Plate, and set it on the Carpet on a Table, and then went and fetched the Napkins and Linen out of a Bureau, and the Lady's laced Head, the Tea-Equipage, and two Silver Casters; *Rivers* bundled them up. He and *Rivers* carried all to *Rivers's* Lodgings, and *Rivers* afterwards pawned them to one *Grub*, who swore he took in fifty-six Ounces of the Plate of *Rivers*." The Fact being plainly proved, the Jury found *Rivers* Guilty, *Death*: But as to *Cornwell*, it being a new Point, the Court directed the Jury to find a Special Verdict.

In *December* Sessions following, the Court ordered *Joshua Cornwell* to the Bar, and told him, *That the opening the Door of his Master's House in the Night-time, and letting in two Persons to rob him* (on which the Jury brought in a Special Verdict last Sessions) was referred to the Twelve Judges, who adjudged his Case to be Burglary, and he received Sentence of *Death*.

Rivers was executed at *Tyburn*, *Monday*, *Nov.* 16, 1730; and *Joshua Cornwell* was hanged at *Tyburn*, *Wednesday*, *Dec.* 23 following. He owned, "That by the Persuasion of *Rivers* and *Girst*, while in *Mr. Fenwick's* Service, he conspired with them to rob his Master; which accordingly he did, by opening the Back-door, and letting them in, and then suffering them to take away the Goods mentioned in the Indictment, with many others: But said, he did not hand out the Goods, as *Girst* swore, but only shewed them where they were; and then *Rivers* bundled them up, and they carried them off to his Lodgings."

There are many Cases in *Keyling* where these Pretences have been rejected, particularly p. 44. where some Rogues influenced a Constable to break open the Door of a House, and thereupon they entered and rifled it; this was adjudged Burglary; and it was re-determined in 1730, in the Case of the King and *Cornwell*.*

I come now to the third and last Part of the first general Question: Whether all the Defendants, or any of them, have committed such Things as will make them *Aiders*, *Commanders*, and *Abettors* of the Robbery?

Under this Head I intended to inquire,

1. Into the Nature of Accessaries before the Fact: And,

2. Whether there is any material Difference in the Case of *Salmon* from any of the rest.

But as I have already taken up so much of your Lordships Time, I shall leave that which relates to *Salmon*, to the learned Gentleman who is to speak next.

As to the first, the Nature of Accessaries:

By the Common Law, the Person alone who committed the Fact was deemed the Principal, and those who procured it to be done *qualicumque Modo*, who contrived it, plotted it, counselled, and assisted, were Accessaries before the Fact; and the Trial was posterior in respect of the Commission, because the Existence of the Crime was to be first examined into; for before then it could not be known, whether they had been guilty of a Crime or no. But when the Fact was established, they proceeded *inverso Ordine*, and he that first counselled was last tried, as appears from *Bracton*, B. 3. cap. 19. p. 138. sect. 4, 5. and p. 139. sect. 10, 11. where he makes use of the Words,

Fortia, } Which three Sorts include all Sorts
Præceptum, } of Persons who contribute to, or
Auxilium, } in any wise assist to the Commission of the Fact.

In *sect.* 5. he has the particular Form of an Appeal. *Staunford*, in his *Pleas of the Crown*, B. 1. c. 45. p. 40, 41. which is an Abridgement of *Bracton*, says, that in an Appeal of Felony all the Principals and Accessaries must be joined, and there he describes Accessaries thus: "*Qui venit, vel tenuit, vel vinxit eum, vel fuit in Auxilio vel Consilio qualicumque modo, vel Præcepto vel Mandato, quo magis ipse C. interfectus fuit.*" [This is *verbatim* from *Bracton*.]

These Words are general, but prove what the Law at that Time was; he was Accessary, of whom it might be said, *qui fuit in Consilio*; and

he alone was not an Accessary, whom the Jury found to be *nullo modo in Consilio*, which is only the Negative. So *Fleta*, B. 1. c. 23. p. 33, 34. These Days had not arrived at that critical Skill; they thought it was the Participation of Guilt which constituted the Crime.

The Story of * *Tarquin* in *Livy* is a similar Case; and no one can doubt, but that he was Accessary before the Fact, though he spoke not, though he saw not his Son *Sextus*. There is a like Story of *Thrasibulus* and *Periander* of *Corinth*, related in *Herodotus* and *Aristotle*.

The *Mirror*, cap. 1. sect. 13. page 42. is more particular, and recites nine Kinds of Accessaries:

1. Those who command.
2. Those who conceal.
3. Those who allow or consent.
4. Those who ———
5. Those who aid.
6. Those who are Partners in the Gain.
7. Those who knew it, and did not disturb it by Defence or Excuse.
8. Those who received them knowingly.
9. Those who are in the Force.

Thus *Coke's Instit.* 182. in the Comment on the Statute of *Westminster*, c. 14. Accessaries before the Fact are divided into three Branches, *Commandment*, *Force*, and *Aid*.

Præceptum. Under this are understood all those that incite, procure, set on, or stir up any other to do the Fact, and are not present when the Fact is done.

Fortia is a Word of Art, and properly signifies the furnishing a Weapon of Force to do the Fact, by Force of which the Fact is committed, and he that furnisheth is not present when the Fact is done; and cites *Brañon*, B. 3. page 139. "*Ubi Factum nullum, ibi Fortia nulla, nec Præceptum nocere debet;*" and again, "*Vulnus, Fortia, et Præceptum generant unicum Factum; non esset Vulnus forte, si non adfuisset Fortia; nec Vulnus, nec Fortia, nisi Præceptum præcessisset.*" And sometimes, in a large Sense, for any that is Accessary before the Fact.

Auxilium. Under this Word are to be comprehended all Persons *counselling*, *abetting*, *plotting*, *assenting*, *consenting*, and *encouraging* to do the Fact, and are not present when the Act is done; for, if present, they are Principals. Before the Time of *Henry* the Fourth, there was no Distinction between present and not, but only he who struck the Stroke was Principal; the others, who were present, were Accessaries, *Plowden* 98 and 100. *Fitz. Coron.* 33. *Brooke Coron.* 118. The Word *Procure* is often used by *Brooke Coron.* 19, 104, 188. *Fitz. Coron.* 33.

The View of the Common Law was to prevent, if not prevent to punish, all those who should stir up any one to commit a Felony: And the Law respects the Intention.

The Law of *England* is not a Cobweb, which Offenders may slip through by being greater Villains than are allowed of by the Laws of

other Nations; and I hope this kind of calm and deliberate Villainy shall not escape by a Criticism.

But it may be said, that the Verdict has not found any *Communication* by express Words. But this will make no Difference, whether they did it by *Blec*, or by Letter, or by any Sign; for, by whatever Method it is done, they did it: And, though there were no Words, they shall be Accessaries.

Suppose a Person should plot High Treason, and employ another to kill the King: Here he is not Principal; but is he not Accessary? Certainly he is. It would be very singular, after all the Encomiums that have been given to the Common Law of *England*, if this should not be the Law of the Land, when it is the Law of all the Nations in the World. *Julius Clarus*, in his *Præctica Criminalis*, B. 5. Q. 89. puts this Case: If a Messenger is employed by *A*, to convey a Letter to *B*, which Letter advises *B* to commit a Felony, and the Felony is committed, they are all three to be punished with the same Punishment. But there is, my Lords, a Case of the highest Authority, that is, that of *Abab* and *Naboth*, 1 *Kings*, c. 24. (and very artfully recited it before he mentioned the Authority.) Can any one say, that *Abab* was not an Accessary, though he spoke not at all? I need not cite Cases from Histories of other Nations, when Sir *Thomas Overbury's* Case, 1 *State Trials*, page 331. is so applicable to the present Case. There was only one Principal convicted, though there were six Accessaries; and five convicted, though the Poison passed through three or four Hands; and *Franklin* was executed.

Where then is the Reason of the Law, that says, this Consent must be in express Words? The Consent is the Crime, and that the Jury have found; and that *that* is sufficient, appears from *Plowden* 473, 4. *Saunders* and *Archer's* Case. Where *Archer* counselled *Saunders*, who wanted to get rid of his Wife, to give her Poison in a roasted Apple, which he accordingly did; and the Wife was going to give some of it to their Child, whom *Saunders* was very fond of: Whereupon he endeavoured to dissuade her from giving it, saying, It is not good for Children; but the Wife answered, It is better for it than for me, and gave the Child some: But the Wife lived, and the Child died. Here *Saunders* was guilty of Murder, though he intended none to the Child; because his Intention was to murder. But as to *Archer*, the Question was, whether he was Accessary? And though the Judges in this Case were of Opinion that he was not, yet they thought it more proper that he should be delivered by a Pardon than otherwise, and accordingly they kept him in Prison from one Sessions to another, till he procured a Pardon: And *Plowden*, the Reporter, says, it was his Opinion, that whoever *counsels* or *commands* an evil Thing, should be judged accessary to all which follows from that evil Action, but not from any distinct Thing. If I command one to strike or rob

* The *Gabii*, who had met with some Success against the *Romans*, unanimously chose *Sextus Tarquinius* for their Governor: *Itaque postquam satis virium collectum ad omnes conatus videbat, (sc. Sextus Tarquinius) tum è suis unum seiscitarum Romam ad patrem mittit, quidnam se facere vellet? quandoquidem ut omnia unus Gabii possit ei Dii dedissent. Huic nuncio, quia credo dubiæ fidei videbatur, nihil voce responsum est. Rex, velut deliberabundus, in hortum ædium transit, sequente nuncio filii, ubi inambulans tacitus, summa papaverum capita dicitur baculo decussisse. Interrogando expectandoque responsum nuncius fessus, ut re imperfecta, redit Gabios: quæ dixerit ipse, quæque viderit, refert; seu ira, seu odio, seu superbia insita ingenio, nullam eum vocem emisisse. Sexto ubi, quid vellet parens, quidve præciperet tantis ambagibus, patuit; primores civitatis, criminando alios apud populum, alios sua ipsos invidia opportunos interemit; multi palam; quidam, in quibus minus speciosa criminatio erat futura, clam interfecti. Liv. lib. 1. cap. 54.*

another, and he kills him; I am Accessary to the Murder, because it is done in Consequence of my Command. The same; if I command one to burn a particular House, and he does it pursuant to my Command; but if he burns another House, this is not in Consequence of my Command.

I come now, my Lords, to the second general Question; which is, Whether the Defendants are deprived of their Clergy? And if the first Proposition is established, I apprehend they are. This Question depends on the Construction of the Acts of the 4th and 5th of *Philip and Mary*, cap. 4. and the 3d and 4th of *William and Mary*, cap. 9.

The 4th and 5th of *Philip and Mary* is for the due Punishment of such as *command, counsel, or hire* any Person to commit any Felony, and deprives them of their Clergy.

The 3d and 4th of *William and Mary* deprives those of Clergy, who shall *comfort, aid, abet, assist, counsel, hire, or command* any Person to commit Felony.

These Acts constitute no new Offence; they follow the Common Law, and are suppletory, and speak of an Offence known at Common Law; and I submit it, that if your Lordships determine these Men to be Accessaries *before the Fact*, unless the King interposes his Mercy, they must be executed. If a Statute speaks of Matters known at Common Law, it must, as to that Matter, be construed and extended according to the Common Law. *Hobart* 98. *Coke Lit.* 381. 6 *Modern* 143.

This is no new Case; for in a similar Case it is determined, that if a Statute is made suppletory to the Common Law, and taking away the Clergy, it must be construed liberally, *Jenkins* 2. *Cent.* 97. The Statutes 23 *H.* 8. and 27 *Edw.* 3. which take away Clergy, are *pro bono publico*; therefore to be taken by Equity.

But it may be said, that the Words *excite, procure, &c.* are not in the Acts of *Philip and Mary*, and *William and Mary*: But this will make no Difference; for, 1 *Anderson* 194. the Words of the Indictment were *excitavit, movit, et procuravit*: Resolved, that the Indictment was good, though the Word *counsel* was out; for it is not possible to *excite, move, and procure*, without counselling.

Mr. MADAN, on the same Side.

States the Question as Mr. *Hume* did.

I shall take Notice of the Word *Aid*; and I apprehend, my Lords, that the Defendants will certainly fall within the Sense of *Aiding*. In *Hale's Pleas of the Crown*, page 616. there is a Definition of Accessaries, *viz.* That which makes an Accessary before the Fact, is *Command, Counsel, Abetment, or Procurement*, by one to another, to commit a Felony, when the Commander or Counsellor is absent at the Time of the Felony committed; for if he be present, he is Principal. But in the Case of Poisoning, a Man may be Principal, though absent, as in *Vaux's Case*, 4 *Coke* 44, 6. *Hale's P. C.* If a Man is indicted as Principal, and acquitted, he shall not be indicted as Accessary before the Fact, *Stamford* 105. and 2 *Edw.* 3. 150, 282. *Fitz. Coron.* So that *Salmon*, it may be said, is no Accessary before the Fact (and if he is to be looked upon as a Principal, he will not come under this Indictment) because

he was present when the Fact was done. This is absurd; for the Fact could not have been done, if he had not been present. Because he was at *Deptsford* when the Fact was committed, therefore not at the *Bell* when contrived; this is a plain *non sequitur*.

I shall now consider,

1. Whether your Lordships can consider it to be a Robbery on *Salmon*, as the Indictment is for putting in Fear, which could not have happened, if he purposely put himself in the Way?
2. Whether the Prisoners, as they never spoke to *Kelly* and *Ellis*, are guilty of being Accessaries?
3. Whether, as the Prisoners agreed that *Blee* should tell *Kelly* and *Ellis* that he could assist them to steal Linen, this will alter the Case, as *Blee* enticed them to commit one Felony, and they committed another?

1. The Jury have found the Record of the Conviction of *Kelly* and *Ellis* *prout*, and your Lordships and the whole World are estopped to say the contrary, *viz.* That a Robbery has not been committed: For to say that *Salmon* was not robbed, is to say against that Record, which the Jury have found to be true. The Record lies before your Lordships, as Part of the Special Verdict, and Records cannot be contradicted, *Coke Lit.* 117. *b.* *Id.* 260.

In Lord *Lovat's* Case, the Crown called Mr. *Murray* as Evidence against him: Lord *Lovat* objected to him, as he stood attainted of High Treason: It was there said, he had been proceeded against in the *King's-Bench* for not surrendering within the Time limited. Mr. *Murray* pleaded, he did surrender himself within the Time limited by the Act of Attainder; and the Attorney-General confessed his Plea to be true: How did he prove this? By the Record of the Admission of his Plea to be true. And if your Lordships determine this to be no Robbery, it is not only overturning the original Conviction of *Kelly* and *Ellis*, but also the Finding of the present Jury.

The Matter now to be considered is not, whether a Robbery was committed by *Kelly* and *Ellis*, but whether the Prisoners are guilty of counselling them to do it. The Parts of the finding of the Jury, subsequent to the finding of the Record, are now to be looked upon, as upon private Knowledge, *Plowden* 83. *b.* The Jury cannot find the Record in one Part, and contradict it in another.

Whoever counsels a Felony or Robbery to be done, is Accessary *before the Fact*: The Defendants counselled, &c. *ergo* Accessaries *before the Fact*. That they did counsel, is found in the Special Verdict; and the third Proposition follows from the Premises.

But it is said, that the Defendants counselled *Blee* to counsel *Kelly* and *Ellis*.

1. What is Counselling, within the Meaning of the Statutes? *Procuring, Moving*, are only Species of Counselling, and shall be good in an Indictment, though the Word *Counselling* is left out, 1 *Anderson* 194. And I insist, that by the Word *Counsel*, is not meant *Counselling* by Word of Mouth only, though the second Count of the Indictment does not conclude with a *Contra Formam Statuti*; but having the Word *Counsel* in it, it will be sufficient, 1 *H. P. C.* 525. A Man may be acquitted

acquitted upon an Indictment which concludes *contra Formam Statuti*, and found guilty of simple Felony at Common Law.

Kelly and *Ellis* were seen and approved of by all the Prisoners. As far as I can find, this Indictment is the same as all Indictments for Accessaries. The Gilt of the Indictment is the *Counselling*.

A General Malice is transferable to any one a Man meets with; as

Particular Malice to one Person may be transferable to another: As in *Saunders's Case*, *Plowden* 473. The Indictment is, *Ea intentione felonice præbuit*, and reached to one not intended; so *ea intentione felonice percussit*, will reach one who did not strike at all; for the Stroke of one extends to all that were present and abetting, *Plowden* 98.

2. If the Defendants had never seen *Ellis* and *Kelly*, the general Command to *Blee*, to procure two Persons to rob, would, by Operation of Law, operate against the Defendants, as soon as *Ellis* and *Kelly* were procured.

Counsel even against one not in *rerum natura*, if when the Person is in being, the Counsel is followed, it will make the Counsellor accessory, *Dyer* 186. *a*. *Blee* did nothing, said nothing, without the Advice and Consent of all the Prisoners.

3. *Blee* was directed to tell *Kelly* and *Ellis*, that he could help them to steal some Linen at *Deptford*, which he did; but told them nothing of the robbing *Salmon*.

I admit, if I counsel one to commit one Species of Felony, and he commits another, I am not accessory, *H. P. C.* 616. So in *H. P. C.* 618. If a Man, after having counselled another to commit Murder, and, before the Fact is done, he repents, and forbids and countermands it, he is not accessory if the Murder is committed. So in the present Case, if the Defendants intended that *Kelly* and *Ellis* should only steal Linen, and they met with *Salmon* by Chance and robbed him, the Defendants would not be accessory to that Robbery: But it appears by the Record to the contrary; their Intention was to get the Rewards offered by Act of Parliament and the Inhabitants of *Deptford*; and, from the Nature of the Action, *Blee* could not tell them the Design, for it would have been absurd to have told them; for how could *Blee* know *Salmon* would be there? This must have struck them upon his first mentioning it.

A Robbery was counselled, a Robbery was committed, and a Robbery was committed as counselled.

But if all these Arguments should fail, the Argument *ab inconvenienti* is often allowed to be of great Weight, and it would deserve in no Case more than the present. Had I been asked my Opinion upon such a Case as this, I should not have hesitated in my Opinion: But if, after your Lordships Determination to the contrary, I should have the same Case put to me; I should tell my Client, That provided he saw not, nor spoke not to him that committed the Murder, he might ride in his Coach, and laugh at his Friends, while they went to be hanged. The Defendants cannot be said to be accessory to an Accessary; for that is, by Construction of Law, one who receives another before the Fact, knowing him to be an Accessary.

But it may be said, after all, that I have produced no Case in Point; I must confess, after a long and diligent Search, I cannot find one: But there will be one; there will be a Report of this Case, and the King and *M^r Daniel* and others will be a Case in Point hereafter.

TRINITY VACATION, 28 Geo. II.

July 28, 1755.

The King against *M^r Daniel* and others.

The Judges met again at Serjeant's-Inn Hall, to hear the Arguments in Favour of the Defendants.

MR. *Hume* begged Leave to mention a Case which he had met with since his Argument, which seemed to be applicable to the present: That was the Case of *William Belchier*, who was tried at the *Old-Bailey*, in the Mayoralty of *Robert Alfop*, Esq; in June Sessions 1752. N^o 345. page 209. and recited the Case at large from the *Sessions-Paper*, viz.

" *William Belchier* was indicted, for that he, " on the King's Highway, on *William Norton* " did make an Assault, putting him in corporal " Fear, and Danger of his Life, and taking from " his Person five Shillings, June 3.

" *William Norton*. The Chaise to the *Devizes* " having been robbed two or three Times, as I " was informed, I was desired to go in it, to see " if I could take the Thief, which I did on the " 3d of June, about half an Hour after One in " the Morning. I got into the Post-Chaise: " The Post-Boy told me, the Place where he had " been stopped was near the *Half-way House*, " between *Knightsbridge* and *Kensington*. As we " came near the House, the Prisoner came to us " on Foot, and said, *Driver, stop: He held a* " Pistol Tinder-box to the Chaise, and said, " *Your Money directly, you must not stay, this* " *Minute your Money.* (He produced the Tinder- " box.) I said, Don't frighten us; I have but " a Trifle, you shall have it. Then I said to " the Gentlemen, (there were three in the Chaise) " Give your Money, &c. I took out a Pistol " from my Coat Pocket, and from my Breeches " Pocket a five-shilling Piece, and a Dollar, " and held the Pistol concealed in one Hand, " and the Money in the other. I held the " Money pretty hard: He said, Put it in my " Hat. I let him take the five-shilling Piece " out of my Hand: As soon as he had taken it, " I snapped my Pistol at him; it did not go off: " He staggered back, and held up his Hands, " and said, O Lord! O Lord! I jumped out of " the Chaise; he ran away, and I after him, " about six or seven hundred Yards; and there " took him. I hit him a Blow on his Back; " he begged for Mercy on his Knees. I took " his Neck-cloth off, and tied his Hands with " it, and brought him back to the Chaise: Then " I told the Gentlemen in the Chaise, That was " the Errand I came upon, and wished them a " good Journey; and brought the Prisoner to " *London*.

" Q. Did you lose Sight of him in the Pursuit?

" *Norton*. No, I did not, my Lord; it was a very clear Morning.

" Q. from the Prisoner. Ask him how he lives?

" *Norton* to the Q. I keep a Shop in *Wyche-Street*, and sometimes I take a Thief.

“ *William Messenger.* I drove the Post-Chaise. I took Mr. *Norton* in the Chaise at *Hyde-Park* Corner; and told him, if we did not meet the Highwayman between *Knightsbridge* and *Kensington*, we should not meet him at all. I saw him coming, and said, *He is coming, get the Pistol ready.* He came up to the Chaise, and said, *Your Money, make Haste, your Money.* I heard the Pistol snap. The Prisoner said, O Lord! and ran away, and *Norton* after him, and took him.

“ Q. Did you ever lose Sight of him in the Pursuit?

“ *Messenger.* I did, for a little Time: The Pursuit was not above three Minutes. I heard the Prisoner cry, O Lord! the Moment he was taken.

“ *Prisoner's Defence.*

“ I leave it to your Lordship and the honourable Court. Guilty, *Death.*”

Mr. Serjeant DAVY.

I have the Honour of attending your Lordships as Council for the Prisoners; and I must own, that I could not have been prevailed upon to have been Council for such a Set of Rogues, had I not been appointed by your Lordships.

I shall consider the Question under two general Propositions:

I. Whether, upon the State of the Verdict, it does appear, that any Robbery was committed by *Ellis* and *Kelly*?

II. If there was a Robbery committed by them, Whether they are Accessaries in such a Manner as to be liable to any Judgment against them?

I shall first take Notice of the Objections which have been raised against the Defendants. And I find it is chiefly insisted on, That the Jury having found the Record *prout*, is sufficient Proof that there was a Robbery; and that the Defendants are thereby estopped to say the contrary.

I admit, that the Rules laid down relating to Estoppels shall prevail at Law. But it is as to the Extent of those Rules which I contend for; and I insist that they do not extend to Parties that are not Privies to the Record. The Reason of the Rules of Law in this Case, is, that there may be an End of Strife; for the Witnesses to the Record might be dead; and therefore Records shall bind Parties and Privies, but shall not bind Strangers. There is another Reason: Parties to the Record may have an Attaint for a false Verdict, or the modern Method of moving for a new Trial, but Strangers cannot.

And this appears from *Lock* and *Norbonne*, 3 *Modern* 141. Trial at Bar in Ejectment for Lands in *Wiltshire*. The Case was this:

“ *Mary Philpot*, in 1678, made a Settlement, by Lease and Release, to herself for Life, then to Trustees to support the contingent Remainders; then to her first, second, and third Sons in Tail Male, &c. then to *Thomas Arundel* in Tail Male, &c. It was objected at the Trial, that she had no Power to make such a Settlement; because, in the Year 1676, her Husband had settled the Lands in Question upon her for Life, and upon the Issue of his Body, &c. and for want of such Issue, then upon *George Philpot* in Tail Male, with several Remainders over, Remainder to *Mary Philpot*

“ in Fee; proviso that, upon a Tender of a Guinea to *George Philpot* by the said *Mary*, the Limitations as to him should be void. *George Philpot* having afterwards made a Lease of this Land to try the Title, the Trustees brought an Ejectment; but because the Tender of a Guinea could not be proved, there was a Verdict for the Defendant.”

And now *Mr. Philpot* would have given this Verdict in Evidence at this Trial, but was not suffered by the Court; for if one Man hath a Title to several Lands, and if he should bring Ejectments against several Defendants, and recover against one, he shall not give that Verdict in Evidence against the rest; because the Party, against whom the Verdict was had, may be relieved against it if it is not good, but the rest cannot, though they claim under the same Title, and all make the same Defence.

So if two Tenants will defend a Title in Ejectment, and a Verdict be had against one, it shall not be read against the other, unless by Rule of Court.

But if an Ancestor hath a Verdict, the Heir may give it in Evidence, because he is privy to it; for he who produceth a Verdict must be either Party or Privy to it; and it shall never be received against different Persons, if it doth not appear that they are united in Interest.

Therefore a Verdict against *A* shall never be read against *B*; for it may happen that one did not make a good Defence, which the other may do.

If upon the Writ of *contra formam collationis* a Recovery is had against the Abbot, and a *scire facias* issue against the Terre-Tenant, he is not concluded by any Trial had against the Abbot, 2 *Inst.* 488. [N. B. I have looked into the Authorities quoted, but cannot find any thing in Point.]

If this Doctrine which the Gentlemen have laid down relating to Estoppels, and that Accessaries upon their Trial cannot controvert the Robbery, should be admitted,

It would,

1. Encounter the known Principles of natural Justice.
2. Be contrary to the Principles of Law, and the Practice in Trials.
3. Contrary to Authorities.

Suppose *A* is indicted and convicted of the Murder of *B*, and *C* is afterwards tried as Accessary to *A*, and upon the Trial the Prosecutor brings the Record of the Conviction of *A*, to prove the Murder: *C* admits that he did give such Counsel, but that it was never executed, for *B* is still alive, and offers to bring Proof of it: No, say the Gentlemen, here is a Record, which says he was murdered, and Records cannot be contradicted; therefore *C* must be hanged. If this is the Law of *England*, it is contrary to the Law of God. But it may be said, that in such a Case the Crown would pardon: But that is a Favour. Mercy is the King's Privilege, and the brightest Diadem he wears; Justice is the peculiar Attribute of the Law.

The same Doctrine with that I have laid down holds with those who are to bring a Writ of Error; for none can bring a Writ of Error, but, 1. Parties; 2. Privies; 3. Those who may receive any Advantage from the Reversal of the Judgment: But it is contrary to the Rules of Law, to assign Error contrary to what appears upon

upon the Face of the Record, 1 *Rolle's Abridgement*, 747. 1, 2, 3, 4. *Dyer* 90. 5 *Coke* 39. b. *Godbolt* 377. 1 *Leon.* 261.

The great Object of the Law is to protect the Innocent; the Punishment of the Guilty is only so far observed, as it tends to protect the Innocent; every thing therefore, which tends to destroy the Innocent, is against Law. So Records are often the Effects of Perjury; and those who are guilty of Perjury may be tried, notwithstanding the Record is not reversed. As for Instance, *A* is indicted for assaulting *B*. To prove the Assault, *J. S.* is called as a Witness, and he swears he saw it: Afterwards *B* indicts *J. S.* for Perjury, which Indictment sets forth, that there was such an Indictment found against *A*, &c. and that he was found guilty upon it, &c. Upon this Trial the first Thing produced is the Record of *A*'s Indictment, which sets forth, that *A* was indicted and found guilty. It would be impossible therefore, according to the Doctrine the Gentlemen have laid down, that *J. S.* could be tried; for here is a Record which says, that *A* was convicted. — So in *Canning's Case*, (p. 223.) a Case which has lately happened, and has made a great deal of Noise; I was concerned in it; and upon her Trial, the Record of the Conviction of *Mary Squires* was produced, and it remains still, and *Squires* is subject to all the Disadvantages attending it.

'Tis said, that Records cannot be contradicted; but they often are, as in the Case put. A Record is no Evidence in some Cases; as suppose the above Case, and afterwards *B* brings an Action for the same Assault against *A*, who has been already indicted and convicted, the Record is no Evidence. I speak this with great Deference to your Lordships: I think it is not Evidence, but I am sure it is not conclusive.

The Reason why Accessaries cannot be tried till the Principal is convicted, is this: The Principal best knows, whether he is guilty or no; and therefore is best able to make his Defence.

I must own, the Case cited from *Brooke*, Tit. *Verdict*, pl. 96. by Mr. *Hume*, has an ugly Aspect; but upon looking into the Year-Book from whence it is abridged, I find it will answer no Purpose at all; and as it is a Case somewhat curious, I beg Leave to mention it; (and then recited the Case, quod vide.) —

It was insisted, That it was sufficient to say that the Principal was convicted, not that the Principal Felony was committed: The Reason is, because, upon the Face of the Record, the Conviction is a presumptive Proof of it, and the Accessary may endeavour to acquit himself, either by denying the Counsel or the Principal Felony.

I apprehend it is a Maxim, That in all Special Verdicts, the Judges will only judge of what the Jury find in their Verdict, and so it was resolved in 2 *Siderfin* 8. *Street v. Roberts*.

The Jury finding the Record, is no Proof that it is true. Their finding is of the Fact of the Existence of the Record: And your Lordships can only from thence judge that the Principals were convicted, sufficient to bring the Accessaries to their Trial. The Question then is, Whether this Special Verdict finds, that any Felony was committed by *Kelly* and *Ellis*?

There are some Words in the Verdict which I consider as only descriptive, and chuse to lay

out of it: *Feloniously robbed*. — The Office of the Jury is to find the Fact, and leave the Law to the Judgment of the Court. In 9 *Co.* 69. *Mackally's Case*, Exception was taken, because it was not found by the Verdict that the said *Mackally felonice percussit*, but *percussit* only; *sed non allocatur*, for the Reason above. If then the omitting the Word *felonice* will not hinder the Fact from being a Felony, the putting it in will not make it a Felony. Having stripped the Verdict of these unnecessary Words, which the Jury had no Right to put in, I shall consider the Nature of a Robbery; and here, in order to constitute a Robbery, two Things are necessary:

1. Violence, and putting in Fear.
2. A taking against the Will.

If either of these are wanting; there is no Robbery. 3 *Inst.* 68. Fear constitutes the Difference between a Robber and a Cut-purse.

2. The taking against the Will; for, *Volenti non fit injuria*. So *Bracton*, b. 3. fol. 150. b. *Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino, cujus res illa fuerit*.*

Let a Man, when he parts with his Money to a Robber, be asked, if he gives it willingly? No; he chuses the lesser Evil to avoid the greater, and had rather suffer the Loss of his Money than Death.

As to the Case of swearing to put Money, &c. the Answer to that is given in the Book. 'Tis the Fear and the Oath continuing, which make it a Robbery: Suppose a Man did not think the Oath obligatory, and had no Fear upon him, then I apprehend, my Lords, it would be no Robbery.

But suppose that *Salmon* was put in Fear, the Defendants must be acquitted. As to *Salmon*, the Jury are silent as to his being afraid: They have in Fact found that he was not afraid, because they have found the Fact was done according to his Agreement. But the putting in Fear ought to be found positively, or to appear from the Words of the Verdict.

'Tis insisted by the Gentlemen on the other Side, that this was a Felony to which *Salmon* was Accessary before the Fact; they might have gone a little further, and made him Principal, as aiding that Counsel which he had given. If Principal, he might have been indicted as Principal: Where there are many Principals, each is a separate Offence, and each may be separately indicted: If so, *Salmon* might be indicted alone, (and then recited Part of the Indictment as it would stand against him, to shew the Absurdity of it.)

Whether *Salmon* consented or not to *Blee*, he certainly did not to *Kelly* and *Ellis*; their Intent was to rob a Man against his Will, and if *Salmon* did consent to be robbed, it could be no Robbery.

Mr. *Hume* insisted, that nothing appeared in the Verdict, contrary to the Record of Conviction. But there certainly is, for it first finds a Robbery, and afterwards finds such Circumstances as make it impossible there should be a Robbery. And *Hobart* 53. *Foster* and *Jackson*, Wherever a Jury begin with a Direct and end with a Special Matter, which is either contrary to their Verdict or to Law, the Special Matter shall overrule the General.

* *Bracton* adds, *Cum animo dico, quia sine animo furandi non committitur*, sc. *furtum*. 2. Whether the *Animus furandi*, which is agreed on all Sides to have been in *Kelly* and *Ellis*, will not constitute this *Furtum*?

1 *Inst.* 227. a. and 4 *Co.* 53. *Rawlin's Case*. The Court held, that the Jury being sworn *ad veritatem dicendam*, must leave the Matter of Law to the Court; and if the Jury find an Estoppel, the Court will not regard it, but will judge upon the Special Matter.

Every Fact found by the Jury ought to be attended to, your Lordships see, even in Disputes relating to Property; God forbid, that in Favour of Life any should be neglected.

If the Conviction of *Ellis* and *Kelly* be any Proof of a Robbery, then the Jury have found the Record one Way, and the Fact another.

I come now to the second Question; which is, Whether, supposing a Robbery to have been committed, the Defendants are Accessaries in such a Manner as to be liable to any Judgment against them?

If *Blee* was no Accessary, the Defendants cannot. In Reality this was a Felony committed by *Ellis* and *Kelly* spontaneously, and without any Accessary at all. In order to make this a Robbery by Procurement, these three Things are necessary to be proved:

1. That this was the very Robbery which *Blee* undertook to procure *Kelly* and *Ellis* to commit.

2.

3. Whether the Defendants are within the Statutes of *Pbilip* and *Mary*.

The Question is, whether *Blee* procured *Kelly* and *Ellis* to commit this Robbery. And here I must observe, that the Word *Procure* is the most general of all those applied to Accessaries: But it is plain, he did not procure them to commit this Robbery, but to steal Linen; and whatever was intended by *Blee*, cannot fall under Consideration.

There is a Distinction between procuring an Act to be done, and procuring the Persons to commit it. As for Instance; If I am walking in the Street, and designedly let my Handkerchief hang out of my Pocket, in order that it may induce somebody to pick it; here I could not be said to procure the Persons to commit this Felony, but the Felony to be committed. The Act intended to be committed must be communicated to the Parties who are to commit it. And whether the Defendants intended that *Kelly* and *Ellis* should steal Linen or no, they were originally acted by such a Disposition, and this Robbery was committed without any previous Intention of *Kelly* and *Ellis*, and therefore there can be no Accessaries; as in Manslaughter there are no Accessaries before, because the Nature of it implies that it was done without Premeditation or Design: Therefore if, upon an Indictment for Murder, the Principal is convicted of Manslaughter, the Accessary is *ipso facto* discharged, *Moore* 461. *Goose's Case*. 4 *Co.* 44. 1 *Hale's P. C.* 437.

But let us consider, whether the Defendants are within the Statutes of *Pbilip* and *Mary*.

The Word *Procure* is put into the second Count; and if the Defendants are at all guilty, they are guilty of all.

The Word *Procure*, which is not in the Statutes, is added to some Words which are in the Statutes; and if the Defendants merely *procured*, no Judgment can be given against them upon this

Indictment: For, if they *procured* without *counselling*, they will not come within the Statute.

[Judge *Foster* observed, That the Word *Procure* was in all the Precedents of Indictments.]

Mr. Serj. *Davy*. I admit the Case which was laid down relating to the Construction of Statutes, which being made for the public Good, should be construed for the public Good.

But Statutes, now shall have a very particular Construction.

It is going a great Way to extend penal Statutes to operate capitally.

Greville's Case, 1 *Anderson* 194. is different from this; the Words there were *Excited*, *Moved*, and *Procured*; and the Judgment was, that it included *Counsel*. Suppose *Excited* and *Moved* had been out, the Court would not have given the same Opinion on the Word *Procure*. *Counselling* is but one Species of Procuring, which is the Genus; and therefore, by this Way of reasoning, he that is guilty of the Species is guilty of the Genus.

There are many Ways of *Counselling* without Procuring; *Blee's* Procuring cannot be extended to mean the Defendant's Procuring.

It will be proper to review the facts as they stand to each Count.

The general Question is, Who moved? The Defendants did not; for they had no Communication with either *Kelly* or *Ellis*, by any Way whatsoever. If *Kelly* and *Ellis* had been asked, By whose Advice are you doing this Felony? the Answer would have been, By *Blee*, not by the Defendants. *Blee* advises them to steal Linen, and the Defendants advised *Blee* to be an Accessary.

I admit all Mr. *Hume's* Doctrine relating to Signs, Messages, &c. The Meaning of the Counsellor must be conveyed to the Perpetrator of the Fact, and the Consent must be in Consequence of the Advice, in order to make him a *Commander*, *Adviser*, and *Counsellor*: So that *Tarquin's Case* does not come up to this Case. The Slave was the passive Instrument to convey *Tarquin's* Mind; but here *Blee* gave *Blee's* Advice. Who did procure? The Answer is, *Blee*. If a Stranger had advised *Tarquin*, would he have been Accessary to *Sextus*? There is a Difference between *advising* a Thing to be done, and *procuring* it to be done. The Words of the Statute are applied to advising any Person to commit a Felony, not any Felony to be committed. The Defendants *counselled*, before any Persons were fixed upon.

The Act of Forgery is; Whoever shall forge, or procure to be forged, or assist [in procuring] to be forged; if procured the Forgery, he is a Principal; if procured a Person to commit the Forgery, an Accessary.

Jenkins only means the Receiver.

If all the intermediate Persons are to be considered as Accessaries, then it will be proper to consider, whether the Defendants did advise any Felony to be committed. The Agreement was, that they should rob *Salmon*, who agreed that it should be done. *Salmon* could not be robbed by his own Consent. This does not refer to the Record: But if there was a Robbery, the Felony exceeds the Agreement, for no Felony was agreed to be done; only the Appearance of a Felony, which those who did it should apprehend was a Felony; and that they might avail themselves of that

that Appearance, either the Goods taken from *Salmon* were taken against his Will, or not.

If against his Will, it was different from the Agreement, which was, that he should part with them willingly: If not against his Will, there could be no Felony. I admit that *Salmon* might be in Fear, if they had taken more than he agreed to part with; but *eo instante* that his Will departed from him, there was a Departure from the Agreement; this extends to all the Defendants.

As to the Case of *Ahab* and *Jezabel*, which my learned Friend cited, however guilty they may have been deemed, they are certainly not Accessaries according to the Law of *England*; according to which Law the Defendants are to be tried.

Mr. Aston, on the same Side.

I also have the Honour of being appointed by your Lordships as Council for the Defendants; and here I cannot but observe, how tender the Law is in Favour of the worst of Men, that it allows them to make use of Subtilties before such an august Assembly.

Before I consider the Argument made use of by the Gentlemen on the other Side, I shall just mention an Objection upon the Face of the Indictment. — By the Common Law, an Accessary in one County could not be tried in another: But by 2 *Edw. 6. c. 24.* Accessaries may be tried in that County where the Offence of Accessary was committed, 9 *Co. 118. a.* It is not set forth in the Indictment, that the Fact was committed in *Kent*, only that the Party was indicted there; and the Defendants are to be tried by this Jury, not by the Jury of *Ellis* and *Kelly*.

I shall consider three Things:

First, it is said, That the Defendants must be Accessaries to the Offence which was committed. In Answer to which,

1. This Verdict does not find any Felony or Robbery, which can make the Defendants Accessaries to any Felony or Robbery charged in the Indictment.
2. The Defendants were not estopped from controverting the Fact of the Robbery.
3. Supposing the Felony and Robbery sufficiently found, it is not sufficiently found to make the Defendants Accessaries.

The *Aiding* and *Abetting* is a Matter of Fact, which this Jury ought to find, which they do not here find.

I admit that the Jury have properly found the Record *prout*. The Jury must proceed to state the Facts, which make the Defendants Accessaries, and the Finding must be of the actual Felony laid in the Indictment. There is no Time found when *Kelly* and *Ellis* committed the Robbery on *Salmon*; it may be after the Robbery on which they were convicted. *Pulton, de Pace* 128. defines a Robbery to be the felonious taking away any Thing from the Person of another against his Will. *Fitz. Coron.* 115.

The Case of the King and *Belchier*, which *Mr. Hume* mentioned, was put out of Doubt by the Jury finding him Guilty; therefore he was put in Fear, which is essential to constitute it a Robbery, as appears 1 *Hawkins* 96, 97. *Hale P. C.* 534. *Dyer* 224. *Keyling* 70. 3 *Inst.* 68. *Pulton* 128. By the Omission the Nature of the Offence is varied; it must be expressly found that he was put in Fear, otherwise it will be no Robbery.

As to the Case of swearing to put Money, *Pulton* 128. *sect.* 28. gives the Reason why it is deemed a Robbery; because (says he) it is against his Will.

The Verdict cannot be helped by any Intendment, 2 *Hawkins* 47, 9. King and *Plummer*. *Keyling* 111. But it is said, that the Jury having found the Record, it operates by way of Estoppel. But the Record found, and the Fact found, may stand consistent with the subtle Doctrine of Estoppels. Therefore I will lay all that out of the Question; for nothing can be implied in this Case. The Jury have found Facts which must speak for themselves: The Jury have only found the Record. The Record of Conviction is not falsified; but the Charge upon the Fact is not sufficiently proved, and the Accessary has a Right to controvert the Robbery; and there are Instances where Accessaries have been executed before the Conviction of the Principal, and upon the Principal's coming Home, found innocent, 9 *Co. 119. b.* *Pulton* 140, 1. gives the Reason, because the Party has waived that Privilege the Law gives him. Accessaries may be indicted with the Principal and in the same Indictment; and then the Jury is first asked, Whether the Principal is guilty or no? But they may be indicted separate; and *Plowden* 100. says, might have separate *Venires*.

The Conviction of the Principal is only to substantiate and warrant the Court to proceed to the Trial of the Accessary: In the present Case, this Indictment stating this Conviction is no more than a *Mode* necessary to found this Trial: It proves no Guilt, only is intended to try Guilt. There must be Proof of the Procurement of the Act, and of the doing the Act in consequence of that Procurement.

The Defendants, in general, may give every thing in Evidence which will shew them to be not guilty of the Charge: What then is so proper as to shew there was no Felony committed, and therefore not guilty of being Accessaries?

Wherever a Plaintiff brings an Action to defeat a Record, he is not estopped by the Record. Whenever a Record is made use of to found a Charge, the Defendant may make use of, and give Evidence against it. 6 *Mod.* 216. *Cro. Car.* 531.

Verdicts may be defeated in their Operation.

Supposing this Felony is sufficiently found, yet it is not found so as to make the Defendants Accessaries. This will depend on the Nature of Accessaries, and what Privity there must be between the Principal and Accessary, and how far it is necessary the Act agreed to be done should be done. In order to make an Accessary before the Fact, the Assent must be express and shewn, *Cro. Eliz.* 540. *pl.* 4.

All the Cases of *Tarquin* carry the Communication home to the Principal. And so in *Saunders* and *Archer's* Case, *Plowden* 475. the Judges said, that *Archer* was not guilty of being accessory to the Death of the Child, as there was no Communication by Words between him and *Saunders* concerning the Child, only concerning the Wife.

And that the Felony intended must be communicated, appears further from *Popbam* 143.

Suppose a Man sends a Letter to *A*, counselling him to kill *B*; but *A* does it before he receives the Letter; here there is no Communication, and so he is not guilty of being Accessary.

2. The Act committed must be the same as was agreed to be done, or in Consequence of that Agreement, as in *Saunders's Case*, *Plowden* 475. There was no Persuasion to induce *Ellis* and *Kelly* to commit the Robbery on *Salmon*; for the Verdict says, they were never told of that being the Robbery intended.

The *Procurement* then was only to commit Larceny; and it was contingent, whether Grand or Petit Larceny; for it depended on the Value of the Goods they took. As to what Mr. *Hume* said, that stealing Linen was the Artifice by which *Ellis* and *Kelly* were to be entrapped; it is not found, that it was the Artifice.

But lastly, there is a Case founded on very great Authority, 2 *Lord Raymond* 1574, 1586. the King against *Huggins*, (*Vide State Trials*, vol. 9.) where it is said, that the Aiding and Abetting is a Matter of Fact, and must be found by the Jury, and not left to the Court: Same Case, 2 *Strange* 885, 6. The Court there said, We are to determine upon Facts, not upon the Evidence of Facts. It must be expressly found that they have *aided* and *abetted*.

When a Person is ousted of Clergy by Act of Parliament, two Things are necessary:

1. That the Indictment precisely brings the Party within the Statute; otherwise, though possibly the Fact itself may be within the Statute, and it may so appear upon the Evidence; yet, if it be not alledged in the Indictment, the Party, the Convict, shall have his Clergy.

2. If the Fact laid in the Indictment does come within the Statute, yet, if upon the Evidence, though it is a Felony, it appears not to be so qualified as laid in the Indictment, the Jury ought to find him guilty of the Felony only, but not in the Manner laid in the Indictment; as for Instance, Guilty of the Felony, but not of the Robbery; and thereupon the Prisoner shall have his Clergy, 2 *Hale P. C.* 236.

Mr. Hume's Reply.

'Tis now, my Lords, incumbent upon me, in this Case, of so great Importance to the Defendants, the Law, and the Public, to offer something to your Lordships by way of Reply. I shall beg Leave, therefore, first of all, to lay two Objections, which were started by Mr. *Aston*, out of the Case:

1. To the Form of the Indictment, because the Question now is not in Arrest of Judgment.
2. The last Objections from the Case of the King and *Plummer*, and the King and *Huggins*.

I admit that the Jury are to find Facts. The Jury find that they *Aided*; this is finding that they *were Accessaries*, and so there was no Need of a Special Verdict. The Special Verdict is only, that the Judges may determine whether what they have found, will make them Accessaries or no.

I shall first consider what is to be the Effect of the Record of Conviction. It may have two:

1. It may be decisive and conclusive, in respect to all the Defendants, of the principal Felony existing, and said to be committed.
2. It may be Evidence, on the Part of the Crown, of the Fact, sufficient to prove the Fact, &c. thereby rendering it necessary for the Defendants to prove the contrary.

I lay out of the Case all that was said of the Cases where Records are no Evidence at all; for here the Record is Evidence legal and necessary:

Mr. *Aston* seemed to contend; that the Record might be Evidence, but such as to throw the *onus probandi* on the Defendants.

1. As to the Principal's being convicted first; all the Indictments are in the present Form.

The Defendants must give that in Evidence, according to the Nature of Evidence, and such as the Law will admit. If the Record of the Conviction is sufficient to support the Charge, the Defendants cannot give parol Evidence against it.

2. Whether it does not operate on the Part of the Crown, unless any Evidence be given against it.

If the Defendants had given any Evidence, and the Jury had been of Opinion, that it appeared that there was no Robbery, the Judges would have directed a General Verdict. The Defendants ought to shew, that there was no Robbery committed in this Verdict. Let us see then, whether or no there is a Robbery found. It is found, that the Goods were taken by Assault, and feloniously: 'Tis not found, that he consented to deliver the Goods. How can *Salmon's* Agreement at the *Bell* be taken to go to an After-time in the High Road, that he did assent to be robbed? This would be contradictory to the Verdict.

Your Lordships are to take the Robbery at the Time of the Commitment of it in the Highway, and to consider whether it is found, that *Salmon* was robbed voluntarily, supposing there was a Robbery committed by them. All the Defendants saw *Kelly* and *Ellis*, but *Salmon* did not. If *Salmon* was put in Fear, says the learned Serjeant, it was not what he agreed to; for the Agreement was that he should be robbed voluntarily. Now the Fact was, that not knowing the Persons who were to rob him, upon being used a little roughly by them, he trembled, and said, *Take what I have got, Gentlemen, don't use me ill.* *Vide Trial*, p. 421.

The Cases cited by the Serjeant and Mr. *Aston* prove, that *Salmon* could not be a Principal to a Robbery upon himself; yet he may be an Accessary to that Robbery which was plotted at the *Bell*.

If *Kelly* and *Ellis* had stolen the Linen, the Defendants would not have been Accessaries, because that was not the Felony plotted.

There may be Accessaries without Communication by *Privity*, *Assent*, and *Consent*: Are these Defendants Accessaries, *Auxilio, vel Præcepto, vel Mandato*? And though *Delegatus non potest delegare*, yet, *qui facit per alium, facit per se*. And so all the Links of this Chain are found: The whole Chain hangs together, and your Lordships cannot separate it. If *Plotting* makes a Man Accessary, did they not plot? If *Consenting* is necessary, did they not consent?

In December 1755, at the *Old-Bailey* Sessions, Justice *Foster* pronounced the Judgment of the Court in the Case between the King and *M^r Daniel* and others, to the Effect following:

THE Indictment chargeth, that at the General Gaol-Delivery held at *Maidstone* in the County of *Kent*, on the 13th of *August*, in the twenty-eighth Year of the King, *Peter Kelly* and *John Ellis* were
by

by due Course of Law convicted of a Felony and Robbery committed by them in the King's Highway in the Parish of *St. Paul Deptford*, in the County of *Kent*, upon the Person of *James Salmon*, one of the Prisoners at the Bar; and that the Prisoners *Stephen M^d Daniel*, *John Berry*, *James Egan*, and *James Salmon*, before the said Robbery, did, in the Parish of *St. Andrew Holbourn* in this City, feloniously and maliciously Comfort, Aid, Assist, Abet, Counsel, Hire, and Command the said *Peter Kelly* and *John Ellis* to commit the said Felony and Robbery.

On this Indictment the Prisoners have been tried, and the Jury have found a Special Verdict to this Effect:

“ That *Kelly* and *Ellis* were by due Course of Law convicted of the said Felony and Robbery.

“ That before the Robbery, all the Prisoners and one *Thomas Blee*, in order to procure to themselves the Rewards given by Act of Parliament for apprehending Robbers on the Highway, did maliciously and feloniously meet at the *Bell Inn* in *Holborn* in this City; and did then and there agree, that the said *Thomas Blee* should procure two Persons to commit a Robbery on the Highway in the Parish of *St. Paul Deptford*, upon the Person of the Prisoner *Salmon*.

“ That for that Purpose they did all maliciously and feloniously contrive and agree, that the said *Blee* should inform the Persons so to be procured, that he would assist them in stealing Linen in the Parish of *St. Paul Deptford*.

“ That in pursuance of this Agreement, and with the Privity of all the Prisoners, the said *Blee* did engage and procure the said *Ellis* and *Kelly* to go with him to *Deptford* in order to steal Linen; but did not at any Time before the Robbery inform them, or either of them, of the intended Robbery.

“ That in consequence of the said Agreement at the *Bell*, and with the Privity of all the Prisoners, the said *Ellis* and *Kelly* went with the said *Blee* to *Deptford*.

“ That the said *Blee*, *Ellis*, and *Kelly* being there, and the Prisoner *Salmon* being likewise there waiting in the Highway in pursuance of the said Agreement, the said *Blee*, *Ellis*, and *Kelly* feloniously assaulted him, and took from his Person the Money and Goods mentioned in the Indictment.

“ They further find, that none of the Prisoners had any Conversation with the said *Ellis* and *Kelly*, or either of them, previous to the Robbery. But they find that, before the Robbery, the Prisoners *M^d Daniel*, *Egan*, and *Berry* saw the said *Ellis* and *Kelly*, and approved of them as Persons proper for the Purpose of robbing the said *Salmon*.”

But whether the Prisoners are guilty in manner as charged in the Indictment, they pray the Advice of the Court.

This Special Verdict hath been argued before all the Judges of *England*, and two Questions have been made.

First, Whether it appeareth from the Facts stated in the Special Verdict, that any Robbery was committed by *Ellis* and *Kelly* on the Person of *James Salmon*.

Second, Supposing that *Ellis* and *Kelly* were guilty as Principals in the Robbery, whether the Facts found will warrant the Court in passing Judgment upon the Prisoners, or any of them, upon this Indictment.

The second Point seemeth to have been the Doubt on which the Jury pray the Advice of the Court; and I have Reason to believe, that when it first came to be considered, it was Matter of great Doubt with some Gentlemen of the Profession, whose Abilities were never yet called in Question.

For which Reason, and because the Law touching Accessaries before the Fact is a Matter of great and very extensive Consequence to the Justice of the Kingdom, and ought to be well understood, I will deliver my Thoughts upon the second Question, before I come to that which will finally govern the present Case.

As to the Prisoner *Salmon*, the Judges, upon Consideration of this Special Verdict, are unanimously of Opinion, that he cannot be guilty within this Indictment: For unless he was Party to the Agreement at the *Bell*, there can be no Colour to involve him in the Guilt of *Ellis* and *Kelly*.

And on the other hand, if he did part with his Money and Goods in consequence of that Agreement, it cannot be said that in legal Construction he was robbed at all; since it is of the Essence of Robbery and Larceny, that the Goods be taken against the Will of the Owner.

There was a late Case (*Belchier* and *Norton's*) cited in the Argument on the Part of the Crown, which I shall consider by and by, and distinguish from the present.

It hath been held, (*Cromp. Just. 41. b. pl. 4, 5.*) and I think rightly, that a Man may make himself an Accessary after the Fact to a Larceny of his own Goods, or to a Robbery on himself, by harbouring or concealing the Thief, or assisting in his Escape.

And under some Circumstances a Man may be guilty of Larceny in stealing his own Goods, or of Robbery, in taking his own Property from the Person of another. *A* delivereth Goods to *B*, to keep for him, (*1 Hale 513.*) and then stealeth them, with Intent to charge *B* with the Value of them, (*Stanf. 26. A. 3 Inst. 110.*) this would be Felony in *A*. Or, *A* having delivered Money to his Servant to carry to some distant Place, disguiseth himself and robbeth the Servant on the Road, with Intent to charge the Hundred, this, I doubt not, would be Robbery in *A*.

For in these Cases the Money and Goods were taken from those who had a special temporary Property in them, with a wicked fraudulent Intention; which is the antient known Definition of Larceny, *Fraudulenta Obtrahatio Rei alienæ invito Domino*. But I never did hear, before this Time, of any Attempt to charge a Man as Accessary before the Fact to a Robbery committed on his own Person.

As to the Prisoners *M^d Daniel*, *Berry*, and *Egan*, the Judges are unanimously of Opinion, That supposing a Robbery was committed on *Salmon*, the Facts found by the Special Verdict are sufficient to charge them as Accessaries in the Manner they are charged in this Indictment.

For the Verdict findeth, that every Circumstance attending the Fact, the Place where, and the Person on whom it was to be committed, the Means

Means by which it was to be effected, and the Persons by whom it was to be done; all these Circumstances were settled and agreed upon by the Prisoners previous to the Fact: And in consequence of this Consult and Agreement the Fact was committed.

It is indeed found, that none of the Prisoners had any Conversation with *Ellis* and *Kelly* previous to the Robbery; and that *Blee* did not acquaint *Ellis* and *Kelly* with his Intention to commit any Robbery, but drew them to *Deptsford* under Pretence of stealing Linen.

These Circumstances seem to have been the Foundation of the Jury's Doubt; and the Prisoners Council have laid great Strefs on them.

As to that Circumstance, that *Blee's* true Design was not made known to *Ellis* and *Kelly*, it appeareth manifestly by the Facts found, that it was Part of the original Agreement at the *Bell*, that the true Design should be concealed from them; and that they were to be drawn to the Place of Action under another Pretence. This Circumstance therefore being Part of the original Agreement, the Prisoners cannot avail themselves of it, if the Agreement upon the whole, and what was done in consequence of it, be sufficient to make them Accessaries.

As to the other Circumstance, that the Prisoners had no Conversation with *Ellis* and *Kelly* before the Assault upon *Salmon*, their Council relied chiefly on the Words of the Statutes on which this Indictment is founded.

The Statutes are the 4th and 5th of *Phil.* and *Mar.* c. 4. and the 3d and 4th of *W.* and *Mar.* c. 9. The Words of the former which are descriptive of the Offence are, "If any Person shall maliciously Counsel, Hire, or Command." The latter retaineth the Words *Counsel*, *Hire*, or *Command*, and addeth others, "shall Comfort, Aid, Abet, or Assist." From these Words, which it must be admitted are descriptive of the Offence, the Prisoners Council concluded, That without a personal immediate Communication of Counsels, Intentions, and Views, from the supposed Accessaries to the Principals, there can be no Accessary before the Fact.

But the Judges are all of Opinion, That whoever procureth a Felony to be committed, though it be by the Intervention of a third Person, is an Accessary before the Fact, and within these Statutes. For what is there in the Notion of Commanding, Hiring, Counselling, Aiding, or Abetting, which may not be effected by the Intervention of a third Person, without any direct immediate Connection between the first Mover and the Actor?

A biddeth his Servant hire somebody, no Matter whom, to murder *B*, and furnisheth him with Money for that Purpose; the Servant procureth *C*, a Person whom *A* never saw or heard of, to do it. Is not *A*, who is manifestly the first Mover or Contriver of the Murder, an Accessary before the Fact? It would be a Reproach to the Justice of the Kingdom to suppose he is not.

It is a Principle in Law which can never be controverted, That he who procureth a Felony

to be done is a Felon. If present, he is a Principal; if absent, an Accessary before the Fact.

In the Case of the Earl of *Somerset*, (1 *St. Trial.*) who was indicted upon the Statute of *Phil.* and *Mar.* as an Accessary before the Fact to the Murder of Sir *Thomas Overbury*, the Lord Chancellor *Ellesmere*, High Steward, in the Outset of the Cause and before any Evidence given, directed the Peers Triers, and all the Judges present concurred with his Lordship, that the only Point in Issue was, *Whether the Earl caused or procured the Murder or not.* And accordingly the Earl was found guilty upon Evidence which satisfied his Peers, that he had contributed to the Murder by the Intervention of his Lady, and of Sir *Jarvis Elways*, and *Franklin*, who were themselves no more than Accessaries; without any Sort of Proof that he had ever conversed with *Weston*, the only Principal in the Murder, or had corresponded with him directly by Letter or Message.

The best Writers on the Crown Law agree, that Persons Procuring, or even Consenting beforehand, are Accessaries before the Fact.

Lord *Coke*, in his Comment on *West.* 1. c. 14. in explaining the Words *Commandment* and *Aid* as applied to Accessaries before the Fact, saith, "Under this Word *Command* are comprehended all those who Incite, Procure, Set on, or Stir up any to do the Fact. And under the Word *Aid* are comprehended all Persons Counselling, Abetting, Plotting, Assenting, Consenting, and Encouraging to do the Fact, and not present when it is committed."

Lord *Hale* saith, (1 *Hale* 374.) "Misprision of Felony is Concealing a Felony which a Man knoweth, but never consented to; for if he consented, he is either Principal or Accessary. (Id. 615, 616.) Again, Accessary before, is he that, being absent at the Time of the Felony committed, doth yet Procure, Counsel, or Abet another to commit the Felony."

Many Authorities to this Purpose may be cited, which for Brevity sake I will barely refer to*.

It was objected by the Prisoners Council, that Penal Statutes are to be construed with great Strictness; and that the Words *Procure* or *Consent* are not to be found in either of the Statutes upon which this Indictment is formed.

The Principle is true, that in Prosecutions on Penal Statutes the Words of the Statute are to be pursued. But it is equally true, that we are not to be governed by the Sound, but by the well-known, true, legal Import of the Words.

Some of the Words made use of in the present Indictment, and in one or other of the Statutes upon which it is founded, are, *Command*, *Aid*, and *Abet*. The Passage I have just cited from Lord *Coke* sheweth, that Persons Procuring, Contriving, or Consenting, come within the Words *Aid* and *Command*. And that Persons Procuring are, in the Language of the Law, Abettors, may be proved by many Authorities, which it is not necessary to cite at large †.

This being so, the Prisoners *M'Daniel*, *Egan*, and *Berry*, who were the Contrivers of this Scene of Iniquity, agreed upon the Place and Manner

* See *Stanf.* 40. *Lambard* 157. *Dalt.* c. 161. s. 5. And see *Co. Ent. Appeal*, pl. 5, 6. *Dyer* 120, 186. 1 *And.* 195. *Rastal Appeal*, pl. 15. Precedents of Appeals, and Indictments against Accessaries before the Fact, all charging them as Procurers of the Felony.

† See *Rastal's Terms le Ley.* V. Abettors, *Stanford* 1. 3. c. 11. *Westm.* 2. c. 12. *Rastal's Ent.* fo. 43. b. 44. a. *Dyer* 120.

of Execution, and conducted the whole by the Intervention of their Instrument *Blee*, are Accessaries before to this Robbery, supposing a Robbery was committed. For in Construction, and indeed in the Language of the Law, they did command *Ellis* and *Kelly* to commit the Fact, and did aid and abet them in it.

I come now to the other Question, Whether, upon the State of the Case in the Special Verdict, any Robbery, in the legal Notion of that Offence, was committed on *Salmon* or no?

And the Judges are of Opinion, that it doth not appear, from the Facts stated in the Verdict, that the taking the Money and Goods from *Salmon*, by *Ellis* and *Kelly*, doth amount to a Robbery, in the legal Notion of that Offence.

Something was said in arguing of this Case upon the Question, how far a Person charged as an Accessary, and brought to his Trial after the Conviction of the Principal, can controvert the Truth of the Fact found by the Verdict against the Principal; or how far the supposed Accessary can be let in to shew, either that no Felony was committed, or that the Person convicted as Principal was not guilty of it.

This General Question is of great Extent and of mighty Importance in Prosecutions of this Kind; and some Diversity of Opinion there is among the Judges upon it.

But it will not be necessary at present to enter at all into it; because the Court in the present Case must found its Judgment upon the Facts found by the Verdict, and upon them alone. Now it is expressly found; that *Salmon* was Party to the original Agreement at the *Bell*; that he consented to part with his Money and Goods under Colour and Pretence of a Robbery; and that for that Purpose, and in pursuance of this Consent and Agreement, he went to *Deptford*, and waited there till this colourable Robbery was effected.

This being the State of the Case with regard to *Salmon*, the Judges are of Opinion, that in Consideration of Law, no Robbery was committed on him. His Property was not taken from him against his Will.

It was said by the Prisoner's Council, that the Verdict doth not find, that *Salmon* was put in Fear; and, say they, there can be no Robbery without the Circumstance of putting in Fear.

I think the Want of that Circumstance alone ought not to be regarded. I am not clear that that Circumstance is of Necessity to be laid in the Indictment, so as the Fact be charged to be done *violenter et contra Voluntatem*. I know there are Opinions in the Books which seem to make the Circumstance of Fear necessary; but I have seen a good MS. Note of an Opinion of Lord *Holt* to the contrary. And I am very clear that the Circumstance of actual Fear at the Time of the Robbery need not be strictly proved. Suppose the True Man is knocked down without any previous Warning to awaken his Fears, and lieth totally insensible while the Thief rifeth his Pockets, Is not this a Robbery? And yet where is the Circumstance of Actual Fear? Or suppose the True Man maketh a manful Resist-

ance, but is overpowered and his Property taken from him by the meer Dint of superior Strength, this doubtless is a Robbery. And in Cases where the True Man delivereth his Purse without Resistance, if the Fact be attended with those Circumstances of Violence or Terror which in common Experience are likely to induce a Man to part with his Property for the Safety of his Person, that will amount to a Robbery. And if Fear be a necessary Ingredient, the Law, in *Odium Spoliatoris*, will presume Fear, where there appeareth to be so just a Ground for it.

I come now to the Case I promised at the Beginning to consider and to distinguish from the present Case. One *Norton* having been informed that one of the early *Stage-Coaches* had been frequently robbed near the Town by a single Highwayman, resolved to use his Endeavours to apprehend the Robber. For this Purpose he put a little Money and a Pistol into his Pocket, and attended the Coach in a Post-Chaise, 'till the Highwayman came up to the Company in the Coach and to him, and presenting a Weapon demanded their Money. *Norton* gave him the little Money he had about him, and then jumped out of the Chaise with his Pistol in his Hand; and with the Assistance of some others took the Highwayman.

The Robber (*Belchier*) was indicted about a Year ago in this Court for a Robbery on *Norton*, and convicted. And very properly, in my Opinion, was he convicted.

But that Case differeth widely from the present. In that Case, *Norton* set out with a laudable Intention to use his Endeavours for apprehending the Highwayman, in case he should that Morning come to rob the Coach, which at that Time was totally uncertain; and it was equally uncertain whether he would come alone or no. In the Case now under Consideration, there was a most detestable Conspiracy between *Salmon* and the rest of the Prisoners, that his Property should be taken from him under the Pretence and Shew of a Robbery; and Time, Place, and every other Circumstance, were known to *Salmon* before-hand, and agreed to by him.

In *Norton's* Case, there was no Concert, no Sort of Connexion between him and the Highwayman; nothing to remove or lessen the Difficulty or Danger *Norton* might be exposed to in the Adventure. In the present Case, there was a Combination between *Salmon* and one at least of the supposed Robbers, I mean *Blee*. And though *Salmon* might not know the Persons of *Ellis* and *Kelly*; yet he well knew that they were brought to the Place by his Friend *Blee*, and were wholly under his Direction.

So widely do these Cases differ.

To conclude, All the Prisoners have been guilty of a most wicked and detestable Conspiracy to render a very salutary Law subservient to their vile corrupt Views. But great as their Offence is, it doth not amount to Felony*. And therefore the Judgment of the Court is, That they be all discharged of this Indictment.

(*Foster's Reports*, p. 121—130.)

* Judge *Foster*, in his Reports, says further, p. 364. "At a Conference among the Judges upon the Case of *M. Daniel* and others above reported, a general Question was moved, How far and in what Cases the Accessary may avail himself of the Insufficiency of the Evidence in point of Fact, or of the Incompetency of Witnesses in point of Law, produced against the Principal; and in what Cases he may be let in to shew, that the Facts charged and proved against the Principal, do not, in Judgment of Law, amount to Felony? There was in that Case no Occasion to enter far into these Questions; since the Facts, upon which the Point of Law then under Consideration must necessarily turn, were all found by the Special Verdict.

Afterwards, at the *February Sessions, 1756*, in Alderman *Bethell's* Mayoralty; they were prosecuted at the Expence of the Crown, upon the Representation of the Judges, for a Conspiracy, on the following Indictment:

“ *Stephen M'Daniel, John Berry, James Egan,*
 “ (otherwise *Gabagan,*) and *James Salmon,* were
 “ indicted; for that they, being Persons of wicked
 “ and corrupt Minds and Conversations; and
 “ not having the Fear of God before their Eyes,
 “ but being moved and seduced by the Instigation
 “ of the Devil, not regarding the Laws of this
 “ Realm, or the Pains and Penalties that should
 “ befall thereon, did wickedly, unlawfully, and
 “ maliciously combine, conspire, and agree to-
 “ gether, that one *Thomas Blee* should procure
 “ two Persons, to wit, *Peter Kelly* and *John Ellis;*
 “ to go to *Deptford* in *Kent;* and to take divers
 “ Goods and Money from the Person of the said
 “ *Salmon* on the King's Highway, who should
 “ be waiting there for that Purpose; with Intent
 “ that they should cause the said two Persons to
 “ be apprehended and convicted for robbing him
 “ the said *Salmon* on the King's Highway, and
 “ so unjustly and wickedly procure to themselves
 “ the Rewards mentioned in the Act of Parlia-
 “ ment, Proclamation, and other Parochial Re-
 “ wards for the apprehending of Highwaymen;
 “ to the great Displeasure of Almighty God,
 “ and the great Dishonour and Scandal of the
 “ Laws of this Kingdom, and the evil Example
 “ of all others, against his Majesty's Peace, his
 “ Crown and Dignity, *July 22, 1754.*”

Upon the Evidence of *Blee*, and others that confirmed him in every thing, the Court declined calling more Witnesses, though several were in Court; and the Prisoners making but a trifling Defence, they were all found Guilty. Their Sentence:

Stephen M'Daniel, John Berry, James Egan, (otherwise *Gabagan,*) and *James Salmon,* to be imprisoned in *Newgate* for the Term of seven Years; and in that Time to be each of them set in the Pillory twice, in the Manner following; *M'Daniel* and *Berry* in *Holborn,* near *Hatton-Garden;* *Egan* and *Salmon* in the Middle of *Smithfield.* Afterwards *M'Daniel* and *Berry* at the End of *King-Street, Cheapside;* and *Egan* and *Salmon* again in *Fleet-Street,* near *Fetter-Lane* End: And at the Expiration of that Time to find Sureties for their good Behaviour for three Years, and to pay a Fine of one Mark each.

Stephen M'Daniel, John Berry, James Egan, (otherwise *Gabagan,*) and *James Salmon,* have each once stood on the Pillory, viz. *M'Daniel* and *Berry* near *Hatton-Garden,* on *Friday* the 5th of *March, 1756;* and were so severely

handled by the Populace, that it was with the utmost Difficulty, that one of the Sheriffs and the Keeper of *Newgate;* who stood in a Balcony just by, prevented their being utterly destroyed; and so great was the Mob, that the Peace-Officers found it impossible to protect the Prisoners from their Fury; and *Egan* and *Salmon* stood in *Smithfield* on *Monday* the 8th. They were instantly assaulted with Showers of Oyster-shells, Stones, &c. and had not stood above half an Hour, before *Egan* was struck dead; and *Salmon* so dangerously wounded in the Head, that it was thought impossible he could recover. — Whatever Punishment they might deserve from the Law, it is certain they ought not to be killed, through the Rage of the Populace. And we find, that *April 11, 1732;* *Edward Dalton* and *Richard Griffiths* were tried at the *Old-Bailey,* for the Murder of *John Waller* in the Pillory, by pelting him with Colliflower-Stalks, &c. and found Guilty; and both executed at *Tyburn.*

In *June Sessions,* in Alderman *Bethell's* Mayoralty, 1756, two of the before-mentioned Miscreants, *M'Daniel* and *Berry,* together with one *Mary Jones,* were tried for Murder, upon a Conspiracy of the like Nature against one *Kidden,* (who was convicted and executed for a Robbery on the Highway, and at the Gallows, in the most solemn Manner, declared his Innocence) on the following Indictment: *Stephen M'Daniel, John Berry,* and *Mary Jones,* were indicted “ for the
 “ wilful Murder of *Joshua Kidden,* in maliciously
 “ causing him to be unjustly apprehended, falsely
 “ accused, tried, convicted, and executed, well
 “ knowing him to be innocent of the Fact laid
 “ to his Charge, with an Intent to share to them-
 “ selves the Reward, &c. *Feb. 4, 1754.*”

The Fact was plainly proved against them upon this Indictment; and “ the * Special Matter being
 “ set forth in the Indictment, the Court suffered
 “ them to be convicted, (*Death,*) but immediately
 “ respited Judgment; in order that the Point of
 “ Law might be more fully considered upon
 “ Motion in Arrest of Judgment †. But the
 “ Attorney-General declining to argue the Point
 “ of Law, the Prisoners were at a subsequent
 “ Session discharged of that Indictment.

“ This Prosecution, I am satisfied, arose from
 “ a laudable Zeal for keeping the Fountains
 “ of Justice pure and unpolluted, and a just
 “ Indignation against an Offence of this signal
 “ Enormity.

“ It must be confessed, that there are strong
 “ Passages in our antient Writers which greatly
 “ countenance a Prosecution of this kind. But
 “ those Writers must always be read with great
 “ Caution upon the Subject of Homicide.

“ The general Question was therefore waived.” — And then goes (p. 365.) to treat on *Accessaries;* and adds, “ Therefore, if it shall come out in Evidence upon the Trial of the Accessary, as it sometimes hath and frequently may, that the Offence of which the Principal was convicted did not amount to Felony in him, or not to that Species of Felony with which he was charged, the Accessary may avail himself of this, and ought to be acquitted. This was the Case of *M'Daniel* and others above cited. The Youths who were convicted of the Robbery, being totally ignorant of the Conspiracy mentioned in the Report of that Case, took no Advantage of it, and were convicted upon full and legal Evidence. But when the whole Scene of Villainy came to be disclosed upon the Trial of those Miscreants, they were discharged from that Indictment upon this single Objection, that the Offence of the Principal did not, in the Eye of the Law, amount to a Robbery.

“ If this Opinion was well founded in Point of Law, and shall stand the Test of future Times, as I think it will, every other Person in the like Circumstances may upon his Trial avail himself of it, and will be entitled to a Verdict of Acquittal.” — If any one wants to see more on this Head relating to *Accessaries,* he may consult *Judge Foster's Reports,* p. 130, 131, 366, and following Pages.

* *Foster's Reports,* p. 131, 132.

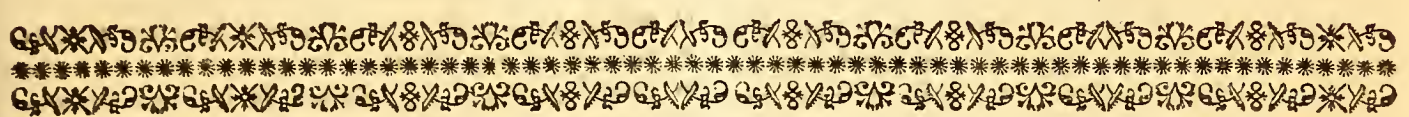
† “ There being a Doubt, whether the Facts proved against them amounted in Law to Murder, which was to have been argued before the Judges, if the Attorney-General had not declined it, — It is a Doubt which could not have arisen in any other Country, where the *Roman* Law is allowed to have any Weight; for by that Law it is expressly declared, That Witnesses, who by a false and malicious Testimony procure an innocent Man to be capitally condemned, shall be deemed Guilty of Murder. *Quis falsum testimonium dolo malo dixerit, quo quis publico judicio rei capitalis damnaretur.* Digest. lib. 48. Tit. 8. s. 2.”

“ *Braeton*, whom the Writers of that Age for
 “ the most Part follow, was a Doctor of both
 “ Laws before he came to the Bench. It is no
 “ Wonder therefore, that having before him no
 “ tolerable System of the *English* Law, then in its
 “ Infant State, he should adopt what he found in
 “ the Books of the Civil and Canon Law, which
 “ he had read, and seemeth to have well under-
 “ stood †.
 “ Succeeding Writers of that Age refined
 “ upon *him*, and in their loose Way wrote upon
 “ the Subject rather as Divines and Casuists than
 “ as Lawyers; and seem to have considered the
 “ Offence meerly in the Light in which it might
 “ be supposed to be considered in *Foro Casti*.
 “ But the Practice of many Ages backwards
 “ doth by no means countenance their Opinion.
 “ And during all the Violence and Rage of the
 “ Prosecution against *Dr. Oates*, it seemeth not

“ to have entered into the Imagination of those
 “ concerned in it, or of the Court, who would
 “ not have spared him if they could have taken
 “ their full Blow at him, that the Offences of
 “ which he was convicted could have been so
 “ charged as to have reached his Life. Though
 “ the Judgment they passed on him, the most
 “ cruel, I believe, that ever was given in *West-*
 “ *minster-Hall* in Case of a Misdemeanor, might
 “ probably have ended in his Death §.”

Egan was killed in the Pillory, but *M^r Daniel*
 and *Berry* continued in *Newgate* under their former
 Sentence till *Feb. 26, 1762*, when *John Berry*
 died in *Newgate*; and the Year following *M^r Daniel*
 procured himself to be sent abroad for Life to the
Indies, as a Soldier. — *Salmon*, I take it, died in
Newgate before.

† See *Dig. l. 48. Tit. 8. ad Legem Corneliam de Sicariis. L. 9. Tit. 2. ad Legem Aquiliam.* And the Writers on the
 Canon Law, collected by *Linwood*, l. 1. Tit. 11. V. *Ne occides.*
 § See 4 *State Trials*, the Proceedings against him, and what fell from the Court at the Time of giving Judgment.



LII. *The Trial of William Barnard, at the Sessions-House in
 the Old-Bailey, before the Right Honourable Sir Charles
 Asgill, Knt. Lord-Mayor of the City of London, Sir
 Michael Foster, Knt. one of the Justices of the King's-Bench,
 Sir Sidney Stafford Smythe, Knt. one of the Barons of the
 Exchequer, Sir William Moreton, Knt. Recorder, and
 others his Majesty's Justices of Oyer and Terminer, for
 the said City, and County of Middlesex, on Wednesday the
 10th, and Thursday the 11th of May, 1758, on the Black
 Act; for sending a Letter in a fictitious Name to Charles
 Duke of Marlborough, demanding a genteel Support for
 Life.*

Middlesex Jury.

- | | |
|--------------------------|--------------------------|
| <i>William Spinnage,</i> | <i>Benjamin Lester,</i> |
| <i>Edward Barlow,</i> | <i>Francis Phillips,</i> |
| <i>John Chilton,</i> | <i>Simon Pawson,</i> |
| <i>Edward Turner,</i> | <i>Richard Airey,</i> |
| <i>John Mills,</i> | <i>John Lugg,</i> |
| <i>Benjamin Bailey,</i> | <i>John Turner.</i> |

“ **W**ILLIAM BARNARD, late of
 “ the Parish of *St. James's*, within
 “ the City and Liberty of *Westminster*,
 “ in the County of *Middlesex*, Yeoman, was
 “ indicted, for that he being an ill-disposed
 “ Person, and seeking wicked Gain, and little
 “ regarding the Laws and Statutes of this King-
 “ dom, or the Pains and Penalties therein con-
 “ tained, after the first Day of *June* in the Year
 “ of our Lord 1723, *to wit*, on the 3d Day of

“ *December*, in the thirty-first Year of the Reign
 “ of our Sovereign Lord *George* the Second,
 “ King of *Great-Britain*, &c. 1758, with Force
 “ and Arms, at the Parish aforesaid, in the
 “ County aforesaid, knowingly, unlawfully,
 “ wickedly, and feloniously, did send a certain
 “ Letter in Writing, with a fictitious Name, *to*
 “ *wit*, with the fictitious Name of *Felton* thereto
 “ signed and subscribed, to the Most Noble
 “ *Charles* Duke of *Marlborough*, and directed to
 “ the said Duke, by the Title and Description
 “ of His Grace the Duke of *Marlborough*, de-
 “ manding therein a certain valuable Thing, *to*
 “ *wit*, a genteel Support for the Life of him the
 “ said *William Barnard*, against the Form of the
 “ Statute in such Case made and provided, to
 “ the evil Example of all others in the like Case
 “ offending, and against the Peace of our said
 “ Lord the King, his Crown and Dignity.”

After

After Mr. *Moore* had opened the Indictment, Mr. Serjeant *Davy* spoke as follows:

May it please your Lordships, and you Gentlemen of the Jury;

I am Council in this Cause for the Prosecution against the Prisoner at the Bar, who stands indicted on an Act of Parliament made in the ninth Year of his late Majesty, very well known by the Name of the Black Act. That Act of Parliament, reciting the several Mischiefs, and constituting several Felonies, amongst other Things, enacts, that if any Person shall knowingly send any Letter, without any Name subscribed thereto, or signed with a fictitious Name, demanding Money, Venison, or other valuable Thing; every Person so offending, being thereof lawfully convicted, shall be adjudged guilty of Felony, and shall suffer Death as in Cases of Felony, without Benefit of Clergy.

It is on that Act that this Indictment now comes before you, that you have heard read. You see it is for sending a Letter; for it is on the first of these Letters that the present Indictment is founded; the others are sent in Consequence of the first, and explanatory of his Intentions.

I will open to you, as concisely as I can, the several Circumstances we have in Evidence, in order to affect the Prisoner at the Bar: They are Circumstances of that Nature, corresponding so exactly with the Prisoner's Case, affecting him so very minutely, that the several Circumstances do infer, I had almost said, an Impossibility of his Innocence: You will find they all tally so exactly, they are so particularly relative to him, that it will be offering Violence to every Rule of Reason, not to find him guilty.

Gentlemen, on the 29th of *November*, a Letter was found under the Door of the *Ordnance-Office*, directed to his Grace the Duke of *Marlborough*: Upon opening this Letter, which was wrote in Imitation of Print-Hand, bearing Date that Day the 29th of *November*, it will be necessary, for the sake of the following Circumstances, to desire your Attention to the several Parts. These are the Words:

To his Grace the Duke of *Marlborough*.

xxviii November.

“ My Lord,

“ As Ceremony is an idle Thing upon most Occasions, more especially to Persons in my State of Mind, I shall proceed immediately to acquaint you with the Motive and End of addressing this Epistle to you, which is equally interesting to us both. You are to know, then, that my present Situation in Life is such, that I should prefer Annihilation to a Continuance in it: Desperate Diseases require desperate Remedies; and you are the Man I have pitched upon, either to make me, or to unmake myself. As I never had the Honour to live among the Great, the Tenour of my Proposals will not be very courtly; but let that be an Argument to enforce the Belief of what I am now going to write. It has employed my Invention, for some Time, to find out a Method to destroy another, without exposing my own Life; that I have accomplished, and defy the Law. Now for the Application of it. I am desperate, and must be provided for: You have it in your Power, it is my Business

“ to make it your Inclination; to serve me; which you must determine to comply with, by procuring me a genteel Support for my Life; or your own will be at a Period before this Sessions of Parliament is over. I have more Motives than one for singling you out first, upon this Occasion; and I give you this fair Warning, because the Means I shall make use of are too fatal to be eluded by the Power of Physic. If you think this of any Consequence, you will not fail to meet the Author, on *Sunday* next, at Ten in the Morning, or on *Monday*, (if the Weather should be rainy on *Sunday*) near the first Tree beyond the Stile in *Hyde-Park*, in the Foot-walk to *Kensington*: Secrefy and Compliance may preserve you from a double Danger of this Sort; as there is a certain Part of the World, where your Death has more than been wished for, upon other Motives. I know the World too well, to trust this Secret in any Breast but my own. A few Days determine me your Friend or Enemy.

“ FELTON.

“ You will apprehend that I mean you should be alone; and depend upon it, that a Discovery of any Artifice in this Affair will be fatal to you: My Safety is insured by my Silence; for Confession only can condemn me.”

This Letter containing every Thing that is dreadful, that might raise Apprehensions of Terror, subscribed by a Name which is painful to almost every Ear—the Name *Felton*! That was the Name of the Assassin that stabbed the Duke of *Buckingham* at *Portsmouth*.

My Lord Duke, not intimidated by the Letter, though greatly surprized at it, and willing to find out the Author, was not afraid to endeavour to apprehend him; he went alone to the Spot, and at the Time appointed; however, there was some Attendant on his Grace at a Distance, in order to observe what passed on the Occasion. My Lord Duke had been there some Time on Horseback, and as much undressed as a Man of his Quality is. He had Pistols before him; he had been there some Time, and saw nobody at all at that particular Place. After waiting some considerable Time, he was returning, and observed a Person come to the particular Spot just by the Tree beyond the Stile in *Hyde-Park*, by the Foot-walk to *Kensington*: That Person held a Handkerchief to his Mouth in a seeming disconsolate Manner, looking into the Water, and stood still a very considerable while. Upon his Grace seeing this, that the Man was not pursuing any Way, the Duke had no Doubt in his own Mind, but that this Man (be he who he would) must be the Person who had sent him this Letter. The Man fauntering just at the Place, the Duke rode up to the Spot, expecting the Person would speak to him: His Grace asked the Man, *Whether he wanted to speak to him?* He said, *No.—Sir, said the Duke, do you know me? I am the Duke of Marlborough; telling you that, perhaps you have something to say to me.—No, my Lord.—*No Notice being taken, the Duke came away.

Gentlemen, you see, this was an Appointment on a *Sunday* to meet at a Place where several People might be supposed to be walking: What was the View of that Person may be seen by and by. The Author of this Letter speaks of his

his being exceedingly guarded against the Possibility of a Detection; he boasts of the Care and Caution he had used for that Purpose, — *He defies the Law, — nothing but Confession could condemn him, — his Safety was insured by his Silence, — he knew the World too well, to trust this Secret in any Breast but his own.*

A few Days after, in the same Week, the Duke received a second Letter. This also was put under the Door of the Office of Ordnance, and was also wrote in Imitation of a Print-Hand: But the Directions of both the Letters are not; there will be Occasion to take Notice of that Circumstance by and by. The second Letter is in these Words:

To his Grace the Duke of Marlborough.

“ My Lord,

“ You receive this as an Acknowledgment of your Punctuality as to the Time and Place of Meeting on *Sunday* last, though it was owing to you that it answered no Purpose. The Pageantry of being armed, and the Ensign of your Order, were useless, and too conspicuous: You needed no Attendant; the Place was not calculated for Mischief, nor was any intended. If you walk in the West Isle of *Westminster-Abbey*, towards Eleven o’Clock on *Sunday* next, your Sagacity will point out the Person, whom you will address by asking his Company to take a Turn or two with you. You will not fail, on Inquiry, to be acquainted with the Name and Place of Abode, according to which Directions you will please to send two or three hundred Pound Bank-Notes the next Day by the Penny-Post. Exert not your Curiosity too early: It is in your Power to make me grateful on certain Terms. I have Friends who are faithful; but they do not bark before they bite.

“ I am, &c.

“ &c.

F.”

Gentlemen, you see, the Writer of the second Letter speaks of being himself in the *Park*, or at least of knowing that the Duke was there, at the Time and Place appointed: And therefore this was a farther Circumstance to convince the Duke, that the Person, whom he had seen the *Sunday* before in *Hyde-Park* and spoke to, was the Writer of the second Letter. You see it speaks of the Duke’s Punctuality as to the Time and Place of Meeting, the particular Dress his Grace was in, and assigns that as the Reason of not speaking to him the *Sunday* before: So you see, Gentlemen, that Circumstance, which was a little unaccountable of itself, of the Duke’s not being owned by the Person whom he had seen the *Sunday* before, is by this second Letter accounted for; — *the Pageantry of being armed, and the Ensign of his Order.* He had then only a Star on, and that perhaps an old one, so as not to be conspicuous: So that this accounts for the Person’s not speaking to the Duke in *Hyde-Park*. There can be no Doubt at all, but that the Writer of the second was the Writer of the first Letter.

The Consequence then of this second Appointment to meet the Writer of the Letters in the West Isle of *Westminster-Abbey*, you will observe. Public Places were appointed, and at public Times; the first in *Hyde-Park*, the second in Prayer-Time at *Westminster-Abbey*, where the Duke

was by his Sagacity to point out the Person — the Writer of this Letter. The Duke accordingly went to *Westminster-Abbey*, to the West Isle, (though indeed, properly speaking, we don’t know which to call the West Isle, the Church standing East and West.) His Grace went to the Westernmost Part of the *Abbey*, and observed no body lurking or standing in Circumstances suspicious: After a little Time, his Grace was surprized to see that the same Person, whom he had seen the *Sunday* before exactly at the Spot in *Hyde-Park*, appeared just in this Place at the West End of *Westminster-Abbey*; but he was surprized the more, that this Person did not speak to him. Perhaps his Grace had not then considered the Tenour of this Letter; for it was not to be expected, that the Writer would address the Duke, but rather refers to the Duke’s Sagacity: — *Your Sagacity will point out the Person*, it then directs, *whom you will address by asking his Company to take a Turn or two with you.* His Grace perhaps did not consider this exactly; but waiting some Time for the Person to speak to him, and finding he did not, his Grace asked him, *Sir, have you any thing to say to me? No, my Lord. — Have you nothing at all to say to me? No. — Have you nothing at all to say to me? No.* he had nothing to say to him. Now I should have mentioned to you, when this Person came into the *Abbey*, another Person came in with him, who seemed by his Appearance to be a substantial Tradesman, a good Sort of Man. These two Persons, after stopping and looking about at the Monuments near the West Gate of the *Abbey*, the Duke being sure one of them was the same Man he had seen before in *Hyde-Park*, his Grace thought proper to go and stand by them, to see if that Person would speak to him: Seeing the Duke took no Notice of him, they both went towards the Choir: The Stranger went into the Choir, and the Man that his Grace had seen in the *Park*, came back again (leaving his Friend there) to the Spot where the Duke was. The Duke then asked him, Whether he had any thing to say to him? No, he had nothing at all to say to him. No, he had nothing at all to say. Then the Duke walked a little on the other Side of the Isle, to see whether the Man would follow him, or had a Mind to speak to him at another Spot. He observed the Man looked eagerly at him: May-be it may be understood, he expected the Duke’s *Sagacity would point out the Man*: However, the Duke did not do what the Letter required, that is, *Ask him to take a Turn with him.*

At this second Time there was somebody that was with the Duke (when I say with him, I don’t mean close to him, but) near enough, so as to take Notice what passed, in order to apprehend the Person, so as to put it beyond all Doubt that he was the Author of those Letters. The Duke, and this Attendant of his, went out at the West Door of the *Abbey*, in order to go to his Coach. Now you will find by and by, in the next Letter, that the Writer of these Letters took Notice of this Attendant, but was under no Apprehension of being watched by any body else; and that will account for those Circumstances I am going to mention: As soon as the Duke went out of the *Abbey*, that Man, whom the Duke had seen at both these Places, watched the Duke out of the *Abbey*, and as soon as his Grace had passed the Door of the *Abbey*, he went up, hid himself in a

Corner, concealed from a Possibility of being seen by his Grace in case he had looked back, and so watched him into his Coach. It may be asked, Why his Grace, upon having such clear Conviction in his own Mind, that that Person must be the Writer of both the Letters, did not apprehend him? His Grace will tell you, he did not think himself justified in so doing; he could not reconcile it to his own Mind to take up a Man, where there was a Possibility of his Innocence.

Gentlemen, a few Days after this, came a third Letter to the Duke, wrapped up in a very small Compass, and directed to his Grace the Duke of *Marlborough* at his House. You will see, by comparing the Directions, that this third Letter was wrote by the Writer of the first Letter: It begins, *My Lord, I am fully convinced you had a Companion on Sunday.* So far it is proved, that the Writer of these Letters was in the *Park* on the first *Sunday*, and saw the Duke there; and was in the *Abbey* on the second *Sunday*, and saw the Duke there; and that it was the same Man that the Duke saw at both these Times. *I interpret it as owing to the Weakness of Human Nature; but such Proceeding is far from being ingenuous, and may produce bad Effects, whilst it is impossible to answer the End proposed.* — Guarded through all. — *You will see me again soon, as it were by Accident, and may easily find where I go to; in Consequence of which, by being sent to, I shall wait on your Grace, but expect to be quite alone, and converse in Whispers. You will likewise give your Honour, upon meeting, that no Part of the Conversation shall transpire.* — So that you see, as he was guarded before, he was determined to make it impossible to be discovered: If they were to converse in Whispers, and to be quite alone, it was impossible for other Evidence to rise up against him. — *These and the former Terms complied with, insure your Safety; my Revenge, in case of Non-compliance, (or any Scheme to expose me,) will be slower, but not less sure, and strong Suspicion the utmost that can possibly ensue upon it.* You see, how artful he had contrived it: He was determined that nothing more than strong Suspicion should ever be in Evidence against him. — *While the Chances will be tenfold against you, you will possibly be in Doubt after the Meeting, but it is quite necessary the Outside should be a Mask of the In. The Family of the BLOODS is not extinct, though they are not in my Scheme.* The Word BLOODS is in Capital Letters. That is a dreadful Name! As *Felton* was the Villain who assassinated the Duke of *Buckingham*, so this is the Name of the Fellow who seized the Duke of *Ormond*, and was going to carry him to *Tyburn* to execute him, and also who stole the Crown out of the *Tower of London*.

You see, Gentlemen, by this third Letter, that the Duke was to expect to hear something farther from the Writer of these Letters. It contains no Appointment, but leads the Duke to expect he shall see the Writer again as by Accident, and was to observe where he should go to, that the Duke might know where to send for him; and that he would come in Consequence of being sent for; but when he came to the Duke, the Terms were, to be a secret Conversation, not in the Presence of a third Person, and that too by Whispers, and the Duke promising, upon his Honour, that no Part of it should transpire, without which he was not led to think the Writer

should disclose any thing at all. The first Letter was dated and received the 29th of *November*, the second received the next Week, the third in the second Week of *December*, and the last was some Time in *April*.

The Duke waited, expecting to hear farther; but heard nothing more until the Middle of *April*. About the 14th there came a Letter to his Grace, wrote in a mean Hand, but not in Imitation of a Print-Hand, as the others were. These are the Words of the fourth Letter:

To his Grace the Duke of Marlborough.

“ May it please your Grace,

“ I have Reason to believe, that the Son of
“ one *Barnard*, a Surveyor in *Abingdon-Buildings*,
“ *Westminster*, is acquainted with some Secrets
“ that nearly concern your Safety; his Father is
“ now out of Town, which will give you an
“ Opportunity of questioning him more privately.
“ It would be useless to your Grace, as well as
“ dangerous to me, to appear more publicly in
“ this Affair.

“ Your sincere Friend,

“ ANONYMOUS.

“ He frequently goes

“ to *Storey's-Gate*

“ *Coffee-house.*”

Gentlemen, the Duke sent for Mr. *Barnard*, the Son of Mr. *Barnard*, according to the Directions in that Letter. This Letter, you will see, bears no Date at all; no Memorandum, or any thing which could possibly indicate when the Letter was sent, or when the Duke received it. The Duke, when Mr. *Barnard* came, was sitting in his Room; and though upon opening the Door of the outer Room (which was at threescore Yards Distance from where the Duke was) yet, the Moment Mr. *Barnard* entered the Room, he was sure that was the Man he had seen both in the *Park* and in the *Abbey*. Though the Duke had no Doubt in his own Mind on the former Circumstances, that the Person whom he had seen before was the Writer of the first Letter, now he was fully convinced that he was the Writer of all the Letters. The Duke was determined the Scheme should not so far take Effect, as to engage himself upon his Honour, that no Part of the Conversation should transpire; if so, nothing could have prevailed upon him to prosecute: Therefore you are not to expect he complied with a Conversation in Whispers, and a Promise on the Duke's Part, that no Part of the Conversation should transpire. The third Letter will tell you, that the Person that entered the Room was the Writer of all these Letters. As soon as he came into the Room, the Duke took him to the Window, and asked him, Whether he wanted to speak with him? *No, my Lord.* — *No, Sir!* I have received a Letter, which tells me, that you are acquainted with some Circumstances that nearly concern my Safety. — *Not I, my Lord.* This is very surprizing, Sir! This is the Letter; and shewed him the last Letter. Still the Duke had not given him any Promise at all of not exposing the Conversation. Sir, it is very odd that you should be pointed out to me, to acquaint me with some Circumstances relating to my Safety, because it mentions some Circumstances as to the Time, the Place where

where you are to be found, your Father's being out of Town, and the like. The Prisoner incautiously said immediately, *My Lord, my Father was out of Town at that Time.* — At what Time, Sir? The Letter bears no Date, nor have I mentioned to you a Syllable when I received it: How came you to know when I received this Letter, that you should tell me, your Father was not in Town at that Time? You speak clearly, as knowing when I received this Letter; therefore give me Leave on this Occasion to tell you, that I do not only suspect you know of this Letter, but that you have sent to me some other Letters that I have received before: Then acquainting him with the other three Letters, his Grace observing upon them, that it was very odd and strange, that the Letters corresponded so certainly and decisively on him, he being always at the Places at the Times appointed, and that he being the Person named in the fourth Letter too, and that he knew the Time of the Duke's receiving that Letter, the Duke put it upon him, Sir, I am surprized at the Writer of this Letter; one should suppose from the Style, and its being grammatically wrote, that the Person who wrote it had had some Share of Education; at least I am surprized, that a Man that has had any Education at all, can descend to such a Means of getting Money. *My Lord, your Grace need not be surprized at that; a Man may be learned, and very poor.* Very fond was he of softening Things. *My Lord, you need not be affrighted; I dare say the Writer of these Letters is a very Madman.* Why! You are very much concerned to apologize for the Writer hereof, said the Duke; picking out this Circumstance, the Man does not know me, he expresses his very great Surprize at my appearing in the *Park* with the Ensign of my Order, and my being armed. As incautious as he had been before, he is incautious upon that too, and said, *Indeed I was surprized to see your Grace armed.* Was you so? said the Duke; was you surprized to see me armed? Can any Man doubt a Moment who wrote these Letters? But however, Mr. *Barnard*, as you insist upon it, and declare so solemnly your Innocence, I will not so far invade the Laws of Hospitality, whatever Crime you have done. (He would not for the World apprehend a Man in his own House whom he had sent for; he let him go safe Home again; it was for that Reason he would not give his Promise not to reveal the Conversation; but in regard to the Public he was determined to prosecute.) The Duke said to him, Sir, if you are not the Writer of these Papers, it much becomes you to find out who is; for your Name is particularly mentioned in this last Letter; either you are the Writer, or allow me to say, somebody else owes you very Ill-will that was the Writer of them. I am relying merely on the Terms of the last Letter, wherein he was to inform his Grace of some Secrets that nearly concern his Safety: What was the Answer that the Prisoner made? First, what would have been the Answer? Must not a Man be struck with Astonishment, to hear he was one that was to inform his Grace of Things that nearly concerned his Safety, so much to the Hazard of his own Life? What became him, as having a Regard to his own Reputation and Safety? To determine, as far as in his Power, to find out the Writer; nay, to have given the Duke Assurance that he

would do it: Instead of that, What was his Behaviour? A Smile of Contempt — an unmannerly Laugh in the Duke's Face, as if it did not concern him at all.

Gentlemen, I should think that to this there can hardly be a Circumstance added more clearly to convince any Man alive of the Circumstances of this Man's being the Author of these Letters; but you will find afterwards the Prisoner (for what Reason let him tell if he can) told his Grace, he had desired his Companion that was with him in *Westminster-Abbey* to leave him: Why? *Because he thought the Duke wanted to tell him of some Place he had for him.* Good God! How could he imagine he wanted to tell him of a Place? A Person whom he had never seen before he saw him in the *Park*, how could he expect that? This was his awkward Reason for desiring his Companion to leave him.

I beg Pardon, if I have omitted any Thing; these are the Circumstances that have occurred to me on this Occasion; they are so strong and necessary in the Proof of the Prisoner's Guilt, that I will venture to say, it is much more satisfactory to an indifferent Person, than positive Testimony, — the positive Testimony of any Man, as Men are liable to Mistakes, as a Mistake in Time, a Mistake in Persons, will exceedingly vary the Case; but Variety of Circumstances which tally in their own Nature, cannot lye or deceive.

This Prosecution is commenced merely for the sake of Justice; I am instructed to say from his Grace, it is perfectly indifferent to him what will be the Issue of this Trial: He thought it his Duty to come here, and leaves it to his Country to determine as they shall think proper.

The Duke of Marlborough sworn.

I received this Letter from an unknown Hand, dated the 29th of *November*, and directed to me, appointing me to meet the Writer on a certain Spot in *Hyde-Park*.

(The first Letter read.)

To his Grace the Duke of Marlborough.

[With Care and Speed.]

xxviii *November.*

“ My Lord,

“ As Ceremony is an idle Thing upon most
 “ Occasions, more especially to Persons in my
 “ State of Mind, I shall proceed immediately to
 “ acquaint you with the Motive and End of
 “ addressing this Epistle to you, which is equally
 “ interesting to us both. You are to know, then,
 “ that my present Situation in Life is such, that I
 “ should prefer Annihilation to a Continuance in
 “ it: Desperate Diseases require desperate Remedies;
 “ and you are the Man I have pitched upon,
 “ either to make me, or to unmake yourself. As I
 “ never had the Honour to live among the Great,
 “ the Tenour of my Proposals will not be very
 “ courtly; but let that be an Argument to enforce
 “ the Belief of what I am now going to write.
 “ It has employed my Invention, for some Time,
 “ to find out a Method to destroy another, without
 “ exposing my own Life; that I have accomplished,
 “ and defy the Law. Now for the Application of it. I am desperate, and must
 “ be provided for: You have it in your Power,
 “ it

“ it is my Business to make it your Inclination,
 “ to serve me; which you must determine to
 “ comply with, by procuring me a genteel Sup-
 “ port for my Life; or your own will be at a
 “ Period before this Sessions of Parliament is
 “ over. I have more Motives than one for
 “ singling you out first, upon this Occasion; and
 “ I give you this fair Warning, because the
 “ Means I shall make use of are too fatal to be
 “ eluded by the Power of Physic. If you think
 “ this of any Consequence, you will not fail to
 “ meet the Author, on *Sunday* next, at Ten in
 “ the Morning, or on *Monday*, (if the Weather
 “ should be rainy on *Sunday*) near the first Tree
 “ beyond the Stile in *Hyde-Park*, in the Foot-
 “ walk to *Kensington*: Secresy and Compliance
 “ may preserve you from a double Danger of this
 “ Sort; as there is a certain Part of the World,
 “ where your Death has more than been wished
 “ for, upon other Motives. I know the World
 “ too well, to trust this Secret in any Breast but
 “ my own. A few Days determine me your
 “ Friend or Enemy.

“ FELTON.

“ You will apprehend that I mean you should
 “ be alone; and depend upon it, that a Discovery
 “ of any Artifice in this Affair will be fatal to
 “ you: My Safety is infured by my Silence; for
 “ Confession only can condemn me.”

Q. What did your Grace do upon the Receipt
 of this Letter?

D. of *Marlb.* I went to the Place at the Time
 appointed. It was at the first Tree near the
 Stile in *Hyde-Park*, in the Way to *Kensington*, at
 the End of the *Serpentine* Water, betwixt that
 Water and a little Pond. I was there some Time,
 and saw no body stop that I could suspect to be
 the Person; upon which I was going away: But
 as I came to *Hyde-Park* Corner, I turned my
 Horse, and saw a Person stand loitering, and
 looking at the Water over the Bridge. This was,
 I believe, within twenty Yards of the Tree, and
 this induced me to go back again. I rode up to
 the Person very gently, and passed by him once
 or twice, expecting him to speak to me; he did
 not. I made him a Bow, and asked him, if he
 had something to say to me? He said, *No, I don't
 know you.* I said, I am the Duke of *Marlborough*,
 now you know me, I imagine you have something
 to say to me: He said, *No, I have not.* Then I
 rode away.

Q. Was your Grace armed?

D. of *Marlb.* I had Pistols before me.

Q. Had your Grace any Great Coat on?

D. of *Marlb.* No, I had not. My Star might
 easily be seen.

Q. Does your Grace see any body here that
 you saw there?

D. of *Marlb.* It was the Prisoner at the Bar.

Q. Had your Grace any Servant or Attendant
 with you?

D. of *Marlb.* I had no Servant with me; there
 was a Person, a Friend of mine, at a good
 Distance in the *Park*. A Day or two after, I
 cannot be sure whether it was the next Day, or
 the Day after that, I received a second Letter.

Council for Prisoner. I am under a great Diffi-
 culty, whether I shall object against this Letter
 being read or not. Your Lordship sees the first
 is a Letter sent to the Duke of *Marlborough*,

demanding a very valuable Thing, *viz.* a genteel
 Employment for Life. This is to the same
 noble Duke, not demanding that valuable Thing;
 but demanding two or three hundred Pounds in
 Bank-Notes. These Demands are very different
 and distinct from one another: So different and
 distinct, that they seem to me to be different
 Felonies. My Lord, I apprehend one Felony,
 whoever it may affect, cannot be Evidence of
 another Felony; nor can this Letter, supposing
 there is any thing in it amounting to a Felony,
 be Evidence to another Felony—

but there were some Acknowledgment in that
 directly affecting the Prisoner at the Bar; but I
 am inclined that the whole of this Matter shall
 come before the Court, from my Opinion of the
 Defendant's Innocence, and the substantial Merits
 of his Defence; and I think myself very happy
 that I have the Assistance of such a Court, who
 are always Council for the Prisoner, where the
 Life, Property, and Character of a Man is at
 Stake; and who, under these Circumstances, will
 do that which is right, admit or not admit what
 is not proper Evidence. I don't firmly object
 to it; I don't think it for the Interest of my
 Client to suppress it, who is called upon to answer
 in this Matter; therefore I leave the Court to do
 as they think proper.

Council for Crown. I desire, if you have any
 Objections, to make them now.

Court. The Use made of this Letter is to sup-
 port the Evidence of the first Letter, let the
 Contents be what they will. The Use they make
 of it is to shew, that the Prisoner at the Bar was
 the Writer or Sender of the first Letter.

(*The second Letter read.*)

To his Grace the Duke of Marlborough.

“ My Lord,

“ You receive this as an Acknowledgment of
 “ your Punctuality as to the Time and Place of
 “ Meeting on *Sunday* last, though it was owing
 “ to you that it answered no Purpose. The
 “ Pageantry of being armed, and the Ensign of
 “ your Order, were useless, and too conspicuous:
 “ You needed no Attendant; the Place was not
 “ calculated for Mischief, nor was any intended.
 “ If you walk in the West Isle of *Westminster-
 “ Abbey*, towards Eleven o'Clock on *Sunday* next,
 “ your Sagacity will point out the Person, whom
 “ you will address by asking his Company to
 “ take a Turn or two with you. You will not
 “ fail, on Inquiry, to be acquainted with the
 “ Name and Place of Abode, according to which
 “ Directions you will please to send two or three
 “ hundred Pound Bank-Notes the next Day by
 “ the Penny-Post. Exert not your Curiosity too
 “ early: It is in your Power to make me grateful
 “ on certain Terms. I have Friends who are
 “ faithful; but they do not bark before they
 “ bite.

“ I am, &c.

“ &c.

“ F.”

Q. What did your Grace do upon the Receipt
 of this second Letter?

D. of

D. of Marlb. I went to *Westminster-Abbey* at the Time the Letter appointed. I had been walking there about five or six Minutes before I saw any body that I suspected; then I saw the Person I had seen before in *Hyde-Park*, and another Person who seemed to be a good looking Man, a substantial Tradesman: They came in and looked on the Monuments. I knowing the Person again, went and stood by them; but the Prisoner said nothing to me: Soon after they both of them went towards the Choir; the Stranger, I may call him, went into the Choir, and the Prisoner turned back and came towards me, but did not speak to me. Then I asked him, if he had any thing to say to me, or any Commands for me? He said, *No, my Lord, I have not.* I said, Sure you have? He said, *No, my Lord.* He walked up and down one Side the Isle, and I the other to give him a little more Time; but he did not speak: Then I went away out at the great Door, and left him in the *Abbey*. I looked back to see if he watched me going out, but I did not see him.

Q. Had your Grace any body with you in the *Abbey*?

D. of Marlb. There were two or three People placed in Disguise, ready, if I had given them the Signal, to have him taken up. Though I was certain it was the same Person whom I had seen and spoke to in the *Park*, I thought not proper to give the Signal, but to run a little longer Risque rather than to take up an innocent Man. Very soon after this I received another Letter, this is it.

(*The third Letter read.*)

To his Grace the Duke of Marlborough.

“ My Lord,

“ I am fully convinced you had a Companion
“ on *Sunday*. I interpret it as owing to the Weak-
“ nefs of human Nature; but such Proceeding
“ is far from being ingenuous, and may produce
“ bad Effects; whilst it is impossible to answer
“ the End proposed. You will see me again
“ soon, as it were by Accident, and may easily
“ find where I go to; in Consequence of which,
“ by being sent to, I shall wait on your Grace,
“ but expect to be quite alone, and to converse
“ in Whispers. You will likewise give your
“ Honour, upon meeting, that no Part of the
“ Conversation shall transpire. These and the
“ former Terms complied with, insure your
“ Safety: My Revenge, in case of Non-com-
“ pliance, (or any Scheme to expose me) will be
“ slower, but not less sure; and strong Suspicion
“ the utmost that can possibly ensue upon it;
“ while the Chances would be ten-fold against
“ you. You will possibly be in Doubt after the
“ Meeting, but it is quite necessary the Outside
“ should be a Mask to the In. The Family of
“ the BLOODS is not extinct, though they are
“ not in my Scheme.”

D. of Marlb. At about two Months after the Receipt of this, I received another Letter, this is it.

(*The fourth Letter read.*)

To his Grace the Duke of Marlborough.

“ May it please your Grace,

“ I have Reason to believe, that the Son of
“ one *Barnard*, a Surveyor in *Abingdon-Buildings*,

“ *Westminster*, is acquainted with some Secrets
“ that nearly concern your Safety; his Father is
“ now out of Town, which will give you an
“ Opportunity of questioning him more pri-
“ vately. It would be useless to your Grace, as
“ well as dangerous to me, to appear more
“ publicly in this Affair.

“ Your sincere Friend,

“ ANONYMOUS.

“ He frequently goes
“ to *Storey's-Gate*
“ *Coffee-House.*”

D. of Marlb. There is no Date to this Letter. About a Week or ten Days after I received this Letter, I sent a Message to the *Coffee-House*, by *Mr. Merrick*, who returned and told me he found *Mr. Barnard* there, and that he said, What could the Duke of *Marlborough* want with him? He had spoke with him once in *Hyde-Park*, and another Time in *Westminster-Abbey*. The Messenger told me, he said he would wait on me, which he did at *Marlborough-House*, about half an Hour after Ten o'Clock, I think, on the *Friday* following.

Prisoner. It was *Thursday*, my Lord.

D. of Marlb. I cannot be sure as to the Day. When he came in, I knew, at first Sight, it was the same Person that I had seen in the *Park* and in the *Abbey*. I desired him to walk with me into a Room, and immediately shut the Door when we were in. I asked him as before; he said, *he had nothing to say to me*; then I told him of the last Letter I received, that it mentioned his Name, and that he knew something concerning my Safety; he said, *he knew nothing of it.* Then I recapitulated all the Letters, beginning with the first, and remarked to him, that it was strange to me, that a Man that wrote so very correct, without false *English* in any Shape, should be guilty of so low an Action; he said, *A Man may be very learned and very poor.* I then took Notice of the second Letter, and said, there must be something very odd in the Man; he said, *I imagine the Man must be mad*; I said, he seems surprized that I should have Pistols; said he, *I was surprized to see your Grace with Pistols, and your Star on.* I said, Why was you surprized at that? His Answer was, after stopping a Moment, *It was so cold a Day; I wondered you had not a Great Coat on:* Then I afterwards shew'd him the Letter again where his Name was mentioned, and walked with him to the Window; and as I read it, when I came to that Part where it said his Father was out of Town, he said, *It is very odd, my Father was then out of Town.* I said nothing to him of that, though it struck me a good deal, as there was no Date to the Letter. I said, if you are innocent, it behoves you much more than me to find out the Author of those Letters, particularly the last; for it was an Attempt to blast his Character behind his Back; he seemed to give me a Smile, and away he went. I did not apprehend him then.

Council for the Prisoner. In what Manner did your Grace receive this first Letter?

D. of Marlb. I am Master of the Ordnance. Somebody or other had put it in under the Door of the Office in the Night-time, and the Keeper of the Door sent it to me the next Day.

Q. As to the second Letter, which Way did your Grace receive that?

D. of Marl. That was sent the same Way, by being put under the Door as the other.

Council. In Consequence of the first Letter, your Grace went into the *Park* on Horse-back, and was there some Time without seeing any body you suspected, Were there not People there?

D. of Marl. I saw several People on Horse-back, and some few walking in a Hurry on Foot.

Q. Pray, my Lord Duke, after you had seen this Person loitering, was there any thing going forward, such as hunting a Duck, or the like?

D. of Marl. No, nothing in the World as I saw; it was a very cold Day.

Q. Your Lordship said there was another Person at a Distance, an Attendant on your Grace; How far might that Person be off when you was speaking to the Prisoner?

D. of Marl. I cannot tell exactly. I had spoke to him to keep a great Way off.

Q. Was he in View of your Grace?

D. of Marl. I dare say he was.

Q. Might not any Person equally see that Person as well your Grace?

D. of Marl. I suppose he might.

Q. Was your Grace there at the Time?

D. of Marl. I was there rather before the Time, I believe.

Q. Did he in the least offer to follow your Grace?

D. of Marl. No, he seemed to go the other Way.

Q. With respect to the second Letter, your Grace went according to Appointment to *Westminster-Abbey*, and saw the Prisoner and another Person come into the *Abbey*; Before that other Person had left him, had your Grace been near him?

D. of Marl. I had; I stood by him in Hopes he would speak to me, if he was the Person that wrote the Letters.

Q. Whether the Circumstance was not such, that that other Person might very well believe your Grace wanted to speak to the Prisoner?

D. of Marl. That I cannot tell. I stood very near the Prisoner, wanting him to speak to me. It is possible he might think so.

Q. Whether there were not at that Time several Persons attending on your Grace?

D. of Marl. There were two or three.

Q. Did your Grace speak to either of them in the *Abbey*?

D. of Marl. No, I did not.

Q. Whether if there was any other Person in *Westminster-Abbey* at that Time, whether that third Person might not have taken Mr. *Barnard* for your Grace's Companion, as your Grace spoke to him?

D. of Marl. Upon my Word I cannot tell that.

Q. Could there be a Person to whom that Expression, in the third Letter, might be applied, referring to your Grace's Companion, besides Mr. *Barnard*?

D. of Marl. Yes, it might be applied to a Gentleman that went away with me in the Coach from the *Abbey*.

Q. Whether your Grace did not bow several Times to the Prisoner before you spoke?

D. of Marl. No, I don't think I did.

Council. With respect to the third Letter, your Grace heard no more of that till the fourth came?

D. of Marl. I did not; and when the fourth came I sent to Mr. *Barnard*.

Q. Did your Grace know Mr. *Barnard* before you received these Letters?

D. of Marl. No, I did not at all.

Q. Does your Grace now know whether he was a Person in such Situation in Life, as answered to the Description in the Letters?

D. of Marl. I don't know the least Thing of him, either Character or Circumstances.

Council. Then, abstracted from these Circumstances, should your Grace have entertained any Suspicion of him more than of any other Person?

D. of Marl. I did not know there was such a Man in the World.

Q. When he came to your Grace's House, did he come in very readily?

D. of Marl. He did.

Q. Whether his Answer was, I was surprized to see you armed too, or I was surprized to see you armed?

D. of Marl. I cannot take upon me to say whether he laid such an Emphasis on it or not.

Council. Then he made no Secret of seeing your Grace in the *Park*?

D. of Marl. No.

Council. Nor in the *Abbey*?

D. of Marl. No.

Q. Your Grace mention'd, he said, It is very odd, my Father was out of Town then! Could your Grace apply that, in the Manner it was spoke, that his Father was out of Town when the Message came to him?

D. of Marl. I really understood him, that he knew his Father was out of Town at the Time of his writing the Letter.

Q. Did your Grace mention the Time you received it?

D. of Marl. No, I did not mention any Time.

Q. Did he come punctually to his Time?

D. of Marl. He did; I think the Messenger said he would wait on me about half an Hour after Ten.

Q. In what Manner was he apprehended?

D. of Marl. I do not know; I understood he was summoned.

Q. It has been said, he went away with a Smile; Pray, my Lord Duke, might not that Smile express the Consciousness of his Innocence as well as any thing else?

D. of Marl. I shall leave that to the Great Judge.

Q. He said, A Man might be very learned, and very poor; Does your Grace know whether this Person at the Bar is either learned or poor?

D. of Marl. I do not know indeed.

Q. May not that Expression fall from any Man whatever?

D. of Marl. I cannot say as to that.

James Merrick. I was directed from his Grace to carry a Message to *Storey's-Gate* Coffee-house; I went, and there was the Prisoner at the Bar: I told him, the Duke of *Marlborough* wanted to speak with him; he expressed some Surprize at what the Duke should want with him, but no Fear.

Q. When was this?

Merrick. This was on *Tuesday* the 25th of *April*, in the Evening; and he said, he would wait on the Duke on the *Thursday* following, between Ten and Eleven o'Clock.

Cross-Examination.

Q. What Reason did he give for not waiting on his Grace sooner?

Merrick. His Excuse was, he was going out of Town.

Q. Did he say any thing to you of his having seen the Duke before?

Merrick. He did. He said, he had seen his Grace three Times in his Life, once in *Hyde-Park*, and once in *Westminster-Abbey*, and once at the Camp at *Byfleet*; he said, he did not know the Duke when he saw him in *Hyde-Park*, till the Duke himself told him who he was.

Q. Did he tell you what had passed either in the *Park* or in the *Abbey*?

Merrick. He told me, that in the *Park* the Duke rode up to him, and asked him, Sir, do you want any thing with me? His Answer was, No. Then the Duke asked him, If he knew who he was? He answered, No, again. Then the Duke told him, he was the Duke of *Marlborough*; then he made his Bow: And in *Westminster-Abbey* he told me he thought the Duke had spoke to him; but on turning about he said, he did not; and he turned and went away.

Q. Where had you this Conversation?

Merrick. This was in a Room in the Coffee-house by ourselves.

Q. Did he tell you this voluntarily?

Merrick. He did. At first he seemed surprized, and then said, he recollected these Circumstances.

Q. Did he express any Signs of Fear?

Merrick. No; but he seemed much surprized.

William Marsden. I was appointed by his Grace the Duke and Justice *Fielding* to watch the Duke in *Westminster-Abbey*, and had two Constables there in order to apprehend the Person, if his Grace had thought proper to give the Signal.

Q. Were you all together?

Marsden. No, but so dispersed that our Intention might not be known; I was within the Choir hearing the Prayers for some Time; there was a Gentleman near the Duke with a Sword, whom I thought the Person at first, but I learned afterwards, he was an Acquaintance of his Grace's; I was not apprized that any such Person would attend him: I saw Mr. *Barnard* and another Person come in, and his Eye was fixed on his Grace as he walked in the Isle; they walked down the middle Isle, not directly to his Grace; in a little Time I observed his Grace to meet them, and as I thought by the Behaviour of Mr. *Barnard*, that he spoke first to the Duke, presently after that Mr. *Barnard's* Partner went off from him; then Mr. *Barnard* went and stood looking at the Duke; then I thought Mr. *Barnard* was the Person; so I did not mind the other: I saw his Grace speak to him again, but was not near enough to hear what they said: After that, his Grace walked backwards and forwards once or twice, and went out at the Door he came in at; the other Gentleman immediately followed the Duke; I followed to see what passed; the Gentleman, the Duke's Acquaintance, walked opposite to the Duke; Mr. *Barnard* was got looking behind a Post; any body that was on that Side he was on

could see him, but a Person on that Side his Grace was on could not; I believe it was impossible for his Grace to see him at that Time; he looked after his Grace a considerable Time, then walked back: I followed his Grace, and told him what Observations I had made; his Grace immediately told me, the Man in black was the Man that he had seen in *Hyde-Park*: Then I said, I wonder your Grace did not give the Signal to have him apprehended; his Grace said the same as repeated here, He would rather let it be a little longer, than to take up an innocent Man; he should hear of him again he apprehended, for he seemed to be afraid to speak to him at that Time.

Q. Was he apprehended after this?

Marsden. He was. I procured him to come before Justice *Fielding*, by a sham Summons, in which he was accused with Assault and Battery: He was not taken up till he came there, then he seemed surprized.

Q. Did he tell you about any thing that happened in *Westminster-Abbey*?

Marsden. I was with him in the Dining-Room at Mr. *Fielding's*, in order to take his Examination; I went as it were out of Complaisance to him not to leave him alone; he talked a great deal, but I did not make such Observations of it as I should have done if I had thought of his coming here: I remember he said he ordered his Friend to walk off, that he might see what the Duke wanted with him; and said, he thought the Duke must come there by Appointment: He mentioned something about the Duke's giving him a Place or Post; I think he said he ordered his Friend to walk off, to see if the Duke would give him some Place; or, perhaps, the Duke wants to give me a Place.

Q. Are you sure he said the Duke wanted to give him a Place? Or, that his Friend said, Go towards him, perhaps the Duke wants to give you some Place?

Marsden. I cannot be sure which; I know the Word *Place* was mentioned.

Cross-Examination.

Q. Where is the Summons?

Marsden. This is the Summons, (*producing one*;) I did not serve it on the Day it bears Date; it was made out on *Saturday* the 29th of *April*. I was to have given him it that Afternoon, but I was told he was gone to *Brentford*; so I went early on *Monday* Morning following, and gave it him: This was only made out as a Decoy; the Name in it is one of the Constables that was fixed in *Westminster-Abbey*, named *Roger Boucher*.

Q. Did he shew any Unwillingness to come?

Marsden. No, none at all; he looked at it, and said, It is a Summons from Mr. *Fielding*; he read it over, and said, *Roger Boucher!* I know nothing of him; give my Compliments, tell him I will wait on him.

Q. As to this Place that he looked through, which Door is it at?

Marsden. It is the West Gate near the *Gate-house*; just at the Corner there is another Gate, and next to the Wall is a Sort of a Post, which is what he looked through, or by.

Q. Is not that Gate, as you call it, a close waincoted Door?

Marsden. It is a Door, but the Place where I mean is a Post; he peeped between the Post and the Wall. I have never been since to look at it;

if

if there is not a Hole between that and the Wall, he must look by the other Side of it.

Q. Which Way was his Head?

Marsden. That was towards the Gentleman who was close to the Wall, opposite him; he must have turned his Head farther from the Wall to have seen his Grace, as his Grace was going to take Coach.

Prisoner's Defence.

I am intirely innocent of this Affair with which I am charged. I leave it to the Court and the Jury, with the Evidence that will be produced.

For the Prisoner.

John Barnard. I am Father to the Prisoner at the Bar.

Q. What is his Employ?

John Barnard. He is employed in my Business as a Builder and Surveyor principally; in not only that, and drawing Plans, but also in receiving great Sums of Money.

Q. Have his Accounts always stood right and clear?

John Barnard. They always have.

Q. Do you look upon him to be a sober Man?

John Barnard. I have had great Reason to believe him such, more particularly lately.

Q. Has he been possessed of large Sums of Money?

John Barnard. He has, of considerable Sums; I have oftener asked him for Money than he me.

Q. Had you any Occasion to send him to *Kensington* on *Sunday* the 4th of *December*?

John Barnard. I had nothing, but Circumstances brought the Day to my Mind since: I gave him an Order on that *Sunday* Morning, when we were at Breakfast, to go to *Kensington*, to know whether there was some Money paid by the Treasurer of the Turnpikes for Gravel: I have a Brother there, named *Joseph*; he went there and did his Business, and dined with my Brother.

Q. How do you know that?

John Barnard. Because he told me so; and the Solicitor of the Turnpike told me he had been with him, and in consequence of which I had my Money afterwards.

Q. Have you ever heard your Son take any Notice of his meeting with the Duke of *Marlborough* that Day?

John Barnard. When he came Home, he told me, he had met the Duke of *Marlborough*, and these Circumstances of his Grace's taking Notice of him; he mentioned it as an extraordinary Thing. I asked him, if he had not looked a little impudently (as he has a near Sight) at him, or pulled his Glafs out? He said, he saw another Gentleman at a Distance, and the Duke was armed; and he imagined there might be a Duel going forwards; he has from that Time to this mentioned it as a very strange Event several Times in my House, without any Reserve at all.

Cross-Examination.

Q. At the Time you sent your Son to *Kensington* on the 4th of *December*, suppose you had not given him an Order to go there, whether he was not at Liberty to go where he pleased?

John Barnard. Yes; I never restrain him.

Q. Did he say he was surprized to see the Duke without a Great Coat?

John Barnard. I cannot remember that Particular.

Q. Did you hear him mention his seeing the Duke of *Marlborough* in *Westminster-Abbey*?

John Barnard. I have very often, and very publicly, and with some Surprize; as he has that in *Hyde-Park*. I said to him, I would not have you be public in speaking of Things of this Kind, lest a Use be made of it to your Disadvantage.

Thomas Barnard. I am First Cousin to the Prisoner at the Bar. On *Saturday* the 3d of *December* I was at *Kensington*, and lay at my Uncle's House there, and dined there. On the *Sunday* the Prisoner came there before Dinner, he said he had been to do some Business that Way. He dined with us, there were my Uncle, Aunt, he and I; he related that Circumstance to us of meeting with the Duke of *Marlborough* in *Hyde-Park*; he said he rode up to him, and asked if he knew who he was; he answered, No; he replied, I am the Duke of *Marlborough*. He related it with some Chearfulness, though as Matter of Surprize.

Q. How long have you known the Prisoner?

T. Barnard. From his Birth: He is in Business with his Father; I always understood he would succeed his Father; I never knew him to behave any otherwise than well in my Life. I never thought him extravagant, nor never heard so; I had always looked upon him to be an honest Man; his Father is in very great Business.

Q. Should you look upon it, that a small Place would be equal to the Chance of succeeding his Father in his Business?

T. Barnard. I should never have thought of such a Thing; I look upon his Situation in Life to be a very extraordinary Thing: I thought he would give the Preference to that above any thing else.

Cross-Examination.

Q. Do you think he would refuse a good Place?

T. Barnard. No Man would refuse a Place that is to his Advantage.

Joseph Barnard. I am Uncle to the Prisoner at the Bar; I live at *Kensington*; my Nephew, *Thomas Barnard*, lay at my House on the *Saturday* Night, and dined with the Prisoner at the Bar on the *Sunday*. I remember he then mentioned having met with the Duke of *Marlborough* in *Hyde-Park*, while we were sitting at Dinner. I said, I was surprized he should meet with him that Day; he said, he saw but one Gentleman at a Distance, and the Duke was armed; and his Grace looked him full in the Face, very earnestly, (which he seemed to speak with a great deal of Pleasure to me;) he is very near-sighted, he can see nothing at a Distance without the Use of a Glafs. I have heard him since speak four or five Times of seeing the Duke in *Westminster-Abbey*.

Q. How long ago?

Joseph Barnard. About a Month ago. He is brought up under his Father in very considerable Business, and a Man of some Property besides, and was employed as his Clerk or Book-keeper.

Q. Is he a sober Man?

Joseph

Joseph Barnard. Very sober; I never heard to the contrary; neither did I ever hear his Father speak of him as idle or dilatory.

Thomas Calcut. I live at *Kensington*: I remember the Prisoner coming there on a *Sunday Morning*; a very cold foggy Morning; with some Message from his Father to me, to know whether the Solicitor had paid some Money or not. He was under his Father, as I am under mine; he desired me to go with him; I said, Stay and dine with me; he said, he could not promise, because he had promised to dine with his Uncle *Joseph*: He went into the Parlour, and said, It is vastly cold: There has been the oddest Accident happened as I came over the *Park*! The Duke of *Marlborough* came up to me, and asked me, if I knew him? I said, No. He asked me, if I wanted any thing with him? I told him, No. He said, I am the Duke of *Marlborough*, if you want any thing with me; then the Duke went away, and he came there. He expressed a great Surprize at it, and I thought it a very odd Affair.

Henry Clive, Esq; I have known the Prisoner two Years; I remember dining with him on the 8th of *December*, at his Father's House, with a great deal of Company; I heard him then say at Dinner, that some few Days before, he had met the Duke of *Marlborough* in *Hyde-Park*; that the Duke asked him, if he had any Business with him? He said, No; he then told him, who he was, and asked him the same again; he said, No. That the Duke seemed in some Confusion, and was armed; and he thought he was about a Duel; and indeed I thought it was a very great Lye. I have gone very frequently to his Father's in relation to *Brentford Bridge*. I have no other Acquaintance with him, only going to his Father's, so cannot say any thing to his Character, either frugal or extravagant.

Q. Can you name any body that dined there that Day?

Mr. *Clive*. Yes, there was Mr. *Wilson* and his Lady, Mr. *Tunstall* and his Lady, another Gentleman and his Wife, and the Prisoner's younger Brother that is at *Westminster School*.

Mrs. *Mary Wilson*. I dined at Mr. *Barnard's* on *Thursday* the 8th of *December*; the Prisoner I remember said he had been in *Hyde-Park* some Days before, and there he saw a Gentleman on Horseback come up to him, and asked him, if he had any thing to say to him? He said, No; then he said, I am the Duke of *Marlborough*, now you know me, have you any thing to say to me? He said, No. He talked of this very freely to us all.

James Greenwood. I live at *Deptford*, with a Relation in the Brewing Way; I came from *Deptford* on *Saturday* to the Prisoner's Father's; and on the *Sunday* following I was there at Breakfast; I solicited the Prisoner to get himself dressed to go with me into the *Park*, being to meet a Person at Twelve o'Clock; I with a good deal of Difficulty got him to dress himself; I put my Shirt on in the Parlour, and after that he put on his; I fancy we breakfasted about Nine o'Clock; when we got to the End of *Henry the VIIth's Chapel*, the Prisoner would have gone the other Way into the *Park* without going through the *Abbey*; I took hold of his Sleeve, and said,

Barnard, you shall go through the *Abbey*; this was a little after Eleven; this was no unusual Thing; we have several Times walked in the *Park*, and sometimes parted.

Q. Which is the nearest Way to the *Park*?

Greenwood. I do not know which is the nearest Way; through the *Abbey*, or by the Side of it; this was the first Time I believe that I ever saw the Monument of General *Hargrave*. After that we walked down to the Monument, erected at the public Expence for Captain *Cornwall*; the Preacher was in the Pulpit; when we were standing at Captain *Cornwall's* Monument, the Prisoner made some Observation on the Execution of it in his own Way. After we had stayed there some Time, I saw his Grace the Duke of *Marlborough*, who was got pretty near us: Upon seeing the Duke, I jogged him by the Elbow, and said, Step this Way; he seemed to look at him.

Q. Had you heard what happened in *Hyde-Park*, previous to this?

Greenwood. I had; I believe it was told to me by the Prisoner at the Bar; on my jogging him we walked up the middle Isle towards the Choir. I said, Did you see that Gentleman in the blue Coat, or do you know him? No, said he, not I. No, said I, it is the Duke of *Marlborough*; we will walk to the Monument again. The Duke came, and placed himself pretty near me a second Time; after this we walked away. I believe we walked some considerable Time in that Isle, in which is the Monument of Sir *Godfrey Kneller*, there I believe we passed and repassed again.

Q. Why did you jog him?

Greenwood. Because he is very near-sighted. At last I think it so happened, we passed the Duke between two of the Pillars; and as I had hold of his Arm walking together, there was barely Room for three People to pass a-breast; the Duke rather gave way, and made, as I thought, a kind of a Bow. Upon this I said, The Duke of *Marlborough's* Behaviour is extremely particular; he certainly has something to say to you; I suppose he does not chuse to say it while I am with you, I will go into the Choir, and do you walk up and down here, and he will possibly speak to you. While I was there, I looked; the first Thing I saw was the Duke of *Marlborough* and the Prisoner at the Bar, with their Heads bowing together, as if it was the first Salutation.

Q. Had the Prisoner the least Inclination to go into the *Abbey* before you proposed it to him?

Greenwood. No; he did not discover any.

Q. Did he discover any Inclination to be left alone, when you proposed to go into the Choir?

Greenwood. No, he did not in the least; in some few Minutes after, the Prisoner and I met together, he told me the Duke of *Marlborough* was gone out of the *Abbey*, he had seen him go out. I said, What passed? to which he replied, The Duke said, did you speak to me, or who spoke first I cannot tell.

Q. In this Transaction did the Prisoner appear openly, or as if he had some secret Transaction to do with the Duke?

Greenwood. No, it was open and clear.

Q. Did you see the Duke come in?

Greenwood. No, I did not; we were employed at looking at the Monuments; we looked at several.

Q. What did you do when you first came in?

Greenwood. We walked along, and looked on the Monuments.

Q. Did you see the Prisoner's Eye fixed on any Person?

Greenwood. No, I did not.

Q. Is Mr. *Barnard* very near-sighted?

Greenwood. He is; I question whether he can be able to see a Person across this Room.

Q. Where did you go, when you went out of the *Abbey*?

Greenwood. We went immediately into the *Park*; and after walking there, we met with two Ladies whom I knew, and to whom Mr. *Barnard* was not unknown, to whom we related this Affair; he always repeated these Things, that is, this and that in *Hyde-Park*, as matter of great Curiosity.

Q. How long have you been acquainted with him?

Greenwood. I have been acquainted with him seven Years.

Q. What is his Character?

Greenwood. I know nothing to the contrary but that he is an industrious, sober young Man.

Q. Did you ever hear that he was a profligate, expensive Man?

Greenwood. No, never.

Q. His Father is in great Business, is he not?

Greenwood. His Father's Business is a very considerable Thing.

William Ball. I am the Master of *Storey's-Gate* Coffee-house; I remember Mr. *Merrick* coming to my House, to inquire for Mr. *Barnard*; he asked me, if Mr. *Barnard* was at my House? I said, Leave any Message, I will deliver it to him; he said, he wanted to see him that Evening; he left his Message, I delivered it to him, and he came rather before Eight o'Clock to him. He has used my House some Years, always a well-behaved Man; I never perceived any Extravagancy in him, always a sober, regular Man. I have heard him speak of having met the Duke of *Marlborough*, but not till after this; he said he had been to his Grace at his Grace's House; this was as he called at my House, after he had been there.

Q. Did he mention what had passed?

William Ball. No, he did not; only that he had seen his Grace.

Cross-Examination.

Q. Did he not tell you any thing that passed?

William Ball. He did not tell me a Syllable of it.

Q. What did you say to him?

William Ball. I told him, may-be he was going to have a Commission; he said, he would not thank his Grace, except it was a very good one.

Q. How did he appear as to Chearfulness, or Dullness, or the like?

William Ball. He seemed to be very chearful, not in the least concerned; the same as usual, composed, rather more chearful.

Council. We will now shew his Behaviour after he was apprehended.

Mr. *Ford.* While he was in Custody, Mr. *Fielding* did me the Honour of sending for me; he told me it was upon some Business which concerned the Duke of *Marlborough's* Life; he asked me to go along with him and Mr. *Box* to *New-*

Prison, which I consented to; we went together in a Coach; this was about Twelve at Night, and Mr. *Barnard* was then in Bed; I have really forgot what Day it was: Mr. *Fielding* told him, he had omitted examining his Pockets at the Time he was before him; he then searched his Pockets, in order to see whether he had any Letters or any Writings that might give Light into the Affair; he very readily let me look into his Pocket-book and Papers. Mr. *Fielding* with great Candour told him, he was in the Hands of a very honourable Prosecutor, and one that would be as glad to discover his Innocence as his Guilt. Mr. *Fielding* asked him for his Keys, and he gave him the Keys of his Scrutore and Compting-house with great Readiness; and I remember that I then told him, that, if he was guilty, some Copies might be found to correspond with the original Letters; and if nothing of that Sort did appear, it would be a Circumstance in his Favour.

Q. Did you or Mr. *Fielding* tell him he was not obliged to part with his Keys, and did he do it as matter of Choice?

Mr. *Ford.* I do not recollect that; I know he parted with them very readily.

The Rev. Dr. *Markham.* I have known the Prisoner some Years; I have always considered him as a young Man of remarkable Sobriety and Attention to Business: I have had some Experience of him; I entrusted him with the Execution of some Matters of Importance relating to myself, in regard to surveying and valuing Estates, in which he acquitted himself ably and honestly; that is the Character he always had: He lives in my Neighbourhood, his Father is a Man of considerable Property, and carries on a large Business.

Council. Then you don't suppose the Prisoner to be in distressed Circumstances?

Dr. *Markham.* I never supposed it, I have no Reason to imagine it; if he had come to me, wanting Money, he might easily have imposed on me, he might have had any thing of me; he is one of the chief Persons I trusted, and I don't know a Man on whom I would have had a greater Reliance; I thought him remarkably able in his Business, and very likely to be a considerable Man; and I never was more astonished in my Life than when I heard this strange Story.

Samuel Cox, Esq. I have known Mr. *Barnard* about the Space of three Years last past. The Beginning of my Acquaintance was on the Account of his surveying of Houses in the *New Square, Dean's-Yard*; the Surveys were generally made by him; he did his Business with such Accuracy, that I have always thought him a Man very attentive to his Business, and very unlikely of being charged with this Fact; and upon his being employed upon public Schemes, I employed him in my own Affairs; I employed his Father to finish some Houses for me at *Hammer-smith*, the Son was constantly employed till the 6th of *April* last; I have at different Times paid to Mr. *Barnard* about seven hundred Pounds, all paid into the Hands of the Prisoner, except fifty or seventy Pounds of it. He has appeared as the Person that managed his Father's Business: If he had come to me, and mentioned any Want of Money, upon his Father's being out of Town,

or the like, he might have had two or three hundred Pounds at any Time. When I first was acquainted with him, I observed he had a remarkable short Sight; when he has looked full at me, I have thought he sneered at me; he has such a Fall with his Eye-lids on the account of his Short-sightedness; I have found his Eye so fix'd upon me, that I have been going to speak to him, which, by my long Acquaintance with him, I since found was only an Accident.

Robert Vansittart, Esq; I have known Mr. *Barnard* about five or six Years; my Acquaintance with him was by being acquainted with his Father, who was employed in carrying on a large Building for Mr. *Lee*, an Acquaintance of mine in *Oxfordshire*; and these five Years I have been acquainted with the Son, and frequently in Company with him. In the Beginning of *April* he was in my Chamber, putting up some Book-cases; I remember one Morning at Breakfast he told me the Circumstance of meeting the Duke of *Marlborough* in *Hyde-Park* and in *Westminster-Abbey*, in the same Way as the Court has been told from his Grace and the rest of the Witnesses: It appeared to me to be a very strange Story, and he seem'd to tell it as such, as I or any body else would have told it. I suspended my Judgment upon it, and never related it to any body, only to my Father and another Gentleman, and they look'd upon it as a great Lye that *Barnard* had invented; I, knowing his Character, did not take it as such, but thought he must have known it to be as he said.

Q. What is your Opinion of him as to his Business?

Mr. Vansittart. From my own personal Acquaintance with him, and from the many Surveys I have seen of his, he certainly is very capable and Master of his Business. I never heard any thing ill as to his private Character.

Q. Did you ever see him write?

Mr. Vansittart. No; he draws very well; I have seen him draw.

John Smith, Esq; I have known him eight or ten Years, and his Father's Family twenty-five. He always appear'd an industrious, sober, diligent Man; particularly within these four or five Years, since he has come into Business with his Father. I consider'd him as a very promising Genius, in his Way, and one capable of conducting his Business with Reputation and Character.

Q. Did you look upon him likely to be driven to Distress, or in want of a Place?

Mr. Smith. No, I did not. I can with great Truth say, most of the Payments in my Compting-House, on his Father's Account, have most of them been paid by the Hands of this young Man; except the last five hundred Pounds: Then Mr. *Barnard* and his Wife came over and dined with me, and paid it; and then I blamed him for not bringing his Son.

Q. What are you?

Mr. Smith. I am a Timber-Merchant.

Joshua Smith, Esq; I am in Partnership with my Father, the last Evidence. I have known the Prisoner several Years; I always thought him a

very honest, sober Man, capable in his Profession: The Money that has been paid to us lately, except that five hundred Pounds, has been by him; they never paid less than a hundred Pounds at a Time, except once.

Q. Have you any Reason to imagine him in desperate Circumstances?

Mr. Joshua Smith. There is no Reason as I know of to imagine so.

Robert Tunstall, Esq; I have known him two Years.

Q. What is his general Character?

Mr. Tunstall. He is industrious, and very capable of his Business. His Behaviour has been prudent; he is the principal Man in his Father's Business in drawing and scheming*.

Mr. Peter Brusbel. I have known him from a Child.

Q. What is his Character?

Mr. Brusbel. I always took him to be a very sober, honest Man. His Father has done a great deal of Business for me, and is now at Work for me.

Q. Who did you generally pay the Money to?

Mr. Brusbel. I generally paid the Father; if the Prisoner had apply'd to me, I would have let him have a hundred Pounds at any Time.

Q. Is he capable of his Business?

Mr. Brusbel. He is very capable. He drew a Plan for me last *Saturday* was Se'nnight.

Q. Do you look upon him to be in desperate or distressed Circumstance?

Mr. Brusbel. No, I do not.

Q. Has he been always a visible Man?

Mr. Brusbel. Always.

Mr. Felse. I am the King's Mason. I have known the Prisoner seven Years and more.

Q. Do you look upon him to be capable of his Business?

Mr. Felse. I believe he is a very capable Man in his Business.

Q. What is his general Character?

Mr. Felse. Always a very worthy, honest Man.

Q. Did you ever see him guilty of any Extravagancy?

Mr. Felse. No, never.

Q. Do you live near him?

Mr. Felse. I am a very near Neighbour to him, and keep him Company on Evenings, within this Year or two more particular.

William Robinson, Esq; I have known him about six or seven Years.

Q. Is he a Person capable of his Profession?

Mr. Robinson. I believe he is.

Q. What has been his Behaviour?

Mr. Robinson. I always look'd upon him to be a very sober, diligent, frugal Man.

Q. Did you look upon him to be in desperate Circumstances?

Mr. Robinson. No, not at all.

Thomas Kynaston, Esq; I have known him six or seven Years.

Q. What are you?

Mr. Kynaston. I belong to the Board of Works.

* *Mr. John Barnard*, the Father of the Prisoner, built *Kew Bridge* for this *Mr. Tunstall*.

Q. What is your Opinion of the Prisoner's Situation?

Mr. *Kynaston*. I think he is in a good one.

Q. What has been his Behaviour?

Mr. *Kynaston*. That has been always good.

Mr. *Keynton Cowse*. I have known him seven Years, and been in his Company many Times.

Q. What is his Character?

Mr. *Cowse*. He is a very worthy young Man, sober and industrious, always attending his Father's Business.

Mr. *Uffort*. I have known him about six or seven Years; he is a sober, sedate young Man as ever I met with. I have done Business for him several Times.

Mr. *Brent*. I have known him upwards of three Years.

Q. What is his Character?

Mr. *Brent*. He has a good Character; he is a very industrious Man. I have frequently paid him Money.

Mr. *Jones*. I have known him several Years.

Q. What is his general Character?

Mr. *Jones*. He is very honest; no Ways extravagant, that could lead him into a desperate State; he is as moral a Man as any I know, and has as good a Character.

Mr. *Wilson*. I have known him about seven Years.

Q. What has been his Behaviour during that Time?

Mr. *Wilson*. It has been always very well. I always looked upon him as an honest Man.

Q. Did you ever look upon him to be in a desperate Way in his Fortune?

Mr. *Wilson*. No, never.

Q. to Mr. Barnard the Elder. Where was you when your Son was sent for to the Duke of Marlborough's?

Mr. *Barnard*. I was then out of Town. I have not been in Town above one Week this five or six Weeks.

Mr. Serjeant Davy's Reply.

My Lord, and Gentlemen of the Jury,

I am sorry to take up any more of your Time; but the Defence consisting of various Parts, I would beg Leave to trespass a little longer on your Patience, and make a very few Observations on the Case, as it now stands before you. I do not claim any Merit at all, for their not opposing any Evidence, as was attempted on the other Side; I am sure I shall be justified in your Opinion. Nothing has passed in the Course of this Prosecution, but what clearly manifests that the Duke is totally indifferent about the Issue of it: In this Matter he is only a Friend to Justice, and would wish for the Prisoner not to be disturbed in any Method he should take in the Course of his Examination; Be that as it may, I have done what I have thought right, and am very glad they have done every thing they could for the Prisoner.

I shall now consider two general Questions: The first is, Whether the several Circumstances

that have been given in Evidence, on the Part of the Prosecution, independently, are in themselves sufficient to convince a reasonable Understanding of the Prisoner's Guilt; I mean, your Understandings as Jurymen. The second Question is, Whether the Defence that has been set up, those Circumstances are sufficient to repel the Weight of the Evidence; I mean, whether the Defence is reconcileable to the Suspicions of the Prisoner's Guilt; for if they are irreconcilable with the Prisoner's Guilt, (as I do not intend to impeach the Credit of any one Witness) I am content upon that Supposition, he may be acquitted: I don't mean, that any Witness has laid a single Circumstance before you that is not strictly true, but that they may be reconcileable with the Suspicion of his Guilt.

I do not mean to draw your Attention back to the several Circumstances of the Prosecution; they are all before you, and they are too strong and striking to be easily forgot; they would be diminished considerably by attempting to recapitulate them, and therefore I shall not attempt it: And, as I said at the Opening, they are irreconcilable with any Supposition of the Prisoner's Innocence, independently of the Defence set up for him, if they are so strong in themselves, as it would be offering Violence to one's Understanding, not to consider them as Circumstances necessarily inducing his Guilt.

It will remain for your Consideration, it is now the capital Question, Whether these Circumstances laid before you, consisting of five or six Parts on the Part of the Prisoner, may be reconciled with the Suspicion of his Guilt? Because, if they may, it is no Defence at all.

Gentlemen, the first is, the Prisoner being sent by his Father to *Kensington* on this *Sunday* on which he met the Duke in *Hyde-Park*. I did not chuse by any means to ask the Father any Question; I should have disoblged my Noble Client, if I had done it. As, Why he was sent to *Kensington*? What Conversation might have led to that Matter? What happened at Breakfast with his Father was the sole Occasion of his going there. The Son, you see, is principally concerned in conducting his Father's Business; he might, or he might not propose the Expediency of such a Journey. It is a little extraordinary, this Business (not being urgent in its own Nature) should be appointed by the Father to be transacted on the *Sunday*, when the Father might as well have employed his Time in going elsewhere: Going to ask whether a Sum of Money had been paid on the account of Gravel, to make it necessary to be sent just at Church-time. His Father talked of his going; he did go—What does that prove? Does it prove he was not to go to *Hyde-Park* any other Way? Whoever was the Writer of these Letters, certainly intended to have a Meeting on both the *Sundays*, in the *Park* and in the *Abbey*, in a very public Manner; and that agreeable to the Tenour of the Letter, he did provide himself with a Defence in case of Need. Now, be the Author of these Letters who it may, the Author did contrive a Subterfuge for himself afterwards, in order to reply to a Charge of that Nature.

Gentlemen, the next Part of the Defence is, that he at several Times and to several People related the Meetings he had had with the Duke, and the extraordinary Occurrences. This indeed corresponds

corresponds with the Observations I made: The Writer of these Letters proposed to meet the Duke at a Time that People were walking out on a *Sunday*, and in the *Abbey*, the most public Places, and at the most public Times: Is that irreconcilable with the Suspicion that the Prisoner (if he was the Author of these Letters) might have been contriving with other Persons telling People of the several Meetings he had had with the Duke, and the Substance of those Meetings? But one Observation will arise, perhaps not much to his Service; and that is, when he told those People of his seeing the Duke, he spoke to his seeing an Attendant, which corresponds with the second Letter: What does he say about it to the Persons to whom he relates the Meeting? He saw he was armed—He saw one likewise at a Distance, and he thought there was a Duel going forwards. Now, when he spoke to the Duke of the Surprise he had entertained on seeing the Duke armed, does he assign that as a Reason of apprehending a Duel? No; it was because it was cold Weather, and he wondered to see him without a Great Coat: So that the same Man that speaks of it to his Friends as a Circumstance that might induce a Surprise, speaks of it at another Time as being surprized, without giving that as a Reason for it.

The next Circumstance is, Mr. *Greenwood's* Evidence of going with him to *Westminster-Abbey*. There are two or three Things a little particular: After Breakfast, about Nine o'Clock, he solicits the Prisoner to dress himself in order to go to the *Park*. The Prisoner seemed unwilling to go there. He said, it was not an unusual Thing, when they were to go together, for them to differ, and upon that Occasion to part. Supposing the Prisoner wanted to get rid of this Companion of his, who had laid there and was not easily to be got rid of, why might not that account for his being unwilling to dress himself at Nine in the Morning, in order to get rid of him? For he had Time enough to dress himself an Hour after that, and to meet the Duke in the *Abbey* at Eleven. It is a little odd, that the Prisoner wanted to go another Way, and expressed a Reluctancy in going through the *Abbey*. It is clear he did not mean to be seen by Mr. *Greenwood* in the *Abbey*: But when he could not get rid of that, and he plucked him by the Coat for that Purpose, did they prosecute their Design in going to the *Park*, and yet saunter a good while in the *Abbey*? (No Reason why they did so.) First they went to General *Hargrave's* Monument, then to Captain *Cornwall's* Monument; there they stayed some Time, the Duke's Behaviour being in Mr. *Greenwood's* Evidence particular; from the Duke's bowing, he thought that the Duke wanted to speak to him in private. How is this reconcilable? There is not a Circumstance in all that Part of the Story of Mr. *Greenwood's* Evidence, which suits so well as this of his Guilt: First he wanted to get rid of Mr. *Greenwood*, and when he could not do that,

then making no Secret of having seen the Duke, and make that tally with his telling him he had met him.

The next Circumstance is Mr. *Ball's*; and if that Circumstance of his Evidence strikes you as it did me, I wonder he was produced as a Witness; for, you see, he was very forward: He

was blamed for it by one of his Witnesses; he thought he talked too much of having met the Duke; that was so singular, that it demanded Animadversions: Yet notwithstanding, when he had had a third Interview with the Duke, and there appeared so very material a Circumstance of the Duke's having charged him with a very extraordinary and wicked Proceeding against him; when he had told him of all these Letters, and one of them set forth his Name, as a Person that could inform his Grace of something which nearly related to his Safety, and hinted to him the Strangeness of these Letters, and charged them upon him; and after having pretended a total Ignorance of this Matter, he afterwards conceals all this from Mr. *Ball*: And what is another Circumstance, Mr. *Ball* says, he was rather more chearful in relating what he did than usual. God knows, he had no Reason to be chearful! For the Duke had charged him home with a capital Offence; the Duke had admonished him, and told him, either he was the Author of the Letters, or he was used exceeding ill by the Person that did write them. Yet, you see, in mentioning these Things to his Friend Mr. *Ball*, *Ball* considers it as a Fruit of the Duke's Benevolence to him, and says, he will give you a post in the Army. The Prisoner replied, It must be a very good one, if I accept it.

These are all the Circumstances that they have insisted upon as Proofs of his Innocence, except one, that is his Character. They have called to that many Witnesses; they say he is very expert in his Business, a very diligent, sober Man; nothing about him as Marks of Distress; no Vices to which they find him inclined, which give him an Occasion for a Demand of this Kind; and that, upon the whole, he has passed as a very honest Man.

Gentlemen, when you come to consider that, Character goes but a very little, and indeed no Way at all, towards proving his Innocence.

In the first Place, Character can only be of Service to a Man, where his Case hangs as it were in equal Scales, and it is doubtful whether innocent or guilty; there it is that a good Character stands in some Stead, and will balance the Scale in his Favour. But this is that sort of a Case, that this particular Character they have given of him will have no Weight to repel those several suspicious Circumstances that tally so exactly as to his Guilt. Might it not happen, that a Man betwixt twenty and thirty Years of Age, dependent in some Measure on his Father, might have a secret Call for Money, which he would wish his Father, and those Friends that are fond of lending him Money, not to be acquainted with? We know very well, there are certain Circumstances, some in this Capital City of *London*, where a Man might be very hard driven for the Want of Money, which he would chuse to hide from his Friends.

I know nothing of the Prisoner's particular Character; but it is enough for this Purpose, that it possibly may be his Case: If so, What then has the present Character to do with it? If the Circumstances of the Out-lines are such, can any doubt about believing he is Guilty or not? Then all those other Circumstances will have no Weight at all to counterpoise the Weight of the former.

As I said at first, if upon any Circumstances offered on the Part of the Prisoner, if the Weight of Evidence on the Part of the Prosecution is sufficient to charge him, there is nothing in the Defence that will lessen it at all.

Gentlemen, he is safe in your Hands. I doubt not but that you will do your Duty: If you think him guilty, you will find him so; if not, you will acquit him. With regard to the Duke, his Grace has discharged his Duty which he owed to the Public, which he will at all Times

do, and is perfectly indifferent about the Issue of it.

The Jury acquitted the Prisoner.

He was a second Time indicted by the Name of *William Barnard*, for feloniously sending another Letter to the Most Noble *Charles Duke of Marlborough*, signed *F.* demanding two or three hundred Pounds; but no Evidence appearing against him, he was acquitted.



LIII. *The Trial of John Stevenson, late of Bickerton, in the County of Chester, Cheesefactor, at Chester Assizes, upon Friday the 27th Day of April, 1759, before Mr. Justice Swinnerton, and Mr. Justice White, for the Murder of Mr. Francis Elcock, late of Nantwich, in the said County, Attorney at Law.*

ABOUT Nine o'Clock in the Morning, the Court being sat, the Prisoner was brought to the Bar.

Council for the Crown,

Mr. Hall, Attorney-General for *Cheeshire*.
Mr. Falconer.
Mr. Hayward.

Council for the Prisoner,

Mr. Townsend, Recorder of *Chester*.
Mr. Perryn.
Mr. Maddocks.

Prothonotary. Prisoner, hold up your Hand.

Prisoner arraigned.

You stand indicted by the Name of *John Stevenson*, late of *Bickerton*, in the County of *Chester*, Yeoman, for that you, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the 21st Day of *March*, in the thirty-second Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great-Britain*, &c. with Force and Arms, at *Bickerton* aforesaid, in the County aforesaid, in and upon one *Francis Elcock*, in the Peace of God, and our said Lord the King, then and there being, then and there feloniously, wilfully, and of your Malice aforethought, did make an Assault; and that you the said *John Stevenson* a certain Gun, of the Value of ten Shillings, then and there charged with Gunpowder and one Leaden Bullet; which Gun you the said *John Stevenson* in both your Hands then and there had and held, to, against, and upon the said *Francis Elcock*, then and there, feloniously, wilfully, and of your Malice aforethought, did shoot and discharge; and that you the said *John Stevenson*, with the Leaden Bullet aforesaid, out of the Gun

aforesaid, then and there, by Force of the Gunpowder shot, discharged, and sent forth as aforesaid, the aforesaid *Francis Elcock*, in and upon the left Side of the Belly of him the said *Francis Elcock*, then and there, with the Leaden Bullet aforesaid, out of the Gun aforesaid, by you the said *John Stevenson*, so as aforesaid shot, discharged, and sent forth, feloniously, wilfully, and of your Malice aforethought, did strike, penetrate, and wound; giving to the said *Francis Elcock*, then and there, with the Leaden Bullet aforesaid, so as aforesaid shot, discharged, and sent forth out of the Gun aforesaid, by you the said *John Stevenson*, in and upon the left Side of the Belly of him the said *Francis Elcock*, one mortal Wound, of the Depth of five Inches, and of the Breadth of one Inch; of which said mortal Wound the said *Francis Elcock*, on the aforesaid 21st Day of *March*, in the Year aforesaid, for the Space of ten Hours, at *Bickerton* aforesaid, in the County aforesaid, did languish, and languishing did live; on which said 21st Day of *March*, in the Year aforesaid, the said *Francis Elcock*, at *Bickerton* aforesaid, in the County aforesaid, of the mortal Wound aforesaid died: And so the Jurors aforesaid, upon their Oath aforesaid, do say, that you the said *John Stevenson*, the said *Francis Elcock*, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Prothonotary. How say you, *John Stevenson*, are you Guilty of the Murder and Felony whereof you stand indicted, or Not Guilty?

Prisoner. Not Guilty.

Prothonotary. Culprit, how will you be tried?

Prisoner. By God and my Country.

Prothonotary. God send you a good Deliverance!

Prisoner. Amen. God send me a good Deliverance.

Then the Jurors were called and sworn.

Names of the Jurors.

William Brown, of *Stockport-Etubels*, Foreman.

John Bennet, of *Marple*.

John Hodson, of *Raby*.

Henry Price, of Ditto.

John Lee, of *Tranmore*.

Samuel Jones, of *Over-Bebbington*.

Joseph Wright, of Ditto.

Richard Jackson, of Ditto.

Thomas Robinson, of *Newball*.

George Woodhouse, of *Buerton*.

John Cliffe, of *Audlem*.

Samuel Lea, of *Badailey*.

N. B. The Prisoner challenged *Abraham Darlington* of *Brindley*, as he came to be sworn; but no Cause was assigned for such Challenge.

Mr. Attorney-General challenged *Edward Hamnett* of *Newball*, as he came to be sworn; as Mr. *Hamnett* owned he was related to the Prisoner.

Prothonotary then read the Indictment.

Mr. Attorney-General, Council for the Crown, opened the Case to the following Effect:

Gentlemen of the Jury,

The Prisoner, *John Stevenson*, stands indicted before you, for the Murder of Mr. *Francis Elcock*, late of *Nantwich* in this County, an Attorney at Law; which Crime he (the Prisoner) perpetrated and committed upon the 21st Day of *March* last: And it is now my Duty, as Council on Behalf of the Crown, to use my Endeavours for the obtaining that Justice and Restitution, which the Law requires for Crimes of this horrid Nature. To which End, it may be necessary, that I point out some Facts and Circumstances, antecedent to the Commission of the Murder, which I doubt not we shall be able to prove, and hope you will be satisfied in your Consciences, that the Prisoner did kill and murder Mr. *Elcock*, as laid in the Indictment; and if so, that you will find him Guilty.

Gentlemen, at the Time this Murder was committed, Mr. *Elcock* was doing a legal and a commendable Act: He was endeavouring to subdue the Prisoner, and to bring him to a just Sense of, and an Obedience to the Laws, which he had but a little while before violated, by an outrageous Contempt of, and Rebellion to those Laws, which have been wisely (and happily for us) made, for the Preservation of the Lives, and Security of the Properties of the Subject. The Prisoner, Gentlemen, has been for many Years a Cheefefactor in this County; but failing in his Credit some Years ago, has since then taken Sanctuary in his House at *Bickerton*, and there kept himself confined, to prevent the Effect of a Civil Process, and to evade the Payment of his just Debts. Common Attempts for Justice to the Creditors were vain: The Sheriff's Officers too well known, and indeed Persons in general (except a few Confidants) too hardly suspected, to gain Admittance: Art and Policy became necessary. The unfortunate young Gentleman, whose Death you are now to inquire into, was employed as an Attorney, for one of the Prisoner's Creditors, to sue out a Writ against him, which he accordingly did, and obtained the Sheriff's

Warrant thereon, and delivered it to one of the Officers named therein, with Directions to arrest the Prisoner. But the Officer apprehending he should be denied Admittance to the Prisoner, had Recourse to a Stratagem, not unlikely to prevail. He wrote a Letter to the Prisoner, signifying, that the Gentleman who sent it wanted to buy some young Trees from the Prisoner, and desiring that the Bearer of the Letter might be permitted to view the Trees, or to that Purpose. The Officer went to the Prisoner's House with this Letter; and knocking at the Door, a Person came to the Window, to whom it was delivered; and as soon as the Prisoner had read the Letter, the Officer was admitted to him. After some Discourse relating to the Trees, the Bailiff acquainted the Prisoner *Stevenson* with the real Errand he came upon, namely, to arrest him; and accordingly the Bailiff did then and there actually arrest the Prisoner, by laying his Hand upon him, and telling him that he had the Sheriff's Warrant against him, which he produced. What was the Prisoner now to do in this Situation? Must he tamely submit to the legal Authority of the Bailiff, and quit his Asylum, till he had given Security, or rendered to the Plaintiff Satisfaction for his Debt? No.—After a short Pause, and taking a Turn or two in his House, he suddenly presented a Pistol at the Breast of the Officer, and swore, if he did not immediately leave the House, he would blow his Brains out; and without waiting for an Answer, actually snapped the Pistol at him, which missed Fire. But he could not rest here; his Temper was too hot to put up with the Affront of being lawfully arrested for a just Debt: He snapped the Pistol three Times at the Officer's Breast, which providentially did not go off.—It was high Time for the Bailiff now to retire; the Preservation of his Life required it: He had no Chance, unarmed and alone, to maintain his Arrest against a loaded Pistol, and there was no Time for Words, to sooth a Man of so desperate and outrageous a Disposition, into a peaceable Compliance; and therefore the Officer thought fit (and I think very prudently too) to leave his Prisoner. But after his miraculous Escape, he went to Mr. *Elcock*, who was in the Neighbourhood, and told him that he had arrested the Prisoner, who rescued himself by snapping a Pistol at him three different Times, and desired Mr. *Elcock* to get him Assistance, for the re-taking the Prisoner; whereupon Mr. *Elcock*, and the Plaintiff in the Action, with one or two other Persons, returned with the Officer to the Prisoner's House, which they found locked; and Mr. *Elcock* going to one of the Doors, demanded Entrance, and desired the Prisoner to yield to the Arrest. But the Prisoner's Resentment could not relish a Capitulation of this Sort; he was determined still to oppose the Authority of the Law, and to refuse any Obedience to it. Resolved upon the Death of somebody or other, no matter whom, he took up a Gun loaded with Gunpowder and Ball, and discharged it through the Door against which Mr. *Elcock* stood, and unfortunately killed him. It seems unnecessary for me, Gentlemen, to make any Observations with respect to the Intention of the Prisoner to commit Murder: His keeping of Fire-arms loaded in his House; his snapping a loaded Pistol three different Times at the Bailiff, in the Execution of

his Duty, after he had arrested the Prisoner; and his discharging the Gun, whereby the Deceased was killed, too fatally evince, beyond the least Shadow of Doubt, that the Prisoner did intend and design an unlawful Killing: And although the Prisoner might not have seen Mr. *Elcock*, when he discharged the Gun which killed him, yet his shooting at Random was an unlawful shooting, for the Purpose, and with an Intent to kill somebody then at the Door; and therefore that shooting at Random can be no Justification or Excuse to the Prisoner. — We, who are of Council for the Crown, shall now proceed to examine the Witnesses in Support of the Indictment; and doubt not but we shall be able to make out the Case, as I have stated it; and if so, you will then find the Prisoner Guilty, that he may receive the Punishment justly inflicted by Law upon those who shall be guilty of the horrid Crime of Murder.

Mr. FALCONER, Council for the Crown.

Gentlemen, Mr. Attorney has represented the Case so fully, that it is quite unnecessary for me to enlarge upon it; and therefore shall not take up the Time of the Court, but proceed to the Examination of the Witnesses.

Cryer calls *John James*, the Bailiff, who arrested the Prisoner.

John James sworn.

Council for the Crown. Do you know the Prisoner at the Bar?

James. Yes.

Q. Did you know the deceased Mr. *Francis Elcock*?

James. Yes.

Q. Were you, at any Time, employed to arrest the Prisoner for Debt; and what happened in consequence of it? Speak up, that the Gentlemen of the Jury may hear you.

James. Yes, I was employed to arrest the Prisoner for a Debt due to *John Atkin*.

Q. By whom were you so employed?

James. By Mr. *Elcock*, an Attorney.

Q. You mean, I suppose, the deceased Mr. *Elcock*,—him that was shot?

James. Yes.

Q. Go on.

James. Being so employed to arrest Mr. *Stevenson*, I went to his House, and knocked at the Door. Somebody came to the Window, and asked me, what I wanted? I told the Person who came to the Window, that I had a Letter for the Master of the House, which she took through the Window; and I suppose it was delivered to Mr. *Stevenson*.

Q. Why do you suppose so?

James. Because, in a little Time after, Mr. *Stevenson* opened the Door.

Q. The Prisoner opened the Door, you say?

James. Yes, and he asked me, whether I lived with the Gentleman who sent the Letter, or from whom the Letter came? I told him I did; and Mr. *Stevenson* invited me in.

Q. Well; What happened afterwards?

James. I went into the House with Mr. *Stevenson*, and we then went together towards the Back Door; and at the Back Door Mr. *Stevenson* stood still, to call his Servant.

Q. Whereabouts at the Back Door did the Prisoner stand still, to call his Servant? Was it within-side of the Door, or at the out-side of the Door?

James. He stood still upon a Step, at the Back Door, the out-side of the Door; and I was within-side of the Door.—I then took the Warrant I had against Mr. *Stevenson* out of my Pocket, and I laid my Hand upon his Shoulder, and said, Sir, I hope you will excuse me. —

Q. Was the Prisoner then out of the Door?

James. Yes. I said, Sir, I hope you will excuse me; for the Letter I gave you was to decoy you. I am a Bailiff; this is a Warrant against you; and you are my Prisoner in the King's Name.

Q. What did the Prisoner say then?

James. He screamed out, and said, I had used him ill.

Q. What did you do afterwards?

James. Mr. *Stevenson* and I returned into the House; and when we got into the Kitchen, he called to *Betty*, who I believe was his House-keeper, and said to her, We have done ill in letting this Man into the House; for he has arrested me.

Q. He told her, you had arrested him, you say?

James. Yes.

Q. Well; What happened then?

James. The Prisoner went then towards the Fire, and turned to the Screen on the right Hand, and stood at the further End of the Screen.

Q. What did he do then?

James. He turned all of a sudden upon me, with a Pistol in his Hand, and said, he would blow my Brains out, if I did not get immediately out of the House.

Q. Did he present the Pistol at you?

James. He did.

Q. What did you say then?

James. I told him, that was not the Way to do Business.—Mr. *Stevenson* then snapped the Pistol at me, but it missed Fire.

Q. Are you sure he snapped the Pistol at you?

James. Yes, very sure.

Q. Well; What did you then?

James. I went backwards through the Kitchen, and Mr. *Stevenson* followed me; and in a narrow Passage leading from the Kitchen towards the Door, he snapped the Pistol at me again; and he snapped the Pistol at me a third Time, but I was then out of the House.

Q. When you got out of the House, where did you go then?

James. I went to the next House, I think Mr. *Nevill's*, where Mr. *Elcock* promised to be. Mr. *Elcock* saw me, and met me, and asked me, if I had arrested *Stevenson*? I told Mr. *Elcock*, that I had arrested him, and that he had snapped a Pistol at me three different Times, which obliged me to come away.

Q. What did Mr. *Elcock* say to that?

James. Mr. *Elcock* said, I had done enough.

Q. How did you proceed afterwards?

James. I told Mr. *Elcock*, if I had a Pistol, I could bring him away; and he said, I should not want that.—Then Mr. *Elcock* sent a Man to the Plaintiff *John Atkin's*, and to bring Arms from his Father's.

Q. Where did *Atkin* live?

James:

James. At *Chelmondley*, not very far from *Bickerton*.

Q. Did the Messenger return with Arms?

James. Yes.

Q. What did you then?

James. After the Arms and Assistance were brought, we went again to Mr. *Stevenson's* House.

Q. Who went to the Prisoner's House?

James. I went, and the Plaintiff *John Atkin*, and a Servant of his, I think. Four or five Persons, I believe, came with me.

Q. Was there another Sheriff's Officer with you?

James. Yes, a Man tolerated by the Sheriff, one *John Jones*.

Q. Did Mr. *Elcock* go to the Prisoner's House with you?

James. Yes.

Q. What happened, when you all returned to the Prisoner's House?

James. As we were all running towards the Prisoner's House, I saw the Prisoner and another Man out of Doors; I called to Mr. *Stevenson*, and said, You may as well stay, for we are coming for you.

Q. Did the Prisoner hear you say this?

James. I believe he did.

Q. Did the Prisoner stay for you?

James. No; he, and the other Man with him, ran into the House.

Q. Well; when you came up to the House, pray, what followed?

James. When we came up to the House, I said to Mr. *Elcock*, I know the Way to that Door; go you to the other.

Q. How many Doors were there to the House?

James. Three.

Q. Did you know all the three Doors?

James. Yes, I knew them all.

Q. You bid Mr. *Elcock* go to one of the Doors, I think, you say?

James. I bid Mr. *Elcock* and the others to take care of two of the Doors, and I would go to the other.

Q. How far was the Door that you said you would go to, from the Door you desired Mr. *Elcock* to take care of?

James. It was a good Way distant, in going round about.

Q. You said, you would go to the third Door; Did you know the Way to it?

James. Yes, very well.

Q. Did Mr. *Elcock* say any thing to the People in the House, when he came up to the Door?

James. I cannot tell whether he did or not, because I was not present, for I ran to the other Side of the House.

Q. Pray, was the Door you went to locked, or made fast?

James. It was fast.

Q. When you all came up to the Doors, as you have been mentioning,—pray, what followed?

James. In a very little Time, almost immediately after I came up to the Door, I heard a Noise—I heard a Gun go off.

Q. Which Way did the Noise come? Where did you apprehend the Gun went off? In what Situation were you from the Noise, or Report of it?

James. The Noise came as betwixt me and them; betwixt me and the People who came with me.

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Q. How far distant might you be from the Door where the Gun was fired?

James. Nine or ten Yards, it might be, from Mr. *Elcock*?

Q. When you heard the Noise, and the Gun go off, what did you do then? It must have alarmed you?

James. When I heard them crying out on the other Side, I went backwards to an Hedge, and looking over it, I saw Mr. *Elcock* held by two Men, sitting on a Block.

Q. You saw Mr. *Elcock* sitting on a Block, supported by two Men; How did he look?

James. Very piteously indeed.

Q. Did you hear him say any thing?

James. Yes, I heard him say, Oh! I am shot, I am shot.

Q. Was Mr. *Elcock* at a great Distance from the Gun at the Time he received the Wound, or was he near it?

James. I cannot tell whether he was at a great or a small Distance from it.

Q. What did you do, after you had seen Mr. *Elcock* sitting on the Block?

James. I returned again to my own Door, to prevent the Prisoner's getting out.

Q. Did you see Mr. *Elcock* afterwards?

James. In about ten Minutes afterwards, I saw two Men carrying him down the Lane.

Q. Were you with Mr. *Elcock* at the House he was carried to?

James. No.

Q. Did you see him afterwards?

James. No, I did not see him, after the two Men carried him down the Lane.

Q. Have you the Warrant whereby you arrested the Prisoner?

James. I have.

Q. Pray produce it.—Is this the very Warrant, under the Authority whereof you arrested the Prisoner?

James. It is.

Q. Pray, who delivered to you this Warrant to execute?

James. Mr. *Elcock* himself.

Q. Were there any Holes in the Door that the Ball came through which killed Mr. *Elcock*, besides the Shot-hole?

James. Yes, there were two Holes in the Door, besides the Shot-hole.

Q. Was there ever a Slit in the Door?

James. That I do not know.

Q. Were the two Holes in the Door higher than the Shot-hole, or lower, or how?

James. The two Holes were higher than the Hole which the Ball had made.

Q. Could you see through the two Holes? Were they large enough to see, and know a Person through?

James. Yes, I could see through them; I did look through, and saw into the Kitchen plainly. I, and several others, did so.

Q. Pray, what Business did Mr. *Elcock* go about, when he went with you to the Prisoner's House?

James. To assist me in re-taking Mr. *Stevenson*.

Q. Do you know the Sheriff's Hand-writing?

James. Yes, very well.

Q. Is the Warrant whereby you arrested the Prisoner, all of the Sheriff's Hand-writing?

6 C

James,

James. All is of his Hand-writing, except two Names.

Q. Are you positive to the Sheriff's Hand-writing?

James. Yes, to Mr. *Baxter's* Hand-writing, who acted as Sheriff, and made out the Warrant, and delivered it.

Q. Pray, what are the two Names, that were not written by Mr. *Baxter*?

James. My own Name, and the Name of *John Jones*, another Bailiff.

Q. Who wrote your Name, and the Name of *John Jones*, in the Warrant?

James. Mr. *Elcock*.

Q. Are you sure of that?

James. Yes; for I saw him write them.

Q. Are you usually employed as a Bailiff for the executing of the Sheriff's Warrants?

James. Yes, I get my Bread by it; and am often sent for, fifteen or twenty Miles round the Country.

Q. Was your Name inserted in the Warrant, as the Sheriff's own Bailiff, or as a Special Bailiff?

James. I was a Special Bailiff, for that Time, appointed by the Sheriff.

Q. How do you know that?

James. I have been informed so: I think it is so expressed in the Warrant.

Q. Had you executed any Warrants from the Sheriff of the County of *Chester*, the Year before?

James. Yes, many; twenty, or more.

Q. Had you executed any Warrants from the present Sheriff, under his Authority?

James. Yes, I executed Attachments under that Authority,—under Mr. *Baxter*. I had four or five Warrants, upon Process, out of the *Exchequer*, at the Time I arrested Mr. *Stevenson*, and have executed several Warrants, since Mr. *Harrison* became Sheriff.

Q. How long had Mr. *Harrison* been Sheriff, before you arrested the Prisoner?

James. A Week or a Fortnight, it might be.

Court. Read the Warrant, whereon the Prisoner was arrested by the Witnesses.

(The Warrant was then read, and it appeared, that the Words, "Bailiffs for this Time only," after the Names of John James and John Jones, the Special Bailiffs, were written by Mr. Baxter. The Warrant was dated the 1st of March, and there was an Indorsement thereon, "Take good Bail for eighteen Pounds eight Shillings and Ten-pence Half-penny, by Affidavit filed." And under-written, "Elcock by Lowe, by the said Sheriff.")

Q. Did *John Evans*, the Sheriff's Bailiff named in the Warrant, go with you, when you attempted to re-take the Prisoner?

James. No; he did not.

Q. When did the Plaintiff *John Atkin* come to you? Was he with you before, or at the Time you attempted to re-take the Prisoner?

James. *John Atkin* came when Assistance was sent for, but not before. He came with us, when we went to re-take Mr. *Stevenson*.

Cross-examined.

Council for the Prisoner. I think you say, you took the Warrant out of your Pocket, and put

your Hand upon the Prisoner's Shoulder, and arrested him?

James. I did.

Q. Pray, where did you first see that Warrant, whereon you arrested the Prisoner?

James. I saw it first at *Nantwich*.

Q. Who shewed it you?

James. The deceased Mr. *Elcock*.

Q. When you first saw the Warrant, was your Name in it?

James. No.

Q. Was the Warrant, when you first saw it, under the Seal of the Sheriff?

James. I believe it was.

Q. Was the Name *John Jones* (the other Special Bailiff) in the Warrant, when you first saw it?

James. I believe it was not.

Q. Was the Name of *John Evans*, the Sheriff's Officer, in the Warrant then?

James. Yes, it was.

Q. Who wrote *Evans's* Name in the Warrant?

James. The Sheriff put it in.

Q. Of whose Hand-writing is the Warrant?

James. It is all of Mr. *Baxter's* Writing; except my Name, and the Name of *John Jones*.

Q. Are you sure of that?

James. Yes.

Q. Who is Mr. *Baxter*?

James. Mr. *Baxter* acts for the Under-Sheriff.

Q. Of whose Hand-writing are the Names, *John James* and *John Jones*, now appearing in the Warrant?

James. My Name and *John Jones's* were written in the Warrant by Mr. *Elcock*.

Q. Are you sure that the Names *John James* and *John Jones* were written in the Warrant by Mr. *Elcock*?

James. I am very sure of it; for I saw him write them.

Q. Were they written by Mr. *Elcock*, after you first saw the Warrant at *Nantwich*?

James. Yes.

Q. Is the Warrant in the same Situation, in every Part of it, as it was when you first saw it at *Nantwich*?

James. It is, except the Addition of the Names made since.

Q. Where does Mr. *Baxter* live?

James. In this City, (*Chester*.)

Q. Do you know Mr. *Hollins*?

James. Yes.

Q. Who is he?

James. The Under-Sheriff.

Q. Do the Sheriffs always keep their Office in the City?

James. They keep their Office in the City, where they please to appoint; I believe so.

Q. And is that the Place where the Sheriff's Warrants are always made out?

James. That is the Place where they apply for Warrants.

Q. How far does the Under-Sheriff live from this City?

James. Twenty Miles, I believe.

Q. Was Mr. *Elcock* appointed by the Sheriff to make out Warrants?

James. I do not know that he was.

Q. Had Mr. *Baxter* Authority to make out Warrants?

James. I don't know.

Q. You say, the Under-Sheriff always keeps an Office in the City of *Chester*?

James.

James. Yes; where the Sheriffs, when they come in, are pleased to fix it.

Q. You say, you went to Mr. *Elcock* after you had arrested the Prisoner?

James. Mr. *Elcock* met me, as I was going to him.

Q. And you then told Mr. *Elcock* you were forced to retreat?

James. I told him so, and so it was.

Q. Is it the Practice, for the Names of the Sheriff's own Bailiffs, or those bound to the Sheriff, to be put into Warrants in the Office; and Blanks to be left in the same Warrants, for the Names of other Bailiffs, to be put in by Attornies, after the Warrants come from the Office?

James. It is the Practice.

Q. Did you give Security to the Sheriff, for being his Bailiff?

James. No, not at that Time.

Q. Where did you stay, after you had arrested the Prisoner, till Assistance came to you?

James. I and Mr. *Elcock* stayed at a Gentleman's House, the next House to Mr. *Stevenson's*, Mr. *Robert Nevill's* House, till Assistance came.

Q. Who went for the Assistance?

James. *John Jones*, the other Bailiff named with me, I believe.

Q. What Number of People came to your Assistance?

James. I don't well recollect the Number; but I remember the Plaintiff *John Atkin*, and his Servant, (whose Name I know not,) *Richard Bowker*, *John Jones*, and myself made five.

Q. Did you desire Mr. *Elcock* to stay where he was, at Mr. *Nevill's* House, and not go to the Prisoner's House?

James. I did not.

Q. Pray, had not you an Iron Crow with you, when you all went to the Prisoner's House?

James. Yes.

Q. Where had you that Crow?

James. I told Mr. *Elcock* I wanted a Crow, and he borrowed one from the Woman of the House, Mrs. *Nevill*.

Q. You say, you went to different Doors, when you came to the House; pray, were these Doors on one Side of the House,—at the Corners of the House; or how were they situated?

James. I said, I went to a Door on one Side of the House, and desired Mr. *Elcock* would stay at a Door on the other Side of the House.

Q. Did you yourself speak to the Prisoner when you came to the House, and demand Entrance from him?

James. I did not.

Q. Did *John Jones* demand Entrance?

James. I don't know: *John Jones* was not on the same Side of the House with me.

Q. Did you desire Mr. *Elcock* to demand Entrance, as you were going to the House, or before you came to the House?

James. No, I did not.—But when we were going to Mr. *Stevenson's*, I saw Mr. *Stevenson* out of Doors, and called to him to stay, and told him, we were coming for him.

Q. How far might you be from the Prisoner at that Time?

James. It might be threescore Yards.

Q. Were Mr. *Elcock* and *John Jones* at one Door of the House?

James. I don't know.

Q. Did you, from the other Side of the House, desire Mr. *Elcock* to demand Entrance?

James. I could not see Mr. *Elcock* from the other Side of the House.

Prisoner. Is the Warrant you have shewn to the Court, the same Warrant you produced to me?

James. Yes, the very same.

(*Prisoner desires to see the Warrant. He looks at it, and says, — It is not the Warrant.*)

Court to the Prisoner. Leave the Questions to be asked by your Council; they know best how to act for your Defence. Consider, you stand upon Trial for your Life. Your Condition is a most melancholy one, and very perilous; therefore refer yourself to the Judgment of your Council in Matters of so great Importance to you.

James. It is the very Warrant upon which I arrested the Prisoner.

Then the Witnesses withdrew.

Cryer, call *John Atkin*.

John Atkin sworn.

Council for the Crown. Do you know the Prisoner at the Bar?

Atkin. Yes, very well.

Q. Did you know Mr. *Francis Elcock*, deceased?

Atkin. Yes.

Q. When were you last in Company with the Deceased?

Atkin. I was in Company with him upon the 21st Day of *March* last, at the House of *John Stevenson* in *Bickerton*.

Q. Did you go with the Deceased to the Prisoner's House on that Day?

Atkin. Yes.

Q. What was the Occasion of your going thither with Mr. *Elcock*?

Atkin. *John James* sent for me, to come to assist the Bailiffs.

Q. To do what?

Atkin. To re-take *John Stevenson*.

Q. And did you go accordingly for that Purpose?

Atkin. Yes.

Q. Who went with you?

Atkin. Mr. *Elcock*, and *John James* and *John Jones*. We all went to take the Prisoner by Force, *John James* having sent for me to assist him, after the Prisoner had snapped a Pistol at him.—We all went, because *John Stevenson* had drove the Bailiff from the House, by snapping a Pistol at him.

Q. Who told you, that the Prisoner had snapped a Pistol at the Bailiff?

Atkin. *John James*, the Bailiff, told me so.

Q. Did you see the Prisoner in the House, when you came there?

Atkin. I did not.

Q. Did you go with Mr. *Elcock*?

Atkin. Yes.

Q. How far were you from Mr. *Elcock*, when you came to the House?

Atkin. Within three or four Yards of him.

Q. Then you did not see the Prisoner?

Atkin. No.

Q. Did you see any People in the House, when you came there?

Atkin. No; but I imagine People were in the House, when Mr. *Elcock* and I came to it.

Q. Did you hear any People in the House?

Atkin.

Atkin. Yes, we heard People, but saw no body.

Q. Were the Doors locked, or made fast?

Atkin. Yes; the Doors were made fast.

Q. When you came up to the House, did *John James* give Mr. *Elcock* and you any Directions, about the Business you were to do there?

Atkin. Yes; when we came up to the Door, *John James* ordered Mr. *Elcock* and me to attend that Door.

Q. Which Door was it?

Atkin. It was the Back Kitchen Door.

Q. When you came to the Door, did Mr. *Elcock* say any thing to the People in the House?

Atkin. As soon as we came to the Door, Mr. *Elcock* said, Open the Door,—open the Door, or we will break it down.—I thought they were making the Door fast.

Q. Was the Door opened?

Atkin. No.

Q. What was done afterwards, when the People within would not open the Door?

Atkin. As soon as Mr. *Elcock* said so, he bid me strike an Iron Crow under the Door, in order to lift it off the Hinges; and I accordingly put the Crow under the Door.

Q. Was it Mr. *Elcock*, who ordered you to put the Crow under the Door?

Atkin. Yes.

Q. When you put the Crow under the Door, pray, what happened?

Atkin. As soon as I had put the Crow or Ringer under the Door, Mr. *Elcock* said to me, *John*, run to the other Door, for fear *Stevenson* gets out of it; whereupon I left the Crow sticking under the Door upon the Sill, and went away towards the other Door, and had not gone above three or four Yards from the Door, before I heard a Gun go off.

Q. Did you see Mr. *Elcock* when the Gun went off?

Atkin. Yes.

Q. Did he say any thing then?

Atkin. Yes.—I heard him say, I am shot, I am shot: And he fell on one Side of his Back down two Steps.—*Richard Bowker* and I took him up:—Then Mr. *Elcock* took up his Shirt, and shewed us the Wound.

Q. Who was this *Bowker*?

Atkin. He was an Assistant, who came with me to re-take *John Stevenson*.

Q. What did you do with Mr. *Elcock*, after you and *Bowker* took him up?

Atkin. He hung about our Shoulders, and we carried him to a wooden Block, where he desired to rest.

Q. You say, he pulled up his Shirt, and shewed you his Wound; pray, on what Part of his Body was he wounded?

Atkin. He was wounded on the Side of the Belly, above his Groin.

Q. Were there any Holes in the Door where the Ball came through, besides that which the Ball made?—Did you see the Hole which the Bullet made?

Atkin. I saw the Hole which the Bullet came through; and there was also a Slit in the Door, which seemed big enough for a Person to see through; and there were two Holes besides in the Door.

Q. How large were the two Holes that were in the Door, besides that which the Bullet made?

Atkin. One of the Holes was an Inch-and-half Hole; the other bigger. But the Slit was afterwards lathed on the inner Side of the Door.

Q. Could you have seen the Prisoner through those Holes?

Atkin. No Doubt of it, if he had been opposite to me when I looked through; but he was not, and therefore I could not see him.

Q. Were you present when the Prisoner surrendered himself?

Atkin. I was.

Q. Had he any Fire-arms in the House, when he surrendered?

Atkin. He had Fire-arms at that Time. I fired off one of the Pistols the Day after the Prisoner killed Mr. *Elcock*.

Q. What Day of the Month was that?

Atkin. The 22d of *March*. Mr. *Elcock* received his mortal Wound upon the 21st, about Three o'Clock.

Q. What other Fire-arms had the Prisoner when he surrendered, besides the Pistol you fired?

Atkin. There were two Pistols;—one besides that which I fired; and a Gun.

Q. Were they loaded?

Atkin. Yes.

Q. How do you know they were loaded?

Atkin. That Pistol which I fired off, was very heavy loaded: The other Pistol was discharged against an Ash-Tree, and I saw the Hole which the Bullet had made in the Tree; and the Gun was fired into the Air.

Q. When the Prisoner surrendered himself, did he acknowledge that he had Fire-arms in the House?

Atkin. He said, he had but one Pistol.—But the Woman in the House being asked, whether there were any more Fire-arms; she told them, there was another Pistol and a Gun.

Q. You say, you discharged one of the Pistols yourself; Did you?

Atkin. I did, and fired it into the Air.

Q. Did you see the Pistol discharged against the Ash-Tree?

Atkin. I did; and looked at the Hole which the Ball had made.—The Gun was fired into the Air.

Cross-examined.

Council for the Prisoner. When you came to re-take the Prisoner with Mr. *Elcock*, what Orders did *John James* give you?

Atkin. He ordered Mr. *Elcock* and me to stay at the Door; and he ran to the other.

Q. What Orders had *John Jones* received?—Was he to have no Hand in re-taking the Prisoner?

Atkin. *John Jones* was ordered by *John James* to attend a Woman, *Stevenson's* House-keeper, I believe, and not let her come near him.

Q. Was neither *John James*, nor *John Jones*, with you and Mr. *Elcock*, at the Door where you were stationed, in order to re-take the Prisoner?

Atkin. Neither of them.

Q. Was *John Jones* within Sight of you?

Atkin. I think he was.

Q. Did you all act as Assistants to the Bailiff?

Atkin. Yes.

Q. And by his Orders?

Atkin. Yes.

Then the Witnesses withdrew.

Cryer, call *William Griffith*.

William Griffith sworn.

Council for the Crown. Do you know the Prisoner at the Bar?

Griffith. Yes, very well.

Q. Do you remember any thing about the Prisoner's discharging or firing a Gun at any Time? Pray, speak up, that the Jury may hear you, and acquaint them, with what you know of the Matter.

Griffith. Yes, Sir; I was in Mr. *Stevenson's* Houfe at *Bickerton*, when Mr. *Elcock* was shot.

Q. What Part of the Houfe were you in at that Time?

Griffith. I was in the Houfe-place, and Mr. *Stevenson* was in the Back Kitchen.

Q. Was any body in the Houfe, besides the Prisoner and yourself?

Griffith. Yes; a Woman was in the Houfe,— a Servant-Woman.

Q. Did you see the Prisoner fire the Gun?

Griffith. The Prisoner did fire the Gun at the Back Door, and brought it in afterwards, and took it into the Parlour.

Q. After the Gun was fired, did you hear no Noise out of Doors?—Was there no Alarm made about it?

Griffith. Yes; the People without shouted, Murder!

Q. From what Place did the Prisoner take the Gun which he fired?

Griffith. He took it from the Mantle-piece in the Kitchen.

Q. Was the Prisoner accustomed to keep Fire-arms in the Houfe with him?

Griffith. I cannot tell.

Q. How long was it after the Gun was fired, that you heard the People shout, Murder?

Griffith. In about a Minute or two after the Gun was fired.

Q. I suppose you were curious enough after the Gun was fired, and you heard the Cry of Murder, to know, whether any body was hurt; or not; Were not you?

Griffith. I went to a Window, and looked out; and saw a Man in blue Cloaths supported or held up between two Men.

Q. Did you say nothing to the Prisoner upon this Occasion?

Griffith. Yes; I told Mr. *Stevenson*, that I believed there was never a Man killed, but there was one hurt, and they called him Mr. *Elcock*.

Q. And pray, when you told the Prisoner there was never a Man killed, but a Man hurt, and his Name was Mr. *Elcock*; What did he say to you?

Griffith. He said, I don't know what Business a Man of his Coat had among such Men as those. I am glad of it.

Q. What do you apprehend he meant by the Words, "A Man of his Coat?"

Griffith. I don't know.

Council for the Prisoner. You will please to observe, The Witness told the Prisoner, there was a Man hurt, but no body killed; and that was immediately before the Prisoner said, he was glad of it.—Glad, that no body was killed.

Then the Witness withdrew.

Cryer, call Mr. *Cooper*.

Mr. *Cooper* sworn:

Council for the Crown. I think you are a Surgeon?

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Mr. *Cooper*. Yes, Sir.

Q. Where do you live?

Mr. *Cooper*. At *Nantwich*.

Q. Did you know the deceased Mr. *Francis Elcock*?

Mr. *Cooper*. Yes, very well.

Q. Were you sent for at any Time, and when, to attend Mr. *Elcock*, upon account of his having received a Wound, by the firing of a Gun, or otherwise?—Pray, acquaint the Court and Jury with what you know of this Matter.

Mr. *Cooper*. Upon *Wednesday* the 21st Day of *March* last, a Messenger came to me about Three o'Clock in the Afternoon, desiring me to go to *Bickerton*, to Mr. *Francis Elcock*, who, the Messenger told me, was shot.—I went accordingly with the Man, and got to *Bickerton* about Five o'Clock in the Evening. When I came there, I found, that Mr. *Rowe*, a Surgeon from *Malpas*, had been sent for likewise, and had been there for some Time before. Mr. *Rowe* and I went up Stairs together, to the Room where Mr. *Elcock* was, and we found him ill in Bed. Almost so soon as he saw me, he pulled up his Shirt, and shewed me where the Ball was lodged, and seemed impatient to have it taken out: Upon seeing the Wound, I took the Ball between my Finger and Thumb, and perceived I could easily dislodge it. I then examined the Wound, where the Ball had entered, and found it cut about two Inches from the Hip on the left Side of his Belly: It passed through his Belly, by his Bowels no doubt, and lodged five or six Inches below the right Hip, almost through the Skin. As soon as I saw this, I took Mr. *Rowe* into another Room, to consult what was fittest to be done; and I told him, it was my Opinion, that Mr. *Elcock* was a dying Man, and that I did not know whether it would be of any Use to take the Ball away, although it could be so easily effected.—But, considering that it would give him some Satisfaction, and perhaps Ease too, by taking the Ball from the Place where it did lie, Mr. *Rowe* and I went into the Room again, and I took out the Ball.—After I had taken the Ball out, and dressed the Wound, and put a Bandage about it, I asked Mr. *Elcock*, how he did? He said, he was easier. Doctor *Hayes* came in afterwards, and when I had told him the Nature of the Wound, he looked upon the Case to be extremely dangerous. The Doctor stayed with him two or three Hours, and then went away; but Mr. *Elcock* desired me and Mrs. *Nevill* to sit with him, which we did, and his Father did so too, till ten Minutes past Three the next Morning, and he then expired.—(The Witness produces the Ball.)

Q. Do you believe, that the Wound which Mr. *Elcock* received was the Occasion of his Death?

Mr. *Cooper*. I firmly believe, that the Wound which he received was the Occasion of his Death.

Q. Did Mr. *Elcock* say any thing to you in his Agonies, upon the melancholy Occasion, and what?

Mr. *Cooper*. Mr. *Elcock* told me, that he was shot, as he was stooping down, with a Crow in his Hand, striving to open the Prisoner's Door.

Q. Did he tell you from what Part of the Houfe he was shot?

Mr. *Cooper*. He said, he received the Wound at the Door of the Prisoner's Houfe.

6 D

Q. Pray,

Q. Pray, how came the Ball to be made so flat, in that uncommon Form?

Mr. *Cooper*. I believe its going through the Door was the Occasion of its being in that Form.
Then the Witness withdrew.

Cryer, call Mr. *Baxter*.

Mr. *Robert Baxter* sworn.

Council for the Crown. Pray, Mr. *Baxter*, are you concerned in any, and what Manner, for Mr. *Harrison*, the present Sheriff of the County of *Chester*?

Mr. *Baxter*. Yes, Sir, I am concerned for the Sheriff, and keep his Office.

Q. Do you make out Warrants for the Sheriff?

Mr. *Baxter*. I do.

Q. Did you receive at any Time, and when, a Writ against the Prisoner, at the Suit of *John Atkin*?

Mr. *Baxter*. I received a Writ against him upon the 1st of *March* last. (*Which he produces.*)

Q. Look upon that Warrant.—Did you make out that Warrant upon the Writ, in order to arrest the Prisoner?

Mr. *Baxter*. I did.

Q. And are you sure that is the same Warrant you did make out?

Mr. *Baxter*. Yes; I am sure it is.

(*The Writ was read, and upon the Back of it was written, "Take Bail for eighteen Pounds " eight Shillings and Ten-pence Half-penny, by Affidavit filed." — And another Indorsement, viz. "I promise to indemnify " the Sheriff in the Execution of the Writ, " as to the Special Bailiffs. John Atkin."*)

Q. Is it usual for the Sheriff to appoint a Gentleman in this Town to execute the Office, and to act for him?

Mr. *Baxter*. It is usual. — I have been several Times appointed myself.

Q. Do you receive all the Writs that are sued out, directed to the Sheriff of this County?

Mr. *Baxter*. I do.

Q. And do you make out the Warrants upon such Writs?

Mr. *Baxter*. I do.

Q. And return the Writs?

Mr. *Baxter*. Yes.

Q. Do you execute all other Acts, that the Sheriff would do, if he resided here himself?

Mr. *Baxter*. Yes; except attending the Assizes and Sessions.

Q. And has this been the constant Practice in this County?

Mr. *Baxter*. Yes, during all my Time.

Q. Has it been usual, when Plaintiffs would have Special Bailiffs appointed, to leave Blanks in the Warrants for their Names to be inserted?

Mr. *Baxter*. Yes, upon the Sheriff being indemnified.

Q. Have you done this yourself?

Mr. *Baxter*. Yes.

Q. Have you known others to do it?

Mr. *Baxter*. Yes, several others to my Knowledge.

Q. Did you ever know it to be refused?

Mr. *Baxter*. No, never, upon the Sheriff being indemnified, and the Attorney is known to be a fair Practiser.—I have known it refused, where the Practiser was not liked, or where the Sheriff run any Risque or Hazard, and the Indemnity

was not approved; but when the Attorney, or Practiser, and the Indemnity are liked, it is usually done.

Q. Pray, what is the Nature of the Indemnity given to the Sheriff upon this Occasion?

Mr. *Baxter*. It is, that he should not suffer by Escapes or Rescues.

Q. And has this been the constant Practice used by the Persons who have acted in the Sheriff's Office in the Capacity you now act?

Mr. *Baxter*. It has been so all the Time I have known the Office.

Q. How long, pray, is that?

Mr. *Baxter*. Seven or eight and twenty Years.

Q. To leave Blanks in the Warrants, for the Names of the Special Bailiffs to be inserted?

Mr. *Baxter*. Yes.

Q. Pray, whether is such Practice convenient to the Plaintiffs and Suitors in the Court, or inconvenient to them?

Mr. *Baxter*. It is looked upon to be very convenient for the Plaintiffs.

Q. Do you think so yourself?

Mr. *Baxter*. I look upon it in that Light.

Q. Had Mr. *Lowe*, or Mr. *Elcock*, or both of them, a Right to insert the Names of the Special Bailiffs in the Blank left in the Warrant, whereon the Prisoner was arrested?

Mr. *Baxter*. I apprehend, either Mr. *Lowe* or Mr. *Elcock* had a Right to do so?

Q. Is it usual for Attornies in the Country to send their Directions to their Agents in *Chester* to take out Writs?

Mr. *Baxter*. Yes.

Q. And is the Agent's Name generally put to the Writ, or the Name of the Attorney in the Country only?

Mr. *Baxter*. The Agent's Name is generally added to the Name of the Country Attorney, in the Writ, since the late Act of Parliament for that Purpose; but before that, the Name of the Attorney was only put to the Writ.

Q. And you say that either Mr. *Lowe* or Mr. *Elcock* had a Right to insert the Names of the Special Bailiffs?

Mr. *Baxter*. Yes, I apprehend so.

Cross-examined.

Council for the Prisoner. Do not the Attornies, and other Persons, usually send the Names of the Special Bailiffs to be inserted in the Warrants by the Sheriff, or by those who act for him?

Mr. *Baxter*. Sometimes People do send the Names of the Special Bailiffs to be inserted.

Q. Has it not been the most usual Way, in your Time, to do so?

Mr. *Baxter*. It was when I first knew the Office the most usual Way, in 1732 and 1733. — But Warrants went out with Blanks then.

Q. Did *John Evans*, the Bailiff named in the Warrant, indemnify the Sheriff?

Mr. *Baxter*. He has given Security to the Sheriff, I believe. — But the Indemnity was for the Special Bailiffs.

Q. In the Year 1732, or 1733, were Blank Warrants sent out, and not the Names of the Special Bailiffs inserted?

Mr. *Baxter*. When I was concerned for Mr. *Page*, who was Sheriff in 1732 or 1733, several Blank Warrants were sent out, and not the Special Bailiffs inserted.

Q. How

Q. How many Warrants were sent out, with Blanks for the Names of the Special Bailiffs, in Mr. Page's Time?

Mr. Baxter. I cannot tell.

Q. Were not Warrants oftener delivered, with the Names of the Special Bailiffs inserted in the Office, before they were sent out, than Warrants with Blanks, for the Names of the Special Bailiffs to be afterwards inserted by the Attornies?

Mr. Baxter. I believe, Warrants were oftener sent out with the Names of the Special Bailiffs inserted, than with Blanks.

Q. Is that the Warrant you made out on the Writ the 1st of March against the Prisoner?

Mr. Baxter. (Looks at the Warrant.) It is the same Warrant.

Q. Is it in the same Situation it was, when you delivered it out of your Hands?

Mr. Baxter. No.

Q. How has it been altered? How does it differ?

Mr. Baxter. The Names John James and John Jones have been since inserted.

Q. Pray, was the Seal to the Warrant before you delivered it out of your Hands?

Mr. Baxter. Yes.

Q. Are you sure of that?

Mr. Baxter. Yes, for I put the Seal to it myself.

Court. Do you remember, that any Arrest was ever set aside, or disputed, on account of a Blank Warrant having been sent out?

Mr. Baxter. No, never.

Council for the Prisoner. Through all the Course of your Practice, has it not been most usual to make out Warrants after you received the Names of the Special Bailiffs, than without them;—than making out Blank Warrants?

Mr. Baxter. Yes, it has been most usual, I think.

Q. When the Names of the Special Bailiffs are sent, do you always insert them in the Warrants?

Mr. Baxter. Yes, I do.

Q. Pray, how is the Under-Sheriff of Cheshire appointed?

Mr. Baxter. He is appointed by the Sheriff, by Deed.

Q. Have you any written Authority from the Sheriff?

Mr. Baxter. No further than by Letters sent me sometimes about the Business of the Office.

Q. How were you appointed?

Mr. Baxter. The Night before the Sheriff was sworn, I supped with him, and it was agreed, I should act for him.

Q. Who were present, when you were appointed to act for the Sheriff?

Mr. Baxter. The Sheriff and Under-Sheriff were both present, and appointed me.

Q. Were you appointed by any Instrument in Writing, or not?

Mr. Baxter. I was not.

Q. Is it usual for the Sheriff and Under-Sheriff both to appoint an Agent to act for the Sheriff?

Mr. Baxter. I believe, the usual Way is by the Under-Sheriff only.

Q. Is there no other Method of appointing a Person to act for the Sheriff, but by Parol?

Mr. Baxter. I don't know of any other Way.

Q. Is the Seal to the Writ the Seal of Office?

Mr. Baxter. It is.

Q. Have the Persons concerned for the Sheriff of this County usually that Sort of Seal?

Mr. Baxter. Yes.

Q. Where had you this Seal?

Mr. Baxter. I had this from Mr. Griffith, having lost my own.

Then the Witness withdrew.

Mr. Gastrell, Clerk to Mr. Lowe, an Attorney in Chester, was then called, to prove that John Atkin signed the Indemnity given to the Sheriff, when the Blank Warrant against the Prisoner was sent out. But the Court thought it unnecessary to examine him.

Mr. Cross, an Attorney in Chester, sworn:

Council for the Crown. Are you acquainted with the Method of suing out Process in the Court of Session for this County?

Mr. Cross. Yes.

Q. Is it usual to send out Warrants from the Sheriff's Office, with Blanks for the Names of the Special Bailiffs to be inserted.

Mr. Cross. When Special Bailiffs are desired; Warrants frequently issue with Blanks, for their Names to be inserted.

Q. Do you know this to be frequently done?

Mr. Cross. Yes.

Council for the Prisoner. But is it not more usual for the Names of the Special Bailiffs to be put into the Warrants in the Office, before they are sent out; than for Warrants to issue with Blanks; for Bailiffs to be inserted afterwards?

Mr. Cross. Sometimes the Names of the Special Bailiffs are inserted in the Office.

Q. I say, is it not oftener done? more frequently?

Mr. Cross. I don't know but it may.

Council for the Crown. Don't you think it prudent, sometimes, not to send the Names of the Special Bailiffs to the Office?—to conceal the Names till they are inserted by the Attorney?

Mr. Cross. I do.

Mr. Fluit, an Attorney in Chester, sworn.

Council for the Crown. Did your Father ever act as Agent for the Sheriff of this County?

Mr. Fluit. He did.

Q. Was it customary for your Father to send out Warrants with Blanks, for the Names of the Special Bailiffs to be inserted afterwards?

Mr. Fluit. He did leave Blanks often in the Warrants.

Q. I suppose you understood that your Father had Authority so to do?

Mr. Fluit. I always understood that he had Authority to do it.

Council for the Prisoner. But did your Father never refuse to send out Blank Warrants, to your Knowledge?

Mr. Fluit. Yes; he sometimes did, when he suspected the Attorney; but never, when he knew the Attorney to be a fair Practiser.

Here ends the Evidence on Behalf of the Crown.

Court to the Prisoner. Have you any Witnesses to examine?—This is the Time for making your Defence.

The Prisoner called no Witnesses, nor said any thing in his Defence.

Mr.

Mr. Recorder TOWNSEND, of Council for the Prisoner.

The Prisoner, I believe, has no Witnesses to call to his Defence, except one Woman, and I do not know yet, that it will be necessary to examine her.

The Occasion, my Lord, of my appearing this Day, as Council for the Prisoner at the Bar, is, on all Sides, a very lamentable Occasion indeed, which must unavoidably affect every body; who has the least Degree of Tendernefs and Humanity; and glad I should have been, if the Prisoner had submitted to the Arrest, how illegal soever, rather than to have taken the desperate Methods he did for delivering himself from it; and I could wish, that it was now in his Power to satisfy the Gentlemen of the Jury, upon the present Trial for his Life, that he did not discharge the Gun, nor kill the unfortunate young Gentleman Mr. *Elcock*, rather than to have Recourse to the Sanction of the Law for a Justification of his Rashness: Yet, as the unhappy Condition of the Prisoner at the Bar does require all the Aid and Assistance which the Law can allow him, for the saving of his Life, I hope, I shall incur to myself no Imputation in the Discharge of my Duty, by endeavouring to satisfy your Lordship, under the Authority of the Law, that, although the Prisoner did discharge the Gun whereby Mr. *Elcock* was killed, yet, that he is, by Law, acquitted from the Crime of Murder; and that, under the Circumstances of his Case, such Killing will not amount to more than Manslaughter. — My Lord, I humbly conceive, that no Warrant or Process from the Sheriff can be executed by any Persons, but by those whom the Sheriff appoints to execute them. The High-Sheriff undoubtedly may appoint his Deputy to act for him; and the Appointment of the Under-Sheriff of this County was by Deed, and not a Parol Appointment. Under that Appointment, the Under-Sheriff is armed with a Power of doing the lawful Duty and Business of the Sheriff himself. — But, my Lord, in the present Case, Mr. *Baxter*, who made out the Warrant against the Prisoner, was a Person acting under the Under-Sheriff: He was not appointed by any Deed, or Instrument in Writing; but he was appointed by Parol, by Word of Mouth only: And Mr. *Baxter*, as Assistant to the Under-Sheriff, under this defective Appointment, made out a Warrant against the Prisoner, and sent it out, after it was sealed, with a Blank left therein for the Names of the Special Bailiffs to be inserted in it. — The Names *John James* and *John Jones* were not in the Warrant, when Mr. *Baxter* delivered it out, under the Seal. It was taken twenty Miles, to *Nantwich*, to have the Names afterwards inserted in it. This is proved by *John James* himself, who swears, that he saw Mr. *Elcock* write his Name, and the Name of *John Jones*, in the Warrant at *Nantwich*. — My Lord, I humbly apprehend, that no Warrant whatsoever from the Sheriff, can or ought to receive the least Addition, Diminution, or Alteration, after it passes the Seal of Office; and that if any Person, in the Execution of a Warrant, which shall receive any Addition or Diminution, or any Alteration whatsoever, after it has passed the Seal, shall be killed, such Killing cannot be Murder. — And if a Person

not lawfully authorized shall attempt to deprive a Man of his Liberty, although by a legal Warrant, and is killed in such Attempt, the Killing, in that Case also, is not Murder. My Lord, I have the Authority of as great a Man, as eminent a Lawyer, as ever lived, which, I humbly apprehend, is directly in Point; *Hale's Pleas of the Crown*, p. 457. where my Lord *Hale* lays down the Law in these Words: “If a Sheriff's Bailiff comes to execute a Process, but has not a legal Authority; as if the Name of the Bailiff, Plaintiff, or Defendant, be interlined, or inserted, after the Sealing thereof, by the Bailiff himself, or any other; if such Bailiff be killed, it is but Manslaughter, and not Murder.” And, my Lord, notwithstanding the Evidence given by Mr. *Baxter*, and Mr. *Fluit*, that Warrants have been generally sent out with Blanks, for the Names of the Special Officers to be afterwards inserted, I humbly contend, that the Warrant, whereon the Prisoner was arrested by *James*, the Special Officer, at the Suit of *John Atkin*, was an illegal Warrant, inasmuch as the Names of the Bailiffs were added to, or inserted in the Warrant, after it had passed the Seal; and it was at the Peril of the Party executing that Warrant, whether Death, or any other Mischief, ensued upon it: And, notwithstanding Warrants have sometimes been sent out by the Person acting for the Sheriff, with Blanks left in them for inserting the Names of the Bailiffs, after the Warrants have been sealed, yet that Usage or Practice cannot be considered to extend to overrule or set aside the known Law, set down by my Lord *Hale*. — My Lord, this is a Point of Law, which I hope your Lordship will look upon to be worthy of Consideration, and not be left to the Determination of the Jury. — It has likewise appeared in Evidence, that when *John Atkin* and *John Jones* came to the Assistance of *John James* the Bailiff, all that *James* ordered Mr. *Elcock* to do, was to stay at the Door: He gave him no Authority, nor Orders to break open the Prisoner's House; all he was to do, was to guard the Door. — But, it appears in Evidence, that Mr. *Elcock*, in a very extraordinary Degree, exceeded the Limits of the Orders which the Bailiff had given him: For, a Crow or Ringer was thrust under the Door, (that very Door which he was ordered to stay at only,) poisoning it open; and Mr. *Elcock* himself, in his Agonies, declared to Mr. *Cooper* the Surgeon, who attended him, that he was striving to break open the Door with the Crow, when the Gun was fired: And therefore I submit it to your Lordship, Whether Mr. *Elcock* did not exceed the Orders and Authority given him by *James*, supposing that *James* had, in himself, any Power at all, (which I humbly conceive he had not,) and could have transferred any Power or Authority to Mr. *Elcock*. These are two Questions, my Lord, which appear to me to be in Favour of the Prisoner, and to deserve Consideration; and if the Court shall be of the same Opinion, I humbly hope, you will not suffer a General Verdict to go against the Prisoner, but reserve those Points for the Consideration of the Court.

Then Mr. PERRY, also of Council for the Prisoner.

The only Question, my Lord, is, Whether the Killing Mr. *Elcock*, in Manner given in Evidence, ought to be considered as Murder, or Manslaughter:

Manſlaughter. It appears clearly, that the Names of the two Bailiffs were not inſerted in the Warrant, when it iſſued under the Seal of the Sheriff; and therefore it was an illegal Warrant, under which *James* could not derive any lawful Authority to arreſt the Priſoner: For, according to Lord *Hale*, the Warrant ſhould have been a full and compleat Warrant, when it paſſed the Seal, and ought not to have been a Blank Warrant, *Hale's Pleas of the Crown*, 457. (quoted by Mr. Recorder.) And the preſent Fact proved by *James* and Mr. *Baxter*, that the two Special Bailiffs were inſerted after the Warrant was ſealed, comes under the Words of this great Authority. My Lord, you will obſerve, that the Sheriff's own Bailiff, named in the Warrant, was not called upon, nor employed to execute it, nor did he attend the Execution of it: But, the Arreſting of the Priſoner was intirely left to the Special Bailiffs, who, I humbly apprehend, had not the leaſt Power or Authority to execute it. — My Lord, I ſhall quote other Authorities, which, I humbly apprehend, will make in Favour of the Priſoner, and thoſe are, *Hawkins's P. C.* 80. *Cro. Car.* 372. 1 *Jones* 346, 372. 1 *Leo.* 91. 12 *Coke* 49. And I mention thoſe Authorities, to ſhew, that if a Warrant be in the leaſt defective, the Arreſt cannot be juſtified. — With regard to the Power derived to Mr. *Elcock* from *James* the Bailiff, I hope it will appear to your Lordſhip's Satisfaction, that *James* had not the leaſt Power or Authority whatſoever in himſelf, and therefore could not transfer any to Mr. *Elcock*. But ſuppoſing the Bailiff had any Power to call Aſſiſtance, and to have given his Orders to Mr. *Elcock*, yet Mr. *Elcock* ſhould have ſtrictly obſerved the Orders, which had been given to him—he ſhould have purſued the Directions, namely, to ſtay at the Door; and not have exceeded the Limits of his Authority, in the Manner he did, in attempting to break down that Door, which he was only directed to guard, or ſtay at, and had not any Orders or Authority to break down. There are other Authorities, which I humbly conceive will be of Uſe to the Priſoner, when they come to be conſidered, 2 *Lev.* 144. 2 *Inſt.* 105, 143. and 3 *Lev.* 146. They treat of Arreſts, and the Authority of the Bailiffs, and their Aſſiſtants. No Requeſt was made from the Bailiff to Mr. *Elcock*, to break down the Door, which ſhould have been previously done, before Mr. *Elcock* could have had the leaſt Colour or Pretence for attempting to break open the Door of the Priſoner's Houſe. *Bretton and Cole. Salk.* 409. 1 *Ray.* 305. — Upon the whole, I hope, your Lordſhip will think that thoſe Points deſerve the Conſideration of the Court, and that they ought not to be left to the Determination of the Jury.

Then Mr. MADDOCKS, *likewiſe of Council for the Priſoner.*

I am alſo of Council with Mr. Recorder *Townſend*, and Mr. *Perryn*, for the unhappy Priſoner at the Bar, and hope your Lordſhip will be of Opinion, that a good deal of Nicety attends this Caſe, not proper for a Jury to determine upon; and that ſeveral Points of Law have ariſen, well worth the Conſideration of the Court. The Law, my Lord, ariſes out of the Fact. This appears to be an Indiſtment againſt the Priſoner, for the Murder of Mr. *Francis Elcock*, who, when

he was murdered, was aſſiſting to re-take a Perſon making his Eſcape from an Arreſt: And I ſhall conſider the Caſe according to its Nature. Firſt, if Mr. *Elcock* was a Trefpaſſer, then the Priſoner's killing him could be only Manſlaughter, not Murder. — Secondly, Whether upon the Writ, the Special Bailiff and Mr. *Elcock* derived an Authority for what they did. And here I ſhall mention one Authority, *Hawkins's P. C.* 86. which ſhews, (although the Caſe is not exactly the ſame with this,) that the General Rule is, if a Party, under Colour of Authority, not having legal Authority, ſhall attempt to take away a Man's Liberty, and is killed in the Attempt, the Killing of that Party is not Murder, but Manſlaughter: And whether Mr. *Elcock* was a Trefpaſſer or not, will depend upon the Authority he derived under the Writ. — The Writ itſelf does not appear to be void, and therefore I won't ſpeak upon it; but ſhall confine myſelf to the Warrant made out for arreſting the Priſoner, in Obedience to the Writ. As to the Facts given in Evidence, it appears, That the Warrant was iſſued by Mr. *Baxter*: That Mr. *Baxter* then acted for the Sheriff, as an Aſſiſtant, by Parol Agreement, and delivered the Warrant under the Seal of the Sheriff's Office: That the Name of *John Evans*, a Bailiff, was then in it, and none others, and that it was carried ſo to *Nantwich*: That Mr. *Elcock* was at *Nantwich*, and there inſerted the Names of *John James* and *John Jones*. Now the General Queſtion is, Whether this Warrant was good in Point of Law? In the firſt Place, the Perſon granting the Warrant muſt have lawful Authority for ſo doing. Mr. *Baxter*, on his Examination, has ſaid, That the Night before the Sheriff was ſworn, he ſupped with him, and it was then agreed, he ſhould act for the Sheriff: That the Sheriff and Under-Sheriff were both preſent, and appointed him, but that it was by Word of Mouth only. And it fully appears, that Mr. *Baxter* had no Authority from the High Sheriff in Writing.—An Under-Sheriff, my Lord, may be admitted into his Office by Parol; he is to execute the whole Office: But Mr. *Baxter* is only to execute a particular Part of it. The Under-Sheriff was appointed by Deed: But Mr. *Baxter*, who did ſome Things for the Sheriff, but did not execute others, ſuch as attending the Aſſizes and Sefſions, was appointed by Parol. I apprehend, if a Perſon is to act for the Sheriff under a limited Authority, that Authority ought to be in Writing; and where the Sheriff delegates a Part only of his Authority to another, it ſhould be by Writing; and therefore, I humbly conceive, that the Appointment of Mr. *Baxter* to act for the Sheriff, was not a good Appointment, and that his Authority to make out the Warrant upon the Writ for arreſting the Priſoner, was a very defective Authority.—Now, whether the Warrant was a legal Warrant, or not, is in the next Place to be conſidered. And that will depend upon a Variety of Circumſtances;—upon the Nature of the Inſtrument itſelf, and Matters attending it. A Warrant is always under Seal, and therefore is a Deed:—I ſay, this Warrant was a Deed under Seal: And nothing binds the Parties, but what is contained in a Deed, when executed: No Interlineation, or Addition afterwards made, can affect the Parties who had executed it, unleſs the Deed be re-executed; and there has been no Evidence given, that this Deed,

this Warrant, was re-executed. Then, if this be the Case in general, at the Time the Sheriff sealed this Warrant, the Names of the two Bailiffs, *James* and *Jones*, were not in it. No Authority was given to any Person, but to *Evans* the Bailiff, who was then named in the Warrant. — Cites *Hale's P. C.* 457. (quoted before by the other Council.) Every Iota of this Case is parallel, and is agreeable to Law and Common Sense. How can this Case be distinguished from the General Law? Can it be by Custom? by *Lex Loci*? It may. What is then incumbent to be done, to establish this Distinction? Why, — the Custom must be immemorial, must be uniform, must be certain; and there is no Evidence here of such a Custom. Mr. *Baxter* says, he sometimes leaves Blanks in the Warrants, and sometimes he inserts the Names of the Special Bailiffs, and that he has known it so done for seven or eight and twenty Years. This Custom is not a Custom immemorial, it is not proved to have been an immemorial Custom; neither is it uniform, nor proved to be certain. — On the contrary, it has been proved, that the inserting the Names of Special Bailiffs in the Warrants at the Office, is more usual than sending out Blank Warrants. And therefore, supposing the Instances of Custom to be of any Consequence, upon the Determination of this Point, the Custom must make for the Prisoner at the Bar, because the putting in the Names of the Bailiffs at the Office has been more usual. The General Law therefore is supported; the Custom, or *Lex Loci*, not being immemorial, nor uniform, but uncertain. We are now to stand on the General Law of the Land; and if the Warrant fails, neither the Bailiff, nor Mr. *Elcock*, nor any of their Assistants, acted under any legal Authority; and therefore the Killing of Mr. *Elcock* cannot amount to more than Manslaughter. The Authority, my Lord, which Mr. *Elcock* had, was given him by *James*; *John Evans*, the proper Bailiff, was not there, but *James* was the acting Bailiff. If *James* had a Mind that Mr. *Elcock* should have attempted the breaking open the Door, surely he would have desired him to have done so, and not bid him stay at the Door only. The Bailiff acts under a limited Authority, Can he then do what he is not authorized? — *James* acted under a limited Authority; and whether he had Power to call Assistance, without an Application to the Sheriff, seems to me a great Doubt; but I humbly apprehend, that a Person, to whom a limited Power is delegated, cannot depute another to execute any Part of that limited Power. — In Cases of Rescous, a Writ of Rescous may be had. — Upon Complaint made, that the Party is rescued, a Writ of Rescous issues. — In Criminal Cases, I allow, an Officer can call another to his Assistance: But this was a Civil Case; the Prisoner was out of Sight; it was not a Criminal Matter, nor an Escape from an Execution. If *James* the Bailiff had an Authority to break open the Prisoner's House, it has not been proved that he gave Mr. *Elcock* this Authority, but the Reverse. *James* bid him only stay at the Door: Mr. *Elcock* himself sent for, or borrowed the Crow, the Plaintiff *Atkin* put it under the Door, and Mr. *Elcock* poised it with an Intent to take it off the Hinges. No particular Authority was given by *James*; but Mr. *Elcock* took the Management upon himself. It was his Business only

to watch the Door. — *Atkin* put the Crow under the Door, and Mr. *Elcock* poised it; neither of them had any Order or Directions to break open the House; and Mr. *Elcock*, having exceeded the Limits of the Authority given him, became a Trespasser; and the unfortunate Killing of him, in the Commission of that Trespass, can only be Manslaughter, and not Murder. — My Lord, I apprehend, that upon an Escape, or Rescous from an Arrest upon Mesne Process, an outward Door cannot be broke open. This was an outward Door: The Rescous was at an End for two Hours, and there ought to have been a Request to assist on the Rescous; and a Request to assist on a Rescous, is traversable.

Court. It must be left to the Jury; Whether there was a Request, or not.

Mr. *Maddocks*. In short, if Mr. *Elcock* was a Trespasser, the Killing of him can be only Manslaughter. I humbly apprehend, that *John James* had no Authority under the Warrant for the arresting the Prisoner: His Name was not inserted in the Warrant, till after it had passed the Seal of Office. He delegated only a particular Authority to Mr. *Elcock*. — Mr. *Elcock* exceeded that Authority. Mr. *Elcock* was a Trespasser. The Prisoner fired a Gun, which killed Mr. *Elcock* in the Commission of the Trespass, when he was breaking open the Prisoner's Door: And therefore I hope your Lordship will be of Opinion, that these are Points so essentially in Favour of the Prisoner, that you will not prevent him from having the Benefit of the Law which may result from a judicial Determination of them; nor suffer the Prisoner's Life to be left at the Hazard of a General Verdict.

Mr. Justice *Swinnerton*. Can you shew any Case to the Court, where an Arrest under a Blank Warrant has been superseded?

Mr. *Maddocks*. No, my Lord, I know of no Case at present. — But the Thing speaks for itself: It is not likely there should be many Cases of this Kind.

Mr. Justice *Swinnerton*. Is the Doctrine of my Lord *Hale* laid down in any Part of *Hawkins's Pleas of the Crown*?

Mr. *Maddocks*. I have not looked over Mr. *Hawkins* for it; but if it is omitted to be inserted in his *Pleas of the Crown*, I hope, that Omission cannot be considered to repeal or invalidate my Lord *Hale's* Authority.

Mr. Justice *White*. This Case does not seem to me to come under the Doctrine of Lord *Hale*. For here a Bailiff was named, and inserted in the Warrant, before it was sealed; and I think it was a good Warrant.

(*Court distinguishes the Warrant from a Deed; for a Deed must be delivered, and the Sealing and Delivering make a Deed.*)

Mr. *Maddocks*. The Warrant was directed to the Bailiffs, jointly and severally. The Name of *John Evans* was then, only, in the Warrant; *John Evans* never acted in the Execution of it; and therefore the Warrant must be illegal, *quoad James*.

Mr. HALL, of Council for the Crown.

I should have almost thought it unnecessary for me to have troubled the Court further on so plain a Case, but that the Objections made to the Authority of Mr. *Baxter* seem to require, that something should be said, to prevent a Notion from

from prevailing, that he had not a Right to make out the Warrant. — By the Common Law, an Under-Sheriff may be appointed by Parol, or Deed; and several Under-Sheriffs for different Purposes.

Court. Shew your Cases.

Mr. *Hall* proceeds:

One Sheriff in London has two Under-Sheriffs, two Compters, two Prisons: The Business is carried on by different Persons. — And there is a Sheriff's Office in *Furnival's-Inn*, the Business of which is executed by a Clerk; and those Persons are appointed by Parol. Mr. *Baxter* has been appointed in the same Manner, and it has been usual to make out Blank Warrants for a great Number of Years. Prescription for thirty Years is good, unless the contrary appears; and here nothing does appear to the contrary. Mr. *Baxter* swears, it has been the Custom all his Time, which he limits to seven or eight and twenty Years, to make out Blank Warrants, for the Names of the Special Bailiffs to be inserted. Mr. *Baxter* did make out this Warrant against the Prisoner, and directed it to *John Evans*, a Bailiff, and left a Blank for the Attorney to insert two other Names; Mr. *Elcock* did put in those two Names, and must be considered as Clerk or Agent to the Sheriff; and if so, *John James* was lawfully authorized to arrest the Prisoner upon that Warrant, and did actually arrest the Prisoner; who afterwards by Violence rescued himself from the Custody of the Bailiff. The Law, upon a Rescous, gives Authority, for the Purpose of taking a Defendant, to break open Doors; and justifies all Persons aiding and assisting the Officer, whether they be requested, or not. — If a Bailiff takes a Man by the Hand out of a Window, it is an Arrest, and he may justify the breaking open of Doors after the Defendant, if he should attempt to escape; and I humbly apprehend, the Reason for breaking open the Door was stronger in this Case. — Cites *Peer Williams*, The Corporation of *Bewdley*, relating to *Venires*. — Though upon Complaint of a Rescous, a Writ of Rescous may be sued out; yet I apprehend, that does not prevent taking other Remedies, such as breaking open Doors. The Sheriff may return a Rescous upon a Mesne Process, but cannot upon an Execution: He must raise a *Posse Comitatus*; but that does not hinder him from raising the *Posse Comitatus* for a Rescous from an Arrest upon a Mesne Process, if he thinks fit. — It was the Duty of every Man to aid and assist *John James* the Bailiff, to re-take the Prisoner, after he had rescued himself from the Hands of Justice, by the Force and Violence given in Evidence by *James*; and Mr. *Elcock* did what was right, in endeavouring to suppress the Arrogance and Outrage of the Prisoner, and to bring him under a Subjection to those Laws, which are too authoritative to be trampled upon, and treated with Contempt and Disobedience. The Authority in Lord *Hale*, cited by the Prisoner's Council, is a very old Authority. My Lord *Hale*, I admit, was a great Man, and I pay the highest Regard to his Reports; but I don't find this Authority named in *Serjeant Hawkins's Pleas of the Crown*, and therefore I apprehend the *Serjeant* doubted it.

Then Mr. *FALCONER*, also of Council for the Crown.

The Practice of the Officer, acting for the Under-Sheriff, in granting Blank Warrants, has

never been complained of as an irregular or unlawful Practice, nor has any Arrest made upon those Sort of Warrants been ever superseded or set aside: Such Blank Warrants have always been held good, and the acting under them legal; and it would be of most dangerous Consequence to attempt to vitiate Proceedings, under which Justice has, for Time immemorial, been administered to the Suitors of the Court. Cites *Hale's H. C.* 459.

Prisoner's Council. That is upon an Execution.

Then Mr. *HAYWARD*, likewise of Council for the Crown.

My Lord, I humbly conceive, that the Arguments made use of by the Prisoner's Council, for invalidating the Practice of issuing Blank Warrants, will have little Weight with your Lordship, it having been the Usage for Time immemorial, for Persons acting under the Sheriff of this County, as Mr. *Baxter* now does, to send out such Warrants, and that Practice was never known to be controverted: And if your Lordship is satisfied, that such has been the allowed Practice, then I humbly contend, that the Special Bailiff *John James* had a legal Authority to arrest the Prisoner, by Virtue of the Warrant which he received from Mr. *Elcock*; and that upon his rescuing himself, as has been given in Evidence, the Officer had a Right to call Assistance, and to break open Doors for the Purpose of re-taking him. — Cites *McCulloch's Case*, 9 *Coke*. — If a *Capias* instead of a *Distingas* be executed by an Officer, and the Officer is killed, it is Murder; surely then, it can be no less a Crime than Murder, to kill an Officer after he has executed a *Capias*: If then the Authority under which *James* acted was a good Authority, Mr. *Elcock* did what was legal, though I heartily wish he had acted with better Caution. Cites *Palmer* 52. *White's Case*. And the killing Mr. *Elcock*, or any of the Persons who assisted in re-taking the Prisoner, after he had rescued himself, was Murder. If a Sheriff can appoint a Deputy generally by Parol, I humbly apprehend he may appoint a Person to act in any particular Part of the Office by Parol: I see no Reason why he may not do it in one Case, as well as in the other. — As to a Warrant being the same Thing in Effect as a Deed, with regard to the Execution of it, as the Council for the Prisoner contend, surely there is not the least Foundation for the Comparison: A Warrant is only sealed, but Signing, Sealing, and Delivering are necessary to make a Deed. It has been argued by the Council for the Prisoner in his Defence, That *James*, the Bailiff, had no Right to call Assistance for the re-taking the Prisoner, because, as they say, it was a Civil Case; it was not a Criminal Matter, nor an Escape from an Execution: But, my Lord, I humbly insist, that from the Moment the Prisoner had refused to submit to the Arrest, and had rescued himself from the Officer, by snapping a Pistol at him, it ceased to be a Civil Case; it became a Criminal Matter: The Prisoner was a Transgressor and Violator of the Laws of his Country; he broke his Majesty's Peace, and became a Criminal Offender; and therefore the Bailiff had a Right to call, and every Person ought to give him, Assistance for apprehending him: His House remained no longer an Asylum, or Sanctuary for him: He forfeited the Safety which the Law had given

given him in the close Retirements of his House before he was arrested: His Doors could be afterwards no Security to him from the Hands of Justice; and therefore his killing Mr. *Elcock* in the Pursuit of him, for the Purpose of bringing him to a due Submission and Obedience, was (I humbly conceive) Murder, and not Manslaughter. The Life of a Man (says my Lord *Coke*) is to be favoured, but the Life of the Law more so. The Law was established for the Security, Defence, and Protection of every Individual, and is the Life, Strength, and Support of the Community. Upon the whole, I humbly apprehend, your Lordship will be of Opinion, that the Points insisted upon by the Council for the Prisoner cannot intitle him to any Indulgence from the Court; but on the contrary, that you will think them too weak and insufficient to induce you to direct a Special Verdict to be found; and that therefore your Lordship will now sum up the Evidence to the Jury, that they may consider it, and find a General Verdict.

Mr. Attorney produces a Case, *Harris* against *Ashley*, determined by Lord *Mansfield*, the Sittings after *Michaelmas* Term 1756, in the *King's Bench*, where a Sheriff's Clerk filled up the Assignment of a Bail Bond, and it was held good.

Mr. TOWNSEND, for the Prisoner.

I humbly contend, That the Warrant, by reason of the inserting the Bailiffs after the Sealing of it, is not a legal Warrant*; and if so, my Lord *Hale's* Doctrine is to the Point, and clearly for the Prisoner. The King's Council themselves admit Lord *Hale's* Reports to be an Authority, and therefore I hope, the Prisoner is well intitled to the Benefit of this Authority. Though the Sheriff may appoint a Deputy by Parol, and that Deputy depute his Authority to a third Person, yet, if that third Person had not a Right of deputing, Mr. *Elcock* could not act as Agent or Clerk to the Sheriff; and I humbly insist, Mr. *Elcock* had not a Right to do so, unless the Sheriff himself gave an Authority appointing him. Mr. Serjeant *Hawkins* omitting to insert my Lord *Hale's* Case in his *Pleas of the Crown*, is no Reason for its not being a Resolution, of as great Authority as any extant; and it would be a Pity, as well as cruel, that the Prisoner's Life should be forfeited for that Omission. It was an Omission not probably intended; he might have overlooked it, or it might have been left out by some other Accident: No Authority contradicts it; and therefore I contend, that it is still an Authority, in full Force and Effect, and available to the Prisoner, and not abolished or affected by the Custom, which the Council for the Crown have set up in Opposition to it. Custom, my Lord,

must be supported by Usage for Time immemorial; Custom must be uniform and certain, before it becomes a Law: This Custom carries with it none of those Qualifications. What Mr. *Baxter* has said, therefore, cannot overset the Rules of the Common Law. I never knew, during all the Time of my own Clerkship, a Blank Warrant sent out, without an Indemnity by Deed; and the Attornies always sent, with the Names of the Special Bailiffs, Indemnities, either by Deed, or *Assumpsit*, on the Back of the Writ: And I humbly insist, that the inserting of the Names of the two Bailiffs in the Warrant, which *James* had to arrest the Prisoner, is directly within the Words and Sense of my Lord *Hale's* Case, as to those two Bailiffs.

Court. Persons coming to the Assistance of the Constable the Law gives the same Sanction to, as to those called by Name. — One Point occurs, not yet spoken to, Whether the Warrant may not be considered as an Escrow. — Suppose a Person gives a Bond to another, sealed and delivered, with a Blank in it for the Sum, and desires him to insert Two Hundred Pounds or any Sum in it, and he to whom the Bond is given, fills up the Blank accordingly, it is good. I should be glad, you could produce one Instance, where a Person, who has been arrested upon a Blank Warrant, has been discharged.

Mr. Justice *White*. No other Person was concerned in the Transaction, but the Party giving the Warrant, and the Party executing it. No Instrument or Writing is a Deed, until it is delivered; but a Warrant is a Warrant as soon as it is sealed.

If a Court see a Blank Indorsement on a Note, they will afterwards suffer it to be filled up. What a dangerous Confusion would be created in the Country, were the Proceedings upon Arrests made by Blank Warrants to be now set aside? To what a precarious Situation would the Property of the Subject be exposed? And how unsettled the Distribution of Justice, heretofore administered upon the Foundation of such Arrests? As to the Question, Whether the Bailiff's Authority to Mr. *Elcock* was for a particular Purpose, or general — By the Bailiff's calling out after *Stevenfon* to stay; they were coming for him — I should think, that Mr. *Elcock* was with the Bailiff to give him general Assistance. — This is Matter of Fact, not Law.

Mr. TOWNSEND again, for the Prisoner:

I hope, the Points of Law that have arisen in the Course of this Trial, will induce your Lordship to direct the Jury to find a Special Verdict, that the Prisoner may have the Benefit of the

* “ In the Case of Arrests upon Procefs, whether by Writ or Warrant, if the Officer named in the Procefs give Notice of his Authority, and Resistance is made, and the Officer killed, it will be Murder; if in Fact such Notification was true, and the Procefs legal: For, after such Notice, the Parties opposing the Arrest acted at their own Peril.

“ I said above, by way of Caution, if the Procefs be legal: But I would not be understood to mean any thing more than, Provided the Procefs, be it by Writ or Warrant, be not defective in the Frame of it, and issue in the ordinary Course of Justice from a Court or Magistrate having Jurisdiction in the Case. There may have been Error or Irregularity in the Proceeding, previous to the issuing of the Procefs; and if the Sheriff, or other Minister of Justice, be killed in the Execution of it, this will be Murder: For the Officer to whom it is directed, must at his Peril pay Obedience to it; and therefore, if a *Capias ad Satisfaciendum*, *Fieri facias*, Writ of Assistance, or any other Writ of the like Kind, issue, directed to the Sheriff, and he or any of his Officers be killed in the Execution of it, it is sufficient, upon an Indictment for this Murder, to produce the Writ and Warrant.

“ But, if the Procefs be defective in the Frame of it; as if there be a Mistake in the Name or Addition of the Person on whom it is to be executed; or if the Name of such Person, or of the Officer, be inserted without Authority, and after the issuing of the Procefs, or the Officer exceedeth the Limits of his Authority, and is killed, this will amount to no more than Manslaughter in the Person whose Liberty is so invaded.” *Foster's Reports*, p. 311, 312.

Law, and that you will not suffer a Matter, which so nearly endangers the Prisoner's Life, to be determined by a Jury: The Authority of Lord *Hale* furnishes me with an Expectation, that you will grant this Indulgence to the Prisoner.

Mr. Justice *Swinerton*. I must, in Justice to you, Mr. Recorder, and the other Council for the Prisoner, say, that you have discharged yourselves, through the Course of this Trial, with great Decency and Judgment, and have done every thing for the unhappy Man, that could possibly be expected from Gentlemen at the Bar. As for my own Part, I have the greatest Inclination to Mercy, and no Person would more readily extend Compassion to a proper Object, than I would: But, I could wish that it had not been my Province to hear, and be a Judge of so shocking and melancholy an Event; for this being an Inquisition for Blood, to delay the Execution of Justice, may tend to overset and destroy Justice. However, if you, Gentlemen at the Bar, of Council for the Prisoner, will give this Court your Honour, that you verily believe the Points of Law, which seem to have arisen upon this Trial, will in the End avail the Prisoner, and that you think Judgment of Murder may be averted from him upon the Decision of those Points; and that you do not ask Indulgence for the sake of Delay, but from reasonable Hopes that the Prisoner may be acquitted of Murder, when the Facts come to be argued; I will most readily consent to direct the Jury to find a Special Verdict; but if, on the other hand, you think that the Prisoner may not be availed by the Determination of the Court upon those Points, I rely upon your Honour, and hope you will not request it.

Mr. *Townsend*. With great Submission to the Court, we humbly apprehend, that the Prisoner will receive the utmost Advantage upon the Determination of the Facts to be stated: We have the Authority of Lord *Hale* on our Side, and shall have Time to consult other Authorities, which may probably give us further Assurances, that the Prisoner's Life in the End will be saved by the Decision of those Points. But if we should fail, I have no Doubt upon me, but the Conduct of myself, and of the other Council for the Prisoner, will be clear from every Imputation, inasmuch as we request this Indulgence under the Patronage of my Lord *Hale*, and not to delay or protract Justice, but that the Prisoner may receive that Benefit from the Law, which we humbly conceive he is intitled unto; and for these Reasons only we desire, that the Court will give the Prisoner an Opportunity of having those Points argued.

The Court consented.

Then the Facts were stated, and found by the Jury as follows:

The Jurors find the *Capias* with the Indorsement of Indemnity.

That the said *John Atkin*, Plaintiff in the said *Capias*, signed the Indorsement of Indemnity.

That the Sheriffs of the County of *Chester* have always appointed a Person, residing in the City

of *Chester*, to receive Writs, make Warrants thereon, and to return them.

That Mr. *Robert Baxter*, the Night before *Samuel Harrison*, Esquire, Sheriff of the said County of *Chester*, was sworn into Office, but after he had received his Appointment as Sheriff, was in Company with the said *Samuel Harrison*, then and now Sheriff of the said County, and *John Hollins*, Gentleman, Under-Sheriff of the said County; and the said *Robert Baxter* was then appointed for the Purposes aforesaid; under which Appointment the said *Robert Baxter* has acted ever since. That the said Sheriff was sworn into Office the Day following such Appointment: That the said *Robert Baxter* after that Time, and in pursuance of such Appointment, did make out a Warrant upon the said *Capias*, under Seal of the said Sheriff, in the Words following, that is to say, [*Here the Warrant is to be set forth in the Record of the Special Verdict.*] But

Note, — In setting forth the Warrant in the Special Verdict, the Words, "*John James*" and "*John Jones*," are to be omitted.

That the said *Robert Baxter* delivered the said Warrant, so under Seal as aforesaid, to Mr. *Lowe*, then Agent to *Francis Elcock* since deceased, which said *Francis Elcock* was Attorney for the Plaintiff *John Atkin*.

That the same Warrant so sealed, was sent to the said *Francis Elcock*, to *Nantwich* in the said County, (a Blank being left in the said Warrant.)

That it has been the Practice, in the Sheriff's Office of the said County of *Chester*, to grant Warrants with the Names of the Sheriff's Bailiffs inserted, and that Blanks have been left therein, for the Purpose of inserting the Names of special Bailiffs, to be added to such Sheriff's own Bailiffs, to act jointly or severally; and that it has also been the Practice for the Sheriff's Agent to insert the Names of all the special Bailiffs therein, before the same hath been delivered out to the Bailiffs, when such Names have been sent to the Sheriff's Office; and that the said *Francis Elcock* afterwards, at *Nantwich* aforesaid, by the Permission of the said *Robert Baxter*, inserted in the said Warrant, in the Blank left for that Purpose, the Words and Names following, to wit, "*John James* and *John Jones*." That the said Warrant was delivered to *John James*, by virtue whereof he the said *John James* alone arrested the said *John Stevenson*. That the said *John Stevenson*, after he was so arrested, rescued himself, went into his House, and shut the Doors. That the said *John James* applied to the said *Francis Elcock* for Arms and Assistance to retake the said *John Stevenson*, (the said *Francis Elcock* then being at an House in the Neighbourhood.) That the said *John James*, the said *Francis Elcock*, and several other Persons, as Assistants to the said *John James*, made fresh Pursuit, and went to the House of the said *John Stevenson*, as soon as they could, in order to retake him the said *John Stevenson*; but that *John Evans*, named in the said Warrant, never was there, and that all the Doors of the said House were shut. That the said *John James*, upon his going to retake the said *John Stevenson*, and before he the said *John James* got to the said *John Stevenson's* House, saw the said *John Stevenson* out of Doors, but going towards the said House; and before he the said *John Stevenson* got into the

faid House, he the faid *John James* called out to the faid *John Stevenson* in these Words, "You may as well stay, for we are coming for you." That when the faid *John James*, the faid *Francis Elcock*, and others, as Assistants to the faid *John James*, came up to the faid House, the faid *John James* told the faid *Francis Elcock* to take care of two of the Doors of the faid House, and the faid *John James* went to a Door on the other Side of the same House, out of the Sight of the faid *Francis Elcock*. That the faid *Francis Elcock* demanded Entrance, while the faid *John James* was at another Door, out of Sight of him the the faid *Francis Elcock*. That the faid *John Atkin*, the faid Plaintiff, was at the same Door with the faid *Francis Elcock*, with an Iron Crow in his Hand. That the faid Crow was brought there, together with other Arms, by the Direction of the faid *John James*. That the faid *Francis Elcock* bid the faid *John Atkin* to put the faid Iron Crow under the same Door, to break it open; whereupon the faid *John Atkin* put the faid Crow under the same Door for that Purpose, and endeavoured to lift the same Door off the Hinges; but failing, he the faid *John Atkin* then left the faid Crow sticking under the same Door, and went towards another Door of the same House, to prevent the faid *John Stevenson* escaping, and left the faid *Francis Elcock* at the same Door, where the faid Iron Crow was. That there were two Holes in the same Door, through which the faid *John Stevenson* might see who was on the Out-side of the same Door.

That the faid *John Stevenson* took a Gun from the Mantle-piece in his faid House, loaded with Gun-powder and a Bullet, and shot and discharged it, and shot the faid *Francis Elcock*, through the same Door, in the Part mentioned in the Indictment, of which he the faid *Francis Elcock* died, as in the faid Indictment is mentioned.

And if, upon the whole Matter, the Court shall be of Opinion, that the faid *John Stevenson* is Guilty of Murder, the Jury say, that the faid *John Stevenson* is Guilty of Murder.

And if the Court shall be of Opinion, that the faid *John Stevenson* is Guilty of Manslaughter, the Jury say, that the faid *John Stevenson* is Guilty of Manslaughter, and not Guilty of Murder.

"*Thursday, August 6*, following, the Special Verdict was argued at the Assizes at *Chester*, before the Hon. Mr. Justice *Noel*, Chief Justice of *Chester*, and *Taylor White*, Esq; the other Justice, when the Court took Time till the next Morning for delivering their Opinions; and accordingly on *Friday Morning*, Mr. Justice *Noel*, in an ingenious and pathetic Speech, supported by adjudged Cases, and the Doctrine of the wisest Sages of the Law, and also by Arguments of Reason and Conscience, declared, That the Prisoner's Crime, found by the *Special Verdict*, could amount at most to Manslaughter only. Whereupon the Prisoner was burnt in the Hand, and discharged from the Indictment of Murder." *London Magazine*, for *August 1759*.

☞ Here should come in the Trial of *Laurence Earl Ferrers*, for the Murder of *Mr. John Johnson*, April 16, 1760; and *Lord Byron's Trial*, April 16, 1765, for the Murder of *William Chaworth, Esq;*

But the Proprietor of the Copy of those Trials would not consent to the reprinting of them in this Collection, for the Reasons given in Vol. 9. p. 588.

Therefore such Persons as have those Trials, may bind them in this Place, which is in Order of Time; if they have them not, may purchase them separately, viz.

Laurence Earl Ferrers, found guilty of Murder, and executed.

William Lord Byron, found guilty of Manslaughter.

Then follows N^o. LIV. The Trial of *Katharine Nairn* and *Patrick Ogilvie*, for Incest and Murder.

IN PARLIAMENT ASSEMBLED, the Lords of the House of
PEERS, of the High Court of Parliament, do hereby
do appoint *James* their printer to print and
publish the *Tracts* that shall be presented for the
Murther of *John*; And do forbid any other
Printer to print or publish the same.

Henry C. S.

IN Purfuance of an Order of the HOUSE of PEERS, of the Eighteenth Day of *April* 1760, I do appoint SAMUEL BILLINGSLEY to Print and Publish the Trial of *Lawrence* Earl *Ferrers*, for the Murder of *John Johnson*; And do forbid any other Person to Print or Publish the fame.

Henley C. S.

THE
T R I A L
OF
LAWRENCE EARL FERRERS,
FOR THE
MURDER of *JOHN JOHNSON,*
Before the RIGHT HONOURABLE
The H O U S E of P E E R S,
IN
WESTMINSTER-HALL, in Full PARLIAMENT,

On WEDNESDAY the 16th, THURSDAY the 17th, and FRIDAY the 18th
of *April*, 1760: On the last of which Days, Judgment for MURDER
was given against him.

Published by Order of the House of PEERS.

L O N D O N :

Printed for SAMUEL BILLINGSLEY, in *Chancery-Lane*.

M. DCC. LX.

THE

T R I A L

OF

A LAWRENCE HALL FERRER

FOR THE

MEMBER OF JOHN JOHNSON

IN THE COURT OF COMMONS

The House of Peers

IN

Parliament

On Wednesday the 17th of January 1811, and Peers of the
of which King's Bench for the
was given against him.

Printed by G. B. of the House of Peers

L O N D O N :

Printed by G. B. of the House of Peers

Printed

T H E
T R I A L
 O F
LAWRENCE EARL FERRERS,
 FOR THE
 MURDER of *JOHN JOHNSON,*
 Before the RIGHT HONOURABLE
The H O U S E of P E E R S,
 I N
 WESTMINSTER-HALL, in Full PARLIAMENT.

Wednesday, April the 16th, 1760.

In the Court erected in WESTMINSTER-HALL, for the TRIAL of *LAWRENCE*
 Earl *FERRERS*, for the Murder of *John Johnson*.

A BOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trial of *Lawrence Earl Ferrers*, in the Manner following:

- The Lord High Steward's Gentlemen Attendants, Two and Two.
- The Clerks Assistant to the House of Lords, and the Clerk of the Parliament.
- Clerk of the Crown in Chancery, bearing the King's Commission to the Lord High Steward and the Clerk of the Crown in the King's Bench.
- The Masters in Chancery, Two and Two.
- The Judges, Two and Two.
- The Peers eldest Sons, Two and Two.
- Peers Minors, Two and Two.
- York and Windsor* Heralds.
- Four Serjeants at Arms with their Maces, Two and Two.
- The Yeoman Usher of the House.
- Then the Peers, Two and Two, beginning with the youngest Baron.
- Then Four Serjeants at Arms with their Maces, Two and Two.
- The Serjeant at Arms attending the Great Seal, and Purse-Bearer.
- Then *Garter* King at Arms, and the Gentleman Usher of the Black Rod, carrying the White Staff before the Lord High Steward.
- Robert Lord Henley*, Lord Keeper of the Great Seal of *Great Britain*, Lord High Steward, alone; his Train borne.

When the Lords were placed in their proper Seats, and the Lord High Steward upon the Woolpack ;

The Clerk of the Crown in Chancery, having his Majesty's Commission to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench, standing before the Clerk's Table with their Faces towards the State, made Three Reverences ; the First at the Table, the Second in the Midway, and the Third near the Woolpack ; then kneeled down ; and the Clerk of the Crown in Chancery, on his Knee, presented the Commission to the Lord High Steward, who delivered the same to the Clerk of the Crown in the King's Bench to read : Then rising, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence, in this Manner :

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

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

Lord High Steward. His Majesty's Commission is about to be read : Your Lordships are desired to attend to it in the usual Manner ; and all others are likewise to stand up, uncovered, while the Commission is reading.

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

GEORGE R.

GEORGE the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth. To our Right Trusty and Wellbeloved Councillor *Robert Lord Henley, Baron of Grainge*, in Our County of *Southampton*, Keeper of our Great Seal of *Great Britain*, Greeting, Know ye, That whereas *Lawrence Earl Ferrers, Viscount Tamworth*, late of the Parish of *Breedon*, in Our County of *Leicester* (before Our Justices, assigned by Our Letters Patent under Our Great Seal of *Great Britain*, to enquire more fully the Truth, by the Oath of good and lawful Men of Our said County of *Leicester*, and by other Ways, Means, and Methods, by which they should and might better know (as well within Liberties as without), by whom the Truth of the Matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, false Coinings, and other Falsties of the Money of *Great Britain*, and of other Kingdoms or Dominions whatsoever, and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, unlawful Uttering of Words, Assemblies, Misprisions, Confederacies, false Allegations, Trespasies, Riots, Routs, Retentions, Escapes, Contempts, Falsties, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other evil Doings, Offences, and Injuries whatsoever, and also of the Accessaries of them, within the County of *Leicester* aforesaid (as well within Liberties as without), by whomsoever and in what manner soever done, committed, or perpetrated, and by whom, or to whom, when, how, and after what manner ; and of all other Articles and Circumstances concerning the Premises, and every or any of them, in any manner whatsoever ; and the said Treasons, and other the Premises, according to the Laws and Customs of *England*, to hear and determine), stands indicted, by the Oath of good and lawful Men of Our said County of *Leicester*, of Felony and Murder, by him the said *Lawrence Earl Ferrers Viscount Tamworth* done and committed ; We, considering that Justice is an excellent Virtue, and pleasing to the Most High ; and being willing that the said *Lawrence Earl Ferrers Viscount Tamworth*, of and for the Felony and Murder whereof he is indicted as aforesaid before Us, in Our present Parliament, according to the Law and Custom of Our Kingdom of *Great Britain*, may be heard, examined, sentenced, and adjudged ; and that all other Things which are necessary on this Occasion may be duly exercised and executed ; and for that the Office of High Steward of *Great Britain* (whose Presence, upon this Occasion, is required), is now vacant (as We are informed) ; We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of *Great Britain*, to bear, execute, and exercise (for this Time), the said Office, with all Things due and belonging to the same Office in this Behalf : And therefore We command you, that you diligently set about the Premises, and (for this Time) do exercise, and execute with Effect, all those Things which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these our Letters to be made Patent. Witness Ourself at *Westminster*, the Sixteenth Day of *April*, in the Thirty-third Year of Our Reign.

By the King Himself, signed with his own Hand.

Yorke and Yorke.

Serjeant at Arms. God save the King.

Then *Garter*, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by *Garter*, Black Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Woolpack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

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

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof, together with the Caption of the Indictment, and the Indictment certified thereupon, against *Lawrence Earl Ferrers*; *in hæc verba*:

The *Certiorari* } *and Return.* } **G**EOERGE the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith; and so forth, To Our Justices, assigned by Our Letters Patent under Our Great Seal of *Great Britain* to enquire more fully the Truth, by the Oath of good and lawful Men of Our County of *Leicester*, and by other Ways, Means, and Methods, by which they should and might better know (as well within Liberties as without), by whom the Truth of the Matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, false Coinings, and other Falsties of the Money of *Great Britain*, and of other Kingdoms or Dominions whatsoever, and of all Murders, Felonies, Manlaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles; unlawful Uttering of Words, Assemblies, Misprisions, Confederacies, false Allegations, Trespasses, Riots, Routs, Retentions, Escapes, Contempts, Falsties, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other evil Doings, Offences, and Injuries whatsoever; and also of the Accessaries of them, within the County aforesaid (as well within Liberties as without), by whomsoever and in what manner soever done, committed, or perpetrated, and by whom, or to whom, when, how, and after what manner; and of all other Articles and Circumstances concerning the Premises, and every or any of them, in any manner whatsoever, and the said Treasons, and other the Premises, according to the Laws and Customs of *England*, to hear and determine, and to every of them, Greeting; We, being willing, for certain Reasons, that all and singular Indictments and Inquisitions of whatsoever Felonies and Murders whereof *Lawrence Earl Ferrers Viscount Tamworth*, late of the Parish of *Breedon*, in the County of *Leicester*, is indicted before you (as is said), be determined before Us, and not elsewhere, do command you, and every of you; that you, or One of you, do send, under your Seals, or the Seal of One of you, before Us, in our present Parliament, immediately after the Receipt of this Our Writ, all and singular the Indictments and Inquisitions aforesaid, with all Things touching the same, by whatsoever Name the said *Lawrence Earl Ferrers Viscount Tamworth* is called in the same, together with this Writ, that We may further cause to be done thereon what of Right, and according to the Law and Custom of *England*, We shall see fit to be done. Witness Ourself at *Westminster*, the Eighteenth Day of *March*, in the Thirty-third Year of Our Reign.

Yorke and Yorke.

To the Justices assigned to enquire of all Treasons, Murders, &c. committed within the County of *Leicester*, a Writ of *Certiorari*, to certify into the Upper House of Parliament the Indictment found before them against *Lawrence Earl Ferrers* for Murder, returnable immediately, before the King in Parliament.

Yorke and Yorke.

Return. } **B**Y Order of the Lords Spiritual and Temporal, in Parliament assembled, by virtue of the within Writ to me, and others, directed, I send to our Sovereign Lord the King, in this present Parliament, under my Seal, the Indictment and Inquisition within mentioned, with all Things touching the same, in certain Schedules hereunto annexed, as I am within commanded.

H. Balhurst.

Leicestershire. } **B**E it remembered, That at the General Session of our Lord the King, of Oyer and Terminer, holden for the County of *Leicester*, at the Castle of *Leicester*; in and for the same County, on *Friday* the Fourteenth Day of *March*, in the Thirty-third Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, and so forth,

forth, before *Henry Bathurst*, Esquire, one of the Justices of our said Lord the King, of his Court of Common Bench; *James Hewitt*, Esquire, one of the Serjeants at Law of our said Lord the King, and others their Fellows, Justices of our said Lord the King, assigned by Letters Patent of our said Lord the King, under his Great Seal of *Great Britain*, to them and others, and any Two or more of them made, of whom our said Lord the King would have the said *Henry Bathurst*, Esquire, and *James Hewitt*, Esquire, to be One, to enquire more fully the Truth, by the Oath of good and lawful Men of the County aforesaid, and by all other Ways, Means, and Methods, by which they should or might better know (as well within Liberties as without) by whom the Truth of the Matter may be the better known and enquired into, of all Treasons, Misprisions of Treasons, Insurrections, Rebellions, Counterfeitings, Clippings, Washings, false Coinings, and other Falsities, of the Moneys of *Great Britain*, and of other Kingdoms or Dominions whatsoever; and of all Murders, Felonies, Manslaughters, Killings, Burglaries, Rapes of Women, unlawful Meetings and Conventicles, unlawful Uttering of Words, Assemblies, Misprisions, Confederacies, false Allegations, Trespases, Riots, Routs, Retentions, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Champarties, Deceits, and all other evil Doings, Offences, and Injuries whatsoever, and also of the Accessaries of them, within the County aforesaid (as well within Liberties as without) by whomsoever, and in what manner soever, done, committed, or perpetrated, and by whom or to whom, when, how, and after what manner; and of all other Articles and Circumstances concerning the Premises, and every or any of them, in any manner whatsoever; and the said Treasons, and other the Premises, according to the Laws and Customs of *England*, for this Time, to hear and determine, by the Oath of *John Grey*, *John Palmer*, *Thomas Boothby* the Elder, *William Pochin*, *Nathan Wrighte*, *Charles Skrymsber Boothby*, *Thomas Boothby* the Younger, *Joseph Craddock*, *Edward Farnham*, *Rogers Rudding*, *Charles Morris*, Esquires; *John Smalley*, *Richard Walker*, *John Willows*, *James Silmey*, *Thomas Ayre*, *Gabriel Newton*, and *Robert Hames*, Gentlemen; good and lawful Men of the County aforesaid, then and there sworn, and charged to enquire for our said Lord the King, for the Body of the same County.

It is presented, That the Bill of Indictment hereunto annexed is a true Bill:

BLENCOWE.

Leicestershire. } THE Jurors for our present Sovereign Lord the King, upon their Oath, present, That the Right Honourable *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, late of the Parish of *Breedon*, in the County of *Leicester*, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the Eighteenth Day of *January*, in the Thirty-third Year of the Reign of our present Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, and so forth, with Force and Arms, at the Parish of *Breedon*, in the County of *Leicester* aforesaid, in and upon one *John Johnson*, in the Peace of God, and of our said Lord the King, then and there being, feloniously, wilfully, and of his Malice aforethought, did make an Assault, and that He the said *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, with a certain Pistol of the Value of Two Shillings, then and there being charged with Gunpowder, and a leaden Bullet, which Pistol he the said *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, in his Hand then and there had and held, at, against, and upon, him the said *John Johnson*, then and there feloniously, wilfully, and of his Malice aforethought, did discharge and shoot off: And that he the said *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, with the leaden Bullet aforesaid, by Force of the Gunpowder aforesaid out of the said Pistol, by him the said *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, so as aforesaid discharged and shot off, him the said *John Johnson*, in and upon the Left Side of the said *John Johnson*, a little under the lowest Rib of the said *John Johnson*, then and there feloniously, wilfully, and of his Malice aforethought, did strike and wound, giving to the said *John Johnson* then and there, with the leaden Bullet aforesaid, out of the said Pistol so as aforesaid discharged and shot off, in and upon the said Left Side, a little under the lowest Rib of the said *John Johnson*, One mortal Wound, of the Breadth of One Inch and Depth of Four Inches; of which said mortal Wound the said *John Johnson*, at the said Parish of *Breedon*, in the said County of *Leicester*, did languish, and languishing did live, until the Nineteenth Day of the same Month of *January*, in the Thirty-third Year aforesaid; on which said Nineteenth Day of *January*, about the Hour of Nine of the Clock in the Morning, he the said *John Johnson*, at the Parish of *Breedon* aforesaid, in the County of *Leicester* aforesaid, of the mortal Wound aforesaid died: And so the Jurors aforesaid, upon their Oaths aforesaid, do say, That the said *Lawrence* Earl *Ferrers*, Viscount *Tamworth*, the said *John Johnson*, in manner and

and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

Witnesses, *Elizabeth Burgeland, Sarah Johnson,*
Elizabeth Saxon, Thomas Kirkland,
Elizabeth Doleman, William Tomlinson:
 Sworn in Court.

A true Bill.

Lord High Steward. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Clerk of the Crown. Serjeant at Arms, Make Proclamation for the Lieutenant of the *Tower* to bring his Prisoner to the Bar.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower* of *London*, Bring forth *Lawrence Earl Ferrers*, your Prisoner, to the Bar, pursuant to the Order of the House of Lords.

Then *Lawrence Earl Ferrers* was brought to the Bar by the Deputy Governor of the *Tower*, having the Ax carried before him by the Gentleman-Gaoler, who stood with it on the Left Hand of the Prisoner, with the Edge turned from him. The Prisoner, when he approached the Bar, made Three Reverences, and then fell upon his Knees at the Bar.

Lord High Steward. Your Lordship may rise.

Then the Prisoner rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers; which Compliment was returned him by his Grace, and the Lords.

Then, Proclamation having been again made for Silence, the Lord High Steward spake to the Prisoner, as follows.

Lord High Steward.

Lawrence Earl Ferrers,

YOU are brought to this Bar to receive your Trial, upon a Charge of the Murder of *John Johnson*; an Accusation, with respect to the Crime, and the Persons who make it (the Grand Jury of the County of *Leicester*, the Place of your Lordship's Residence), of the most solemn and serious Nature.

Yet, my Lord, you may consider it, but as an Accusation; for the greatest or meanest Subject of this Kingdom (such is the Tenderness of our Law) cannot be convicted capitally, but by a Charge made by Twelve good and lawful Men, and a Verdict found by the same Number of his Equals at the least.

My Lord, in this Period of the Proceedings, while your Lordship stands only as accused, I touch but gently on the Offence charged upon your Lordship; yet, for your own Sake, it behoves me, strongly to mark the Nature of the Judicature before which you now appear.

It is a Happiness resulting from your Lordship's Birth and the Constitution of this Country, That your Lordship is now to be tried by your Peers in full Parliament. What greater Consolation can be suggested to a Person in your unhappy Circumstances, than to be reminded, that you are to be tried by a Set of Judges, whose Sagacity and Penetration no material Circumstances in Evidence can escape, and whose Justice nothing can influence or pervert?

This Consideration, if your Lordship is conscious of Innocence, must free your Mind from any Perturbations that the Solemnity of such a Trial might excite; It will render the Charge, heavy as it is, unembarrassing, and leave your Lordship firm and composed, to avail yourself of every Mode of Defence, that the most equal and humane Laws admit of.

Your Lordship, pursuant to the Course of this Judicature, hath been furnished with a Copy of the Indictment, and hath had your own Counsel assigned; you are therefore enabled to make such Defence as is most for your Benefit and Advantage; if your Lordship shall put yourself on Trial, you must be assured to meet with nothing but Justice, Candour, and Impartiality.

Before I conclude, I am, by Command of the House, to acquaint your Lordship, and all other Persons who have Occasion to speak to the Court, during the Trial, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Lord High Steward. *Lawrence Earl Ferrers,* Your Lordship will do well to give Attention, while you are arraigned on your Indictment.

Here *Earl Ferrers* was arraigned, in the Form of the said Indictment against him, by the Clerk of the Crown in the King's-Bench.

Clerk of the Crown. How say you, *Lawrence Earl Ferrers*, Ate you guilty of the Felony and Murder whereof you stand indicted, or not guilty?

Earl Ferrers. Not guilty, my Lords.

Clerk of the Crown. Cul' : prit,
How will your Lordship be tried ?

Earl Ferrers. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez ! All manner of Persons that will give Evidence, on behalf of our Sovereign Lord the King, against *Lawrence Earl Ferrers*, the Prisoner at the Bar, let them come forth, and they shall be heard ; for now he stands at the Bar upon his Deliverance.

Lord High Steward. My Lords, the Distance of this Place from the Bar is so great, that I must desire your Lordships Leave to go down to the Table for the Convenience of hearing.

Lords. Ay, Ay.

Then his Grace removed to the Woolpack, and delivered the White Staff to be held by the Gentleman Usher of the Black Rod ; who, during the whole Trial, always received and delivered back the White Staff upon his Knee.

Mr. Perrott.

May it please your Lordships,

THIS Noble Lord *Lawrence Earl Ferrers*, the Prisoner at the Bar, stands indicted for the felonious Killing and Murder of one *John Johnson*, and the Indictment sets forth, That the Right Honourable *Lawrence Earl Ferrers*, Viscount *Tamworth*, on the Eighteenth Day of *January*, in the Thirty-third Year of his present Majesty's Reign, with Force and Arms, at the Parish of *Breedon*, in the County of *Leicester*, in and upon one *John Johnson*, feloniously, wilfully, and of his Malice aforethought, did make an Assault ; and that a certain Pistol then and there being charged with Gunpowder and a leaden Bullet, which Pistol he the said *Lawrence Earl Ferrers* then and there held in his Hand, at, against, and upon him the said *John Johnson*, then and there feloniously, wilfully, and of his Malice aforethought, did discharge and shoot off ; and with the leaden Bullet aforesaid, by Force of the Gunpowder aforesaid, out of the said Pistol by him so discharged and shot off, the said *John Johnson* in and upon the Left Side of the said *John Johnson*, a little under his lowest Rib, then and there feloniously, wilfully, and of his Malice aforethought, did strike and wound, giving to the said *John Johnson* then and there, with the leaden Bullet aforesaid, out of the said Pistol so as aforesaid discharged and shot off, in and upon the said Left Side, a little under the lowest Rib of the said *John Johnson*, One mortal Wound, of the Breadth of One Inch and Depth of Four Inches ; of which said mortal Wound the said *John Johnson* did languish, and languishing did live, until the Nineteenth Day of the same Month of *January*, in the Thirty-third Year aforesaid ; on which Day, about the Hour of Nine of the Clock in the Morning, he the said *John Johnson*, of the mortal Wound aforesaid, died ; and so the Jurors, upon their Oath, do find, That the said *Lawrence Earl Ferrers*, the said *John Johnson*, in manner aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against the Peace of our Lord the King, his Crown and Dignity.

To this Indictment the Noble Lord, the Prisoner at the Bar, hath pleaded Not guilty, and for his Trial hath put himself upon your Lordships his Peers here present.

We, who have the Honour to serve the Crown in this Prosecution, shall call our Evidence ; and, if we prove the Fact charged by this Indictment, we doubt not but your Lordships will find him guilty, and give such Judgment for the same as shall be just.

Mr. Attorney-General.

May it please your Lordships,

IAM likewise of Council for the Crown ; and it is become my Duty in consequence of that, to open to your Lordships the Facts and Circumstances of this Case, out of which your Lordships are to collect and find the Crime that is charged in this Indictment.

The noble Prisoner stands here arraigned before your Lordships for that odious Offence, malicious and deliberate Murder. There cannot be a Crime in human Society that deserves more to be punished, or more strictly to be inquired after ; and therefore it is that his Majesty, the great executive Hand of Justice in this Kingdom, has promoted this Inquiry, whereby all Men may see, that in the Case of Murder his Majesty makes no Difference between the greatest and meanest of his Subjects.

The Prisoner has a Right from his Quality, to the Privilege of being tried before this noble Tribunal ; if he is innocent, he has the greatest Reason to be comforted, that your Lordships are his Judges ; for that Nobleness and Humanity, which prompt you naturally to incline towards Mercy, will strongly exert themselves in the Protection of Innocence. But, on the other Hand, if the Prisoner is really guilty of the Charge, his Case is truly deplorable ; because your Minds cannot be deceived, by the false Colouring of Rhetorick, nor your Zeal for Justice perverted, by any unmanly Compassion.

This impartial Disposition in your Lordships calls upon the Prosecutors to observe a Conduct worthy of this noble Assembly; not to enlarge or aggravate any Part, or advance a Step beyond their Instructions; but barely to state the naked Facts, in order that, by that means, your Lordships may be enabled the better to attend to the Witnesses when they are called, to examine and cross-examine, and sift out the Truth with more Accuracy.

My Lords, as I never thought it my Duty in any Case to attempt at Eloquence, where a Prisoner stood upon Trial for his Life, much less shall I think myself justified in doing it before your Lordships; give me Leave therefore to proceed to a Narration of the Facts.

My Lords, the deceased Person Mr. *Johnson*, I find to have been employed by the *Ferrers* Family almost during the whole Course of his Life: He was taken into their Service in his Youth, and continued in it unfortunately to the Time of his Death.

At the time a Bill was passed by your Lordships about Two Years ago, to separate Lord *Ferrers* from his Lady, Mr. *Johnson* was appointed Receiver of his Lordship's Estates. At that time his Lordship seems to have entertained a good Opinion of him, because I am told he was appointed Receiver at his Lordship's own Nomination; but, very soon after he became invested with this Trust, when the Noble Lord found there was no possible Method, by any Temptation whatever, to prevail on Mr. *Johnson* to break that Trust, his Lordship's Mind grew to be alienated towards him, and his former Friendship was converted into Hatred.

The First Instance of his Lordship's Malice, that will be produced, will be his giving him Notice to quit a beneficial Farm that Mr. *Johnson* had obtained a Promise of from the Earl, or his Relations, before he was appointed Receiver; but when it appeared that the Trustees had made good the Promise, and had granted him a Lease, my Lord was obliged to desist from that Attempt.

When he found it was impossible to remove him from the Farm, his Resentment against Mr. *Johnson* increased, and he took at last a determined Resolution within himself to commit the horrid Fact for which he now stands arraigned.

My Lords, I find several Causes assigned by the Prisoner for this Indignation expressed against the deceased; he charged him with having colluded secretly with his Adversaries, with being in the Interest of those he was pleased to call his Enemies, and instrumental in procuring the Act of Parliament: Whether these Charges were justly founded or not, is totally immaterial; such as they were, he had conceived them. His Lordship, who best knew the Malice of his own Heart, has confessed that he harboured these Suspicions.

Another thing he suspected was, that, in Confederacy with Mr. *Burslem* and Mr. *Curson*, he agreed to disappoint his Lordship, in regard to a certain Contract for Coal Mines. These Notions, tho' void of Truth, had so poisoned his Lordship's Mind, that he was determined at last to gratify his Revenge by Murder.

This Determination being once settled and fixed in his Mind, your Lordships will see, with what Art and Deliberation it was pursued: Notwithstanding these seeming Causes of Disgust, he dissimulated all Appearance of Ill-will or Resentment; his Countenance towards the Deceased for some Months seemed greatly to be changed, and his Behaviour was affable and good-humoured.

The poor Man, deluded with these Appearances, was brought to believe he was in no Danger, and that he might safely trust himself alone with his Lordship.

Matters being thus prepared, on *Sunday* the 13th of *January*, the Prisoner made an Appointment for Mr. *Johnson* to come to him on the *Friday* following.

His Lordship, though the Appointment was Five or Six Days before, remembered it perfectly; nay, he remembered the very Hour he was to come, and took his Measures accordingly; for your Lordships will find, that, in order to clear the House, Mrs. *Clifford*, a Woman who lives with his Lordship, and Four Children, were directed by him, at Three o'Clock precisely, to absent themselves; they were ordered to walk out to Mrs. *Clifford's* Father, about Two Miles from my Lord's House, and not to return till Five, or Half an Hour after Five.

The Two Men Servants likewise, the only Servants of that Sex then residing with him, were contrived to be sent out of the Way; so that when Mr. *Johnson* repaired to *Stanton*, my Lord's House, at Three o'clock, there was no Person in the House, except his Lordship, and Three Maid Servants.

Mr. *Johnson*, when he came to the House, rapt at the Door, and was received by his Lordship, and directed to wait some Time in the Still Room; then his Lordship ordered him into the Parlour, where they both entered together, and the Door was immediately locked on the Inside.

What passed in that Interval, between the Time of Mr. *Johnson's* first going in, and the Time of his being shot, can only be now known to your Lordships by the Noble Earl's Confession, which has been very ample indeed upon the present Occasion.

After Mr. *Johnson* had been there the best Part of an Hour, one of the Maids in the Kitchen, hearing some high Words in the Parlour, went to the Door to see if she could discover what was doing; she listened, and heard my Lord, as she was at the Kitchen Door, say, Down upon your Knees; Your Time is come; You must die; and presently after heard a Pistol go off: Upon that

that, she removed from the Kitchen, and retired to another Part of the House; for she did not care to venture into his Lordship's Presence.

Though it appeared, afterwards, that Mr. *Johnson* had then received that Wound of which he died, he did not then immediately drop; he arose, and was able to walk.

Just then, my Lord *Ferrers*, as he confessed afterwards, felt a few momentary Touches of Compassion: He permitted Mr. *Johnson* to be led up Stairs to Bed, till better Assistance could be called; he suffered a Surgeon to be sent for, nay, the very Surgeon that Mr. *Johnson* himself had desired; and Mr. *Johnson's* Children, by his Lordship's Order, were acquainted with the Accident, and sent for to see him.

Mr. *Johnson's* Daughter was the first Person that came; she met the noble Lord, and the first Greeting she had from him was, that he had shot her Father; and that he had done it on Purpose, and deliberately. Mrs. *Clifford*, who had been apprized of this Accident by the Servants, came not long after; and, in an Hour and an Half, or Two Hours, Mr. *Kirkland*, the Surgeon, who was from Home when the Servant was dispatched, and at a neighbouring Village, hastened with the best Expedition he could make, to *Stanton*. When he came to *Stanton* he met my Lord in the Passage.

Here your Lordships will observe, that the Noble Lord's Conduct and Behaviour, from this Time to the Time that Mr. *Johnson* was removed to his own House, seemed all along calculated for his Escape; and that the only Anxiety he expressed was the Dread of being seized, and brought to Punishment in case Mr. *Johnson* should die.

Upon Mr. *Kirkland's* first Appearance, my Lord had told him, that he had shot Mr. *Johnson*, and that he had done it coolly; he desired he might not be seized till it was known with Certainty, whether Mr. *Johnson* would die or not; and threatened, that if any Person attempted to seize him, he would shoot them. Mr. *Kirkland* told him, he would take Care that nobody should meddle with him.

Mr. *Kirkland* was then brought up to Mr. *Johnson*, who was upon the Bed; the Surgeon examined the Wound, and found that the Ball had penetrated a little below the Ribs on the Left Side; he took an Instrument in his Hand, called a Director, in order to probe the Wound: Here my Lord interrupted him, and said, You need not be at that Trouble; pass your Instrument downwards; I, when I shot off the Pistol, directed it that Way; and Mr. *Kirkland* found this, upon Examination, to be true; the Ball had not passed through the Body, but remained lodged in the Cavities of the Abdomen.

When my Lord found that the Ball was in the Body, he grew uneasy; for he was apprehensive that the Ball, if it remained there, might prove fatal: He asked Mr. *Kirkland* if it could be extracted; Mr. *Kirkland* told him, from what he observed, it would be impracticable to extract the Ball: but, to give him better Hopes, he told him, that many Persons had lived a long while after they had been shot, though the Ball had remained within them.

Presently after this, the Surgeon went down Stairs to prepare a Fomentation, and soon after returned: When he came back into the Room, Mr. *Johnson* complained of the Strangury, and found a considerable Difficulty in making Water; this alarmed his Lordship again: He then asked Mr. *Kirkland*, What would be the Consequence, if the Bladder or Kidneys were hurt? Mr. *Kirkland* having laid down his Rule of Conduct, wherein his Prudence deserves to be commended, answered, that, though the Bladder should be wounded, or the Kidneys hurt, there had been many Cures performed upon such like Wounds.

This made his Lordship tolerably easy: He then began to be in better Spirits, which, I am sorry to say, at that Time were somewhat heightened with Liquor; for, although he was cool and fresh when he did the Fact, yet the Moment it was done, he began to drink, and continued drinking, at Times, till Twelve o'Clock at Night: This Liquor, however, only contributed to raise his Spirits, without disordering his Understanding; for he appeared to be compleat Master of himself the whole Day.

After Mr. *Kirkland* had given him so much Encouragement, they together went down to the Still Room; and now, his Lordship verily believing that Mr. *Johnson* would recover, he grew less cautious in avowing the Deliberation with which he did the Fact, and declaring all the Circumstances that attended it.

And here, because I will not wrong the Noble Lord, by adding a single Letter to my Brief, your Lordships shall hear his Confession, from thence, in his own Words.

Kirkland, says he, I believe *Johnson* is more frightened than hurt; my Intention was to have shot him dead; but, finding that he did not fall at the first Shot, I intended to have shot him again, but the Pain he complained of made me forbear; there Nature did take place, in Opposition to the Resolution I had formed. I desire you will take Care of him; for it would be cruel not to give him Ease, now I have spared his Life.

When you speak of this afterwards, do not say (though I desire he may be eased of his Pain) that I repented of what I have done: I am not sorry for it; it was not done without Consideration; I own it was premeditated; I had, some Time before, charged a Pistol for the Purpose,
being

‘ being determined to kill him, for he is a Villain, and deserves Death ; but, as he is not dead, I desire you will not suffer my being seized ; for, if he dies, I will go and surrender myself to the Houle of Lords ; I have enough to justify the Action ; They may not excuse me, but it will satisfy my own Conscience : but be sure you don’t go in the Morning without letting me see you, that I may know if he is likely to recover or not ; I will get up at any Time ; at Four o’Clock in the Morning.

‘ To this very strange and horrid Declaration Mr. *Kirkland* answered, by promising his Lordship, that he would certainly give him the first Intelligence touching Mr. *Johnson*’s Condition ; and, as it was proper, for very prudent Reasons, as well with respect to himself as Mr. *Johnson*, to dissemble with his Lordship, he proceeded further, and told him, that he would give a favourable Account of this Matter. The Noble Lord then asked him, what he would say if he was called upon ; he told him he would say, that though *Johnson* was shot, that he was in a fair Way of Recovery. His Lordship asked Mr. *Kirkland*, if he would make Oath of that ? He said, yes.

‘ Mr. *Kirkland* then went to see Mr. *Johnson* again, and found him better ; they then went to Supper, and, during the Time they were at Supper, his Lordship mentioned several other Particulars : He said he was astonished that the Bullet should remain in his Body ; for, says he, I have made a Tryal with this Pistol, and it pierced through a Board an Inch and an Half thick ; I am astonished it did not pass through his Body ; I took good Aim, and I held the Pistol in this Manner ; and then he shewed Mr. *Kirkland* the Manner of his holding his Pistol.’

He also declared the Grounds and Motives for his killing *Johnson* ; that he had been a Villain ; that he was in the Interest of his Enemies ; that he had joined with those who had injured him, and taken away his Estate, by an Act of Parliament ; that he had colluded with Mr. *Curzon* and Mr. *Burlem*, with respect to the Coal Contract.

Another Thing he mentioned with respect to the Farm ; says he, I have long wanted to drive *Johnson* out of the Farm ; if he recovers, he will go back to *Cheeshire*, where he came from. Mr. *Kirkland* said, no doubt but this Accident would drive him Home again.

After they had supped, Mrs. *Clifford* came into the Room, and she proposed, that Mr. *Johnson* should be removed to the *Lount*, which is the Name of Mr. *Johnson*’s House, and lies about a Mile from *Stanton* ; his Lordship refused to consent to that, not because he thought Mr. *Johnson* might be hurt by the Removal, but, to use his own Words, because he would have him under his own Roof, to plague the Villain.

When Supper was over, they returned back to Mr. *Johnson*, who was then under the greatest Uneasiness ; he was restless, and the Complaint of the Strangury increased : Then my Lord was alarmed again ; he enquired of the Surgeon what would be the Consequence, in case the Guts were shot through ? Mr. *Kirkland* gave him a favourable Answer that revived his Spirits ; he went out of the Room, and invited Mr. *Kirkland* to take a Bottle of Port ; they then drank together, and during that Time, the same, or the like Expressions were repeated. I will not trouble your Lordships with them again ; but he all along declared, he did not do it hastily, but coolly and deliberately ; that his Intention was to have killed him : And that the Reason why he did it at that Time was, because he would not sign a Paper of Recantation, acknowledging all the Injuries he had done his Lordship.

They then again returned to Mr. *Johnson*, after they had drank out the Bottle : Whether the Liquor was prevalent or not, I don’t know ; your Lordships will observe what followed : His Behaviour to the poor Man, though he lay there under the Surgeon’s Hands, was totally changed, and his Resentment grew outrageous ; my Lord again attacked him upon the same Charge as before, compelled him to acknowledge before all the Company (of which his Daughter was one) that he was a Villain ; nay, he was about to drag him out of Bed upon the Floor, which would hardly have been prevented, if Mr. *Johnson*, who was tutored by a Wink from Mr. *Kirkland*, had not said, I do confess I am a Villain : My Lord at last went to Bed ; but, before he departed, he said, with great Earnestness to Mr. *Kirkland*, May I rely upon you ? Are you sure there is no Danger ? May I go to Bed in Safety ? Mr. *Kirkland* said, Yes, your Lordship may. When his Lordship was gone, poor *Johnson* begged to be removed to his own House. Mr. *Kirkland* wished it as much ; for, besides that he could not have that free Access to his Patient that was necessary, if he was to remain there, he thought himself in the utmost Peril. My Lord had confessed too much, and *Kirkland* too little ; so that if Mr. *Johnson* had died there, no Man in Mr. *Kirkland*’s Situation would have wished to have been alone with his Lordship, considering the dangerous Conversation that had passed between them.

Mr. *Kirkland*, therefore, immediately went to the *Lount*, procured Six or Seven armed Men, and came back by Two o’Clock in the Morning. They removed Mr. *Johnson*, put him into a great Chair, and wrapped him up in Blankets, and so conveyed him home. Towards Morning the poor Man’s Symptoms grew worse, and Mr. *Kirkland* then went away.

Mr. *Johnson* lay languishing till Seven or Eight in the Morning, and then died.

In the mean time Mr. *Kirkland* had procured a Number of armed Men to go down to *Stanton*, and to seize his Lordship. When they came there, my Lord was just out of Bed ; he had his

Garters in his Hand, and was seen passing towards the Stable. The Horses were all saddled, and every thing got in Readiness for his Escape.

Mr. *Springthorpe* advanced towards him; and when his Lordship found he was really to be attacked, he fled back to his House, and there stood a Siege of Four or Five Hours. While he was thus beset, he appeared at the Garret Windows, and, thinking himself secure in that Place, he began to parley, and asked, what they wanted with him? They told him, Mr. *Johnson* was dead, and that they were come to secure him. He said, he knew that was false; for Mr. *Johnson* was not dead: That he wished it might be true: That he would not believe it, unless Mr. *Kirkland* would declare it: That he would pay no Regard to any body else. He did not think fit to surrender; but continued in the House, till he thought he had an Opportunity of escaping through the Garden. He was there discovered by one *Cutler*, a Collier, who was a bold Man, and determined to take him: He marched up to him; and though his Lordship was armed with a Blunderbuss, Two or Three Pistols, and a Dagger, he submitted to the Collier's taking him, without making the least Resistance: And the Moment he was in Custody, he declared he gloried in the Fact; and again declared, that he intended to kill *Johnson*. He was then carried to Mr. *Kinsley's* House, and remained there till after the Coroner sat upon the Body.

I must mention to your Lordships, that upon Mr. *Hall*, a Clergyman's being introduced to him, he told him, he knew his Duty as well as he or any other Clergyman: That the Fact he had committed was coolly and deliberately done. So that your Lordships see his Declarations were consistent and uniform, from the Beginning to the End.

I shall neither aggravate nor observe.

These are the Circumstances which attended this horrid Murder. I have opened them faithfully from my Instructions. The Case is rather stronger than I have made it.

The Witnesses are to acquaint your Lordships, whether I have opened the Case truly. If the Evidence comes out as I have represented it to your Lordships, then your Lordships Sentence must be agreeable to Law. The noble Earl at the Bar must be found guilty.

If he has any Defence, God forbid that he should not have a fair Opportunity of making it. Let him be heard with Patience. The Prosecutors will be as glad as your Lordships to find him innocent.

The Evidence is to determine; and upon that Evidence we shall leave it.

Mr. *Sollicitor General*,
The Hon. *Charles Yorke*, Esq; } MY Lords, we will now proceed to call our Witnesses.
Call *Elizabeth Burgeland*.

Who came to the Bar, and one of the Clerks held the Book to her, upon which she laid her Hand.

Clerk of the Crown. Harken to your Oath.

The Evidence that you shall give on Behalf of our Sovereign Lord the King's Majesty, against *Lawrence Earl Ferrers* the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you G O D.

Then she kissed the Book.

Mr. *Sollicitor General.* My Lords, This Witness was in the House at the Time when the Fact is charged to have been committed.

Lord High Steward. If your Lordships please, the Clerk may go down to the Bar and repeat to your Lordships what is said by Lord *Ferrers* or the Witnesses.

Lords. Ay, Ay.

Earl *Ferrers.* My Lords, There was something said by the Gentleman, Council for the Crown, that is a little false, relating to a Lease said to be given by Sir *William Meredith* to Mr. *Johnson*; I did not know of that Lease previous to this Fact; there were other Matters mentioned that are not right; I will not take up your Lordships Time to answer them now, but leave that Matter till I come to my Defence.

Mr. *Sollicitor General.* My Lords, Whatever his Lordship thinks material in his Defence, he will have many Opportunities to offer.

Mr. *Sollicitor General.* You was a Maid Servant in Lord *Ferrers's* House the 11th of *January* last?

Burgeland. Yes.

Mr. *Sollicitor General.* Did you know one Mr. *Johnson*?

Burgeland. Yes.

Mr. *Sollicitor General.* Do you know any Thing of Mr. *Johnson's* being employed by Lord *Ferrers*? did he use to attend him?

Burgeland. He sometimes attended my Lord *Ferrers*.

Mr.

Mr. Solicitor General. Did you know any Thing of his being expected to wait on Lord Ferrers at any Time in January last?

Burgeland. Yes.

Mr. Solicitor General. What do you know of it?

Burgeland. I know he came to the House.

Mr. Solicitor General. Do you know what Day in January?

Burgeland. I don't know what Day.

Mr. Solicitor General. About what Time of the Day was it?

Burgeland. About Three o'Clock in the Afternoon.

Mr. Solicitor General. On what Day of the Week was it?

Burgeland. On Friday.

Mr. Solicitor General. When Mr. Johnson came, who let him in?

Burgeland. I let him in.

Mr. Solicitor General. What did he say?

Burgeland. He asked whether his Lordship was within; I told him he was in his Room.

Mr. Solicitor General. What happened after that? Did my Lord expect him?

Burgeland. I believe he did.

Mr. Solicitor General. When he was let in, did you go with him?

Burgeland. No; he walked up to the Room Door, and knocked at it himself.

Mr. Solicitor General. At the Door of the Room where Lord Ferrers was sitting?

Burgeland. Yes.

Mr. Solicitor General. Did he go in then?

Burgeland. No; he did not go in then.

Mr. Solicitor General. Did Lord Ferrers speak to him?

Burgeland. Yes; and told him to walk into the other Room.

Mr. Solicitor General. Do you know any Thing of what passed between them?

Burgeland. I cannot say any Thing about it.

Mr. Solicitor General. You said Lord Ferrers expected Mr. Johnson, how do you know he expected him?

Burgeland. Mrs. Clifford told me in the Morning, that Mr. Johnson was to come to his Lordship that Day.

Mr. Solicitor General. Did you hear, or do you know, any Thing of what passed between Lord Ferrers and Mr. Johnson, when Mr. Johnson went into my Lord's Room?

Burgeland. No.

Mr. Solicitor General. Was the Door locked or open, after he went into the Room?

Burgeland. Locked.

Mr. Solicitor General. How came you to observe that?

Burgeland. I heard it locked.

Mr. Solicitor General. Where did you go after Mr. Johnson was in the Room with Lord Ferrers?

Burgeland. Into the Kitchen.

Mr. Solicitor General. Who was with you there?

Burgeland. The other Maid Servant.

Mr. Solicitor General. What was her Name?

Burgeland. Elizabeth Saxon—There was another Maid Servant in the Kitchen when he went in.

Mr. Solicitor General. Who was she?

Burgeland. Elizabeth Doleman.

Mr. Solicitor General. After that, did you hear any Thing?

Burgeland. I did not hear any Thing myself.

Mr. Solicitor General. Did you afterwards hear any Thing of what happened?—Do you know whether Mr. Johnson came out of the Room?

Burgeland. I cannot tell any Thing of it.

Mr. Solicitor General. Did you go into the Room?

Burgeland. I did not go into the Room; I was not out of the Kitchen.

Mr. Solicitor General. Did you hear any Noise?

Burgeland. No; I heard no Noise at all.

Mr. Solicitor General. Did you hear any Pistol go off, or any Noise?

Burgeland. I heard a Pistol go off.

Mr. Solicitor General. What did you do then?

Burgeland. When I heard the Pistol go, I run into the Yard, and the other Maid Servant with me.

Mr. Solicitor General. What happened afterwards?

Burgeland. We staid in the Yard a while, a few Minutes, and came back to the Wash-house.

Mr.

Mr. Solicitor General. Was the Room Door open after you heard that Noise ?

Burgeland. I did not stay till it was open.

Mr. Solicitor General. Did you stay till Lord *Ferrers* came ?

Burgeland. My Lord came when we were in the Wash-house, and called.

Mr. Solicitor General. What did he say ?

Burgeland. He hooped and hollood, Where are you all ?

Mr. Solicitor General. What did he say then ?

Burgeland. I went out, and said, We are here, my Lord ; he asked me, Where we had been. I said, in the Bleaching Yard.

Mr. Solicitor General. Did he give you any Order ?

Burgeland. He ordered that we should walk down to the House.

Mr. Solicitor General. Did he give any other Order ?

Burgeland. He sent up a Maid Servant into the Yard to fetch the Man in.

Mr. Solicitor General. Did he say any Thing of Mr. *Johnson* ?

Burgeland. Not till I got into the Room.

Mr. Solicitor General. What did he say then ?

Burgeland. He went up to Mr. *Johnson* and asked, how he did ?

Mr. Solicitor General. What did Mr. *Johnson* say ?

Burgeland. That he was a dying Man, and desired he would send for his Children.

Mr. Solicitor General. Did any Thing else pass ?

Burgeland. That is all I know.

Mr. Solicitor General. Who else was in the House besides the Servants you have named and yourself ?

Burgeland. There was nobody in the House but us Three when Mr. *Johnson* came ; and but Two in the Kitchen when it was done.

Mr. Solicitor General. What other Servants did my Lord use to keep ?

Burgeland. One Man Servant ; an old Man ; I don't know whether he was a Servant.

Mr. Solicitor General. Did any other Person live with him ?

Burgeland. Mrs. *Clifford*, and the four young Ladies.

Mr. Solicitor General. Were they all out at the Time when this happened ?

Burgeland. Yes ; they were all out but the Two Maids.

Mr. Solicitor General. Were they out by Accident, or by Order ?

Burgeland. I do not know any Thing of any Order.

Mr. Solicitor General. Did you give Mr. *Johnson* any Assistance to carry him up to his Room ?

Burgeland. Yes ; I took him up to Bed by the Arm, by his Lordship's Order

Earl Ferrers. Was not the Door locked before Mr. *Johnson* came ?

Burgeland. Yes.

Earl Ferrers. Has it been locked before ?

Burgeland. It has several times, when my Lord has been upon Business.

Earl Ferrers. Was not Mr. *Johnson* at my House on the *Monday* ?

Burgeland. Yes, he was there on the *Monday*.

Earl Ferrers. Did you hear any Dispute or Words between Mr. *Johnson* and me on the *Monday* ?

Burgeland. No, I did not hear any at all.

Earl Ferrers. Had not I packed up my Trunks, intending to go to *London* the Week following ?

Burgeland. Yes.

Earl Ferrers. On the *Monday* while he was there, and sent to the Carriages ?

Burgeland. Yes.

Mr. Gould. Our next Witness is *Elizabeth Saxon* (who was sworn in like manner).

Mr. Gould. Did you live with Lord *Ferrers* in *January* last ?

Saxon. Yes.

Mr. Gould. Did you know *John Johnson* ?

Saxon. Yes.

Mr. Gould. Do you remember Mr. *Johnson*'s coming to Lord *Ferrers* in *January* ?

Saxon. Yes.

Mr. Gould. Upon what Day ?

Saxon. The Eighteenth.

Mr. Gould. What Day of the Week was it ?

Saxon. On *Friday*.

Mr. Gould. Who was in the House when he came ?

Saxon. Nobody, only Three Maids and my Lord.

Mr. Gould. What Time of the Day did he come?

Saxon. About Three o'Clock.

Mr. Gould. What was become of the rest of my Lord's Family?

Saxon. I don't know: Mrs. *Clifford* and the Misses were gone out.

Mr. Gould. How long were they gone out before Mr. *Johnson* came?

Saxon. About Half an Hour.

Mr. Gould. Do you know the Reason of their going away?

Saxon. No; my Lord came into the Still-house, and said, they might go and fetch a Walk.

Mr. Gould. How long was it before they did go upon the Walk?

Saxon. They went directly.

Mr. Gould. What Time of Day did my Lord give this Leave?

Saxon. It was about Three o'Clock.

Mr. Gould. Was any thing mentioned where they were to go?

Saxon. Mrs. *Clifford* asked him, whether they might go to her Father's? And my Lord said, Yes.

Mr. Gould. Was any thing mentioned how long they might stay?

Saxon. He said, they might stay till Five, or Half an Hour after.

Mr. Gould. What Men Servants belonged to the House?

Saxon. There is but One Boy and an old Man.

Mr. Gould. Where were they?

Saxon. I cannot tell.

Mr. Gould. Were they in the House?

Saxon. No.

Mr. Gould. When Mr. *Johnson* came in, in what Room was my Lord *Ferrers*?

Saxon. In his own Room.

Mr. Gould. Where did Mr. *Johnson* go when he came into the House?

Saxon. He went up to my Lord's Room.

Mr. Gould. Did my Lord appear?

Saxon. My Lord came to the Door.

Mr. Gould. Did you hear any thing said by my Lord to Mr. *Johnson*?

Saxon. No.

Mr. Gould. Where did Mr. *Johnson* go when my Lord came out?

Saxon. My Lord came out, and ordered him to go into the Still-house.

Mr. Gould. What became of my Lord then?

Saxon. He went into his Room.

Mr. Gould. How long did he stay there before he came out again?

Saxon. I don't know: May be a few Minutes; Not long; Ten Minutes, or such a Matter.

Mr. Gould. When he came out, did he speak to Mr. *Johnson*?

Saxon. I don't know that he did: I did not hear him.

Mr. Gould. Did you see Mr. *Johnson* when my Lord came out a second Time?

Saxon. No.

Mr. Gould. What became of Mr. *Johnson*? Did he go into any Room with my Lord *Ferrers*?

Saxon. I know he went into my Lord's Room.

Mr. Gould. Was the Door locked or not?

Saxon. He locked to the Door after Mr. *Johnson* was in.

Mr. Gould. Did you hear the Door locked?

Saxon. Yes; I heard it locked.

Mr. Gould. What did you hear pass in that Room?

Saxon. Nothing at all; I did not hear any Thing.

Mr. Gould. Did you hear any Expression, any Words used by my Lord to Mr. *Johnson*?

Saxon. No.

Mr. Gould. Did you hear any Noise?

Saxon. Yes; I heard them very loud; I heard my Lord say, Down on your other Knee, and declare what you have acted against Lord *Ferrers*; and then the Pistol went off; and I and the other Maid were frightned, and run away.

Mr. Gould. Did you hear my Lord, or Mr. *Johnson*, say any Thing more in the Room, than what you have mentioned?

Saxon. No.

Earl Ferrers. Was it not customary for Mrs. *Clifford* to speak to me before she went out?

Saxon. She said, My Lord, where must we go to?

Earl Ferrers. Was it customary to speak to me?

Saxon. Yes.

Earl Ferrers. How came you to be at my Door at that Time?

Saxon. I was not at my Lord's Door.

Lord Mansfield. Who was the other Maid that was with you when you over-heard what passed in my Lord's Room?

Saxon. The other Witnefs that was here?

Lord Mansfield. Had that other Servant the same Opportunity to hear as you had? Was she as near the Door, listening in the same Way you was?

Saxon. No, she was not.

Earl Ferrers. Do you know what Time Mrs. *Clifford* was to return?

Saxon. About Five o'Clock, or Half an Hour after Five.

Earl Ferrers. Did not Mrs. *Clifford* very often go out about that Time after Dinner, about Three or Four o'Clock?

Saxon. Yes.

Earl of Morton. You said in the First Part of your Evidence, that you heard my Lord say to Mr. *Johnson*, Down on your other Knee. My Lord *Ferrers* asked you, how you came to be near the Door. You said, that you was not. Where did you hear it?

Saxon. I was at the Kitchen Door: I was no nearer than the Kitchen.

Earl of Morton. You say, that Lord *Ferrers* locked his Door?

Saxon. Yes.

Earl of Morton. Was it customary for him to lock it when People were with him, or when he was alone?

Saxon. I don't know.

Earl of Morton. Did you ever know Lord *Ferrers* lock his Door when Mr. *Johnson* was with him?

Saxon. No.

Earl Ferrers. Did you never know that I locked the Door when I had Company with me?

Saxon. No; I don't know that his Lordship did it ever since I came.

Earl of Hardwicke. You have said, that Lord *Ferrers* told Mr. *Johnson* to kneel on the other Knee; and that you heard it, though you was no nearer than the Kitchen Door: What Distance was there between the Kitchen Door and the Door of the Room where Lord *Ferrers* was?

Saxon. Not a great Way.

Earl of Hardwicke. What Distance was it?

Saxon. It might be Ten or a Dozen Yards, may be.

Earl Ferrers. Was there not a thick Wall between that Room and the Kitchen, and a Chimney.

Saxon. Yes.

Elizabeth Dolman sworn in like manner.

Mr. Norton. Was you Servant to Lord *Ferrers* in *January* last?

Dolman. Yes.

Mr. Norton. Did you know Mr. *Johnson* the Deceased?

Dolman. Yes.

Mr. Norton. Do you remember his coming there in *January* last?

Dolman. Yes.

Mr. Norton. What Day of the Month was it?

Dolman. The Eighteenth.

Mr. Norton. What Time of the Day?

Dolman. About Three o'Clock.

Mr. Norton. Who was in the House of Lord *Ferrers* at that Time?

Dolman. Three Maids.

Mr. Norton. Nobody else?

Dolman. No.

Mr. Norton. Was not his Lordship there?

Dolman. Yes.

Mr. Norton. Do you know where the rest of the Family was at that Time?

Dolman. I know nothing of that: I believe Mrs. *Clifford* and the Children were gone out.

Mr. Norton. Do you know whether Mr. *Johnson* was expected at Lord *Ferrers*'s that Day?

Dolman. I don't know.

Mr. Norton. Was you in the House when Mr. *Johnson* came in?

Dolman. I was in the Kitchen.

Mr.

- Mr. Norton.* Who let him in?
- Dolman.* *Elizabeth Burgeland.*
- Mr. Norton.* Who did he ask for?
- Dolman.* Lord *Ferrers.*
- Mr. Norton.* Did you or *Elizabeth Burgeland* shew him to Lord *Ferrers*?
- Dolman.* *Elizabeth Burgeland.*
- Mr. Norton.* You was there?
- Dolman.* I was in the Kitchen.
- Mr. Norton.* Did you hear any thing that passed between Lord *Ferrers* and Mr. *Johnson*?
- Dolman.* No.
- Mr. Norton.* Did you hear a Pistol go off?
- Dolman.* Yes.
- Mr. Norton.* At that Time where were Lord *Ferrers* and Mr. *Johnson*?
- Dolman.* In my Lord's Room.
- Mr. Norton.* How long had Mr. *Johnson* been in my Lord's Room before you heard the Report of the Pistol?
- Dolman.* May be about Half an Hour.
- Mr. Norton.* Was you there when Mr. *Johnson* went into the Room?
- Dolman.* I was in the Kitchen.
- Mr. Norton.* Did you hear the Door locked?
- Dolman.* Yes.
- Mr. Norton.* How did you hear it? Was there a Spring, or was the Key turned?
- Dolman.* It was turned with the Key.
- Mr. Norton.* Did you hear the Key turned, and the Door locked?
- Dolman.* Yes.
- Mr. Norton.* How soon did you see Mr. *Johnson* after the Pistol went off?
- Dolman.* I did not see Mr. *Johnson* till after he was laid upon the Bed.
- Mr. Norton.* Did you see Lord *Ferrers* after Mr. *Johnson* was laid upon the Bed?
- Dolman.* Yes.
- Mr. Norton.* Did you hear any Conversation between my Lord and Mr. *Johnson* at the Time Mr. *Johnson* was upon the Bed?
- Dolman.* Lord *Ferrers* ordered me to go up and see what Mr. *Johnson* would have done.
- Mr. Norton.* Then his Lordship was not in the Room at that Time?
- Dolman.* Not then; he came in after.
- Mr. Norton.* What passed then? What did you hear between them?
- Dolman.* I went up Stairs, and asked Mr. *Johnson* how he did. He said, he was very poorly.
- Mr. Norton.* Was Lord *Ferrers* there then?
- Dolman.* No.
- Mr. Norton.* How soon did he come in?
- Dolman.* He did not come in till after I had fetched a Bed out of the Garret, and laid it on the Bedstead.
- Mr. Norton.* Did you hear his Lordship say any thing to Mr. *Johnson*?
- Dolman.* Yes; his Lordship told him, that he would shoot him through the Head.
- Mr. Norton.* Did Mr. *Johnson* make any Reply to that?
- Dolman.* He said, No Matter how soon, my Lord.
- Mr. Norton.* What Time of the Night was this?
- Dolman.* It might be between Four and Five o'Clock.
- Earl Ferrers.* Did not I send you for the Bed, and order it to be well aired?
- Dolman.* Yes.
- Lord Ravensworth.* How long did you live with my Lord *Ferrers* before this supposed Accident?
- Dolman.* It might be Two Months.
- Lord Ravensworth.* Did Mr. *Johnson* ever, during the Time you lived with my Lord *Ferrers*, before the 18th of *January*, to your Knowledge, come to Lord *Ferrers*?
- Dolman.* Yes; I have seen him there.
- Lord Ravensworth.* I should be glad to know, whether from your own Knowledge, or from any Conversation with others, you had any Reason to suspect or believe that Lord *Ferrers* bore Mr. *Johnson* any Ill-will; or did his Lordship ever make any Complaint, to your Knowledge, in regard to Mr. *Johnson*?
- Dolman.* No; I never had.
- Lord Ravensworth.* At what Time did Mr. *Johnson* come to Lord *Ferrers*?
- Dolman.* About Three o'Clock.

Lord Ravensworth. When Lord *Ferrers* and Mr. *Johnson* went into the Room, did Lord *Ferrers* appear to be in Liquor?

Dolman. No, not at all.

Lord Ravensworth. When you was in the Room, and Mr. *Johnson* said he was but poorly, did you imagine he was shot?

Dolman. No.

Lord Ravensworth. Did Lord *Ferrers* take Mr. *Johnson* by the Wig, before he said he would shoot him through the Head?

Dolman. Yes.

Lord Ravensworth. Did you hear the Pistol go off, and where?

Dolman. I was in the Yard; and I heard the Pistol go off.

Lord Mansfield. Did you hear any Part of the Conversation between Lord *Ferrers* and the Deceased before the Pistol went off?

Dolman. I did not.

Lord Mansfield. Was you near enough to have heard it, if any such Conversation had passed?

Dolman. I was not.

Lord Mansfield. Had *Elizabeth Saxon*, from the Place where she was, a better Opportunity of hearing what passed?

Dolman. I cannot say.

Lord Mansfield. Where was you at that Time?

Dolman. I was in the Yard.

Lord Mansfield. Where was *Elizabeth Saxon*?

Dolman. She was in the Kitchen, I believe.

Lord Mansfield. What was the Distance between the Kitchen Door and the Room where Lord *Ferrers* and the Deceased were?

Dolman. I cannot justly tell.

Lord Mansfield. Might a Person that was at the Kitchen Door hear any Conversation or Words which passed between Two People in that Room?

Dolman. Yes.

Lord Mansfield. Was it as far off as to that Bench?

Dolman. Yes.

Earl Ferrers. Did you ever hear any Conversation that passed in my Room, at any Time when I had Company and you was in the Kitchen?

Dolman. I have heard Talking.

Earl Ferrers. Could you distinguish what was said?

Dolman. I never took Notice.

A Lord. Was you at the Kitchen Door when my Lord *Ferrers* and Mr. *Johnson* were in his Room?

Dolman. I was in the Kitchen.

A Lord. Did you hear Lord *Ferrers* tell Mr. *Johnson* to kneel on the other Knee?

Dolman. No; I heard no such Thing.

A Lord. Was you with the other Witness at the Time she says she heard these Words?

Dolman. I was not.

Lord Mansfield. I desire to know of this Witness, whether at the Time that the Pistol went off, she was not in the Yard; and the Maid, that heard the Conversation, at the Kitchen Door?

Dolman. I was in the Yard then.

Lord Mansfield. Where was you when you heard the Key lock the Door?

Dolman. I was in the Kitchen.

Lord Ravensworth. You say you was in the Room when Lord *Ferrers* went up to Mr. *Johnson*, and he pulled Mr. *Johnson* by the Wig, and said, he would shoot him; how long was that from the Time that you heard the Pistol go off?

Dolman. I cannot justly say.

Lord Ravensworth. What Space of Time was there, from the Time that you saw Mr. *Johnson* in the Room, to the Time that Lord *Ferrers* came and pulled him by the Wig, and said, he would shoot him through the Head?

Dolman. I cannot say, he had lain upon the Bed some Time.

Sarah Johnson sworn.

Mr. Perrott. You are the Daughter of *John Johnson*, to whom this Accident happened?

Johnson. Yes.

Mr. Perrott. Was your Father concerned in Lord *Ferrers*'s Estate?

Johnson. Not that I know of.

Mr. Perrott. Was he his Steward?

Johnson.

Johnson. He did live with him, but not within these Two Years.

Mr. Perrott. Did he receive any Rents?

Johnson. For nobody but Lord *Ferrers*.

Mr. Perrott. Did he rent any Farm that was Part of the Estate of Lord *Ferrers*?

Johnson. Not that I know of.

Mr. Perrott. Do you remember his going to Lord *Ferrers*, at any Time in *January* last?

Johnson. On the 18th of *January*.

Mr. Perrott. Do you know whether Lord *Ferrers* had been with your Father any short Time before that 18th of *January*?

Johnson. Lord *Ferrers* was at our House on the *Sunday* before.

Mr. Perrott. Did you hear any Conversation that passed between Lord *Ferrers* and your Father, on that *Sunday*?

Johnson. I did not; I came home before he was gone.

Mr. Perrott. Did you hear Lord *Ferrers* say any Thing to Mr. *Johnson*?

Johnson. No; I was not in the Room.

Mr. Perrott. Did not you know before the 18th of *January*, that your Father was to go on that Day to Lord *Ferrers*'s?

Johnson. I heard my Father say, that he was to go to Lord *Ferrers*'s on the *Friday*.

Mr. Perrott. Do you know upon what Occasion he was to go?

Johnson. No.

Mr. Perrott. Upon whose Appointment?

Johnson. No.

Mr. Perrott. Was you sent for to Lord *Ferrers*'s on the 18th of *January*?

Johnson. Yes.

Mr. Perrott. At what Time?

Johnson. I think it was between Four and Five o'Clock.

Mr. Perrott. Who sent for you?

Johnson. I believe it was Lord *Ferrers*.

Mr. Perrott. Who was it that came for you?

Johnson. A Man that was at Work there.

Mr. Perrott. What Message was brought to you?

Johnson. That I must come down to the Hall to Lord *Ferrers*.

Mr. Perrott. Then was any Thing said about your Father?

Johnson. I asked, what he wanted me for? and he said, my Father was taken very ill.

Mr. Perrott. When you got there, did you see my Lord *Ferrers*?

Johnson. Yes.

Mr. Perrott. What did he say to you?

Johnson. I cannot say: I asked him how my Father was; he ordered one of the Maids to go up Stairs, and shew me where my Father was.

Mr. Perrott. Was Lord *Ferrers* in the Room when you was with your Father?

Johnson. He followed me up directly.

Mr. Perrott. In what Condition did you find your Father?

Johnson. He was in Bed; but he did not say any Thing to me.

Mr. Perrott. Did Lord *Ferrers* say any Thing?

Johnson. When Lord *Ferrers* came up, he said, he thought he had not shot him.

Mr. Perrott. Was any Thing done upon that?

Johnson. Some Time after that, Lord *Ferrers* came up again; and I, or he, turned the Cloaths down; and he said, he saw he had shot him; and threwed something out of a Bottle; I don't know what it was; he poured something upon it, out of a Bottle.

Mr. Perrott. Who poured that out of the Bottle?

Johnson. Lord *Ferrers*.

Mr. Perrott. Did he tell you how the Accident happened?

Johnson. He did not then say any Thing about that.

Mr. Perrott. Did he at any Time?

Johnson. He said, he did not know what he had done; he had shot him; he said, it was what he designed.

Mr. Perrott. Was that the same Day or afterwards?

Johnson. The same Day.

Mr. Perrott. Did Lord *Ferrers* say any Thing about your Father's Family?

Johnson. He said he would take Care of his Family, if my Father died.

Mr. Perrott. Was that all; was there no If?

Johnson. He said he was in hopes, I would not let any body come to take him; that he would take Care of the Family; that he would not go out of the House till my Father was buried, if he should die.

Mr. Perrott. Do you know of any Thing more that passed between Lord *Ferrers* and you, about your Father?

Johnson. My Lord, when Mr. *Kirkland* was searching the Wound, shewed him which Way he held the Pistol when he let it off.

Mr. Perrott. Did Lord *Ferrers* say at that Time it was an Accident?

Johnson. No; he said he designed it.

Mr. Perrott. Did he give any Reason for it?

Johnson. I did not hear him give any Reason for it.

Mr. Perrott. Do you know whether your Father was ever served with any Notice to quit a Farm?

Johnson. Yes.

Mr. Perrott. What Farm was that?

Johnson. The Farm he lived in.

Mr. Perrott. Whose Estate was it?

Johnson. Lord *Ferrers's*.

Mr. Perrott. Who gave him that Notice?

Johnson. Either Lord *Ferrers* or Mr. *Clifford*; Mr. *Clifford* gave it me; they were both together.

Paper produced.

Mr. Perrott. Is that the Paper?

Johnson. Yes.

Paper read.

“ I Do hereby give you Notice to quit your Farm at *Lady-Day* next ensuing, or Six Months after the Date hereof, *November* the 7th, 1758, agreeable to your Lease granted to me,

“ *Richard Clifford.*”

Mr. Perrott. Was Lord *Ferrers* by when that was given to you?

Johnson. Yes.

Mr. Perrott. Did you hear any Thing said about that Farm?

Johnson. No.

Mr. Perrott. Shewing her the Body of the Paper, Whose Hand-writing is that?

Johnson. This is Lord *Ferrers's*, I believe.

Mr. Perrott. Did you ever see Lord *Ferrers* write?

Johnson. No.

Mr. Perrott. When you was up in the Room with Mr. *Johnson*, do you remember any body attempting to pull the Cloaths off?

Johnson. Lord *Ferrers* attempted to pull them off.

Mr. Perrott. What Time was that?

Johnson. I cannot say; about Ten or Eleven o'Clock.

Mr. Perrott. Do you know of any Occasion that was given for my Lord's attempting to pull the Cloaths off your Father?

Johnson. I cannot say what was the Reason of it,

Mr. Perrott. What had passed before that?

Johnson. I cannot tell: Lord *Ferrers* seemed to be very angry before; but I cannot tell what about.

Mr. Perrott. Did my Lord *Ferrers* pull off the Cloaths?

Johnson. He did not pull them off.

Mr. Perrott. How did that happen?

Johnson. I caught hold of them.

Mr. Perrott. Do you remember any thing That Lord *Ferrers* said at the Time that he attempted to pull off the Cloaths?

Johnson. He said, he knew him to be a Villain, and that he had acted Things against him, that were not right.

Mr. Perrott. Did your Father say any Thing to you about Lord *Ferrers's* having shot him?

Johnson. I don't remember he did.

Mr. Perrott. Did not your Father tell you, that Lord *Ferrers* had shot him? And that he believed he should die?

Johnson. I heard him say he believed he should die; but I did not hear him say, that Lord *Ferrers* had shot him. I do not remember it. My Lord said, he knew the Pistol to be a good one, he had shot through a Board with it.

Mr.

Mr. Perrott. Was any body by when Lord *Ferrers* said that he had shot him, and that it was what he designed?

Johnson. Mr. *Kirkland* was by.

Earl Ferrers. Do you think that I was sober when I came into the Room where your Father was?

Johnson. At the time I came in, I think his Lordship was.

Mr. Perrott. At the Time of this Confession?

Johnson. I cannot tell: I think he was not quite sober when he said that.

Lord Talbot. I believe the Confusion of this unhappy Witness has occasioned an apparent, though not an intentional, Variation in her Evidence; therefore I desire she may be asked again about the Farm.

Mr. Perrott. Did you know of your Father's renting a Farm of Lord *Ferrers*?

Johnson. He rented no Farm but what he had of Lord *Ferrers*.

Mr. Perrott. And did he rent one of him?

Johnson. Yes.

Mr. Perrott. You was asked at first about the Lease; he might have the Farm, and not the Lease.

Johnson. He had a Lease; but I believe he had it but the last Year.

Lord Ravensworth. I agree with the Noble Lord, that there is a particular Tenderness in the Situation of this Witness; but imagine your Lordships are desirous of knowing as many Particulars as may be relating to this unhappy Affair; therefore I desire this Witness may be asked, whether she, at any Time near the Time of the Decease of her Father, did hear her Father express any Degree of Uneasiness, or Apprehension, from his being to wait upon Lord *Ferrers*?

Johnson. No, I never heard him say, that he was afraid of going to Lord *Ferrers*'s.

Mr. Attorney General. My Lords, we will now call Mr. *Curzon* to prove the Body of the Notice that has been read, to be all of Lord *Ferrers*'s Hand-writing.

Earl Ferrers. I do not deny it. I hope the Witnesses may be detained by your Lordships, in case I should think proper to call them again.

Mr. Attorney General. My Lord, we will take Care that they shall be forth-coming.

Thomas Kirkland sworn.

Mr. Attorney General. What is your Profession, or Occupation?

Kirkland. A Surgeon.

Mr. Attorney General. Where do you chiefly practise?

Kirkland. At *Ashby De la Zouch*.

Mr. Attorney General. How far is that from Lord *Ferrers*'s House at *Stanton*?

Kirkland. Two computed Miles.

Mr. Attorney General. Do you know the Noble Earl at the Bar?

Kirkland. Yes.

Mr. Attorney General. How long have you known him?

Kirkland. I have known him many Years. I have been employed for his Lordship about Nine Years.

Mr. Attorney General. Did you know Mr. *Johnson* the deceased.

Kirkland. Yes.

Mr. Attorney General. How long did you know him?

Kirkland. I have known him a great many Years. I have been intimately acquainted with him Ten or Eleven.

Mr. Attorney General. Had he any Employ under my Lord *Ferrers*, or any Part of his Family?

Kirkland. I believe so.

Mr. Attorney General. What was his Employ?

Kirkland. Steward.

Mr. Attorney General. Did you, in the Month of *January* last, see Mr. *Johnson* or my Lord *Ferrers*?

Kirkland. I saw them together.

Mr. Attorney General. At what time in that Month in particular?

Kirkland. The Eighteenth of *January*.

Mr. Attorney General. What Day of the Week?

Kirkland. On *Friday*.

Mr. Attorney General. Upon what Occasion did you see the one or the other?

Kirkland. I saw Mr. *Johnson* to take Care of a Wound he had received in his Left Side.

Mr. Attorney General. Who sent for you?

Kirkland. They told me that Lord *Ferrers* had sent for me.

Mr.

Mr. Attorney General. Who was sent for you? What was his Name?

Kirkland. I have since found that his Name is *Henry Wales*.

Mr. Attorney General. At what time did you receive that Message?

Kirkland. About Five o'Clock in the Afternoon.

Mr. Attorney General. Where was you at that time?

Kirkland. At *Caleorton*.

Mr. Attorney General. How far is that from *Stanton*?

Kirkland. A Mile and a Half, or a Mile.

Mr. Attorney General. Did you go directly to *Stanton*?

Kirkland. I went first to the *Lount*.

Mr. Attorney General. What Place was that?

Kirkland. The Place where *Mr. Johnson* lived.

Mr. Attorney General. How far is that from *Stanton*?

Kirkland. I think Half a Mile, or it may be a little more.

Mr. Attorney General. Did you hear any thing there?

Kirkland. I first heard at the *Lount*, that *Mr. Johnson* was shot; the Boy that came for me, told me that he was sent to me from my Lord.

Mr. Attorney General. Did you, when you came to the *Lount*, and had had this Intelligence, proceed to *Stanton*?

Kirkland. Yes.

Mr. Attorney General. When you came there, who did you see?

Kirkland. I met one of the Servant Girls in the Clofe next to the Yard.

Mr. Attorney General. What was the Girl's Name?

Kirkland. I cannot tell; it was dark.

Mr. Attorney General. Did any Thing pass there?

Kirkland. She said my Lord had been charging Guns and Pistols.

Mr. Attorney General. What happened next?

Kirkland. I heard my Lord calling out in the Yard, who is there? I immediately spoke to his Lordship; he ordered me to come along. I went to him; he told me, he had shot *Johnson*, and desired I would go and take Care of him: As we went along, his Lordship desired I would not suffer him to be seized, because *Johnson* was not dead; and if any body offered to seize him, he would shoot them.

Mr. Attorney General. What Answer did you make to that?

Kirkland. I told his Lordship, that nobody should meddle with him. I then went up Stairs; and upon seeing *Mr. Johnson*, and that he had lost no Blood, I bled him.

Mr. Attorney General. Did *Mr. Johnson* make any Complaint?

Kirkland. He complained of a violent Pain in his Bowels.

Mr. Attorney General. Did he at that time say that he had received any Wound, and where was it?

Kirkland. I looked, and found the Wound below the lowest Rib, on his Left Side.

Mr. Attorney General. How large was that Wound?

Kirkland. I put my little Finger into it. I then took a Director to search the Wound. My Lord told me, *Mr. Kirkland*, you must pass your Instrument slanting downwards, I held the Pistol in this manner when I shot him. After that my Lord asked me, whether I could find the Ball? I said no, it was lodged in the Abdomen; and after this he again asked me, if I could not extract it? I told his Lordship I believed it would be better to remain where it was (indeed I looked upon it impracticable to extract it). My Lord asked me then, what would be the Consequence of the Ball's lying in the Abdomen? I told him that Balls often lay there many Years, without giving any Disturbance: With this my Lord seemed satisfied, and said he knew they would.

Mr. Attorney General. Was there any Surprise expressed by any body at the Ball's being lodged, or any thing said?

Kirkland. I cannot say there was.

Mr. Attorney General. Was any thing said concerning the Goodness of the Pistol?

Kirkland. My Lord asked me, if the Ball had not gone through? I told him no. He said he wondered it had not; for this Pistol had carried a Ball thro' a Board, and broke the Bricks, or Wall, I don't know which.

Mr. Attorney General. Was *Mr. Johnson* by, and did he hear what passed?

Kirkland. Yes he did.

Mr. Attorney General. Did this provoke him to utter any thing?

Kirkland. He did. My Lord went out of the Room at that time, and *Mr. Johnson* said, What a Villain this is!

Mr. Attorney General. Did you order any thing to be prepared for the Dressing of the Wound?

Kirkland.

Kirkland. I dressed the Wound ; it had already been dressed. There was a Dressing upon it. I ordered a Fomentation, and what other Things I thought proper. I then went down Stairs. My Lord told me, he thought *Johnson* was more frightened than hurt.

Mr. Attorney General. Did you both go down Stairs ?

Kirkland. No, we did not.

Mr. Attorney General. You said it had been dressed before, What was that Dressing ?

Kirkland. I believe, tho' I am not certain, it was *Arquebusade*.

Mr. Attorney General. Was there any Plaster found upon it ?

Kirkland. To the best of my Remembrance there was not.

Mr. Attorney General. Was there a Rag upon it ?

Kirkland. I believe there was ; a Rag that had been dipt in *Arquebusade*. After my Lord's telling me that *Johnson* was more frightened than hurt, he said, he intended to have shot him dead, and that, seeing he did not fall at first, he intended to shoot him again ; but the Pain he complained of made him forbear. Says he, There Nature did take Place, in Opposition to the Resolution I had formed. And, says he, it is cruel not to give him Ease, now I have spared his Life ; therefore I desire you would do all you can for him. One Thing I omitted to mention, while I was up Stairs. My Lord desired I would take all the Care imaginable of Mr. *Johnson* ; that he would send one of his Servants for any Thing I wanted.—I forgot to relate to your Lordships, that my Lord was in Liquor when I saw him. He desired, when I spoke of this Affair, that I would not say, tho' he desired me to ease him of his Pain, that he repented of what he had done. He was not sorry for it ; for he owned it was premeditated ; that he intended to shoot him, for he said he was a Villain and deserved Death. But, says he, as he is not dead, I desire you will not suffer my being seized ; for, if he dies, I will go and surrender myself to the House of Lords ; I have enough to justify the Action : Perhaps they may not excuse me, but it will satisfy my own Conscience.

Mr. Attorney General. Did he say any Thing about his going away, or not going away, the next Morning ?

Kirkland. He told me thus : *Kirkland*, be sure you don't go away in the Morning before I have seen you. I will get up at Four o'Clock, or at any time that you call. I told his Lordship I would let him know before I went.

Mr. Attorney General. What particular Complaint did Mr. *Johnson* labour under when you went ?

Kirkland. A Pain in his Bowels.

Mr. Attorney General. What other Complaints had he ?

Kirkland. A Strangury. A Difficulty of making Water.

Mr. Attorney General. What did my Lord *Ferrers* say upon that ?

Kirkland. He asked me : “ *Kirkland*, don't you think that the Bladder or Kidneys are “ wounded ? ” And what would be the Consequence ? I set it in such a Light as to make him believe that they might, and no bad Consequence ensue.

Mr. Attorney General. Was that, or was it not, your Rule, upon which you represented Things in this Light ?

Kirkland. I, immediately from the Time of my seeing Mr. *Johnson*, thought he would be dead ; but I thought it prudent to deceive my Lord for our Safety.

Mr. Attorney General. Was my Lord satisfied with this flattering Account that you gave ?

Kirkland. Yes, he seemed satisfied.

Mr. Attorney General. Were any Orders given to get Things in Readiness ; any Orders for the Horses ?

Kirkland. I don't know any Thing but what the Servants told me.

Mr. Attorney General. Did any Discourse pass between you relating to their Seizure of my Lord's Person ?

Kirkland. My Lord did desire that I would take Care he was not seized, and I promised him I would.

Mr. Attorney General. Did you tell him how you meant to represent it ?

Kirkland. My Lord asked me, what I should say upon the Occasion, if I was called upon ? I told his Lordship that I should say, that, tho' Mr. *Johnson* was shot, yet there was a great Probability of his recovering ; and that I thought there was no Necessity of seizing his Lordship. His Lordship then asked me, If I would make Oath of that before a Justice of the Peace if I was called upon ? I said, Yes.

Mr. Attorney General. Where was this ? and about what Part of the Night did the last Conversation pass ?

Kirkland. It was in the Parlour.

Mr. Attorney General. What time was it ? Was it an Hour before Supper ?

Kirkland. I think this was before Supper ; but it was repeated before and after Supper.

Mr. Attorney General. Did my Lord, in this Discourse, say any Thing relating to Mr. *Johnson* ?

Kirkland. He told me, that Mr. *Johnson* had long been a Villain to him. He said, he began his Villany in 1753; that he assisted in procuring the Act of Parliament; that he was in the Interest of his Enemies; that, on Mr. *Johnson's* first coming there in the Afternoon, he ordered him to settle an Account. He then told him, *Johnson*, you have been a Villain to me; if you don't sign a Paper, confessing all your Villainy, I'll shoot you. My Lord told me *Johnson* would not sign one. Therefore, says he, I bid him kneel down on his Knees to ask my Pardon. I said, *Johnson*, if you have any thing to say, speak quickly. Then, says he, I fired at him. I know he did not think I would have shot him; but I was determined to do it. I was quite cool. I took Aim; for I always aim with a Pistol in this manner.

Mr. Attorney General. Did any Thing pass in reference to the Farm?

Kirkland. My Lord told me he had long wanted to drive *Johnson* out of his Farm; and that he imagined, after he recovered, he would go into *Cheshire* from whence he came, and give him no more Disturbance. He said he had long intended to shoot him: That the chief Reason he did it at this time was, an Affair between Mr. *Curzon*, Mr. *Burslem*, and his Lordship. But the greatest Part of this Discourse was at the time that my Lord was full of Liquor.

Mr. Attorney General. Was he so full of Liquor as to be deprived of his Understanding?

Kirkland. I think not; he seemed to understand very well what he did?

Mr. Attorney General. Was he in Liquor when you first saw him?

Kirkland. Yes; not much.

Mr. Attorney General. Did he continue drinking during the Time you saw him?

Kirkland. He was drinking Porter; they said it was Porter.

Mr. Attorney General. Did you go to Mr. *Johnson* again?

Kirkland. Yes; after Supper I went up Stairs to Mr. *Johnson*; nothing material passed; but my Lord inquired what I thought of Mr. *Johnson*; and upon my setting Things in the Light I thought I should, my Lord seemed very well satisfied.

Mr. Attorney General. Was any Thing said about the Bowels or Guts?

Kirkland. My Lord asked, if the Bowels were wounded, what would be the Consequence? I said, some had had Wounds in their Bowels and recovered.

Mr. Attorney General. There was an Expression used, that the Bullet was lodged in the Abdomen; Was that yours or my Lord's Expression?

Kirkland. It was my Expression.

Mr. Attorney General. Did you and my Lord sit together in the Evening?

Kirkland. Yes.

Mr. Attorney General. Was any Wine brought?

Kirkland. Yes; Mrs. *Clifford* brought a Bottle of Wine, and then his Lordship again repeated, that he had shot *Johnson*, and that he intended it.

Mr. Attorney General. Was there any Thing passed between you relative to my Lord's Circumstances?

Kirkland. A little before he went to Bed, before I went to Mr. *Johnson* the last Time, my Lord said, *Kirkland*, I know you can set this Affair in such a Light, that I shall not be seized if you will; I owe you a Bill, you may have some of your Money now, and the rest when you want it; I told his Lordship I did not want Money, I should be glad to receive it, when it was most convenient to him.

Mr. Attorney General. Did you afterwards see my Lord and Mr. *Johnson* together?

Kirkland. Yes.

Mr. Attorney General. What passed?

Kirkland. My Lord went up to the Bedside, and spoke it temperately; *Johnson*, you know you have been a Villain to me; Mr. *Johnson* made no Answer, but desired my Lord to let him alone at that Time: My Lord kept calling of him Villain; his Passion rose, and he began to pull the Bed Cloaths, and said, have not you been a Villain? Mr. *Johnson* said, my Lord, I may have been wrong as well as others: Upon this, my Lord run up in a violent Passion to the Bedside, I thought he would have struck him; but upon Mr. *Johnson's* declaring, he might have been a Villain to his Lordship, my Lord went to the Fire-side.

Mr. Attorney General. How came Mr. *Johnson* to make that Answer?

Kirkland. I winked at him, and he made the Answer.

Mr. Attorney General. Was Miss *Johnson* in the Room?

Kirkland. Yes; my Lord went to her, after he had abused her Father, and said, Though he has been a Villain to me, I promise you before *Kirkland*, who I desire to be a Witness, that I will take Care of your Family, if you do not prosecute.

Mr. Attorney General. Did my Lord go out of the Room?

Kirkland. Yes; he went down Stairs; he sent for me, and told me, he was afraid he had made Miss *Johnson* uneasy; he desired I would tell her, he would be her Friend: We came up Stairs together; his Lordship asked at the Top of the Stairs, whether I thought Mr. *Johnson* would

would recover ; I replied, Yes ; he said, then I may go to Bed in Safety ; he went to Bed directly.

Mr. Attorney General. What passed after ?

Kirkland. The first Thing I did I went to Mr. *Johnson*, who desired, for God's Sake, that I would remove him ; while we were talking, I heard my Lord open the Door, and call up his Pointer : Mr. *Johnson* was a good deal alarmed at it, fearing my Lord should come again ; but my Lord shut the Door ; then he again intreated me to remove him.

Mr. Attorney General. Was any Proposal made to remove him before that ?

Kirkland. Yes ; Mrs. *Clifford* came down before that into the Still Room, and said, cannot *Johnson* be removed ? My Lord replied, No, he shall not be removed, till he be either better or dead : And some time after that he said, he was glad he had him in the House, that he could plague the Rascal ; or some such Words.

Mr. Attorney General. Why did you propose to remove him ?

Kirkland. I thought it prudent for many Reasons to remove him ; I imagined, Mr. *Johnson* would die ; and if my Lord came and found him dying, his Resentment would rise against me ; besides, Mr. *Johnson* was in a good deal of Apprehension of being again shot ; I really apprehended he might die through Fear, for he was a Man of a very weak Constitution ; upon this, I went to the *Lount*, and got a Parcel of Fellows, and placed Mr. *Johnson* in an easy Chair, and carried him upon Poles to the *Lount*, where he got without being much fatigued.

Mr. Attorney General. Did you apprehend that the moving would be prejudicial to him, considering the Condition he was in ?

Kirkland. It is impossible to say it might not ; but there was much more Danger in leaving him at *Stanton* ; and he expressed Satisfaction on my removing him : When he came there, he desired he might be removed from one Room where he was, into another ; for he said, my Lord might come and shoot him there, the Window was facing the Bed ; I told him, he might make himself easy, I would place a Centry at each Door.

Mr. Attorney General. At what Time was Mr. *Johnson* removed ?

Kirkland. I believe about Two o'Clock in the Morning ; I am not quite certain of the Hour.

Mr. Attorney General. How long did he live after that ?

Kirkland. He lived, as I was informed, till about Nine ; I did not leave him till Seven o'Clock.

Mr. Attorney General. In what Condition was he when you left him ?

Kirkland. Weak and low, and cold in the Extremities.

Mr. Attorney General. What was your Judgment about him ?

Kirkland. That he would be dead ; he thought so himself.

Mr. Attorney General. What happened after he was dead ?

Kirkland. Nothing more than my examining the Body.

Mr. Attorney General. What did you do upon that ?

Kirkland. I examined it the next Day, when the Coroner's Inquest was taken.

Mr. Attorney General. Did you give an Account of the Wound ?

Kirkland. The Ball had passed just under the lowest Rib, on the Left Side, through One of the Guts, and through a Bone we call the Os Inominatum, and lodg'd in the Bone called the Os Sacrum.

Mr. Attorney General. Do you apprehend that Mr. *Johnson* died of that Wound ?

Kirkland. I do ; I am clear in it.

Mr. Attorney General. Was you there when the Earl was seized ?

Kirkland. I was not ; I went to ask Advice what was to be done.

Earl Ferrers. You said that when I asked you to extract the Ball, that it was lodged in the Abdomen, and that I wondered at it.

Kirkland. That Question was asked before I told your Lordship it was lodged ; I remember the Question was asked.

Earl Ferrers. When I told you I had shot it through a Deal, was it not mentioned with Surprise ?

Kirkland. The Surprise seemed to be, that it had not also gone through the Man.

Earl Ferrers. At the Time that we were talking this over a Bottle of Wine, did you talk with me as a Friend ; or did you intend to betray me ?

Kirkland. I do own, my Lord, that I intended to deceive you ; and I thought it absolutely necessary.

Earl Ferrers. Did you intend to give this in Evidence ?

Kirkland. I knew I should be called upon on this Occasion.

Earl Ferrers. Did you not take Advantage of my being in Liquor ?

Kirkland. No, I could not, my Lord ; what you said was quite voluntary.

Earl

Earl Ferrers. Did I say I had come to a Resolution to do it deliberately?

Kirkland. I do not remember.

Earl Ferrers. Did you never hear me say, that I did not intend to kill him?

Kirkland. Your Lordship did.

A Lord. Did you, at any Time, hear Mr. *Johnson* say, that Lord *Ferrers* had shot him?

Kirkland. As soon as Mr. *Johnson* had got home, I said to him, Was my Lord in Liquor when he shot you? He was, when I first saw him. Mr. *Johnson* said, No, he was not: I imagined he got what Liquor he had afterwards. I did not think he would have shot me. I thought he only wanted me to sign a Paper. I asked him, Was you down on your Knee when my Lord shot you? He said, I think when my Lord shot me I was rising; though I cannot be sure whether I was or not, being hurried.

Mr. Attorney General. At the Time of this Relation of Mr. *Johnson's*, was any other Person present?

Kirkland. No, there was none; we were by ourselves in the Room.

Mr. Attorney General. Did you hear my Lord say to Miss *Johnson*, that he would take Care of them?

Kirkland. Yes, I heard my Lord say so to Miss *Johnson*.

Mr. Attorney General. He said to you, I owe you a Bill?

Kirkland. My Lord said, You can set this Matter right: If you do, I owe you a Bill; you may have some Money now, and the rest when you want it.

Mr. Attorney General. Did you ever hear Mr. *Johnson* express any Apprehension of my Lord *Ferrers*?

Kirkland. Mr. *Johnson*, in Conversation at different Times, has said to me, he did not think my Lord *Ferrers* would do him any Harm.

Lord Talbot. My Lords, this Witness has told you, that in One of his Conversations with Lord *Ferrers* his Lordship declared, that he did not intend to kill Mr. *Johnson*; and also that Lord *Ferrers* shewed him the Position in which he held the Pistol, when his Lordship thought the Instrument went wrong, as Mr. *Kirkland* was probing the Wound; I would ask, whether the Conversation was previous or subsequent to the probing the Wound?

Kirkland. He told me, before I entered the Director into the Wound, You must pass it in that Manner. The other Conversation was subsequent to this.

Lord Talbot. Do you believe that his Lordship's shewing the Position of the Pistol, in order to acquaint you with the Direction of the Ball, was with an Intention to facilitate your Operation?

Kirkland. I believe it was.

Mr. Attorney General. Did he appear in Liquor?

Kirkland. He was in Liquor at first; but it got more upon him.

Mr. Attorney General. As that unhappy Fury rose, the more Liquor he had, the more he seemed to persist in the Action?

Kirkland. Yes.

Mr. Attorney General. But when he was calmer, in his better Senses, he said, he did not wish to kill him?

Kirkland. No; he said at first, that he intended to kill him.

A Lord. When he told you the Direction of the Ball, did he not mean that tenderly, to assist the unfortunate Man?

Kirkland. I took it, that he was directing me to enquire into the Nature of the Wound.

A Lord. Could he direct you with any other View than to assist?

Kirkland. I remember when I told my Lord the Ball could not be extracted, he said, I do not intend to direct you; pursue your own Method, and do the best you can for him.

A Lord. You mentioned that he sent to you?

Kirkland. Yes.

Lord Mansfield. You have said, that, from the first to the last, Lord *Ferrers* told you that he designed to kill the Deceased; now, in Answer to a Question lately asked, you say, he said, he did not intend to kill him; upon what Occasion did he say that?

Kirkland. I think we sat by the Fire in the Still-Room, but I am not quite certain, and his Lordship said, that he did not intend to shoot him dead; I intended only to make him smart, and shoot him into the Hip, or Side.

Lord Mansfield. Could such a Wound as this be given to a Man without a certain Hazard of his Life?

Kirkland. It was certain Death to such a Constitution as Mr. *Johnson's*.

Lord Mansfield. How long after this Time was it, that he told you that you could set that Matter right?

Kirkland. He mentioned it at the very Beginning, and several Times after, till the End of the Evening.

Lord Mansfield. Did your Fear of Lord *Ferrers*, arise from his being in Liquor?

Kirkland. I should not have been afraid of Lord *Ferrers* if he had not been in Liquor; I thought, if he had found Mr. *Johnson* had died, that, as I had deceived him, I should have had his Resentment.

Lord Mansfield. Did you see Lord *Ferrers* in the Morning?

Kirkland. No. I did not.

Mr. Springthorpe, sworn.

Mr. Gould. My Lords, we call this Witness to give an Account of the Manner of seizing Lord *Ferrers*, and what passed upon that Occasion.

Mr. Gould. Was you present at the Time of taking Lord *Ferrers*?

Springthorpe. I was.

Mr. Gould. What Day was it?

Springthorpe. On Saturday Morning.

Mr. Gould. What Time in the Morning?

Springthorpe. I believe it was between Ten and Eleven o'Clock.

Mr. Gould. Had you a Multitude of People with you?

Springthorpe. The first Part of the Time I had not; but before he was taken there were a great many.

Mr. Gould. Was you armed?

Springthorpe. I had a Pistol I took from Mr. *Burslem's*.

Mr. Gould. Where did you go first?

Springthorpe. I went to see Mr. *Johnson*; he was my Friend, and I found he was dead. Mr. *Burslem* desired I would go and help to take Lord *Ferrers*: I condescended to do it. When I came to the Hall Yard, my Lord, in a few Minutes, came; he seemed to be going to the Stable, with his Stockings down, and his Garters in his Hands; his Lordship seeing me, demanded to know what I wanted. I presented my Pistol to his Lordship, and I said it was he I wanted, and I would have him; he put his Hand, whether he was going to put his Garters in his Pocket, or to pull out a Pistol, I cannot say; but he suddenly run into the House: I never saw more of him for two Hours; in about two Hours he came to the Garret Window; I went under the Window; he called, I asked what he wanted; he said, How is *Johnson*? I said he was dead; he said, you are a lying Scoundrel, G——d d——n you. I told him he was dead; he said, I will not believe it till *Kirkland* tells me so. I said he was dead; he said, then disperse the People and I will go and surrender: Let the People in, and let them have some Victuals and Drink. I told him I did not come for Victuals, but for him, and I would have him. He went away from the Window, swearing he would not be taken. Two Hours after that, there was a Report that he was upon the Bowling-green; I was at this Part of the House; I run there, and, by the Time I got there; I saw two Colliers had hold of his Lordship. I said, I would take Care no-body should hurt him. I took from a Man that had hold of him, a Pistol and a Powder-Horn; I shot the Pistol off, and it made a great Impression against the Stones. I heard my Lord say, he had shot a Villain and a Scoundrel, and, clapping his Hand upon his Bosom, he said, I glory in his Death. That is all I know of the Matter.

Francis Kinsley sworn.

Mr. Norton. You keep a Public-House at *Ashby De la Zouch*?

Kinsley. Yes.

Mr. Norton. Was Lord *Ferrers* brought to your House when he was apprehended?

Kinsley. Yes.

Mr. Norton. Did you hear him say any Thing about killing of *Johnson*?

Kinsley. I heard very little of it.

Mr. Norton. Do you remember one Mr. *Hall*, a Clergyman, coming to your House at that Time?

Kinsley. Yes.

Mr. Norton. Did he desire to be admitted to Lord *Ferrers*?

Kinsley. Yes.

Mr. Norton. Did you hear what passed between Mr. *Hall* and my Lord *Ferrers*?

Kinsley. A great many Words passed.

Mr. Norton. What passed?

Kinsley. I heard Mr. *Hall* intimate to his Lordship, as a Clergyman, that his Lordship seemed to be pretty much in Liquor at that Time, and desired he would not make Use of those Expressions. He told Mr. *Hall* he was extremely obliged to him for his good Advice; he apprehended what it was; however, he told Mr. *Hall* that he knew his Duty, perhaps as well as a Justice of Peace.

Mr. Norton. Was Mr. *Hall* a Justice of Peace?

Kinsley. Yes. I did not hear much more said between Mr. *Hall* and my Lord *Ferrers*. Mr. *Hall* staid with his Lordship some Time in the same Room; then he came down Stairs, and I never saw him afterwards.

Mr. Norton. Did he say any Thing about killing of Mr. *Johnson*?

Kinsley. He asked, a great many Times, if I had heard that *Johnson* was dead; I told him, a good many Times, that I heard he was dead: He said, I will not be convinced till I hear it from the Coroner.

Mr. Norton. Did he say any Thing else?

Kinsley. His Lordship behaved very well with me, and decently, from the *Saturday*, to the *Monday* at Ten o'Clock.

Mr. Attorney General. My Lords, we rest it here for the Crown.

Lord High Steward. My Lord *Ferrers*, the Council for the Crown have done; now is the Time for your Lordship to make your Defence; and if you have any Witnesses to examine, now is your Time to call them.

Earl Ferrers. My Lords, there have been a great Variety of Circumstances that have appeared through the Course of this Evidence. I really do not recollect any Thing that happened since the Time relative to the Affair; and I should hope your Lordships would give me a farther Day to make my Defence.

Lord High Steward. Your Lordship hath had a great deal of Time, and you have had Council assigned you, and Orders for summing your Witnesses. It is now the Time to proceed to your Defence.

Earl Ferrers. I hope your Lordships will be so good as to give me till To-morrow, as there are some Circumstances that I could wish to consult my Council about.

Lord Mansfield. My Lords, as your Lordships cannot debate here upon the Application that has been made by the Noble Lord at the Bar, to adjourn the Trial till To-morrow, I could wish he would open to your Lordships the Nature of his Defence, or some Reason why he is not prepared to go on now; otherwise, when your Lordships adjourn, you will have nothing to debate upon, but barely whether there shall be this Delay because it is asked; and it may be a dangerous Precedent to establish, that a Trial shall be adjourned, as of course, if desired, just when the Evidence in Support of the Prosecution is closed. If he should give your Lordships a Reason for it, then it will be in your Lordships Discretion, whether that Reason is sufficient to induce your Lordships to adjourn 'till To-morrow. I think he should open the Nature of his Defence, and state some Ground for the Delay he asks.

Elizabeth Burgeland called in again.

A Lord. Do you know of any particular Quantity of strong Liquor, of any Kind, that Lord *Ferrers* had drank that Day?

Burgeland. No. I cannot tell any Thing of it: He drank some Brandy in his Tea in the Morning.

A Lord. Who is the Person that kept the Key of the strong Liquor?

Burgeland. Mrs. *Clifford*.

A Lord. Do you know of any that he had that Day?

Burgeland. I cannot tell any Thing about it.

A Lord. Was it usual for my Lord to drink Brandy in his Tea?

Burgeland. He did not drink Tea every Morning; but, when he drank Tea, I believe he did put Brandy in it.

A Lord. Was Mrs. *Clifford* returned to the Hall before the Surgeon, Mr. *Kirkland*?

Burgeland. Yes.

A Lord. How long?

Burgeland. I cannot justly say; it may be near, or near upon two Hours.

A Lord. Had you, or any Person, carried any strong Liquor to my Lord before Mr. *Kirkland* came?

Burgeland. I cannot tell any Thing about it.

A Lord. At what Time did Lord *Ferrers* dine that Day?

Burgeland. At Two o'Clock.

A Lord. When you saw Lord *Ferrers*, after the Fact, was he drunk, or sober?

Burgeland.

Burgeland. I did not observe he was much in Liquor then ; but, soon after, he was quite fuddled.

A Lord. The first Time you saw him after the Pistol went off, how was he then?

Burgeland. I did not observe that he was much in Liquor at the Time when it was done.

A Lord. Did you see him any Part of that Day, before you heard the Pistol go off, or before Mr. *Kirkland* came to the House, appear intoxicated with Liquor?

Burgeland. I saw him at Dinner ; I never saw him after till it was done.

A Lord. How was he at Dinner?

Burgeland. My Lord was sober at Dinner.

Earl Ferrers. My Lords, by the Kind of Defence recommended to me it will be impossible to go on at present ; there are several Witnesses to be examined, and, really, my Lords, I am quite unprepared.

Earl of Hardwicke. I believe it is expected by your Lordships, that the Noble Lord at the Bar should now open to you the Nature of his Defence.

Lord High Steward. My Lord *Ferrers*, it is required that you should open the Nature of your Defence ; my Lords will be able to judge, from that, whether it will be proper to give your Lordship Time to make your Defence, agreeable to your Request.

Earl Ferrers. My Lords, I can hardly express myself, the very Circumstance shocks me so much ; but I am informed, from several Circumstances, of an Indisposition of Mind.

Then the Lord High Steward returned back to the Chair.

Lord Ravensworth. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the same Order they came down ; and, after some Time, the House was adjourned again into *Westminster Hall*, and the Peers being there seated, and the Lord High Steward in his Chair, and the House resumed, the Serjeant at Arms made Proclamation for Silence, as usual.

Lord High Steward. My Lord *Ferrers*, you are to proceed to your Defence.

Earl Ferrers. My Lords, the Kind of Defence I mentioned to your Lordships before, I really don't know how myself to enter upon ; it is what my Family have considered for me, and they have engaged all the Evidence that are to be examined upon this unhappy Occasion, who I really have not seen ; I do not well know what they have to say : I should, therefore, hope your Lordships will give me all the Assistance that is possible in their Examination.

My Lords, I believe that what I have already mentioned to your Lordships, as the Ground of this Defence, has been a Family Complaint ; and I have heard that my own Family have, of late, endeavoured to prove me such. The Defence I mean is occasional Insanity of Mind ; and I am convinced, from recollecting within myself, that, at the Time of this Action, I could not know what I was about. I say, my Lords, upon reflecting within myself, I am convinced, that at that Time I could not know what I was about.

It has been too plainly proved, that, at the Time this Accident happened, I was very sober, that I was not disordered with Liquor : Your Lordships will observe, from the Evidence both of Mr. *Kirkland* and Miss *Johnson*, that it plainly appeared that this Man never suspected there was any Malice, or that I had any.

Mr. John Bennefold sworn.

Earl Ferrers. How long have you known me?

Bennefold. Above these Twenty Years.

Earl Ferrers. Was you ever employed by me in any Shape?

Bennefold. Yes.

Earl Ferrers. In what Shape?

Bennefold. In receiving his Lordship's Rents, when they were sent him out of the Country.

Earl Ferrers. Did you know any of the Family besides me?

Bennefold. Yes.

Earl Ferrers. Do you remember my Uncle, or any other of the Family?

Bennefold. Yes, the late Lord *Ferrers*, *Henry*.

Earl Ferrers. What Disorder had he?

Bennefold. Lunacy.

Earl Ferrers. How many Years before he died?

Bennefold. Several Years before he died, at *Kensington Gore*.

Earl

Earl Ferrers. Did you know Lady *Barbara Shirley*?

Bennefold. No.

Earl Ferrers. Did you never hear that she was disordered?

Bennefold. Yes, I have.

Earl Ferrers. Please to observe what you know of my Conduct, as to the State of my Mind, without having any particular Questions asked you?

Bennefold. His Lordship has always behaved in a very strange manner, very flighty, very much like a Man out of his Mind, more particularly so within these Two Years past, such as being in Liquor, and swearing and cursing, and the like, and talking to himself, very much like a Man disordered in his Senses; and then he has behaved himself as well as any other Gentleman at times.

Earl Ferrers. Do you know of any particular Time, or of any particular Action?

Bennefold. Nothing in particular, more than the particular Circumstances of my Lady, and expressing great Hardships, and Dissatisfaction with the Act of Parliament.

Earl Ferrers. Have you observed irrational Behaviour when I have not been in Liquor?

Bennefold. Yes, I have.

Earl Ferrers. Was it frequent or seldom?

Bennefold. It was often.

Earl Ferrers. Can you recollect any particular irrational Behaviour in me when I have not been in Liquor?

Bennefold. I cannot say that I can recollect any particular Passage.

Earl Ferrers. Did you ever see me walking about the Room, talking to myself; making Motions with my Head, and talking to myself?

Bennefold. Yes, a great many times.

Earl Ferrers. Did you think that I was disturbed in my Mind?

Bennefold. Yes.

Mr. Attorney General. My Lords, I should be glad to know what is this Witness's Trade and Occupation?

Bennefold. I am now Clerk of *St. James's* Parish; I was a Peruke-maker by Trade.

Mr. Attorney General. Was you acquainted with my Lord *Ferrers* in the Country or in Town?

Bennefold. In Town.

Mr. Attorney General. Was you admitted to my Lord's Friendship or Familiarity?

Bennefold. To both.

Mr. Attorney General. In Conversation at any time, have you observed my Lord to give you irrational or insensible Answers?

Bennefold. I cannot say he has given me any insensible Answers.

Mr. Attorney General. I should be glad to know whether you have any Reason to believe, from his Behaviour, that he did not understand enough to distinguish Right from Wrong?

Bennefold. That is a Question I am in some Doubt of answering.

Mr. Attorney General. I have asked as to your Opinion; if you will recollect what Discourse has passed between you, you will be able to give an Answer; now, from your Discourse and Conversation, do you think or believe he was in that State of Mind as not to know Right from Wrong at any time?

Bennefold. That is a Question I cannot answer to.

Mr. Attorney General. You will be pleased to recollect, that you told me, when I asked you, that my Lord never gave you an irrational Answer; why cannot you give your Opinion as to his Sanity?

Bennefold. My Lord's Behaviour appeared in general in such manner as I have mentioned.

Mr. Attorney General. My Lords, This Witness did not mention any particular Act, only talking to himself, and Motions with his Head; I am questioning him upon those kind of Acts that proceed from Words or Speeches: Did you ever, from his Words or Speeches, conceive that he was not himself?

Bennefold. No further than by being displeas'd, often talking to himself, like a Man that was out of his Mind.

Mr. Attorney General. Did my Lord manage his Affairs by himself?

Bennefold. He managed them himself; he gave me Directions.

Mr. Attorney General. Were those Directions reasonable and sensible?

Bennefold. Sometimes they were, though thought unreasonable and insensible by the Persons he wrote to.

Mr. Attorney General. Can you recollect any Instances, and the Persons that thought them so?

Bennefold. I cannot recollect any Circumstance relating to Family Matters; his Mother, when I have carried such Messages, has thought him to be in a wrong Mind, in writing to her in the manner he did.

Mr. Attorney General. Did Mrs. *Shirley* ever treat him as an insane Person, or talk of sending for a Physician to him?

Bennefold. Not that I know of.

Mr. Attorney General. Did any other Person think my Lord so insane as to want that?

Bennefold. I cannot recollect any Person in particular.

Mr. Attorney General. Was it easy to impose upon his Lordship in his Affairs, or difficult?

Bennefold. It was not easy to impose upon his Lordship, that I know of.

Mr. Attorney General. As you have known him so long, and have been admitted to his Familiarity, I wish you would recollect One single irrational Expression that you have ever heard him make use of.

Bennefold. I cannot recollect any in particular.

Mr. Attorney General. You say that he seemed displeas'd with his Lady, and with the Act of Parliament; please to recollect, whether, upon that Occasion, his Behaviour was such as betray'd his Infanity, or any thing that was irrational?

Bennefold. My Lord express'd a good deal of Dissatisfaction at the Act of Parliament.

Mr. Attorney General. What was the Dissatisfaction? and was it general as well as particular?

Bennefold. In relation to the Estate's being taken away, and Receivers being put upon it.

Mr. Attorney General. Do you apprehend that that Sort of Expression denoted Infanity or Sanity?

Bennefold. That I cannot take upon me to determine.

Mr. Attorney General. Please to recollect yourself, and give me an Answer to the Question: You said that he express'd a Dissatisfaction, because his Estate was taken from him, and a Receiver put upon it; I desire to know whether those Expressions bespeak a Man in his Senses or out of his Senses?

Bennefold. I cannot say whether that denoted him to be in his Senses or out of his Senses.

Mr. Attorney General. Are those Expressions the Expressions of a Fool, or of a Man of Understanding upon the Subject?

Bennefold. I should think, of a Man of Understanding.

Mr. Attorney General. You have not been able to answer as to any particular Speeches that denoted him to be insane; now do you remember any Act of his, of any kind, that denoted a disordered Mind?

Bennefold. I cannot say I can; I was not so often with him, though I have known him long.

Mr. Attorney General. Then I desire to know, whether Lord *Ferrers*, from the Conversation you had with him, appear'd to be rather of better Parts than an ordinary kind of Man?

Bennefold. Yes, to be sure.

Mr. Thomas Goostrey sworn.

Earl Ferrers. How long have you known Lord *Ferrers*?

Goostrey. About Ten Years.

Earl Ferrers. How long have you been concern'd for him?

Goostrey. About that time.

Earl Ferrers. Have you seen any Instances of any thing like Infanity in me?

Goostrey. I think I have.

Earl Ferrers. Please to mention the Instances.

Goostrey. I have been call'd upon very unexpectedly; I should have recollected myself, if I had had any Apprehension of being call'd upon.

Earl Ferrers. Then mention the Instances.

Goostrey. I know nothing within this Twelve Months past: Lord *Ferrers* always appear'd to me to be of a very remarkable Disposition; and though Lord *Ferrers* was extremely sensible, and thoroughly acquainted with his Affairs, yet I have frequently had Directions from him to do Things that in my Opinion were either fruitless, or opposite to his Interest, and upon those Occasions I have always found it in vain to endeavour to dissuade his Lordship from it; and as I always found that Lord *Ferrers* was extremely sensible, and thorough Master of his Affairs, I have never been capable of accounting for his Behaviour, otherwise than by apprehending that he has been at times out of his Mind.

Earl Ferrers. Do you remember any Instance where I appear'd to be out of my Mind, and what?

Goostrey. I remember that all of a sudden he took it into his Head that he should be capable of impeaching a Family Settlement that he had long acquiesc'd under, and by which he was only Tenant for Life of his Estate; and though he had advis'd with many Lawyers upon the Occasion, and they were all of Opinion that it was impossible he could succeed, yet he per-

sifted in his Resolution of bringing a Suit to destroy that Settlement; and upon those Occasions I have always found Lord *Ferrers* extremely strange; and when he has touched upon that Subject, his Conversation has been very wild, and inconsistent with what I have looked upon a Man of Sense and Understanding to be; and I remember One Instance, which was, when Lord *Ferrers* returned from my Lord *Westmorland's*, my Lord *Ferrers* followed me upon that Occasion into the City, and he came into the Room where I was with a great deal of Company. I perceived, by his Appearance, that something disturbed him, and therefore hastily came up to him, and got him out of the Room. When I came up to him, I asked him what was the Matter; and did at first apprehend he had been in Liquor, but I soon perceived that he was perfectly sober. He then told me a strange inconsistent Story of his having been down at my Lord *Westmorland's*, and of his having been ill treated by Sir *Thomas Stapleton*, and the Intent of his coming to me was, to draw an Advertisement to be inserted in all the Papers, tending to challenge Sir *Thomas Stapleton*, and to post him for a Coward if he did not give him Satisfaction. I was extremely uneasy; and with Difficulty did dissuade him from it, upon a Promise to wait upon him the next Day; but then looking upon him to be out of his Senses, I did not call upon him the next Day. From thence I declined being concerned for him, as looking upon him to be a Person out of his Senses: That is all; I have never seen his Lordship from that time to this, except when I had the Honour to wait upon his Lordship in the Tower.

Earl Ferrers. Did you know Mr. *Johnson*?

Goostrey. Very well.

Earl Ferrers. Was I in Friendship with Mr. *Johnson*?

Goostrey. I have often seen Lord *Ferrers* and Mr. *Johnson* together, and have likewise had Occasion to talk of Mr. *Johnson* with my Lord: I always observed that his Lordship had the greatest Regard and Esteem for Mr. *Johnson*; and I have, in the Course of my Business that I have done for Lord *Ferrers*, always found that Mr. *Johnson* was very exact and regular in his Accounts.

Earl Ferrers. Did you ever hear me at any time find Fault with Mr. *Johnson*, or express any Dissatisfaction at him?

Goostrey. Never, but always the reverse.

Earl Ferrers. Do you know if Mr. *Johnson* would have consented to have been Receiver under the Act of Parliament, without consulting me?

Goostrey. I heard Mr. *Johnson* declare, that when it was proposed to him to be Receiver, that he refused to be so, without first consulting his Lordship; and afterwards I saw Mr. *Johnson*, and he told me that it was at his Lordship's particular Request that he consented to be a Receiver.

Mr. Solicitor General. My Lords, I must beg Leave to ask this Witness a Question or Two.

Mr. Solicitor General. Mr. *Goostrey* gave your Lordships as a Reason for his Opinion that Lord *Ferrers* was insane, that his Lordship would very frequently send Directions in the Course of his Affairs, which Mr. *Goostrey* thought fruitless, or opposite to his Interest; in particular, he mentioned an Instance relative to his impeaching or setting aside a Family Settlement;

Now, I should be glad to ask Mr. *Goostrey*, Whether he thinks that the Manner of Lord *Ferrers's* receiving his Advice to dissuade him from endeavouring to set aside that Settlement, proceeded from a Tenaciousness of his Opinion, or from the Insanity of his Mind?

Goostrey. To say that it might be owing to Insanity of Mind might be going too far; but it was from his remarkable Disposition, his obstinate and improper Behaviour, his remarkable Tenaciousness of his Opinion, which was not consistent with the good Sense I have known him Master of.

Goostrey. If I may explain what I said before, I should rather think it tended to Insanity than any thing else, as it was so inconsistent with the good Sense and Understanding that I have always met with from his Lordship.

Mr. Solicitor General. Was it from any particular Circumstance which passed between you and Lord *Ferrers*, that you thought the Manner of receiving your Advice was owing to a Tendency in Lord *Ferrers* to Insanity?

Goostrey. My Reason is, that his Lordship had been advised by many Lawyers, that, by his long Acquiescence under that Settlement, and the many Acts he had done confirming it, that there was no Possibility of succeeding in it.

Mr. Solicitor General. Mr. *Goostrey*, You have had a great deal of Business, and been employed by many Clients, as well as Lord *Ferrers*; have not you, in the Course of your Experience and Transactions, met with several Clients of a Temper to proceed against the Advice of Council and Friends?

Goostrey. I never did in my small Experience meet with any Person that did so, that was possessed of the good Sense and Understanding that I have at other times found in my Lord *Ferrers*.

Mr. Solicitor General. Have you never met with Persons unsuspected of Lunacy, who acted in the Manner Lord *Ferrers* did upon that Occasion?

Goostrey. I do not know I ever had any other Client that was under such Circumstances; I do not know that I ever met with any Client that would commence a Suit after Council advised the contrary.

Mr. Solicitor General. How did the Suit end?

Goostrey. It never proceeded so far as to have an Answer; for, in the mean time, the unhappy Dispute between Lord and Lady *Ferrers* broke out, and that diverted his Thoughts from it.

Mr. Solicitor General. You mentioned an Instance of attending Lord *Ferrers*, with regard to the ill Treatment he had received from Sir *Thomas Stapylton*; upon that Occasion do you think that my Lord's insinuating to have a Challenge inserted in the Papers, by way of Advertisement, proceeded from Insanity, or from mere Violence of Temper?

Goostrey. I did then think it Insanity; he being perfectly sober, I could impute it to nothing else, and from thenceforth I declined being concerned for him.

Mr. Solicitor General. Might it not be from Violence of Temper?

Goostrey. It was many Hours after the Accident happened that he came to me.

Mr. Solicitor General. Did you ever observe any thing frantick in my Lord's Behaviour?

Goostrey. Many times.

Mr. Solicitor General. Upon what Occasion?

Goostrey. Upon Occasion of his going from the Business we have been talking upon, I have often found him in Conversation lose himself intirely.

Mr. Solicitor General. Did he lose himself from Passion, or for want of Understanding?

Goostrey. He had nothing to ruffle his Temper but that particular Thing; it was from his talking to himself; I made it a Rule never to contradict him; and, during the Ten Years I was concerned for him, I never had a Word with him.

Mr. Solicitor General. You endeavoured to dissuade him from this Suit which he was going to prosecute as to the Settlement; How did he reason upon the Occasion?

Goostrey. Quite wild and inconsistent, and, upon this Occasion, in my Opinion, shewed Want of Reason.

Mr. Solicitor General. Do you recollect what he said, and how he argued? Mention the Particulars.

Goostrey. He treated it as if he had been imposed upon, and drawn in improperly to do it.

Mr. Solicitor General. Do you think that such a way of arguing shewed his Insanity and Want of Sense?

Goostrey. I thought it did, because it appeared to me to be inconsistent with the Facts.

Mr. Solicitor General. Might it not arise from a Difference in Opinion between you and him?

Goostrey. I should think not, because I always looked upon his Lordship to be a much more sensible Man.

Mr. Solicitor General. How long have you known him?

Goostrey. I said Ten Years; but I believe it may be Eleven.

Mr. Solicitor General. Do you know of any Instance in which his Friends or Family ever entertained the same Opinion of him as you do?

Goostrey. Never, as to taking out a Commission of Lunacy.

Mr. Solicitor General. As from the Conversation you had with him you think he was insane, did not you represent it to the Family?

Goostrey. Never; his Family knew it as well as I.

Mr. Solicitor General. As you was of that Opinion, did you advise a Commission of Lunacy?

Goostrey. Never.

Mr. Solicitor General. In the Time of your being concerned for him in his Affairs, did you prepare any Deed, Conveyance, or Lease for him?

Goostrey. In some Things I have.

Mr. Solicitor General. Did you ever prepare any Mortgage upon his Estate?

Goostrey. Never, that I remember.

Mr. Solicitor General. Did you ever attend the Execution of any such Deeds?

Goostrey. I was concerned in suffering a Recovery, and cutting off the Entails in the Settlement.

Mr. Solicitor General. In case of a Client's being insane, would you have suffered such Acts to be done?

Goostrey. There was no such thing happened in my Time; I never knew of any Act that my Lord did to his Prejudice in the Execution of any Deed in my Time.

Mr.

Mr. Solicitor General. I ask you, if you had been desired to be a Party, or present at the Execution of any such Deed, whether you would have suffered it under such Circumstances?

Goostrey. Most certainly I should not.

Mr. Solicitor General. Was you ever a Witness to the Execution of any Deed by Lord Ferrers?

Goostrey. I have.

Mr. Solicitor General. Did you ever transact any Mortgage for him?

Goostrey. I do not recollect.

Mr. Solicitor General. Did you never get any Loan of Money for him?

Goostrey. Never. If the Gentlemen will find it out, I will not disown it.

Mr. Solicitor General. Has my Lord lately raised a considerable Sum of Money upon his Estate?

Goostrey. No, I never negotiated any such, nor was I privy to it.

Mr. Solicitor General. Was you employed to procure any Money?

Goostrey. Never to my Memory.

Mr. Solicitor General. Did you never converse with his Lordship upon the Subject?

Goostrey. Never.

Mr. Solicitor General. Did you, or did you not, in your Conscience and Opinion, upon the whole Matter, think my Lord Ferrers insane, or a proper Object to be under the Care of a Physician, or of the Court of Chancery?

Goostrey. I am in great doubt whether my Lord was so insane as that a Commission of Lunacy could be taken out; I should think a Commission of Lunacy could not be taken out against him.

Mr. Solicitor General. Why? because he was not insane?

Goostrey. I look upon it that he was insane only at particular Times, and in particular Instances.

Mr. Solicitor General. If he was insane only at times, would he not have been a proper Object of a Commission of Lunacy?

Goostrey. I cannot say at the times I have seen. If a Jury had been to inquire touching his Sanity, I am sure they would have found him a Lunatic.

Mr. Solicitor General. Mention the Times of which you speak.

Goostrey. I meant that particular Time when his Lordship came to me in the City, as I have mentioned.

My Lord Ferrers did propose to dispose of his *Northamptonshire* Estate. I do recollect there once was a Negotiation of a Loan of Ten thousand Pounds from Sir *Thomas Clarges*. I was no otherwise concerned in it, than only to see that the Deed which Lord Ferrers executed was a proper One. *Mr. Howell* of *Lincoln's Inn* was the Person concerned.

Mr. Solicitor General. You recollect the Negotiation of a Loan, and your being advised with?

Goostrey. I do recollect I was advised with, and I believe my Lord was then in *Leicestershire*.

Mr. Solicitor General. What Advice did you give?

Goostrey. The Money to be borrowed by my Lord was not to be put into his Pocket, but to pay off another Mortgage.

Mr. Solicitor General. What Advice did you give?

Goostrey. I do not recollect any particular Advice; I remember there was a Draught of a Deed; I believe it was laid before me.

Mr. Solicitor General. Did you, or did you not, advise the Execution of it?

Goostrey. I neither advised one way nor the other; I was no otherwise concerned than to see that the Draught was proper.

Mr. Solicitor General. You say my Lord asked your Advice; did you give him your Opinion with respect to the Propriety of the Deed?

Goostrey. I dare say if my Lord asked it, I did; I don't remember he did; 'tis most likely he did.

Lord Hillsborough. Why did you make it a Rule never to contradict my Lord Ferrers?

Goostrey. Because if I had contradicted him, I should have led his Lordship into a strange wild Way of Reasoning, that I had often experienced, by his Reasoning with himself only.

Earl Ferrers. Was you ever concerned for any of the Family but me?

Goostrey. For Lady *Anna Eleonora Shirley* I was concerned.

Earl Ferrers. Do you know of any thing else?

Goostrey. Not that I recollect.

Lord Ravensworth. Do you know Lord Ferrers's Mother, or any of his Relations?

Goostrey. I know them all.

Lord Ravensworth. Do you mean that you know them as one that has transacted Business with them, and that you can speak your Opinion touching them?

Goostrey. Yes; I have had Business with them frequently.

Lord Ravensworth. Did you at any time, or at different times, speak to Lord *Ferrers's* Mother, or any of his Relations, to give them your Opinion of the Management of Lord *Ferrers*?

Goostrey. I never did; I should have thought it very unnecessary, because I was thoroughly satisfied that the Family knew it as well as myself.

Lord Ravensworth. My Lords, I have attended to Mr. *Goostrey's* Evidence, and am desirous of getting every Thing from him that I can; and therefore desire he will tell your Lordships, whether, during the time he did Business for Lord *Ferrers*, he ever signified to any of his Lordship's Family his own Sentiments touching his Lordship?

Goostrey. If I had been concerned for the Family, I should not have hesitated a Moment to have done it. I believe Mr. *Shirley* in particular knew that the Reason I declined being longer concerned in Lord *Ferrers's* Affairs was from an Apprehension that he was not in his Senses.

Lord Ravensworth. You declined being concerned for him upon his Behaviour about the Settlement?

Goostrey. No, upon his returning from Lord *Westmorland's*.

Lord Ravensworth. Should you have thought that alone sufficient, if, previous to that, you had not seen Marks that induced you to have a Suspicion of his Sanity, and to take the Resolution you did?

Goostrey. I don't know whether, if that had been the only Instance in which I had found my Lord behave in that odd Manner, I should then have given up his Affairs; but he had several times before acted so inconsistent, as to induce me to think it was out of my Power to be of any Service to him.

Lord Ravensworth. How long is it since he was at Lord *Westmorland's*?

Goostrey. About a Year and an half.

Lord Ravensworth. You say that you have known him between Ten and Eleven Years; during the whole time was you concerned in his Affairs?

Goostrey. There was something or other moving in his Affairs all the while; it was with the greatest Difficulty that I kept him within the Bounds I did.

Lord Ravensworth. Do you mean that, from the first time of your being concerned in his Affairs, you looked upon him in that Light, or only in that Instance?

Goostrey. Soon after I was concerned in his Affairs, I wished I had not engaged; but as I had got into them, it was difficult to recede, and for that Purpose I went on.

Lord Ravensworth. In your Opinion, and from your best Recollection, did you observe these Symptoms in Lord *Ferrers* the whole Time you attended him, the major Part of the Time, or more particularly at the latter Part?

Goostrey. Most certainly his Lordship was greatly affected with the Separation of Lady *Ferrers*; and at that Time I observed it.

Lord Ravensworth. Do you think it proceeded from Liquor?

Goostrey. I very seldom saw him in Liquor.

Lord Ravensworth. At the Times you recollect, was he sober?

Goostrey. Perfectly sober, at the Times I speak of.

Earl of Morton. Did you ever see him in such a Condition, that he was incapable of judging between a moral and an immoral Act?

Goostrey. I cannot say I ever did.

Then the Lord High Steward returned back to his Chair.

Lord Privy Seal. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament in the same Order they came down; and, after some Time, the House being there resumed, resolved to proceed further in the Trial of Lawrence Earl Ferrers, in Westminster-Hall, To-morrow, at Ten of the Clock in the Morning; and ordered that the said Lawrence Earl Ferrers should be remanded Prisoner to his Majesty's Tower of London, there to be kept in safe Custody; and that he be brought again to the Bar of this House in Westminster-Hall, To-morrow, at Ten of the Clock in the Morning.

Thursday April 17, 1760. The Second Day.

THE Lords, and others, came from the Chamber of Parliament into *Westminster-Hall*, in the same Order as on *Wednesday* last; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, The House is resumed. Is it your Lordships Pleasure, that the Judges may be covered?

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence, as usual; and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower*, bring forth your Prisoner, *Lawrence Earl Ferrers*, to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the Tower brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

Lord High Steward. *Earl Ferrers*, your Lordship will proceed in your Defence.

Thomas Huxley sworn.

Earl Ferrers. DID you know the late *Earl Ferrers*?

Huxley. I did.

Earl Ferrers. How long did you know him?

Huxley. About Fourteen Years.

Earl Ferrers. What was the Matter with him?

Huxley. He was a Lunatic.

Earl Ferrers. Was he under Confinement?

Huxley. He was under Confinement.

Earl Ferrers. Was he a Lunatic all that Time.

Huxley. He had Intervals.

Earl Ferrers. Was he not recovered of his Understanding sometimes, so as to return to his Seat in Parliament?

Huxley. Not in that Time that I was with his Lordship.

Earl Ferrers. Was he a Lunatic home to the Time of his Death?

Huxley. He was.

Earl Ferrers. Did you know Lady *Barbara Shirley*?

Huxley. I did not.

Earl Ferrers. Or Lady *Betty Shirley*?

Huxley. I did know Lady *Betty Shirley*.

Earl Ferrers. Is she living?

Huxley. She is dead.

Earl Ferrers. How long has she been dead?

Huxley. To the best of my Knowledge about Seventeen or Eighteen Years.

Earl Ferrers. Had she any Disorders that you know of?

Huxley. As I have been told, by her Servants, she frequently appeared to be very much disordered.

Mr. Attorney General. My Lords, I should be sorry to stop the Course of the Noble Earl's Evidence, but this is Hearsay.

Earl Ferrers. Did you know any other of the Family that were disordered in their Senses?

Huxley. Nothing more than by Hearsay.

Earl Ferrers. How long have you known the present *Earl Ferrers*?

Huxley. But a very few Years.

Earl Ferrers. What Relation was the late *Earl Ferrers* to the present Lord?

Huxley. His Uncle.

Mr. Attorney General. My Lords, we will not trouble your Lordships to cross-examine this Witness.

Mrs. *Wilhelmina Deborah Cotes* sworn.

Earl Ferrers. Did you know Lady *Barbara Shirley*?

Cotes. Perfectly well.

Earl Ferrers. What Relation was she to the present *Earl Ferrers*?

Cotes. His Aunt.

Earl Ferrers. How long did you know Lady *Barbara* before her Death?

Cotes. She is now living.

Earl Ferrers. Was she afflicted with any, and what, Distemper?

Cotes. Lunacy.

Earl Ferrers. Is she confined as a Lunatic at this Time?

Cotes. She was always looked upon as a Lunatic, and proper Care has been taken of her.

Earl Ferrers. Do you know any other of the Family that has been afflicted with Lunacy?

Cotes. Only by Hearsay.

The Honourable and Reverend Mr. *Walter Shirley* sworn.

Earl Ferrers. What Relation are you to me?

Shirley. Brother.

Earl Ferrers. Do you know any, and which, of the Family, that have been afflicted with Lunacy; if you do, please to mention their Names?

Shirley. I believe the Prisoner at the Bar has that Misfortune.

Earl Ferrers. What is your Reason for such Belief?

Shirley. I have many Reasons for it. The First is, that I have seen him several Times talking to himself, clenching his Fists, grinning, and having several Gestures of a Madman, without any seeming Cause leading thereto—I have likewise very frequently known him extremely suspicious of Plots and Contrivances against him from his own Family; and, when he was desired to give some Account what the Plots were that he meant, he could not make any direct Answer.—Another Reason I have for thinking him so is, his falling into violent Passion, without any adequate Cause.

Earl Ferrers. Do you believe that, at some Times, I have been hurried into violent Fits, so as not to know the Distinction between a moral and immoral Act?

Shirley. I believe, at those Times when my Lord has been transported by this Disease of Lunacy, that he has not been able to distinguish properly between moral Good and Evil.

Earl Ferrers. Has any other of the Family, besides myself, been afflicted with Lunacy?

Shirley. I have heard———(stopt)

Earl Ferrers. Please to inform their Lordships, whether, at the Time I have been transported with such violent Fits, they have been the Effects of Drink, and whether they have happened when I was sober?

Shirley. Frequently when my Lord has been sober, much more so when he has been a little inflamed with Liquor.

Earl Ferrers. Do you know of any Intention in the Family to take out a Commission of Lunacy against me?

Shirley. I heard it talked of.

Earl Ferrers. How long ago?

Shirley. I think I can recollect it was at the Time of his Lordship's committing the Outrage at Lord *Westmorland's* House that it was proposed to be done; but afterwards they were afraid to go through with it; and the Reason given was, lest, if the Court of Judicature should not be thoroughly satisfied of my Lord's Lunacy upon Inspection, that the Damage would be very great to those that should attempt it.

Earl Ferrers. Why was the Family afraid that I should appear in the Courts of Judicature to be in my Senses?

Shirley. Because my Lord had frequently such long Intervals of Reason, that, we imagined, if he, on the Inspection, appeared reasonable, the Court would not grant the Commission against him.

Earl Ferrers. What Damage do you mean that the Family was apprehensive of, in case the Court should refuse a Commission?

Shirley. We apprehended my Lord would sue us for *Scandalum Magnatum*.

Earl Ferrers. Was the Family apprehensive of any other Kind of Damage?

Shirley. I know of none.

Mr. Attorney General. My Lords, I did not intend to have troubled this Gentleman; but from what he has said, your Lordships will permit me to ask him Two or Three Questions; I shall do it very tenderly, and with as much Propriety as I can.—In giving his Account of the Noble Lord's State of Mind, as far as I could collect it, said, That he had more Reasons than One why he deemed him to be insane.

Mr. Attorney General. Mr. Shirley, You said that the First Ground was, that his Lordship would, at Times, talk to himself, grin, and use certain Gestures, proper only to Madmen—Now, as to this First Mark of Insanity, Was this frequently the Case with his Lordship?

Shirley. Very frequently.

Mr. Attorney General. Did he, at those Times, speak loud, or use any intelligible Language to himself?

Shirley. He did not.

Mr. Attorney General. Did he, at such Times, offer to commit any Mischief, or betray any Marks of Disorder, while in that Situation?

Shirley. I do not recollect any.

Mr. Attorney General. Then, as far as I can understand you, at those Times, his Behaviour in those Intervals was perfectly innocent.

Shirley. Yes.

Mr. Attorney General. At such Times have you ever entered into Discourse with him?

Shirley. No, I do not remember.

Mr. Attorney General. Did you never ask him a single Question when you have seen him walking backwards and forwards in the Way you mention?

Shirley. I don't remember I have.

Mr. Attorney General. Did you never hear him speak at such Times to other Persons?

Shirley. Not whilst he continued in those Attitudes?

Mr. Attorney General. I don't ask you whether he conversed the Time that he was mute, but within a Quarter or Half an Hour?

Shirley. I am not certain.

Mr. Attorney General. Your next Ground for supposing him to be insane was, That he was accustomed to be transported into Passions without any adequate Cause, were those the Words?

Shirley. Without any seeming Cause.

Mr. Attorney General. Was not adequate the Expression you used?

Shirley. Yes.

Mr. Attorney General. I should be glad to know whether you deem every Man that is transported with Anger, without an adequate Cause, to be a Madman?

Shirley. I deemed it as a Sign of Madness in him; but there were other Causes.

Mr. Attorney General. I ask you a general Question, and I do not expect a particular Answer. Whether you deem a Person that is transported with Fury without Reason, to be a Madman?

Shirley. I think a Person may be transported to Fury without an adequate Cause, that is no Madman.

Mr. Attorney General. Then please to recollect some particular Instance of this frantic Passion, and state it.

Shirley. I really cannot command my Memory so far.—I have not seen my Lord these Two Years, till the Time of this unhappy Confinement.

Mr. Attorney General. Then I am to understand you, that you cannot recollect one particular Instance.—Am I, or not?

Shirley. I cannot recollect any at this Time.

Mr. Attorney General. Then as to the Suspicion of Plots without any Foundation—Will you please to enumerate any of those?

Shirley. He never himself would give any particular Account of what he suspected, only that he did suspect that the Family was in some Combination against him; and when I have asked him, What it was that he meant? he would never give me a direct Answer to that Question.

Mr. Attorney General. Does that Kind of Behaviour, as you describe it, denote a Man out of his Senses?

Shirley. I thought so.—I was so fully possessed of that Opinion, that I declared to other People long ago, that I thought him a Madman.

Mr. Attorney General. Please to inform their Lordships, whether the unfortunate Earl lived well or ill with his Family?

Shirley. Indeed, he did not live in Friendship with his Family.

Mr. Attorney General. Were there not Disputes on both Sides?

Shirley.

Shirley. Yes there were, his younger Brothers and Sisters were under the unhappy Constraint of suing for their Fortunes.

Mr. Attorney General. Then please to inform their Lordships, whether, in Truth, there was not a Combination in the Family against him?—I do not mean a Criminal one?

Shirley. I am very certain that was not what my Lord alluded to.

Mr. Attorney General. If you are certain of that, you can inform their Lordships what it was that he alluded to?

Shirley. I will give a Reason why I am certain it was not that; because it appeared to be some secret Combination: That was a Thing publicly known.

Mr. Attorney General. How did you collect that the Combination was secret?

Shirley. By my Lord's manner of expressing himself.

Mr. Attorney General. Can you recollect the Phrase or the Words he used?

Shirley. I cannot.

Mr. Attorney General. In another Part of your Examination you was asked, whether the Earl could distinguish between Good and Evil; you said he could not distinguish them properly.—Was he at that Time less able to distinguish properly between Good and Evil than any other Man that is transported into a violent Passion?

Shirley. I never saw any Man so transported.

Mr. Attorney General. Did he express himself in insensible Words, so as that you could discover the State of his Mind; and that it was that of a Madman, and not a Man in Passion?

Shirley. I considered it as Madness.

Mr. Attorney General. Can you recollect any Expression, in any Fit of Passion that my Lord was in, that might not as well have come from the Mouth of any other passionate Man?

Shirley. Indeed I cannot.

Mr. Attorney General. You recollect an old Adage, *Ira furor brevis est*: Do you believe that his was such Madness as is there poetically described?

Shirley. I believe that it really proceeded from Madness.

Mr. Attorney General. Have you ever seen him so transported upon any other Occasion than that of Anger? Have you seen any Appearance of that Kind when he was cool and calm?

Shirley. I have seen him break into Passions without any seeming Cause.

Mr. Attorney General. You said you could not remember any Instance, when the Question was asked you; can you now?

Shirley. I remember once being at a hunting Seat at *Quarendon* in *Leicestershire*, as I chose to avoid the Bottle, I went up Stairs to the Ladies; *Lady Ferrers*, at that Time, lived with him; and, without any previous Quarrel, my Lord came up Stairs into the Room; and, after standing for some Time with his Back to the Fire, he broke out into the grossest Abuse of me, insulting me, and swearing at me; and I cannot to this Day or Hour conceive any Reason for it.

Mr. Attorney General. Had you never any Dispute or Quarrel with your Brother?

Shirley. Not at that Time.

Mr. Attorney General. Might not you have had some Quarrel a few Days before?

Shirley. No.

Mr. Attorney General. Are you confident of that?

Shirley. I am confident.

Mr. Attorney General. Had he no Suspicion at that Time of your interesting yourself with respect to my Lady *Shirley*?

Shirley. There was then no Quarrel existing.

Mr. Attorney General. Had there never been a Quarrel between my Lord and my Lady?

Shirley. I think not; it was soon after his Marriage.

Richard Phillips sworn.

Earl Ferrers. How long have you known me?

Phillips. About Eighteen Years.

Earl Ferrers. Are you a Tenant, or what Relation do you stand in to me?

Phillips. I am a Tenant to your Lordship.

Earl Ferrers. Did you ever see me mad?

Phillips. Your Lordship asked me one Day, whether I ever saw you mad? I said, I hoped not.

Earl Ferrers. How long ago is that?

Phillips. It may be Nine or Ten Years.

Earl Ferrers. Upon what Occasion was it that I asked you that Question; and what did I say further?

Phillips. Your Lordship said that you was a Madman, but could not help it; and when it was off you, you was sorry for it.

Earl Ferrers. Did I, at any Time, lament the Misfortune of my Family, in respect of Mad-ness?

Phillips. Your Lordship told me that it was in your Family.

Earl Ferrers. At the Time that you speak of, Ten or Eleven Years ago, was I upon a Visit at any Place that might make it necessary for me to caution People against my own Mad-ness, that they might not be affronted at my Behaviour?

Phillips. Your Lordship came then to live in the House where I live. I thought you spoke those Words in a Way to caution me, that I should not be surprized, in case you had such Fits.

Earl Ferrers. Did you hear *Johnson* the Deceased say that he thought me mad?

Phillips. I have.

Earl Ferrers. When was it?

Phillips. Some time ago.

Mr. Attorney General. My Lords, That is not Evidence, to speak of what he heard *Mr. Johnson* say.

Earl Ferrers. I thought, as the Evidence of Declarations of the Deceased was admitted against me, it would have been admitted for me.

Mr. Attorney General. My Lords, though the Declarations of the Deceased; whilst a dying Man, and after the Stroke is given, are to be admitted as legal Evidence; yet a Deposition of what he or any other Person said before the Accident, is clearly Hearsay Evidence, upon the same Foundation with all other Hearsay Evidence; and, with Submission to your Lordships, ought not to be admitted.

Mr. Attorney General. The Question is objected to by me; if my Noble Lord or his Council insist upon it, the next Step is to hear his Council upon the Objection; then we are to answer it, and they are to reply; and then it is for your Lordships Judgment.

Earl Ferrers. I waive the Question.

Gold Clarges, Esq; sworn.

Earl Ferrers. How long have you known me?

Clarges. From the Time of your Birth.

Earl Ferrers. Did you look upon me to be afflicted with any and what Distemper?

Clarges. Indeed I have looked upon your Lordship as a Lunatick for many Years.

Earl Ferrers. Has that Distemper increas'd of late Years, and how long?

Clarges. I think it has.

Earl Ferrers. How long?

Clarges. For these Two Years or more, ever since the unhappy Difference between my Lady and my Lord.

Earl Ferrers. Have you seen me in violent Fits of Lunacy?

Clarges. I cannot say I have; and the Reason that I have seen few extravagant Actions of his Lordship was this, as I look'd upon him to be disordered in his Mind, I avoided being in Company or having any Conversation with him as much as possible.

Earl Ferrers. Have you particularly remark'd that I am of a very jealous or suspicious Nature?

Clarges. That I have often.

Earl Ferrers. Has it been remarkably so in me more than in any other People?

Clarges. Much more so.

Earl Ferrers. Did you know any of my Relations being so afflicted?

Clarges. I remember *Henry Earl Ferrers* was.

Earl Ferrers. Had he a Commission taken out against him?

Clarges. He had.

Earl Ferrers. Was he after that restor'd to his Senses for any Time, so as to return to Parliament?

Clarges. He was; he return'd to Parliament about a Year and an Half, I believe, or thereabouts.

Earl Ferrers. What Relation was he to me?

Clarges. Uncle?

Earl Ferrers. Was his Return to Parliament after he had been confin'd for Lunacy?

Clarges. Yes.

Earl Ferrers. Had he, after that Year and an Half's being in Parliament, any Relapse?

Clarges. Yes.

Earl Ferrers. What became of him then?

Clarges.

Clarges. Another Commission was taken out, and he was confined to the Time of his Death?

Earl Ferrers. His being in Parliament a Year and a Half was after the first Commission issued against him?

Clarges. Yes.

Earl Ferrers. Do you know of any other of the Family being afflicted with that Distemper?

Clarges. I have heard, but do not know it?

Lord Ravensworth. Have you avoided being in Company with Lord *Ferrers*, or having any Thing to do with him, for some Time past?

Clarges. I did, as much as I could.

Lord Ravensworth. Please to inform their Lordships, whether you, at any Time previous to that, lived in any Degree of constant Correspondence and Intimacy with Lord *Ferrers*?

Clarges. Not much since he arrived to Manhood.

Lord Ravensworth. Whether, previous to his Arrival at Manhood, did you see a great deal of Lord *Ferrers*?

Clarges. A great deal, almost from his Cradle; for I being a Relation of his Family, was constantly with his Father and with him in the Country, and most Part of my Time I spent with them.

Lord Ravensworth. Whether in that Time, previous to his Manhood, did you observe any Thing in Lord *Ferrers* from his Behaviour, or any of his Department, that was particularly remarkable?

Clarges. I have.

Lord Ravensworth. You have known him during his Infancy and before his Manhood; Did you observe any thing remarkable constitutionally (if I may call it so), and singular in his Behaviour, during the Time you knew him?

Clarges. I have seen great Oddities in him beyond what I have seen in any other Man.

Lord Ravensworth. What Age was this present unfortunate Earl at the Time of the Death of his Father?

Clarges. I believe about Twenty-two or Twenty-three.

Lord Ravensworth. You say you was intimate with his Father; Had you at any Time any Conversation with the Father of the present Earl, relative to that which appeared to you to be singular in his Son?

Clarges. I cannot say I ever had.

Lord Ravensworth. Please to recollect, as far as possible, any Symptoms, be they of what Kind soever, that made you think Lord *Ferrers* so very singular in his Nature?

Clarges. I cannot specify any particular Thing.

Lord Ravensworth. You say that you have several Times seen that in my Lord, which made you think my Lord to be very singular?

Clarges. Yes.

Lord Ravensworth. Do you recollect any Thing?

Clarges. It is a great while ago; I cannot particularly specify any Thing.

Earl of Morton. This Witness has told your Lordships, that he has known the Noble Lord at the Bar from his Cradle—I desire he may be asked, if he ever observed any Defect of Understanding in the Noble Lord at the Bar?

Clarges. Not to my Knowledge; not whilst he was with me.

Earl of Morton. Upon no Occasion when you saw him?

Clarges. No, I cannot say I have.

Earl of Morton. Did you ever perceive the Noble Lord at the Bar so far deprived of his Senses, as not to know that Robbery or Murder was an Offence against the Law of God and Man?

Clarges. No, to be sure, my Lords; I cannot say that I ever did.

Peter Williams sworn.

Earl Ferrers. How long have you known me?

Williams. I have known your Lordship these Sixteen or Seventeen Years.

Earl Ferrers. Do you know of any Distemper that I am afflicted with?

Williams. Of late I have.

Earl Ferrers. What Distemper is that?

Williams. I have often observed your Lordship, when I have been in your Company, to be spitting in the Glass, and biting your Lips, and Stamping about the Room, which induced me to believe your Lordship was not in your right Senses; and further to convince me it was so, there was a Mare that your Lordship sent to me on the 17th January 1749, and remained with me to the

the first of *April* following : One Day, being *Sunday*, your Lordship came to my House, about Four or Five in the Afternoon, with Two Servants; your Lordship arm'd with a Tuck stuck upon a Stick, the Two Servants with Guns and other offensive Weapons : Upon entering into the Yard, your Lordship jump'd off the Horse, and bid one of your Servants, you call'd *Tom*, knock the Padlock off the Stable Door.—He did so. My Wife hearing a Noise in the Yard, she came to know the Reason; and without any Ceremony your Lordship fell'd her to the Ground with your Fist : Upon my seeing this, I went into the Yard, and ask'd your Lordship what you meant by this Behaviour ?

Earl Ferrers. My Lords, I desire to stop this Witness; I only meant to ask him a general Question.

Earl Ferrers. Have you observed, that That which you call a Distemper in me has increased lately ?

Williams. Yes, in my Opinion I think it did : When your Lordship came to me, you, without any further Ceremony — — — (Stopp'd by Lord *Ferrers*).

Lord Ravensworth. My Lords, in Justice to myself and to your Lordships, I hope that the Witness may go on, tho' the Prisoner desires he may be stopp'd ?

Lord Mansfield. If any of your Lordships have any Questions to ask the Witness, you will do it : The Prisoner will ask him such as he thinks proper.

Earl Ferrers. Do you know of any Design in the Family to take out a Commission of Lunacy against me ?

Williams. I cannot say I do.

Earl Ferrers. Did you ever tell me that the Family wanted to prove me mad ?

Williams. I don't remember I did.

Earl Ferrers. Did you yourself consider me as a Madman ?

Williams. I considered your Lordship so at this Juncture, and many Times before.

Earl Ferrers. What Time did you mean by this Juncture ?

Williams. I mean the Juncture of his Lordships coming on Horseback with Guns and other offensive Weapons to take away the Mare.

Earl Ferrers. What Time was that ?

Williams. *Sunday* the 1st of *April* 1759; I mistook when I said 1749.

Earl Ferrers. Was it the general Reputation of the Country that I was mad ?

Williams. It was; I have heard several People say, where is the mad Lord that us'd to be at your House ?

Earl Ferrers. How long before this Accident, in regard to Mr. *Johnson*, was it, that my Lord came to your House arm'd in this manner ?

Williams. I believe it was about a Twelvemonth.

Earl Ferrers. You said it was 1749 before.

Williams. I meant 1759.

Elizabeth Williams sworn.

Earl Ferrers. How long have you known Lord *Ferrers* ?

Williams. A great many Years.

Earl Ferrers. Do you know of any Distemper that Lord *Ferrers* is afflicted with, and what is it ?

Williams. He never appeared like any other Gentleman.

Earl Ferrers. Wherein did he differ from other People in general ?

Williams. He always was amusing and talking to himself.—He spit in the Looking-glass, tore the Pictures, swearing he would break my Bureau open, and would break all the Glasses in my House, and would throttle me if I would not let him do it.

Earl Ferrers. Had he any particular Reason for this Conduct ?

Williams. None that I ever saw, but like a delirious Man.

Earl Ferrers. Did you keep a Public House ?

Williams. Yes.

Earl Ferrers. How near did you live to my Lord ?

Williams. My Lord was at my House, and boarded with me.

Earl Ferrers. Are you the Wife of the last Witness ?

Williams. Yes.

Earl Ferrers. Where did Lord *Ferrers* live, at the Time he behav'd in that odd manner you speak of ?

Williams. He had Lodgings at *Muswell Hill*.

Earl Ferrers. How far did you live from him.

Williams. Two Miles to the best of my Knowledge, he frequently us'd to come, I have made him Coffee and sent up a Dish, he always drank it out of the Spout, which surprized me, that I thought him delirious.

Earl Ferrers. How long ago is that?

Williams. I believe it is about Twelve Months ago to the best of my Knowledge.

Earl Ferrers. Have you often seen Lord *Ferrers* behave in that Manner?

Williams. I never saw him behave like any other Gentleman in my Life.

Earl Ferrers. Was the Coffee hot when he drank it out of the Spout?

Williams. Hot.—He always went about the Town like a Madman, throttled me and threw me down in the Yard, one Day when he took the Horse away.

Earl Ferrers. Did you think Lord *Ferrers* a Madman?

Williams. I know he was by all his Appearance.

Earl Ferrers. Was he generally thought so by other People?

Williams. By all the whole Town.

A Lord. When he threatened to break open your Bureau, and to use you ill if you did not let him do it, was he in Liquor?

Williams. Sober as I am now.

A Lord. Did you ever, upon any Occasion when he committed these Outrages, observe that he had been drinking?

Williams. Never; he never drank in a Morning but a little Tea or Coffee, or some Broth.

Earl Ferrers. Have you ever seen me commit any other Acts of Outrage besides those you have mentioned?

Williams. A great many more that are worse.

Earl Ferrers. Name them?

Williams. Swearing, cursing, and damning us; and wishing us all at Hell, and himself at Hell; and threatened to break the Glasses; and talk'd to himself for Hours together in Bed.

Earl Ferrers. Was he drunk or sober at those Times?

Williams. Very rarely; but he seem'd more to be disturb'd in his Mind.

Earl Ferrers. Mention the Circumstance about my coming for the Mare?

Williams. My Lord came for the Mare, it was at Church Time, and brought his Servants, and a Hammer in his Hand, and Guns, with a Tuck in his Hand, and broke the Stable Door open by Violence of Arms, and knock'd me down with his Arm, and run the Tuck into my Husband, fetch'd the Blood, I was obliged to have a Surgeon to attend him; and took the Mare away by Force of Arms, and if any-body came to hinder him, he said he would blow their Brains out. He always had Pistols, nobody knew of. I never saw any Gentleman that came to my House before, that had those Things about them. I us'd to like to take them out of the Bed-chamber, but was afraid to touch them, for fear of what he should do to me himself, by seeing his Mind so disturb'd.

Earl Ferrers. Were those Outrages committed when he was drunk or sober?

Williams. Sober for the general; and when he took the Mare away, as sober as he is now.

Earl of Hardwicke. Inform their Lordships, whether, before my Lord came in this Manner to get the Mare out of the Stable, he had before sent any Servant to demand the Mare, and had been refus'd?

Williams. Yes he had, the Boy was gone to Church. We always kept it under Lock, because there was more of his Lordship's Horses; and nobody was to go into the Stable but his Lordship's Ostler.

The Honourable Mr. *Robert Shirley* sworn.

Earl Ferrers. What Relation are you to me?

Shirley. Brother.

Earl Ferrers. When was the last Time that you and I had any Conversation together?

Shirley. Almost Four Years ago, between Three and Four Years.

Earl Ferrers. At that Time in what Light did you look upon me?

Shirley. Rather turn'd in your Head.

Earl Ferrers. Was there any Disorder in the Family? and what was that?

Shirley. Lord *Henry Ferrers* had Madness.

Earl Ferrers. Do you know Lady *Barbara Shirley*?

Shirley. I do not.

Earl Ferrers. Do you know of your own Knowledge any other besides Earl *Henry* that was a Lunatic?

Shirley. No.

Earl Ferrers. Have you any Reason to believe that I have been afflicted with the like Disorder?

Shirley. I have.

Earl Ferrers. Please to Name your Reasons?

Shirley. My Reasons are, that when I liv'd at *Burton-upon-Trent*, your Lordship came to my House with conceal'd Pistols in your Pockets, Pockets that were made on Purpose for that Use I apprehend; and that you likewise had a Snick-or-snee Knife, as it is call'd; and I apprehended myself and all the Family in great Danger at that Time; and I was obliged to shut the Doors against you; upon that I wrote to my Brother Captain *Washington Shirley*, that I apprehended you to be a Lunatic, and would join with him in taking out a Commission against you.

Earl Ferrers. Have you any other Reasons to believe me a Lunatic than my carrying Pistols?

Shirley. Yes.

Earl Ferrers. Name all your Reasons?

Shirley. Your Lordship has frequently ask'd my Opinion in relation to your Affairs, which I have told you to the best of my Capacity; but you was always so unsteady and jealous of me and your Friends, when we were endeavouring to serve you, that you would never venture to trust us in any Thing in which we could be of Service to you. I have likewise seen you in several strange Postures, walking about with great Confusion of Mind, and very often was absent for a considerable Time, when I have been asking you a Question I could hardly get an Answer from you.

Earl Ferrers. Was it usual for me to go arm'd?

Shirley. I believe for Four Years past, or very near, you have hardly ever gone without conceal'd Pistols about you.

Earl Ferrers. Did I use to go arm'd formerly when you knew me?

Shirley. I never knew that his Lordship went arm'd, till he came to my House at *Burton-upon-Trent*, which was the last Time I saw him.

Earl Ferrers. Do you know any Thing more?

Shirley. I have further to say, that my Father made a Settlement in 1741, which you subjected yourself to and acquiesced under for near Twenty Years; and then prefer'd a Bill, in order to set that Settlement aside; and, contrary to the Opinion of your Solicitor and Council, you still would insist upon doing it, and obliged me to put in an Answer for myself and my Son.

Earl Ferrers. Do you know of my being subject to Fits of violent Rage?

Shirley. I cannot say but I have.

Earl Ferrers. Did you ever see me so outrageous as not to know the Difference between Good and Evil?

Shirley. I really cannot particularize any Thing, 'tis so long ago; but upon Occasions I have seen you extremely passionate and warm, and so much so, that I believe you did not know what you did sometimes.

Earl Ferrers. Do you think that these violent Passions you speak of arose from constitutional Defects?

Shirley. I really believe so.

Earl Ferrers. If you have any Thing more to offer, mention it yourself; I have no more Questions to ask you.

Shirley. I have nothing more to offer.

Lord Cadogan. How long was it before this Accident, that you wrote to Captain *Washington Shirley* about taking out a Commission of Lunacy against my Lord?

Shirley. It is upwards of Two Years ago since I wrote to him.

Doctor *John Monroe* sworn.

Earl Ferrers. Did you know the late Earl *Ferrers*?

Monroe. I did.

Earl Ferrers. Did you know him in any and what Distemper?

Monroe. I attended him as a Physician when he was under the unhappy Influence of Lunacy.

Earl Ferrers. Have you heard all the Evidence that has been given in this Cause, on the Charge against Earl *Ferrers*, on both Sides?

Monroe. I have.

Earl Ferrers. You are desired to mention what are the usual Symptoms of Lunacy?

Monroe. Uncommon Fury, not caused by Liquor, but very frequently raised by it; many others there are which tend to Violence against other Persons or against themselves: I do not know a

stronger,

stronger, a more constant, or a more unerring Symptom of Lunacy than Jealousy, or Suspicion without Cause or Grounds: There are many others too long to enumerate.

Earl Ferrers. Has the carrying of Arms been generally a Circumstance of Lunacy?

Monroe. I have known it to be so, but not generally.

Earl Ferrers. Please to inform their Lordships whether any and which of the Circumstances which have been proved by the Witnesses are Symptoms of Lunacy?

Mr. Attorney General. My Lords, if the Noble Lord means to insist upon that Question, I object to it.

Lord High Steward. Lord Ferrers, do you desire your Council to be heard upon that?

Earl Ferrers. I do.

Earl of Hardwicke. My Lords, this Question is too general, tending to ask the Doctor's Opinion upon the Result of the Evidence, and is very rightly objected to by the Council for the Crown: If the Noble Lord at the Bar will divide the Question, and ask whether this or that particular Fact is a Symptom of Lunacy, I dare say they will not object to it?

Mr. Attorney General. My Lords, I shall not.

Earl Ferrers. My Lords, I submit to have it go on in the Way recommended by Lord Hardwicke.

Earl Ferrers. Please to inform their Lordships, whether quarrelling with Friends without Cause is a Symptom of Lunacy?

Monroe. Very frequently one.

Earl Ferrers. Whether being naturally suspicious is a Symptom of Lunacy?

Monroe. Yes it is without Cause a constant one.

Earl Ferrers. Whether going arm'd where there is no Danger is a Symptom of Lunacy?

Monroe. That must be according to the Circumstances.

Earl Ferrers. Whether going generally arm'd where there is no apparent Danger is a Symptom of Lunacy?

Monroe. I should think it was.

Earl Ferrers. Whether spitting in the Looking-glass, clenching the Fist, and making Mouths is a Symptom of Lunacy?

Monroe. I have frequently seen such in Lunatic Persons.

Earl Ferrers. Whether walking in the Room, talking to himself, and making odd Gestures, are Symptoms of Lunacy?

Monroe. Very common ones.

Earl Ferrers. Is quarrelling without Cause a Symptom of Lunacy?

Monroe. It is a very frequent Attendant upon such unhappy Complaints, and they are generally malicious.

Earl Ferrers. Whether drinking Coffee hot out of the Spout of the Pot is a Symptom of Lunacy?

Monroe. I should think it one in the present Case; it is not a general one.

Earl Ferrers. Whether Lunatics, when they are angered with or without Cause, know what they are doing?

Monroe. Sometimes, as well as I do now.

Earl Ferrers. Is it common to have such a Disorder in Families in the Blood?

Monroe. Unfortunately too common?

Earl Ferrers. Whether Lunatics in their Intervals are conscious of their being Lunatics?

Monroe. They are conscious of it; many, both in and out of their Intervals; very few that are not.

Earl Ferrers. Whether Lunatics are apt to be seized with Fits of Rage on a sudden?

Monroe. Very often.

Earl Ferrers. Without any apparent Cause?

Monroe. Without any apparent Cause.

Earl Ferrers. Is there any other Way of discovering whether a Man is a Lunatic or not, but by the Irregularity of his Behaviour or his Pulse?

Monroe. By the Irregularity of his Behaviour; I know of no other Method; the Pulse discovers nothing in general.

A Lord. Please to inform their Lordships, whether a Person under an immediate Visitation from God of Madness, has not commonly a Fever?

Monroe. Seldom or never, unless it may be at the first Attack of the Distemper, or in some very violent Fit.

Roger Griffith sworn.

Earl Ferrers. How long have you known me?

Griffith. About Twelve Months.

Earl Ferrers. Did you know me when I lived at *Muswell Hill*?

Griffith. Yes, very well.

Earl Ferrers. When was that?

Griffith. It was about Twelve Months ago.

Earl Ferrers. At that Time was I generally reputed a Madman, or a Man in his Senses?

Griffith. Generally reputed a Lunatic; some said, crack'd in his Head.

Earl Ferrers. My Lords, I desire Leave to call Mr. *Goostrey*, to ask him a Question I forgot Yesterday.

Mr. *Goostrey* sworn again.

Earl Ferrers. Have you observ'd me remarkably jealous and suspicious, and for what?

Goostrey. Very remarkably so all the while I had the Honour to be concerned for him, and much more than any other Person. In the course of Time that I was concern'd for his Lordship, he has been at different Times——

Lord High Steward. You are not to go into a Detail.

Earl Ferrers. My Lords, I have done with my Evidence; but it is impossible for me to sum up, and what I have to offer to your Lordships I have reduced into Writing, and desire the Clerk may read it.

Lord High Steward. Is it of your Lordship's own Writing?

Earl Ferrers. My Lords, the Attorney got it copied.

Clerk reads.

My Lords,

IT is my Misfortune to be accused of a Crime of the most horrid Nature.

My Defence is, in *general*, that I am *Not Guilty*: The Fact of *Homicide* is proved against me by Witnesses, who, for ought I can say to the contrary, speak truly.

But if I know myself at this Time, I can truly affirm, I was ever incapable of it, *knowingly*; If I have done and said what has been alledg'd, *I must* have been depriv'd of my Senses.

I have been driven to the miserable Necessity of proving my own Want of Understanding; and am told, the Law will not allow me the Assistance of Council in this Case, in which, of all others, I should think it most wanted.

The more I stand in need of Assistance, the greater Reason I have to hope for it from your Lordships.

Witnesses have been call'd to prove my Insanity,—To prove an unhappy Disorder of Mind, and which I am griev'd to be under the Necessity of exposing.

If they have not directly prov'd me so Insane as not to know the Difference between a *moral* and an *immoral* Action, they have at least prov'd that I was *liable* to be driven and hurried into *that unhappy Condition* upon very slight Occasions.

Your Lordships will consider whether my *Passion*, *Rage*, *Madness* (or whatever it may be called), was the Effect of a weak or distemper'd Mind, or whether it arose from my own Wick- edness, or Inattention to my Duty.

If I could have controul'd my Rage, I am answerable for the Consequences of it.—But *if I could not*, and if it was the mere Effect of a distempered Brain, I am *not* answerable for the Consequences.

My Lords, I mention these Things as *Hints*—I need not, indeed I *cannot*, enlarge upon this Subject: Your Lordships will consider all Circumstances, and I am sure you will do me Justice.

If it be but a Matter of *Doubt*, your Lordships will run the Hazard of doing me *Injustice* if you find me Guilty.

My Lords, If my Insanity had been of *my own seeking*, as the sudden Effect of *Drunkennes*, I should be *without Excuse*. But it is proved, by the Witnesses for the Crown, *that I was not in Laquer*.

Mr. *Kirkland*, who drank and conversed with me, in order to betray me, (Mr. Attorney may commend his *Caution*, but *not his Honesty*) represents me as the most irrational of all Madmen, at the Time of my doing a Deed, which I reflect upon with the utmost Abhorrence.

The Council for the Crown will put your Lordships in Mind of every Circumstance against me, I must require of your Lordships' Justice, to recollect every Circumstance on the other Side.

My Life is in your Hands, and I have every Thing to hope, as my Conscience does not condemn me of the Crime I stand accused of; for I had no preconceived Malice; and was hurried into the Perpetration of this fatal Deed, by the Fury of a disordered Imagination.

To think of this, my Lords, is an Affliction, which can be aggravated only by the Necessity of making it my Defence.

May God Almighty direct your Judgments, and correct my own.

Earl Ferrers. My Lords, I will mention One Circumstance, which I did speak of Yesterday; it was said, that I knew of a Lease *Johnson* had, but it has never been proved; therefore, I imagine, that what I asserted, that I did not know of it, must be admitted as Truth.

Lord High Steward. Earl Ferrers, Hath your Lordship any thing further to offer?

Earl Ferrers. No.

Mr. Solicitor General.

My Lords,

IT is now my Duty, to lay before your Lordships some Observations, upon the Evidence offered both for the King and the Prisoner, in Reply to the Defence made against the Charge.

The Fact of killing Mr. *Johnson* (the Person named in the Indictment), is admitted as well as proved. The Noble Lord at the Bar only denies the Consequence; that the Fact is Murder. For, he tells your Lordships, that, upon considering all the Circumstances, he is satisfied, that he was incapable, knowingly, of doing what he did; and therefore insists upon an Incapacity and Infanity of Mind in his Defence.

My Lords, It is certainly true, that the Fact is not Murder without Malice; so natural Justice says; so the Law says, on which the Indictment is framed: And Malice must depend, in every Case, upon the Will and Understanding of the Party. If the Defence is founded in Truth; as the Noble Prisoner at the Bar has seen the Anxiety of your Lordships, to give it all due Weight, through the whole Course of his Trial; so now, in the Conclusion, he will receive from you, as his Judges, the full Benefit of that Defence in his Acquittal. If it is not founded in Truth, I am persuaded, that no other Consideration, respecting the Rank and Quality of the Noble Prisoner, and his Relation to your Lordships, will turn your Attention from the Evidence, nor make the least Impression upon the Firmness of your Justice.

Before I observe upon the Evidence, I will presume, with your Lordships Indulgence, to state to you the Legal Notion of that Defence, which has been urged and attempted in Proof.

My Lords, The Law of *England*, which is wisely adapted to punish Crimes with Severity, for the Protection of Mankind, and for the Honour of Government, provides, at the same Time, with the greatest Equity, for the Imbecillity and Imperfections of human Nature. Therefore, my Lord Chief Justice *Hale* (the Weight and Authority of whose Writings are known to your Lordships and to the whole Kingdom), explains the Law upon this Subject, at large, with his usual Clearness and Accuracy. It is, in his First Volume of the History of the Pleas of the Crown, (fol. 30), where he traces all the Distinctions, which the Nature of this Question admits, as it concerns the Trial of Criminals for Capital Offences. I will collect the Substance of what he says, and submit it to your Lordships, as founded not only in Law and Practice, but in the most unerring Rules of Reason and Justice.

My Lords, He begins with observing, that "There is 1st, A Partial Infanity of Mind, and " there is 2dly, A Total Infanity. 1st. Partial Infanity is, either in respect to Things, when " they, who are competent as to some Matters, are not so as to others; or else it is Partial, in " respect to the Degree. This is the Condition of many, especially of Melancholy Persons. As to " such, a Partial Infanity will not excuse them; for (he says) that Persons who are Felons of " themselves, and other Felons, are under a Degree of it, when they offend." It is difficult to draw the Line, which divides Perfect from Partial Infanity; and he refers it to the Discretion of the Judge and Jury, who must duly weigh and consider the Whole; "Lest on one Side, there be a Kind of Inhumanity towards the Defects of Human Nature; or, on the other Side, too much Indulgence " given to great Crimes." Then, my Lords, he speaks of the general Rule, which he would chuse to lay down, as the best Measure of his own Judgment; and it is, "That a Person, who has " ordinarily as great a Share of Understanding, as a Child of Fourteen Years of Age, is such a " Person, as may be guilty of Treason or Felony. 2dly, As to Total Infanity or Alienation of " Mind,

“ Mind, which is perfect Madness, this (Lord *Hale* agrees) will plainly excuse from the Guilt of Felony and Treason.”

But he distinguishes under the Head of Total Insanity, between “ that Species, which is fixed and permanent ; and Lunacy, which comes by Periods or Fits.”

Of this latter Kind he expresses himself thus : “ Crimes committed by Lunatics, in such their Distempers, are under the same Judgment, as those committed by Men partially insane. The Person, who is absolutely mad for a Day, killing a Man in that Distemper, is equally not Guilty, as if he were mad without Intermision. But such Persons, as have their lucid Intervals, have usually, in those Intervals at least, a competent Use of Reason ; and Crimes committed by them are of the same Nature, and punishable in the same Manner, as if they had no such Defect.”

My Lords, Afterwards, he treats of that Insanity, which arises from Drunkenness, and lays it down, that “ By the Law of *England*, such a Person shall have no Privilege from this voluntary contracted Madness, but shall have the same Judgment, as if he were in his right Senses ;” (unless it be occasioned by Medicine unskilfully administered, or Poison accidentally taken). Indeed, if, by such Practices, an habitual fixed Frenzy be caused, it puts the Man in the like Condition, with respect to Crimes, as if that Frenzy were at first involuntarily contracted.

My Lords, The Result of the whole Reasoning of this wise Judge and great Lawyer (so far as it is immediately relative to the present Purpose) stands thus. If there be a total permanent Want of Reason, it will acquit the Prisoner. If there be a total temporary Want of it, when the Offence was committed, it will acquit the Prisoner. But if there be only a partial Degree of Insanity, mixed with a partial Degree of Reason ; not a full and complete Use of Reason, but (as Lord *Hale* carefully and emphatically expresses himself) a competent Use of it, sufficient to have restrained those Passions, which produced the Crime ; if there be Thought and Design ; a Faculty to distinguish the Nature of Actions ; to discern the Difference between moral Good and Evil ; then, upon the Fact of the Offence proved, the Judgment of the Law must take place.

My Lords, The Question therefore must be asked ; Is the Noble Prisoner at the Bar to be acquitted from the Guilt of Murder, on account of Insanity ? It is not pretended to be a constant general Insanity. Was he under the Power of it, at the Time of the Offence committed ? Could he, did he, at that Time, distinguish between Good and Evil ?

The same Evidence, which establishes the Fact, proves, at the same Time, the Capacity and Intention of the Noble Prisoner. Did he weigh the Motives ? Did he proceed with Deliberation ? Did he know the Consequences ?

My Lords, He weighed the Motives. The Two Witnesses, who speak most strongly and materially to this Part of the Cause, as well as to every other, are, *Sarah Johnson* the Daughter of the Deceased, and *Mr. Kirkland* the Surgeon.

The Circumstances proved by their Evidence shew, that the Malice conceived, on this unfortunate Occasion, was steady, cool, and premeditated. *Mr. Johnson* had acted, for many Years, as Steward to collect the Rents of such Lands as Lord *Ferrers* had in Possession ; and he was himself Tenant of One of the Farms. At the Time of passing the Act of Parliament, Two Years ago, relative to the Noble Lord's Estate and Affairs, *Mr. Johnson* stood so well in his Opinion and Favour, as to be recommended by his Lordship to be Receiver, for the various Trusts and Purposes in the Act. Something passed on that Occasion, which disgusted the Noble Lord, and made him jealous, that *Johnson* had taken part against him. From that Moment, he entertained Resentment and Hatred in his Heart. More lately still, he took Offence against *Johnson*, as to a Contract for the Sale of Coals upon Part of the Estate, in which his Lordship thought (as he seems to be knowing and attentive in his private Business) that there had been some Collusion, to impose upon him.

My Lords, The first Instance of his Resentment appeared to you from the Evidence of *Sarah Johnson*, the Daughter : That, in the *November* preceding the killing of her Father, Lord *Ferrers*, accompanied by *Mr. Clifford*, delivered a Paper to *Johnson*, the Body of which was voluntarily admitted by my Lord to be of his own Hand-writing. It was a Notice to *Johnson* to quit the Farm which he rented, and *Clifford* was the intended Successor. This Step proceeded from Resentment, and it was so explained afterwards by himself to *Kirkland*, when he said, that he had long wanted to drive *Johnson* out of the Farm, and make him return to *Cheshire*, from whence he came. My Lords, It is very plain, that the Noble Lord took his Resolution—

Earl Ferrers. Mr. Solicitor, you mistake; the Notice was given a Twelvemonth ago last *November* ; it was not given in the last *November*.

Mr.

Mr. Solicitor General. My Lords, I am extremely obliged to the Noble Lord at the Bar, for setting me right in the least Circumstance; and hope that he will always do it, whenever I mistake. I mean to be as exact as I am able. My Lords, The View with which I mention the Notice to turn *Johnson* out of the Farm, is this. Lord *Ferrers*, in order to shew the Improbability of his conceiving Malice against *Johnson*, has relied upon it, that he was always known to entertain the greatest Regard and Friendship for that unfortunate Man. My Lords, I admit the Friendship and Kindness down to the Time of passing the Act of Parliament: And I said, that his Lordship had recommended *Johnson* to be Receiver. But soon after the passing of that Act, he certainly changed his Opinion. It is sufficient, therefore, that the Notice to quit the Farm (which was the first strong Mark of his Repentment proved in Evidence) was given, subsequent to the Proceedings of the Legislature. Whether the Notice was given last *November*, or in the Year preceding, the Observation, as applied to this Purpose, remains in its full Force.

My Lords, I was saying, that, it was plain, his Lordship gradually wrought himself up to a Resolution of destroying Mr. *Johnson*. The Daughter, *Sarah Johnson*, proves, that his Lordship declared, in her Hearing, when she went to *Stanton*, in the Evening of the 18th of *January*, to see her dying Father, that he designed it. He declared to *Kirkland*, that since the Year 1753, *Johnson* had been a Villain; that he had done Things not right; that his Lordship fully intended to shoot *Johnson* dead, as a Villain who deserved Death; and that it was premeditated. He complained farther to *Kirkland*, that *Johnson* had colluded with his Enemies to obtain the Act of Parliament; but added, that the chief Reason, which had just then provoked him, was, the Contract with Mr. *Curzon*, in relation to the Profits of his Coals. He upbraided *Johnson* that Evening, upon his Death-bed, in like Terms of Reproach. And though the Witnesses said, that his Lordship might then be raised with Liquor in some Degree, yet he did not lose his Understanding; and the Manner, in which he spoke, was temperate.

My Lords, Can there be a clearer Proof, that the Noble Prisoner weighed the Motives of this Action? Neither these, nor any other Motives, will justify it; but the Evidence shews, that his Conduct was not absurd, but rational and consistent. The same Crime has been committed in all Ages, upon Grounds as slight, by Men who never thought of setting up the Defence of Lunacy. Motives like those suggested, might easily and naturally work upon one, the Course of whose Life (as explained by the Witnesses), betrays so many Marks of ungoverned Passion; though the same Motives would not have inflamed Tempers, less susceptible of Violence than his own.

My Lords, He proceeded with equal Deliberation to commit the Fact. The Attention, Thought, and Care, with which he acted, are remarkable.

It appears, that he had appointed a particular Day for Mr. *Johnson* to wait upon him. *Friday* the 18th of *January* was fixed, by the Order of Lord *Ferrers*; and the Appointment was made some Days beforehand. *Elizabeth Burgeland* has told your Lordships, that Mr. *Johnson* was expected at *Stanton* in the Forenoon of that very Day. *Sarah Johnson* tells your Lordships, that she heard her Father declare, on the *Sunday* preceding, that he was to attend Lord *Ferrers* on *Friday*. *Kirkland* proves, that the Noble Prisoner himself said to the Witnesses at *Stanton*, that, upon *Johnson's* coming into the Room, they had a Conversation together; after the Door was locked, by way of warm and violent Expostulation on the Part of my Lord; and that he tendered a Paper to be signed by *Johnson*, acknowledging his Villainy. *Elizabeth Saxon* overheard Part of what was said. That Paper must have been the Result of Thought and Consideration, probably prepared before *Johnson* came. Your Lordships observed, with some Emotion, the Account given of the Impatience, with which Confessions of Villainy were expected, and almost extorted afterwards, from the dying Man.

My Lords, when the Wound was given, the Noble Lord at the Bar told Mr. *Kirkland*, that he was cool at the Time he did it: That he took Aim; but not having killed *Johnson*, he intended to shoot again: That, however, Nature got the better of Resolution, when he observed the Pain under which *Johnson* languished. It is proved, that in the Evening, whilst *Kirkland* and Lord *Ferrers* sat together in the Still Room, his Lordship declared, that he did not intend to shoot *Johnson* dead, but only to make him smart in the Hip and Side. This was taken Notice of by the Noble Prisoner, as a Variation in *Kirkland's* Account of the Intention with which *Johnson* was shot, inconsistent with what the Witness had said before. But, the Variation probably arose from my Lord's own Manner of discoursing during that Evening. The Observation, therefore, cannot affect the Credit of the Witness; and the Intention declared, of killing or wounding, will not vary the Construction of Law upon the Fact committed. Your Lordships heard too, what Lord *Ferrers* said in the Hearing of *Sarah Johnson*; that he had tried the Pistol through a Deal Board, and knew it to be good. He said the same Thing to *Kirkland*; expressing some Surprize (as the Witness understood it), that the Ball did not go through *Johnson*.

All these Circumstances shew, the Deliberation with which the Noble Prisoner proceeded.

My

My Lords, let me now ask, when the Motives had been weighed, and the Fact deliberately committed, Did he know the Consequences?

His first Thought was, instantly to send for the Assistance of a Surgeon, and to enquire, whether *Johnson* would live or die. The Daughter came early in the Afternoon. He said to her, that he was afraid of being prosecuted; adding, that if she would not prosecute him, he would maintain her, and her Family. Does not this Circumstance prove, that he readily understood the Consequences? that he knew himself bound to answer to the Law for his Offence? When *Kirkland* came, his Lordship tempted him with fair Promises, to prevent the Neighbours from seizing him. He told *Kirkland*, that a large Bill was owing to him; and my Lord said, that he would pay Part of it then, and the rest in a reasonable Time. In talking over the Circumstances (which he recollected clearly and calmly), he added, that he could justify himself; though, upon his Surrender to your Lordships, he was doubtful whether his Justification would be approved. From what Consciousness in his own Mind did that Doubt arise? He expressed his Fears, during the whole Evening, that he should be seized. He was quieted, in this respect, only by the Conversation of *Kirkland*, and the Manner of his Behaviour. Upon *Kirkland's* coming to *Stanton*, my Lord enquired much into the Probability of *Johnson's* dying. In the first Visit which my Lord and the Surgeon made to *Johnson* that Evening, his Lordship gave material Instructions; asked sensible and pertinent Questions, particularly as to the Place of the Wound, and the Effect of the Ball lying in the Abdomen. The Witnesses thought that Mr. *Johnson* would die, from the very Moment of his first Visit; but he told your Lordships, that he judged it right to deceive Lord *Ferrers*. The noble Prisoner was pleased to say, that the Caution of the Witnesses might be commended, but not his Honesty. My Lords, the Caution proceeded from Honesty: He was unwilling that his Lordship should escape. This was due to Civil Government, to Justice, and Humanity. To prevent Lord *Ferrers* from taking Alarm, and attempting to escape, *Kirkland* flattered him with Hopes of *Johnson's* Recovery, during the whole Evening; and his Lordship was told, that if the People should endeavour to seize him, the Witnesses would persuade them, that there was no Occasion for it. About Eleven o'Clock at Night, Mr. *Kirkland* went up again to *Johnson*: He still continued to amuse Lord *Ferrers* with Hopes of *Johnson's* Recovery; and, at taking Leave, when *Kirkland* gave him Assurances on that Subject, my Lord said, then he might go to Bed in Safety; and retired to his own Chamber. What do all these Circumstances speak, but a correct Knowledge of the Fact, and Apprehension of all its Consequences, either as they concerned *Johnson*, or himself? When he was seized, did he shew Marks of Insanity? He resisted, for some Time; but appeared, in every Respect, in the Judgment of the Witnesses, to be of sound Mind. Afterwards, when he was led into *Kinsley's* House, his Behaviour was decent; and he made Answer to a worthy Clergyman in the Commission of the Peace, who visited and admonished him, that he knew his Duty as well any Justice of the Peace.

This is the Substance of the Evidence, which has been offered for the King; and it not only proves the Fact, but proves it to be Murder.

My Lords, What is the Evidence produced by the Noble Lord to weaken the Force of it? In the First Place, there is none, which applies to the Time of committing the Fact. His Sobriety is admitted, and Drunkenness would not excuse; and even supposing it had appeared to your Lordships, that the Noble Prisoner was sometimes, by Fits and Starts, under a degree of Lunacy or temporary Insanity; yet, if he was of sound Mind at that Hour, he is a Person within all the Rules and Distinctions, which Lord *Hale* explains. But, my Lords, in the next Place, I must observe, that no general Evidence has been offered, which proves his Lunacy or Insanity at any time; for his own Witnesses fail in their Endeavours to shew it. This appears from their manner of expressing themselves in their original Examination; but still more in the Answers, which they gave to the Questions asked upon the Cross-Examination.

The Two first Witnesses called, were, Mr. *Bennefold*, and Mr. *Goostrey*. They describe the Insanity of the Noble Lord at the Bar to consist of Flights. They say, that he would swear; would talk to himself; that he would use strange Gestures; that he had Friends, and suspected them; that he was of a positive Temper, and difficult to be dissuaded from any Opinion or Resolution which he had once formed. But Mr. *Bennefold*, upon the Cross-Examination, admitted, that he never knew of any Act of Wildness done by his Lordship, nor of any Physician sent for, to take Care of him in that respect. He said, upon the whole, that he thought Lord *Ferrers* had better Parts and Understanding than ordinary Men. Mr. *Goostrey* told your Lordships, upon the Cross-Examination, that he had done Business several Years for Lord *Ferrers*; that he had advised and prepared Deeds for his Lordship to execute; that he had assisted in suffering a Recovery to bar the Entail of the Estate; and admitted his Sense and Capacity in general, but inferred Insanity from Positiveness of Temper and Opinion. However, in Answer to a Question proposed by one of your Lordships, he said, that he thought Lord *Ferrers* capable of distinguishing between moral and immoral Actions.

Several

Several other Witnesses have been called To-day. I will first mention Mr. *Clarges*. He describes similar Circumstances with Mr. *Bennet* and Mr. *Goostrey*, from which he collects the Insanity of the Noble Prisoner. He said, that he had observed great Oddities in my Lord, during his Minority, but no Defect of Understanding. He could not specify particular Instances; and added, that his Lordship was jealous and suspicious: But the Witness never saw him in such a Situation, as not to be capable of distinguishing between Good and Evil, and not to know, that Murder was a great Crime.

My Lords, This Account of the State of the Noble Prisoner's Mind is consistent, not only with a considerable Degree of Understanding, but with the highest Degree of it. If the Law were to receive such Excuses, it would put a Sword into the Hand of every savage and licentious Man, to disturb private Life, and public Order.

My Lords, There was another Witness of a different and a much lower Sort than those whom I have named; I mean *Elizabeth Williams*. She was the only Person who said, that the Noble Earl was always mad. When she came to explain the Instances from which she drew that Conclusion, the principal one insisted upon was ridiculous; the Anger which he shewed against a Servant, who had neglected to take Care of a favourite Mare, intrusted to his Management. This was a Vivacity so natural, that, if it be deemed a Symptom of Madness, few are free from it; and I doubt the Inference will go far in Cases of common Life.

The Two next Witnesses, whom I will mention, are the Brothers of the Noble Earl. My Lords, I own I felt for them. It gave me Pain to see them, in a Cause which touches a Brother's Life, brought to the Bar as Witnesses, to mitigate the Consequences of One Misfortune, by endeavouring to prove another of the most tender and affecting Nature; and if they had spoke stronger to Matters of Conjecture, Opinion, and Belief, for my Part, I could easily have excused them.

My Lords, They both spoke with Caution, and as Men of Honour; but One of them was the only Witness of Weight, who expressed a Belief, that, at particular Times, the Noble Lord might not be able to distinguish between moral Good and Evil. I did not observe, that he spoke of any Instance within his own Recollection. The Circumstances, from which these Gentlemen inferred Insanity, were for the most part of the same Kind with those which came from the Mouths of the other Witnesses. They did not carry the Marks of it in the least Degree beyond that Evidence. And Mr. *Walter Shirley* admitted, That the Noble Lord at the Bar had long Intervals of Reason. I endeavour to repeat the Expression, and I think it was so. Mr. *Robert Shirley* told your Lordships, That he had not seen the Noble Prisoner for Four Years past; that the last Time of seeing Lord *Ferrers* was, at *Burton upon Trent*. He mentioned the carrying of Pistols, and Arms, and a large Case Knife, at that time. I understood him to say, that the Noble Lord generally did so; the Witness had seen it only once; but from that Circumstance he argued Insanity. Your Lordships will judge, whether this Practice might not be owing to Jealousy and Violence of Temper, as well as to Lunacy and Madness. The Witness added, That he had written formerly to his Brother Captain *Washington Shirley*, about taking out a Commission of Lunacy against Lord *Ferrers*; but I could not find, that any Measures were taken in Consequence of that Opinion given by the Witness, nor did he himself ever take any Steps towards it, nor any Branch of his Family.

The last Witness called, on Behalf of the Noble Prisoner, was Doctor *Monro*. He was brought here to describe, what Symptoms he considers as Marks of Lunacy or Insanity. He said, that there were many; and on being asked particularly, as to the several Symptoms suggested in this Cause, Doctor *Monro* was led to speak principally of Three Marks of Lunacy. The First was uncommon Fury, not caused by Liquor, but raised by it. Surely this Circumstance will not infer Insanity. The Next was, Jealousy and Suspicion, with causeless Quarrelling. Do not many, who are not Lunatics, suspect or quarrel without Cause, and become dangerous to their Neighbours? The Third was, carrying Arms; which (he said) though less usual, might be a Mark of Lunacy. And it is equally true, that such Behaviour may prove, in many Cases, a bad Heart and a vicious Mind, as well as Lunacy. My Lords, the general Observation, which occurs upon Doctor *Monro's* Evidence, is this; that he did not describe any of these Things, as absolute Marks of Lunacy, so as to denote every Man a Lunatick, who was subject to them. Indeed he could not have said it, consistently with Common Sense and Experience.

This was the Import of the Evidence for the Noble Prisoner. No Witnesses were offered, on the Part of the King, in Reply to that Evidence. And, my Lords, the Reason, why they were not offered, was, because the Council who attend your Lordships for the King, chuse to submit it to your Opinions, whether the Evidence produced for the Prisoner does not tend to strengthen, rather than weaken, that Proof of Capacity, which arises out of all the Circumstances urged, in Support of the Charge? From those Circumstances, I have already shewn, that the Noble Prisoner was conscious of what he did, at the Time of the Offence committed; that he weighed the Motives; that he acted with Deliberation; that he knew the Consequences.

I will only take Notice of one Thing more. Your Lordships have attended with great Patience, and the most impartial Regard to Justice, to all the Evidence, and every Observation, which has been laid before you. You have seen the Noble Prisoner, for Two Days at your Bar, (though labouring under the Weight of this Charge), Cross-examining the Witnesses for the King, and Examining his own, in a Manner so pertinent, as cannot be imputed merely to the Hints and Advice of those Agents and Council, with which you have indulged him. I am persuaded, from the Appearance and Conduct of the Noble Prisoner, that if the Fact itself would have admitted Doubts, and probable Arguments, to repel the Force of any One material Circumstance, your Lordships would have heard him press those Arguments, with Sense and Sagacity.

But, my Lords, The Truth is, That the Fact tried this Day stands, without Alleviation. There is not a Colour for the Defence, unless it arises from the Enormity of the Crime, aggravated by the Manner of committing it; an old, faithful Servant of himself and his Family, murdered in cold Blood, whilst he was performing, by express Orders, an Act of dutiful Attendance upon his Master; murdered, in the most deliberate and wilful Manner, destructive of all Confidence in human Society. My Lords, in some Sense, every Crime proceeds from Insanity. All Cruelty, all Brutality, all Revenge, all Injustice, is Insanity. There were Philosophers, in antient Times, who held this Opinion, as a strict Maxim of their Sect; and, my Lords, the Opinion is right in Philosophy, but dangerous in Judicature. It may have a useful and a noble Influence, to regulate the Conduct of Men; to controul their impotent Passions; to teach them, that Virtue is the Perfection of Reason, as Reason itself is the Perfection of human Nature; but not to extenuate Crimes, nor to excuse those Punishments, which the Law adjudges to be their Due.

My Lords, The Necessity of his Majesty's Justice; the Necessity of public Example, called for this Prosecution; and the Effect of the whole Evidence, is submitted to the Weight and Wisdom of your Judgment.

Then the Lord High Steward returned back to his Chair.

Lord High Steward. Lieutenant of the *Tower*, Take my Lord *Ferrers* from the Bar.

Which was done accordingly.

Lord Privy Seal. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament, in the same Order they came down: And, after some Time, the House was adjourned again into *Westminster-Hall*; and the Peers being there seated, and the Lord High Steward in his Chair, and the House resumed, the Serjeant at Arms made Proclamation for Silence, as usual.

Lord High Steward. Your Lordships have heard the Evidence, and every thing that has been alledged on both Sides; and the Solemnity of your Proceedings requires, that your Lordships Opinions on the Question, Of Guilty or Not guilty, should be delivered severally, in the Absence of the Prisoner, beginning with the junior Baron; and that the Prisoner should afterwards be acquainted with the Result of those Opinions by me. Is it your Lordships Pleasure to proceed now to give your Opinions on the Question, Of Guilty or Not guilty?

Lords. Ay, Ay.

Then the Lord High Steward stood up uncovered; and, beginning with the youngest Peer, said,

George Lord Lyttelton, What says your Lordship? Is *Lawrence Earl Ferrers* Guilty of the Felony and Murder whereof he stands indicted, or Not guilty?

Whereupon *George Lord Lyttelton*, standing up in his Place, uncovered, and laying his Right Hand upon his Breast, answered,

Guilty, upon my Honour.

In like manner, the several Lords after-mentioned, being all that were present, answered as followeth;

Wills Lord Harwich. Guilty, upon my Honour.

William Lord Mansfield. Guilty, upon my Honour.

Horatio Lord Walpole. Guilty, upon my Honour.

Thomas Lord Hyde. Guilty, upon my Honour.

Vere Lord Vere. Guilty, upon my Honour.

William Lord Ponsonby. Guilty, upon my Honour.

Thomas Lord Archer. Guilty, upon my Honour.

Anthony Lord Feversham. Guilty, upon my Honour.
Henry Lord Ravensworth. Guilty, upon my Honour.
George Lord Anson. Guilty, upon my Honour.
Mathew Lord Fortescue. Guilty, upon my Honour.
Thomas Lord Bruce. Guilty, upon my Honour.
Samuel Lord Sandys. Guilty, upon my Honour.
Richard Lord Edgcumbe. Guilty, upon my Honour.
John Lord Cbedworth. Guilty, upon my Honour.
Thomas Lord Montfort. Guilty, upon my Honour.
William Lord Talbot. Guilty, upon my Honour.
John Lord Monson. Guilty, upon my Honour.
William Lord King. Guilty, upon my Honour.
Matthew Lord Ducie. Guilty, upon my Honour.
Charles Lord Cadogan. Guilty, upon my Honour.
Richard Lord Onslow. Guilty, upon my Honour.
Allen Lord Bathurst. Guilty, upon my Honour.
Samuel Lord Masham. Guilty, upon my Honour.
Francis Lord Middleton. Guilty, upon my Honour.
John Lord Boyle. Guilty, upon my Honour.
Nathanael Lord Delamere. Guilty, upon my Honour.
John Lord Berkeley of Stratton. Guilty, upon my Honour.
John Lord Ward. Guilty, upon my Honour.
William Lord Byron. Guilty, upon my Honour.
John Lord Clifton. Guilty, upon my Honour.
John Lord St. John of Bletsoe. Guilty, upon my Honour.
Hugh Lord Willoughby of Parham. Guilty, upon my Honour.
Edward Lord Wentworth. Guilty, upon my Honour.
John Lord Willoughby of Broke. Guilty, upon my Honour.
John Lord Delawarr. Guilty, upon my Honour.
James Lord Audley. Guilty, upon my Honour.
George Lord Abergavenny. Guilty, upon my Honour.
Jacob Viscount Folkestone. Guilty, upon my Honour.
Hugh Viscount Falmouth. Guilty, upon my Honour.
Frederick Viscount Bolingbroke and St. John. Guilty, upon my Honour.
Thomas Viscount Weymouth. Guilty, upon my Honour.
Richard Viscount Say and Sele. Guilty, upon my Honour.
Stephen Earl of Ilchester. Guilty, upon my Honour.
Thomas Earl of Fauconberg. Guilty, upon my Honour.
Philip Earl of Hardwicke. Guilty, upon my Honour.
Charles Earl Cornwallis. Guilty, upon my Honour.
Francis Earl of Guilford. Guilty, upon my Honour.
Francis Seymour Earl of Hertford. Guilty, upon my Honour.
Simon Earl Harcourt. Guilty, upon my Honour.
Charles Earl of Egremont. Guilty, upon my Honour.
Hugh Earl of Northumberland. Guilty, upon my Honour.
Henry Arthur Earl of Powis. Guilty, upon my Honour.
John Earl of Buckinghamshire. Guilty, upon my Honour.
Granville Leveson Earl Gower. Guilty, upon my Honour.
Francis Earl Brooke. Guilty, upon my Honour.
John Earl of Portsmouth. Guilty, upon my Honour.
William Earl of Harrington. Guilty, upon my Honour.
Thomas Earl of Effingham. Guilty, upon my Honour.
John Earl Ashburnham. Guilty, upon my Honour.
James Earl Waldegrave. Guilty, upon my Honour.
George Earl of Pomfret. Guilty, upon my Honour.
George Earl of Macclesfield. Guilty, upon my Honour.
Philip Earl Stanhope. Guilty, upon my Honour.
William Earl Cowper. Guilty, upon my Honour.
Henry Earl of Sussex. Guilty, upon my Honour.
George Earl of Halifax. Guilty, upon my Honour.
Heneage Earl of Aylesford. Guilty, upon my Honour.
Charles Earl of Tankerville. Guilty, upon my Honour.
William Earl of Dartmouth. Guilty, upon my Honour.

William Earl of Strafford. Guilty, upon my Honour.
Edward Earl of Oxford and Earl Mortimer. Guilty, upon my Honour.
John Earl of Hyndford. Guilty, upon my Honour.
Hugh Earl of Marchmont. Guilty, upon my Honour.
George Earl of Aberdeen. Guilty, upon my Honour.
John Earl Breadalbane. Guilty, upon my Honour.
John Earl of Loudoun. Guilty, upon my Honour.
James Earl of Moray. Guilty, upon my Honour.
James Earl of Morton. Guilty, upon my Honour.
George Earl of Cholmondeley. Guilty, upon my Honour.
George William Earl of Coventry. Guilty, upon my Honour.
George Anne Earl of Albemarle. Guilty, upon my Honour.
William Henry Earl of Rochford. Guilty, upon my Honour.
Richard Earl of Scarborough. Guilty, upon my Honour.
Other Lewis Earl of Plymouth. Guilty, upon my Honour.
Robert Earl of Holderness. Guilty, upon my Honour.
George Henry Earl of Litchfield. Guilty, upon my Honour.
Anthony Ashley Earl of Shaftesbury. Guilty, upon my Honour.
George Earl of Cardigan. Guilty, upon my Honour.
Anne Holles Earl of Essex. Guilty, upon my Honour.
John Earl of Sandwich. Guilty, upon my Honour.
Sackville Earl of Thanet. Guilty, upon my Honour.
Daniel Earl of Winchelsea and Nottingham. Guilty, upon my Honour.
Charles Earl of Peterborough and Monmouth. Guilty, upon my Honour.
John Earl of Westmorland. Guilty, upon my Honour.
Charles Earl of Northampton. Guilty, upon my Honour.
Henry Earl of Lincoln. Guilty, upon my Honour.
Henry Earl of Pembroke and Montgomery. Guilty, upon my Honour.
Charles Marquis of Rockingham. Guilty, upon my Honour.
Francis Duke of Bridgewater. Guilty, upon my Honour.
Henry Duke of Chandos. Guilty, upon my Honour.
Robert Duke of Manchester. Guilty, upon my Honour.
Thomas Holles Duke of Newcastle. Guilty, upon my Honour.
Evelyn Duke of Kingston. Guilty, upon my Honour.
Peregrine Duke of Ancafter and Kesteven, Lord Great Chamberlain of England. Guilty, upon my Honour.
Archibald Duke of Argyll. Guilty, upon my Honour.
George Duke of Marlborough. Guilty, upon my Honour.
Thomas Duke of Leeds. Guilty, upon my Honour.
Charles Duke of Bolton. Guilty, upon my Honour.
Augustus Henry Duke of Grafton. Guilty, upon my Honour.
Charles Duke of Richmond. Guilty, upon my Honour.
William Duke of Cleveland and Southampton. Guilty, upon my Honour.
William Duke of Devonshire, Lord Chamberlain of his Majesty's Household. Guilty, upon my Honour.
John Duke of Rutland, Lord Steward of his Majesty's Household. Guilty, upon my Honour.

Richard Earl Temple, Lord Privy Seal. Guilty, upon my Honour.

Then the Lord High Steward, standing uncovered at the Chair, laying his Hand upon his Breast, said;

Lord High Steward. My Lords, I am of Opinion, that *Lawrence Earl Ferrers* is Guilty of the Felony and Murder whereof he stands indicted, upon my Honour.

Lord High Steward. Your Lordships have unanimously found, that *Lawrence Earl Ferrers* is Guilty of the Felony and Murder whereof he stands indicted: Is it your Lordships Pleasure that he should be called in, and acquainted therewith?

Lords. Ay, Ay.

Proclamation was then made for the Lieutenant of the Tower to bring the Prisoner to the Bar, which was done in the same Order as before; and afterwards Proclamation was made for Silence, as usual.

Lord High Steward. *Lawrence Earl Ferrers*, The Lords have considered of the Charge of Felony and Murder which has been brought against you; they have likewise considered the Evidence, and every thing which your Lordship has alledged in your Defence; and, upon the whole Matter, their Lordships have unanimously found, that you are Guilty of the Felony and Murder whereof you stand indicted.

Lord High Steward. Lieutenant of the Tower, take the Prisoner from the Bar.

Lord Privy Seal. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Lords returned, in the Order beforementioned, to the Chamber of Parliament; and, the House being there resumed, Resolved to proceed further, in order to the giving Judgment against the said Earl *Ferrers* To-morrow; and that the said Earl be brought to the Bar of the House in *Westminster-Hall*, for that Purpose, To-morrow at Eleven of the Clock in the Forenoon.

Friday, April 18th, 1760. The Third Day.

THE Lords, and others, came from the Chamber of Parliament into *Westminster-Hall*, in the same Order as on *Wednesday* last; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, The House is resumed. Is it your Lordships Pleasure, that the Judges may be covered?

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence, as usual; and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the Tower, bring forth your Prisoner, *Lawrence Earl Ferrers* to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Serjeant at Arms made Proclamation for Silence as usual.

Lord High Steward. *Lawrence Earl Ferrers*, when you was last at this Bar, I acquainted your Lordship, That, upon your Trial, my Lords your Peers had unanimously found you Guilty of the Felony and Murder whereof you stand indicted: What has your Lordship to say, Why Judgment of Death should not pass upon you according to Law?

Earl Ferrers. I desire that the Clerk may repeat what I say—Which he did.

My Lords,

I Must acknowlege myself infinitely obliged for the fair and candid Trial your Lordships have indulged me with.

I am extremely sorry that I have troubled your Lordships with a Defence that I was always much averse to, and has given me the greatest Uneasiness; but was prevailed on by my Family to attempt it, as it was what they themselves were persuaded of the Truth of; and had proposed to prove me under the unhappy Circumstances that have been ineffectually represented to your Lordships.

This Defence has put me off from what I proposed, and what perhaps might have taken off the Malignity of the Accusation; but, as there has been no Proof made to your Lordships, can only be deemed at this Time my own Assertion: But that I must leave to your Lordships.

My Lords, I have been informed of this Intention of the Family before ; and your Lordships I hope, will be so good to consider, the Agony of Mind a Man must be under, when his Liberty and Property are both attacked: My Lords, under these unhappy Circumstances, though the Plea I have attempted was not sufficient to acquit me to your Lordships, according to the Laws of this Country ; yet I hope your Lordships will think, that Malice, represented by the Council for the Crown, could not subsist ; as I was so unhappy as to have no Person present at the Time of the fatal Accident, it was impossible for me to shew your Lordships, that I was not at that Instant possessed of my Reason.

As the Circumstances of my Case are fresh in your Lordships Memories, I hope your Lordships will, in Compassion to my Infirmities, be kind enough to recommend me to his Majesty's Clemency.

My Lords, As I am uncertain whether my unhappy Case is within the late Act of Parliament, if your Lordships should be of Opinion that it is, I humbly hope the Power of respiting the Execution will be extended in my Favour, that I may have an Opportunity of preparing myself for the great Event, and that my Friends may be permitted to have Access to me.

If any Thing I have offered should be thought improper, I hope your Lordships will impute it to the great Distress I am under at this Juncture.

Lord High Steward. Has your Lordship any Thing else to offer ?

Earl Ferrers. No.

Lord High Steward. Make Proclamation for Silence whilst Judgment is giving.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King doth strictly charge and command all manner of Persons to keep Silence, whilst Judgment is giving, upon Pain of Imprisonment.

Lord High Steward.

Lawrence Earl Ferrers,

HIS Majesty, from his Royal and Equal Regard to Justice, and his steady Attention to our Constitution, (which hath endeared him in a wonderful Manner to the universal Duty and Affection of his Subjects) hath commanded this Inquiry to be made, upon the Blood of a very ordinary Subject, against your Lordship, a Peer of this Realm: Your Lordship hath been arraigned; hath pleaded, and put yourself on your Peers; and they (whose Judicature is founded and subsists in Wisdom, Honour, and Justice) have found your Lordship unanimously Guilty of the Felony and Murder charged in the Indictment.

It is usual, my Lord, for Courts of Justice, before they pronounce the dreadful Sentence ordained by the Law, to open to the Prisoner the Nature of the Crime of which he is convicted; not in order to aggravate or afflict, but to awaken the Mind to a due Attention to, and Consideration of, the unhappy Situation into which he hath brought himself.

My Lord, The Crime of which your Lordship is found Guilty, Murder, is incapable of Aggravation; and it is impossible, but that, during your Lordship's long Confinement, you must have reflected upon it, represented to your Mind in its deepest Shades, and with all its Train of dismal and detestable Consequences.

As your Lordship hath received no Benefit, so you can derive no Consolation from that Refuge you seemed almost ashamed to take, under a pretended Insanity; since it hath appeared to us all, from your Cross-examination of the King's Witnesses, that you recollected the minutest Circumstances of Facts and Conversations, to which you and the Witnesses only could be privy, with the Exactness of a Memory more than ordinarily found; It is therefore as unnecessary as it would be painful to me, to dwell longer on a Subject so black and dreadful.

It is with much more Satisfaction, that I can remind your Lordship, that though, from the present Tribunal, before which you now stand, you can receive nothing but strict and equal Justice; yet you are soon to appear before an Almighty Judge, whose unfathomable Wisdom is able, by Means incomprehensible to our narrow Capacities, to reconcile Justice with Mercy; but your Lordship's Education must have informed you, and you are now to remember, such Beneficence is only to be obtained by deep Contrition, sound, unfeigned, and substantial Repentance.

Confined strictly, as your Lordship must be, for the very short Remainder of your Life; according to the Provision of the late Act; yet, from the Wisdom of the Legislature, which, to prevent as much as possible this heinous and horrid Offence of Murder, hath added Infamy to Death: You will be still, if you please, intitled to converse and communicate with the ablest Divines of the Protestant Church, to whose pious Care and Consolation, in fervent Prayer and Devotion, I most cordially recommend your Lordship.

Nothing

Nothing remains for me, but to pronounce the dreadful Sentence of the Law ; and the Judgment of the Law is, and this High Court doth award ;

“ That You, *Lawrence Earl Ferrers*, return to the Prison of the *Tower*, from whence you came ; from thence you must be led to the Place of Execution, on *Monday* next, being the 21st Day of this Instant *April* ; and when you come there, you must be hanged by the Neck till you are dead, and your Body must be dissected and anatomized.”

“ And God Almighty be merciful to your Soul.”

Lord High Steward. Lieutenant of the *Tower*, Take the Prisoner from the Bar. Which being done, Proclamation was made for Silence, as usual.

Lord High Steward. My Lords, This Trial being at an End, nothing remains to be done here, but to determine the Commission.

Lords. Ay, Ay.

Lord High Steward. Let Proclamation be made for dissolving the Commission of High Steward.

Serjeant at Arms. Oyez, Oyez, Oyez ! Our Sovereign Lord the King does strictly charge and command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our said Sovereign Lord the King ; for his Grace my Lord High Steward of *Great-Britain* intends now to dissolve his Commission.

Then the White Staff being delivered to the Lord High Steward, by the Gentleman Usher of the Black Rod, upon his Knee, his Grace stood up uncovered ; and, holding the Staff in both his Hands, broke it in two, and declared the Commission to be dissolved ; and then leaving the Chair, came down to the Woolpack, and said, Is it your Lordships Pleasure to adjourn to the Chamber of Parliament ?

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Lords and others returned in the same Order they came down.

And the Prisoner was carried back to the *Tower* of *London*.

F I N I S.

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I N Purfuance of an Order of the HOUSE of
P E E R S, of the Seventeenth Day of *April 1765*,
I do appoint SAMUEL BILLINGSLEY to Print and
Publish the Trial of *William Lord Byron*, for the
Murder of *William Chaworth*, Esquire: And do forbid
any other Person to Print or Publish the same.

Northington, C.

T H E
T R I A L
O F
WILLIAM Lord *BYRON*,
Baron *BYRON* of *ROCHDALE*,
FOR THE
MURDER of *WILLIAM CHAWORTH*, Esq;
Before the RIGHT HONOURABLE
The H O U S E of P E E R S,
I N
WESTMINSTER-HALL, in Full PARLIAMENT.

On TUESDAY the 16th, and WEDNESDAY the 17th of *April*, 1765:
On the last of which Days the said *William* Lord *Byron* was Acquitted
of MURDER, but found Guilty of MANSLAUGHTER.

Published by Order of the HOUSE of PEERS.

L O N D O N :

Printed for SAMUEL BILLINGSLEY, in *Chancery-Lane*.

MDCCLXV.

T H E
T R I A L
O F
WILLIAM Lord *BYRON*,
F O R T H E
MURDER of *WILLIAM CHAWORTH*, Esq;
Before the R I G H T H O N O U R A B L E
The H O U S E of P E E R S,
I N
WESTMINSTER-HALL, in Full PARLIAMENT.

Tuesday, April the 16th, 1765.

In the Court erected in WESTMINSTER-HALL, for the TRIAL of *WILLIAM* Lord *BYRON*, for the Murder of *WILLIAM CHAWORTH*, Esquire.

A BOUT Eleven of the Clock the Lords came from their own House into the Court erected in *Westminster-Hall*, for the Trial of *William* Lord *Byron*, in the Manner following :

- The Lord High Steward's Gentlemen Attendants, Two and Two.
- The Clerks Assitant to the House of Lords, and the Clerk of the Parliament.
- Clerk of the Crown in Chancery, bearing the King's Commission to the Lord High Steward, and the Clerk of the Crown in the King's Bench.
- The Masters in Chancery, Two and Two.
- The Judges, Two and Two.
- The Peers eldest Sons, Two and Two.
- Peers Minors, Two and Two.
- Chester* and *Somerset* Heralds.
- Four Serjeants at Arms with their Maces, Two and Two.

The Yeoman Usher of the House.
 The Barons, Two and Two, beginning with the youngest Baron.
 The Bishops, Two and Two.
 The Viscounts and other Peers, Two and Two.
 The Lord Privy Seal and Lord President.
 The Archbishop of *York* and the Archbishop of *Canterbury*.
 Four Serjeants at Arms with their Maces, Two and Two.
 The Serjeant at Arms attending the Great Seal, and Purse-Bearer.
 Then *Garter* King at Arms, and the Gentleman Usher of the Black Rod carrying the White Staff before the Lord High Steward.
Robert Earl of *Northington*, Chancellor of *Great-Britain*, Lord High Steward, alone, his Train borne.
 His Royal Highness the Duke of *Glocester*, his Train borne.
 His Royal Highness the Duke of *York*, his Train borne.
 The Lords being placed in their proper Seats, and the Lord High Steward upon the Woolpack, the House was resumed.

The Clerk of the Crown in Chancery, having his Majesty's Commission to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench, standing before the Clerk's Table with their Faces towards the State, made Three Reverences; the First at the Table, the Second in the Midway, and the Third near the Woolpack; then kneeled down; and the Clerk of the Crown in Chancery, on his Knee, presented the Commission to the Lord High Steward, who delivered the same to the Clerk of the Crown in the King's Bench to read: Then rising, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence, in this Manner:

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

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

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up uncovered, while the Commission is reading.

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

GEORGE R.

GEOERGE the Third, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, To Our Right Trusty and Right Well-beloved Cousin and Counsellor *Robert* Earl of *Northington*, Our Chancellor of *Great Britain*, Greeting; Know ye, That whereas *William* Byron, Baron *Byron* of *Rochdale*, late of the Parish of *Saint James*, within the Liberty of *Westminster*, in Our County of *Middlesex*, in Our Court at *Westminster*, in the said County of *Middlesex*, before Our Justices assigned to hold Pleas before Us, stands indicted upon the Oath of Twelve Jurors, good and lawful Men of the said County of *Middlesex*, then and there sworn and charged to enquire for Us for the Body of the said County, of Felony and Murder, by him the said *William* Byron, Baron *Byron* of *Rochdale*, done and committed; We, considering that Justice is an excellent Virtue, and pleasing to the Most High; and being willing that the said *William* Byron, Baron *Byron* of *Rochdale*, of and for the Felony and Murder whereof he is indicted as aforesaid before Us, in Our present Parliament, according to the Law and Custom of Our Kingdom of *Great Britain*, may be heard, examined, sentenced, and adjudged; and that all other Things which are necessary on this Occasion may be duly exercised and executed; and for that the Office of High Steward of *Great Britain* (whose Presence upon this Occasion is required) is now vacant (as We are informed); We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of *Great Britain*, to bear, execute, and exercise, for this Time, the said Office, with all Things due and belonging to the same Office in this Behalf: And therefore We command you, that you diligently set about the Premises, and, for this Time, do exercise and execute, with Effect, all those Things which belong to the Office of Steward of *Great Britain*, and which are required in this Behalf. In Witness whereof, We have caused these our Letters to be made Patent. Witness Ourselves at *Westminster*, the Fifteenth Day of *April*, in the Fifth Year of Our Reign.

By the KING Himself, signed with his own Hand.

Yorke and *Yorke*.
 Serjeants

Serjeant at Arms. God save the King.

Then *Garter*, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by *Garter*, Black Rod, and the Purse Bearer (making his proper Reverences towards the Throne) removed from the Woolpack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on his Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

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

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof, together with the Caption of the Indictment, and the Indictment certified thereupon, against *William Lord Byron*; in hæc verba:

GEORGE the Third, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, To Our Right Trusty and Wellbeloved *William Lord Mansfield*, Our Chief Justice appointed to hold Pleas before Us, Greeting; We being willing, for certain Reasons, that all and singular Indictments of whatsoever Felonies and Murders whereof *William Byron*, Baron *Byron of Rochdale*, late of the Parish of *Saint James*, within the Liberty of *Westminster*, in Our County of *Middlesex*, is indicted before you (as is said) be determined before Us, and not elsewhere; do command you, that you do send under your Seal before Us, in Our Parliament, immediately after the Receipt of this Our Writ, all and singular the Indictments aforesaid, with all Things touching the same, by whatsoever Name the said *William Byron*, Baron *Byron of Rochdale*, is called in the same; together with this Writ, that We may cause further to be done thereon, what of Right and according to the Law and Custom of *England* We shall see fit to be done. Witness Ourselves at *Westminster*, the Twenty-eighth Day of *February*, in the Fifth Year of Our Reign.

Yorke and Yorke.

Label. To the Right Honourable *William Lord Mansfield*, Chief Justice appointed to hold Pleas before the King himself, a Writ of *Certiorari*, to certify into the Upper House of Parliament the Indictment found against *William Byron*, Baron *Byron of Rochdale*, for Murder, returnable immediately before the King in Parliament.

Yorke and Yorke.

Indorsed. } BY Order of the Lords Spiritual and Temporal, in Parliament assembled, by virtue of the within Writ to me directed, I send to our Sovereign Lord the King, in this present Parliament, under my Seal, the Indictment within mentioned, with all Things touching the same, in certain Schedules hereunto annexed, as I am within commanded.

Mansfield.

Middlesex. } BE it remembered, That on *Tuesday* next after the Octave of the Purification of the Blessed *Virgin Mary*, in the Fifth Year of the Reign of our Sovereign Lord *George the Third*, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, in the Court of our said Lord the King, before the King himself at *Westminster*, in the County of *Middlesex*, upon the Oath of *Philip Dyott of Dyott-street*, Esquire, *John Chase of Great Russel-street*, Esquire, *Henry Raper of John-street*, Esquire, *Robert Hucks of Great Russel-street*, Esquire, *Oliver Coghill of the same*, Esquire, *Anthony Chapman of Great Ormond-street*, Esquire, *Charles Sheppard of Muswell Hill*, Esquire, *Thomas Singleton of Finchley*, Esquire, *George Mertins of Hatton Garden*, Esquire, *Gideon Arbonin of the same*, Esquire, *John French of the same*, Esquire, *William Clarke of Clopton*, Esquire, *Abraham Ogier of Clopton*, Esquire, *Edward Nurse of Hamersmith*, Esquire, *John Anderson of Henrietta-street*, Esquire, *George Mercer of Bolsover-street*, Esquire, *Isaac Lefevre of Stepney Green*, Esquire, *Henry Mason of Great Russel-street*, Esquire, *George Wright of Baldwin's Gardens*, Esquire, *Liscombe Price of Islington*, Esquire, *Charles Digby of Mile End*, Esquire, *Richard Tidswell of Edmonton*, Esquire, and *John Duvall of Portugal-street*, Gentleman,
good

good and lawful Men of the County of *Middlesex*, then and there sworn and charged to enquire for our said Lord the King, for the Body of the said County of *Middlesex*.

It is presented that the Bill of Indictment hereto annexed is a true Bill.

BURROW.

Middlesex. } THE Jurors for our Lord the King, upon their Oath, present, That the
 Right Honourable *William Byron*, Baron *Byron* of *Rochdale*, late of the
 Parish of *Saint James*, within the Liberty of *Westminster*, in the County of *Middlesex*, not
 having the Fear of God before his Eyes, but being moved and seduced by the Instigation of
 the Devil, on the Twenty-sixth Day of *January*, in the Fifth Year of the Reign of our So-
 vereign Lord *George* the Third, by the Grace of God, of *Great Britain, France, and Ire-*
land, King, Defender of the Faith, and so forth, with Force and Arms, at the Parish afore-
 said, in the County afore said, in and upon one *William Chaworth*, Esquire, in the Peace of
 God, and our said Lord the King, then and there being, feloniously, wilfully, and of his Ma-
 lice aforethought, did make an Assault, and that the said *William Lord Byron*, with a certain
 Sword drawn, made of Iron and Steel, of the Value of Five Shillings, which he the said
William Lord Byron, in his Right Hand, then and there had and held, him the said *William*
Chaworth, in and upon the Left Side of the Belly of the said *William Chaworth*, near the Na-
 vel of the said *William Chaworth*, then and there feloniously, wilfully, and of his Malice afore-
 thought, did strike, thrust, stab, and penetrate, giving to the said *William Chaworth*, with
 the Sword drawn as afore said, in and upon the said Left Side of the Belly of the said *William*
Chaworth, near the Navel of the said *William Chaworth*, One mortal Wound, of the Depth
 of Six Inches and of the Breadth of Half an Inch; of which said mortal Wound the said *Wil-*
liam Chaworth, at the said Parish of *Saint James*, within the Liberty of *Westminster*, in the
 said County of *Middlesex*, and also at the Parish of *Saint George, Hanover Square*, within the
 Liberty of *Westminster* afore said, in the same County, from the said Twenty-sixth Day of
January, in the Year afore said, until the Twenty-seventh Day of the same Month, in the
 same Year, did languish, and languishing did live; on which said Twenty-seventh Day of
January, in the Year afore said, the said *William Chaworth*, at the said Parish of *Saint George,*
Hanover Square, in the Liberty of *Westminster* afore said, in the said County of *Middlesex*, of
 the said mortal Wound did die: And so the Jurors afore said, upon their Oath afore said, do
 say, That the said *William Lord Byron*, him the said *William Chaworth*, in Manner and Form
 afore said, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against
 the Peace of our said Lord the King, his Crown and Dignity.

Witneffes,

John Hewit, Esquire,
Frederick Montague, Esquire,
John Sherwyn, Esquire,
George Donston, Esquire,
Francis Mollyneux, Esquire,
 The Honourable *Thomas Willoughby*, Esquire,
Cesar Hawkins, Esquire,

Anthony Addington, Esquire,
John Edwards,
James Finmore,
Thomas Wally Partington, Esquire,
William Levinz, Esquire,
Robert Adair, Esquire.

Sworn in Court.

A true Bill.

Lord High Steward. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Clerk of the Crown. Serjeant at Arms, make Proclamation for the Lieutenant of the *Tower* to bring his Prisoner to the Bar.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower of London*, bring forth *William Lord Byron*, your Prisoner, to the Bar, pursuant to the Order of the House of Lords.

Then *William Lord Byron* was brought to the Bar by the Deputy Governor of the *Tower*, having the Ax carried before him by the Gentleman-Gaoler, who stood with it on the Left Hand of the Prisoner, with the Edge turned from him. The Prisoner, when he approached the Bar, made Three Reverences, and then fell upon his Knees at the Bar.

Lord High Steward. Your Lordship may rise.

Then

Then the Prisoner rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers; which Compliment was returned him by his Grace, and the Lords.

Then, Proclamation having been again made for Silence, the Lord High Steward spake to the Prisoner, as follows.

Lord High Steward.

William Lord Byron,

YOUR Lordship is unhappily brought to this Bar to answer a heavy and dreadful Accusation, for you are charged with the Murder of a Fellow Subject.

The Solemnity and awful Appearance of this Judicature, must naturally embarrass and discompose your Lordship's Spirits, whatever internal Resource you may have in Conscience to support you in your Defence.

It may be therefore not improper for me to remind your Lordship, that you are to be tried by the fixed and settled Laws of a free Country, framed only to protect the Innocent, to distinguish the Degrees of Offence, and vindictive only against Malice and premeditated Mischiefs.

Homicide, or the Killing of a Fellow Creature, is by the Wisdom of the Law distinguished into Classes; if it by Accident ariseth from Necessity, or is without Malice, it is not Murder, and of these Distinctions, warranted by Evidence, every Person, though accused by a Grand Jury, standing indifferent, is at full Liberty to avail himself.

As an additional Consolation your Lordship will reflect that you have the Happiness to be tried by the supreme Judicature of this Nation; that you can receive nothing from your Peers but Justice, distributed with Candor; delivered too under the strongest Obligation upon noble Minds, Honor. These Considerations will, I hope, compose your Lordship's Mind, fortify your Spirits, and leave you free for your Defence.

Before I conclude, I am, by Command of the House, to inform your Lordship, and all others that shall have Occasion to speak to the Court during the Trial, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Lord High Steward. *William Lord Byron,* your Lordship will do well to give Attention, while you are arraigned on your Indictment.

Then Proclamation was made for Silence.

After which, *William Lord Byron* was arraigned, in the Form of the said Indictment against him, by the Clerk of the Crown in the King's Bench.

Clerk of the Crown. How say you, *William Lord Byron,* Are you guilty of the Felony and Murder whereof you stand indicted, or not guilty?

William Lord Byron. Not guilty, my Lords.

Clerk of the Crown. Cul' puit,
How will your Lordship be tried?

William Lord Byron. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! All manner of Persons that will give Evidence, on Behalf of our Sovereign Lord the King, against *William Lord Byron,* the Prisoner at the Bar, let them come forth, and they shall be heard; for now he stands at the Bar upon his Deliverance.

Lord High Steward. My Lords, the Distance of this Place from the Bar is so great, that I must desire your Lordships Leave to go down to the Table for the Convenience of hearing.

Lords. Ay, ay.

Then his Grace removed to the Table.

Mr. Cornwall.

May it please your Lordships,

WILLIAM Lord BYRON stands indicted by the Grand Jury of the County of *Middlesex* for Murder; and the Indictment sets forth, That *William Lord Byron,* on the Twenty-sixth Day of *January,* in the Fifth Year of his present Majesty's Reign, with Force and Arms, at the Parish of *Saint James,* in the County of *Middlesex,* feloniously, wilfully, and of his Malice aforethought, did make an Assault in and upon one *William Chaworth,* Esquire, and with a Sword drawn, then in his Right Hand, in and upon the Left Side of the Belly of the said *William Chaworth,* did strike and stab, giving to the said *William Chaworth* a mortal Wound, of the Depth of Six Inches and of the Breadth of Half an Inch; of which Wound the said *William Chaworth,* at the Parish of *Saint James* aforesaid, and also

at the Parish of *Saint George, Hanover Square*, languished from the Twenty-sixth Day of *January* aforesaid, till the Twenty-seventh Day of the same Month, in the Year aforesaid, and then and there of the said mortal Wound died; and the Jurors aforesaid, upon their Oath, say, That the said *William Lord Byron*, the said *William Chaworth*, in Manner aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder.

To this Indictment the Noble Prisoner at the Bar, has pleaded Not guilty, and hath put himself upon your Lordships his Peers for Trial.

It is our Duty to produce to your Lordships the Evidence we have to offer in Support of this Charge; your Lordships will determine upon that Evidence, and give such Judgment as your Lordships shall think the Justice of the Case requires.

Mr. Attorney-General, Sir Fletcher Norton, Knight.

May it please your Lordships,

I Am likewise of Council for this Prosecution; and by the Indictment which has been opened, your Lordships have heard that the noble Prisoner at the Bar is charged with one of the highest Offences that human Nature is capable of committing, nothing less than shedding the Blood of a Fellow Creature.

My Lords, I need not enlarge upon this Subject, the Crime itself is incapable of Aggravation; it is my Province to lay before your Lordships the State of the Evidence which will be produced in Support of the Charge; and as it is not my Duty, so neither is it my Inclination, to exaggerate any Thing upon this Occasion; but publick Justice requires, that the whole Proof should be brought fully and fairly before your Lordships.

I hope it will neither be thought impertinent or improper for me to make some general Observations upon the Law, which may respect the Offence now under Consideration; the Utility and Application of which your Lordships will see in the Course of the Evidence.

My Lords, as it will be proved beyond a Doubt, in the Course of these Proceedings, that the Deceased fell by the Hands of the noble Prisoner at the Bar, I shall therefore take that Fact for granted; and if so, every Presumption in Law arises against him; and it will be incumbent upon the Prisoner to exculpate himself in the best Manner he is able; for though every Homicide is not Murder, yet every Homicide, *prima facie*, is so, and it is required of the Prisoner to make out, that the Fact of Killing in this Case was not committed under Circumstances which will make it Murder: And I admit the Law will allow the Prisoner to shew the Homicide justifiable, excusable, or done under such Circumstances of Extenuation, as to induce your Lordships to think it was not done with Malice aforethought, and then it will be Manslaughter, and not Murder.

It is clear in Point of Law, if there be a Quarrel, and the Parties afterwards have Time to cool, and after that they fight, and one falls, he who survives has been guilty of Murder; or if the Manner in which the Fact was done bespeaks a Depravity of Mind, and a Wickedness of Intention, that will make it Murder.

My Lords, as this Case must depend upon a very nice and strict Enquiry into all the Circumstances that accompanied the Fact, in order to mark the Offence with One or other of these Denominations (for an Offence Manslaughter is in the Eye of the Law) so I am persuaded your Lordships will attend carefully to the Evidence which may be produced; and I am convinced we shall hear such a Judgment from your Lordships, as, under all the Circumstances of the Case, Justice shall require: And this must afford Matter of the greatest Consolation to the noble Prisoner at the Bar (if he is innocent) because your Lordships Understanding cannot be deceived, nor your Judgment biased: But, on the other Hand, if his Lordship is guilty of the Offence laid to his Charge, he must know, that no Art, no Subterfuge, no Management, will avail him; Innocence, and Innocence alone can be his Support and Defence.

Having said this, give me Leave to observe to your Lordships, the Happiness of this Constitution under so gracious a Prince, as his present Majesty, who aims at no other Rule of Government than that which the Law prescribes, and has no other Wish than that in all Cases, and over all Persons indiscriminately, the Law should be impartially administered; and when the Laws are thus administered, and allowed their due Force, such is the Excellency of the *English* Constitution, that the meanest Subject is not beneath their Protection, nor the highest beyond their Reach; thus to be governed is the full Perfection of Civil Liberty.

On the 26th of *January* last, the noble Prisoner at the Bar, the Deceased, and many more Gentlemen of Rank and Fortune of the County of *Nottingham*, met, as they usually did once a Week, to dine together at the *Star and Garter* Tavern, in *Pall-Mall*: In the Course of the
Dinner

Dinner there was nothing but Good-humour; about Seven at Night the Conversation turned upon the Subject of Game: Upon this Occasion Mr. *Chaworth* had something of a Dispute with the Gentleman who sat next him, about the best Method of preserving the Game: The Prisoner at the Bar interfered upon that Subject, and said, in his Opinion, the Way to have Game was to take no Care of it; Mr. *Chaworth* happened to be of a different Opinion, and thought the best Way was, to be strict with Poachers, and thereby preserve the Game: This drew on some Altercation; Mr. *Chaworth* added, that he believed there was not a Hare in that Part of the Country, but what was preserved by himself or Sir *Charles Sedley*; upon which Lord *Byron* offered a Wager of an Hundred Pounds that he had more Game in a Manor or Manors of his than Mr. *Chaworth* had upon any that belonged to him. Your Lordships will find a little Difference in the Account given by the Witnesses, touching the Terms of the Wager; but you will have them from the Witnesses themselves, who are all Gentlemen of Character, and as they have most of them been already examined before the Coroner, and again before the Grand Jury, they did not choose to be examined by those concerned in the Prosecution; but said, when they were called and examined before your Lordships, they should speak the Truth, as doubtless they will; and I only mention this Circumstance as an Excuse for myself, if I should not happen to open the Evidence exactly as it may come out from the Witnesses.

My Lords, Mr. *Chaworth* having said he was willing to accept the Wager, said it would be proper to make a Memorandum of it, and called for Pen, Ink, and Paper; after that, it happened that Sir *Charles Sedley's* Manors were mentioned; upon which the noble Prisoner at the Bar said, with some Degree of Heat, Sir *Charles Sedley's* Manors! where are his Manors? to which Mr. *Chaworth* replied, Why *Hucknel* and *Nuttall*: His Lordship then said, I know no Manors of Sir *Charles Sedley's*; to which Mr. *Chaworth* replied, Sir *Charles Sedley* has a Manor, the Manor of *Nuttall* is his, and one of his Ancestors bought it out of my Family; and if your Lordship wants any further Information about his Manors, Sir *Charles Sedley* lives in *Dean-Street*, and your Lordship knows where to find me in *Berkeley-Row*.

My Lords, whether this was a real Dispute between Lord *Byron* and Mr. *Chaworth*, about Sir *Charles Sedley's* Manors, or whether it was used only as a Means of affronting and quarrelling with each other, it is impossible for me to say; however, after this Quarrel, the Parties staid in Company together for a considerable Time, I believe near an Hour, during which Time, both the noble Prisoner at the Bar and Mr. *Chaworth* entered into Conversation with the Company that sat next to them upon indifferent Subjects, and particularly Lord *Byron* was observed to be in good Humour.

The Company thought there was an End of the Quarrel, and that no more would be heard of it: About Eight, an Hour after the first Quarrel, Mr. *Chaworth* went first out of the Room, and it happened a Gentleman went after him to the Door, and he asked the Gentleman, whether he had observed the Dispute between him and Lord *Byron*? he said, he had in Part; upon which Mr. *Chaworth* asked him, if he thought he had gone far enough? to which Mr. *Donston* (for that was the Gentleman's Name) said, he thought he had gone too far; it was a silly Business, and neither of them should think of it again.

Mr. *Chaworth* going down Stairs, Mr. *Donston* returned into the Room, and, as he opened the Door, he met Lord *Byron* coming out. I must now state to your Lordships the Evidence as it arose from the Declarations of the Deceased, as well as the Facts which will be proved; for, both being legal Evidence, they just stand under the same Predicament, and the Evidence being thus put, will come in proper Order in Point of Time; the Prisoner at the Bar saw the Deceased upon the Stairs, and said to him, Sir, I want to speak with you; they then went down one Pair of Stairs, and one or other of them called out, Waiter; which of them it was I am not instructed to say; upon the Waiter's coming, the noble Prisoner at the Bar asked him, whether either of these two Rooms (pointing to them) were empty? the Waiter opened one of the Doors, and went in, with a poor little Tallow Candle, which was all the Light, except a dull Fire, that was in the Room; the Waiter set the Candle upon the Table, and Lord *Byron* and Mr. *Chaworth* went into the Room; when they were there the Prisoner asked Mr. *Chaworth*, whether he was to have Recourse to Sir *Charles Sedley* to account for the Business of the Game, or to him? The Deceased said, To me, my Lord; and if you have any Thing to say, it would be best to shut the Door, lest we should be overheard: Mr. *Chaworth* went to shut the Door, and turning from the Door, he saw the noble Prisoner just behind him, with his Sword half drawn, or nigh drawn, and at that Instant Lord *Byron* called out—Draw! The Business was soon done; Mr. *Chaworth* finding his Lordship in such a Situation, had nothing left for it but to draw as quickly as he could: By his own Account he has told he gave the noble Prisoner the first Thrust, and intangled his Sword in his Waistcoat, and thought he had wounded him; after that, Lord *Byron* shortened his Sword, and stabbed Mr. *Chaworth*.

There

There was another Circumstance, the Bell rung ; but by whom it was rung I know not ; the Waiter came up, and seeing the Situation of the Two Gentlemen, was not a little frightened, he run out again, and sent up the Master of the Tavern, who will tell your Lordships how he found them. I think they were grasped in each other's Arms, and Mr. *Chaworth* had his Sword in his Left-hand, and the noble Prisoner at the Bar had his in his Right-hand ; the Deceased delivered his readily, but Lord *Byron* quitted his with Reluctance. One of them, I believe Lord *Byron*, ordered him to send for Relief : Upon this Mr. *Hawkins* the Surgeon was soon sent for, and as soon came ; but before this, an Alarm was given in the Room above Stairs, the Company came down, they saw the terrible Situation of the unfortunate Gentleman ; he told them, and your Lordships will hear, the Manner in which it happened, pretty nearly as I have stated it, at least I hope substantially so. When Mr. *Hawkins* came, it did not require a Person of his Skill and Penetration to find out that the Wound was mortal, for the Sword had gone in at one Side, and out at the other ; Mr. *Hawkins* ordered, no doubt, what was proper, and had him conveyed Home. Mr. *Chaworth* had sent Messengers for the worthy Gentleman, who is the Prosecutor upon this Occasion ; when he came, seeing so near a Friend and Relation in the Condition the Deceased then appeared, he immediately inquired what had brought him into that terrible Situation. His Evidence will be material ; for Mr. *Chaworth* told Mr. *Levinz* the whole Transaction : And when the Deceased related to him the Circumstance that Lord *Byron* had drawn, or nigh drawn, his Sword, when the Deceased was shutting the Door, Mr. *Levinz* asked him, Was that fair, *Billy* ? The Deceased, who was one of the most benevolent, as well as one of the bravest of Men, gave no Answer to that Question : Mr. *Levinz* followed him with some other Questions, and the Answers (which he will give you an Account of) will amount in Substance to this, that Mr. *Chaworth* did not think when Lord *Byron* carried him into the Room, that he had any Design of fighting him ; but afterwards he thought he had got him to an Advantage, and that was the Reason of his fighting him.

My Lords, besides this ; the Deceased having made his Will, the Person who attended him upon that Occasion, thought it proper that some Questions should be asked him, even though the Deceased was then in great Agonies (for he died soon afterwards) ; and the same Person wished, that the Answers might be reduced into Writing, which was accordingly done ; and the Paper will be produced to your Lordships, and will speak for itself ; and it will need no Comment.

It states, that Mr. *Chaworth* said, the noble Prisoner's Sword was half-drawn when he turned from the Door, that, knowing his Man, he immediately whipped out his own, and had the first Lunge at his Lordship, when Lord *Byron* shortened his Sword, and run him through ; and then said, with an Oath, I have as much Courage as any Man in *England*. This is the Nature of the Case in general ; and I believe I have stated the Evidence substantially, if not correctly true.

I cannot sit down without mentioning another Circumstance, which further evinces his Majesty's Love of Justice, and his inflexible Resolution to do Right, according to Law, without Favour or Affection, however high and respectable the noble Personage may be, who is concerned in this important Cause. Your Lordships all remember, upon another very solemn and melancholy Occasion, as the Event proved, the then noble Prisoner had killed a Person of very inferior Rank, who left neither a Fortune nor Relations equal to the Expence of a Prosecution of this Sort, his Majesty, from his Love of Justice, sustained the whole Charge, and committed the Care of that Prosecution to his own Servants ; but in the present Instance, the Deceased having a large Fortune, and the Inheritor of it being both able and willing to carry on this Prosecution, his Majesty, from the same Love of Justice, and that there might not be the Appearance of Partiality to the noble Prisoner at the Bar, has left the Prosecution, and the intire Management of it, in the Hands of the private Prosecutor, who, actuated with no Motive of Revenge, only hopes, that there will be a fair, but a strict and full Enquiry for the Blood of his deceased Relation ; being thoroughly satisfied, that your Lordships will hear with Patience, deliberate with Caution, and determine with Wisdom, Justice, and Truth.

Mr. Solicitor General, } **M**Y Lords, we will now proceed to call our Witnesses.
William de Grey, Esq; } Call *John Hewett, Esquire.*

Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.

Clerk of the Crown. Harken to your Oath.

The Evidence that you shall give on Behalf of our Sovereign Lord the King's Majesty, against *William Lord Byron*, the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you G O D.

Then he kissed the Book.

Mr. Solicitor General. My Lords, I would ask *Mr. Hewett* if he was present at the *Star and Garter* in *Pall-mall* on the Twenty-sixth of *January* last?

Mr. Hewett. I was: I dined there, my Lords, the Twenty-sixth of *January*.

Lord High Steward. I cannot at this Distance hear One Word of what is said by the Witnesses.

Then one of the Clerks was sent down to the Bar to repeat the Questions put to the Witnesses, and their Answers.

Mr. Solicitor General. I desire that *Mr. Hewett* will tell your Lordships if he was present at the *Star and Garter* Tavern on the Twenty-sixth of *January* last?

Mr. Hewett. I was: I dined at the *Star and Garter* on the Twenty-sixth of *January* last.

Mr. Solicitor General. Was it any particular Meeting?

Mr. Hewett. It was: It was a County Club.

Mr. Solicitor General. Of what County?

Mr. Hewett. The Gentlemen of *Nottinghamshire*.

Mr. Solicitor General. I desire you will name the Gentlemen then present.

Mr. Hewett. *Lord Byron, Francis Molineux, Esquire, John Sherwin, Esquire, the Honourable Thomas Willoughby, Frederick Mountagu, Esquire, William Chaworth, Esquire, George Donston, Esquire, Charles Mellish junior, Esquire, Sir Robert Burdett, and myself.*

Mr. Solicitor General. At what Time did the Company dine?

Mr. Hewett. The Dinner was upon the Table precisely at a Quarter after Four o'Clock.

Mr. Solicitor General. Do you recollect any Conversation relative to the Game?

Mr. Hewett. I do; it was some Time after Dinner before any such Conversation arose.

Mr. Solicitor General. You will please to recollect the Time.

Mr. Hewett. At or about the Time the Drawer brought in the First Reckoning.

Mr. Solicitor General. About what o'Clock might that be?

Mr. Hewett. It was about or after Seven o'Clock. The Rule of the Club was to have the Bill and a Bottle brought at Seven o'Clock.

Mr. Solicitor General. Do you recollect whether it was about Seven, or long after Seven o'Clock?

Mr. Hewett. I believe it could not be long after Seven o'Clock.

Mr. Solicitor General. Had the Company at that Time drank much?

Mr. Hewett. I think the Company were all very sober when we parted.

Mr. Solicitor General. Do you mean that all the Company were very sober when they parted at Seven o'Clock?

Mr. Hewett. I think so, my Lords.

Mr. Solicitor General. I wish *Mr. Hewett* would recollect the Conversation that passed about the Game?

Mr. Hewett. What I heard relating to it was a Dispute in whose Manor, or in what Manor, there was the most Game.

Mr. Solicitor General. Do you recollect by whom the Conversation was begun?

Mr. Hewett. The Conversation about the Game began from myself.

Mr. Solicitor General. In what Manner?

Mr. Hewett. By starting a Proposition for preserving the Game, besides the present System of the Game Laws, which has very often, where I have been, produced agreeable Conversation.

Mr. Solicitor General. Who were the Persons in particular who entered into that Conversation?

Mr. Hewett. I believe all the Company, more or less.

Mr. Solicitor General. Do you recollect what *Mr. Chaworth* said on that Occasion?

Mr. Hewett. I recollect hearing a Bet proposed of One Hundred Pounds.

Mr. Solicitor General. Was that the First Time *Mr. Chaworth* had said any Thing upon the Subject?

Mr. Hewett. I cannot take upon me to say that: I can describe the Order in which we sat, and the Persons I was in Conversation with at the Time the Bet was proposed; *Mr. Mountagu* sat next me on my Right-hand, I sat at the Head of the Table, *Mr. Willoughby* sat next *Mr. Mountagu*, *Mr. Sberwin* next him, *Mr. Molineux* next to him, *Lord Byron* was the last Person on the same Side the Table, and farthest from me on my Right-hand, and on my Left-hand *Mr. Chaworth* sat next me, *Mr. Donston* next, *Mr. Mellish* next, *Sir Robert Burdet* next on that Side.—I was engaged in some Subject with *Mr. Sberwin*, and the Gentlemen on my Right-hand, at the Time when the Conversation passed between *Lord Byron* and *Mr. Chaworth*.

Lord High Steward. Recollect yourself again.

Mr. Hewett. I was conversing with *Mr. Sberwin*, and the Gentleman on my Right-hand, when I heard the Conversation about the Bet between *Lord Byron* and *Mr. Chaworth*.

Mr. Solicitor General. Please to repeat exactly the Conversation between *Lord Byron* and *Mr. Chaworth*, in the Order in which it passed.

Mr. Hewett. I cannot recollect any Thing farther of the Conversation than I have done.

Mr. Solicitor General. Be so good as to repeat again what that Conversation was?

Mr. Hewett. It was a Dispute in whose Manor or Manors there was the most Game.

Mr. Solicitor General. Whose Manors were understood?

Mr. Hewett. I heard none mentioned at all; I imagined as *Lord Byron* and *Mr. Chaworth* were Neighbours in the Country, it was their Manors they were speaking of.

Lord Mansfield. *Mr. Hewitt* won't speak as to Imagination; they can only ask him as to Facts.

Mr. Solicitor General. After this Bet was proposed, what passed?

Mr. Hewett. I did not perceive any other Conversation between *Mr. Chaworth* and *Lord Byron*, but what I have mentioned, during the whole Day.

Mr. Solicitor General. At what Time did the Conversation close upon that Subject?

Mr. Hewett. Very soon, my Lords.

Mr. Solicitor General. What Conversation followed upon that?

Mr. Hewett. A great Variety, I think.

Mr. Solicitor General. Did *Mr. Chaworth* join in that Conversation?

Mr. Hewett. He did, my Lords.

Mr. Solicitor General. Did *Lord Byron* join in any Conversation afterwards?

Mr. Hewett. *Lord Byron* being the farthest from me of any of the Company, I did not hear any Conversation of his afterwards; but I observed he was conversing with *Mr. Molineux* afterwards.

Mr. Solicitor General. Did you observe whether *Lord Byron* seemed to be in or out of Humour after the Conversation about the Game?

Mr. Hewett. He seemed to be conversing with *Mr. Molineux* in good Humour.

Mr. Solicitor General. How long did this Conversation last before *Mr. Chaworth* went out of the Room?

Mr. Hewett. It must be after Eight o'Clock before *Mr. Chaworth* went out of the Room.

Mr. Solicitor General. Did *Mr. Chaworth*, when he left the Room, take any Body with him?

Mr. Hewett. *Mr. Donston* was out of the Room at the same Time; but whether he went with him, or followed him, I do not know.

Mr. Solicitor General. How long did *Mr. Donston* stay out of the Room?

Mr. Hewett. A very short Time, I think.

Mr. Solicitor General. Did *Lord Byron* leave the Room?

Mr. Hewett. *Lord Byron* left the Room at the very Instant *Mr. Donston* came in.

Mr. Solicitor General. *Mr. Hewett* says that *Mr. Donston* stayed out of the Room but a very short Time; I should be glad to know what he reckons a short Time?

Mr. Hewett. I am not able to judge of the Time; but from the Hour of paying the Reckoning, and the Time I went into the Room where *Mr. Chaworth* was wounded.

Mr. Solicitor General. What was the First Account you had of any Thing that passed after they quitted the Room?

Mr. Hewett. Almost at the Instant of *Mr. Donston's* sitting down, a Drawer came into the Room, and told us that *Lord Byron* and *Mr. Chaworth* were fighting.

Mr. Solicitor General. What was the Drawer's Name?

Mr. Hewett. I don't know.

Mr. Solicitor General. Did the Company go down?

Mr. Hewett. They went down as fast as they could.

Mr. Solicitor General. Did you go into the Room where *Mr. Chaworth* and *Lord Byron* were?

Mr. Hewett. I did.

Mr. Solicitor General. Where was the Room?

Mr. Hewett. It was a Back Room, up One Pair of Stairs.

Mr. Solicitor General. What did you observe in that Room?

Mr. Hewett. I was lame at that Time; when I got into the Room *Mr. Chaworth* was sitting in an armed Chair, with his Left Leg on another Chair, and leaning his Head against *Mr. Dorston*.

Mr. Solicitor General. Did you observe the Condition in which *Mr. Chaworth* was?

Mr. Hewett. I did. He was wounded in the Belly, and had his Hand upon it, and there was a good deal of Blood under the Chair.

Mr. Solicitor General. Did *Mr. Chaworth* say any Thing to you?

Mr. Hewett. He did.

Mr. Solicitor General. What was that?

Mr. Hewett. He said he was a dying Man, and gave me an Account of the Transaction, and of what had passed between my *Lord Byron* and him: He said *Lord Byron* told him he wanted to speak to him; upon which they went into that Room together; that he told *Lord Byron* it was better to shut the Door that they might not be heard; that while he was doing it, *Lord Byron* bid him draw; that he saw his Lordship's Sword half-drawn, upon which he whipp'd out his own as quick as possibly he could to give him the Point; and he asked how *Lord Byron* was, whether he was mortally wounded, as he thought he was about his Breast; when his Lordship shortened his Sword, and stabbed him in the Belly.

Mr. Solicitor General. Was you in the Room when *Mr. Hawkins* the Surgeon was sent for?

Mr. Hewett. I was not in the Room when *Mr. Hawkins* was sent for; *Mr. Hawkins* was in the Room when I was there.

Mr. Solicitor General. Was *Lord Byron* in the Room at that Time?

Mr. Hewett. *Lord Byron* came into the Room, and went up to *Mr. Chaworth*, and asked him how he was?

Mr. Solicitor General. What Answer was given by *Mr. Chaworth*?

Mr. Hewett. I don't recollect any.

Mr. Solicitor General. Was you afterwards at *Mr. Chaworth's* House that Night?

Mr. Hewett. I was.

Mr. Solicitor General. At what Time was it you went, and what passed there?

Mr. Hewett. I do not remember exactly. I was one of the subscribing Witnesses to *Mr. Chaworth's* Will. It might be about or after Three o'Clock in the Morning.

Mr. Solicitor General. How was your Time employed, when you left the *Star and Garter*, till you went to *Mr. Chaworth's* House?

Mr. Hewett. *Mr. Chaworth* at different Times expressed himself as a dying Man: He asked me twice after *Lord Byron* and his Wound. When I went from the *Star and Garter*, I went with *Mr. Willoughby*, in my own Coach, to fetch *Mr. Levinz*, for whose Coming *Mr. Chaworth* was extremely impatient.

Mr. Solicitor General. What Relation was *Mr. Levinz* to *Mr. Chaworth*?

Mr. Hewett. His Uncle.

Mr. Solicitor General. Where did *Mr. Levinz* live?

Mr. Hewett. At *Kensington Gore*.

Duke of Newcastle. Did not *Mr. Chaworth* tell you he had mortally wounded *Lord Byron*; for I think you said, when you came into the Room *Mr. Chaworth* asked how *Lord Byron* did, for he thought he was wounded about his Breast?

Mr. Hewett. *Mr. Chaworth* asked me how *Lord Byron* was, whether mortally wounded or not, for he thought he was about his Breast, when *Lord Byron* stabbed him into the Belly.

Earl Morton. Did *Mr. Chaworth* mention that he had given *Lord Byron* a Wound? Or did you imagine it was his own Wound he was speaking of?

Mr. Hewett. He inquired after a Wound he supposed he had given *Lord Byron*.

Lord Mansfield. My Lords, I believe it would be much better if your Lordships would forbear asking any Questions of the Witness till the Counsel for the Crown shall have done with the Witness; then *Lord Byron* will ask such Questions as he may think proper, and afterwards your Lordships will have an Opportunity of asking any Questions you please; otherwise I am afraid it will very much interrupt the Regularity of your Proceedings.

Mr. Solicitor General. I was endeavouring to fix the Time when *Mr. Hewett* came to *Mr. Chaworth's* House, by asking him, how he was employed after he left the *Star and Garter*? *Mr. Hewett* said, in seeking *Mr. Levinz*, who lived at *Kensington Gore*.

Mr. Hewett. I sent my Coach for *Mr. Levinz* some Time before, and it returned without finding him; upon that I sent to the Duke of *Leeds's* House, to know if they knew any Thing of him there; they returned for Answer, that he dined there, and was gone Home.

Mr. Solicitor General. I would ask you, if there was any Conversation between *Mr. Chaworth* and you after the making his Will in the Presence of *Mr. Willoughby*?

Mr. Hewett. There was.

Mr. Solicitor General. Did *Mr. Chaworth* make any Declarations of what had passed at that Time?

Mr. Hewett. He did.

Mr. Solicitor General. Were those Declarations reduced into Writing?

Mr. Hewett. They were.

Mr. Solicitor General. How long was it after they were made before they were reduced into Writing?

Mr. Hewett. We went down from the Bed-chamber into the Parlour.

Mr. Solicitor General. There *Mr. Partington* delivered the Will into *Mr. Levinz's* Hands?

Mr. Hewett. No, I gave the Will into *Mr. Levinz's* Hands in the Parlour; then Minutes were made, and some Alterations made in them, till we were all agreed it was exactly what *Mr. Chaworth* had said.

Mr. Solicitor General. Were the Minutes transcribed again after those Alterations were made.

Mr. Hewett. I believe they were.

Mr. Solicitor General. Should you know the Paper Writing again if you saw it?

Mr. Hewett. I should not; but I remember that the Contents appeared to me exactly the same with the Account I have given your Lordships, except the Omission of the particular Term of *Mr. Chaworth's* whipping out his own Sword, and *Lord Byron's* shortening his.

Mr. Solicitor General. Who wrote the Paper?

Mr. Hewett. *Mr. Partington*, an Attorney.

Mr. Solicitor General. What became of it after it was written?

Mr. Hewett. I do not know.

Mr. Solicitor General. Did you see *Mr. Chaworth* after that Paper was wrote?

Mr. Hewett. I did not.

Mr. Solicitor General. Did *Mr. Chaworth* continue in his perfect Understanding till the last Time you saw him?

Mr. Hewett. He did. I understood many of the Questions put to him to be with a View of knowing that.

Mr. Solicitor General. My Lords, I shall ask this Witness no farther Questions.

Lord High Steward. *Lord Byron*, would you ask this Witness any Questions?

Lord Byron. Might not a great deal pass in Company that you did not hear?

Mr. Hewett. Certainly there might.

Lord Byron. Was not you Toast Master?

Mr. Hewett. I was.

Lord Byron. Might not your Attention to that Office be the Reason that you did not hear several Things that passed?

Mr. Hewett. It might; but my Ears are not the best at any Time.

Lord Byron. My Lords, I have done with this Witness.

Lord Mansfield. I would ask One single Question of this Witness, if he can answer it precisely.

Mr. Chaworth, as I took it, told him that *Lord Byron* asked to speak to him; and when they went into the Room, *Mr. Chaworth* said they had better shut the Door. Now I would ask, whether it was, Shut the Door, or Bolt the Door?

Mr. Hewett. I believe the Word was, Shut the Door.

Earl of Denbigh. I desire to know whether the Paper Writing was shewn to *Mr. Chaworth* after it was copied?

Mr. Hewett. *Mr. Chaworth* was in his Bed-chamber above Stairs, the Paper was drawn up in the Parlour below Stairs; and I went away very soon after.

Earl Poulet. Were the Alterations in the Paper you mentioned material ones or not?

Mr. Hewett. I thought it my Duty to the Publick to make an exact Minute of the Circumstances of the Day, which Minute I have now in my Hand, and it corresponds exactly with that Paper, except in the Circumstance I mentioned to your Lordships.

Earl of Buckinghamshire. I desire Mr. *Hewett* may be asked, if he expected Mr. *Chaworth* would have come back again?

Mr. Hewett. I did imagine he would have come back.

Earl of Buckinghamshire. I desire to know, whether, when Mr. *Chaworth* went out of the Room, he took his Hat with him or not?

Mr. Hewett. I don't know; I did imagine he would come back immediately.

Lord High Steward. I do not remember any precise Answer to the Question, who it was that offered the Bet?

Mr. Hewett. Lord *Byron* proposed the Bet.

Lord High Steward. Are you sure it was Lord *Byron*?

Mr. Hewett. I think I am sure it was; and Mr. *Chaworth* took it up, as I thought, in a Joke, and called for a Pen and Ink.

Lord High Steward. Do you recollect how the Conversation about the Game finished?

Mr. Hewett. I cannot.

Earl of Dartmouth. Do you remember the particular Discourse on the Game between Lord *Byron* and Mr. *Chaworth*?

Mr. Hewett. There were various Discourses upon the Subject by different People in Company; I was talking about the best Method for preserving Game, and the Discourse turned upon the Proposition, that it might be a sensible Way of preserving Game to make it the Property of the Owner of the Soil.

Earl of Dartmouth. Was there any general Debate on the Subject of the Game?

Mr. Hewett. It might be as to the probable Ways of preserving the Game.

Earl of Dartmouth. I think you said Lord *Byron* left the Room at the Instant Mr. *Donston* returned.

Mr. Hewett. I did.

Earl of Dartmouth. I desire to know whether Lord *Byron* sat so as to hear what passed between Mr. *Chaworth* and Mr. *Donston* on the Stairs?

Mr. Hewett. It was a mighty odd-shaped Room that we were in; the Door opened very inconveniently; Mr. *Donston* was scarcely set down, when the Waiter came into the Room and told us Lord *Byron* and Mr. *Chaworth* were fighting.

Duke of Richmond. Where did Mr. *Chaworth* sit?

Mr. Hewett. Mr. *Chaworth* sat next to me on my Left-hand.

Duke of Richmond. Could any Thing remarkable pass at the Table without your hearing it?

Mr. Hewett. My Ears are but indifferent at best; and at that Instant of Time I was talking to a Gentleman that sat on my Right-hand.

Duke of Richmond. When my Lord *Byron* asked Mr. *Chaworth*, where is Sir *Charles Sedley's* Manor, did you understand it was in a friendly Manner, or what other Kind of Style?

Mr. Hewett. I have given that Part of my Evidence precisely in Mr. *Chaworth's* Words, and your Lordships will interpret them as you think proper.

Duke of Richmond. If I understood you right, when you went into the Room Mr. *Chaworth* was then with One Leg upon a Chair, and he inquired how Lord *Byron* did?

Mr. Hewett. He did, my Lords, twice, and once at another Time.

Lord Le Despencer. I should be glad to know, whether there was any considerable Distance of Time between Lord *Byron* and Mr. *Chaworth's* going out of the Room.

Mr. Hewett. I cannot resolve that Question precisely.

Lord Ravensworth. You said the Bill was called for about Seven o'Clock?

Mr. Hewett. It is the Order of the Club to the Master of the House to bring a Bill at Seven o'Clock.

Lord Ravensworth. You said you had no fixed Guide to judge as to Point of Time, but by the Bills being brought at Seven o'Clock; I desire to know by what Circumstances you guided yourself as to the Time in general?

Mr. Hewett. In Things of this Kind, one cannot be precise in every Thing; but I made a Minute, and I will tell you the Time as near as I can; my Watch was rather too fast; when I came into the Room to Mr. *Chaworth*, the Minute Hand of my Watch was between Eight and Nine, and the Hour Hand approaching Nine: This was at the First Time I saw Mr. *Chaworth* in that Condition; the Time of my being a Witness to Mr. *Chaworth's* Will, was a little after Three in the Morning.

Lord High Steward. So you said before.

Lord High Steward. Who do you call next, *Mr. Solicitor General*?
Solicitor General. We desire to call *Frederick Mountagu*, Esquire.

Frederick Mountagu, Esquire, (*Who was sworn in like Manner.*)

Mr. Serjeant Glynn. I desire to ask *Mr. Mountagu*, if he was not present at the *Star and Garter* on the Twenty-sixth of *January* last?

Mr. Mountagu. I was.

Mr. Serjeant Glynn. I desire to know what Company was there?

Mr. Mountagu. There were *Lord Byron*, *Mr. Chaworth*, *Mr. Willoughby*, *Mr. Hewett*, *Mr. Molyneux*, *Mr. Donston*, *Mr. Sberwin*, *Mr. Mellish*, and *Sir Robert Burdet*.

Mr. Serjeant Glynn. Upon what Occasion were they met?

Mr. Mountagu. At a County Club.

Mr. Serjeant Glynn. At what Time might the Company dine?

Mr. Mountagu. A little after Four.

Mr. Serjeant Glynn. Do you remember any Dispute in the Company?

Mr. Mountagu. There arose a Dispute some time after Dinner.

Mr. Serjeant Glynn. At what Hour?

Mr. Mountagu. As near as I can recollect, at Seven o'Clock.

Mr. Serjeant Glynn. Do you remember the Subject of the Dispute?

Mr. Mountagu. The Dispute was upon Game.

Mr. Serjeant Glynn. Who were the Persons that disputed?

Mr. Mountagu. The Persons that principally disputed were *Lord Byron* and *Mr. Chaworth*.

Mr. Serjeant Glynn. Can you recollect the Conversation upon that Subject?

Mr. Mountagu. The Dispute was, whether it was better for the Preservation of Game to be remiss, or to be severe.

Mr. Serjeant Glynn. Do you recollect particularly what *Mr. Chaworth* and *Lord Byron* said?

Mr. Mountagu. *Mr. Chaworth* was of Opinion that Severity was best, and *Lord Byron* that it was better to be remiss.

Mr. Serjeant Glynn. I should be glad if *Mr. Mountagu* would repeat the whole Conversation that followed upon this.

Mr. Mountagu. The Dispute was upon the respective Manors of *Lord Byron* and *Mr. Chaworth*, and upon *Sir Charles Sedley's* Manor; the Conversation ended upon that Point, with *Mr. Chaworth's* saying, and to the best of my Recollection repeating, If you have any Thing more to say, you will find *Sir Charles Sedley* in *Dean-street*, and me in *Berkley-Row*.

Mr. Serjeant Glynn. Repeat what Conversation passed before *Mr. Chaworth* said those Words?

Mr. Mountagu. In general, the Conversation was upon Game.

Mr. Serjeant Glynn. Do you recollect any Particulars of the Conversation?

Mr. Mountagu. No more than what I have repeated.

Mr. Serjeant Glynn. Was this the Whole? Recollect.

Mr. Mountagu. I can, upon my own Recollection, speak to nothing more.

Mr. Serjeant Glynn. *Mr. Mountagu* will recollect if he can, whether there was any Dispute at all about the Ownership of any Manor or Manors?

Mr. Mountagu. There was some mention made of a particular Manor, of *Hucknell Manor*.

Mr. Serjeant Glynn. By whom?

Mr. Mountagu. By *Mr. Chaworth*, -I think.

Mr. Serjeant Glynn. Do you remember what was said about that Manor?

Mr. Mountagu. I think *Lord Byron* mentioned that Manor being his.

Mr. Serjeant Glynn. Do you remember any Answer *Mr. Chaworth* made to that?

Mr. Mountagu. No.

Mr. Serjeant Glynn. My Question to *Mr. Mountagu* was, whether he recollects any Conversation between *Lord Byron* and *Mr. Chaworth* about Manors?

Mr. Mountagu. Yes, there was a great deal of Conversation upon that Point.

Mr. Serjeant Glynn. Whether *Sir Charles Sedley* was mentioned or not?

Mr. Mountagu. His Name was mentioned.

Mr. Serjeant Glynn. How was *Sir Charles Sedley's* Name introduced?

Mr. Mountagu. I forget how it was first introduced.

Mr. Serjeant Glynn. Recollect what was said about *Sir Charles Sedley*, when his Name was mentioned?

Mr.

Mr. Mountagu. It was mentioned that he was severe upon his Manors.

Mr. Serjeant Glynn. By whom was that said?

Mr. Mountagu. Either by Lord *Byron* or Mr. *Chaworth*, I forget which.

Mr. Serjeant Glynn. How long did the Conversation about Game continue?

Mr. Mountagu. About Twenty Minutes, I should guess; but I cannot speak positively.

Mr. Serjeant Glynn. Did the Company then break up?

Mr. Mountagu. No.

Mr. Serjeant Glynn. How long might they continue afterwards together?

Mr. Mountagu. An Hour.

Mr. Serjeant Glynn. Were the Company after this Conversation in good Humour or not?

Mr. Mountagu. They appeared to be in good Humour.

Mr. Serjeant Glynn. Did Mr. *Chaworth* join in the Conversation?

Mr. Mountagu. He did.

Mr. Serjeant Glynn. Did Lord *Byron* join in Conversation?

Mr. Mountagu. He did, each with those who sat near.

Mr. Serjeant Glynn. Did Lord *Byron* appear to be in good Humour?

Mr. Mountagu. I saw nothing to the contrary.

Mr. Serjeant Glynn. At what Time did Mr. *Chaworth* leave the Company?

Mr. Mountagu. About Eight.

Mr. Serjeant Glynn. Whether he left the Company alone, or did any Person go out with him?

Mr. Mountagu. I think Mr. *Donston* followed him.

Mr. Serjeant Glynn. Did Mr. *Donston* return to the Company or not?

Mr. Mountagu. He did.

Mr. Serjeant Glynn. How soon after his going out with Mr. *Chaworth*?

Mr. Mountagu. A few Minutes; I cannot speak exactly to the Number.

Mr. Serjeant Glynn. Did Lord *Byron* go out of the Room at that Time?

Mr. Mountagu. He did afterwards.

Mr. Serjeant Glynn. Did Lord *Byron* go out of the Room before or after the Return of Mr. *Donston*?

Mr. Mountagu. About that Time.

Mr. Serjeant Glynn. At what Time of the Night might that be?

Mr. Mountagu. A very little after Eight.

Mr. Serjeant Glynn. Had the Company drank moderately, or otherwise?

Mr. Mountagu. Moderately.

Mr. Serjeant Glynn. When did you first hear of Mr. *Chaworth* after this?

Mr. Mountagu. I went down Stairs about that Time myself, and as I was going out of the Door of the Tavern, the Master of the Tavern called me back, and told me that Mischief had happened; and that Mr. *Hawkins* was sent for; I ran up Stairs with one of the Drawers.

Mr. Serjeant Glynn. Who was that Drawer?

Mr. Mountagu. I do not recollect him in particular; I ordered him to fetch the Company from above Stairs, and went into the Room immediately myself, where I found Mr. *Chaworth* in a Chair bleeding, and Lord *Byron* standing by him.

Mr. Serjeant Glynn. Was there any Person in the Room when you came in, except Lord *Byron* and Mr. *Chaworth*?

Mr. Mountagu. No, I think not; the Company above Stairs came in soon after.

Mr. Serjeant Glynn. Give an Account of what passed between Mr. *Chaworth* and the Company, when they came in?

Mr. Mountagu. Mr. *Chaworth* first told me that he could not live Five Minutes; that he forgave Lord *Byron*, and hoped the World would forgive him too; that he had rather be in his own Situation than Lord *Byron*'s; he said the Affair passed in the Dark: Upon my desiring an Explanation, he pointed to a very small Tallow Candle, which stood upon the Table in the Room we were then in. Mr. *Chaworth* told me, that when Lord *Byron* and he came into the Room where they then were, Lord *Byron* asked Mr. *Chaworth*, if he meant the Conversation upon Game to Sir *Charles Sedley* or to him? Mr. *Chaworth* said, If you have any Thing to say, we had better shut the Door; after he had shut the Door, he turned, and saw Lord *Byron* drawing his Sword; he drew his, and made the First Pass, and in his Pass he entangled his Sword in the Left Side of Lord *Byron*'s Waistcoat; upon which Lord *Byron* shortened his Sword, and run him through the Body.

Mr. Serjeant Glynn. Was this the Whole of what Mr. *Chaworth* said?

Mr. Mountagu. I recollect nothing material besides.

Mr.

Mr. Serjeant Glynn. Did Mr. *Chaworth*, from the Manner of relating this Affair, appear to be sensible or not?

Mr. Mountagu. Perfectly so.

Lord High Steward. Lord *Byron*, would your Lordship ask this Witness any Questions?

Lord Byron declined asking him any Questions.

Lord High Steward. How soon might you leave the Room after Mr. *Donston* returned?

Mr. Mountagu. About a Minute.

Lord High Steward. You passed the Room upon the First Floor as you went down?

Mr. Mountagu. I did, my Lords.

Lord High Steward. You heard no Fighting?

Mr. Mountagu. None in the World.

Lord High Steward. When you went down, did you stop?

Mr. Mountagu. A few Minutes in calling a Chair.

Lord High Steward. Were you got into the Chair?

Mr. Mountagu. I was not got into the Chair; I was not out of the Door.

Lord Berkeley. Was any Provocation given by Lord *Byron*, that might induce Mr. *Chaworth* to say to my Lord, If you have any Thing more to say to me or Sir *Charles Sedley*, you will find Sir *Charles Sedley* in *Dean-street*, and I live in *Berkley Row*?

Mr. Mountagu. I do not recollect any particular Provocation.

Lord Berkeley. Do you recollect any Thing more than the general Account you have given?

Mr. Mountagu. Nothing further, my Lords.

Duke of Richmond. Did you sit next Lord *Byron*?

Mr. Mountagu. No, my Lords, I did not sit next Lord *Byron*.

Duke of Richmond. From the Discourse that you heard, and what passed, did you expect a Duel?

Mr. Mountagu. No, my Lords, I did not.

Earl Temple. Did Mr. *Chaworth* say any Thing expressing his Imagination of his having wounded Lord *Byron* about the Breast?

Mr. Mountagu. I do not recollect any Thing that Mr. *Chaworth* said as to that.

Earl Temple. From Mr. *Chaworth*'s Expressions, did any Thing induce you to think he had wounded Lord *Byron*?

Mr. Mountagu. No.

Earl Talbot. After Lord *Byron* and Mr. *Chaworth* went out of the Room, and were in the Room where they fought, Mr. *Chaworth* said, he saw Lord *Byron*'s Sword half-drawn when he turned from fastening the Door, and the Gentleman who spoke before said Lord *Byron* called to Mr. *Chaworth*, and bid him draw; do you recollect whether Mr. *Chaworth* said Lord *Byron* bid him draw?

Mr. Mountagu. In the Conversation that passed I do not recollect that Circumstance of Lord *Byron*'s bidding him draw.

Earl Poulet. Was you nearer seated to the Door than Lord *Byron* was?

Mr. Mountagu. No, I was not; I was at the upper End of the Table.

Earl Poulet. Was the Door at the upper or lower End of the Room?

Mr. Mountagu. It was a very odd-shaped Room.

Earl Poulet. Did Lord *Byron* sit near the Door?

Mr. Mountagu. No, he did not.

Earl Poulet. Do you think it was possible to hear what Words passed between Mr. *Donston* and Mr. *Chaworth* upon the Stairs?

Mr. Mountagu. I should think it impossible; there was a great Skreen before the Door.

Earl of Morton. Did not Mr. *Chaworth* say, the best Method of preserving Game was by Severity, and Lord *Byron* by Remissness?

Mr. Mountagu. Yes, my Lords, it was so.

Mr. Stowe. My Lords, I would call *George Donston*, Esquire.

George Donston, Esquire. (*Who was sworn in like Manner.*)

Mr. Stowe. Was you, on the Twenty-sixth of *January*, at Dinner with Lord *Byron* and other Gentlemen at the *Star and Garter*?

Mr. Donston. I was.

Mr. Stowe. Name the Gentlemen that composed the Company.

Mr. Donston. Lord *Byron*, *Mr. Hewett*, *Mr. Willoughby*, *Mr. Chaworth*, *Mr. Sherwin*, *Mr. Mountagu*, *Sir Robert Burdet*, *Mr. Charles Mellish*, and myself.

Mr. Stowe. Was there any Discourse between Lord *Byron* and *Mr. Chaworth*?

Mr. Donston. There was.

Mr. Stowe. What was the Subject of that Discourse?

Mr. Donston. It was about their respective Manors in the Country, and the Quantity of Game upon them.

Mr. Stowe. Do you recollect the Manner of the Conversation that passed between Lord *Byron* and *Mr. Chaworth*?

Mr. Donston. In general it was upon the best Method of preserving Game.

Mr. Stowe. What did Lord *Byron* give as his Opinion upon that Discourse?

Mr. Donston. Lord *Byron* thought it was best not to be too strict.

Mr. Stowe. What was *Mr. Chaworth's* Opinion?

Mr. Donston. *Mr. Chaworth* was for being strict, and for putting the Game Laws in Execution.

Mr. Stowe. Did any Thing pass relating any other Gentlemen, or the Estates of any other Gentlemen?

Mr. Donston. Yes, *Sir Charles Sedley's* Manor was mentioned.

Mr. Stowe. By whom was it mentioned?

Mr. Donston. By *Mr. Chaworth*.

Mr. Stowe. What did *Mr. Chaworth* say upon the mentioning *Sir Charles Sedley's* Manor?

Mr. Donston. He was speaking of the Quantity of Game upon *Sir Charles Sedley's* Manor.

Mr. Stowe. Was there any Bet mentioned relative to this Discourse concerning the Game?

Mr. Donston. Yes, there was a Bet proposed.

Mr. Stowe. By whom proposed?

Mr. Donston. I am not very sure by whom it was proposed.

Mr. Stowe. Was it proposed either by Lord *Byron* or *Mr. Chaworth*?

Mr. Donston. Yes, by one of them.

Mr. Stowe. Was any Bet made or not?

Mr. Donston. There was no Bet made.

Mr. Stowe. At what Time did this Conversation pass?

Mr. Donston. I believe about Seven o'Clock.

Mr. Stowe. Did Lord *Byron* or *Mr. Chaworth* continue in that Company any Time after this Discourse was over?

Mr. Donston. Yes, for some Time after.

Mr. Stowe. Whether after the Bet proposed, there was any other Conversation that passed between Lord *Byron* and *Mr. Chaworth*?

Mr. Donston. Yes; I remember, upon *Sir Charles Sedley's* Manor being mentioned, Lord *Byron* asked which was *Sir Charles Sedley's* Manor.

Mr. Stowe. Of whom did Lord *Byron* ask that?

Mr. Donston. Of *Mr. Chaworth*.

Mr. Stowe. Did *Mr. Chaworth* make any Answer?

Mr. Donston. He answered *Nuttall*.

Mr. Stowe. Did *Mr. Chaworth* mention any Thing more upon that Subject to Lord *Byron*; and what?

Mr. Donston. He did, after Lord *Byron* had repeated the same Question.

Mr. Stowe. What was further mentioned by *Mr. Chaworth*?

Mr. Donston. *Mr. Chaworth* said, upon his Lordship's asking him over again which was *Sir Charles Sedley's* Manor; Surely, my Lord, you will allow *Nuttall* to be *Sir Charles Sedley's*.

Mr. Stowe. Was any Thing more said respecting *Sir Charles Sedley*, or his Manors, or where he lived?

Mr. Donston. Yes, *Mr. Chaworth* went on to say, *Sir Charles Sedley* lives in such a Place, and can best inform you relating to his Manors; your Lordship knows where to find me in *Berkley-Row*.

Mr. Stowe. Did this conclude the Conversation on this Subject, or was any Thing more said at that Time?

Mr. Donston. The Conversation ended with the Words I have last said.

Mr

Mr. Stowe. Did you stay in the Room till the Time Lord *Byron* and Mr. *Chaworth* went out?

Mr. Donston. I staid till Mr. *Chaworth* went out.

Mr. Stowe. What Distance of Time might that be from the End of the Conversation to Mr. *Chaworth's* going out of the Room?

Mr. Donston. I think it might be about an Hour.

Mr. Stowe. Did Lord *Byron* and Mr. *Chaworth*, during that Hour, enter into Conversation with one another, or with the rest of the Company?

Mr. Donston. I am not sure whether they did converse with each other; they did with the rest of the Company.

Mr. Stowe. At what Distance from one another did they sit?

Mr. Donston. At a pretty considerable Distance.

Mr. Stowe. Do you recollect any subsequent Conversation that Lord *Byron* entered into, except what you have mentioned?

Mr. Donston. I do not; I was at a Distance from Lord *Byron*.

Mr. Stowe. At what Time was it that Mr. *Chaworth* went out of the Room?

Mr. Donston. About Eight o'Clock; I am not quite sure as to the Time.

Mr. Stowe. Do you know the Purpose of his going out of the Room?

Mr. Donston. He was going down Stairs; I believe into the Yard.

Mr. Stowe. Did he take his Hat with him when he went out of the Room?

Mr. Donston. I think he did not.

Mr. Stowe. Did any body go along with Mr. *Chaworth*, or immediately follow him?

Mr. Donston. I went out with him.

Mr. Stowe. How far did Mr. *Chaworth* and you go?

Mr. Donston. A little Way without the Room.

Mr. Stowe. Was there any Conversation between Mr. *Chaworth* and you, when you were out of the Room?

Mr. Donston. There was.

Mr. Stowe. Was there any other Person besides Mr. *Chaworth* and you?

Mr. Donston. There was none.

Mr. Stowe. Repeat what that Conversation was that passed between Mr. *Chaworth* and you.

Mr. Donston. Mr. *Chaworth* asked me, If I attended to the Discourse between him and Lord *Byron*? I told him I did in Part: He then asked me, If he had been short in what he last said upon that Subject. I told him, No; I thought he said rather more than what was necessary upon so trifling an Occasion, and that I did not believe that either Lord *Byron* or the rest of the Company would think any more about it.

Mr. Stowe. Was there any other Conversation between Mr. *Chaworth* and you at that Time?

Mr. Donston. Yes; he asked me how long I stayed in Town, and hoped we should meet often.

Mr. Stowe. Was there any other Conversation between Mr. *Chaworth* and you relative to the Subject of the Discourse that had passed between my Lord *Byron* and Mr. *Chaworth*?

Mr. Donston. No.

Mr. Stowe. What became of Mr. *Chaworth* after this?

Mr. Donston. He turned to go down Stairs.

Mr. Stowe. Where did you go to?

Mr. Donston. Into the Room again.

Mr. Stowe. When you went into the Room, did you see Lord *Byron*, and where?

Mr. Donston. I stood with my Back to the Door, and upon turning round to go into the Room I saw Lord *Byron*.

Mr. Stowe. What was he doing at that Time?

Mr. Donston. He was coming out as I was going in.

Mr. Stowe. What Length of Time might it be from your going out to Mr. *Chaworth*, to the Time of your coming in again?

Mr. Donston. I cannot exactly tell, but I believe a very short Time.

Mr. Stowe. Can you form any Judgment how long it might be?

Mr. Donston. I think it could not be Five Minutes.

Mr. Stowe. When you met Lord *Byron* going out of the Door, was any Thing said?

Mr. Donston. No.

Mr. Stowe. Do you remember any Thing more that passed in the House that gave you any Alarm in Regard to Lord *Byron* and Mr. *Chaworth*?

Mr.

Mr. Donston. Yes, when I was in the Room, and saw that Lord *Byron* was not there, I began to reflect that they possibly might meet and resume their Discourse; by that Time the Bell was rung by some of the Company, and the Waiter came into the Room. I met the Waiter, and asked him if he saw Mr. *Chaworth*? and he said he believed he was be'ow Stairs; I desired he would go and see for him immediately, and tell him I must speak to him. I was then preparing to go down myself, and the Waiter immediately came up with an Account of Mr. *Chaworth*'s being run through the Body.

Mr. Stowe. What did you and the rest of the Company upon that?

Mr. Donston. We all hastened down to the Room where Mr. *Chaworth* was.

Mr. Stowe. Did you see Mr. *Chaworth* in the Room, and who was there, and in what Situation? describe the Particulars.

Mr. Donston. I saw him in a great Chair in the Corner of the Room. Mr. *Fynmore*, the Master of the Tavern, was in the Room.

Mr. Stowe. How did Mr. *Chaworth* appear?

Mr. Donston. He sat in the Chair, leaning his Head back; I went to him, and asked him how he did? he said he was run through the Body, and had not Five Minutes to live. Upon my asking how it happened? he said he and Lord *Byron* went into the Room and fought. I then told him, I hoped his Wound was not so bad as he apprehended; he said he was sure he was run through the Body, for that my Lord was very near him, and had shortened his Sword.

Mr. Stowe. Did you enquire any Thing of Mr. *Chaworth*, how they came to go into that Room and fight?

Mr. Donston. No, I did not particularly.

Mr. Stowe. Did Mr. *Chaworth* relate any Thing to you about his going into the Room?

Mr. Donston. He did; and said, when he turned round from shutting the Door, he saw Lord *Byron* with his Sword half-drawn, and calling upon him to defend himself.

Mr. Stowe. What did Mr. *Chaworth* do when Lord *Byron* so called upon him?

Mr. Donston. He drew, and they immediately engaged.

Mr. Stowe. Who said so?

Mr. Donston. Mr. *Chaworth* himself said so.

Mr. Stowe. Was any Thing more said by Mr. *Chaworth* to you at that Time concerning this Matter?

Mr. Donston. No, I do not recollect any Thing else material.

Lord High Steward. Recollect yourself, whether any Thing else material happened; or did Mr. *Chaworth* say upon what Occasion they fought?

Mr. Donston. No, he did not to me; for I then got up, and he talked to other People who flocked about him.

Mr. Stowe. Did you hear Mr. *Chaworth* make any Enquiry concerning Lord *Byron*?

Mr. Donston. I heard him say he thought he had wounded Lord *Byron*.

Mr. Stowe. Did Mr. *Chaworth* say to you any Thing of the Manner in which he apprehended he had wounded Lord *Byron*?

Mr. Donston. No, he did not to me.

Mr. Stowe. At the Time you left the Room at the *Star and Garter*, were all the Company sober or not?

Mr. Donston. I think, perfectly so.

Mr. Stowe. My Lords, this is all I shall examine Mr. *Donston* to.

Lord High Steward. Lord *Byron*, would your Lordship ask this Witness any Questions?

Lord Byron. What Reason had you to imagine that if I and Mr. *Chaworth* should meet we should resume the Discourse?

Mr. Donston. It was very likely that they should come together, as I met my Lord so soon after I had parted with Mr. *Chaworth*.

Lord Byron. Was it not on account of the Words which you heard repeated in the Room, and what passed after Mr. *Chaworth* and you went out of the Room together?

Mr. Donston. It was partly from the Words I heard in the Room, and partly from Mr. *Chaworth*'s having questioned me about them.

Lord Montfort. Why did you follow Mr. *Chaworth* out of the Room?

Mr. Donston. Mr. *Chaworth* took hold of my Arm, and asked me to speak with him.

Lord Montfort. How came you not to follow Lord *Byron* down Stairs?

Mr. Donston. I was returning into the Room, and was not sure it was Lord *Byron* till I came into the Room and saw that he was not there.

Earl of Buckinghamshire. Do you imagine Lord *Byron* could overhear any Part of the Conversation you had with Mr. *Chaworth* upon the Stairs?

Mr.

Mr. Donston. I do not imagine Lord *Byron* could overhear it at that Distance.

Lord Berkeley. Do you know of any Words spoken by Lord *Byron* that could induce Mr. *Chaworth* to say, that if he wanted any Thing with Sir *Charles Sedley* he lived in such a Place, and that he, Mr. *Chaworth*, lived in *Berkley-Row*?

Mr. Donston. It arose from Lord *Byron*'s asking the Question a Second Time about Sir *Charles Sedley*'s Manor.

Lord Berkeley. When Mr. *Chaworth* said to you, Do you think I have been short in what I said to Lord *Byron*? do not you apprehend, that that referred to the Words that Mr. *Chaworth* had said in the Room?

Mr. Donston. I believe it did.

Lord Berkeley. Did Mr. *Chaworth* leave his Sword in the Room as well as his Hat?

Mr. Donston. I do not believe he did; I think he never took his Sword off.

Lord Mansfield. Whether Lord *Byron* took his Hat with him when he went out?

Mr. Donston. I do not know at all.

Earl Talbot. When you reproved Mr. *Chaworth* for having gone too far in what he had said to Lord *Byron*, by saying, I think he said rather more than was necessary on so trifling an Occasion, did not you think the Words he had said were of Force enough to a Man of strict Honour, and nice Sensibility, to require an Explanation?

Mr. Donston. I did at first; but as they were spoke without much Heat or Passion, and no apparent Notice taken either by Lord *Byron*, or the rest of the Company, I thought they might admit of a different Construction.

Lord Cathcart. Did any Thing pass between you further than what you have acquainted the Lords with?

Mr. Donston. Nothing more.

Lord Viscount Weymouth. Did Mr. *Chaworth* say any Thing that led you to imagine that Lord *Byron* would take Notice of it?

Mr. Donston. Nothing more than his asking me that Question.

Earl Poulet. Do you apprehend that at the Time those Words were spoke about Sir *Charles Sedley*'s Manors, they were said in a Manner reflecting upon Sir *Charles Sedley*, or Mr. *Chaworth*?

Mr. Donston. No, I do not; it seemed to me to be rather questioning the Bounds of their Manors, as I understood it.

Mr. Cornwall. My Lords, we desire Mr. *Molyneux* may be sworn.

Francis Molyneux, Esquire (*Who was sworn in like Manner*).

Mr. Cornwall. Mr. *Molyneux* will inform your Lordships if he dined at the *Star and Garter* on the Twenty-sixth of *January* last.

Lord Mansfield. I should think it unnecessary to ask this Question of every Witness.

Mr. Cornwall. Was you in Company with Lord *Byron* and Mr. *Chaworth* on the Twenty-sixth of *January* last?

Mr. Molyneux. I was.

Mr. Cornwall. Do you recollect any Discourse upon the Subject of Game?

Mr. Molyneux. I do.

Mr. Cornwall. Was Lord *Byron* and Mr. *Chaworth* engaged in that Discourse?

Mr. Molyneux. They were.

Mr. Cornwall. At what Time of the Day might that Discourse begin?

Mr. Molyneux. About Seven of the Clock, I think.

Mr. Cornwall. Was there any Difference of Opinion between Lord *Byron* and Mr. *Chaworth* upon that Subject?

Mr. Molyneux. There was.

Mr. Cornwall. Please to tell their Lordships how that was expressed?

Mr. Molyneux. Mr. *Chaworth* said he had always been strict in preserving his Game, and that that was the best Method of preserving them; Lord *Byron* said he had never been strict, and that he had more Game about *Newstead* than any body else.

Mr. Cornwall. Was any Bet proposed by any of the Company?

Mr. Molyneux. There was.

Mr. Cornwall. By whom?

Mr. Molyneux. By Lord *Byron*.

Mr. Cornwall. What were the Terms of the Bet?

Mr. Molyneux. He offered to lay One hundred Pounds that he had more Game about *Newstead* than Sir *Charles Sedley* or Mr. *Chaworth*.
Mr.

- Mr. Cornwall.* Did Mr. *Chaworth* take the Bet?
- Mr. Molyneux.* Mr. *Chaworth* said, if he would call for Pen, Ink, and Paper, he would lay him the Wager.
- Mr. Cornwall.* Was nothing more said upon that Subject?
- Mr. Molyneux.* Lord *Byron* said he should be glad to know where Sir *Charles Sedley's* Manor was.
- Mr. Cornwall.* What Answer was made to that Question?
- Mr. Molyneux.* Mr. *Chaworth* said *Nuttall*; but if your Lordship should have any Thing to say to Sir *Charles Sedley*, he lives at one Mr. *Cooper's* in *Dean-street*.
- Mr. Cornwall.* Was any Thing further said by any Person, or was that the Whole?
- Mr. Molyneux.* Lord *Byron* asked again where Sir *Charles Sedley's* Manor laid.
- Mr. Cornwall.* And what Answer was given to Lord *Byron*?
- Mr. Molyneux.* Mr. *Chaworth* said he had already informed Lord *Byron* where Sir *Charles Sedley* lived; and his Lordship knew where he lived, if he had any Thing to say to him.
- Mr. Cornwall.* Was there any more Conversation?
- Mr. Molyneux.* No more upon that Subject.
- Mr. Cornwall.* How long did Lord *Byron* continue in Company after this Conversation ceased?
- Mr. Molyneux.* I believe he continued in Company about an Hour.
- Mr. Cornwall.* Did he join in any Part of that Time in any future Conversation?
- Mr. Molyneux.* He conversed with me.
- Mr. Cornwall.* Was you near him?
- Mr. Molyneux.* I sat next to him.
- Mr. Cornwall.* On what Subject did Lord *Byron* converse with you?
- Mr. Molyneux.* About the Duke of *York's* House.
- Mr. Cornwall.* Upon any other Subject?
- Mr. Molyneux.* Upon no other.
- Mr. Cornwall.* Did he appear to be in good Humour?
- Mr. Molyneux.* I thought he did; I did not see any Thing to the contrary.
- Mr. Cornwall.* Do you recollect at what Time Mr. *Chaworth* quitted the Room?
- Mr. Molyneux.* I think it was about Eight of the Clock.
- Mr. Cornwall.* Did any Body go out with Mr. *Chaworth*, and who?
- Mr. Molyneux.* Mr. *Donston*, I think, went out with him. I do not know whether he went out with him, or followed him.
- Mr. Cornwall.* Do you recollect Lord *Byron's* quitting the Room?
- Mr. Molyneux.* I do.
- Mr. Cornwall.* At what Time?
- Mr. Molyneux.* About Seven or Eight Minutes after Mr. *Chaworth*.
- Mr. Cornwall.* Where did you next see Mr. *Chaworth*?
- Mr. Molyneux.* In a Room up One Pair of Stairs.
- Mr. Cornwall.* How soon after Lord *Byron* quitted the Room?
- Mr. Molyneux.* I cannot justly say; but I think it might be about Five or Six Minutes.
- Mr. Cornwall.* In what Condition did you find Mr. *Chaworth*?
- Mr. Molyneux.* He was sitting in a great Chair, and Lord *Byron* standing by him.
- Mr. Cornwall.* Did you hear Mr. *Chaworth* declare any Thing, and what?
- Mr. Molyneux.* Mr. *Chaworth* said he had very few Hours to live; that Lord *Byron* had shortened his Sword and stabbed him into the Belly; that he should be glad to say something to a particular Friend before he died; I left the Room soon afterwards.
- Mr. Cornwall.* Did you hear Mr. *Chaworth* declare any Thing, and what after that?
- Mr. Molyneux.* I heard him say again, that he had but a very few Hours to live.
- Mr. Cornwall.* Did you hear Mr. *Chaworth* declare any Thing else at that Time?
- Mr. Molyneux.* I did not.
- Mr. Cornwall.* My Lords, we have done with this Witness.
- Lord High Steward.* Lord *Byron*, will your Lordship ask any Questions of this Witness?
- Lord Byron.* Was not the Conversation between you and me very short?
- Mr. Molyneux.* It was not of long Duration.
- Lord Byron.* My Lords, I shall ask this Witness no more Questions.
- Earl of Morton.* I understood that Lord *Byron* said he had more Game upon his Manor than any Body, and that he would lay One hundred Pounds of that; was that what you said?

Mr. Molyneux. It was.

Mr. Attorney General. I understand *Mr. Hawkins* and *Mr. Adair*, the Two Surgeons that are attending here, in all Probability may be wanted, and therefore if your Lordships please, we will call them.

Lord High Steward. Yes, certainly, the Surgeons may be called, as they may be wanted elsewhere.

Lords. Ay, ay.

Cæsar Hawkins, Esquire (Who was sworn in like Manner).

Mr. Attorney General. *Mr. Hawkins*, was you sent for to *Mr. Chaworth*, on the Twenty-sixth of *January* last?

Mr. Hawkins. I was.

Mr. Attorney General. Did you go to him?

Mr. Hawkins. I did, immediately upon receiving the Message.

Mr. Attorney General. What Time of the Night might that be?

Mr. Hawkins. A little after Eight, as near as I can recollect.

Mr. Attorney General. In what Condition did you find *Mr. Chaworth*?

Mr. Hawkins. I found him sitting by the Fire Side, in the Back Room, up One Pair of Stairs, with the lower Part of his Waistcoat open, his Shirt bloody, and his Hand holding his Belly.

Mr. Attorney General. Had you any Conversation with him there, how that Misfortune had befallen him?

Mr. Hawkins. He said to me, that he believed he had received a mortal Wound, that he felt within himself a peculiar Kind of Faintness and Sinking; and that he had a Sensation of Stretching and Swelling of his Belly, that made him believe he bled internally.

Mr. Attorney General. Did he say any Thing more how this unfortunate Affair happened?

Mr. Hawkins. After I had made my proper Enquiries and Examination, he pressed me earnestly to tell him what his real Situation was, and, as he expressed it, not to flatter him, but to inform him truly, if I thought him in any immediate Danger, for if he was, that he had private Affairs which he wished extremely to settle. I told him, I was afraid his Wound was dangerous; he then desired that *Mr. Levinz* might be immediately sent for to him, and desiring the other Gentlemen, who were in the Room, to step out for a few Minutes, he gave me some Directions relative to his private Affairs, which he desired I would mention to *Mr. Levinz*, in case he died before *Mr. Levinz* could be brought to him. This Conversation being ended, I think before the other Gentlemen returned into the Room, I asked him in what Position his Body was when he received the Wound? To which Question, as I apprehend to make his Answer more explicit, he gave me the following Detail, That *Lord Byron* and he came into that Room together, *Lord Byron* leading the Way, and walking on towards the further End of the Room, said something very rough to him, upon which he said, then my Lord it is right I should fasten the Door (I am not sure whether he said fasten the Door, or bolt the Door) that he turned to the Door and did fasten it; that as he turned round again towards *Lord Byron*, he saw his Lordship with his Sword either drawn, or nearly drawn, upon which he immediately drew his own, and at the same Time that he presented the Point of his Sword to his Lordship, that he made a Thrust at him, which he thought had hit him, and dangerously wounded or killed him; that immediately afterwards he perceived his Lordship shortening his Arm to make a Thrust at him, which he thought to have parried with his Left-hand, with which he endeavoured to catch the Point of the Sword; and he looked at his Hand once or twice, thinking that he had either scratched or wounded his Hand in the Attempt; that he perceived the Sword enter his Body, and imagined it had gone in deep, for that he had felt a Pain quite through to his Back; that immediately after he laid hold of the Gripe of *Lord Byron's* Sword, and struggling with him for it, and being the stronger Man, he disarmed his Lordship, saying to him, he hoped he was not dangerously wounded; that *Lord Byron* replied something to the same Purpose to him; and, I think, added, that *Lord Byron* said, That he hoped now he would allow or acknowledge (it was either allow, or acknowledge, I am not sure which of the Two Words) that he (his Lordship) was as brave a Man as any other in the Kingdom; and some considerable Time passed afterwards at the Tavern, before *Mr. Chaworth* was carried to his own House, partly on Account of *Mr. Chaworth's* being of Opinion that he still felt himself bleeding inwardly, and as he wished extremely to see *Mr. Levinz*, he desired to avoid moving, for fear the Bleeding should be increased by it, and so accelerate his Death; a Part

of the Time was likewise taken up in our endeavouring to get proper Conveniencies for his Removal; during this Time he recollected some other little Circumstances relative to his private Affairs, on which Account he desired the Gentlemen, who were then in the Room, to retire again; when he had mentioned what he had to say upon that Subject, he repeated to me again with great Earnestness, what I had heard him declare before, Two or Three Times in different Expressions, equally strong, that pained and distressed as he then was, and in immediate Danger of Death, he had rather be in his present Situation, than live under the Misfortune of having killed another Person. This strong Expression of Humanity led me to ask him, if there had been any serious Cause of Offence between them, meaning between Lord *Byron* and himself, that should have occasioned the Quarrel? He paused for a Moment or Two, as One recollecting himself, and then answered, No, nothing that might not have been explained and made up; I think his Expression was easily made up. After a little Time more he grew stronger, and he was removed to his own House, without any great Uneasiness or Difficulty. I had desired the Assistance of another Surgeon; and then Mr. *Adair*, and soon after Dr. *Addington*, his Physician, met me. We all joined in our best Endeavours to give him some Relief, but without any Hopes of doing him Good, and the next Morning, about Nine o'Clock, he expired. On the *Monday* Evening, by the Coroner's Directions, we examined the dead Body: The Sword had entered about an Inch on the Left Side of the Navel, and, passing obliquely upwards, had made its Exit about Five or Six Inches higher, on the left Side of the Back: In its Passage the Sword went through One of the small Intestines, and had made a very large Opening at the back Part of the Bottom of the Stomach; so that all the Contents of the Stomach, a Part from the Intestine, and a Quantity of Blood, were mixed together in the Cavity of the Belly. The Sword had likewise passed through the lower Part of the Diaphragm, and there was a small Quantity of Blood in the Cavity of the Left Breast. Upon the whole, there was not the least Doubt but that the Wound we examined was the immediate Cause of Mr. *Chaworth's* Death.

Mr. Attorney General. My Lords, we have done with this Witness.

Lord High Steward. My Lord *Byron*, would your Lordship chuse to ask this Witness any Questions?

Lord Byron. No, my Lords.

Mr. Solicitor General. The next Witness, if your Lordships please, is Mr. *Adair*, the other Surgeon.

Robert Adair, Esquire (*Who was sworn in like Manner*).

Mr. Solicitor General. Do you remember being sent for to Mr. *Chaworth* on the Twenty-sixth of *January* last?

Mr. Adair. I was.

Mr. Solicitor General. At what Time were you sent for?

Mr. Adair. About Nine o' Clock.

Mr. Solicitor General. In what Condition did you find Mr. *Chaworth*?

Mr. Adair. I found him with a Wound upon the Left Side of his Belly near the Navel, which passed upwards, and went through between Five and Six Inches higher than at its Entrance.

Mr. Solicitor General. Did Mr. *Chaworth* say any Thing upon the Subject of the Wound?

Mr. Adair. Nothing to me.

Mr. Solicitor General. Nor in your Hearing?

Mr. Adair. Nor in my Hearing.

Mr. Solicitor General. Was you present when the Body was opened?

Mr. Adair. I was present.

Mr. Solicitor General. Do you think this Wound occasioned his Death?

Mr. Adair. Most certainly.

Lord High Steward. My Lord *Byron*, does your Lordship chuse to ask this Witness any Questions?

Lord Byron. No, my Lords.

Mr. Serjeant Glynn. If your Lordships please, we will now call *John Sherwin*, Esquire.

John

John Sherwin, Esquire (*Who was sworn in like Manner*).

Mr. Serjeant Glynn. Were you at the *Star and Garter*, at the *Nottinghamshire Club*, on the *Twenty-sixth of January* last?

Mr. Sherwin. I was.

Mr. Serjeant Glynn. Do you remember whether *Lord Byron* and *Mr. Chaworth* were there?

Mr. Sherwin. They were.

Mr. Serjeant Glynn. Do you remember any Conversation about Game?

Mr. Sherwin. There had been some Conversation by the Company in general about Game.

Mr. Serjeant Glynn. Do you remember what Part *Lord Byron*, and what Part *Mr. Chaworth*, took in that Conversation?

Mr. Sherwin. *Lord Byron* spoke upon that Subject.

Mr. Serjeant Glynn. What did *Lord Byron* say?

Mr. Sherwin. He thought that being too severe hurt the Game, and that they were preferred more by the other Method.

Mr. Serjeant Glynn. Did *Mr. Chaworth* express himself of a different Opinion?

Mr. Sherwin. *Mr. Chaworth* did.

Mr. Serjeant Glynn. What did *Mr. Chaworth* say?

Mr. Sherwin. He said nothing could be so clear as that the Poachers were idle Fellows, and did a great deal of Mischief in the Country.

Mr. Serjeant Glynn. Did *Mr. Chaworth* say any Thing about Game in his own Manors?

Mr. Sherwin. After this Conversation, *Lord Byron* offered a Bet of One hundred Pounds, that he had more Game upon an Acre on his Manor than *Mr. Chaworth* had.

Mr. Serjeant Glynn. Did *Mr. Chaworth* accept the Bet?

Mr. Sherwin. *Mr. Chaworth* said he would.

Mr. Serjeant Glynn. What did he say upon that?

Mr. Sherwin. He offered to take the Bet, and I believe desired that Pen, Ink, and Paper might be sent for.

Mr. Serjeant Glynn. Was there any Bet laid?

Mr. Sherwin. I said it was a Bet that could never be determined.

Mr. Serjeant Glynn. Was any Thing said about *Sir Charles Sedley's* Manor?

Mr. Sherwin. After this there arose a Dispute about their Manors.

Mr. Serjeant Glynn. Repeat what passed upon that Occasion?

Mr. Sherwin. *Nuttall* Manor was mentioned, and another or Two that I do not remember.

Mr. Serjeant Glynn. By whom was *Nuttall* mentioned?

Mr. Sherwin. I remember its being mentioned by *Mr. Chaworth*; he said, your Lordship has nothing to do there, it is *Sir Charles Sedley's* Manor, it was bought out of my Family.

Mr. Serjeant Glynn. Was there any Thing more said upon this Subject?

Mr. Sherwin. There was more Conversation, which I do not remember.

Mr. Serjeant Glynn. How long did the Conversation continue upon this Subject?

Mr. Sherwin. It might continue a Quarter of an Hour, or Twenty Minutes.

Mr. Serjeant Glynn. Did the Company then enter upon any other Subject of Conversation?

Mr. Sherwin. During the Dispute between *Lord Byron* and *Mr. Chaworth*, I remember *Mr. Chaworth's* saying, as to *Sir Charles Sedley*, my Lord, he will give you an Answer; as to myself, your Lordship knows where I live.

Mr. Serjeant Glynn. Did *Lord Byron* take any Part in the future Conversation of the Company?

Mr. Sherwin. Not that I remember; in general, I believe, he talked with *Mr. Molyneux*, who sat next him.

Mr. Serjeant Glynn. Did he appear to be in good Humour or not?

Mr. Sherwin. I did not observe that at all, either One Way or the other; there was no further Conversation between *Lord Byron* and *Mr. Chaworth*.

Mr. Serjeant Glynn. When did *Mr. Chaworth* leave the Room?

Mr. Sherwin. It might be Twenty Minutes after *Mr. Chaworth* had said, You know where I live, my Lord.

Mr.

Mr. Serjeant Glynn. Did Mr. *Chaworth* go out alone, or did any Person go with him?

Mr. Sherwin. He asked Mr. *Donston*, who sat next him, to go out with him, he wanted to speak to him.

Mr. Serjeant Glynn. Did Mr. *Donston* return again to the Company, and how soon?

Mr. Sherwin. He came into the Room again very soon, almost in Two Minutes.

Mr. Serjeant Glynn. Did you observe when Lord *Byron* left the Room?

Mr. Sherwin. I remember his getting up out of his Chair.

Mr. Serjeant Glynn. Before or after the Return of Mr. *Donston*?

Mr. Sherwin. I think it was before.

Mr. Serjeant Glynn. Where did you see Mr. *Chaworth* again that Evening?

Mr. Sherwin. Soon after Mr. *Donston* came into the Room again, a Drawer, or somebody, came in, and said there had been a Quarrel; the Company above Stairs went down Stairs into that Room where Mr. *Chaworth* was; I went with them.

Mr. Serjeant Glynn. In what Condition did you find Mr. *Chaworth*?

Mr. Sherwin. He was sitting in a Chair, holding his Belly with his Right Hand, his Waistcoat was open, and his Shirt bloody.

Mr. Serjeant Glynn. Had you any Conversation with Mr. *Chaworth*?

Mr. Sherwin. I do not remember I had.

Mr. Serjeant Glynn. Did you hear any Conversation between Mr. *Chaworth*, and any other of the Company?

Mr. Sherwin. Somebody asked him how he did; he said he had not Five Minutes, or Five Hours, to live, I forget which; Mr. *Hawkins* came in, who had been sent for, and in a little Time the Company left Mr. *Hawkins* and Mr. *Chaworth* together, and went up Stairs, where they had dined.

Mr. Serjeant Glynn. Did you hear any Declarations from Mr. *Chaworth*, respecting the Accident that had happened to him?

Mr. Sherwin. I did not.

Lord High Steward. Would Lord *Byron* ask the Witness any Questions?

Lord Byron. How was Mr. *Chaworth* employed during the Twenty Minutes that he was in the Room, after the Conversation that passed?

Mr. Sherwin. I do not remember in particular, but I imagine he was talking to the Gentlemen on his Right-hand, or on his Left.

Lord Byron. Was he not employed in settling the Reckoning?

Mr. Sherwin. I believe he was.

Lord Byron. Did you observe any Thing particular in his Manner at the Time?

Mr. Sherwin. I cannot say I did.

Lord High Steward. The Witness may withdraw.

Mr. Stowe. If your Lordships please, the next Witness we will call is *Thomas Willoughby*, Esquire.

The Honourable Thomas Willoughby (Who was sworn in like Manner).

Mr. Stowe. Was you at the *Star and Garter* on the Twenty-sixth of *January* last?

Mr. Willoughby. I was.

Mr. Stowe. Was you there between Four o'Clock and Seven in the Afternoon?

Mr. Willoughby. I dined there a little after Four, and was there at Seven in the Afternoon.

Mr. Stowe. Do you remember any Dispute between Lord *Byron* and Mr. *Chaworth*, concerning the Preservation of Game?

Mr. Willoughby. They were of different Opinions about their preserving of Game.

Mr. Stowe. What passed between Lord *Byron* and Mr. *Chaworth* upon that Subject?

Mr. Willoughby. Mr. *Chaworth*'s Argument was, that there was no such Thing as having Game, unless Gentlemen were severe with the Poachers.

Mr. Stowe. Did Lord *Byron* differ with Mr. *Chaworth* upon that Head?

Mr. Willoughby. He did.

Mr. Stowe. Did any Words of Anger pass between them?

Mr. Willoughby. I did not perceive any.

Mr. Stowe. Do you remember any Inquiry made concerning the Manors of Sir *Charles Sedley*?

Mr. Willoughby. *Nuttall*, a Manor of Sir *Charles Sedley*'s, was mentioned.

Mr. Stowe. By whom?

Mr. Willoughby. I do not know whether it was mentioned by Lord *Byron* first, or Mr. *Chaworth*, but Mr. *Chaworth* said *Nuttall* belonged to Sir *Charles Sedley*; he knew it, for it was bought of his Family.

Mr. Stowe. Did any Thing more pass, and what, about that?

Mr. Willoughby. No, not that I recollect.

Mr. Stowe. Do you remember any Bet on either Side?

Mr. Willoughby. Lord *Byron* offered to bet Mr. *Chaworth* One hundred Pounds that he had more Game upon his Manor or Manors, than Mr. *Chaworth* had.

Mr. Stowe. What followed upon that Offer?

Mr. Willoughby. Mr. *Sherwin* said it would be very difficult to decide that Bet.

Mr. Stowe. Do you know if any Bet was made?

Mr. Willoughby. I do not.

Mr. Stowe. Were there any Words passed afterwards between Lord *Byron* and Mr. *Chaworth*, respecting Sir *Charles Sedley*, his Manor, or his Estate?

Mr. Willoughby. Not that I heard.

Mr. Stowe. Do you remember Mr. *Chaworth* afterwards going out of the Room?

Mr. Willoughby. I do.

Mr. Stowe. At what Distance of Time might that be from the finishing the Conversation?

Mr. Willoughby. Perhaps Three Quarters of an Hour, or thereabouts, I cannot say exactly.

Mr. Stowe. Did Lord *Byron* during that Three Quarters of an Hour, discourse with Mr. *Chaworth*, or any other Gentleman of the Company?

Mr. Willoughby. I did not hear him.

Mr. Stowe. Do you recollect when Mr. *Chaworth* went out of the Room if any body went with him or followed him?

Mr. Willoughby. Mr. *Donston* went out at the same Time.

Mr. Stowe. Did Mr. *Chaworth*, when he went out of the Room, take his Hat with him or not.

Mr. Willoughby. I did not take Notice of that.

Mr. Stowe. How long was Mr. *Chaworth* out of the Room, and did he return again?

Mr. Willoughby. He never returned again.

Mr. Stowe. Did Mr. *Donston* return again?

Mr. Willoughby. He did.

Mr. Stowe. In what Space of Time?

Mr. Willoughby. In a very short Time.

Mr. Stowe. Can you form any Judgment of the Time?

Mr. Willoughby. I cannot speak exactly, perhaps Five Minutes.

Mr. Stowe. Where was Lord *Byron* when Mr. *Donston* came into the Room?

Mr. Willoughby. He was got up and gone towards the Door, or out of the Door, I do not know which.

Mr. Stowe. Did Lord *Byron* take his Hat?

Mr. Willoughby. I do not know.

Mr. Stowe. How long might Lord *Byron* be gone out of the Room before you heard any Thing more relative to Lord *Byron* or Mr. *Chaworth*?

Mr. Willoughby. A very few Minutes.

Mr. Stowe. Who mentioned any Thing to you concerning Lord *Byron* or Mr. *Chaworth*?

Mr. Willoughby. The Waiter came up and told us what had happened.

Mr. Stowe. Did you go to the Place and see Lord *Byron* and Mr. *Chaworth*, or either of them there?

Mr. Willoughby. I did.

Mr. Stowe. Did you see Mr. *Chaworth*?

Mr. Willoughby. I did.

Mr. Stowe. In what Condition and Situation was Mr. *Chaworth*?

Mr. Willoughby. He was sitting in a Chair, with his Hand on his Belly, and his Shirt was bloody.

Mr. Stowe. Did Mr. *Chaworth* say any Thing how he came by that Wound?

Mr. Willoughby. He did not; only he said he was a dying Man, and that Lord *Byron* had run him through.

Mr. Stowe. Did he say any Thing more that you recollect?

Mr. Willoughby. He said several Times over that he was a dying Man, and had but a few Minutes to live.

Mr. Stowe. My Lords, we have done with this Witness!

Lord High Steward. Lord *Byron*, would you ask this Witness any Questions?

Lord Byron. Was not you conversing with Mr. *Hewett*, during the latter Part of the Conversation between Mr. *Chaworth* and me, so as you might not hear it?

Mr. Willoughby. The last Word I heard, was that *Nuttall* belonged to Sir *Charles Sedley*, that it was bought of his Family, and he knew it.

Lord Byron. Was not you conversing with Mr. *Hewett* so as to prevent you from hearing any more?

Mr. Willoughby. That was the last I heard.

Lord High Steward. Has Lord *Byron* any Thing more to ask this Witness?

Lord Byron. No, my Lord.

Lord High Steward. The Witness may withdraw.

Mr. Cornwall. If your Lordships please, the next Witness we shall call is *John Edwards*.

John Edwards (*Who was sworn in like Manner*).

Mr. Cornwall. Was not you a Waiter at the *Star and Garter*, on the Twenty-sixth of *Janugry* last?

John Edwards. I was.

Mr. Cornwall. Did you attend the Gentlemen of the *Nottinghamshire* Club who met there that Day between Eight and Nine in the Evening?

John Edwards. I did.

Mr. Cornwall. What was the Purpose of your Attendance between Eight and Nine?

John Edwards. To answer the Bell, and to carry any Thing into the Room.

Mr. Cornwall. What Commands had the Company laid upon you at that Time?

John Edwards. To bring up a Bottle of Claret.

Mr. Cornwall. Did you go down?

John Edwards. I did, to the Bar, but not into the Cellar.

Mr. Cornwall. What did you do then?

John Edwards. I called to my Master to get some Wine, who, when I called him first, I thought he was in the Kitchen, and I called him twice or thrice, and then I found him in the Larder. I told him the Gentlemen wanted a single Bottle of Claret at the *Nottinghamshire* Club.

Mr. Cornwall. Whilst you were standing at the Bar waiting for the Bottle of Claret, did you hear the Bell ring?

John Edwards. I did not.

Mr. Cornwall. Did you hear any Body call?

John Edwards. I heard somebody call Waiter up Stairs.

Mr. Cornwall. Did you know the Voice?

John Edwards. I did not.

Mr. Cornwall. Did you obey?

John Edwards. I did not the First Time, I thought to have taken the Wine up Stairs with me.

Mr. Cornwall. Was it repeated?

John Edwards. It was once or twice.

Mr. Cornwall. Did you go up?

John Edwards. I did.

Mr. Cornwall. Who did you meet?

John Edwards. When I came up the first Pair of Stairs, I saw Lord *Byron* and Mr. *Chaworth* coming down, or rather waiting upon the Stairs for somebody to come up. Lord *Byron* asked me if either of these Rooms were empty (there being Two Rooms in his View) I answered in the Affirmative, and said, This; being the Door which was on the Right-hand.

Mr. Cornwall. What then did you do?

John Edwards. I had a Candle in my Right Hand; I opened a green Bays Door, with a Brass Lock, with my Left Hand, and shewed Lord *Byron* and Mr. *Chaworth* into the Room; I set the Candle upon the Table in the Room; I quitted the Room, and pulled the inner Door after me; the outer Door shuts with a Pully. I went down Stairs immediately for the Bottle of Wine, which I had desired my Master to get; I met him by the Bar or the Cellar Door (which are together) with the Wine in his Hand. I took it from him and went up Stairs to the *Nottinghamshire* Club up Two Pair of Stairs. I drew the Cork, and heard the
Bell

Bell ring in the Room into which I had shewed Lord *Byron* and Mr. *Chaworth*, twice, whilst I was decanting the Wine. When I had decanted the Wine, I came down Stairs, and found I was too late to answer the Bell, as is common for a Waiter that shews the Room. I heard somebody had been in. When I came to the Ground Floor, the first Person I spoke to (to the best of my Knowledge) was my Master. He clapp'd his Hands together, and said Mr. *Chaworth* is wounded, or Lord *Byron* has wounded Mr. *Chaworth*; the Expression I cannot exactly tell.

Mr. Cornwall. Did you go into the Room?

John Edwards. Not till after I had been in the *Nottinghamshire* Club Room, and had informed the Gentlemen that Mr. *Chaworth* was wounded.

Mr. Cornwall. Did you stay long?

John Edwards. I did not stay long.

Mr. Cornwall. Did you hear Mr. *Chaworth* say any Thing?

John Edwards. He seemed extremely desirous of seeing Two or Three Friends, particularly Mr. *Levinz*.

Mr. Cornwall. What was the Size of the Room you shewed Lord *Byron* and Mr. *Chaworth* into?

John Edwards. In some Parts of the Room, I have measured it, it is Sixteen Feet long and Sixteen Feet broad in some Parts; the Chimney is taken out of the Corner of the Room.

Mr. Cornwall. What kind of a Candle did you leave in the Room?

John Edwards. A common Tallow Candle about Eight in the Pound.

Mr. Cornwall. Was there any other Candle in the Room?

John Edwards. There was no other Candle in the Room, nor no other Light to my Knowledge.

Mr. Cornwall. Was there a Fire in the Room?

John Edwards. There was a Fire in the Room, but it was rather down.

Mr. Cornwall. We have done with this Witness.

Lord High Steward. Lord *Byron*, would your Lordship ask this Witness any Questions?

Lord Byron. Was there any Table in the Room?

John Edwards. There was a Table in the Room.

Lord Byron. Did you set the Candle upon it?

John Edwards. I did.

Lord Byron. How large a Space might the Chairs and Furniture of the Room take up from the Length of it?

John Edwards. I cannot tell indeed.

Lord Byron. In what Part of the Room did you leave Mr. *Chaworth* and me standing?

John Edwards. Both walked towards the Fire Place.

Lord Mansfield. I would ask this Witness whether he is sure that he shut the inner Door, on Mr. *Chaworth* and Lord *Byron*'s going into the Room?

John Edwards. I pulled it after me, but cannot tell certainly whether it shut or not.

Lord Mansfield. Was there any Bolt to the inner Door?

John Edwards. There is, it is a Brass Lock, and there is a little Bolt at the Bottom.

Mr. Attorney General. If your Lordships please, we will call Mr. *Fynmore*.

Mr. James Fynmore (Who was sworn in like Manner).

Mr. Attorney General. My Lords, this is the Master of the Tavern.

Do you remember going up Stairs on the Twenty-sixth of *January* last, into the Room where Lord *Byron* and Mr. *Chaworth* were?

Mr. Fynmore. I do.

Mr. Attorney General. What induced you to go thither?

Mr. Fynmore. A Waiter came to me, and told me that Two Gentlemen were come out of the *Nottinghamshire* Club, into the Room Number Seven, and desired to speak to me.

Mr. Attorney General. What is the Waiter's Name?

Mr. Fynmore. *John Gotborp*.

Mr. Attorney General. In what Situation did you find Lord *Byron* and Mr. *Chaworth*?

Mr. Fynmore. I found them standing close together, Mr. *Chaworth* had his Sword in his Left-hand, and Lord *Byron* had his in his Right-hand. Mr. *Chaworth* said, Here, *James*, take my Sword, for I am disarmed, or I have disarmed him, I do not know which. I turned to Lord *Byron*, and said, Pray, my Lord, give me your Sword; on which, Lord *Byron* gave me his Sword, and I took it and went down Stairs with it. As I was going out of the Room, either One or both called after me, and desired me to get Help immediately; I went down the
Stairs

Stairs with the two Swords, and laid them upon the Table, in a Room at the Bottom of the Stairs, and then called Mr. *Hawkins*.

Mr. Attorney General. Did you hear Mr. *Chaworth* say any Thing how this Accident had befallen him?

Mr. Fynmore. No.

Mr. Attorney General. My Lords, we have done with this Witness.

Lord High Steward. Lord *Byron*, will you ask this Witness any Questions.

Lord Byron. Did not you carry up the Club-Book into the Room where we dined?

Mr. Fynmore. I went up at Seven o'Clock, as is the Custom, with the Book and a Bill.

Lord Byron. Did you wait the settling of the Bill?

Mr. Fynmore. I did.

Lord Byron. Did not Mr. *Chaworth* settle it?

Mr. Fynmore. Mr. *Chaworth* settled the Book that Day.

Lord Byron. What Time might it take up in settling it?

Mr. Fynmore. It was done in Five or Six Minutes.

Lord Byron. Did you make any Observation upon Mr. *Chaworth's* Manner of settling it, or observe any Thing particular?

Mr. Fynmore. No, I think not any Thing particular.

Lord Byron. Did you observe him to be ruffled or confused?

Mr. Fynmore. In One Particular only; the Book is marked with Lines ruled in Checks, each Gentleman's Name is upon a Line, and against each Name, if the Gentleman be present, there is put a o; if absent 5 s. The only Remark I made of any Flurry in Mr. *Chaworth*, was, he put 5 s. against Lord *Byron's* Name instead of a o; upon which I said, Sir, my Lord is present; upon which he altered it, and made a o.

Lord Byron. What was the Size of the Room where we were?

Mr. Fynmore. It was sixteen Feet in the clear both Ways, except that the Chimney was taken out of one of the Corners.

Lord Byron. What Space might the Chairs take up from the Dimensions?

Mr. Fynmore. The Chairs are pretty large, they might take two Feet each Chair into the Room.

Lord Byron. Is there any inner Fastening, and what, to the Door?

Mr. Fynmore. The Door has a Brass Lock, and there is a little Catch underneath, as there usually are to these Doors.

Lord Byron. Is it not a Bolt?

Mr. Fynmore. It is a little Sliding Bolt.

Lord Byron. When you went into the Room, in what Part did you find me and Mr. *Chaworth* standing?

Mr. Fynmore. I saw Lord *Byron* and Mr. *Chaworth* standing Shoulder to Shoulder, close by the Fire.

A Lord. Was the Door bolted when you first came to the Room?

Mr. Fynmore. No, it was not.

Lord Viscount Folkstone. Did Lord *Byron* deliver up his Sword readily?

Mr. Fynmore. When Mr. *Chaworth* gave me his Sword, I turned to Lord *Byron* for his.

Lord Viscount Folkstone. Did he give you his Sword directly?

Mr. Fynmore. I took hold of it, and his Lordship made no Objection.

Lord Viscount Folkstone. The Reason I mentioned this is, because the Council, in opening, said, that Lord *Byron* delivered up his Sword with Reluctance. Was not Lord *Byron* at this Time employed in supporting Mr. *Chaworth*?

Mr. Fynmore. Lord *Byron's* Left Hand was round Mr. *Chaworth*, as Mr. *Chaworth's* Right Hand was round Lord *Byron's* Neck and over his Shoulder.

Lord Viscount Folkstone. Did not Lord *Byron* desire you to call Assistance?

Mr. Fynmore. I had the Swords in my Hand, and my Back was towards them, when one of them said (I do not know which) Get some Help immediately.

Mr. Solicitor General. If your Lordships please, we will call *John Gothrop*, another of the Waiters.

John Gothrop, (*Who was sworn in like Manner*).

Mr. Solicitor General. You are a Waiter at the *Star and Garter*?

John Gothrop. Yes, my Lords.

Mr. Solicitor General. Was you on the Twenty-sixth of *January* last?

John Gothrop. I was.

Mr. Solicitor General. Do you remember the Bell ringing in Number Seven ?
John Gotbrop. I do.
Mr. Solicitor General. About what Time ?
John Gotbrop. About a Quarter past Eight.
Mr. Solicitor General. Did you go up into the Room ?
John Gotbrop. I did.
Mr. Solicitor General. Was the Door fastened ?
John Gotbrop. It was not.
Mr. Solicitor General. Where did you see Lord *Byron* and Mr. *Chaworth* ?
John Gotbrop. Standing with their Backs to the Fire.
Mr. Solicitor General. How near the Door ?
John Gotbrop. About Ten Feet, as near as I can recollect.
Mr. Solicitor General. In what Situation did you see Lord *Byron* and Mr. *Chaworth* ?
John Gotbrop. They were both standing together ; Lord *Byron* had his Left Arm round Mr. *Chaworth*'s Waist, with his Sword in his Right-hand, with the Point to the Ground ; Mr. *Chaworth* was standing, with his Right Arm resting upon Lord *Byron*'s Shoulder, with his Sword in his Left-hand extended up.
Mr. Solicitor General. Did they say any Thing ?
John Gotbrop. Lord *Byron* bid me take this Sword (meaning which I cannot say) and call up *Fynmore* immediately.
Mr. Solicitor General. What did you do ?
John Gotbrop. I immediately left the Room, without taking any Sword, to call my Master up.
Lord High Steward. Lord *Byron*, will your Lordship ask this Witness any Questions ?
Lord Byron. No, my Lords.
Lord Mansfield. Was the Door open when you came to it, or was it fastened with a Bolt ?
John Gotbrop. It was fastened, but not with the Bolt.
Mr. Serjeant Glynn. If your Lordships please, the next Witness we will call is Mr. *William Man*.

Mr. William Man, (Who was sworn in like Manner.)

Mr. Serjeant Glynn. Did you attend Mr. *Chaworth*, as an Apothecary, on the Twenty-sixth of January last ?
Mr. Man. I did.
Mr. Serjeant Glynn. Who did you find in the Room with Mr. *Chaworth* ?
Mr. Man. His Servant.
Mr. Serjeant Glynn. Was there any other Person besides his Servant ?
Mr. Man. Not in the Room where he was.
Mr. Serjeant Glynn. Did any other Person come in during the Time you were there ?
Mr. Man. Mr. *Hawkins* and Mr. *Levinz* did.
Mr. Serjeant Glynn. Was there any Conversation between Mr. *Chaworth* and Mr. *Levinz* concerning the Accident that had happened ?
Mr. Man. There was.
Mr. Serjeant Glynn. Relate that Conversation.
Mr. Man. Mr. *Chaworth* said some few Words arose at Dinner concerning who had the most Game upon their Estates: About two Hours after Mr. *Chaworth* had Occasion to go down Stairs: Upon his returning back, he was met by Lord *Byron*, who said, *Chaworth*, I want to speak to you ; a Waiter passing by at the same Time, Lord *Byron* said, Waiter, shew us a Room. They went into the Room, and first Mr. *Chaworth* said, My Lord, we will shut the Door, or else some Person will hear what we say. Mr. *Chaworth*, when he turned round from shutting the Door, saw Lord *Byron* with his Sword half drawn, who said, *Chaworth*, Draw ! Mr. *Chaworth* drew immediately, and made the first Pass, and intangled his Sword in my Lord's Waistcoat ; he then endeavoured to disarm Lord *Byron*, and my Lord gave him a Push or Blow, and then run him through.
Mr. Serjeant Glynn. Was this the Whole of what Mr. *Chaworth* declared at that Time ?
Mr. Man. No.
Mr. Serjeant Glynn. Relate the Whole ?
Mr. Man. Mr. *Chaworth* said, when he was first desired to walk into the Room by Lord *Byron*, he did not in the least imagine that he was going to be offered a Challenge.
Mr. Serjeant Glynn. Was that the Whole ?
Mr. Man. No.

Mr.

Mr. Serjeant Glynn. Go on?

Mr. Man. Some Time after *Mr. Chaworth* said, This will not in the least be to my Lord *Byron's* Credit.

Mr. Serjeant Glynn. Is that the Whole of what was said?

Mr. Man. Yes, my Lords.

Mr. Serjeant Glynn. My Lords, we will ask no more of this Witness.

Lord High Steward. My Lord *Byron*, would your Lordship ask this Witness any Questions?

Lord Byron. Was any body present besides *Mr. Levinz*?

Mr. Man. *Mr. Chaworth's* Servant.

Lord Byron. What is his Name?

Mr. Man. *Michael Cullum.*

Lord Byron. At what Time was this Declaration made?

Mr. Man. I cannot positively say, but I think it was between the Hours of Two and Four.

Lord Byron. Was it before he signed his Will?

Mr. Man. I think it was, but I am not certain.

Mr. Cornwall. If your Lordships please, we will call *Michael Cullum.*

Michael Cullum was called, but did not appear.

Mr. Attorney General. My Lords, I find that this Witness is not here. If your Lordships please, we will call *Mr. Levinz.*

Lord High Steward. How many more Witnesses do you intend to call?

Mr. Attorney General. We will only call *Mr. Levinz* and one more.

Lord Mansfield. From the Opening of the Prosecutor's Case, it seems to me, they are very near the End of their Evidence, and there is nothing else left but the Paper; it is now past Five o'Clock, and, I should think, it would be more for the Ease of the Prisoner and your Lordships, to adjourn to the Chamber of Parliament.

Then the Lord High Steward returned back to the Chair.

Lord President of the Council. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament in the same Order they came down, except the Lord High Steward, who walked after his Royal Highness the Duke of *York*; and, The House being there resumed, Resolved to proceed further in the Trial of *William Lord Byron*, in *Westminster-Hall*, Tomorrow at Ten of the Clock in the Morning; and ordered, that the said *William Lord Byron* should be remanded Prisoner to his Majesty's Tower of *London*, there to be kept in safe Custody; and that he be brought again to the Bar of this House in *Westminster-Hall*, To-morrow, at Ten of the Clock in the Morning.

Wednesday

Wednesday April 17, 1765. The Second Day.

THE Lords and others came from the Chamber of Parliament in the same Order as on Tuesday last, except the Lord High Steward, who walked after His Royal Highness the Duke of York; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, the House is resumed. Is it your Lordships Pleasure that the Judges may be covered?

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence as usual; and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the Tower, bring forth your Prisoner, William Lord Byron, to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the Tower brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Lord High Steward, by Leave of the Lords, went down to the Table for the Convenience of hearing.

Lord High Steward. Mr. Attorney General, you will proceed in your Evidence.

Mr. Attorney General. My Lords, the first Witness we call is Mr. Levinz.

William Levinz, Esquire, (*Who was sworn in like Manner*).

Mr. Attorney General. **M**R. Levinz is Uncle to the deceased Mr. Chaworth. Did you see Mr. Chaworth on the Twenty-sixth of January last?

Mr. Levinz. I did, about Ten at Night, or thereabouts.

Mr. Attorney General. Where did you first see him?

Mr. Levinz. I first saw him at his own House.

Mr. Attorney General. That was after the Misfortune?

Mr. Levinz. It was after the Misfortune.

Mr. Attorney General. Did he give you any Account how that Misfortune had happened?

Mr. Levinz. He did.

Mr. Attorney General. What was that Account?

Mr. Levinz. As soon as I got into the House I went into his Bedchamber; he took me by the Hand, and told me Lord Byron had given him a mortal Wound, desired I would send for a Lawyer as soon as possible to make a new Will, saying he believed he should be dead before Morning; upon which I came out into the outward Room; there were Mr. Serjeant Hawkins, Mr. Adair, Mr. Willoughby, and Mr. Hewett: I told them that Mr. Chaworth had desired me to send for a Lawyer, but I was so totally deprived of Recollection, I could not remember where any one lived; upon which Mr. Hawkins told me, there was one Mr. Partington who lived in that Neighbourhood, that was a Man of Character, and that, if I pleased, he would send for him; Mr. Partington came, I believe, in a Quarter of an Hour; as soon as he came I introduced him to Mr. Chaworth, and I left him in the Room to take his Instructions: When the Gentlemen were gone down Stairs, and Mr. Partington had begun making the Will in the next Room, I went to Mr. Chaworth, and asked him how this unfortunate Affair had happened? He told me, that Lord Byron took him into a Room; upon which Mr. Chaworth said, If we are to talk I had better shut the Door, or else they may overhear what we say: Upon his shutting the Door, the first Thing he saw when he turned his Head about, was Lord Byron's Sword halfdrawn; upon which he drew his as quick as possible, and got the first Pass at him, and finding his Sword engaged in something, he thought it was my Lord's Body, and therefore wished to disarm him, and in endeavouring to close in for that Purpose, my Lord shortened his Sword, or Arm, I am not positive which, and gave him that mortal Wound; from that Time till the Time the Will was executed, which was about Three in the Morning, Mr. Chaworth's Head was so full of his private Affairs, that I cannot say I heard him mention the unfortunate Affair till after the Will was executed, when I asked him, Has this been fair? But he made no Answer that I could hear, but said he saw my Lord's Sword half out, and, knowing his Man, he drew his Sword as quick as he could; that he had the first Pass at him, and then my Lord wounded him; and after that, he disarmed his Lordship, when my Lord swore he was as brave a Man as any in England. He said twice to me, Good God! that I should be such a Fool as to fight in the Dark; for indeed there was very little Light. He said he did not believe Lord Byron intended fighting when they went into the Room; but seeing him up by the Door, he believed he thought he had him

him at an Advantage; and the first Thing he saw, upon turning his Head, was his Lordship's Sword half drawn; he said he died as a Man of Honor, but he thought Lord *Byron* had done himself no Good by it; I asked him several Times in the Night, how this Affair begun above Stairs? he always answered, it is a long Story, and it is troublesome to me to talk. They will tell you; Mr. *Donston* will tell you. That is all I know of this unfortunate Affair.

Mr. Attorney General. I shall ask Mr. *Levinz* no more Questions.

Lord High Steward. Lord *Byron*, will your Lordship ask this Witness any Questions?

Lord Byron. My Lords, I shall ask no Questions of this Witness.

A Lord. Did you understand that Mr. *Chaworth* went to shut the Door, that they might not be overheard, or to bolt the Door?

Mr. Levinz. He expressly said, that he went to shut the Door that they might not overhear what they said.

A Lord. Was it before or after the making the Will that Mr. *Chaworth* gave that Account to you?

Mr. Levinz. The first Account was about Eleven at Night, I believe, when the Will was first begun: The last Time he spoke to me about this unfortunate Affair was, I believe, within the Hour after the Will was executed.

Earl of Morton. Before the Will was made, when he gave the Account to the Gentlemen in the Room, did he seem to have most Attention to the making of his Will?

Mr. Levinz. To the making of the Will, he seemed to have it prodigiously at Heart.

Earl of Morton. Did he seem to you in bodily Pain?

Mr. Levinz. He was more or less so the whole Night; for about an Hour after the Will was executed, he was amazingly compos'd; about Four he fell into vast Tortures; I sent for Mr. *Adair*, who came to him, and by applying warm Fomentations relieved him very much; but from that Time I cannot say he talked about the unfortunate Affair; he sent for me up to desire that something might be done as soon as ever he was dead.

Earl of Morton. The last Time he spoke to you was he seemingly in Pain?

Mr. Levinz. My Lords, he never was free from Pain.

Earl of Denbigh. Did Mr. *Chaworth* tell you what pass'd upon the Stairs, previous to his going into the Room?

Mr. Levinz. He never said any Thing to me about what pass'd upon the Stairs; I wish'd to know it, but never could learn it.

Lord High Steward. The Witness may withdraw.

Mr. Solicitor General. The next Witness, my Lords, is Mr. *Partington*.

Thomas Walley Partington, Esquire, (Who was sworn in like Manner.)

Mr. Solicitor General. Did you attend Mr. *Chaworth* on the Twenty-sixth of January last?

Mr. Partington. I did.

Mr. Solicitor General. At what Time did you attend him?

Mr. Partington. A little after Ten o'Clock.

Mr. Solicitor General. Who did you find with Mr. *Chaworth*?

Mr. Partington. When I first came into the House, I was taken into a Parlour, where there were Mr. *Levinz*, Mr. *Hawkins*, Mr. *Adair*, Mr. *Hewett*, and Mr. *Willoughby*. I staid there a very few Minutes. I first asked what I was sent for? I was told to make Mr. *Chaworth's* Will; and by the Conversation that pass'd between the Gentlemen there, I understood that Lord *Byron* and Mr. *Chaworth* had fought in a Room by themselves, and according to an Expression of one of the Gentlemen, by a Farthing Candle. After the Will was executed, Mr. *Chaworth* begun to talk of his Situation as of a dying Man; he expressed a Satisfaction that he was in that Situation rather than to have lived and to have had the Life of any Man to answer for: After such Conversation, Mr. *Levinz*, in seeming great Distress said to him, Dear *Billy*, for God's Sake, how was this? was it fair? Mr. *Chaworth's* Head was turned towards the Gentlemen on his Left Hand, Mr. *Levinz* stood on his Right. Upon that Question being asked, he turned his Head to Mr. *Levinz*, sinking upon the Pillow; he said something which I could not distinguish, for I stood at the Bottom of the Bed, and immediately went round to where Mr. *Levinz* stood, and as I opened the Curtain, I heard him say something of Lord *Byron's* Sword being drawn; upon which, and from what I understood had pass'd, I was led to ask him this Question, Mr. *Chaworth*, was my Lord *Byron's* Sword drawn when you came into the Room? he then answered what I afterwards wrote down.

Mr. Solicitor General. How soon after did you write it down?

Mr. Partington. Upon coming down into the Parlour, after I had sealed up and delivered the Will to Mr. *Levinz*, as I had advised some Question might be asked when the Will was executed, so I thought it prudent whilst we were together, that we should set down the Answer that Mr. *Chaworth* gave: The Gentlemen assented; I took a Pen and Ink and wrote, "When he came into the Room, Mr. *Chaworth* said," and went on a little further: When I read what I had wrote, and I think Mr. *Hewett* in particular excepted to those Words "when he came into the Room," I tore the Paper, and threw it into the Fire, and wrote the Words which I now have in my Hands.

Mr. Solicitor General. How long after the finishing the Will were the Declarations contained in this Paper made?

Mr. Partington. It must be but a very few Minutes.

Mr. Solicitor General. We desire the Paper may be read.

The Witnesses produced the Paper, and read it as follows:

"Sunday Morning, the Twenty-seventh of *January*, about Three of the Clock, Mr. *Chaworth* said, that my Lord's Sword was half-drawn, and that he, knowing the Man, immediately, or as quick as he could, whipt out his Sword, and had the first Thrust; that then my Lord wounded him, and he disarmed my Lord, who then said, By God, I have as much Courage as any Man in *England*."

Lord High Steward. Lord *Byron*, will your Lordship ask this Witness any Questions?

Lord Byron. Did not you understand this Declaration of the Facts to be an Answer to the Question, whether it was fair or not?

Mr. Partington. I understood the Declaration to be an Answer to Mr. *Levinz* and myself, and to the Inquiry in general, which was making by the Gentlemen.

Lord Byron. Did not you understand from those Declarations that what had passed was fair?

Lord Mansfield. They will not ask the Witness as to his Understanding, but to the Facts only. Your Lordships will draw the Conclusion.

Lord High Steward. You had this Paper to refresh your own Memory?

Mr. Partington. I had, my Lords.

Lord Ravensworth. I desire to know whether this Paper in Mr. *Partington's* Hand was not read and allowed to be what Mr. *Chaworth* said before every one in the Room. I do not look upon it as a Paper to refresh his Memory, but as a Paper taken from the Mouth of Mr. *Chaworth* as a Declaration from him; and therefore desire to know, if it was read to the Gentlemen in the Room, and who those Gentlemen were?

Lord High Steward. Your Lordships will observe, that the Witness has been examined upon Oath with respect to the Declaration he has in his Hand, which was reduced into Writing; you may therefore ask this Witness, whether he took that Paper in order to refresh his Memory, or for what other Purpose?

Mr. Partington. I took it for our general Recollection of the Words that Mr. *Chaworth* said.

Lord High Steward. Were those Declarations made to you?

Mr. Partington. To all of us. They are the very Words I heard.

Lord High Steward. Then you may refresh your Memory from the Paper.

Lord Ravensworth. Was this Paper read to the Gentlemen who were below Stairs? and who were in the Room when Mr. *Chaworth* made the Declaration?

Mr. Partington. Mr. *Levinz*, Mr. *Hewett*, Mr. *Hawkins*, Mr. *Willoughby*, and Mr. *Adair*, I think no other Gentleman was present, except myself, in the Room; after I had wrote this, I read it over, and they agreed it was the Substance of what Mr. *Chaworth* said.

Lord Ravensworth. Were they the Persons present in the Bed-chamber when the Declaration was made?

Mr. Partington. They were the Persons present in the Bed-chamber when the Words were spoke; they were the Persons present in the Parlour when I read it over; and it was agreed by all, that they were the Words Mr. *Chaworth* said.

Lords. Read the Paper over again?

Which was done by the Witness.

Earl of Denbigh. Did you ever hear Mr. *Chaworth* say any Thing of any Conversation which passed previous to Lord *Byron's* drawing his Sword in the Room?

Mr.

Mr. Partington. I was with Mr. *Chaworth*, backwards and forwards, from Half an Hour past Ten till Three, and he said nothing more to me than what I have repeated to your Lordships, concerning what had passed between him and my Lord *Byron*.

Duke of Manchester. Did you ever shew this Paper, of which you now speak, to Mr. *Chaworth* before his Death?

Mr. Partington. No, my Lords; I never saw Mr. *Chaworth* after I came down from him after he had executed his Will.

Lord Viscount Townshend. Was it ever read by any of the Gentlemen to Mr. *Chaworth*?

Mr. Partington. Not to my Knowledge; it has never been in my Custody since.

Lord Viscount Townshend. Where was it?

Mr. Partington. I delivered it to Mr. *Levinz* that Night; and I never saw it since, but once in Mr. *Foyne's*, Mr. *Levinz* Solicitor's, Hands.

Duke of Manchester. The Paper that you first began to write, I think, you said was thrown into the Fire?

Mr. Partington. It was, my Lords.

Duke of Manchester. Was it not completed when thrown into the Fire?

Mr. Partington. I had wrote as far of the Paper as where the Expression *half-drawn* is mentioned.

Lord Cathcart. Did the Paper you burnt, and the other Paper you now have, differ?

Mr. Partington. No.

Earl Gower. I desire to know whether you threw the Paper into the Fire, because it differed from the Account Mr. *Chaworth* gave, or because it differed from your own Account?

Mr. Partington. The Reason it was thrown into the Fire was, I thought it was better to write it over again, than to have it appear with an Alteration in it. I had struck out some Words Mr. *Hewett* objected to, and for that Reason I wrote it over again fair.

Lord High Steward. The Witnesses may withdraw.

Earl of Denbigh. I desire Mr. *Levinz* may be called in again?

Mr. Attorney General. I think it my Duty to inform your Lordships, that from a Misapprehension on our Part, that the Witnesses might differ in some little Matters, we were extremely tender of examining any of them to what was contained in the Writing, conceiving the legal Evidence to be the Paper Writing itself; and if your Lordships think that the Paper cannot be admitted, I am in your Lordships Breasts, if it is not proper for us to call the Witnesses to speak to these Declarations. We were extremely tender in examining to any Thing that should lead to the Conversation contained in this Paper.

Lord Mansfield. By my Notes it appears, that Mr. *Hewett* spoke precisely to the Declarations of Mr. *Chaworth*; for after he had been examined to the Writing, he said, there was an Exception taken to some Words in it, and it was destroyed, and a new one was wrote.

Duke of Richmond. My Lords, a Question was some Time since asked by the Prisoner of Mr. *Partington*, the Answer to which I did not at this Distance hear.

Lord High Steward. That Question was objected to by a noble Lord as improper, and therefore it was not answered.

Earl of Denbigh. I desire that Mr. *Levinz* may be called to the Bar again to be further examined.

Lord Harwich. Your Lordships cannot enter into any Debate here: If there be any Difference of Opinion, it will be necessary to go back to the Chamber of Parliament.

The Lords were then moved to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament in the same Order as they went from thence this Morning, and the House was there Resumed; and, after some Time, again adjourned to *Westminster-Hall*; and the Peers and others went down in the same Order as before; and the Peers being there seated, and the Lord High Steward in his Chair,

Lord High Steward. My Lords, the House is Resumed: Is it your Lordships Pleasure that the Judges may be covered?

Lords.

Lords. Ay, Ay.

Then the Serjeant at Arms made Proclamation for Silence as usual, and afterwards the following Proclamation.

Serjeant at Arms. Oyez, Oyez, Oyez! Lieutenant of the *Tower*, bring forth your Prisoner, *William Lord Byron*, to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the *Tower* brought the Prisoner to the Bar in the like Form as before, and then he kneeled down.

Lord High Steward. Your Lordship may rise.

Then the Lord High Steward, by Leave of the Lords, went down to the Table,

Lord High Steward. Mr. Attorney General, you will proceed in your Evidence?

Mr. Attorney General. My Lords, if I could have conceived that there remained a Doubt in the Minds of any one of your Lordships, that the Contents of this Paper were not true, I should have thought it my Duty to have called all the Witnesses to have substantiated the Contents: But as I cannot now trespass upon your Lordships Patience, the Evidence on Behalf of the Crown is closed; and we leave it here.

Earl of Denbigh. I desire that Mr. *Levinz* may be called to the Bar.

Mr. Levinz was called again.

Earl of Denbigh. There was a Conversation passed between Mr. *Chaworth* and the noble Prisoner at the Bar, previous to Mr. *Chaworth's* shutting the Door; now I should be glad to know whether Mr. *Chaworth* said any Thing to you, relative to the Conversation which passed between him and Lord *Byron* upon the Stairs, previous to their going into the Room where they fought?

Mr. Levinz. No, my Lords; what he told me was, that Lord *Byron* asked him into the Room; that when he came into the Room, he said, My Lord, if we are to talk we had better shut the Door, or else they may overhear what we say: And I never heard Mr. *Chaworth* say any Thing else about it.

Duke of Newcastle. When you asked Mr. *Chaworth* whether it was fair, you were on one Side of the Bed, and Mr. *Chaworth* turned his Head, and said something which Mr. *Partington* did not hear; I desire to know whether, upon that Occasion, you heard any Answer to that Question?

Mr. Levinz. At that Time I did not: I asked him the same Question once afterwards, and he gave me no Answer; but seemed to me to shrink his Head into the Pillow.

Lord Viscount Folkestone. When Mr. *Chaworth* told you what passed in the Room where they fought, did he say that Lord *Byron* bid him defend himself, or any Thing to that Purpose?

Mr. Levinz. Mr. *Chaworth* told me, that, on his turning his Head from the Door, he saw Lord *Byron's* Sword half-drawn. My Lord said, Draw, Draw! I am sure Mr. *Chaworth* said the Word, Draw, twice.

Lord Viscount Folkestone. Did Mr. *Chaworth* explain to you in what Manner he received the Wound?

Mr. Levinz. He told me he felt the Point of his Sword engaged in something, and that he took it to be my Lord's Body; that, therefore, he wished to disarm him; and in endeavouring to close in for that Purpose, my Lord shortened his Sword, or his Arm (I am not certain which Word he made use of) and gave him that Wound. This was all that he said to me on that Subject.

Lord High Steward. The Witnesses may withdraw.

Mr. Attorney General. My Lords, as the Witnesses have fully proved the Evidence and Facts which I stated to your Lordships in the Opening, I will not trouble your Lordships to call any more Witnesses, but will rest our Evidence, in Support of the Prosecution, here.

Mr. Solicitor General.

My Lords,

THE Evidence on the Part of the Prosecution being closed, it remains for me, according to the usual Course of Proceeding, to collect, as far as it may be necessary, into one View, the Proofs that have been made, and to apply them to the present Charge: A very painful Task! but yet Justice to the publick Peace, to the Memory of the Deceased, and to the Sollicitude of his surviving Friends, authorizes and requires it. I should wish to discharge this Part of my Duty with that Benevolence and Humanity which possessed the Mind of the Deceased in the last Hours of his Life.

The noble Prisoner at the Bar is charged with having killed Mr. *Chaworth* deliberately and maliciously; or, in the Terms of the Indictment, with Malice aforethought. That he killed him, is a Truth beyond Dispute; and he who takes away the Life of another, is presumed to have taken it away deliberately and maliciously, till it shall appear to have been the Effect of Necessity, of Accident, or of sudden Passion; for as Necessity will justify, and Accident excuse the Fact, an ungovernable Transport of Passion will so far alleviate the Crime, as to make that, which would otherwise have been Murder and a capital Offence, Manslaughter only, which saves the Life of the Offender.

This is a Condescension the Law shews to the Frailties of the human Mind, which upon great and sudden Provocations cannot command itself, nor maintain its Reason; but whilst the Law shews this Condescension, it guards the Life of the Subject, with all possible Caution and Reserve, against the Excess and Abuse of the Benignity. It shelters no Man whose Mind is not free, perfectly free, from the Guilt of Malice, expressed in Words, or implied in Action; to be free from Malice, he must have acted from the Impulse of a present Passion, without Deliberation or meditated Mischief. If it should so have happened that the Provocation did not irritate, or irritating did not overcome the Reason, or overcoming the Reason, the Mind cooled and deliberated, or had Time to cool and deliberate, and then he fought and killed, he has incurred the Guilt of malicious Murder; he did not act from the Impulse of a present Passion; and whatever Motive actuated him, whether some secret Grudge, or an imaginary Necessity of vindicating his Honour, or of satisfying the World of his Courage, or any other latent Cause, he is no Object of this Benignity of the Law.

The Law Books do not make it Murder, only where the Passion has actually cooled, but where, in the Time that has passed, it ought in Reason to have cooled. And in Major *Oneby's* Case, no more than an Hour had passed, and the Judges thought that sufficient for the Purpose.

There is no specific Evidence required to shew that the Mind has cooled, it must depend upon the particular Circumstances of the Case; but all the Books, from the Time of Lord *Morley's* Case, in the Reign of *Charles II.* down to the Treatise of a late learned Judge, agree, that the Party engaging in indifferent Conversation, or in Amusements, affords a convincing Proof that he labours under no Transport of Passion, but has cooled and recovered his Reason.

I will not abuse your Lordships Patience with going through the Detail of the Evidence. Your Lordships serious and unwearied Attention, during the Course of this Trial, have made it unnecessary. I shall only point out some Observations arising from what passed at the Three most material Periods of Time, that is, during the Conversation in the Room where the Company dined; upon the Stairs; and in the Room below.

Nothing could be more innocent than the Conversation of the Company about the best Method of preserving of the Game; there could be no Offence in Mr. *Chaworth's* saying, that he had more Game upon his Estate, than Lord *Byron* had upon his; nor was there any in Lord *Byron's* saying, that he had the most. The first Offence, that seems to have been taken, was my Lord *Byron's* repeating the Question relative to Sir *Charles Sedley's* Manors; Mr. *Donston* understood it to be so. But it does not precisely appear, whether the Offence was given by the bare Repetition of the Question, or that it imported a Reflection upon an absent Friend; or that it contained too flat a Contradiction of what he had asserted; or that there was any Thing particularly affronting in the Tone of Voice, or in the Countenance, or in the Gesture; but it is very plain, Mr. *Chaworth* thought himself offended, and Mr. *Chaworth's* Expressions upon the Stairs, in asking Mr. *Donston* if he had been wanting in "his Reply", imports it. It is clear too, from the Questions Lord *Byron* asked Mr. *Chaworth*, that Lord *Byron* saw Mr. *Chaworth* had taken Offence. But whatever Effect Lord *Byron's* Behaviour had upon Mr. *Chaworth*, Mr. *Chaworth's* had no visible Effect upon Lord *Byron*;

no Action or Expression of Anger escaped him ; there was no Change of Countenance ; the Matter ended there. Other Conversation engaged the Company ; Lord *Byron* appeared to Mr. *Hewett* to be conversing in good Humour with Mr. *Molyneux* ; and Mr. *Molyneux* confirms the Reality of it. A full Hour passed in general Conversation. Mr. *Chaworth* does not seem to have been much discomposed, though *Fynmore* says he was a little ruffled ; which he collects from a Mistake he made in settling the Book ; a trifling Circumstance ! from which no just Inference can be drawn. But the Question is not, whether Mr. *Chaworth* was ruffled, but whether Lord *Byron* was agitated with any Violence of Passion ? It is for your Lordships to determine whether this Period affords any Proof of a sudden Quarrel, or of a heated Temper ; without Time to cool, or Leisure to deliberate ; and whether any Thing can be collected from hence, that will intitle the noble Prisoner to this Benignity of the Law, which is extended only to the Impetuosity of a sudden Passion.

In this Situation Lord *Byron* left the Room, in Appearance cool and deliberate ; if he had then a Purpose to fight, I am afraid it must have been deliberate ; if he had not, it imports Lord *Byron* to prove some new Occasion of Quarrel. What passed upon the Stairs affords only one Observation, Lord *Byron* told Mr. *Chaworth* he wanted to speak to him ; if the Purpose for which he wanted to speak to him is to be explained by what passed below, that Purpose was deliberate and without Provocation ; if he had not such Purpose in his Mind at that Time, will it not warrant Mr. *Chaworth's* Suspicions ? Your Lordships will recollect what Mr. *Chaworth* said, and what he thought was the Reason for calling him to an Account in that Place and in that Manner. Your Lordships will recollect likewise what Disadvantages the Place gave to Mr. *Chaworth*. If Mr. *Chaworth* understood the Sword, he understood it as the Accomplishment of a Gentleman. It never hurt his Innocence, he abhorred to shed the Blood of any Man. The Darkness of the Room, and Confinement of the Place probably prevented him from giving a signal Proof of it in disarming his Adversary. There is reason to believe it. How conspicuous in his last Hours was his Benevolence to all Mankind, his Humanity to the Author of his Death, his serious and earnest Attention to the Discharge of the remaining Duties of his Life, and the Magnanimity with which he beheld the approaching Minute of his Death !

I shall lay no Weight upon the Manner in which the Wound was given, till Mr. *Partington* was examined, an Inference arose to the Disadvantage of Lord *Byron* from the supposed Silence of Mr. *Chaworth*, when he was asked, Whether the Wound was fairly given ? Mr. *Partington's* Evidence may have left it now in some Doubt, what Opinion Mr. *Chaworth* had of that Circumstance. I will not allow myself to observe upon it ; nor will I repeat that unguarded Expression your Lordships have heard, that my Lord *Byron* used after the Wound was given, and after Mr. *Chaworth* had closed in and was endeavouring to prevent further Mischief. It must give Pain to the noble Prisoner to hear it repeated ; it must have made its Impression on your Lordships Minds ; it is fitter to remain there than to be the Subject of publick Discussion. It is for your Lordships to determine whether this Mischief has happened from the Impulse of a sudden Passion, or resulted from a deliberate and premeditated Purpose.

Lord High Steward. My Lord *Byron*, the Council for the Crown have done : Now is the Time for your Lordship to make your Defence ; and if you have any Witnesses to examine, now is your Time to call them.

Lord Byron. My Lords, I shall not call any Witnesses. I have reduced into Writing what I have to offer to your Lordships ; which, as my Voice is very low, I am apprehensive of my not being heard by your Lordships, and therefore desire it may be read by the Clerk.

Lords. Read, Read ?

Clerk reads.

My Lords,

YOUR Lordships are now in full Possession of the Evidence against me, and, I am convinced, will weigh it with the Wisdom and Impartiality which have ever distinguished the Court of the Peers of *Great-Britain*.

This Consideration, my Lords, affords me Comfort and Support, though oppressed under the heavy Load of an Accusation of Murder, against which I am now required to speak in my own Defence.

My Inexperience in the nice Distinctions of Law, and in Proceedings of this Nature, but ill qualify me for this Task; and will furnish very ample Occasion for the Goodness and Indulgence of your Lordships.

The Witnesses, (as far as their Knowledge and Observation could lead them) have already sufficiently proved the accidental Manner in which the greatest Part of the Transaction happened; and the Innocence of my own Intentions, through the Whole of it, makes it difficult for me to select any particular Passages which may more immediately demand your Lordships Attention.

Let me presume, however, to lay before you my own Narrative of the Fact, according to the best of my Recollection. It agrees in Substance with great Part of what has fallen from the Witnesses, but it supplies some Particulars which may possibly deserve Weight and Credit. In doing this, the Respect which I owe to your Lordships, as well as a tender Concern for my own Honour, will not suffer me to prevaricate, neither will I conceal or deny what is true.

After we had dined at the Club, about Seven o'Clock, a Discourse began concerning Game, and Mr. *Chaworth* insisted that Strictness and Severity were the only effectual Methods with the Country People.

I must confess that I was of a different Opinion; being for gentler Measures, and therefore observed, that such Severity might only prompt them to do more Mischief; and added such Circumstances as I thought supported what I said.

This Discourse lasted some Time; and, during the Whole of it, I was concerned to observe that the deceased Gentleman, without any Cause, treated me in a slighting and contemptuous Manner.

Towards the Conclusion of it, he, with some Heat, said, there would be no Game in the Country; and that I should not have a single Hare on my Estate, if it was not for the Care taken by himself and Sir *Charles Sedley*, to preserve the Game on their Manors; and added, that he had more Game on five Acres than I had in all my Manors. The Proposal of a Bet followed, but some of the Gentlemen interfered, and no Bet was made.

Mr. *Chaworth* again mentioned Sir *Charles Sedley's* Manors, and his Care of the Game; upon which I happened to ask what Manors of Sir *Charles Sedley* he meant, when he answered, *Nuthall* and *Bulwell*; to which I replied, I did not understand how that could be, for though I knew *Nuthall* was Sir *Charles Sedley's*, yet *Bulwell Park* was mine.

Mr. *Chaworth* answered, that besides *Bulwell Park*, there was the Lordship of *Bulwell Town* (a Point, which I believe may formerly have been in Dispute between Mr. *Wentworth's* Family and mine, but has long lain dormant) and that Sir *Charles Sedley* had a Deputation for that Lordship.

Upon which I made some insignificant Observation on the Uncertainty of Deputations, as they are liable to be recalled at any Time, or something to that Purpose.

Whereupon, to the best of my Recollection, Mr. *Chaworth* replied in the following Words, "Sir *Charles Sedley*, my Lord, lives at Mr. *Cooper's*, in such a Place, and I doubt not, will be ready to give your Lordship Satisfaction about his Manors, if you have any Thing to say concerning them; and as to myself, you know where I live, and I shall be ready to answer your Lordship whenever you will call upon me, if you have any Thing to say to me."

These Words, so unexpected, of such an Import, uttered, and repeated in the Manner they were, would not admit of any Reply, but put an End to the Discourse, so that nothing further passed between the deceased Gentleman and myself, at that Time; but during the short Stay I made afterwards, I might possibly have some very short Conversation, on indifferent Matters, with Mr. *Molyneux*, who was next me.

And here, I must observe, that as I sat at the lower Corner on the one Side, and Mr. *Chaworth* at the upper Corner on the other Side of a long Table, at which Ten People had dined, no private Intimations for a future Meeting, or other Signs, could be given by either of us, without being perceived by all the rest of the Company, to whose Evidence I must refer, observing only that no such Thing is pretended, or even suspected by any of the Gentlemen who have been called upon.

Soon after this Discourse was finished in the abrupt Manner I have mentioned, the Club Book was brought to Mr. *Chaworth*, who usually settled it, and did so on this Occasion, though with some Hurry and Confusion, as *Fynmore*, the Master of the Tavern, has told your Lordships.

The Book being settled, and the Reckoning paid by Mr. *Chaworth*, and several of the Company, I saw him go behind a Screen in the Room which intirely conceals the Door, and I had every Reason to conclude that he was gone.

I staid

I staid some Time to settle and discharge my Reckoning, which might detain me near Ten Minutes, and then I took my Hat and left the Company.

As I was going out of the Room, I remember that somebody passed me behind the Screen near the Door, and believe it might be Mr. *Donston*, who (I think) says, he met me, but being in the Shade, I could not well distinguish him, so as to take particular Notice or say any Thing to him.

When I opened the Door, I saw Mr. *Chaworth*, on the Landing Place, near the upper Step of the Stairs, with his Face towards the Door, and his Back to the Stairs, not moving (as he appeared to me) but rather as if he waited for somebody coming out.

The Landing Place is so narrow, that to go without the Door of the Room was unavoidably to pass near Mr. *Chaworth*, who immediately said, "Has your Lordship any Commands for me?" which he spake in a very particular and significant Manner, and not (to my Apprehension) as a Question either of Civility or Respect.

I only answered, "I should be glad of an Opportunity of speaking a few Words to him;" Mr. *Chaworth* replied, "That the Stairs were not a proper Place, and, if I pleased, we would go into a Room."

We then went down together to the Landing Place of the One Pair of Stairs (for we dined up Two Pair of Stairs) and there the Waiter was called, and as it was repeated Three or Four Times, it is most probable we both called him.

The Waiter soon came with a Candle, and being asked (I am sorry I cannot recollect who put the Question) which of those Rooms (meaning the Two Rooms on that Floor) was empty, he threw open the Door of One of them, and going in first, set his Candle upon the Table, which stood towards the Middle of the Room, whilst we went to the Fire.

He retired immediately, and shut the Door after him.

I then said to Mr. *Chaworth*, as we still continued standing by the Fire, "How am I to take those Words you used above, as an intended Affront from Sir *Charles Sedley*, or yourself?" Mr. *Chaworth* replied, "Your Lordship may take them as you please, either as an Affront or not, and I imagine this Room is as fit a Place as any other to decide the Affair in."

Then turning round, he said, he would bolt the Door to prevent any Interruption, or any Body interfering, or Words to that Effect. Accordingly, he went to the Door and fastened it. In the mean time, his Intention being but too manifest, by this Action and his last Expression, I went round on the further Side of the Table, towards the most open Part of the Room, which your Lordships have been informed by *Fynmore* is about Sixteen Feet Square, and the Furniture did not leave a vacant Space of more than Twelve Feet in Length, and, as I believe, Five Feet in Breadth, where it was my unhappy Lot to be obliged to engage.

Mr. *Chaworth* was now turned round from bolting the Door, and as I could not any longer continue in Doubt of his Intention, it was impossible for me in such a Situation to avoid putting my Hand to my Sword, and I believe I might at the same Time bid him *Draw*, or use some other Words of the like Import, though I cannot now be certain of the Expression.

Mr. *Chaworth* immediately drew his Sword, and made a Thrust at me, which I parried; he made a second, which also missed of its Effect: And then finding myself with my Back against the Table, with great Disadvantage of the Light, I endeavoured to shift a little more to the Right-hand, which unavoidably brought us nearer to each other, and gave me an Opportunity to perceive that the deceased Gentleman was making a third Pass at me. We both thrust at the same Time, when I found Mr. *Chaworth's* Sword against my Ribs, having cut my Waistcoat and Shirt for upwards of eight Inches; and I suppose it was then, that he received the unlucky Wound, which I shall ever reflect upon with the utmost Regret.

Mr. *Chaworth* paused, and said, "I am afraid I have killed you;" at the same Time putting his Left-hand to his Belly, which, on withdrawing it again, I could perceive was bloody.

I expressed the like Apprehension on his Account; and, Mr. *Chaworth* telling me that he was wounded, I said that I was sorry for it, and went to the Bell, near the Fire, to ring it, in order to call for Assistance, whilst the unfortunate Gentleman, being still near the Door, unbolted it.

I then returned to him; and as I was supporting him to an Elbow-chair which stood near the Fire, I could not help observing, that, He might thank himself for what had happened, as he had been the Aggressor; that I supposed he took me for a Coward, but I hoped I had as much Courage as another Man: Mr. *Chaworth* replied, My Lord, all I have to say is, you have behaved like a Gentleman.

During

During this Discourse *Fytmore* came into the Room, took our Swords, whilst I was employed, to the best of my Power, in supporting Mr. *Chaworth*, and at my Request went for the Surgeon. The rest of the Gentlemen also, who were above Stairs, being now alarmed, came down into the Room; where I continued for some Time, being desirous to give every Kind of Assistance to the Deceased, and afterwards I waited in a Room below, till he was removed to his own House.

My Lords, this is my melancholy Story. I cannot pretend to call any Witnesses in Support of those Parts of it, which relate to what passed during the few Minutes whilst we were in private; But as the Declarations of the Deceased are admitted as Evidence, your Lordships will compare the broken Accounts collected by those Gentlemen who discoursed with him, with such Circumstances as my Memory and Knowledge tell me are exactly true.

There are several Persons now attending, and ready to attest various Instances of friendly Intercourse and Civility from me to the Deceased; but as nothing has been offered to induce your Lordships to believe the contrary, I will not enter into that Evidence, nor offer any other on my Part, relying upon your Lordships Justice, and my own Innocence; not only as that Innocence may be presumed from the Insufficiency of Proof on the Part of the Prosecutors, to shew either Malice or Premeditation in me, but as most of the Witnesses unanimously agree in declaring the Provocation, Challenge, and Insult offered me; and your Lordships will not imagine that I felt them with less Emotion, because my Manner and my Words were decent.

My Lords, as the Provocation was great, so the Time was very short, between the Conversation and my meeting with Mr. *Chaworth* upon the Stairs, which was quite unexpected to me.

After that accidental Meeting, the Time of our continuing together (which was scarce Four Minutes) the Light, the Unfitness of the Place, and every other Circumstance prove, in the strongest Manner, that nothing could be more sudden and unpremeditated than the Conflict that ended so unfortunately, and in which I received the First Thrust, at the Peril of my own Life.

Our Fighting could not be very regular, circumstanced as it was; but notwithstanding some Insinuations, my own Mind does not charge me with the least Unfairness. The Facts declared by Mr. *Chaworth*, import the contrary; and Mr. *Partington* has acquainted your Lordships, that the last Declarations, reduced into Writing, were understood by him, and by the other Gentlemen present, as an Answer to every Question which had been asked.

My Lords, it is very plain from the Evidence, that Mr. *Chaworth* had not cooled; and if the Infirmary of his Temper was such, as not to have recovered itself in so short an Interval, though he had done the Injury; your Lordships, I hope, will at least make that Allowance (which the Law permits) to the like Infirmary of Nature in him who had been injured.

Grieved and affected as I am on this Occasion, and willing to spare any Reflection on the dead, the Necessity of my Defence obliges me to take Notice, that according to the Evidence of Mr. *Donston*, whom he desired to speak with on the Stairs, he but too clearly explained the Sense in which his Words were intended by asking that Gentleman, Whether he had observed what passed between himself and me, and whether he had left the Matter short?

Such a Behaviour, my Lords, needs no Comment, especially if considered with the Sequel of it; after we came into the Room below, where he declined giving me any reasonable Explanation, though such an one might easily have been given as would have been consistent with my Honour and Character.

In such a Case your Lordships will, no Doubt, have some Consideration for human Weakness and Passion, always influenced and inflamed in some Degree by the Customs of the World.

And though I am persuaded that Compassion can never obstruct your impartial Justice, yet I trust that you will incline to mitigate the Rigour of it, and administer it, according to Law, in Mercy.

I am told, my Lords, that it has been held by the greatest Authorities in the Law, that if contumelious Words (and still more, I presume, if contemptuous Words of Challenge) have been given by one Man to another, and, before they are cooled, either bids the other draw his Sword, and Death ensues, after mutual Passes, the Fact of that Case will not amount to Murder.

Therefore I am willing to hope that your Lordships, in weighing these Circumstances, may find sufficient Cause to acquit me of all Malice, and to consider me as an unhappy Man, innocent in Intention, conscious only of Misfortune.

My Lords, I will detain you no longer. I am in your Lordships Judgment, and shall expect your Sentence, whether for Life or Death, with all the Submission that is due to the noblest and most equitable Court of Judicature in the World.

Then the Lord High Steward returned back to his Chair.

Lord High Steward. Lieutenant of the *Tower*, take *William Lord Byron* from the Bar?

Which was done accordingly.

Lord President. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

Lords. Ay, Ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament in the same Order they came down: And, after some Time, the House was adjourned again into *Westminster-Hall*; and the Peers being there seated, and the Lord High Steward in his Chair, and the House resumed, the Serjeant at Arms made Proclamation for Silence as usual.

Lord High Steward. Your Lordships have heard the Evidence, and every Thing that has been alledged on both Sides; and the Solemnity of your Proceedings requires that your Lordships Opinions on the Question of Guilty, or Not Guilty, should be delivered severally in the Absence of the Prisoner, beginning with the junior Baron; and that the Prisoner should afterwards be acquainted with the Result of those Opinions by me. Is it your Lordships Pleasure to proceed now to give your Opinions on the Question of Guilty, or Not Guilty?

Lords. Ay, Ay.

Then the Lord High Steward stood up uncovered; and, beginning with the youngest Peer, said,

George Lord Vernon, What says your Lordship? Is *William Lord Byron* Guilty of the Felony and Murder whereof he stands indicted, or Not Guilty?

Whereupon *George Lord Vernon*, standing up in his Place, uncovered, and laying his Right Hand upon his Breast, answered,

Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

In like manner the several Lords after-mentioned, being all that were present, answered as followeth:

Edward Lord Beaulieu. Not Guilty, upon my Honour.

Joseph Lord Milton. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Lord Montague. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Lord Lovel and Holland. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Lord Boston. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Nathaniel Lord Scarfsdale. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Richard Lord Grosvenor. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Lord Grantkam. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Lewis Lord Sondes. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Lord Wycombe. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Lord Lyttelton. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Wills Lord Harwich. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Lord Mansfield, Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Horatio Lord Walpole. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Lord Hyde. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Vere Lord Vere. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Lord Ponsonby. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Lord Ravensworth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Matthew Lord Fortescue. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Lord Bruce. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Samuel Lord Sandys. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Lord Edgumbe. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Frederick Henry Lord Chedworth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Lord Montfort. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Lord Monson. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Lord King. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Matthew Ducie Lord Ducie. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Lord Cadogan. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Samuel Lord Massam. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Robert Lord Trevor. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Edmund Lord Boyle. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Schaw Lord Cathcart. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Lord Craven. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Nathaniel Lord Delamer. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Lord Berkeley of Stratton. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Edward Lord Leigh. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Lord Clifton. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Lord Saint John of Bletsoe. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Peyto Lord Willoughby of Broke. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Norborne Lord Boticourt. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Lord Abergavenny. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Francis Lord Le Despenser. Not Guilty, upon my Honour.

John Viscount Dudley and Ward. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Viscount Courtenay. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Edward Viscount Wentworth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Viscount Spencer. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Viscount Folkestone. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Viscount Torrington. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Hugh Viscount Falmouth. Not Guilty upon my Honour.

Frederick Viscount Bolingbroke and Saint John. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Viscount Weymouth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Viscount Townshend. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Richard Viscount Say and Sele. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Edward Viscount Hereford. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Stephen Earl of Ilchester. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Earl Fauconberg. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Philip Earl of Hardwicke. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Earl Cornwallis. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Simon Earl Harcourt. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Richard Earl Temple. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Hugh Earl of Northumberland. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Arthur Earl Powis. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl of Buckinghamshire. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Earl of Harrington. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Earl of Orford. Not Guilty, upon my Honour.

John Earl of Ashburnham. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl Waldegrave. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl Ker. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Earl of Macclesfield. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Earl of Sussex. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Montagu Earl of Halifax. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Heneage Earl of Aylesford. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Earl of Tankerville. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Earl of Dartmouth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Earl of Strafford. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Edward Earl of Oxford and Earl Mortimer. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl of Bute. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Hugh Earl of Marchmont. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Earl of March and Ruglen. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Earl of Dummore. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl of Breadalbane. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl of Loudoun. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

James Earl of Abercorne. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Alexander Earl of Eglinton. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

James Earl of Morten. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Vere Earl Poulet. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George William Earl of Coventry. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Earl of Albemarle. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Rickard Earl of Scarborough. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Other Lewis Earl of Plymouth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Earl of Gainsborough. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Henry Earl of Litchfield. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Anthony Ashley Earl of Shaftesbury. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Earl of Cardigan. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Anne Holles Earl of Essex. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Earl of Sandwich. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Daniel Earl of Winchelsea and Nottingham. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Earl of Peterborough and Monmouth. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Earl of Westmorland. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Basil Earl of Denbigh. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Earl of Suffolk and Berkshire. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Earl of Lincoln. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Earl of Pembroke and Montgomery. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Francis Earl of Huntingdon. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Granville Levison, Earl Gower, Lord Chamberlain of the Household. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Earl Talbot, Lord Steward of the Household. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Marquis of Rockingham. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Francis Duke of Bridgewater. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Henry Duke of Chandos. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

George Duke of Manchester. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

William Henry Cavendish, Duke of Portland. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Holles Duke of Newcastle. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Peregrine Duke of Ancafter and Kesteven, Lord Great Chamberlain of England. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Duke of Argyle. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Duke of Rutland. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Thomas Duke of Leeds. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Augustus Henry Duke of Grafton. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Charles Duke of Richmond. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

John Duke of Bedford, Lord President of the Council. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

His Royal Highness William Henry Duke of Gloucester and Edinburgh. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

His Royal Highness Edward Duke of York and Albany. Not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Then the Lord High Steward, standing uncovered at the Chair, laying his Hand upon his Breast, said ;

Lord High Steward. My Lords, I am of Opinion that *William Lord Byron* is not Guilty of Murder, but Guilty of Manslaughter, upon my Honour.

Lord High Steward. Your Lordships have found that *William Lord Byron* is not Guilty of the Felony and Murder whereof he stands indicted ; but have found him Guilty of Manslaughter. One Hundred and Nineteen of your Lordships having voted him Guilty of Manslaughter, and the remaining Four having declared him to be Not Guilty generally : Is it your Lordships Pleasure that he should be called in, and acquainted therewith ?

Lords. Ay, Ay.

Proclamation was then made for the Lieutenant of the *Tower* to bring the Prisoner to the Bar, which was done in the same Order as before ; and afterwards Proclamation was made for Silence as usual.

Lord High Steward. *William Lord Byron,* The Lords have considered of the Charge and Evidence brought against you, and have likewise considered of every Thing which you have alledged in your Defence, and upon the whole Matter, their Lordships have found you not Guilty of the Murder whereof you stand indicted, but Guilty of Manslaughter. What has your Lordship to alledge against Judgment being pronounced upon you ?

Upon which, his Lordship claimed the Benefit of the Statute of *Edward* the Sixth.

Whereupon the Lord High Steward acquainted him that he was allowed the Benefit of that Statute, and was discharged, paying his Fees.

Proclamation was then made for Silence in the usual Manner.

Lord High Steward. My Lords, this Trial being at an End, nothing remains to be done here, but to determine the Commission.

Lords. Ay, ay.

Lord High Steward. Let Proclamation be made for dissolving the Commission of High Steward.

Serjeant at Arms. Oyez, Oyez, Oyez! Our Sovereign Lord the King does strictly charge and command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our said Sovereign Lord the King, for his Grace my Lord High Steward of *Great-Britain*, intends now to dissolve his Commission.

Then the White Staff being delivered to the Lord High Steward by the Gentleman-Usher of the Black Rod upon his Knee, his Grace stood up uncovered, and holding the Staff in both his Hands, broke it in Two, and declared the Commission to be dissolved; and then leaving the Chair, came down to the Woolpack and said, Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

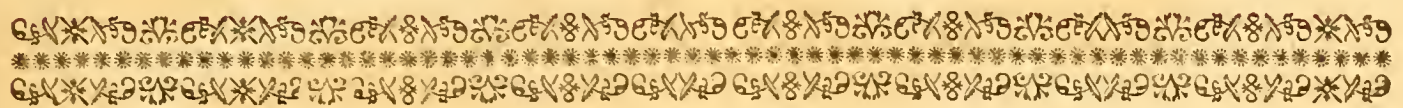
Lords. Ay, ay.

Lord High Steward. This House is adjourned to the Chamber of Parliament.

Then the Peers and others returned back to the Chamber of Parliament, in the same Order they came down, except that their Royal Highnesses the Duke of *Gloucester* and Duke of *York* walked after the Lord Chancellor.

F I N I S.





LIV. The Trial of Katharine Nairn and Patrick Ogilvie, for the Crimes of Incest and Murder, before the High Court of Justiciary in Scotland, upon the 5th, 12th, 13th, 14th, 15th, and 16th Days of August, 1765.

Curia Justiciaria, S. D. N. Regis, tenta in Nova Sessiois Domo de Edinburgh, quinto die mensis Augusti, millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Justiciarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale Moor, Henricum Home de Kames, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, -Commissionarios Justiciarie S. D. N. Regis.

Curia legitime affirmata.

Intran.

KATHARINE NAIRN, Widow of the deceased Thomas Ogilvie of Eastmiln in the County of Forfar;

AND

PATRICK OGILVIE, Lieutenant of the eighty-ninth Regiment of Foot, Brother-German of the said deceased Thomas Ogilvie;

Both now Prisoners in the Tolbooth of Edinburgh;

PANELS.

Indicted and accused at the Instance of Thomas Miller of Barskimming, Esq; his Majesty's Advocate, for his Majesty's Interest, for the Crimes of Incest and Murder, in Manner mentioned in the Criminal Indictment raised thereanent, Bearing, THAT WHEREAS, by the Law of God, and the Laws of this and all other well-governed Realms, the Crime of Incest, committed betwixt a Man and the Wife of his Brother-German, especially when such Crime is committed within the Dwelling-house of the injured Husband, where the Offenders were cherished and entertained by him with Confidence and Trust, is a heinous Crime and most severely punishable; and particularly by an Act passed in the Parliament of Scotland, in the Year one thousand five hundred and sixty-seven, being the first Parliament of King James the Sixth, chap. 14. intituled, "Anent them that commit Incest," it is statuted and ordained, "That quhatsumever Person or Persons that committes the said abominable Cryme of Incest, that is to say, quhatsumever Person or Persones they be that abuses their Bodie with sik Persones in Degrie, as God in his Word has expreslie forbidden, in ony Time cumming, as is contained in the xviii. Chapter of Leviticus, shall be punished to the Death:" And also whereas, by the same holy Law of God, and by the Laws of this and every other well-governed Realm, all wilful Homicide or Murder, especially when perpetrated by Poison, and above all, when such Murder is

committed under Trust, or upon a Person to whom Fidelity and Affection are due by the most sacred Ties, is also a Crime of most heinous and atrocious Nature, and severely punishable: Yet true it is, and of Verity, that the said Katharine Nairn and Patrick Ogilvie, shaking off all Fear of God and Regard to the Laws, have presumed to commit, and are guilty, Actors, Art and Part of both, or one or other of the said heinous Crimes of Incest and Murder, aggravated as aforesaid: In so far as, the said Katharine Nairn having been married to the said deceased Thomas Ogilvie in the Month of January last, in this present Year one thousand seven hundred and sixty-five, and the said Patrick Ogilvie having about that Time returned from abroad, and taken up his Residence at the House of Eastmiln, belonging to the said deceased Thomas Ogilvie his Brother, in the Parish of Glenylla and County of Forfar, the said Katharine Nairn did, soon after her said Marriage, alienate her Affections from her said Husband, and fall into a Course of indecent Familiarities with the said Patrick Ogilvie, which soon became the Subject of Observation and Regret to her unhappy Husband, and to her Friends and Family; and notwithstanding repeated Admonitions given to the said Katharine Nairn, and to the said Patrick Ogilvie, by the said Thomas Ogilvie and their other Relations, to abstain from such indecent Familiarities, they obstinately persisted therein, frequently retired together, and continued in private for a considerable Time, as well in the Fields as within the House of Eastmiln, and in other Houses and Places of that Neighbourhood; and the said Katharine Nairn and Patrick Ogilvie, yielding to their inordinate Desires, did, after the said Marriage, viz. in the Months of January, February, March, April, May, and June, all last past, and before the twelfth Day of that last Month, at different Times, and in one or other of the Rooms of the House of Eastmiln, and in the Out-houses adjacent thereto, lie together, and abuse their Bodies with one another, and thereby they, and each of them, committed the abominable Crime of Incest; and their indecent Conduct having at last become the Subject of Observation and just Censure, not only to the said deceased Thomas Ogilvie and his Family, but to the Neighbourhood, the said Patrick Ogilvie was, on that Account, dismissed by the said Thomas Ogilvie from his House, on or about the twenty-third Day of May last; and the said Katharine Nairn did, upon that Occasion, and thereafter, express her Resentment against her Husband, and by the most outrageous Behaviour; and before the said Patrick Ogilvie left the said House, or soon after, he

he and the said *Katharine Nairn* did *treacherously and wickedly* conspire to murder the said *Thomas Ogilvie* by Poison; and, upon different Occasions, the said *Katharine Nairn* signified this her wicked Purpose to *Anne Clark*, Daughter of the deceased *Allan Clark*, Officer of Excise, who then lived in Family with her, and informed her, that the said *Patrick Ogilvie* had undertaken to provide the Poison, which she did not then believe either of them capable of, and endeavoured to divert the said *Katharine Nairn* from such wicked Thoughts; but, instigated by the Temptations of the Devil and of their own wicked Hearts, the said *Katharine Nairn* and *Patrick Ogilvie* persisted in their wicked Conspiracy; and from the Time the said *Patrick Ogilvie* was dismissed from his Brother's House, he and the said *Katharine Nairn* carried on a secret Correspondence by Letters, and had private Meetings together for the Purpose of concerting the Perpetration of their wicked Design; one of which Letters, without a Date, and unsigned, but of the Hand-writing of the said *Katharine Nairn*, will be produced in Evidence against them, and will be lodged in the Hands of the Clerk of the High Court of Justiciary, before which they are to be tried, that they may see the same: And, for accomplishing the Murder so concerted betwixt them as aforesaid, the said *Patrick Ogilvie* did, about the latter End of *May* last, repair to the Burgh of *Brechin*, in the County aforesaid, and there bought and received from *James Carnegie*, Surgeon in that Burgh, a small Phial Glass of Laudanum, which he pretended was for his own Health, and about half an Ounce or more of Arsenick pulverized, and put up in three or four different Dozes, in separate Paper Covers, pretending that he had Occasion for that Poison, in order to kill some Dogs, which destroyed the Game in that Part of the Country where he resided. And the said *Patrick Ogilvie* brought the said Poison to *Alyth*, within a few Miles of *Eastmiln*, where he arrived upon or about *Monday* the third Day of *June* last, at the House of *Andrew Stewart*, Merchant there, his Brother-in-law; and, upon the Day following, he did there receive a Letter from the said *Katharine Nairn*, which, by her Orders, was delivered to him in private, by *Elizabeth Sturrock* her Servant, to which he returned an Answer that same Day, with the said *Elizabeth Sturrock*, by a Letter, with Injunctions to deliver it privately to the said *Katharine Nairn*; which was done accordingly: And, upon the Day following, being the fifth Day of *June*, the said *Andrew Stewart* having had Occasion to go to the House of *Eastmiln*, he, the said *Patrick Ogilvie*, did send with him two small Phial Glasses, one of which he said contained Laudanum, and a Paper with Directions about the Manner of using it; and also a Packet which he said contained Salts, and a Letter closed with a Wafer, and likewise sealed with Wax, addressed to the said *Katharine Nairn* at *Eastmiln*; and he informed the said *Andrew Stewart*, that these were Medicines for the Use of the said *Katharine Nairn* herself, and desired him to deliver them and the Letter privately into her own Hands: And the said *Katharine Nairn*, having been previously advised by the said *Patrick Ogilvie*, that he was to send the Poison by the said *Andrew Stewart*, watched his Arrival at the House of *Eastmiln*, and, upon his coming there, conducted him into a private Room, and received from him the above

Particulars, which she presently locked up in a Drawer alongst with the Letter, without reading the same; and, in this Manner, or by some other Conveyance to the Prosecutor unknown, the Arsenick bought by the said *Patrick Ogilvie* as aforesaid, was conveyed by him to, and received by the said *Katharine Nairn* at the House of *Eastmiln*: And the said *Andrew Stewart* having, some Time after his Arrival there, discovered to the said *Anne Clark*, that he had brought some Medicines from the said *Patrick Ogilvie*, which he had delivered to the said *Katharine Nairn*, *Anne Clark* did thereupon disclose to the said *Andrew Stewart*, and to *Isobel M'Kenzie* the Mother of the said *Thomas Ogilvie*, her Apprehensions of Danger to the said *Thomas Ogilvie's* Life; and all these Persons, or some of them, did that Night advise and caution the said *Thomas Ogilvie*, to take no Meat or Drink from his Wife, except what he saw others taking; and some Time that same Night, the said *Katharine Nairn* said to the said *Andrew Stewart*, *she wisshed her Husband was dead*; and the said *Thomas Ogilvie* did that same Night sup with the said *Katharine Nairn* his Wife, and the other Persons above named, in his ordinary State of Health, and went to Bed at the usual Time of Night, having been abroad the preceding Day: That next Morning, the sixth Day of *June*, or one or other of the Days in the Beginning of that Month, Breakfast was set in the Parlour earlier than usual, and the said *Thomas Ogilvie* not having then got out of Bed, the said *Katharine Nairn* filled out the first of the Tea in a Bowl, which she said she was going to carry up to the Laird, meaning her Husband; and accordingly left the Parlour with the said Bowl in her Hand; but instead of carrying it straight to her Husband, she went into a Closet adjoining to his Bed-room, where she remained for some Time, and there wickedly and feloniously mixed the Arsenick which she had received as aforesaid, or some other deadly Poison, into the said Bowl of Tea, which she afterwards carried to her Husband, and pressed him to drink the same, which he accordingly did: And soon after he rose from Bed, went abroad, conversed with some of his Tenants and Servants, and then appeared to be in his ordinary State of Health; but before he got back to the House, and within the Space of an Hour or thereby after he had drunk the said Bowl of Tea, he was seized with a violent Reaching and Vomiting, and having got into the Kitchen, he continued there for some Time in great Distress, upon which he was helped up to his own Room, and laid in Bed, where he remained reaching, vomiting, and purging with such Violence, that he sometimes appeared convulsed; and, in the Intervals of his Distress, he did say to his Friends, and others about him, that he had been poisoned by the said Bowl of Tea which he had got from his Wife; and he having called for Water to drink, which was brought up to the Room by *Anne Sampson* his Servant-maid, in the same Bowl, or one like to that out of which he had drunk the Tea, he said, "Damn that Bowl, for I have got my Death out of it already," and ordered her to bring up the Water in the Tea-kettle, for he would drink out of nothing else; and having continued in the Situation above described for several Hours, his Tongue swelled, and his Mouth became so parched and dry, that he could scarcely speak; and,

and, during his Illness, though from the Beginning very alarming, the said *Katharine Nairn* not only endeavoured to hinder his Friends and Neighbours to have Access to him; but when she was pressed, by the said *Andrew Stewart*, to send for a Surgeon, she obstinately resisted that Proposal till near Sun-set, when, the said *Thomas Ogilvie* her Husband appearing to be then very low and near his End, she sent a Servant on Horseback to bring *Peter Meik*, Surgeon at *Alyth*, who accordingly came with all Dispatch; but, before his Arrival, her Husband was dead, having died in the Night betwixt the sixth and seventh Days of *June* last, or upon one or other of the Days or Nights in the Beginning of that Month: And from the Symptoms of his Disorder, and whole Circumstances of the Case above-recited, it evidently appears that he died of the Poison which was mixed and given to him, by the said *Katharine Nairn*, in the Bowl of Tea as above mentioned. And some Days thereafter, when it was proposed to inspect the dead Body, she, *Katharine Nairn*, appeared like one distracted, and cried out, *What will I do!* And the said *Patrick Ogilvie* being advised of the Death of the said *Thomas Ogilvie* his Brother, to whom he is Heir, in case the said *Katharine Nairn* be not with Child, he immediately came to *Eastmiln*, took up his Residence there, and gave the necessary Orders for the Interment. And the said *Katharine Nairn* and *Patrick Ogilvie*, having been apprehended there and committed to the Prison of *Forfar*, by *George Campbell*, Esq; Sheriff-Substitute of that County, as guilty of the Murder of the said *Thomas Ogilvie*, and examined by the said Sheriff-Substitute upon the fourteenth and fifteenth Days of *June* last, did each emit two several Declarations, which were subscribed by each of them, and by the said Sheriff-Substitute; which Declarations are to be used in Evidence against them upon their Trial, and shall be lodged in the Hands of the Clerk of the said Court of Justiciary, that they may have Access to see the same: And another Examination of the said *Patrick Ogilvie*, taken before *James Balfour*, Esq; Sheriff-Substitute of the County of *Edinburgh*, upon the twenty-second Day of the said Month of *June* last, and subscribed by him and the said *James Balfour*; and also an Examination of the said *Katharine Nairn*, taken before the said *James Balfour*, upon the twenty-fourth Day of the said Month of *June* last, and subscribed by him, will likewise be produced in Evidence against them in the Course of their Trial, and will in like Manner be lodged in the Hands of the Clerk of the said Court of Justiciary, that they may have Access to see the same. At least, at the Time and Place aforesaid, the said *Thomas Ogilvie* was murdered or died by Poison, wilfully administered to him; and of which Murder or Poisoning the said *Katharine Nairn* and *Patrick Ogilvie*, and each of them, or one or other of them, are guilty, Actors, or Art and Part. All which, or Part thereof, or that they were guilty of the Crime of Incest above charged against them, being found proven by the Verdict of an Assize before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, they, and each of them, ought to be punished with the Pains of Law, to the Terror of others from committing the like in Time coming.

THOMAS MILLER.

LIST of ASSIZE.

- Sir *James Clark* of *Pennycuik*.
 Sir *Alexander Gibson* of *Pentland*.
 Sir *Robert Morton* of *Gogar*.
Thomas Trotter of *Mortonhall*.
 5 *George Warrender* of *Burntsfield*.
John Howieson of *Braehead*.
John Borthwick of *Cruikston*.
James Forrest of *Commiston*.
Alexander Muirhead of *Linhouse*.
 10 *Hugh Dalrymple* of *Fordel*.
John Wightman of *Maulslie*.
John Christie of *Baberton*.
Adam Cuninghame of *Bonnytown*.
Thomas Brown of *Braid*.
 15 *Alexander Sheriff* of *Craigleith*.
James Finlay of *Wallyford*.
Alexander Gibson of *Cliftonball*.
James Linn of *Gorgie*.
 Sir *Robert Dalziel* of *Binns*.
 20 *Thomas Sharp* younger, of *Houston*.
Robert Ramsay of *Blackcraig*.
John Paterson of *Kirkton*.
David Dundas younger, of *Newhalls*.
James Dallas younger, of *Parklie*.
 25 *Henry Cochran* of *Barbacklaw*.
 Sir *George Suttie* of *Balgonie*.
 Sir *John Hall* of *Dunglass*.
 Sir *John Sinclair* of *Stevenson*.
John Henderson of *Liston*.
 30 *William Hay* of *Lawfield*.
Charles Hay of *Hopes*.
Richard Newton of *Newton*.
James Hume of *Gemmelsbiells*.
Alexander Wedderburn of *St. Germain's*.
 35 *William Ramsay* of *Preston*.
Oliver Colt of *Auldbam*.
John Forrest senior, Merchant in *Edinburgh*.
William Callender, Merchant there.
Ralph Dundas, Merchant there.
 40 *John Fordyce*, Merchant there.
Daniel Seton, Merchant there.
George Chalmers, Merchant there.
William Ramsay, Merchant there.
Gavin Hamilton, Bookseller there.
 45 *Archibald Wallace*, Merchant there.

GILB. ELLIOT.
 ALEX. BOSWELL.
 AND. PRINGLE.
 GEO. BROWN.

LIST of WITNESSES.

- *The Witnesses so marked were examined for the Prosecutor.
 1 * *George Spalding* of *Glenkilrie*.
 2 *Betbia Nairn* his Spouse.
 3 * *Andrew Stewart*, Merchant in *Alyth*.
 4 *Martha Ogilvie* his Spouse.
 5 * *James Carnegie*, Surgeon in *Brechin*.
 6 * *Gilbert Ramsay*, Surgeon in *Coupar* of *Angus*.
 7 * *Peter Meik*, Surgeon in *Alyth*.
 8 * *Dr. John Ogilvie*, Physician in *Forfar*.
 9 * *Lieutenant George Campbell*, late of the 89th Regiment of Foot.
 10 * *Patrick Dickson*, Merchant in *Brechin*.
 11 The Reverend Mr. *Thomas Masson*, Minister of *Glenylla*.
 12 *Katharine Gruer*, Relict of *M^r Kenzie*, late Servant in *Eastmiln*.
 13 * *James M^r Kenzie*, Session-Clerk of *Glenylla*.
 14 *James Rattray* of *Kirkbillocks*.
 15 *Anne Robertson* his Spouse.

- 16 *William Clark* of *Holemerry*, one of the Elders of the Parish of *Glenylla*.
- 17 * *Elizabeth Sturrock*, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*.
- 18 * *Anne Sampson*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 19 * *Alexander Lindsay*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 20 * *Katharine Campbell*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 21 *John Guthrie* in *Dalnakebock*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 22 *Anne Robertson*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 23 *John Rattray*, Servant to *John Robertson* of *Cray*.
- 24 *Margaret Downie*, Servant to *William Ker*, Writer in *Forfar*.
- 25 *Jean Low*, Servant to *William Gorty*, Taylor in *Forfar*.
- 26 * *Anne Clark*, Daughter to the deceased *Allan Clark*, Officer of Excise.
- 27 * *George Campbell* of *Carsegownie*, Esq;
- 28 * *Mr. John Ure*, Sheriff-Clerk of *Forfar*.
- 29 *Patrick Orr*, Writer in *Forfar*.
- 30 *Fergus Fergusson*, Residenter in *Kirkton* of *Glenylla*.
- 31 *Margaret Rait* his Spouse.
- 32 *William Shaw*, Residenter at *Little Fortber* in the Parish of *Glenylla*.
- 33 * *John Gilloch*, Wright in *Dalnakebock*.
- 34 * *Mr. James Balfour* of *Pilrig*, Advocate, Sheriff-Substitute of *Edinburgh*.
- 35 * *William Dunbar*, Writer in *Edinburgh*.
- 36 *William Campbell*, Writer in *Edinburgh*.
- 37 *James M'Niccol* in *Newton* of *Glenylla*.
- 38 *John Hall*, Portioner of *Achlish*.
- 39 * *James Millam*, Tackfman of the *Eastmiln* of *Glenylla*.
- 40 *James Dougal*, Surgeon in *Kerriemuir*.
- 41 *Mr. Laurance Brown*, Minister at *Lintretban*.
- 42 *Andrew Murison*, one of the Macers of Justiciary.
- 43 *Charles Copland*, Messenger in *Edinburgh*.
- 44 * *David Rattray* younger, in *Cammock* in the Parish of *Glenylla*.
- 45 * *John Lamar* in *Craigendeach* in the said Parish.
- 46 *Alexander Barnet* in *Cammock* in the said Parish.
- 47 *Helen Murray*, Spouse to the said *Alexander Barnet*.
- 48 * *James Barnet*, Son to the said *Alexander Barnet*.
- 49 *Alexander Reid*, Writer in *Edinburgh*.
- 50 *David Spalding* of *Whitehouse*.
- 51 *Alexander Reid*, Tenant in *Ennoch* in *Glenkilrie*.
- 52 *John Tudhope*, Residenter at *Guardwell* in the Parish of *Libberton*.
- 53 *Isobel Farquarson* his Spouse.
- 54 *Tudhope*, Relict of *Knicht*, and Daughter to the said *John Tudhope*, Residenter near *Dean*.
- 55 *Mrs. Dallas*, Spouse to *Gibb*, Coachmaster in *Canongate*.
- 56 *Dr. William Cullen*, Physician in *Edinburgh*.
- 57 *James Russel*, Surgeon in *Edinburgh*.
- 58 * *Robert Smith*, Surgeon in *Edinburgh*.
- 59 *James Rae*, Surgeon in *Edinburgh*.
- 60 *William Forrester* or *Froster*, Tenant in *Eastmiln*.
- 61 *John Turnbull*, Writer in *Edinburgh*.
- 62 *John Stewart*, Writer in *Edinburgh*.

- 63 *Isobel M'Kenzie*, Relict of the deceased *Thomas Ogilvie* of *Eastmiln*, and Mother to the deceased *Thomas Ogilvie* last of *Eastmiln*.
- 64 *Dr. John Rutherford*, Physician in *Edinburgh*.

L I S T of the Writings and other Particulars to be adduced in Evidence.

The Bottle of Laudanum mentioned in the Indictment.

The Declarations therein mentioned.

The Letter therein mentioned.

A Letter from *Katharine Nairn* the Pannel to the deceased *Thomas Ogilvie*, dated *Glenkilry*, *Weensday*.

A Letter from *Katharine Nairn* the Pannel to the said *Thomas Ogilvy*, dated *Glenkilry*, *January 4th 1765*.

The said Indictment being read over to the Pannels in open Court; and they being severally asked, What they had to say against the same? They answered, *They were not guilty*.

Procurators for the Prosecutor.

Thomas Miller of *Bariskimming*, Esq; his Majesty's Advocate, for his Majesty's Interest.

Mr. James Montgomery, Advocate, his Majesty's Solicitor.

Sir David Dalrymple, Advocate.

Mr. Patrick Murray, Advocate.

Mr. David Kennedy, Advocate.

Procurators in Defence.

Mr. Alexander Lockhart, Advocate.

Mr. David Græme, Advocate.

Mr. David Rae, Advocate.

Mr. Andrew Crosbie, Advocate.

Mr. Henry Dundas, Advocate.

DUNDAS, for *Katharine Nairn* the Pannel, repeated the signed Defences; and represented, That, in 1764, the now deceased *Thomas Ogilvie* of *Eastmiln*, a Gentleman rather advanced in Years, of a tender Constitution, and possessed of a very small Fortune, made his Addresses to this unfortunate Pannel, (then scarce nineteen Years of Age) in Proposals of Marriage: Which, contrary to the Opinion of her Friends, by reason of the Smallness of his Fortune, she accepted of from Principles of pure Love and Affection: And the Marriage being accordingly celebrated in the Beginning of *January* last, 1765, was dissolved, by *Mr. Ogilvie's* Death, upon the 6th of *June* last; when the Affections she had conceived for her Husband can scarce be supposed to have had Time to cool or subside.

Notwithstanding of which, it is her now very singular Misfortune to be indicted and accused, at the Instance of his Majesty's Advocate, upon the Information of *Alexander Ogilvie*, her Husband's youngest Brother, as guilty of two of the most enormous Crimes known in the Law: 1st, The Crime of Incest, which she is charged to have committed with Lieutenant *Patrick Ogilvie*, her Husband's immediate younger Brother; 2^{dly}, The Crime of Murder, committed upon the Person of her said Husband, by Poison administered to him.

Her Parentage, Education, Age, Sex, Character, and Behaviour, in that Stage of Life previous to her Marriage, when Female Passions are most powerful and predominant, which she flatters

flatters herself will be attested by Persons of the greatest Honour and Probity, render it highly incredible, that any Person, not hardened and inured to every Species of Wickedness, lost and abandoned to every Principle of Virtue, should at once plunge into Crimes of so deep a Dye.

Conscious of her Innocence, she wishes for nothing more ardently than a fair and impartial Trial, as the only Means of Reparation that can be made to her injured Character, so much traduced; and which, in the Event, she is hopeful, will appear to be the Result of the most inveterate Rancour, Hatred, and deadly Malice, conceived against her by one of her own Sex, a Person of most flagitious Life, and abandoned Character; and who, she is now told, is the principal Evidence meant to be used against her.

Since her Imprisonment, no Endeavours have been spared to impress the Public with Sentiments of her Guilt, by Publication of many false, malicious, and wicked Reports, industriously propagated to the Prejudice of her general Character.

But she rejoices in the Appeal she will soon be able to make to the World, to her Judges and Jury, to vindicate her from the Charge of those horrid Crimes with which she stands now arraigned. At the same Time, she cannot know what false Evidence may be produced against her, Self-preservation requires, that she should not pass over any material Objection to the Form of this Indictment.

And, in that View, she objects to that Article of the Indictment which charges the Crime of Incest, said to have been committed *in one or other of the Rooms of the House of Eastmiln, and Out-houses adjacent thereto, at different Times, in January, February, March, April, May and June, all last past, and before the 12th Day of that last Month*; that is, in other Words, from the Day of her Marriage till the sixth Day after her Husband's Death.

She takes no Exception to the Generality of the Places charged where this Crime should have been committed, *viz.* "in one or other of the Rooms of the House of *Eastmiln*, and Out-houses adjacent thereto;" though she is advised, that after so full a Precognition as she is told has been taken, by Examination upon Oath of every Person that could be supposed to have the least Knowledge in these Matters, at which none were allowed to be present upon her Part, the Places where this supposed Crime is said to have been so frequently repeated, should have been specially condescended upon, and described. But she is advised, and humbly submits it to the Consideration of her honourable Judges, and the impartial World, that a most unbecoming and improper Latitude has been taken, in charging the Time of the Commission of this supposed Offence, comprehending the whole Space, every Hour, Day, Week, and Month, from the Period of her Marriage, to her Husband's Death, and even while he was lying a Corpse, before his Interment on the 12th of *June*.

The Disadvantages to which she must necessarily be exposed, in making her Defences against so general a Charge, are too obvious to need Illustration; and therefore she does humbly insist, that this Branch of the Indictment cannot be sustained, or admitted to Proof.

But if, contrary to Expectation, the same shall be sustained, she proposes, by undeniable Evidence, to traverse and redargue every material Circumstance charged in the Indictment, as well with regard to this as the other Crime with which she is accused; and, without departing from any other Defences which may occur to her Council, the great Lines of those Facts which she proposes to prove will be these following.

1st, That she accepted of Mr. *Ogilvie* for her Husband, contrary to the Opinion of her Friends, out of pure Love and Affection: That Mr. *Ogilvie*, before his Marriage, was, and continued thereafter, so long as he lived, to be of a tender Constitution: That he had repeated and violent Attacks of internal Disorders, Cholic Pains, Convulsions in his Bowels, &c. in so much that he was not only looked upon to be in a dangerous Way, but having had some violent Attacks recently before his actual Death, gave himself up for lost; and both the Day and the Night before he actually died, had such violent Returns of these Disorders, that he thought himself dying, and resolved to have sent for a Physician at many Miles Distance.

2^d, That the Pannel herself, soon after her Marriage, did likewise fall into a bad State of Health, costive in her Body, and restless in the Night, which obliged her frequently to take small Doses of Salts and Laudanum.

3^d, That Lieutenant *Patrick Ogilvie*, her Husband's younger Brother, the supposed Associate in the Crimes charged, having returned from the *East-Indies*, broken and shattered in his Constitution, much about the Time of the Pannel's Marriage, came to pay his first Visit to his Brother, and for some Time had his principal Residence in his Brother's House; whereby, and by Means of his near Relation, he distinguished a becoming Friendship and Intimacy with the Pannel, his Sister-in-law.

4th, That the Pannel having inadvertently allowed herself to run short of the Salts and Laudanum she used to take, and having occasionally mentioned this in the hearing of Lieutenant *Ogilvie*, he told her, that as these were Medicines which he himself had been advised to use, he had brought Home, in his Chest, a small Quantity of Laudanum, and a Parcel of Salts, of the very best Quality; and that if she pleased, he would send her a small Phial of the Laudanum, and a few Doses of the Salts, how soon his Chest, in which they were, should arrive from *Dundee*. She accepted of the Offer; and did accordingly some Time after receive from him, by the Hands of *Andrew Stewart*, Brother-in-law to *Eastmiln*, who came to *Eastmiln* on an occasional Visit, a small Phial of Laudanum, and two Doses of Salts; and which are supposed to be the Particulars alluded to in this Indictment, as the Doses of Poison said to be secretly conveyed to the Pannel.

5th, That *Alexander Ogilvie*, the younger Brother of her Husband, had, about the Beginning of this Year 1765, intermarried with a Woman of the lowest Rank, the Daughter of a common Porter in *Edinburgh*, which gave great Offence to his two Brothers; and the Pannel does not doubt, but she might, upon Occasion thereof, have expressed her Sense and Feeling of the Reproach thereby brought upon their Family.

Of

Of which the said *Alexander Ogilvie*. having got Intelligence, this, joined with the Disappointment in the Expectation he had conceived of the Succession to his Brother's Estate, he from thenceforward entertained a most groundless Resentment against the Pannel, the innocent Cause of that Disappointment; and took every Occasion to publish the most scandalous Falsehoods, calculated to create a Misunderstanding between her and her Husband.

6th, That for some Time before the said *Alexander Ogilvie's* Marriage, he had cohabited, in a most unbecoming Manner, with *Anne Clark*, a Cousin-german of the Family; a Woman of the most infamous Character, and who, for a Course of Years, had lived as a common Servant-maid, in one of the most notorious Stews or lewd Houses in *Edinburgh*, and other Houses of bad Fame, till at length she took up her Residence with the said *Alexander Ogilvie*.

7th, *Anne Clark's* Relation to Mr. *Ogilvie's* Family furnished *Alexander Ogilvie* with a Pretence of sending her over to *Eastmeln*, to pass some Weeks there, and to endeavour, by every possible Means, to bring about a Reconcilement between Mr. *Ogilvie* and his Brother *Alexander*. In this View, she attached herself at first to the Pannel, thinking by her Means to have some Influence with Mr. *Ogilvie* himself; till at length, finding they were both equally averse to have any further Correspondence, either with *Alexander* or his Wife, she fell to work in another Way; quarrelled with the Pannel; made her Court to Mr. *Ogilvie*; and, first by dark Insinuations, thereafter more explicitly, endeavoured to instil into Mr. *Ogilvie's* Mind Suspicions of the Pannel's Virtue, and of a criminal Intimacy between his Brother the Lieutenant and her; and that they had even gone the Length to form a Scheme to deprive him of his Life, by Poison or otherwise; and these her pretended Suspicions she communicated to the good old Lady Mr. *Ogilvie's* Mother: the Tendency of all which was, to operate a Misunderstanding and Separation betwixt Mr. *Ogilvie* and the Pannel.

8th, This diabolical Contrivance happened unluckily, in point of Time, to coincide with some Differences that had arisen between Mr. *Ogilvie* and his Brother the Lieutenant, in settling Accounts about Money-matters; which having at length produced high Words, and put both Brothers in a Passion, Lieutenant *Ogilvie* declared he would stay no longer in a House where he had been so used; and was preparing to leave it directly, when Mr. *Ogilvie*, giving way to his Passion, gave the parting Blow, by acquainting the Lieutenant of the Information he had received of his Familiarity with the Pannel, his Sister-in-law; by which Lieutenant *Ogilvie* justly enraged, having peremptorily insisted to know his Author, *Anne Clark* came at last to be suspected as the Author and Propagator of this wicked and malicious Story; and what afterwards happened, too fully justified the Suspicion.

9th, Lieutenant *Ogilvie* immediately left the House. Mr. *Ogilvie* soon cooled, and became sensible of the Folly of his Proceedings, and of the Injury he had done, both to his Wife and Brother; as so abrupt a Separation could not fail to put them in the Mouth of the World. He therefore wrote to his Brother the Lieutenant,

pressing him most anxiously to return to the Family: The Pannel, as far as Decency would permit, joined in the same Request.

10th, At this unlucky Period was Mr. *Ogilvie* seized with a Return of one of those violent Disorders in his Bowels and Stomach. He had been almost dead the Day before; he relapsed at Night, complained much, thought himself a dying, continued ill all Night; finding himself easier, arose in the Morning as usual; again turning bad, returned to Bed, where he took a Bowl of warm Tea and Biscuit; after which he made another Effort, got up, put on his Cloaths, went abroad to take the Air, relapsed, fell a vomiting, threw up a deal of Bile, and expired about Twelve that Night.

11th, The Pannel's Behaviour upon that melancholy Occasion was decent and becoming, expressive of the real Sorrow and Grief she felt. The Tale that is told of her having administered the Poison in a Bowl of Tea that Morning, will be disproved in the strongest Manner. She had none to administer; and every Circumstance, as it is expected to come out on Proof, will shew, that she had it not in her Power so to have done, had she intended it; and that *de facto* none was administered.

12th, Mr. *Ogilvie's* Corpse remained uninterred until the 11th. It was viewed by Physicians and Surgeons of Character and Skill: The Appearances were nothing but what is usual in natural Distempers proceeding from various internal Causes. A Dissection of the Body would easily have shown whether there had been Poison in the Case or not; and it was the Duty of *Alexander Ogilvie* the Informer, who had come to the House, and stopped Interment for one Day upon this very Suspicion, to have caused the Body to be laid open. This was not done; whereby the infallible Means were lost of detecting the Crime, if any was committed, and this unhappy Pannel was deprived of the only infallible Means of proving her Innocence.

These are the great Lines of principal Facts which the Pannel proposes to prove: Many others to the same Tendency, will, it is expected, come out in leading the Proof; and she flatters herself, that these, with an intelligent Jury, will be effectual to detect the Falsehood of this Accusation, and to vindicate the Character and Innocence of an unfortunate young Woman, whose present State, several Months gone with Child, renders her a very improper Object to undergo a Trial of this Nature; which, from the Accumulation of two Capital Crimes in one Indictment, and the great Number of Witnesses given out in List, besides those to be adduced for her Exculpation, must draw out to an immoderate Length.

CROSBIE, for Lieutenant *Patrick Ogilvie*, Pannel, repeated his signed Defences; and represented, That the said Lieutenant *Patrick Ogilvie* having obtained a Commission in the Regiment, he behaved in the Execution thereof in a proper and inoffensive Manner; and being ordered along with his Regiment to the *East-Indies*, he remained there till his Health obliged him to return Home; when he came to the House of *Eastmeln*, where his Brother resided, who was then about to be married to *Katharine Nairn*, the other Pannel, and where he continued for some Time with an inoffensive

inoffensive Character; suitable to that which he had maintained in the Regiment in which he had served, of which there are many Officers ready to attest the Character he held.

About the Time that the Pannel *Patrick Ogilvie* returned Home, and about the same Time that the defunct *Thomas Ogilvie* of *Eastmiln* was married to *Katharine Nairn*, *Alexander Ogilvie*, the third and youngest Brother of the Family, married the Daughter of one *Ratray* a Porter, a Person greatly inferior in Rank to himself; and his Relations, and immediate Connections, highly disapproved of the Match, and alienated themselves from him on that Account. This Marriage happened near about the Time that the deceased *Thomas Ogilvie* was married to the Pannel *Katharine Nairn*.

There was one *Anne Clark*, who was related to the Family of *Eastmiln* by the Mother's Side. This Woman had for several Years resided as a Servant in a House of dissolute Reputation in *Edinburgh*, and which, as a House of bad Fame, had regularly been visited by the Constables. Some Months, at least Weeks, however, before the Marriage of *Alexander Ogilvie*, she had cohabited with him in the same Room, and the same House; and after his Marriage she had lived in his Father-in-law's House. In consequence of all which it may be presumed a very particular Intimacy had arisen between her and the said *Alexander Ogilvie*.

The Friends of the Family of *Eastmiln* had taken Umbrage at the Marriage of *Alexander Ogilvie* with the Daughter of a common Porter; he thought it necessary, therefore, to send some Person to interpose as a Mediator with that Family; and the Person he made choice of was *Anne Clark*.

Anne Clark was accordingly dispatched to the House of *Eastmiln*. She was received, without Suspicion, as a Relation of the Family; and, in that Character, without Inquiry into her former Life and Conversation, she was treated as an Equal, and a Gentlewoman.

Such was the Pretext of sending *Anne Clark* to the House of *Eastmiln*: Something deeper, however, seems to have been intended. The deceased *Thomas Ogilvie* of *Eastmiln* had for many Years been subject to consumptive Symptoms; he had been afflicted with Ulcers in his Bowels, which had been discovered at the Distance of about five Years before his Death; ever after he had been in a valetudinary State; and there was Reason to apprehend he would not be long-lived. The Relations of Mrs. *Ogilvie*, in particular, had shewn some Apprehensions, that by his premature Death the Provisions in her Favour might be rendered ineffectual. The Pannel *Patrick Ogilvie* was also in a bad State of Health: He had been obliged to return from the *East-Indies*, where he had been in Service with his Regiment, on account of his valetudinary Habit: And from the Situation which the two elder Brothers were then in, there is the greatest Reason to believe, that *Alexander Ogilvie* had entertained the most sanguine Hopes of Succession to the Estate; which, by the Marriage of *Thomas*, and the Return of *Patrick* for the Recovery of his Health, seemed likely to be disappointed.

That Issue should not be procreated between *Thomas Ogilvie* and *Katharine Nairn* his Wife, and

that *Patrick Ogilvie* should be obliged to betake himself to those inhospitable Climates which he had left, and whose Inclemencies had well nigh already put an End to his Life, seemed desirable Objects in the Eyes of *Alexander Ogilvie*. To promote Diffension, therefore, between *Thomas Ogilvie* and his Wife, and to alienate the Mind of *Patrick Ogilvie* the Pannel, from this Country, seemed to have been the Purpose for which *Anne Clark* was dispatched from *Edinburgh*. As a Relation of the Family, she was received with implicit Confidence at *Eastmiln*, particularly by the Pannels, who were little aware what a Snare was prepared for their unguarded Confidence.

Miss *Clark* had but a short Time resided at the House of *Eastmiln*, when she made it her Business to sow Diffension and Animosity among all the Members of the Family. She endeavoured to inspire Mr. *Ogilvie* with Jealousy towards his Wife, and Distrust towards his Brother: And she was but too successful in her Endeavours; Mr. *Ogilvie*, a sickly Man, and too susceptible of such Impressions, was soon misled by the artful Miss *Clark* into a Belief of what, if he had trusted his own Judgment, he could never have supposed.

The Period which was chosen to insinuate these Jealousies was remarkable. The Pannel Lieutenant *Patrick Ogilvie* had some Differences with his elder Brother, concerning his Patrimony; for a Dispute had occurred about the Balance of a Bond of Provision resting owing to *Patrick Ogilvie*. Miss *Clark* laid hold of that Opportunity to propagate her malicious Alledgences; and in the Heat of a Conversation which arose concerning the Balance of this Bond of Provision, and what *Thomas* had done with it after he took it up from the Custodier, the Deceased first insinuated his Apprehension of an improper Intercourse between the two Pannels.

To Minds already heated by a Dispute concerning Money-matters, this Incident served to add greater Warmth. The two Brothers parted with some Animosity, the Pannel *Patrick* declaring his Intention never to return to the House of *Eastmiln*.

The Intention of the Pannel was, after visiting his Friends in the Country, as he had now tolerably recovered his Health, to return to his military Service in the *East-Indies*; hoping, by means of this, to avoid both the Jealousy of his Brother, and the Envy of his other Relations. Though often solicited, therefore, to return to his Brother's House, he kept always at a Distance, from that Day when he discovered the first Symptom of Jealousy.

Mrs. *Ogilvie*, the other Pannel, had for some Time before this complained of bad Health; and particularly she complained of Want of Sleep: On account of her Complaints she had been in use to take Salts and Laudanum as Medicines. In the hearing of the Pannel she had expressed her Desire to have some of these Medicines; and as he, while at Sea, had been in use to take both on account of his bad State of Health, and in a short Time expected one of his Sea-chests would arrive, in which he had a Quantity of both, he proffered to her to send her some Laudanum and Salts, as soon as the Trunk or Chest they were in should be brought to the Country: And she told him she would be obliged

to him for them, as they were so ill to be had of a proper Kind in that remote Part of the Country.

After the Pannel had left the House of *Eastmilk* in the Manner above-mentioned, his Trunk or Chest came to hand; it was brought from *Dundee* by *Andrew Stewart*, Merchant in *Alyth*, to his House; and was, in his Presence, in the public Shop, opened by the Pannel; who has Reason to believe, that the said *Andrew Stewart* observed both the Salts and Laudanum that were therein. But the Quantity of Laudanum proving very small, as a great Part of it had been used during the Voyage, the Pannel found himself under the Necessity of purchasing a small Quantity of Laudanum, in order to send as much as was requisite to Mrs. *Ogilvie*. He did accordingly buy a small Quantity of Laudanum for this Purpose; which, together with what he already had, he put into a Phial, and with two Doses of Salts, which, in the Presence of *Andrew Stewart*, he took out of the Chest or Trunk aforesaid, put up, and sent by the said *Andrew Stewart*, who was going on an occasional Visit to see *Eastmilk* and Mrs. *Ogilvie*.

What Symptoms attended the deceased Mr. *Ogilvie*'s last Illness, the Pannel, not having been at the House of *Eastmilk*, cannot, from his personal Knowledge, pretend to say. As far as he has been able to inform himself, however, he cannot discover, that there is the least Evidence that he died by Poison. Nor did the Pannel, on any Occasion, pretend to hinder a Dissection of the Body, or any other Mean of Discovery, whether the Defunct had died of Poison or not. On the contrary, he urged and insisted, that such Trial should be made. And he having sent for a Surgeon to inspect and open the Body, the Person whom he had dispatched Express for that Purpose, was privately stopped by *Alexander Ogilvie*, the younger Brother, who is the Person on whose signed Information he was originally committed to Prison.

Such are the material Facts which the Pannel apprehends he is called on to explain, in Vindication of his good Fame: And to these Facts he subjoins the following Defence, in Terms of the Statute.

1st, That the Libel contains a *Cumulatio actionum in criminalibus*, which is reprobated in Law.

2^{dly}, That so far as relates to the Incest, the Libel is utterly vague and inconclusive, being destitute of all Circumstances of Time or Place, or other Requisites that can enable the Pannel to make a pointed Defence; and therefore ought not to pass to the Knowledge of an Assize.

3^{dly}, The Libel, as far as respects the Crime of Poisoning, is utterly irrelevant *quoad* this Pannel.

LOCKHART, for Katharine Nairn, } Adhering to
RAE, for Patrick Ogilvie, } the Defences
severally proponed for them, represented, That the Indictment charges the Pannels with Incest committed betwixt them, in the Months of *January* and *June*, and intervening Months, and before the 12th Day of the said Month of *June*: That the said *Katharine Nairn* and the deceased *Thomas Ogilvie* were not married till the 30th Day of the said Month of *January*; and to instruct that, produces and opposes their Contract of Marriage,

dated the 29th of *January*, and they were married the subsequent Day. And therefore contended, That as to the Month of *January*, the Indictment could not go to Proof, farther than as to the last Day of that Month.

2^{dly}, As the deceased *Thomas Ogilvie* died on the 5th of *June*, the Time intervening betwixt that and the 12th, were equally irrelevant, as Incest could not be committed with the Widow after the Death of the Husband, at least to infer the Pains of Law, by which, in our Practice, are generally meant the Pains of Death.

Sir DAVID DALRYMPLE, for the Prosecutor, answered, That *cumulatio actionum criminalium*, is established in the Practice of the Justiciary Court; and in this Case is particularly necessary and proper. That it is established in the Practice of the Justiciary Court, is evident by the following Examples, selected from many of the same Nature which occur in the Books of Adjournal.

16th *February*, 1580. *Andrew Glencorse* indicted for poisoning his Wife, and for Incest with his Wife's Mother.

6th *September*, 1610. *William Douglas* of *Lindcluden*, Slaughter and treasonable Theft, being a landed Man.

30th *March*, 1638. *Isobel Kailtie*, notour Adultery, and murdering two Children born of the adulterous Intercourse.

30th *March*, 1638. *Andrew Harvie*, Art and Part of the Murder of *Isobel Dalgleish*, and of Adultery with *Helen Stevenson*.

27th *July*, 1642. *Margaret Cunningham*, Adultery, and Murder of the Child born in the Adultery.

12th *March*, 1645. *John Gordon*, Bigamy, Adultery, and Theft.

28th *March*, 1646. *Margaret Thomson*, Adultery and Forgery.

20th *December*, 1649. *James Wilson*, Incest with his Wife's Daughter, and Adultery with another Woman.

21st *April*, 1664. *John Swinton* and *Janet Brown*, notour Adultery and Murder of *Swinton's* Wife.

27th *May*, 1665. *Margaret Hamilton*, Adultery and Murder of her Husband.

9th *April*, 1670. Major *Thomas Weir*, Fornication, Adultery, Incest, and Bestiality.

12th *September*, 1678. *Isobel Hay*, Adultery, and Murder of her adulterous Child.

15th *January*, 1694. Doctor *John Elliot*, *Daniel Nicolson*, and *Marion Maxwell*, Murder, Falsehood, Forgery, and notour Adultery.

9th *November*, 1702. *Margaret* and *David Myles*, Incest and Child-Murder.

9th *November*, 1703. *Mary Graham*, Incest with her Father, and Child-Murder.

21st *February*, 1706. *Elizabeth Hunter*, Incest and Adultery.

As this *Cumulatio actionum criminalium* is fully established by Practice, so in this Case it is particularly proper and necessary: The two Crimes charged, Incest and Murder, are, from the Circumstances of the Charge, intimately connected; and it is proposed in general to prove both by the same Witnesses. To make separate Trials for each Crime would be oppressive to the Witnesses, the Jury, and the Parties. It is true that Accusations for different Crimes may be thrown

thrown into one Libel, in such Manner as to prove oppressive. Whenever this is attempted, the Court will interpose; but not in order to prevent the Trial of different Crimes in one Libel where nothing oppressive is meant, and where the Expediency of the *Cumulatio actionum* is obvious. As to what is said, that the Charge for Incest is unintelligible or vague, it is answered, That it is laid in Terms the most unexceptionable, in the express Words of an Act of Parliament; and surely the Legislature must be presumed capable of conveying by Words, a just Idea of the Crime which it meant to punish. — As to what is said, that the Libel for Incest is vague, charging the Crime as committed in *January* and *June* 1765, and the intervening Months, it is answered, That in all Criminal Indictments a Latitude of this Kind is allowed in Practice; for Witnesses may be distinct as to the Circumstances of the Crime charged, and yet may not be certain as to a Day, or even as to a Month. Indictments do generally comprehend the Term of three Months. In the Case, the King's Advocate against *Olipphant*, 4th *February* 1736, a Libel for a single Act of Sodomy, bearing two Months in one Year, and two in another, was held sufficiently articulated; and in that Form was remitted to the Knowledge of an Assize. When an Indictment contains the Charge of a Crime, which in its own Nature is capable of frequent Repetition, as Incest is, a still greater Latitude is allowed. Thus in the Case of *Forbes* 1758, tried for corrupting young Girls, an Indictment was remitted to the Knowledge of an Assize, although it bore that the Crime was committed in some one or other of the Months from *May* 1757, to *April* 1758, inclusive. — If the Pannel Mrs. *Ogilvie* was not married till the 30th of *January*, 1765, the Charge of Incest preceding that Date will cease of course. If it shall be proved that she and Lieutenant *Ogilvie* defiled their Bodies after the Death of *Eastmiln*, it may not perhaps be Capital Incest by the Act 1567, which refers to the xviiiith Chapter of *Leviticus*; but it will nevertheless be Incest punishable in Law: And if no Incest but what was committed after the Death of *Eastmiln* should be proved, then the Jury will find accordingly, and the Court will adapt the Punishment to the Offence. As to what is said, that the Murder by Poisoning is not properly laid against Lieutenant *Ogilvie*, it is answered, That the contrary appears from the Tenor of the Indictment. But although this were not the Case, yet he is charged as guilty Art and Part of that Crime, which is in Law a relevant Indictment, and as such must be remitted to the Knowledge of an Assize.

“ The Lord Justice-Clerk and Commissioners
 “ of Justiciary, having considered the Criminal
 “ Indictment raised and pursued at the Instance
 “ of *Thomas Miller* of *Barskimming*, Esq; his
 “ Majesty's Advocate, for his Majesty's Interest,
 “ against *Katharine Nairn*, Widow of the deceased
 “ *Thomas Ogilvie* of *Eastmiln* in the County of
 “ *Forfar*, and *Patrick Ogilvie*, Lieutenant of the
 “ eighty-ninth Regiment of Foot, Brother-
 “ german of the said deceased *Thomas Ogilvie*,
 “ Pannels, with the foregoing Debate, repell
 “ the haill Objections made to the Form of the
 “ Indictment; and find the said Indictment

“ relevant to infer the Pains of Law: But allow
 “ the Pannels and each of them to prove all
 “ Facts and Circumstances that may tend to
 “ their Exculpation or Alleviation of their
 “ Guilt; and remit the Pannels with the Indict-
 “ ment as found relevant to the Knowledge of
 “ an Assize.”

(Signed) GILB. ELLIOT, I. P. D.

“ The Lord Justice-Clerk and Commissioners
 “ of Justiciary continue the Diet against the said
 “ *Katharine Nairn* and Lieutenant *Patrick Ogilvie*
 “ Pannels, till *Monday* next, the twelfth Instant,
 “ at Seven o'Clock in the Morning; and ordain
 “ Parties, Assizers, Witnesses, and all concerned,
 “ then to attend, each under the Pains of Law;
 “ and the Pannels in the mean time to be carried
 “ back to Prison.”

*Curia Jusficiaria, S. D. N. Regis, tenta in Nova
 Sessionis Domo de Edinburgh, sexto die Augusti,
 millesimo septingentesimo sexagesimo quinto, per
 Honorabiles Viros Dominum Gilbertum Elliot de
 Minto, Baronetum, Dominum Jusficiarium Cle-
 ricum, Alexandrum Boswell de Auchinleck, An-
 drean Pringle de Alesmoor, Henricum Home de
 Kames, Jacobum Ferguson de Pitfour, et Georgium
 Brown de Coalston, Commissionarios Jusficiarie
 S. D. N. Regis.*

Curia legitimè affirmata.

The which Day, there was a Petition presented to the said Lords in the Names of *Katharine Nairn*, Relict of the deceased *Thomas Ogilvie* of *Eastmiln*, and Lieutenant *Patrick Ogilvie*, Brother to the said *Thomas Ogilvie*; humbly shewing,

That the Petitioners stood indicted before their Lordships, at the Instance of his Majesty's Advocate, for the alledged Crimes of Incest and Accession to the supposed Murder of the said *Thomas Ogilvie*.

That the Petitioners had pleaded Not Guilty to this grievous Accusation; and were confident, that in the Course of the Trial their Innocence would be fully vindicated to the Satisfaction of the Court and Jury.

That as the Petitioners did assert, and had good Reason to believe, that that Prosecution took its Rise from Malice, and most false and injurious Calumnies raised and propagated by Persons, who, from most unjust Views, have been desirous of ruining the Petitioners; it was therefore highly necessary and just, that the Petitioners, who were then to undergo that solemn Trial for their Lives, should be secured as far as possible against every Kind of Influence and undue Practice, that might, or could be used, upon Witnesses to be adduced in that Cause.

That, among other Misfortunes under which the Petitioners laboured, they had been accused, by Report, of Endeavours to secrete material Witnesses in that Matter; and though conscious of their Innocence in that, as well as in other Respects, yet several of the Witnesses have, on that or some other Account, been secured as Prisoners in the Castle of *Edinburgh*.

That, among these Witnesses, was *Anne Clark*, designed Daughter of the deceased *Allan Clark*, Officer of Excise, who is now confined in the same Room with two or more Maid-Servants, who were in the House of *Eastmiln* at the Time

of *Thomas Ogilvie's* Death, and who would be most material Witnesses for the Petitioners in that Cause.

That the Petitioners would make it appear, by uncontestable Evidence, that the said *Anne Clark* was not only a Person of the worst Character and Disposition, such as rendered her improper and inhabile to be received as a Witness; but also, that she had entertained and expressed deadly Malice and Hatred against both the Petitioners; and that, in pursuance thereof, she had been the Author and Propagator of the false and malicious Stories which had given Rise to the present Prosecution. And, in fine, that she was in a Combination to ruin the Pannels, and, as far as she could, to deprive them of their Lives, as well as their Reputation.

That it would occur to their Lordships, that the Petitioners were exposed to imminent Danger by the said *Anne Clark's* being constantly confined in the same Room with other material Witnesses, whose Sex, Station, and Inexperience, though otherwise honest and well inclined, might expose them to be influenced and prejudiced by the malicious Endeavours of that artful Woman. For these Reasons, the Petitioners were confident, that their Lordships would forthwith give Orders for separating the said *Anne Clark* from the said other Witnesses. *Therefore praying*, That it might please their Lordships forthwith to grant Warrant to the Deputy-Governor of the Castle of *Edinburgh*, or any other proper Officer, to remove the Person of the said *Anne Clark* from the Room in which she was presently confined; or otherwise to separate her from the said Maid-Servants, and to keep her separate from them, or any other Witnesses to be adduced against the Petitioners in that present Prosecution. According to Justice, &c.

(Signed) HENRY DUNDAS. DAV. RAE.

Edinburgh, 6th August, 1765.

I THOMAS MILLER, Esq; his Majesty's Advocate, consent, That the Prayer of the within Petition be granted; but upon this express Condition, that no Person whatever be admitted or have Access to any of the said three Witnesses, except in Presence of one or other of the Officers of the Court of Justiciary, which their Lordships shall think proper to appoint.

(Signed) THO. MILLER.

“ The Lord Justice-Clerk and Commissioners
“ of Justiciary having seen and considered the
“ foregoing Petition, with the Consent of his
“ Majesty's Advocate subjoined thereto, recom-
“ mend to the Depute-Governor of the Castle of
“ *Edinburgh*, or other proper Officers, to cause
“ remove the said *Anne Clark* from the Room
“ where she and the other two Women before-
“ named are presently staying, into some other
“ Room in the said Castle, until *Monday* next
“ the twelfth Day of *August* current; and also
“ recommend as above, that Care be taken that
“ no Person get Access to any of the said three
“ Women, betwixt and that Time, except in
“ Presence of *Robert Auld*, Writer, or *Andrew*
“ *Murison*, Macer of this Court, or either of
“ them.

(Signed) GILB. ELLIOT, I. P. D.”

Curia Justiciaria, S. D. N. Regis, tenta in Nova Sessiois Domo de Edinburgh, duodecimo die Augusti, millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Justiciarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale Moor, Henricum Home de Kames, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, Commissionarios Justiciariæ S. D. N. Regis.

Curia legitime affirmata.

Intran.

KATHARINE NAIRN, Widow of the deceased *Thomas Ogilvie* of *Eastmiln*,

AND

PATRICK OGILVIE, Lieutenant of the eighty-ninth Regiment of Foot, Brother-German of the said deceased *Thomas Ogilvie*;

Both present Prisoners in the *Tolbooth* of *Edinburgh*;

PANELS.

Indicted and *accused* as in the former *Sederunt*.

The Interlocutor on the Relevancy being read over to the Pannels in open Court,

The Lords proceeded to make choice of the following Persons to pass upon the Assize of the said Pannels :

Sir James Clark of *Pennycaik*.

John Howieson of *Braehead*.

John Christie of *Baberton*.

Adam Cuninghame of *Bonnytown*.

Alexander Sheriff of *Craigleith*.

David Dundas younger, of *Newballs*.

Sir George Suttie of *Balgonie*.

Charles Hay of *Hopes*.

William Ramsay of *Preston*.

John Forrest senior, Merchant in *Edinburgh*.

George Chalmers, Merchant in *Edinburgh*.

Gavin Hamilton, Bookseller in *Edinburgh*.

Archibald Wallace, Merchant in *Edinburgh*.

John Borthwick of *Cruikston*.

Thomas Brown of *Braid*.

The above Assize being all lawfully sworn, and no Objection to the contrary,

His Majesty's Advocate proceeded to call the following Witnesses :

DAVID RATRAY younger, in *Cammock* in the Parish of *Glenylla*, aged forty-two, married, purged of Malice and partial Counsel, sworn, and interrogate, depones, That he lives in the Neighbourhood of *Eastmiln*, and did hear it talked in the Country, that Mrs. *Ogilvie* the Pannel, and Lieutenant *Ogilvie* the other Pannel, lived in too familiar a Way, and walked out together without others in their Company: That the Deponent himself once saw them at their Walk, when there was no body with them, when they were leading other Arm in Arm, and at that Time he saw the Pannel Lieutenant *Ogilvie* kiss Mrs. *Ogilvie* the other Pannel once: That this happened after the late *Thomas Ogilvie* of *Eastmiln's* Marriage with the Pannel, and before his Death; cannot remember the precise Time, but there was a Storm on the Ground then: That at the above-mentioned

mentioned Time the Pannels were walking near the House of *Eastmiln*, crossing the King's Highway, when the Witnesses saw as above, when he was no farther from them than the fourth Part of a quarter of a Mile; and that the Pannels were in a hollow Way when he saw Lieutenant *Ogilvie* give the other Pannel one Kiss as above. *Causa scientie patet.* And this is Truth, as he shall answer to God.

(Signed) DAVID RATTRAY. GILB. ELLIOT.

JOHN LAMAR in *Craigendeach* in the Parish of *Glenylla*, aged forty-seven, married, purged of Malice and partial Counsel, sworn and interrogate, depones, That he lives very near *Eastmiln*, and has heard the clashing People of the Country commonly report, that the Pannel Mr. *Ogilvie* liked Mrs. *Ogilvie* the other Pannel too well; and that a Dispute in the Family of *Eastmiln* about that Time arose, which took its Rise, as was said, from a Suspicion, that the two Pannels liked other too well: That upon this Mr. *Ogilvie* the Pannel left the House of *Eastmiln*, as was reported, upon the above Suspicion; and it was even said in the Country, that the two Pannels loved one another too well: That the Deponent himself knows, that Mr. *Ogilvie* the Pannel went away from the House of *Eastmiln*, about a Fortnight, as he thinks, before *Eastmiln's* Death, and the Deponent saw him return to the House of *Eastmiln* the Morning after *Eastmiln's* Death: That before Mr. *Ogilvie* the Pannel left *Eastmiln's* House, the Deponent has often seen the two Pannels walking Arm in Arm, and their Arms about each other's Neck: That he has seen them in that Posture at their Walk, even when Miss *Clark* and the Laird of *Eastmiln* himself were in Company, as well as when there was no body else with them. Depones, That the Report of the Love between the two Pannels he did not hear in the Country till after Lieutenant *Ogilvie* had left the House of *Eastmiln* as above; and that he never saw the Pannel Mrs. *Ogilvie* till after her Marriage: That since the Marriage he has seen Dr. *Alexander Ogilvie*, a Brother of *Eastmiln's*, at the House of *Eastmiln*; and that *Anne Clark*, a Witness cited in this Trial, was there before him and at the same Time: That the Deponent's House lies at about a quarter of a Mile's Distance from *Eastmiln's* House on the other Side of the River, from whence it is easy to see any Person who comes out or goes into the House of *Eastmiln*. *Causa scientie patet.* And this is Truth, as he shall answer to God. And depones he cannot write.

(Signed) GILB. ELLIOT.

JAMES BARNET, Son to *Alexander Barnet* in *Cammock* in the Parish of *Glenylla*, aged fifteen Years, unmarried, purged of Malice and partial Counsel, sworn, and interrogate. *Dismissed.*

JOHN GILLOCH, Wright in *Dalnakebock*, aged twenty-six Years, married, purged of Malice and partial Counsel, sworn, and interrogate, depones, That, about a Fortnight after *Eastmiln's* Marriage, the Deponent was sent for to the House of *Eastmiln* to put on some Locks and Brags-Work upon a Drawer: That accordingly the Deponent went to the Room where the Drawers stood, in which Room he saw the Pannel Mr. *Ogilvie* lying in Bed: That when he was so

employed, Mrs. *Ogilvie* the Pannel came to the Room-Door where the Deponent was at Work, she having heard him, as he supposed, at Work. Upon Mr. *Ogilvie* the Pannel observing her, he desired her to come in: That after having said to the Deponent, *John, are you begun?* she went in and asked Mr. *Ogilvie* the Pannel, *What! are not you up yet?* and then she went towards the Bed-side, where stood a little Chest, upon which she sat down, and then they eat some sweet Bread together, which had been got at a Market. Depones, That he observed her Hand about the Bed-cloaths, just upon Lieutenant *Ogilvie's* Breast; at which Time she said to him, *You are not poor, but pretty fat;* but did not observe whether her Hand was below the Bed-cloaths, or above. Depones, That when Mrs. *Ogilvie* the Pannel was going out of the Room, Lieutenant *Ogilvie* kicked up the Bed-cloaths with his Feet, and threw them up upon his Body; upon which Mrs. *Ogilvie* said, *Ab! you daft Dog!* and the Deponent at that Time saw so much of the said Lieutenant *Ogilvie's* Body, that he the Deponent could judge whether he was a Man or a Woman: That after Breakfast, Mrs. *Ogilvie* came to where the Deponent was at Work, and gave him a Dram; and Lieutenant *Ogilvie* being present, she gave him also a Dram, for he was by that Time dress'd. Depones, That the Week before *Eastmiln's* Death, the Deponent went to *Eastmiln* to do some Work: That when he was sawing, *Elizabeth Sturrock*, then a Servant in that Family, came to the Deponent, and asked him, If he knew which Way the Laird had gone? he said, he could not tell. Upon asking her why she put such a Question, she answered, That as Lieutenant *Ogilvie* was expected at *Eastmiln* that Day, she could wish the Laird and he might not meet. And depones, That he the Deponent saw *Eastmiln* walk away from the House some Time before. Depones, That on the Evening of the Day last-mentioned, as the Deponent was returning from his Work, he saw Mrs. *Ogilvie* the Pannel returning to *Eastmiln*, upon the Road that leads from the *Kirkton* to that Place, and observed Mrs. *Ogilvie* and *Anne Clark* meet upon that Road; and that same Night he saw Mr. *Ogilvie* the Pannel standing at the *Kirkton*, which is not a quarter of a Mile from *Eastmiln*: That, at the Time above-mentioned, when Lieutenant *Ogilvie* kicked up the Cloaths, and the Lady said to him, *Ab! you daft Dog!* the Deponent does not think she saw the Condition the Lieutenant's Body was in, as she was then going out of the Room. Depones, That while Mrs. *Ogilvie* was sitting upon the Chest by Lieutenant *Ogilvie's* Bed, as above deponed to, the Deponent could see Mr. *Ogilvie's* Breast from the Posture he was then in. Being interrogate for the Pannel, depones, That when he saw Mrs. *Ogilvie* the Pannel upon the Road from the *Kirkton* returning to *Eastmiln*, as above deponed on, and *Anne Clark* upon the same Road, that they were both walking towards *Eastmiln*, and *Anne Clark* foremost. *Causa scientie patet.* And this is Truth, as he shall answer to God.

(Signed) JOHN GILLOCH. GILB. ELLIOT.

KATHARINE CAMPBELL, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*, being called; against adducing of whom it was objected, That she ought not to be received as a Witness, no Execution being returned against her twenty-four

Hours before the Diet of Compearance, conform to the Forms of Court established. 2do, That she bears Ill-will and Malice against the Pannel Mrs. *Ogilvie*, having been dismissed her Service for Theft; on which Occasion she expressed Resentment in strong Terms, and swore Revenge, which is offered to be proved *instante*.

Sir DAVID DALRYMPLE answered, on the Part of his Majesty's Advocate, That the *first* Objection ought to be repelled. The Fact is, that this Witness was given out in List with others; but as she had gone into a distant Part of *Scotland*, could not be cited by the Messenger so soon as the other Witnesses were. She was cited on the *Saturday* before the first Diet of Compearance; but the Execution did not come up to *Edinburgh* till after that Diet. Upon its being received, it was on *Wednesday* last in the Forenoon given out to the Agents for the Pannels. The Act 1672 ordains, That the List of Witnesses be given out with the Indictment, and this was done here; but no Law requires that the Executions should be returned into Court twenty-four Hours before the first Diet of Compearance: In the present Case it was impossible that the Execution could be sooner produced, and the Pannels can suffer nothing by this; for they saw the Name of the Witness in List, and they have had more Time for this Purpose than they would have had, if the Execution had been given out twenty-four Hours before the first Diet of Court, and then the Relevancy had been determined and the Proof taken at the same Diet.

As to the *second* Objection, it ought also to be repelled. No particular Condescendence has been made of Malice or Cause of Malice at this Time, and the Witness will be purged of Malice in the Initials of her Oath in common Form; and therefore the Objections ought to be repelled, agreeable to the universal Practice of the Court.

“ The Lord Justice-Clerk and Commissioners of Justiciary, having considered the foregoing Objections and Answers thereto, repel the Objections, and allow the Witness to be received; reserving to this Consideration of the Court, whether or not any special Expressions of Malice and the Cause thereof, that may be condescended on by the Pannels in their Exculpation, shall be admitted or not.

(Signed) GILB. ELLIOT, I. P. D.”

On pronouncing of which Interlocutor, Mr. *Alexander Lockhart* Advocate, Procurator for the Pannels, protested for Remeid of Law; and that any Interrogatories he shall put afterwards to this or other Witnesses, during the Trial, shall not be deemed a passing from this Protestation.

It being represented to the Court, That *Katharine Campbell*, the Witness before-named, could speak the *English* Language but very ill; and that an Interpreter or Interpreters would be necessary to interpret what she said in the *Irish* or *Erse* Language into the *English*; and *Robert Gray*, Writer in *Edinburgh*, and *James Frazer*, Writer to the Signet, having appeared, they were appointed to be Interpreters, and gave their Oaths as such *de fide*.

And the said KATHARINE CAMPBELL, aged twenty-seven Years, unmarried, solemnly sworn,

purged of Malice and partial Counsel, and examined, depones, That twenty Days after the deceased Mr. *Ogilvie* of *Eastmiln*'s Marriage with *Katharine Nairn* one of the Pannels, she was sent by the Lady *Glenkilrie*, her Sister, to serve as Washer-woman at *Eastmiln*: That the Deponent staid in that Service for ten Weeks: That about fourteen Days, to the best of her Remembrance, after she went there, the said deceased Mr. *Ogilvie* went from Home, and as she heard, to *Dunfinnan*: That before Mr. *Ogilvie* went to *Dunfinnan*, she observed Lieutenant *Ogilvie* the Pannel frequently kissing Mrs. *Ogilvie* the Pannel, and shewing a great Fondness for her: That the Deponent having said to Lieutenant *Ogilvie* the Pannel, that she thought he shewed too great Fondness for his Sister-in-law, and that it would not be worse if he shewed less, the Lieutenant answered, that his Brother desired him to be fond of her, to keep her chearful in the Beginning. Depones, That she saw the Lieutenant frequently holding the Pannel Mrs. *Ogilvie* in his Arms when he was kissing her. Depones, That when the deceased Mr. *Ogilvie* went to *Dunfinnan*, the two Pannels continued at *Eastmiln*: That the Deponent made up Beds for them in two separate Rooms: That the Room she made up for Mrs. *Ogilvie* was immediately above the Kitchen, where the Deponent slept: That before the Deponent went to Bed, her Mistress called down to her, if she was not yet to Bed; and that she thought, she saw the Deponent have a Light; the Deponent answered, she was not yet gone to Bed, but was going soon: That after the Deponent had gone to Bed, she heard the Pannel Mrs. *Ogilvie* utter these Words, *O fy, fy*; and that she heard the Bed moving as if somebody had been stirring in it: That the Deponent upon this became under great Terror, but thereafter fell asleep. That next Morning when she went up Stairs, she found the Lieutenant's Bed in the same State that she had made it up the Night before, and the Bed no Way discomposed as if one had lain into it. Depones, That some Time before she went to Bed, she went up to Mrs. *Ogilvie*'s Room, where she saw the Lieutenant sitting with her: That the Deponent proposed to mend the Fire in the Lady's Room, and to make a Shake-down there, for the Deponent's lying there all Night by her: That Mrs. *Ogilvie* desired the Deponent to go to her own Bed, for that she had no Difficulty to sleep in a House by herself. Depones, That the Cause of her being under the Terror as above, was, that she thought the two Pannels were then in Bed together. Depones, That she made up Mrs. *Ogilvie*'s Bed next Morning, which was much tossed and tumbled; but as Mrs. *Ogilvie* might have done this herself, the Deponent did not, from the Appearance of that Bed, form her Conjecture. Depones, That the Kitchen where the Deponent slept had no plastered Ceiling, so that the smallest Noise in the Room above could be heard there. Depones, That there were two other Servant-maids at *Eastmiln* at that Time, to wit, *Anne Sampson* and *Elizabeth Sturrock*. Depones, That she never heard, while she continued in *Eastmiln*, any Circumstances happening between the two Pannels, such as has been above described, except one Night as before mentioned; and remembers particularly that the other Nights that *Eastmiln* was at *Dunfinnan*, the Lieutenant's Bed in the Morning had the Appearance as if it had

had been slept in; and so had Mrs. Ogilvie's. Depones, That she never spoke of what she heard the Night above-mentioned, to the best of her Remembrance, till after she had left the House of *Eastmiln*, when she communicated the same to Lady *Glenkilrie*, the Pannel Mrs. Ogilvie's Sister. Depones, That the Deponent constantly slept in the Kitchen alone, while *Eastmiln* was at *Dunfinnan*, and all the Time she was in the Service. Depones, That, while the Deponent was in the Service at *Eastmiln*, there was a Sister of the Laird's married in his House; after which the whole Family went to *Dunfinnan*, and when they returned, all of them, except *Eastmiln* and his Mother, expressed Dissatisfaction with the Deponent, but upon what Occasion they never explained to her. And being further interrogate, depones, That the Motion she heard in the Room above her, deponed to above, she then thought was the Motion of a Man and Woman in Bed together, and such as a Husband and Wife have together; and that she would have been of this Opinion, though she had not seen the Lieutenant's Bed unruffled next Morning. And being interrogate by one of the Jury, depones, That she always considered that it was *Anne Clark* who stirred up her Mistress against her the Deponent. And being specially interrogate, depones, That the Night aforesaid, when she heard the Noise in the Bed above described, she slept none till towards the Morning; then fell asleep, awakened again in a Fright, and told the old Lady *Eastmiln* that she was under Terror, but did not explain the Cause. Depones, That *Anne Clark* was not come to the Family at the Time the Laird went to *Dunfinnan*, and she heard the Noise as above in the Bed. And being interrogate for the Pannels, depones, That *Anne Clark* came to *Eastmiln* about a Fortnight, to the best of the Deponent's Remembrance, after the Deponent came there. And further depones, upon the Pannels Interrogatory, That she did not hear the Motion above-mentioned, but at the Time above deponed to, and did not hear these Motions repeated at any other Period that Night. Further depones, That while she staid in the House, she made all the Beds without the Assistance of any of the other Servants. And, upon Recollection, depones, That she slept in the Kitchen by herself ever till *Anne Clark* came to the House; but after she came, *Elizabeth Sturrock* slept in the Kitchen with her the Deponent. Depones, That *Anne Clark* met the Laird as he was going to *Dunfinnan*, and came to *Eastmiln* two Nights before he returned. Further depones, That when she found Lieutenant *Ogilvie's* Bed in the State above described in the Morning, as if no Person had lain in it, it was about Sun-rising: That she saw the Lieutenant come down Stairs, and Mrs. *Ogilvie* the Pannel was still in Bed: That she made up Mrs. *Ogilvie* the Pannel's Bed that same Day, but after Dinner: That when *Eastmiln* went to *Dunfinnan*, to the best of her Remembrance, he staid away three Nights, and came home the fourth. And upon the Oath being read over to her, desired that it might be marked, That what is said of her having made up Mrs. *Ogilvie's* Bed in the Morning, is a Mistake, and improperly taken down, for that it was after Dinner she made it up. Depones, That she never got any Wages but a Pair of Shoes from *Eastmiln*; and that when she asked her Wages, she was told by Mrs. *Ogilvie* the Pannel, in

Presence of *Anne Clark*, Lieutenant *Ogilvie*, and the deceased *Eastmiln*, that she was well off that she got Leave to go without Wages; and that the deceased *Eastmiln* followed her, and desired her to return, which she did, and staid for a Day; but that Mrs. *Ogilvie* next Morning turned her off. *Causa scientie patet*. And this is Truth, as she shall answer to God. And depones she cannot write.

(Signed) ROB. GRAY.
ALEX. BOSWELL.
JAMES FRASER.

ANNE CLARK, Daughter to the deceased *Allan Clark*, Officer of Excise, being called,

Mr. HENRY DUNDAS, for the Pannels, made the following Objections to her being received:

1^{mo}, That she is a Person of an infamous Character, being held and reputed to be a notorious Liar and Dissembler, a Disturber of the Peace of Families and Sower of Dissension, and also a common Whore and Prostitute.

2^{do}, That she has not only been held and reputed such as above described, but it will be clearly proved, that she lived and resided for no less than three Years and a half in a noted Bawdy-house within the City of *Edinburgh*, as a common Prostitute, notwithstanding that at the same Time the said House was frequently visited by the Constables as a House of bad Fame, and that frequent Disturbances happened therein, to the great Offence and Scandal of the Neighbourhood.

3^{tio}, The said *Anne Clark* did, in Confederacy with *Alexander Ogilvie*, Brother to the deceased *Thomas Ogilvie* last of *Eastmiln*, publish and propagate false, scandalous, and malicious Aspersions upon the Characters of the Pannels, relative to the Matters libelled, and did endeavour to make Dissension and Differences between the Pannel Mrs. *Ogilvie* and her deceased Husband. And,

4^{to}, The said *Anne Clark* does, and has entertained and expressed, on fundry Occasions before and since the Decease of the said *Thomas Ogilvie*, deadly Malice and inveterate Ill-will against both the Pannels, and has threatened repeatedly to do all she could to bereave them of their Lives.

Sir DAVID DALRYMPLE, on the Part of his Majesty's Advocate, answered, That all and every one of the Objections ought to be repelled; and that for the Reasons following:

With respect to the *first*, it is obviously irrelevant. No such Thing is ever allowed in the Practice of the Justiciary Court, as a general Proof of Character; and indeed, were it allowed, criminal Trials in *Scotland* would become inextricable; were the Character of each Witness to be thus inquired into, there would be as many separate Trials as there are Witnesses produced. Besides, were this new Form to be introduced, Witnesses would be deterred from appearing upon Citation given. Instead of being called to give Evidence, they would in Effect be called to stand an Inquiry upon the whole Conduct of their Lives. If they were to appear and undergo such a Scrutiny, they would come much worse prepared for their Defence than the Parties themselves when tried for the greatest Crimes. For the Parties know what is charged against them, and by what Evidence it is proposed to prove such Charge;

Charge; they are therefore enabled to prepare for their Defence. But Witnesses neither know what may be charged against them, nor by what Evidence it is proposed to prove such Charge; they are therefore incapable of preparing for their Defence. Indeed, by the Forms established in *Scotland*, the public Prosecutor himself has no Means of confuting such a Charge brought against a Witness. He may be possessed, as he is actually in the present Case, of Certificates from credible Persons to prove the Character of the Witness to be unblemished; but he is not at Liberty to produce them, because he must confine himself to the Examination of the Witnesses whose Names are given out with the Libel, and to the Evidence therein mentioned.

With respect to the *second* Objection; That the Witness is a common Prostitute, &c. it cannot be received in this Case; for the Crimes charged are occult Crimes, said to have been committed *infra Familiam*, and they can only be proved by Witnesses who resided in the Family, be their Character what it will. The Witness against whom the Objection is moved, did reside in the Family at the Period when the Crimes charged are said to have been committed. She was a near Relation of the Family of *Eastmiln*, was received and entertained as such, and had Occasion to have daily Intercourse with the Pannels. If such necessary Witnesses were to be rejected, it follows, that the Crimes charged could not be proved at all. Against the last Witness, *Katharine Campbell*, it was objected, That she had been turned out of the Family for some small Thefts; had vowed Revenge, and entertained Malice against Mrs. *Ogilvie* the Pannel. Against this Witness it is objected, That she is of an abandoned Character and a common Prostitute. Like Objections might be moved against every other Person of the Family called as Witnesses; and thus it would follow, that in the House of *Eastmiln*, the greatest Crimes might be committed with certain Impunity, because there were in the Family no Witnesses of irreproachable Characters, who might give Evidence of such Crimes.

With respect to the *third* Objection, it is no less irrelevant. If the Witness did spread such Reports as are mentioned in the Objection, from her proper Knowledge or just Suspicion of the Truth of the Matters libelled, she did nothing unlawful; and until the closing of the Evidence, it cannot be known whether the Reports, if spread by her, were true or false. It is therefore premature in the Pannels to offer to prove the Falseness of Reports while the Inquiry subsists, whether the Facts reported were true.

With respect to the *fourth* Objection of deadly Malice, it is a Charge in itself most improbable, That a Witness would deliberately resolve to perjure herself out of Malice. The Pannels ought to condescend, not only on the particular Expressions used, but also on the Cause of such deadly Malice. Were a general Proof of Malice expressed in Words to be permitted, then it would be in the Power of every Witness favouring the Pannel, to *incapacitate* himself from bearing Evidence to Facts which might be hurtful to the Pannel; and hence it is, that the Practice of the Court requires, that not only the Expressions importing Malice be proved, but that the probable Cause of such deadly Malice be also proved.

“ The Lord Justice-Clerk and Commissioners
“ of Justiciary, having considered the foregoing
“ Objections and Answers thereto, repell the
“ Objections; and allow the said *Anne Clark* to
“ be examined, reserving the Consideration of
“ the Alledgeance, as to the said *Anne Clark*'s
“ being the Author of the Report of the Pannels
“ Guilt, till their Exculpation; and also reserving
“ to the Consideration of the Court, whether or
“ not any special Expressions of Malice, that
“ may be condescended on by the Pannels in
“ their Exculpation, shall be admitted or not.

(Signed) GILB. ELLIOT, I. P. D.”

On pronouncing of which Interlocutor, Mr. *Alexander Lockhart* Advocate, Procurator for the Pannels, protested for Remedy of Law.

The said ANNE CLARK, Daughter to the deceased *Allan Clark*, Officer of Excise, aged thirty and upwards, unmarried, purged of Malice and partial Counsel, sworn, and interrogate, depones; That she was Cousin-german to the deceased Mr. *Ogilvie* of *Eastmiln*, and went to *Eastmiln* upon the first Day of *March* last: That her Reasons for going there were, not only to see *Eastmiln* and Mrs. *Ogilvie* who were then recently married, and Lieutenant *Ogilvie* who was then come from abroad, but also to endeavour to make up the Peace betwixt that Family and their Brother *Alexander*, who had entered into a very mean Marriage below the Rank of his Family: That after the Deponent had been some little Time at *Eastmiln*; she came to be informed, that Mrs. *Ogilvie* the Pannel was censured for being too familiar with the other Pannel, Lieutenant *Ogilvie*: That the Deponent informed Mrs. *Ogilvie* the Pannel of what she had thus heard; and desired Mrs. *Ogilvie* to be upon her Guard as to her Conduct, and to abstain from the Lieutenant's Company: That notwithstanding this, Mrs. *Ogilvie* was frequently in a Room by herself with the Lieutenant. Depones, That upon *Sunday* the nineteenth Day of *May* last, all the Family went to Church, excepting the two Pannels and the Deponent; and that they three staid together conversing in the lower Part of the House; but thereafter the two Pannels left the Deponent in the low Room, and went up Stairs together to the East Room above Stairs, which was the Lieutenant's Room, and immediately over Head of the Room where the Deponent was left: That she heard, by the Motion of the Feet, that both of them had entered the Room above, and, as she judged, they went towards the Bed; and thereafter the Noise of the Feet ceased: That upon this the Deponent, in order to discover what was passing, went up the Stair; and as the Bed in the Lieutenant's Room was an Alcove Bed, the Back of which came to the Side of the Stair, and there was nothing betwixt the Bed and the Stair, but a Piece of Plaster and the Timber of the Bed, so that a Person standing in the Stair could hear distinctly what passed in the Bed, she stood and listened; and from the Motions that she heard, is positive that they were in Bed together, and abusing their Bodies together; by which she means, they were lying carnally together. Depones, That immediately after this she came up to the Room where the Pannels were, and walked to the End of the Room, without looking into the Bed: That she then

turned and saw the Lieutenant, one of the Pannels, standing close by the Side of the Bed buttoning his Breeches; and she observed his Shirt at first out: That at this Time she observed Mrs. Ogilvie was in the same Bed; and that she saw her Cloaths which she had then on, which were a red and white Callico Bed-gown and Skirt. Depones, That the same Evening she told Mrs. Ogilvie the Pannel what she had seen and heard: That Mrs. Ogilvie made no Answer. Depones, That upon the *Monday* the Pannels repeated the same Thing, which the Deponent is positive of, because she saw them go out of the low Room, and heard them enter the Lieutenant's Room, move towards the Bed; and then the Deponent listened at the Stair, and heard the same Motions repeated: That, upon the *Tuesday* and the *Wednesday*, she heard them again retire together to that Room, and move towards the Bed; but she did not any of these two Days go to the Stair. Depones, That she told the deceased Mr. Ogilvie of *Eastmiln's* Mother, the Deponent's Aunt, what she had heard and seen; this she told her *Sunday* Night, *Monday*, and *Tuesday*. Depones, That she heard afterwards from the deceased *Eastmiln*, that his Mother had said to him, that the Pannel Mrs. Ogilvie, was troublesome to the other Pannel the Lieutenant: That, on Occasion of this Information, there was ill Blood and high Words between the two Brothers; and at length *Eastmiln* deceased, ordered the Lieutenant out of his House; and that this happened upon the *Thursday* immediately subsequent to the *Sunday* aforesaid. And further depones, That upon the *Sunday*, *Eastmiln*, as she believes, was at *Glenkilrie*: That the other Days he was at Home; but as he went to visit his Workmen every Morning, when the Pannels went together to the Lieutenant's Room as aforesaid, it was at the Times that *Eastmiln* was out with his Workmen. Depones, That Lieutenant Ogilvie left the House of *Eastmiln* about Three o'Clock Afternoon of the *Thursday* aforesaid: That, upon his leaving it, the other Pannel, Mrs. Ogilvie, went up to the Room which had been his, and threw herself down upon a Bed in that Room, different from the Alcove Bed above-mentioned, and there fell a-tearing and crying; and that, when her Husband came to the Room, she ordered him to go out of it: That *Eastmiln*, upon that Occasion, told his Wife, that her Conduct was improper, and that she would ruin her Reputation, by intermeddling in the Differences betwixt him and his Brother. And being further interrogate, depones, That, before the *Sunday* above-mentioned, the Deponent has frequently seen improper Familiarities between the two Pannels; particularly, she has seen them kissing one another, and him having his Hand down her Breast. Depones, That when the Lieutenant went off, as above-mentioned, and Mrs. Ogilvie was in the above Disposition, *Eastmiln*, as he had frequently upon former Occasions, when he and his Wife differed about the Lieutenant, expressed his Desire to go and leave his own House; and the Deponent, who at that Time saw little Prospect of Harmony between them, proposed to Mrs. Ogilvie, that she should agree to this Scheme, which she seemed very well pleased with; but that next Day both seemed to have changed their Mind. And being further interrogate, depones, That about a Fortnight or three Weeks after the Deponent went to *East-*

miln, the two Pannels and the deceased Mr. Ogilvie of *Eastmiln* having gone to pay a Visit at *Glenkilrie*, they all of them returned, as the Deponent thought, in very bad Humour; and, in particular, Mrs. Ogilvie the Pannel was so, and expressed her Dissatisfaction with her Husband, and said, If she had a Dose, she would give it him; but the Deponent at that Time did not think Mrs. Ogilvie serious in what she said: That thereafter, but she cannot precisely specify the Times, Mrs. Ogilvie did frequently signify to the Deponent, that she was resolved to poison her Husband; and told the Deponent, she intended to get Poison either from Mr. *Robertson* a Merchant in *Perth*, or Mrs. *Eagle* who keeps a Seedshop in *Edinburgh*, upon Pretence of poisoning Rats: That the Deponent, seeing Mrs. Ogilvie intent at that Time upon that Project, endeavoured to divert her from it by gaining Time, and signified, that if she applied to these People for the Poison, she would be brought to an untimely End; but that she the Deponent would go to *Edinburgh*, and get a Brother of the Deponent's who lived there to buy the Poison: That Mrs. Ogilvie approved of the Deponent's Proposal; but complained, that the Deponent was long in putting it in Execution, and therefore proposed to the Deponent to speak of it to Lieutenant Ogilvie the Pannel, as he could get it more expeditiously; and this the Deponent declined to do. Depones, That upon the Day that the Lieutenant was put from the House, she, Mrs. Ogilvie, told the Deponent, that, with much Difficulty, she had prevailed upon Lieutenant Ogilvie the Pannel to undertake to furnish her with Poison. Depones, That upon a *Wednesday*, which was the Day immediately before *Eastmiln's* Death, Mrs. Ogilvie the Pannel told the Deponent, that she had received a Letter the Day before from the Lieutenant, which was brought to her Hand by *Elizabeth Sturrock*; and in this Letter he had acquainted her, that he had got the Poison the Length of *Alyth*, but did not chuse to trust *Elizabeth Sturrock* with it; and that he would send it by *Andrew Stewart* his Brother-in-law, whom he was to send with it next Day; so that she expected it there that Night. Depones, That, upon this Occasion, she told Mrs. Ogilvie, she never believed it would come to that Pitch, and exhorted her most earnestly against the Proposal, saying, It would not only bring her to Misery, both in this World and the next, but would be bringing a Disgrace upon the Family she was come of, and upon that into which she was married: That upon this Occasion, Mrs. Ogilvie said to the Deponent, to let her alone; for the Conversation was disagreeable to her, as the Deponent knew, and she was determined to put her Resolution in Execution, whatever might be the Event. Depones, That the Reasons given by Mrs. Ogilvie for coming to this strange Resolution, and for rejecting all the Proposals the Deponent made for her living in Friendship with her Husband, were, that she did not love her Husband, and never could love him; and that he had used Lieutenant Ogilvie ill upon her Account; and said, How happy could they live at *Eastmiln*, if there were none there but the Lieutenant, she, and the Deponent! That, upon one Occasion the Deponent, in remonstrating against these wicked Proposals, told Mrs. Ogilvie, that, although her Husband were dead, she and the

the Lieutenant could not enjoy one another; Mrs. *Ogilvie* answered, That they could go and live in some of the Countries where he had been. And being further interrogate, depones, That when she was remonstrating to Mrs. *Ogilvie* against poisoning her Husband, she specially mentioned to her, that as she had been guilty of Adultery and Incest, it was a dreadful Thing to crown all with Murder. Depones, That upon the *Wednesday's* Night aforesaid, immediately preceding *Eastmiln's* Death, Mrs. *Ogilvie* the Pannel, and the Deponent went out together, Mrs. *Ogilvie* having expressed her Impatience for *Andrew Stewart's* Arrival: That they did not meet with *Andrew Stewart*; but when they returned to the House, found him sitting with the old Lady *Eastmiln*, he having come in another Way: That Mrs. *Ogilvie* the Pannel immediately carried *Andrew Stewart* up Stairs with her, who staid with her about half an Hour, and then came down Stairs by himself: That the Deponent asked him, if he had brought any thing with him? He answered nothing at first; but, upon her pressing, and saying, She was sure he had brought something with him, he then said he had brought some Drugs for Mrs. *Ogilvie*, which, at that Time, he described as being in two Phial Glasses: That the Deponent, on this Occasion, said, they were black Drugs: That Mrs. *Ogilvie* the Pannel having come down Stairs very soon after, the Deponent did not get an Opportunity at that Time to explain to *Andrew Stewart* what she meant by calling them black Drugs: But Mrs. *Ogilvie* and *Andrew Stewart* having gone out towards the *Kirkton*, and left the Deponent and her Aunt Lady *Eastmiln* by themselves, the Deponent told her Aunt, that she believed what *Andrew Stewart* had brought was Poison; for that Mrs. *Ogilvie* the Pannel had told her the Deponent, that *Andrew Stewart* was to bring the Poison. Depones, That the old Lady *Eastmiln* was present when the Deponent said to *Andrew Stewart*, they were black Drugs, as above-mentioned: That the Deponent, after acquainting the old Lady as above, asked her, If she should inform the deceased Mr. *Ogilvie* of *Eastmiln* of the Particulars? That the old Lady said it would be improper; for that Mrs. *Ogilvie* would persuade her Husband, that it was but Laudanum for her own Use, and would resent it against the Deponent; and that the only Method that occurred to her proper was, that both she and the Deponent should caution *Eastmiln* against taking any thing from his Wife in private. Depones, That after this, she went to the *Kirkton* with a View of being advised by the Minister, what was fit to be done in such a Case; but had the Misfortune to miss him, he not being at Home, the Door locked, but the Key in it: That *Eastmiln*, and his Wife the Pannel, and *Andrew Stewart*, were all in the *Kirkton* at that Time, in the House of *Fergus Ferguson*, a Tenant of *Eastmiln's*, who keeps a Public House: That they having come away from the *Kirkton*, Mrs. *Ogilvie* and *Andrew Stewart* walked on like a pistol-shot before *Eastmiln*; and the Deponent joined *Eastmiln*, and signified to him, that it would be very proper and necessary for him to leave his own House, for that she believed his Life was in Danger; but did not tell him, that she suspected the Danger was from his own Wife: That *Eastmiln* said, he could not leave Home at that Time, because of

his Labourers; she having signified, that there was Danger in a Delay, *Eastmiln* answered, He understood what she meant; but that he was determined he would take nothing she gave him, and so would put it out of her Power. Depones, That her Aunt, that same Night, both before and after Supper, told her, that she likewise had cautioned *Eastmiln* to take nothing from his Wife. Depones, That the same Evening she informed *Andrew Stewart*, that she believed it was Poison he had brought, and told him her Reasons for believing so; that *Andrew Stewart* appeared to give Credit to what the Deponent said. After *Eastmiln* and his Wife had gone up Stairs to Bed, *Andrew Stewart*, the old Lady the Deponent's Aunt, and the Deponent, had a long Conversation how to disappoint Mrs. *Ogilvie's* Design; and particularly, she remembers, that *Andrew Stewart* proposed, that as he knew the Drawer wherein she had put the Things that he had brought her, Means should be used in the Night-time to get Mrs. *Ogilvie's* Keys to open the Drawer, and take out the Things; or, if that would not answer, that they might get a Tradesman next Day, or as soon as they could get an Opportunity, to open the Back of the Chest of Drawers, and so get into the particular Drawer to get out the Things. Depones, That Mrs. *Ogilvie*, as *Andrew Stewart* told that Night, received a Letter from Lieutenant *Ogilvie*, which he *Andrew Stewart* brought along with him; and that the Lieutenant had desired him to deliver that Letter with the Drugs privately to Mrs. *Ogilvie* the Pannel. Depones, That she never insinuated to *Eastmiln* any Suspicions she had of his Life being in Danger, till that Night above-mentioned, which was the one immediately preceding his Death; but that she frequently told the old Lady his Mother of the Danger she apprehended *Eastmiln* was in, from the Disposition his Wife appeared to be in; and the old Lady said, that she likewise was suspicious, because she thought her Daughter-in-law would stick at nothing: But that the Deponent did not explain to the old Lady the Affair of the Poison, till after the Lieutenant was turned away from *Eastmiln*, when she advised her to warn her Son of his Danger. And being further interrogate, depones, That from the Time that the Deponent went to his House in *March* last, *Eastmiln* appeared to be under great Distress of Mind on account of the Difference between him and his Wife; but she did not hear him complain of any bodily Indisposition, excepting sometimes of a Pain in his Breast, which she thinks happened twice; but he never kept his Bed one Day, nor even an Hour extraordinary: That the Day immediately before his Death, there had been a Quarrel between him and his Wife; and the Quarrel was, that Mrs. *Ogilvie* had given the Deponent some Cambrick to make into Ruffles for the Lieutenant, who, she said, had sent the Cambrick to her Mrs. *Ogilvie*; whereas *Eastmiln* said, a Chapman had come that Day to the House and craved him for the Price of it, and that he had refused to pay it: That upon this Quarrel *Eastmiln* had gone out in bad Humour, and, as the Deponent thinks, without his Breakfast; and the Deponent heard, that he spent the Day among his Tenants over the Hill: That he returned in the Evening, and said he was not well, and went to Bed without Supper. Depones, That *Eastmiln* never

never had at this Time, or at any Time, so far as she knows, any violent Vomiting, Purging, or Convulsions; and, so far as she knows, no body else ever heard of any such Thing. Depones, That next Morning Mrs. *Ogilvie* the Pannel made the Tea for Breakfast somewhat earlier than usual: That the Deponent having come into the Breakfasting Room, heard Mrs. *Ogilvie* the Pannel say, that the Laird and *Elizabeth Sturrock* were well off that Morning, for they had got the first of the Tea: That the Deponent before this had been sitting with her Face to the Window, and her Back to the Table, but did not take any Notice what Mrs. *Ogilvie* had been doing; but upon Mrs. *Ogilvie*'s expressing herself as above, turned about and asked, *What! has the Laird got Tea?* And Mrs. *Ogilvie* answered, he had; upon which the Deponent said nothing. Depones, That she does not know the Reason why Mr. *Ogilvie* had not come down to Breakfast that Morning. Depones, That she said to the old Lady, as she thinks, that she was frightened about the Tea the Laird had got; but said nothing to *Andrew Stewart* of it, and this she means of the Time before the Laird was taken ill. Depones, That Mrs. *Ogilvie* the Pannel, during the Time of Breakfast, went out of the Room twice or thrice, and at length came in and told the Laird was taken very ill: That the Deponent overheard a Report among the Servants, that he was troubled with a Purging and a Vomiting: That the old Lady desired the Deponent to go up and see *Eastmiln*, which she did in about half an Hour after Breakfast: That she continued very short while in the Room, she looked to him, and he appeared to her to be in a dying Condition: That she came off very soon crying; Mrs. *Ogilvie* the Pannel met her, and asked her if she was daft? That the Deponent answered, in way of Surprize or Derision, *O! ay! and Mr. Ogilvie is dying.* Depones, That after she had come down Stairs, and staid half an Hour or so, the old Lady desired her to go up Stairs to her Son *Eastmiln*, to keep him from these two Women; by which the Deponent understood she meant Mrs. *Ogilvie* and *Elizabeth Sturrock*, who were then sitting with him: That the Deponent accordingly went up Stairs before Mid-day, as she thinks, and continued with him till his Death, which happened betwixt Eleven and Twelve o'Clock that Night: That *Eastmiln*, as the Deponent has above expressed, was seized, as she heard, with a Purging and Vomiting: That after she went up Stairs to him, he had for some Time some Purging, but not near so violent as she had been informed it was before: That he had a most severe Vomiting, and called always to give him a cold Drink: That he drank great Quantities of cold Water: That the Deponent having mixed it with Milk, he complained of that, and insisted to have cold Water by itself, and then drank some small Ale; but upon his Brother-in-law *Glenkilrie*'s coming there, which was in the Evening when it was almost dark, he dissuaded him from taking more Ale: That the Deponent tried him once with a Glas of Wine and a Piece of Sugar in it, which he drunk, and for about an Hour after taking it vomited none: That the Deponent got the Glas of Wine from Mrs. *Ogilvie* the Pannel: That *Eastmiln* immediately after taking the Water or the Ale threw it up again; but after he had drunk the Glas of

Wine, as afore said, there was an Intermission of the Vomiting for about an Hour; and though he drank both Water and Ale after that, he kept it longer than before. Depones, That *Eastmiln* complained of a Burning at his Heart, as he called it; and complained bitterly of Pains in the Brawns of his Legs, and said they would rent, and desired the Deponent to bind them up for him, which the Deponent according did: That there was a severe Heaving at his Breast, and a strong Caw, and he cried to keep open the Windows to give him Breath: That he was constantly in Motion, moving his Head, his Legs, and his Arms: That she observed in the Afternoon he did not speak plain, which she supposed was owing to his Tongue having swelled; but she did not see his Tongue: That about an Hour, or an Hour and a half before his Death, he had an Intermission of the Vomiting; but that at length he was again attacked with a most severe Press of Vomiting, after which he fell back upon the Deponent, who was sitting behind him in the Bed supporting him, and expired. Depones, That she heard *Eastmiln* during his Distress say to *James Millam* his Tenant in the Mill, who was attending him, that it was either strong Poison, or rank Poison, that was killing him. Depones, That before One o'Clock she heard the old Lady *Eastmiln* say to *Eastmiln*, that he had broke his Promise to her in taking any thing from his Wife: That he answered, *It is too late now, Mother; but she forced it on me:* That at this Conversation there were none present, but the old Lady and the Deponent. Depones, That she knows nothing about sending for any Surgeon to attend upon *Eastmiln*, further than that she herself sent *Annie Robertson*, one of the Servants of the House, to tell *Andrew Stewart*, who she understood had then gone off for *Alyth*, to desire Mr. *Meik* the Surgeon at that Place to come to *Eastmiln*; and that this happened the Forenoon of the Day on which *Eastmiln* died: That she thinks, before she sent off *Annie Robertson* herself, she heard some Conversation about sending for a Surgeon; and thinks that it was *Andrew Stewart* and the old Lady who were talking of it. Depones, That after *Eastmiln*'s Death, she was told by *James Millam*, that he had got Orders from Mrs. *Ogilvie* the Pannel, to take a Horse and go and acquaint Lieutenant *Ogilvie* of his Brother's Death; but that thereafter it was concerted, that as *Glenkilrie*, in whose House the Lieutenant then staid, was going Home from *Eastmiln*, that he should acquaint the Lieutenant: That next Morning the Lieutenant arrived about Six o'Clock, as she thinks. Depones, That the Day on which *Eastmiln* died, Mrs. *Ogilvie* the Pannel came in for a very little to him in the Forenoon: That thereafter she frequently proposed to come back to him, if the Deponent were dismissed; but *Eastmiln* would not agree to this, and she came no more near him. And being further interrogate, depones, That the Morning after *Eastmiln*'s Death, she told the Lieutenant the Pannel, that she knew the whole Affair of the Poison, and asked him how he could send it to Mrs. *Ogilvie*? That the Lieutenant appeared to be under great Concern and Confusion, and told, That suppose he had sent it to her, he did not think she had so barbarous a Heart as to give it. And three missive Letters, marked by the Deponent and the Lord Examiner's Subscription, being shewn

to her, depones, That the Letter which begins *Dr Captain*, and is not subscribed, and has no Date, and another Letter which begins *Dr Sr*, and is dated *Glenkilry, Weensday*, and signed *Ketty Nairn*, are both very like Mrs. *Ogilvie* the Pannel's Writing, but the first she is sure is her Writing; and the third Letter, which bears Date at *Glenkilry*, and addressed *To Thomas Ogilvie, Esq; of Eastmiln*, depones, That she does not know whose Hand-writing it is. Depones, That she did not, either the Day of *Eastmiln's* Death, or the Day after, acquaint any body, by Letters or otherwise, of her Suspicions and Belief that *Eastmiln* died by Poison. And being interrogate for the Pannels, depones, That upon the *Monday, Tuesday*, and *Wednesday* above-mentioned, when she has deponed, That the two Pannels were together, in Manner above described, the old Lady and the Deponent were in the House, and some Servants, who were at the other End of the House. And being interrogate, From what Place the Pannels went when they went to the Room above Stairs for the said three Days? depones, They went from the low Room in which the Deponent was all these Days: That she is positive the old Lady *Eastmiln* was in the low Room with them upon the *Monday*; but has been informed from her, that she observed nothing: That she desired the old Lady, on the *Wednesday*, to observe the Motion of their Feet in the Room above; but the old Lady said she did not hear it, which the Deponent imputed to her being dull of hearing: That when the Deponent heard as above, these last three Days, it was after Breakfast, and, as she thinks, about Eleven o'Clock before Noon. Depones, That when she went into the Room where the two Pannels were upon the *Sunday*, the Door of the Room was open. Depones, That she did not meet *Eastmiln* upon the Road that Day she came to his House; but she saw him the Day before at the Boat of *Bermeny*, but did not speak to him, he having passed before she knew it was him: That when she came to *Eastmiln*, she found none in the Room that she came into but *Eastmiln* and his Mother: That after she came to *Eastmiln*, she slept with her Aunt the old Lady. Depones, That she does not know where the Servants lay; but has a Notion, that *Katharine Campbell* and *Elizabeth Sturrock* lay in the Kitchen. Depones, That she has seen *Elizabeth Sturrock* several Times in her Bed in the Kitchen; and that she does not remember to have seen *Katharine Campbell* in her Bed, though she slept in the Kitchen: That the Servant-maids had no Place to sleep in, in the House, but the Kitchen; but the third Maid slept out of the House. Depones, That Lieutenant *Ogilvie* slept in the Room she has formerly mentioned; but she never knew him sleep in any of the Beds, but the Alcove Bed, except when his Brother was lying a Corpse. Depones, That she had once a Conversation with one Mr. *Dougal* a Surgeon, upon the Nature of Laudanum, which Mr. *Dougal* had been speaking of the Day that Lieutenant *Ogilvie* was put from *Eastmiln*: That Mr. *Dougal* had been telling that he took it for the Gout; and she asked, If it was not dangerous? He told her, that there had been Instances of fatal Effects that it had; but said, if it was cautiously taken, there was no Danger: That she asked, how much one might take with Safety? which he told her; but that she did not ask, how much of it would do a Man's

Business? Depones, That from her own Knowledge she cannot say whether *Eastmiln* was abroad on the Morning of that Day on which he died; but that she heard it reported by others, particularly by *Anne Sampson*, that he had been out that Morning; and heard it reported, that it was after he had got the Bowl of Tea; and that he was seized with a Vomiting before he got in again. Depones, That she knows there was once a Dose of Salts sent from *Edinburgh* to *Eastmiln* for Mrs. *Ogilvie's* Use; but never heard of any more Salts coming into the Family. Depones, There was no body present when the old Lady desired her to go up Stairs and attend *Eastmiln*, and keep these two Women from him. Depones, That *Alexander Ogilvie*, one of *Eastmiln's* Brothers, came to *Eastmiln* upon the *Tuesday* Forenoon after his Death. Depones, That when the Deponent once asked *Eastmiln*, when he was dying, If he did not chuse that his Wife should be with him? his Answer was, *Miss Clark, I chuse a Drink*; and that either *Glenkilrie*, or *James Millam*, or both, was present at this Time: That what *Eastmiln* vomited was much of the Colour of squeezed Eggs, or greenish-yellow: That *Alexander Ogilvie* aforesaid came to *Eastmiln* upon the *Monday* eight Days after she came there; and that she came on a *Friday*; and that he staid there till his Sister was married: That she never heard of any Report of the indecent Familiarities between the Pannels before she came to *Eastmiln*: That she never knew Mrs. *Ogilvie* the Pannel, till the Deponent went to *Eastmiln* as aforesaid. Depones, That she never had any Difference with any of the Family of *Eastmiln* while she staid there: That she never heard that *Eastmiln* had employed *James Millam* to turn her away from *Eastmiln*, or borrow Money from him to give her to go away from the House: That after *Eastmiln's* Death, she got a Message from Mrs. *Ogilvie* the Pannel, by *Martha Ogilvie*, *Eastmiln's* Sister, to dismiss from the House. Depones, That the Conversation she had with Lieutenant *Ogilvie* the Pannel, about his sending the Poison to the other Pannel, was at the Burnside, upon the East Side of *Eastmiln*. And, upon the Prosecutors's Interrogatory, depones, That she does not know that Mrs. *Ogilvie* the Pannel took any Salts after her Husband's Death. Depones, That when she saw *Eastmiln*, in coming to his House, at the Boat mentioned above, she was informed he was then returning from *Dunfinnan*. And being further interrogate, upon the Part of the Pannels, depones, That she was informed, the Drawers into which the Things were put that *Andrew Stewart* brought, stood in the Lieutenant's Room. Depones, That after the Pannels were committed to Prison at *Forfar*, she the Deponent went back to *Eastmiln*, and staid for a few Nights: That at this Time *Alexander Ogilvie*, *Eastmiln's* Brother, had a Roup of the Cattle at *Eastmiln*. *Causa scientie patet*. And this is Truth, as she shall answer to God. And being further interrogate, upon the Part of the Prosecutor, depones, That when Mrs. *Ogilvie* the Pannel was carried Prisoner from *Eastmiln*, *Alexander Ogilvie* took up some small Keys of hers, and asked her, If he should take care of them? And that she answered, She did not care who took care of them. Depones, upon Recollection, That *Alexander Ogilvie* had the Keys in his Hands when he asked the above Question: That *Alexander Ogilvie* locked all the Rooms in the House, except the laigh Room; and

and put the Keys in a Drawer of that laigh Room, which he locked, and took the Key with him. And this is also Truth, as she shall answer to God.

(Signed) ANNE CLARK. ALEX. BOSWELL.

ELIZABETH STURROCK, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*, aged twenty-three Years, unmarried, purged of Malice and partial Counsel, and interrogate, depones, being solemnly sworn, That about the End of last Harvest, she entered as a Servant to the deceased *Thomas Ogilvie* of *Eastmiln*, and continued in that Service till the said *Thomas Ogilvie*'s Death: That about *Candlemas* last, the said *Thomas Ogilvie* was married to Mrs. *Ogilvie*, at which Time the said Mrs. *Ogilvie* came home to *Eastmiln*: That much about the same Time Lieutenant *Ogilvie* the Pannel came likewise to reside at *Eastmiln*, where he continued till about a Fortnight before the said *Thomas Ogilvie*'s Death: That during Lieutenant *Ogilvie*'s Residence at *Eastmiln*, she had Occasion to observe too great a Fondness betwixt the said Lieutenant and Mrs. *Ogilvie* the Pannels, which proceeded even to Indecencies, she having frequently seen them kissing and hugging each other in and about the House of *Eastmiln*: That the late *Thomas Ogilvie* used frequently to be from Home, particularly about his Workmen: That during his Absence, she has frequently observed the two Pannels retire by themselves to the upper Rooms of the House, both the Easter and Wester Room, when she believed there was no body in these Rooms but themselves. Depones, That one Night about Sun-set, during the Time aforesaid, the Deponent having Occasion to speak to Mrs. *Ogilvie* the Pannel, about what Ale the Deponent should bring from *Kirkton*, the Deponent went up Stairs to the East Room, where the Lieutenant used to lie, to see for her Mistress: That she found the Door of the Room open; and upon looking into the Room, she observed the two Pannels lying in the Bed in which Lieutenant *Ogilvie* usually lay: That she suspected them to be there, by hearing them breathing: That upon discovering them, she immediately turned back without speaking to them, and run down to the first Flat of the Stair, where she stopt, and called up to her Mistress to see if she was in the foresaid Room; upon which her Mistress answered her from that Room, as she apprehended it, that she was there: That Lieutenant *Ogilvie* the Pannel likewise spoke to her from the same Place at that Time. Depones, That at another Time, and before the Time above-mentioned, and soon after Mrs. *Ogilvie* the Pannel's Marriage with the late *Eastmiln*, and while the late *Eastmiln* was at *Dunfinnan*, she was told pretty early in a Morning by *Anne Sampson*, a Neighbour-servant, that she, *Anne*, believed Lieutenant *Ogilvie* the Pannel was gone into her Mistress's Room: That upon this the Deponent went up to her Mistress's Room to see into the Truth of it; and when she went into the Room, she observed Lieutenant *Ogilvie* the Pannel going from the Bed-side towards the Window, in his Night-gown: That she is sure her Mistress was then in Bed in that Room, as she was not got up by that Time in the Morning, nor had she come down Stairs, nor was she in the only other Room above Stairs, which the Deponent immediately went and looked into. Depones, That at several other Times,

when the Deponent had Occasion to be sitting at her Wheel in the Kitchen, which is immediately under Mrs. *Ogilvie* the Pannel's Room; and where one can easily hear any Noise, even to a laigh Word, that is made in Mrs. *Ogilvie*'s Room, the Deponent heard the Feet of the two Pannels in the Room, and shuffling at the Side of the Bed: That the Reason why she believed it to be the Feet of the Pannels which she heard there, was, that she saw them go up together to that Room just before she heard the Noise as aforesaid. Depones, That she believes Lieutenant *Ogilvie* the Pannel was put away by the late *Eastmiln* from the House, upon *Eastmiln*'s Suspicion, that the Lieutenant was too great with Mrs. *Ogilvie* the Pannel: That her Reason for believing so is; that about the Time Lieutenant *Ogilvie* went away, the Deponent, as she was going to her Bed in the Kitchen, overheard the late *Eastmiln*, when he was going to Bed with his Wife in the Room above, say to his Wife, That she was too great with Lieutenant *Ogilvie* the Pannel; and that they were as frequent together as the Bell was to ring on *Sunday*. Depones, That *Anne Sampson* was in the Kitchen at the same Time; and the Deponent believes she heard what passed betwixt *Eastmiln* and his Wife, as aforesaid, and the Deponent challenged her for listening. Depones, That after Lieutenant *Ogilvie* the Pannel had left the House of *Eastmiln*, the Deponent observed the other Pannel Mrs. *Ogilvie* in Tears and crying; upon which Occasion Mrs. *Ogilvie* said to the Deponent, That she was sorry; or grieved, Lieutenant *Ogilvie* had left the House. Depones, That upon the Night of the Day that Lieutenant *Ogilvie* left the House, as aforesaid; Mrs. *Ogilvie* the Pannel gave the Deponent a Letter to be carried to Lieutenant *Ogilvie* at *Little Forther*, about three Miles from *Eastmiln*: That Mrs. *Ogilvie* desired the Deponent to let no body know she had got such Letter: That the Deponent did not know what were the Contents of the Letter: That Mrs. *Ogilvie* desired the Deponent to tell Lieutenant *Ogilvie*, that she had been bad since he went away; and that her Husband was not owning her: That she delivered the Letter accordingly to Lieutenant *Ogilvie* at the Water-side near *Little Forther*: That the Lieutenant, in Answer, bid the Deponent tell Mrs. *Ogilvie*, that he was very well, and that she should keep up a good Heart; and that he was to go to Baron *Reid*'s. Depones, That afterwards Mrs. *Ogilvie* the Pannel gave her another Letter to carry to Lieutenant *Ogilvie* at *Glenkilrie*, and to deliver it privately, which the Deponent carried accordingly; and she received an Answer in Writing from the Lieutenant to Mrs. *Ogilvie*, which the Lieutenant likewise desired her to deliver privately; and she did so. Depones, That upon another Time, being the *Tuesday* immediately before the late *Eastmiln*'s Death, Mrs. *Ogilvie* the Pannel sent the Deponent with another Letter to Lieutenant *Ogilvie* at *Alyth*, likewise with Orders to deliver it privately. Depones, That she delivered the Letter to Lieutenant *Ogilvie* accordingly, and then went and did some other Business in the Town of *Alyth*, and returned and received an Answer from Lieutenant *Ogilvie* to the last-mentioned Letter, which he desired her to take care of and deliver privately; when he likewise told her, that he had a Packet of Linens lying at a House near by, and a Letter

with them, which the Lieutenant desired the Deponent to call for, and take to *Eastmiln* with her: That the Deponent returned straight to *Eastmiln* with the Lieutenant's Answer; and Mrs. *Ogilvie* not being then at home, the Deponent went and fetched a Bundle of Linens, and the other Letter, all which she delivered to Mrs. *Ogilvie* at the same Time. Depones, That the Answer she received last from the Lieutenant, as aforesaid, was a large thick Letter, bigger than a Sheet of Paper; but she did not think there was any thing in it but Paper. Depones, That *Eastmiln* appeared to be in his ordinary Health upon the *Tuesday* before he died, and that he usually had very good Health, the Deponent having never known him to be in bad Health while she was in his Service: That upon the *Wednesday* before his Death, he was likewise in good Health: That upon the *Thursday* Morning upon which he died, the Deponent knew little about *Eastmiln*, as she herself was confined to Bed by Sickness, except that she heard that *Eastmiln* had been taken ill: That Mrs. *Ogilvie* the Pannel came into the Kitchen where the Deponent was lying, and told the Deponent in a low Voice, or a Whisper, that she, Mrs. *Ogilvie*, had given the Laird his Breakfast that Morning, and she desired the Deponent to say, that she had likewise got her Breakfast, although the Deponent had then got none: That some Time thereafter Mrs. *Ogilvie* sent *Anne Sampson* with some Tea to the Deponent in a Bowl, which the Deponent drunk: That the Deponent commonly got Tea in the Morning when she was indisposed. Depones, That after the Deponent had got out of Bed on the said *Thursday* Morning, and before she got the Tea as aforesaid, she observed the late *Eastmiln* come in at the outer Door, and come forward to the Kitchen where the Deponent was: That he was then very ill, and vomited much: That, at this Time, she believes the rest of the Family were at their Breakfast, Mrs. *Ogilvie* the Pannel having come into the Kitchen for some Cream to the Tea. Depones, That Mrs. *Ogilvie*, seeing *Eastmiln* so ill, desired him to go up to his Bed, which he did, and the Deponent helped him to go up Stairs, and to throw off his Cloaths: That after he had been a little while in Bed, he said, he thought himself some easier. But depones, That in a short Time he turned very ill again, fell a vomiting and purging, and complained of every Part of his Body; said, his Heart was broken or riven, and he tossed very much. Depones, That *Eastmiln*, during his Illness, called frequently for cold Water, and drank often of it. Depones, That about Ten or Eleven o'Clock that Forenoon, when old Lady *Eastmiln*, *Andrew Stewart*, and the Deponent, were in the Room together attending the late *Eastmiln*, *Eastmiln* said, in the Deponent's hearing, That he was poisoned, and that *Woman* had done it. Depones, That, by that *Woman*, the Deponent understood *Eastmiln* meant his Wife: That the old Lady seemed to understand it in the same Way, and reproved her Son *Eastmiln* for saying so. To which *Eastmiln* answered, That it was very true, and his Death lay at her Door. Depones, That upon the Day *Eastmiln* was ill, as aforesaid, Mrs. *Ogilvie* the Pannel came pretty often up to his Room to see him in the Forenoon; but she did not come near him at all in the Afternoon; and that, in the Afternoon, Mrs. *Anne Clark*, who sat close

by *Eastmiln*, desired the Deponent to go down and tell Mrs. *Ogilvie* the Pannel to come up and see her Husband: Upon which *Eastmiln* himself said, *No! no! I do not want her*: That *Anne Clark* told the Deponent, she might go down and bid her come up for all that: That the Deponent accordingly went and told Mrs. *Ogilvie*; but Mrs. *Ogilvie* refused to come up, saying, She did not like to see dying People. Depones, That, during her Husband's Illness, Mrs. *Ogilvie* did not chuse that the People in the Neighbourhood that came to see him, should get Access to his Room, for fear of disturbing him: That the Deponent went and brought the Precentor in the Afternoon, or rather about Dinner-time, when the Precentor went and prayed by *Eastmiln*; Mrs. *Ogilvie*, who had sent the Deponent for the Precentor, went up Stairs with him to *Eastmiln*'s Room. Depones, That Mrs. *Ogilvie* was not very dull, or shewed great Marks of Grief upon her Husband's Death, till *Alexander Ogilvie*, *Eastmiln*'s Brother, the Doctor, came to the House upon the *Tuesday* thereafter; when Mrs. *Ogilvie* having ordered the Deponent to desire *Alexander Ogilvie* to speak with her, and he having refused to do so, Mrs. *Ogilvie* fell a crying, and wringing her Hands, throwing herself back upon the Bed, and saying, What could be the Meaning of this? Depones, That *Alexander Ogilvie* stopped the Burial, and sent for Doctor *Ogilvie* of *Forfar*, and Doctor *Ramsay*, and Doctor *Meik* of *Alyth*, to inspect the dead Body of his Brother: That, at this Time, Mrs. *Ogilvie* behaved very ill, weeping and crying, and wringing her Hands, and tearing herself; but the Deponent does not know the Cause of this Behaviour. Depones, That Lieutenant *Ogilvie*, at the Time of his Brother *Eastmiln*'s Death, lived at *Glenkilrie*'s House; and *Glenkilrie* having been at *Eastmiln* when *Thomas Ogilvie* died, he went home and desired Lieutenant *Ogilvie* to go to *Eastmiln* upon that Event: That Lieutenant *Ogilvie* came to *Eastmiln* next Morning, and the Deponent seeing him approach the House, told Mrs. *Ogilvie* that he was coming: Upon which Mrs. *Ogilvie* went out, and desired the Deponent to tell Lieutenant *Ogilvie* to speak to her in the Stable: That the Deponent went accordingly and delivered the Message to Lieutenant *Ogilvie*, who was then walking with Doctor *Meik*, and the Lieutenant went to Mrs. *Ogilvie* in the Stable, as desired. Depones, That after the late *Eastmiln*'s Death, and after Mrs. *Ogilvie* heard the Sheriff of *Forfar* was coming to examine them at *Eastmiln*, Mrs. *Ogilvie* desired the Deponent to say to the Sheriff, That the Deponent had seen Mrs. *Ogilvie* mix up the Bowl of Tea, which she, Mrs. *Ogilvie*, had given her Husband the Morning of the Day on which he died; and that the Deponent had drunk some of it before *Eastmiln* tasted it; and that she likewise drank off what *Eastmiln* left of it; she likewise particularly desired the Deponent to say, That the Deponent was in the Closet with her, Mrs. *Ogilvie*, when she mixed up the Bowl of Tea; and that she, Mrs. *Ogilvie*, gave her Husband some short Bread with it: That Mrs. *Ogilvie* told the Deponent, that if the Deponent would say as thus directed, she would stand by the Deponent, that no Harm should happen to her; that the Deponent should go with her where-ever she went; and while she, Mrs. *Ogilvie*, had a Halfpenny, she should have the Half of it. Depones, That Mrs. *Ogilvie* spoke

to the Deponent in this Manner several Times: That Lieutenant *Ogilvie* was present upon these Occasions, heard what Mrs. *Ogilvie* desired the Deponent to say, and he himself desired the Deponent to say as Mrs. *Ogilvie* directed her. Depones, That some Time before *Eastmiln's* Death, the Deponent knows Mrs. *Ogilvie* took a Dose of Salts, the Deponent having got a Part of them: That she never knew Mrs. *Ogilvie* taking Salts but that Time. Depones, That before *Eastmiln's* Marriage, she lay in the laigh Room with old Mrs. *Ogilvie* and her Daughter: That after the Marriage, she continued to lie with the old Lady, till *Anne Clark* came to *Eastmiln*: That after that, *Anne Clark* lay with the old Lady, and the Deponent lay in the Kitchen with *Katharine Campbell*: That at this Time, *Anne Sampson* lay in an Out-house till *Katharine Campbell* went away. Depones, being interrogate for the Pannels, That what she has above deponed concerning the Pannels kissing and hugging one another, happened at different Times, sometimes when they were by themselves, and at other Times when they were in Company with others. Depones, That when she saw the Captain in Mrs. *Ogilvie's* Room in his Night-gown as above, the Door was in Part open, so that she could see into it; and that she did not go into the Room. And being interrogate for the Pannels, What Number of Persons, not of the Family, got Access to the Room in which *Eastmiln* was, after his being taken ill as above? depones, That, to the best of her Remembrance, the Persons who got Access, were, Mr. *Spalding* of *Glenkilrie*, *William Froster*, *Anne Froster*, *James Millam*, and *David Watson*: That *James Millam*, *William Froster*, and *Anne Froster*, were brought in by the Deponent, without the Knowledge of Mrs. *Ogilvie*. Depones, That she did not hear *Alexander Ogilvie* give Orders to the Persons who were sent for the Doctors, to inspect *Eastmiln's* Body; but she afterwards heard of it from the Persons who had been sent, and who on that Account had come to get Meat in the Family; but that she the Deponent was forbid by Mrs. *Ogilvie* to give them Meat. Depones, That when the Deponent was first brought to Town, she was lodged, for about the Space of twenty Days, in the House of one Mr. *Gardiner* at the Head of the *Cowgate*, by Mr. *Murison* the Macer: That from thence she was carried to the Castle of *Edinburgh*, where she has remained since that Time: That the Deponent, *Anne Clark*, *Anne Sampson*, and *Katharine Campbell*, were lodged in the same Room till *Thursday* or *Friday* last, when *Anne Clark* was put into another Room in the Castle, where she remained a Day and a Night, and was thereafter put into the Room with the Deponent, and the other Persons above-mentioned. Depones, That while the Deponent, and the other Persons above-mentioned, were at the House of one *Gardiner* and in the Castle, they had some, though not much, Conversation upon the Subject of this Trial; but that, in these Conversations, all of them declared, that they considered it as their Duty to tell nothing but the Truth. Depones, That upon the Morning of the Day after *Eastmiln's* Death, *Anne Sampson* told Mrs. *Stewart*, *Eastmiln's* Sister, in Presence of the Deponent, that the Bowl out of which *Eastmiln* was said to have drunk the Poison the Day before, was below in a Press in the Kitchen: That the Deponent having taken out the Bowl, observed something greasy in the

Bottom of it; and intending to try if there was any Thing poisonous in the Grease, she put some Broth into the Bowl, and gave it to a Dog, who eat it up; but was nothing the worse of it: That the Deponent made this Experiment of her own accord, and not on the Suggestion or Desire of any other Person whatsoever. And depones, That *Anne Sampson* has often told the Deponent, that she had filled the said Bowl with Water and offered it to *Eastmiln*, that Day on which he died; but that he had refused to drink out of it, damning the Bowl, and saying, he had already got his Death out of it. *Causa scientie patet*. And this is Truth, as she shall answer to God. And being further interrogate, depones, That while the Deponent was in *Eastmiln's* Service, she never heard of his being troubled with Vomitings, Purgings, or Cholicks, before that Day on which he died; and that she never knew of his being indisposed, except by slight Colds. Depones, That when Lieutenant *Ogilvie* went into the Stable where Mrs. *Ogilvie* was, as has been above deponed, he did not remain there above four or five Minutes. And this is also Truth, as she shall answer to God: And depones she cannot write.

(Signed) AND. PRINGLE.

ANNE SAMPSON, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*, aged nineteen Years, unmarried, purged of Malice and partial Counsel, sworn and interrogate, depones, That she entered Servant to the Family of *Eastmiln Whitfunday* was a Year: That after being some Time absent, she returned a few Days before Miss *Clark* came to the House: That after her Return, she had more than once Occasion to observe Mrs. *Ogilvie* and Lieutenant *Ogilvie* kissing one another; particularly once in the Kitchen before the Deponent and another Servant-maid: That she has seen them embrace and hug one another: That when the Laird was out of the House, she has known them retire to a Room by themselves, but not staying above an Hour at a Time. Depones, That one Morning when the Laird was at *Dunfman*, she heard the two Pannels speaking together in Bed in the Room above: That she was in the Kitchen, the Ceiling of which is not plastered, and where she could hear the lowest Voice in the Room above: That upon this she desired her Fellow-servant *Elizabeth Sturrock* to go up Stairs and see what was going on; and that *Elizabeth*, upon her Return, told the Deponent that the Lieutenant had got out of the Bed before she was got to the Door; and that she saw him going from the Bed towards the Window in his Night-gown. Depones, That this was about Sun-rising. Depones, That the Lieutenant left the House a Fortnight before his Brother's Death; and before that Time, the Deponent being in the Kitchen with her Fellow-servants, *Elizabeth Sturrock* and *Annie Robertson*, they all heard the Laird and Lady talking together in Bed in the Room above: That the Talking begun with the Lady's scolding her Husband; upon which the Laird bade her hold her Tongue, for that she and the Lieutenant were as common as the Bell that rings on *Sabbath*. Depones, That the Morning the Lieutenant left the House, she saw Mrs. *Ogilvie* weeping: That this was before he went away; and that she saw her also weep after he went away. Depones, That *Eastmiln* was a healthy Man; and that,

before

before the Day he died, she never heard him complain, if it was not sometimes of an Headach; and that the Night before he died, he was in Health, so far as she knows. Depones, That the Night before her Master died, she saw *Andrew Stewart* in the House of *Eastmiln*; and that she was told by *Elizabeth Sturrock* and *Miss Clark*, the Night thereafter, that the said *Andrew Stewart* had retired with *Mrs. Ogilvie* into a private Room. Depones, That the Morning of the Day her Master died, Breakfast was ready betwixt Eight and Nine, a little sooner than ordinary: That she saw her Mistress make up the Bowl of Tea in Presence of her Mother-in-law and *Miss Clark*, for *Andrew Stewart* was not then up: That she followed her Mistress up Stairs, wanting some Beef out of the Beef-stand, and saw her go into a Closet adjoining her Master's Room: That the Deponent followed her into the Closet, demanding the Beef; but that her Mistress bade her go down Stairs, as she was not ready yet; and that she was always wanting something; and that *Mrs. Ogilvie* appeared to be in a Passion at her: That her Master was at that Time in Bed; and that, when the Deponent was in the Closet, she saw *Mrs. Ogilvie* stirring about the Tea, with her Face to the Door; and that, upon what her Mistress said to her above, she went out of the Closet down to the Kitchen; but that she did not see her Mistress, when in the Closet, put any thing into the Tea. Depones, That at this Time she saw *Alexander Lindsay*, a Servant-lad in the House, standing upon the Stair-head, near the Closet-door, at the Time her Mistress was in the Closet. Depones, That her Master got up between Nine and Ten, and first went to the Stables to see his Horses fed, and then to the *Skilling-Hill*, where he conversed with some of his Tenants: That, in his returning towards the House, she saw him vomiting, and still more when he came into the Kitchen; and that, when he was there, *Mrs. Ogilvie* came into the Kitchen, and ordered *Elizabeth Sturrock* to help him up Stairs, and followed him herself. Depones, That some Time thereafter she was ordered to carry up some clean Water for her Master for drinking, which she did in the same Bowl that he got his Tea in from *Mrs. Ogilvie*; but that she first synded the Bowl with some Water: That she went up Stairs with the Bowl into her Master's Room, and found him in Bed; but that, upon seeing the Bowl, he cried, *Damn that Bowl, for I have got my Death in it already*; and bid her, at the same Time, carry it down Stairs out of his Sight; and that she carried up Water to him in the Tea-kettle, which he drunk of. Depones, That the Reason for her synding the Bowl was, that it appeared to be greasy and white; and that she knew the Bowl to be the same as above, because *Mrs. Ogilvie*, after giving her Master his Tea, came down Stairs with it, and set it down in the Kitchen on the Fore-side of the Press. Depones, That, after synding the Bowl, as aforesaid, the Grease did not come wholly out of it. Depones, That the Day her Master died, about Mid-day, she was sent by *Mrs. Ogilvie* two Miles to clip some Sheep. Depones, That *Mrs. Ogilvie* frequently went to see how her Husband was in the Forenoon, but not once in the Afternoon; and that, when the Deponent was going up Stairs to see him between Twelve and One o'Clock, she was turned back by *Mrs. Ogilvie*. Being interrogate on Behalf of

the Pannels, depones, That when *Mrs. Ogilvie* made up the Bowl of Tea in the Breakfasting Room as aforesaid, the Deponent saw her put in Milk and Sugar; but whether she put in any Honey, the Deponent does not perfectly remember, nor whether she saw any Honey upon the Table. Depones, That the Family seldom breakfasted without Honey; but that the Day deponed upon, she rather thinks there was none; because, she believes, at that Time the House was out of Honey. And being further interrogate in Behalf of the Pannels, depones, That, at the Time deponed upon, when she carried up the fresh Water to her Master to drink, she synded the Bowl with Water, and not with Broth out of the Pot. Depones, That the next Day thereafter, the Bowl was synded with Broth out of the Pot, and given to a Dog; and that it was the Deponent that did so by the Direction of *Elizabeth Sturrock*; and that *Elizabeth Sturrock* gave her no Reason for doing so. Further depones, That she took the Bowl for carrying Water to her Master, because it was at Hand; and that she had no Notion at that Time of her Master being poisoned, nor till after his Death. Being interrogate in Behalf of the Pannels, When she returned from the Sheep-clipping? depones, That it was about Nine at Night. Upon which, being again interrogate, How she came to depone as above, That *Mrs. Ogilvie* did not once visit her Husband in the Afternoon? answers, That was because she was told so by the other Servants, who added, That her Master did not want *Mrs. Ogilvie* up for fear of doing her Harm. Depones, That after she saw her Mistress make up the Bowl of Tea in the Breakfasting Parlour, as aforesaid, she went into the Kitchen and made up the Fire, before she followed her Mistress to the Closet, as above deponed to. *Causa scientiæ patet*. And this is Truth, as she shall answer to God.

(Signed) HENRY HOME.

ANDREW STEWART, Merchant in *Alyth*, aged thirty, married, purged of Malice and partial Counsel, sworn and interrogate, depones, That upon the Evening before *Mr. Ogilvie* of *Eastmiln* died, being a *Wednesday*, the Deponent was at the House of *Eastmiln*, when, upon his coming into the House, *Mr. Ogilvie* told him, that he had forbid his Brother the Captain the House, on account of Suspicions he had, that his Wife was too much taken up in doing Things for his Brother the Captain, and not for himself; and that, at the same Time, he mentioned some Differences he had with his Brother concerning Money-matters. Depones, That on the *Monday* before *Eastmiln*, the Deponent's Brother-in-law, died, Lieutenant *Ogilvie* (who is above designed Captain) came to the Deponent's House in *Alyth* on Horseback; and that the Horse he rode belonged to *Mr. Ogilvie* of *Eastmiln*. Depones, That, on the Day thereafter, being the *Tuesday*, *Elizabeth Sturrock*, a former Witness, came to the Deponent's House, and bought some Things for the Family of *Eastmiln*: That he does not know that she brought with her any Letter for Lieutenant *Ogilvie*; nor does he know if Lieutenant *Ogilvie* gave her any Letter for *Mrs. Ogilvie* the Pannel. But depones, That he did that Day inform Lieutenant *Ogilvie*, that he the Deponent was to be at *Eastmiln* next Day. Depones, That upon the Day thereafter, he accordingly went to *Eastmiln*,

Eastmiln, and before he went off, Lieutenant *Ogilvie* delivered to the Deponent a small Phial Glass containing something liquid, which he said was Laudanum; and also a small Paper Packet, which he said contained Salts; and that the Morning of the Day preceding, the Deponent saw the Lieutenant working among some Salts, at least, which appeared to the Deponent to be Salts, which were in a Chest belonging to the Lieutenant: That the Phial Glass was round, and knows that there was another Phial Glass in his own House which was square: That he is positive, as he has already deponed, that one Phial Glass was delivered to him by the Lieutenant; and cannot say, with Certainty, that two might not have been delivered to him by the Lieutenant; but rather thinks he got only one; and that at the Time when the above Particulars were delivered to the Deponent, the Lieutenant desired him to deliver them privately into Mrs. *Ogilvie*'s own Hand: That he did not see the Packet made up, nor did he open it to see what it contained. Depones, That on the aforesaid Packet, there was a Letter directed for Mrs. *Ogilvie* of *Eastmiln*, which Letter was sealed both with Wax and a Wafer; and that round the Packet there was a loose Paper of Directions, in what Manner the Laudanum was to be used. Depones, That when he came to *Eastmiln* in the *Wednesday* Afternoon, he was carried into a Room where old Lady *Eastmiln* was; and that, within a short Time thereafter, Mrs. *Ogilvie* the Pannel and Miss *Clark* came into the Room: That, at the Desire of Mrs. *Ogilvie*, he followed her up to the Easter Room, where Mrs. *Ogilvie* having asked him, If he had brought any Word to her from the Lieutenant? he delivered to her the several Particulars above-mentioned, which the Deponent saw her immediately put into a Drawer in the Room: That he did not see her read the Letter at that Time; but that she put the whole together into the Drawer: That soon thereafter Miss *Clark* asked the Deponent, What he had brought with him from the Lieutenant to Mrs. *Ogilvie*? or if he had brought any thing with him? He at first said he had brought nothing; but, upon Miss *Clark*'s pressing him with great Earnestness, he at last informed her of the Particulars he had brought: That, upon this, Miss *Clark* said, that she was afraid Mrs. *Ogilvie* might poison her Husband. Depones That soon thereafter Miss *Clark*, in Presence of the Deponent and the old Lady, desired *Eastmiln* not to take any thing out of his Wife's Hand, except at the Table; to which he answered, that he would not: That the old Lady joined with Miss *Clark* in desiring *Eastmiln* to take nothing out of his Wife's Hand; but that the Deponent was at that Time very much displeas'd with both, as he then had no Suspicion that Mrs. *Ogilvie* had any Design against the Life of her Husband. Depones, That that same Night he heard Mrs. *Ogilvie* say, that she lived a most unhappy Life with her Husband: That she wished him dead; or, if that could not be, she wished herself dead. Depones, That the Deponent supped with *Eastmiln* and the rest of the Family that Night: That he then appeared to be in his ordinary State of Health; but that some times before, that same Night, he told the Deponent and the rest of the Company then at the *Kirkton*, that he had swarfed or fainted on the Hill; that, for that Reason, he could drink no

Ale: That, upon this, they called for a Dram; which he took, and thereafter seemed hearty, and in good Spirits; and *Eastmiln* then said, that the Swarf had happened to him on the Hill that same Day. Depones, That that Night the Deponent told, that he intended to go off from *Eastmiln* early next Day, which occasioned their getting Breakfast more early than usual: That *Eastmiln* did not breakfast along with the Family, the only Persons present at Breakfast being Mrs. *Ogilvie*'s elder and younger, Miss *Clark* and the Deponent being then only present: That the Deponent saw Mrs. *Ogilvie* making a Bowl of Tea, by filling it out of the Tea-pot, and putting Sugar and Milk in it; and that she said, in Presence of the Company, that she was to give it to her Husband, who was then in Bed; and that the Deponent saw her go out of the Room with the Bowl in her Hand: That, about an Hour and a half after they had begun to breakfast, they were told that *Eastmiln* had been suddenly taken ill; upon which Miss *Clark* immediately run up to the Room in which he was, and soon thereafter returned weeping, and told them, that *Eastmiln* had got a bad Breakfast. Depones, That the Deponent immediately run up Stairs, where he found *Eastmiln* vomiting and purging violently: That he heard him say that he was all wrong within; and that he had got what would do his Turn: That *Eastmiln* called very much for Drink: That they offered him Milk; but that he would drink nothing but Water: That he complained much that he was burning within. Depones, That he proposed to Mrs. *Ogilvie* that a Surgeon should be called to his Assistance, to which she would not agree, saying, that he would be better: And upon the Deponent's renewing this Proposal, she said, She would not for any Money that a Surgeon should be called, as the Consequence of this would be, to give her a bad Name, from what Miss *Clark* had said of her: That, upon this, the Deponent told Mrs. *Ogilvie*, That Mr. *Meik*, Surgeon in *Alyth*, whom the Deponent had recommended, was a discreet Person: That he would come; and that he would tell none but her what he thought of him: That, upon this, the Deponent left her, she having previously agreed that Mr. *Meik* should come: That the Deponent thereafter set out on his Journey; but, before he had got far from the House, one of the Girls, whose Name he thinks was *Robertson*, came up to him, and desired that Mr. *Meik* might be sent with all Haste: That after Supper, the Deponent had a Conversation with Miss *Clark* concerning the Suspicions she had of Mrs. *Ogilvie*'s Intentions against her Husband, in which the Deponent proposed, that they should either take Mrs. *Ogilvie*'s Keys out of her Pocket, or break open her Drawers at the Back, in order that they might satisfy themselves, if the Particulars brought by the Deponent were Poison or not; and that this was the only Method by which Mischief would be prevented: That Miss *Clark* did not seem to agree to either of these Proposals, and the Deponent himself had at that Time no Suspicion, that there was any Foundation for Miss *Clark*'s Fears; and the Deponent was confirmed in this Opinion from his having been told, by the old Lady, that she had gone up to the Room-door, after her Son and Daughter-in-law were in Bed; and that there was then more Kindness between them than usual. Depones, That

his Wife had frequently told him, before the Death of *Eastmiln*, that he was a tender Man; but that he never heard of his having been troubled with violent Vomitings, or Purgings, before the Day on which he died: That he had the Appearance of a tender Man; and that the Deponent has heard his Wife say, that he would not be a Long-liver. Depones, That at the Conversation above-mentioned at *Kirkton*, he heard *Eastmiln* say, that he had been ill of a Cough and sore Breast; and that for some Time past, he had been thinking of writing to Doctor *Ogilvie* at *Forfar*, to send him some Things: That the Deponent laughed at him for talking in that Manner, and bid him take a Dram. Depones, That the Drawer into which Mrs. *Ogilvie* put the Particulars delivered to her by the Deponent, stood in that Room in which the Deponent slept that Night. Depones, That at the Time when *Alexander Ogilvie* the Deponent's Brother-in-law arrested the Corpse, the Deponent advised Lieutenant *Ogilvie* to make his Escape, if guilty; to which he answered, That God and his own Conscience knew that he was innocent. Depones, That the two Pannels lived at the House of *Eastmiln*, from the Time of *Eastmiln's* Burial to the Time that Mrs. *Ogilvie* was apprehended; and that for some Time after the Pannels continued to live there; but how long he cannot say. Depones, That Mrs. *Ogilvie* had been blooded the Day before *Eastmiln's* Death, or the Day before that; and that she had been ill, and taking Drugs for some Time before, as the Deponent had heard. *Causa scientiæ patet.* And this is Truth, as he shall answer to God. And at reading over the Oath, depones, That at the Time when Lieutenant *Ogilvie* delivered the Particulars above-mentioned to the Deponent, he desired him to put them into Mrs. *Ogilvie's* own Hand: But did not mention the Words *privately*, or *by herself*; and that his Reason for denying at first to *Anne Clark*, that he had brought any Parcel from Lieutenant *Ogilvie*, was, because he considered Miss *Clark* as a Person given to raise Dissension in Families; and because that he had been desired by the Lieutenant to put the Particulars into Mrs. *Ogilvie's* own Hand. And this is also Truth.

(Signed) AND. STEWART. GEO. BROWN.

JAMES CARNEGIE, Surgeon in *Brechin*, married, aged about forty and upwards, being solemnly sworn, purged of Malice and partial Counsel, depones, That in the End of *May* last, he got a Message from Lieutenant *Ogilvie* the Pannel, with whom he is acquainted, desiring him to meet him at *Colin Smith's*, Vintner in *Brechin*: That the Deponent having gone there, found him in Company with one Lieutenant *Campbell* of the same Regiment, and one Mr. *Dickson*: That Lieutenant *Ogilvie* took the Deponent aside, and told him, that he was troubled with Gripes, and wanted to buy some Laudanum from him, and at the same Time told him he wanted to buy some Arsenick, in order to destroy some Dogs that spoiled the Game: That the Deponent told him, that he was uncertain whether he could furnish him with these Things or not; but that he should look when he went Home: That the Deponent, when he went Home, found he had some of both, and put up a small Phial Glas of Laudanum, and betwixt half an Ounce and an Ounce of Arse-

nick, both which he delivered next Day to the Lieutenant, after the Deponent had dined with him and Lieutenant *Campbell* next Day in *Smith's*: That Lieutenant *Ogilvie* took the Deponent into another Room, away from Lieutenant *Campbell*, when he was to receive the Laudanum and the Arsenick, and there the Deponent delivered them to him: That the Price of both was a Shilling: That the Arsenick was pulverized; and Lieutenant *Ogilvie* having asked how to prepare it, the Deponent gave him Directions. Depones, That he had sold of the same Arsenick formerly to People for poisoning of Rats, and heard that it had the desired Effect. Depones, That he has been accustomed, when he sold Arsenick, to take Receipts from low People who bought it, but never from Gentlemen; and as the Deponent knew Lieutenant *Ogilvie*, and had a good Opinion of him, the Deponent did not ask a Receipt from him, although, when the Lieutenant spoke about it first, the Deponent said to him, *We use to take a Receipt for Arsenick*: That the Lieutenant answered, *See first if you have it*, adding at the same Time, *Very good*. Depones, That he got his Arsenick from a Druggist in *Dundee*; but how long ago he cannot say, there being a small Demand for Arsenick at any Time. *Causa scientiæ patet.* And all this is Truth, as he shall answer to God. Depones, That he wrapped it up in the Form of a Pennyworth of Snuff under three Paper Covers. Depones, That the Arsenick which he sold as above was white Arsenick. Depones, That he cannot take upon him to say, from looking at Arsenick, whether it be Arsenick or not; nor can he say from the Taste, for he never tasted it; but that he bought this as Arsenick, had the Name marked upon it upon the Package, and heard from those he sold it to that it had killed Rags, as above-mentioned. Depones, upon a further Interrogatory, That he heard of Mr. *Ogilvie* of *Eastmiln's* Death after the Time that he sold the Arsenick to the Lieutenant. *Causa scientiæ patet.* And this is also Truth, as he shall answer to God.

(Signed) JA. CARNEGIE. ALEX. BOSWELL.

Lieutenant GEORGE CAMPBELL, of the late eighty-ninth Regiment, unmarried, aged about twenty-two, being solemnly sworn, purged of Malice, partial Counsel, and interrogate, depones, That he has known Lieutenant *Ogilvie* the Pannel these five Years past: That in the Beginning of *June* last, as he thinks, the Pannel called for the Deponent at *Phinhaven*, and desired him to go along with him to *Brechin*, because he wanted to see his old Landlord *William Finlay*, Vintner there: That they accordingly went to *Brechin*, and put up at *Colin Smith's*, Vintner, and the Pannel called for *James Carnegie*, Surgeon there, but had no Conversation at that Time apart from the Deponent; the Pannel invited Mr. *Carnegie* to Dinner, after he and the Deponent should return from the Fishing, which they were going to next Day. And accordingly he came to Dinner, and the Pannel and Mr. *Carnegie* went out after Dinner to another Room, and had some private Conversation for some few Minutes, and then returned back to the Deponent; and the Deponent and the Pannel went to *Phinhaven* that Night, it being *Friday's* Night, and he staid with the Deponent *Saturday* and *Sunday* Nights, and left him on *Monday*; and on the *Saturday* after the Deponent

ment heard of Mr. *Ogilvie* of *Eastmiln*'s Death. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) GEO. CAMPBELL.
JAMES FERGUSON.

PATRICK DICKSON, Merchant in *Breckin*, married, aged sixty and upwards, being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That when the Pannel Mr. *Ogilvie* was in Prison at *Forfar*, the Deponent went to visit him; and he desired the Deponent to go to *James Carnegie*, Surgeon in *Breckin*, and talk to him, that he might not be imposed on by any body; and the Deponent accordingly went and conversed with Mr. *Carnegie*, who informed him, that he had sold the Pannel some Laudanum and some Arsenick, for both which he received a Shilling; and the Deponent returned to *Forfar*, and communicated to the Pannel what Mr. *Carnegie* had said; upon which the Pannel seemed to be under some Concern, and seemed desirous to speak with Mr. *Carnegie*, without either confessing or denying to the Deponent that he had bought the Arsenick, for he had only acknowledged buying the Laudanum on the *Saturday* before, when the Deponent had been with him in Prison; and the Deponent told him that he had some Business on hand which hindered him to send Mr. *Carnegie* to him; and the Pannel desired the Deponent to tell the Sheriff that he wanted to see him, to amend something in his Declaration with regard to the Laudanum which the Pannel received from Mr. *Carnegie.* *Causa scientiæ patet.* And all this is Truth, as he shall answer to God.

(Signed) PAT. DICKSON. AND. PRINGLE.

PETER MEIK, Surgeon in *Alyth*, unmarried, aged about twenty-seven, being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That upon the Day that Mr. *Ogilvie* of *Eastmiln* died, the Deponent was sent for as a Surgeon to him: That he was dead before he came, as the Deponent was informed, about two Hours: That immediately upon the Deponent's Arrival, he was carried up by a Servant to Mrs. *Ogilvie* the Pannel's Room, where she was sitting, and she appeared to be in great Grief and Concern for her Husband's Death, and desired the Deponent, that whatever he might think he discovered to be the Cause of her Husband's Death, that he would conceal it from the World. And depones, There was no body else present with the Deponent and the Pannel at that Time: That, upon going to the Room where the Corpse lay, and afterwards going out of the House, he met with Mr. *Ogilvie* the Pannel, who went up with him to the Room where the Corpse lay, and appeared to be in great Grief and Concern for his Brother: That five or six Days after, he was called upon to inspect the Body of *Eastmiln*; and, upon inspecting it, he observed the Nails and a Part of the Breast discoloured, and his Tongue swelled beyond its natural Size, and cleaving to the Roof of his Mouth, and no Part of his Tongue was beyond his Lips, though it did come out beyond his Teeth: That he has observed the Symptoms of the Nails and the Breast to occur after a natural Death, but never that of the Tongue at the same Time, though he has observed the Tongue swelled

without the other Symptoms. And being interrogate, Whether he understood these Symptoms to be the Effect of Poison? depones, That he is not so much acquainted with the Effects of Poison as to have formed a Judgment whether that was the Cause in this Case; but he was led to make that Conjecture from the Notice given him by *Andrew Stewart*, who had told him that the Defunct was thought to be poisoned, and from the Caution given him by Mrs. *Ogilvie* the Pannel, to conceal any thing that might discover the Manner of her Husband's Death. Depones, That *Alexander Ogilvie*, the Defunct's youngest Brother, told the Deponent that he was sent for to open his Brother's Body; and *Gilbert Ramsay*, Surgeon in *Coupar*, being also there, the Deponent and he agreed to open the Body; but *Alexander* would not agree to it, unless Doctor *Ogilvie* at *Forfar* was there; and as the Deponent and Mr. *Ramsay* could not stay till he came, it was laid aside. Depones, That neither of the Pannels made any Objection to it; and that *Alexander* desired them to take a superficial View of the Body, which they did, and discovered the Symptoms aforesaid. *Causa scientiæ patet.* And all this is Truth, as he shall answer to God.

(Signed) PETER MEIK. AND. PRINGLE.

GILBERT RAMSAY, Surgeon in *Coupar* of *Angus*, married, aged about thirty-eight Years, being solemnly sworn, purged of Malice and partial Counsel, and interrogate, depones, That he was sent for to *Eastmiln* about five or six Days after the Laird's Death, and was desired by *Alexander Ogilvie*, his youngest Brother, to inspect his Body along with the preceding Witness; and, upon looking at it, they observed the Nails and Part of the Breast discoloured, and his Tongue swelled: That he has observed the first two Symptoms to happen in a natural Death, in consequence of Putrefaction; but has not observed the last Symptom: That these Symptoms are owing to something very acrid, and made the Deponent suspect that he died of Poison: That his Lips were very little swelled, but more discoloured than by a natural Death: That the Deponent had heard Suspicions of Poison before he came there. And being interrogate for the Pannels, depones, That he had observed the Tongue swelled even in a natural Death, but not to that Degree it was in this Case. And depones, That, if he saw a dead Body with these Symptoms, though he had got no Notice of any Suspicion of Poison, he would suspect it from these Appearances. And being interrogate, Whether all these Symptoms might not happen in a bilious Cholick? depones, That the great Swelling in the Tongue, and Discolouring in the Lips, would not happen. And being interrogate for the Pannels, Whether all the usual Symptoms of Poison happened in this Case? depones, That he cannot answer that Question with any Certainty, never having seen the Body of any other Person who died of Poison. And being further interrogate, depones, That the usual Symptoms that occur in Poison by Arsenick, are Vomiting, and Evacuating downwards, and a great Swelling in the Tongue, and the Blackness in the Breast. And being further interrogate, depones, That there was no Appearance of Ulcers, in this Case, either in the Tongue or the Lips. Depones, That the Deponent proposed to open the Body; but

but he was opposed by *Alexander Ogilvie*, on account that Doctor *Ogilvie* from *Forfar* was not there; but, as far as the Deponent knows, it was not opposed by either of the Pannels. And further depones, That he believes every Thing in the Body would, after being so long dead, be in a State of Putrefaction; so that he doubts if the Poison would have been certainly discovered though the Body had been opened. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) GILBERT RAMSAY.
JAMES FERGUSON.

Doctor JOHN OGILVIE, Physician in *Forfar*, aged forty-eight Years, married, being solemnly sworn, purged of Malice and partial Counsel, and interrogate, depones, That he heard, that the late *Eastmiln* died upon the sixth of *June* last; and that a few Days after that, the Deponent was desired by the Sheriff-substitute of *Forfarshire*, to go to *Eastmiln* to inspect the Corpse of the Defunct: That the Deponent forthwith obeyed their Order, and arrived at *Eastmiln* upon the twelfth of *June* last, about Noon: That upon his Arrival, *Alexander Ogilvie*, the Defunct's Brother, desired the Deponent to go and inspect the Corpse, which were then lying in an Out-house: That he found the Corpse in its Grave-cloaths, and in a Coffin; and having inspected the Body, he observed, that the Face, the Arms, and several other Parts of the Body, were black and livid, and that the Nails were remarkably black; and as to the Tongue, it was locked fast by the Jaws, so that he could only observe a small Part of it, which projected beyond the Teeth, which Part being the Tip of the Tongue, he observed to be white and rough, and of a very unusual Appearance: That the Breast was white, and the Lips pretty much of a natural Colour: That from the Appearances above described, he could draw no Conclusion as to the Cause of the Defunct's Death; as almost all these Appearances might have arisen from the putrid State the Body was then in; and that the only Thing that appeared extraordinary to him, was the Appearance of the Tongue above described: That the Deponent had some Inclination to have opened the Body, and if the two Surgeons, who he heard had left *Eastmiln* that Morning, had been there, he believes he might have done so; but as they were gone, and as the Deponent, in his own Opinion, thought the Body too much putrefied, to be opened with Safety to the Operator; and as he was likewise of Opinion, that in such a State of Putrefaction, no certain Signs could have been discovered of the Cause of the Death by opening the Body, the Deponent declined to do it. Depones, That the Appearance of the Tongue before described, was not such as happens in common Deaths, but such as occurs from Convulsions, or other strong Causes. Depones, That Lieutenant *Ogilvie* the Pannel neither desired nor forbid the Deponent to inspect the Corpse; but he was present with the Deponent when he inspected them as aforesaid. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) JOHN OGILVIE. AND. PRINGLE.

ROBERT SMITH, Surgeon in *Edinburgh*, aged fifty Years and upwards, a Widower, who being solemnly sworn, purged of Malice and partial

Counsel, and examined, depones, That he had once Occasion to attend a Patient, being a Woman, near *Ormisson*, who had got Arsenick and died of it, as the Deponent verily believes: That the Deponent went and saw the Woman about two Hours after she had taken the Arsenick in some Pottage, as she told him: That the Deponent, when he came, found her seized with a violent Vomiting and a Purging: That she complained of a burning Heat in her Stomach and Bowels, and had a great Thirst, and drank frequently of Milk and Water: That the Deponent, after staying some Time with her, went away, and after a few Hours, returned to her again, when he was informed, the before-mentioned Symptoms had continued upon her, that is to say, the Vomiting, Purging, Pain, and Drought: That she soon thereafter died, having lived, as the Deponent thinks, about nine Hours after she took the Arsenick. Depones, That the Deponent next Day inspected the dead Body of the foresaid Woman, and could discover nothing externally upon the Body different from the Appearances after a natural Death; but that, upon opening the Body, he discovered the Stomach and Guts to be red and inflamed, and the Stomach appeared to be gangrened, and in Parts of the Stomach he discovered some Arsenick. Depones, That at the Time the Woman had received the Arsenick, as above deponed, a Child had likewise taken a Spoonful or two of the Pottage, which occasioned the Child to vomit, and thereby throw up the Arsenick, as he believes, so that the Child recovered. Being interrogate for the Pannels, depones, That a Person may be seized with a Vomiting, internal Pain, and Drought, without having received Arsenick; as these Symptoms may occur in a bilious Cholick and other Cases. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) ROBERT SMITH. AND. PRINGLE.

GEORGE CAMPBELL, Sheriff-substitute of *Forfar*, aged seventy and upwards, *solutus*, who being solemnly sworn, purged of Malice and partial Counsel, and examined, depones, That upon looking at the two Declarations now exhibited to him, emitted before him by Mrs. *Ogilvie* the Pannel, and other two by *Patrick Ogilvie* Pannel, that all these were emitted freely before him, and faithfully taken down from their own Mouths, and subscribed by them before the Deponent. And also, that the Deponent's Name adjected thereto, is his Subscription. Depones, That he, as Sheriff-substitute of the County of *Forfar*, went to *Eastmiln* upon the first of *July* last, in order to search for Papers or Letters belonging to any of the Pannels: He the Deponent did find in a Trunk, or Drawer, he cannot say which, the Letter now exhibited to him, marked by his Hand, and that of *John Ure* his Clerk, on the Day aforesaid. And another Letter being exhibited to him, without Date or Subscription by the Writer thereof, and with a Docquet on the Back, signed *George Spalding*, and another Docquet below, signed *Anne Clark* and *Alexander Boswell*, depones, That to the best of his Memory, he thinks he received the said Letter inclosed in one wrote by *Alexander Ogilvie* the Pannel's Brother, addressed to the Deponent. And a third Letter being exhibit to him, signed *Ketty Nairn*, with a Docquet on the Back, signed *Anne Clark*, *Alexander Boswell*,

Beswell, depones, That he found the said Letter in one of the Repositories at *Eastmiln*, when he made the Search above-mentioned. *Causa scientie patet*. And this is Truth, as he shall answer to God.

(Signed) GEO. CAMPBELL. GILB. ELLIOT.

JOHN URE, Sheriff-Clerk of *Forfar*, aged forty Years, married, being solemnly sworn, purged of Malice and partial Counsel, and interrogate, depones, That the four Declarations now exhibited to him, two by Mrs. *Ogilvie* Pannel, and two by *Patrick Ogilvie* Pannel, were all freely emitted before the preceding Witness, and in Presence of the Deponent, and all signed by him the Deponent, by the Sheriff-substitute *George Campbell*, and the Pannels. *Causa scientie patet*. And this is the Truth, as he shall answer to God.

(Signed) JOHN URE. GILB. ELLIOT.

The three Letters and four Declarations before deponed to were read to the Court and Jury, and of which the Tenor follows :

FIRST LETTER.

D^r Captin

I was sorrie I missed you this Day. I sat at the Water Side a long Time this Forenoon; I thought you would have comed up here; if you had as much Mind of me as I have of you, you would have comed up, tho' you had but stayd out-by as there was no Use for that, there is more Rooms in the House then one. God knows the Heart that I have this Day and instead of being better its worse, and not in my Power to help it. You are not minding the Thing that I said to you, or you went out here and what I wrote for. Meat I have not tasted since Yesterday Dinner, nor wont or you com here, tho' I should never eat any it lyes at your Door. Your Brother would give any thing you would come, for God's sake come.

SECOND LETTER.

D^r S^r

I received yours just now; I am very glead to hear that you went safe home, no thing could give me greater Pleasure then to here of you being well; Mrs. *Spaden* was safely delivert of a Daughter last Night, and is in a very good Way; Mr. *Spaden* thought it needles to write you as I have wrote you: As for that you write me about any body clattring any Noncens you need not be afraid of that about any thing, for I am detrmind not to mind any thing; We shall send to you when *Willie* and *Chairele* comes up, but in the mean time I think you may send one *Sunday* to see and to let us here how you are; the Pain will not write for me: I have no more Time to write, but my best Respects to your Mother is all from

D^r S^r

yours while

Glenkilrie Weensday

KETTY NAIRN.

THIRD LETTER.

D^r S^r

I recved yours, and as you propose coming this Day eight Days, Mr. *Spalding* thinks it proper that hi runs an Expreß to *Edinburgh* to my Uncle, which I think very right, and till you heare the Consequance thereof, I think you

better not trust any Writer, which you shall hear the Moment the Expreß comes back; as I see you mean nothing but what is genteel, you may expect nothing else at my Hand, and tell wee see you heare is all with Comp^{te} to you and Feamily

D^r S^r

your most humble Serv^t

Glenkilry
Jan^y 4. 1765.

KETTY NAIRN.

Addressed on the Back, To *Thomas Ogilvy Esq;* of *Eastmiln*.

FIRST DECLARATION by KATHARINE NAIRN.

Forfar, 14 June, 1765. In Presence of *George Campbell*, Esq; Sheriff-substitute,

Compeared KATHARINE NAIRN, lawful Daughter of the deceased Sir *Thomas Nairn* of *Dunfinnan*, Baronet, and Relict of the deceased *Thomas Ogilvie* of *Eastmiln*, who being examined, declares, That Lieutenant *Patrick Ogilvie* was at *Eastmiln* when she was married to his Brother, and continued there as his proper Residence till within these three or four Weeks, when he left same, as his Brother and he did not agree. That the Evening *Patrick Ogilvie* left *Eastmiln*, the Declarant wrote him a Letter, which she sent by *Elizabeth Sturrock*, one of the Maid-servants; to *Little Forther*, as she was going there, at least about a Gun-shot from *Little Forther*, for some Whisky from one *Robert Easson*. Declares, That she did not write any Letter to said *Patrick Ogilvie* when at *Glenkilrie*, nor to be sent him to one *John Spalding's*, nor to *Glenkilrie*. Declares, That on *Tuesday* before her Husband's Death she was sending said *Elizabeth Sturrock* to *Alyth* with some Yarn, when she wrote a Letter by her to deliver to said *Patrick Ogilvie* relative to some of his Shirts she had been mending to him, and the Letter was directed to the Care of *Andrew Stewart*, and that she got no Return by *Elizabeth Sturrock*; but that next Day she got a Return to her Letter by said *Andrew Stewart*, a Merchant in *Alyth*, who was coming to *Eastmiln* however, and that it was the Afternoon of the Day before her Husband died. That *Andrew Stewart*, beside the Letter, brought her two Doses of Salts and a small Phial Glas with a little Laudanum; and that the Letter was but a Quarter of a Sheet of Paper, containing mostly Directions about the Salts, and how much of the Laudanum to take; but whether the Letter was open or sealed she does not remember. That before *Patrick Ogilvie* left his Brother's House, she asked him, any Time he was at *Alyth*, to buy for her and send to *Eastmiln* two Doses of Salt and a little Laudanum as she slept very ill: That when *Andrew Stewart* delivered the Letter, she read same, being only a Direction as above, and after laid the Salts and Laudanum into a Drawer, till she should use same; and that she took one of the Doses of Salts on the *Friday* after her Husband's Death, and the other on the *Saturday*; and on the *Sunday* and the *Monday* Nights she took Laudanum each Night, and as she did not use the whole Laudanum, she delivered back the Glas, and the Remainder of Laudanum, to the said *Patrick Ogilvie* on his Return to *Eastmiln*, after his Brother's Death. That on *Thursday* Morning the sixth of *June*, her Husband being distressed the Night before, and many Days preceding; and that Morning he complained of a Shortness of Breath, and that through the Night he had been distressed with it,

she therefore gave him his Tea in his Bed; and that when the rest of the Family were at their Tea, she filled up a Bowlful for her Husband, which, with a Bit of hard Bisket from *Dundee*, she carried straight from the low Room, where they were at Breakfast, up Stairs to her Husband's Room, and gave him; and that she took the Bisket out of a Basket standing on a By-table in the Room, aside the Family then sitting at Breakfast; but that she did not go into any Closet with the Tea, before giving it to her Husband: That she never heard from her Husband, nor any Person else, that he blamed the Tea for his Illness. Declares, That *Elizabeth Sturrock* got so much of the Tea Mr. *Ogilvie* left, as he did not drink it out, and also got another Bowl of Tea after, both which she gave her out of her own Hands. And this she declares to be Truth.

KETTY OGILVIE.
GEO. CAMPBELL.
JOHN URE, Clk.

SECOND DECLARATION by
KATHARINE NAIRN.

Forfar, 15 June, 1765. In Presence of the said *George Campbell*, Esq; Sheriff-substitute,

Compeared the said KATHARINE NAIRN, *alias* OGILVIE, who being re-examined, declares, That before the Lieutenant left *Eastmiln*, she heard him say that he had both Salts and Laudanum in a Chest that he brought from the *East-Indies*, and that she said she would be obliged to him for a little of the Salts and Laudanum, as she had much need thereof.

KETTY OGILVIE.
GEO. CAMPBELL.
JOHN URE, Clk.

FIRST DECLARATION by
PATRICK OGILVIE.

Forfar, 14 June, 1765. By *George Campbell*, Esq; Sheriff-substitute of *Forfarshire*.

Compeared Lieutenant PATRICK OGILVIE, of the eighty-ninth Regiment of Foot, who being examined, declares, That so far as he remembers, he came to this Country from Abroad in *January* last, and that his principal Residence was at the *Eastmiln* of *Glenylla*, his Brother *Thomas Ogilvie's* House, and that he left that Place about three Weeks ago. That the Reason he left it, was on account of some Dryness betwixt his Brother and him, occasioned by some Surmises or Reports in the Country; but though these had not happened, he was determined not to stay longer about his Brother's. That since leaving same he has had no fixed Residence, but has been going about seeing his Friends and old Acquaintances. Declares, That Evening he left his Brother's House, he went to Mr. *Shaw's* House at *Little Forther*, and when walking by the Water-side there with *George Shaw*, *Elizabeth Sturrock*, a Servant of his Brother *Thomas Ogilvie's*, brought him a Letter from Mrs. *Ogilvie* his Brother's Lady, the Contents of which were desiring him to return to his Brother's House; and that he sent a verbal Message, he was not to return at that Time, as he then intended going the Length of *Baron Reid's* on a Visit. Declares, That the next Day, when at *Little Forther*, he received another Letter from his

Brother by *James Millam*, the Contents of which were to the same Purpose as Mrs. *Ogilvie's*, which *James Millam* knew. That some Days after, when at *Glenkilrie*, he received another Letter from said Mrs. *Ogilvie*; but who was the Bearer of it he does not remember, nor does he remember if he wrote any Answer to that Letter. Declares, That he was in *Alyth* the *Tuesday* before his Brother's Death, when he received a third Letter from Mrs. *Ogilvie* by the aforesaid *Elizabeth Sturrock*, but to which he returned no Answer in Writing. That the said Evening of *Tuesday*, he gave to *Andrew Stewart*, Merchant in *Alyth*, his Brother-in-law, a small open Note, by way of Wrapper or Direction round a small Phial Glass in which were some Drops of Laudanum, and in the Wrapper two Doses of Salts folded close by the Glass; and that the Write in the Note or Wrapper properly contained Directions for Mrs. *Ogilvie* how to use the Laudanum, and, so far as he remembers, was to take fourteen or fifteen Drops at a Time. That all this he told to *Andrew Stewart*, and that it was for Mrs. *Ogilvie's* own proper Use, and to deliver it to no body else; but did not desire him to do it privately, or to let no body see him deliver it, only desired him to be sure to deliver it to herself. Neither did he deliver a sealed Letter to *Andrew Stewart* at the Time for Mrs. *Ogilvie*. That the said Laudanum and Salts he brought from the *East-Indies* with him, as a Remainder of what he used when his Health was bad there, and on his Passage home, having done the same by his Surgeons Directions both at Land and Sea. And this he declares to be Truth.

PAT. OGILVIE.
GEO. CAMPBELL.
PATRICK ORR, Clk.
JOHN URE, Witness.

SECOND DECLARATION by
PATRICK OGILVIE.

Forfar, 15th June, 1765. By *George Campbell*, Esq; Sheriff-substitute.

Compeared the said Lieutenant PATRICK OGILVIE, who being re-examined, declares, That it consists with his Knowledge, that of the Laudanum he sent as mentioned in his last Declaration, there was not above thirty Drops or Gutts of it used, so far as he can recollect, from the Quantity he sent, and what remained in the Phial Glass the Day after his Brother's Death. That the Declarant came to *Eastmiln*, when Mrs. *Ogilvie* returned him the Glass, and the Remainder of Laudanum therein, and which he instantly produces, and is immediately sealed up with the Declarant's own Seal, and lodged in the Sheriff-Clerk's Office. And that when the Declarant delivered the Glass to *Andrew Stewart*, he shook the same to him, and shewed him betwixt him and the Light the Quantity of Laudanum therein, who, upon looking at the same just now, must be sensible that there is no more out thereof than about the Quantity of thirty Gutts as above; and that Mrs. *Ogilvie* told him she had used about that Quantity, and also made use of the Salts. Declares, That within these two Weeks he was at the Town of *Breckin*, and in Company with *James Carnegie*, Surgeon of that Place, but that he received from him no Laudanum or any other Medicine whatever. That when he was at *Eastmiln*, in the Course of Conversation

versation with Mrs. *Ogilvie*, he happened to say that he had some Salts and Laudanum, that he used when at the *East-Indies*, in his Chest at *Dundee*, which would be very soon at *Ayrb*; when Mrs. *Ogilvie* desired to have some of both Salts and Laudanum, as it might give her Rest when uneasy and could not procure Sleep. And this he declares to be Truth.

PAT. OGILVIE.
GEO. CAMPBELL.
PATRICK ORR, Clk.
JOHN URE, Witness.

Mr. JAMES BALFOUR of *Pilrig*, Sheriff-substitute of the Shire of *Edinburgh*, aged fifty and upwards, married, who being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate; and two Declarations or Examinations being now exhibited to the Deponent, depones, That, at the Desire of the Lord Advocate, the Deponent, upon the twenty-second of *June* last, went to the *Laigh Council-house* of *Edinburgh*, where *Patrick Ogilvie* Pannel being brought before him for Examination, depones, That the Declaration now exhibited to him, signed by the Deponent and the said *Patrick Ogilvie* Pannel, is what was emitted by the Pannel before the Deponent at that Time: That, on the *Monday* thereafter, the Deponent, at my Lord Advocate's Desire, went to the *Tolbooth* of *Edinburgh*, in order to examine *Katharine Ogilvie* the other Pannel. The Paper now exhibited to him, and signed by him before *William Dunbar* and *John Stewart*, both Writers in *Edinburgh*, Witnesses subscribing thereto, contains a faithful Narrative of what passed on that Occasion. *Causa scientia patet*. And this is Truth, as he shall answer to God.

(Signed) JA. BALFOUR.
GILB. ELLIOT.

WILLIAM DUNBAR, Writer in *Edinburgh*, aged twenty-four, unmarried, who being solemnly sworn, purged of Malice, partial Counsel, examined, and interrogate, depones, That the Examination of *Patrick Ogilvie* Pannel, mentioned in the Deposition of the preceding Witness, was emitted in the Deponent's Presence, and he saw the said Pannel and the Sheriff-substitute subscribe the same. Another Paper being exhibited to him, containing what passed on the Examination of Mrs. *Ogilvie* Pannel, by Mr. *James Balfour*, Sheriff-substitute of the Shire of *Edinburgh*, in the *Tolbooth* thereof, depones, That the said Paper contains a faithful Account of what passed on that Occasion; and that the Deponent is a signing Witness to the said *James Balfour's* Subscription thereto annexed. *Causa scientia patet*. And this is Truth, as he shall answer to God.

WILL. DUNBAR.
GILB. ELLIOT.

The two Papers before deponed to were read to the Court and Jury, and the Tenor thereof follows:

Edinburgh, the twenty-second Day of *June*,
One thousand seven hundred and sixty-five
Years.

In Presence of Mr. *James Balfour* of *Pilrig*, Sheriff-substitute of the Shire of *Edinburgh*, Compared PATRICK OGILVIE, late of Colonel *Morris's*

Regiment; and being interrogate, Whether he sent any Salts to Mrs. *Ogilvie* of *Eastmiln*, his Sister, or any Medicine, or any Thing wrapt up in a Paper? Refuses to answer this Question.

Being interrogated, Whether he was in use to take Laudanum and purging Salts in one and the same Day for his Health? Answers, That he was not.

Being interrogated, Whether he had in his Possession a Bottle of Laudanum during his Voyage home from the *East-Indies*? He refuses to answer this Question.

Being interrogated, How many Gutts or Drops of Laudanum he was in use to take at a Dose? He refuses to answer this Question.

Being interrogated, Whether Laudanum was in use to bind or loose him while at Sea? He refuses to answer this Question.

Being interrogated, What was the Bulk of each Dose of Salts he took? Refuses to answer this Question.

Being interrogate, Whether he sent a Bottle to the said Mrs. *Ogilvie* by the Hands of *Andrew Stewart*? and whether he told *Andrew Stewart* that there were Salts along with the Bottle? Refuses to answer this Question.

Being interrogated, What was the Nature of the Surmises and Reports, which occasioned a Dryness betwixt him and his Brother *Eastmiln*? He refuses to answer this Question.

Being interrogated, What were the Contents of any Letters sent to him by the said Mrs. *Ogilvie*, after that the Declarant had left his Brother's House this Summer? and what were the Contents of the Answers he made to them? Refuses to answer this Question.

Being interrogated, When he first heard of his Brother's Illness, and from whom? Refuses to answer this Question.

Being interrogated, Whether he had any Conversation with his Mother, or any of the Family, or in the Family, as to the Nature of his Brother's Distemper or Cause of his Death? Refuses to answer this Question.

Being interrogated, Whether he slept in the House of *Eastmiln* after his Brother's Death? for how many Nights, in what Room, and who slept in the Room with him? He refuses to answer any of these Questions.

Being interrogated, In what Room the said Mrs. *Ogilvie* slept, during the Nights between the Death and Burial of her Husband? He refuses to answer this Question.

Being interrogated, Whether he did ever send for any Medicines from one *Dougal*, a Surgeon in *Kerriemuir*? or did ever hear any body send for any Medicines from him? He refuses to answer this Question.

Being interrogated, Whether he has had any Conversation with any of his Brother's Servants concerning the Circumstances which happened on the Day of his Brother's Death? He declines answering this Question.

Being interrogate, Whether, while he was in the Prison of *Forfar*, he sent any Messages by Word or Writing to the said Mrs. *Ogilvie*? He refuses to answer this Question.

Being interrogated, Whether he is acquainted with one Mr. *Carnegie*, a Surgeon in *Brechin*? or whether he ever bought any Medicines or Poison from the said Mr. *Carnegie*? He refuses to answer this Question.

Being

Being interrogate, Whether he recollects what Time his deceased Brother was married? Answers, He does not recollect just now.

Being interrogated, Whether he the Declarant was present at the Marriage? Answers, That he was.

Being interrogated, Whether he was acquainted with the said Mrs. *Ogilvie* before her Marriage with his Brother? Answers, That he was not.

Being interrogated, Whether he absolutely refuses to answer the above Questions, which it is said above he refuses, or declines to answer? or whether he declines at present to answer them? He now answers, That he absolutely refuses to answer them To-night; but he does not know, whether he may hereafter answer some of them or not.

And being interrogated, Whether he inclines to give any Reason for this Refusal? Answers, That he does not think it necessary to give any Reasons.

This Declaration and Answers were emitted in Presence of *William Dunbar* and *William Campbell*, Writers in *Edinburgh*.

PAT. OGILVIE. JA. BALFOUR.

At *Edinburgh*, the twenty-fourth Day of *June*, One thousand seven hundred and sixty-five Years.

In Presence of Mr. *James Balfour* of *Pilrig*, Advocate, Sheriff-substitute of this Sheriffdom of *Edinburgh*, Compeared Mrs. KATHARINE NAIRN, Widow of the deceased *Thomas Ogilvie* of *Eastmiln*; and a Copy of two several Declarations emitted by her, upon the fourteenth of *June* instant, before *George Campbell*, Esq; Sheriff-substitute of *Forfar*, and subscribed of this Date by the said Mr. *James Balfour*, being read over to her, she was asked, If there was any thing in the said Declarations which she now desired to correct or alter? She refused to answer this or any other Question put to her, having been so advised by her Friends and Council: And the following Questions were separately put to her.

In what Drawer and in what Room in the House did she put the Medicines and Letter which were delivered to her by *Andrew Stewart*, the Day before her Husband's Death?

Did she read the Letter? What were the Contents? Has she the Letter? or how has she disposed of it?

By whose Advice did she order the above Medicines to be sent to her?

What was her Ailment? Did she mention such Ailment to any in the Family? Did she mention her Ailment to Lieutenant *Ogilvie*? If she did, how came she to take his Advice about her Health?

Did she sleep with her Husband the Night before his Death? When did she first see and speak to him next Morning, the sixth of *June*?

Was she in use to give him Tea in his Bed? Did he desire Tea that Morning? Did any body see her make the Tea and fill the Bowl for her Husband? Did she carry up the Tea from the Place where it was made straight to his Room? Did he refuse or shew any Unwillingness to take it? Did she give any of the Tea which her Husband had drank to any other Person?

Did any body propose sending for a Surgeon when her Husband was taken ill? Did she oppose

the Surgeon being sent for? And what was the Reason for so doing?

Where did she sleep from the Time of her Husband's Death, till the Time of her Commitment to the Prison of *Forfar*?

Where did Lieutenant *Ogilvie* sleep during that Time?

How many Letters did she write to Lieutenant *Ogilvie* from the Time he was dismissed from her Husband's Family? If she sent any Letters, mention how many, by whom sent, and to what Places sent, and what were the Contents, and what Answers she received. Does she know what is become of these Letters and Answers?

To all and each of which Questions, put separately to her, she refused to give any Answer. And further refuses to adhibite her Subscription hereto.

In Witness whereof, the said Mr. *James Balfour*, *William Dunbar*, Writer in *Edinburgh*, and *John Stewart*, Writer there and hereof, have adhibited their Subscriptions, Time and Place foresaid.

(Signed) JA. BALFOUR.

WILLIAM DUNBAR, Witness.

JOHN STEWART, Witness.

JAMES M'KENZIE, Session-Clerk of *Glenylla*, aged forty Years, married, who being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That some Time after the late *Eastmiln's* Death, the Deponent was in the House of *Eastmiln*, where *Alexander Ogilvie*, Brother of the late *Eastmiln*, likewise was: That he saw the said *Alexander Ogilvie* have several Papers in his Hand, one of which, he said, he was to send to *Forfar*, as it might be Evidence against Mrs. *Ogilvie* the Pannel; and that the Deponent looked at that Paper, and saw that it was in the Form of a Letter without a Subscription; but the Deponent did not read it, nor hear it read: And a Letter libelled upon, beginning *D' Captain*, and indorsed on the Back by the Names of *George Spalding* and *George Campbell*, being now exhibited to the Deponent, he depones, That he cannot now say positively whether or not that is the Letter shewn to him by *Alexander Ogilvie* as aforesaid; but thinks it is like it. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) JA. M'KENZIE. AND. PRINGLE.

JAMES MILLAM, Tacksman of the *Eastmiln* of *Glenylla*, aged thirty-six Years, married, and being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That, during the late *Eastmiln's* Illness, upon that Day on which he died, the Deponent was sometimes in the Room with him, particularly about Two o'Clock in the Afternoon, when the Deponent asked the late *Eastmiln*, How he was? To which *Eastmiln* answered, That he was very ill: And the Deponent further asked him, What he thought was the Matter with him? To which *Eastmiln* answered, *I am gone, James, with no less than rank Poison!* *Causa scientiæ patet*. And this is the Truth, as he shall answer to God.

(Signed) JAMES MILLAM. AND. PRINGLE.

GEORGE SPALDING of *Glenkilrie*, aged thirty and upwards, who being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That he is married to a Sifter

Sister of Mrs. Ogilvie the Pannel, and has had frequent Occasion of seeing Mrs. Ogilvie's Hand-writing; and a Letter, without a Subscription, beginning *D' Captain*, and indorsed on the Back by the Subscriptions of *George Spalding* and *George Campbell*, being exhibited to the Deponent, he depones, That he thinks that Letter is of the Hand-writing of Mrs. Ogilvie the Pannel; but cannot be quite positive, as he has seen her write sometimes better, and sometimes worse, according as her Pen was. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) GEO. SPALDING. AND. PRINGLE.

ALEXANDER LINDSAY, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*, aged twenty-one, unmarried, who being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That he came to be a Servant at *Eastmiln* about Six o'Clock of the Morning of that Day on which *Eastmiln* died: That, about Nine o'Clock that Morning, he saw Mrs. Ogilvie the Pannel standing in a Closet up Stairs between the two Bed-rooms: That the Deponent was going up to the Garret to take down a Wheel: That the Door of the Closet was open; but the Deponent did not go into the Closet; and that he did not then observe any thing that Mrs. Ogilvie was doing, nor that she had any thing in her Hand; and that, when the Deponent went up to the Garret, Mrs. Ogilvie called up to him not to walk over the Closet, for fear of shaking down something. Depones, That, when he was in the Garret, he saw *Anne Sampson* standing at the Stair-head, near the Closet where Mrs. Ogilvie was. *Causa scientiæ patet*. And this is Truth, as he shall answer to God.

(Signed) ALEX. LINDSAY. AND. PRINGLE.

His Majesty's Advocate declared he concluded his Proof.

The following Witnesses were adduced by the Pannels, for proving their Exculpation.

LIST of WITNESSES summoned for KATHARINE NAIRN.

The Witnesses so marked * were examined.

- 1 * *George Spalding* of *Glenkilrie*.
- 2 *Andrew Stewart*, Merchant in *Alyth*.
- 3 *Martha Ogilvie* his Wife.
- 4 Lieutenant *George Campbell*, late of the 89th Regiment of Foot, at *Phinhaven*.
- 5 *Patrick Dickson*, Merchant in *Brechin*.
- 6 *Colin Smith*, Vintner there.
- 7 *James Rattray* of *Kirkbillocks*.
- 8 *Anne Robertson* his Wife.
- 9 *Alexander Lindsay*, late Servant to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 10 * *George Campbell*, Esq; Sheriff-substitute of the County of *Forfar*.
- 11 *John Ure*, Sheriff-Clerk of *Forfar*.
- 12 *Fergus Fergusson* in *Kirkton* of *Glenylla*.
- 13 * *Margaret Rait* his Wife.
- 14 * *James Millam*, Tacksman of the *Eastmiln* of *Glenylla*.
- 15 *David Spalding* of *Whitehouse*.
- 16 *Isobel M'Kenzie*, Widow of the deceased *Thomas Ogilvie* some time of *Eastmiln*, and Mother of the said last deceased *Thomas Ogilvie* of *Eastmiln*.
- 17 *David Watson*, Miller at *Eastmiln* of *Glenylla*.
- 18 *Thomas Farquarson*, eldest Son of *Paul Farquarson* of *Perrie*.
- 19 *John Farquarson* at *Formall*.
- 20 *Gilbert Ramsay*, Surgeon in *Coupar* of *Angus*.
- 21 * *Jean Wallace*, Servant to *George Spalding* of *Glenkilrie*.
- 22 * *John Pateron*, Son of *James Pateron* in *Clocknocator* in *Glenylla*.
- 23 *Andrew Pateron*, also Son of said *James Pateron*.
- 24 * *Margaret Pateron*, Daughter to the said *James Pateron*.
- 25 *Katharine Fergusson*, Daughter of *Fergus Fergusson*, in *Kirkton* of *Glenylla*.
- 26 *James M'Kenzie*, Schoolmaster at *Glenylla*.
- 27 *James Dougal*, Surgeon in *Kerriemuir*.
- 28 * *Elizabeth Fergusson*, Spouse to *John Bresack*, Portioner of *Invercarity*.
- 29 *Alexander Robertson* at *Binzean*.
- 30 *Alexander Ramsay* at *Bridge-end* of *Lintrathen*.
- 31 *Janet Irons*, Spouse to *William Glas* at *Burnside* of *St. Martin's*.
- 32 * *Isobel Douglas* at *Wardhead* of *Formall*.
- 33 Mr. *James Warden*, Schoolmaster at *Alyth*.
- 34 *Patrick Ramsay* at *Achmuir*.
- 35 * *Thomas Jack*, Tenant in *Kirkton* of *Glenylla*.
- 36 *Thomas Ogilvie* in *Little Kenny*.
- 37 *John Ramsay* of *Kinalty*.
- 38 *James Manson*, Servant to *Colin Smith*, Vintner in *Brechin*.
- 39 *Thomas Morgan*, Vintner in *Dundee*.
- 40 *Helen Knight*, his Servant.
- 41 *Helen Sinclair*, Spouse to *Robert Dow* in *Dundee*.
- 42 *Charles Farquarson*, Watchmaker there.
- 43 *Patrick Ogilvie*, Shipmaster there.
- 44 *James Kay* junior, Mariner there.
- 45 *James Dickson*, Stabler at *Cowgate-Head* of *Edinburgh*.
- 46 *Robert Heron*, Shoemaker there.
- 47 *John Gardiner*, Stabler there.
- 48 *Gardiner*, his Wife.
- 49 *Anne Younger*, Spouse to *Charles Ramsay*, Barber in *Edinburgh*.
- 50 *David Murray*, Stabler there.
- 51 *Joseph Baron*, Porter at the Foot of *Merlin's-wynd*, *Edinburgh*.
- 52 *Christian Ogilvie*, his Wife.
- 53 *Andrew Murison*, Macer to the Court of Justiciary.
- 54 *Murison* his Wife.
- 55 *Robert Gibb*, Coachmaster in *Canongate-Head*.
- 56 *Mary Dallas* his Wife.
- 57 *Thomas Miller* of *Barskimming*, Esq; his Majesty's Advocate.
- 58 *John Davidson*, Writer to the Signet.
- 59 Mrs. *Hay*, Widow of *Cuthbert* of *Castlehill*.
- 60 *Donald Farquarson*, Cadie or Council-post, and Residenter in *Edinburgh*.
- 61 *John Laing*, Journeyman-Wright, Foot of *Old Assembly-Clofs*, *Edinburgh*.
- 62 *Francis Shaw*, Carpenter, Son of *Duncan Shaw* at *Cortachie*.
- 63 *Robertson*, Son of *John Robertson* of *Cray*.
- 64 *Farquarson*, Wife of *Wallace*, Porter and Indweller in *Edinburgh*.
- 65 *John Farquarson*, some time in *Sheitbie*, now in Ground of *Dirie*.
- 66 *Elizabeth Sturrock*, late Servant to the deceased *Thomas Ogilvie* of *Eastmiln*.

- 67 *Anne Sampson*, late Servant to the said deceased *Thomas Ogilvie*.
- 68 *Dr. Robert Menzies*, Physician in *Coupar in Fife*.
- 69 *Moir*, Wife of the said *Dr. Robert Menzies*.
- 70 *Hay*, Relict of *Bruce of Bunzean*.
- 71 *George Rodger*, Sawyer of Timber in *North Leith*.
- 72 *John Rodger* his Son.
- 73 *Mrs. Sarah Young*, late Boarding-mistress in *Edinburgh*, now in
- 74 *James Rattray*, Porter or Workman in *Edinburgh*.
- 75 *Margaret Spalding* his Spouse.
- 76 *Anne Rattray*, Spouse to *Alexander Ogilvie*, Brother to the said deceased *Thomas Ogilvie* of *Eastmiln*.
- 77 *Thomas Black*, late Surgeon in *Dundee*, now in *Pertb*.
- 78 *Mr. James Hill*, Preacher of the Gospel, residing at *Wester Gowrdie*.
- 79 *John Sword*, Merchant in *Edinburgh*.
- 80 *John Ballantyne* in *Kirkton of Glenylla*.
- 81 *John Shaw*, Tenant in *Downie*.
- 82 *James Rob*, Tenant in *Tullich*.
- 83 *John Farquarson* at *Dykehead* in Ground of *Dirie*.
- 84 * *James Scott*, late Druggist in *Edinburgh*, now in *Alloa*.
- 85 *Dr. James Christie*, late of *Keith*.
- 86 *George Jaffray*, Writer in *Edinburgh*.
- 87 *James Smith*, Writer in *Edinburgh*.
- 88 *Anne Cameron*, Spouse to *Alexander M'Gregor*, Stabler there.
- 89 *Henry Walker*, late Servant to *Peter Fyfe*, Stabler in *Edinburgh*.
- 90 *Jean Haig*, Widow of *John Allan*, Baker in *Edinburgh*.
- 91 *Charles Stewart*, Taylor in *Edinburgh*.
- 92 *John Armstrong*, Writer there.
- 93 *Francis Carlyle*, Writer there.
- 94 *John Fenton*, Journeyman-Painter in *Edinburgh*.
- 95 *James Rae*, Writer in *Edinburgh*.
- 96 *John Pearson*, Writer there.
- 97 *James Corrie*, Writer there.
- 98 *James Harrower*, Writer there.
- 99 *Gilbert Stewart*, Writer there.
- 100 *Janet M'Lauchlan*, Servant to *John Gilloch* in *Dalnakebock*.
- 101 *Isobel Robertson*, Wife of *Alexander M'Kenzie* in *Inveredry*.
- 102 *Bethia Nairn*, Spouse to *George Spalding* of *Glenkilrie*.
- 103 *Dr. Adam Austin*, Physician in *Edinburgh*.
- 104 *Dr. Clerk*, Physician in *Edinburgh*.
- 105 *Dr. Stewart Threipland*, Physician there.
- 106 *John Scott*, Son to *Dr. James Scott*, Physician in *Alloa*.
- 107 *James Carnegie*, Surgeon in *Brechin*.
- 108 *Mrs. Margaret Murray*, Relict of *Archibald Eagle*, Seed-merchant in *Edinburgh*.

The List of Witnesses summoned for Lieutenant *Patrick Ogilvie* is the same as the above, with the Omission of the 108th.

N. B. *The List of Witnesses summoned for the Prosecutor, the List of Assize given out in the Indictment, and the List of Witnesses summoned for the Pannels, are not inserted in the Record.*

GEORGE SPALDING of *Glenkilrie*, aged thirty and upwards, married, who being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That in *February* last, he wrote a Letter to the Lady *Nairn*, pressing her Ladyship, that Intestment should be taken in Favour of *Mrs. Ogilvie* of *Eastmiln*, upon her Contract of Marriage, because her Husband *Eastmiln* appeared to be in a bad State of Health. Depones, That, for some Years past, *Eastmiln* appeared to him to be in an indifferent State of Health, complaining often of a Heart-Cholick, or a Pain in his Stomach, attended with a short Cough, which was not continual, but which seldom left him. Depones, That he wore a plaiden Jacket and a Belt round his Middle, much broader than ever he saw another wear, with Lappets of Leather hanging down his Haunches: That, upon his Marriage, he took off these Happings. Depones, That before he got the said broad Belt, he wore a striped woollen Night-Cape upon his Breast, the lower End of which reached near his Breeches; but never observed him wear it after he got the Belt. Depones, That about six Years ago, the Deponent was told, that *Mr. Ogilvie* of *Eastmiln* had an ulcerous Fever; after which the Deponent saw him frequently, but never saw him look so well as formerly. Depones, That the old Lady *Eastmiln* told the Deponent, that her Son *Eastmiln* was about forty Years of Age when he died. Depones, That *Eastmiln* was married the thirtieth Day of *January* last. Depones, That when *Eastmiln* was complaining of the said Pain of his Stomach, in the Deponent's House, he the Deponent has frequently given him a Dram to comfort him; and particularly, a little before *Eastmiln's* Marriage, *Eastmiln* being ill of the said Disease in the Deponent's House, he got hot Ale and Whisky, with a Scrape of Nutmeg in it, and was put to Bed without any Supper. Depones, That he does not certainly know how old *Mrs. Ogilvie* the Pannel is, but believes her to be about twenty-one. *Causa scientiæ patet.* And this is Truth, as he shall answer to God.

(Signed) *GEORGE SPALDING. HENRY HOME.*

JAMES MILLAM, Tacksman of the *Eastmiln* of *Glenylla*, formerly sworn this Day on the Part of the Prosecutor, and now examined on his said Oath on the Part of the Pannels, depones, That the very next Day after Lieutenant *Ogilvie* had left the House of *Eastmiln*, *Eastmiln* employed the Deponent to carry a Letter to his Brother, and he read this Letter to the Deponent, the Contents of which the Deponent has forgot, further than that it contained a Request to the Lieutenant to return to *Eastmiln*: That upon this Occasion the Deponent was informed by *Eastmiln* of indecent Familiarities which his Mother told him had passed betwixt the Lieutenant and his Wife *Mrs. Ogilvie*; but that for his Part he did not believe them: That the Deponent delivered the Letter according to his Instructions, and received an Answer from the Lieutenant, which was also read to him by the Lieutenant, importing the Lieutenant's declining to return to the House of *Eastmiln*, because of the Reports that were raised against him. Depones, That Reports were in the Country of indecent Familiarities betwixt the two Pannels: That he knows not what gave Rise to these Reports; but that for his Part he never saw

saw any Indecencies betwixt them. Depones, That his Dwelling-house is within a Penny-stone Cast of the House of *Eastmiln*, and that he has been frequently in that House. Depones, That he was very well with *Eastmiln*; and that if any thing concerned *Eastmiln*, he would have imparted it to the Deponent as soon as to any other. Depones, That *Eastmiln*, four Days before his Death, complained to the Deponent of a Gravel, and a Cholick; and that he could not live, if he got not the better of it: That on the Evening of the *Tuesday* before his Death, he went into the Deponent's House, saying he was cold, and ordered some Shilling-feeds to be set on Fire for warming him: That he complained of his being ill, refusing to eat, and saying he would have no other Supper but the Fire; and that he was fading as fast as Dew goes off the Grass. Depones, That the same Night was not cold. Depones, That *Eastmiln*, the Night before he died, was again in the Deponent's House, and said he was no better. Depones, That the Day after *Eastmiln* died, he saw the Lieutenant sitting on a Bed-side of the House of *Eastmiln*, with his Mother on the one Hand, and Dr. *Meik* on the other; and that he could not be pacified: That Mrs. *Ogilvie* was in another Room, and did not see her: That the Lieutenant, in the Situation above described, was gushing out of Tears. Depones, That he does not know whether there was any Quarrel betwixt Mrs. *Ogilvie* and *Anne Clark* before *Eastmiln*'s Death; but that *Eastmiln* complained to him, that he could not get peaceable Possession of his own House for *Anne Clark*: That he wished her away; and that he got from the Deponent a ten-shilling Note for the Expence of her Journey. Depones, That upon the *Monday* after *Eastmiln*'s Death, *Anne Clark* left the House of *Eastmiln*; and that the Deponent saw her get Money from Mrs. *Ogilvie* the Pannel immediately before her Departure. Depones, That when the Mournings came Home upon Occasion of *Eastmiln*'s Death, *Anne Clark* complained to the Deponent for Want of a mourning Apron, adding that she should make it as dear to them as if it was a Gown, meaning the Pannels, as he understood; and his Reason for understanding so, was, that it was the Lieutenant who sent for the Mournings. Depones, That the Day *Eastmiln* died, he was sent for to see him; and that he came about Twelve o'Clock, at which Time there was no Person with him but *Anne Clark*: That upon that Occasion he staid but a very short Time: That he returned about an Hour thereafter, and several other Times, till *Glenkilrie* came: That he saw several Persons in the Room besides *Glenkilrie*, who came to see *Eastmiln*; but that he does not remember their Names. And being interrogate for the Prosecutor, depones, with respect to the Letter which he got from *Eastmiln* to deliver to his Brother the Lieutenant, That he now recollects a Passage in it, importing, that *Eastmiln* was to go to *Edinburgb*, to stay there a Fortnight, perhaps a Month, or six Weeks. Depones, That the said Letter, which the Deponent carried from *Eastmiln* to his Brother the Lieutenant, was inclosed by the Lieutenant in the said Letter which the Lieutenant wrote in Return, and which Letter the Deponent put in his Pocket without looking at the Direction: That he offered the said Letter to *Eastmiln*, which

Eastmiln, without opening it, bade the Deponent give to his Wife — because it was directed to her; and which he did accordingly. And being further interrogate for the Prosecutor, How it came, that when the Lieutenant's Letter was read over to him, that he did not know it was addressed to a Woman? depones, That he took no Notice of this, but only of the Lieutenant's refusing to return to the House, because of the Reports raised against him. Depones, That before the Day on which *Eastmiln* died, the Deponent never heard that he was ever troubled with any violent Vomitings or Purgings. Being interrogate, Whether, to the Deponent's Knowledge, *Eastmiln* did not continue in the same State of Health after his Marriage that he was for a Year before? depones, That he never heard him complain before his Marriage; but has heard him often complain after it, though he was as intimate with *Eastmiln* before his Marriage as after it. *Causa scientiæ patet*. And this is Truth, as he shall answer to God. And being further interrogate, depones, That the *Monday* after the Pannels were put in *Forfar* Gaol, *Alexander Ogilvie*, youngest Brother to *Eastmiln*, roused the Stocking upon the Farm of *Eastmiln* that belonged to his deceased Brother: That he gave it out, that he did this by Authority of a Letter from his Brother the Lieutenant: That he received the ready Money got at the Roup; and that the Bills were taken payable to him at *Martinmas* next: And this is also Truth, as he shall answer to God.

(Signed) JAMES MILLAM.
HENRY HOME.

JEAN WALLACE, Servant to *George Spalding* of *Glenkilrie*, unmarried, aged thirty and upwards, being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That she was Servant in the deceased *Eastmiln*'s Family for three Years, and left it, as she thinks, about six Years ago: That the last Year she was in his Service, as she thinks, *Eastmiln* had an Ulcer, and was attended by Dr. *Ogilvie*: That since that Time the Deponent had little Occasion to see *Eastmiln*, and did not hear him make any Complaints of his Health; but that the Deponent from his Looks did not think he was in good Health. Depones, That while he was bad of the Ulcer, he was confined, as she thinks, for six Weeks, and she herself sat up frequently with him. *Causa scientiæ patet*. And all this is Truth, as she shall answer to God. And depones, she cannot write.

(Signed) ALEX. BOSWELL.

ISOBEL DOUGLAS at *Wardhead*, dismissed of Consent of the Pannels.

THOMAS JACK in *Kirkton* of *Glenylla*, married, aged forty and upwards, being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate, depones, That about Ten o'Clock of the Day upon which *Eastmiln* died, the deceased *Eastmiln* told him, that he had been out the Day before visiting some of his Tenants Biggings; and that he was very bad that Day, and had been obliged to rest himself three Times; but told the Deponent, that he was better that Morning; and that he told the Deponent, that he had been a Mile. or a Mile and a half, from Home

Home the Day before. *Causa scientiæ patet.* And all is Truth, as he shall answer to God.

(Signed) THOMAS JACK.
ALEX. BOSWELL.

ELIZABETH FERGUSON, Spouse to *John Bre-sack*, Portioner of *Invercarity*, aged thirty-five, or thereby, being solemnly sworn, purged of Malice, examined, and interrogate, depones, That the Day before *Thomas Ogilvie* of *Eastmiln* died, the Deponent saw him in her own House, which is, as she thinks, about three Miles from *Eastmiln*: That he was on Foot: That he told her he was not very well; and that he had been taken ill, as he said, when he was going Home some Time before that, and had not got the better of it, or was not much better yet. *Causa scientiæ patet.* And all is Truth, as she shall answer to God. And depones she cannot write.

(Signed) ALEX. BOSWELL.

JOHN PATERSON, Son of *James Paterson* in *Clocknocator* of *Glenylla*, married, aged twenty-two Years and upwards, being solemnly sworn and interrogate, depones, That he saw *Eastmiln* the Day before he died about a Mile from his own House: That he was going West to see some of his Tenants Biggings: That *Eastmiln* complained to the Deponent that he was sick: That he said his Bowels were all sore; and that he had not been so ill for six Years: That he lay down and took a Sleep upon the Ground: That the Deponent's Sister *Margaret Paterson* was with the Deponent at this Time, and none other. *Causa scientiæ patet.* And all is Truth, as he shall answer to God.

(Signed) JOHN PATERSON.
ALEX. BOSWELL.

MARGARET PATERSON, Daughter of *James Paterson* in *Clocknocator* of *Glenylla*; unmarried, aged thirty or upwards, being solemnly sworn, purged, and interrogate, *ut antea*, depones and concurs with her Brother the preceding Witness in all Things; with this Addition, That *Eastmiln* likewise complained of sore Bones. *Causa scientiæ patet.* And being further interrogate, depones, That *Eastmiln* after this went further West, and did not return Home that she saw. And depones, All this is Truth, as she shall answer to God.

(Signed) ALEX. BOSWELL.

MARGARET RAIT, Spouse to *Fergus Fergusson* in *Kirkton* of *Glenylla*, aged about threescore Years, being solemnly sworn, purged, and interrogate, depones, That she saw the deceased *Eastmiln* in her own House, which is about a quarter of a Mile distant from his, the Day before he died: That *Eastmiln* told her that he was not well, and he behoved to get Dr. *Ogilvie* to give him something to do him good: That *Eastmiln* was then walking, and had come from the Hill. *Causa scientiæ patet.* And all is Truth, as she shall answer to God. And depones she cannot write.

(Signed) ALEX. BOSWELL.

Doctor JAMES SCOTT, Physician in *Edinburgh*, married, aged about forty, being solemnly sworn, purged of Malice and partial Counsel, examined, and interrogate; depones, That he has made sundry Experiments upon Arsenick: That he

knows it will not dissolve in warm Water; and that the common Arsenick that is to be met with in the Shops, although pretty fine pounded, falls to the Bottom of a Vessel with Water almost instantaneously: That it never puts on a greasy Appearance. But being further interrogate upon the Part of the Prosecutor, depones, That if Arsenick be put into a Bowl of Tea with Milk and Sugar, that, if it was stirred round, the Arsenick would be suspended so long, that it would kill a Person that had drunk it; and if there was Honey in the Bowl, the Arsenick would be still more suspended thereby. *Causa scientiæ patet.* And all this is Truth, as he shall answer to God.

(Signed) JAMES SCOTT.
ALEX. BOSWELL.

GEORGE CAMPBELL of *Carsegowrie*, Sheriff-substitute of *Forfarshire*, a Witness formerly solemnly sworn, and examined on the Part of the Prosecutor, depones, That some Time after the late *Eastmiln*'s Death, the Deponent went to the House of *Eastmiln* to make a Search for any thing that might appear there to clear up the Cause of *Eastmiln*'s Death: That the Deponent not having the Keys of the Drawers in the House, broke up several of them, and particularly the Drawers of what was said to be the late *Eastmiln*'s Cabinet: That, in one of these Drawers, he found some brownish white Powder wrapped up in two or three small Parcels: That the Deponent not knowing what that Powder was, carried it away with him, and afterwards shewed it to *James Carnegie*, Surgeon in *Brechin*, and asked him, What Kind of Powder he took it to be? and particularly, Whether or not he thought it was Arsenick? That *James Carnegie*, after looking attentively upon the Powder, declared, That he did not know Arsenick but by the Effects of it; and could not say, upon Sight, whether that Powder was, or was not Arsenick. Depones, That *Alexander Ogilvie*, Brother to the late *Eastmiln*, was not present with the Deponent either at the foresaid Search at the House of *Eastmiln*, or when he shewed the Powder to *James Carnegie* as aforesaid. Depones and produces some of the Powder foresaid which he found at *Eastmiln*; which Powder, upon the Opinion of Dr. *Cullen*, Physician in *Edinburgh*, and Mr. *James Russel*, Surgeon there, who tried it before the Court and the Jury, he believes to be Saltpetre. *Causa scientiæ patet.* And this is the Truth, as he shall answer to God.

(Signed) GEO. CAMPBELL.
AND. PRINGLE.

The Procurators for the Pannels renounced all further Probation.

“ Betwixt the Hours of One and Two o’Clock
“ in the Morning of the fourteenth current,
“ The Lords Commissioners of Justiciary ordain the Affize instantly to inclose in this
“ Place, and to return their Verdict at Four
“ o’Clock this Afternoon, being the fourteenth
“ Day of *August* current, and appoint the hail
“ fifteen Assizers then to be present, and the
“ Pannels in the mean time to be carried back
“ to Prison; and continue the Diet to that
“ Time.”

Curia Jusficiaria, S. D. N. Regis, tenta in Nova Sessionis Domo de Edinburgh, decimo quarto die Augusti, anno millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Jusficiarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale Moor, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, Commissionarios Jusficiarie S. D. N. Regis.

Curia legitimè affirmata.

Intran.

KATHARINE NAIRN,
AND
PATRICK OGILVIE,
PANNELS:

Indicted and accused as in the foregoing Sederunt.

The Persons who passed upon the Affize of the said Pannels returned the following Verdict:

“ At *Edinburgh*, the fourteenth Day of *August*,
“ One thousand seven hundred and sixty-five
“ Years,
“ The above Affize having inclosed, did make
“ Choice of the said Sir *George Suttie* of *Balgonie*,
“ Baronet, to be their Chancellor, and the said
“ *Alexander Sheriff* of *Craigleith* to be their Clerk;
“ and having considered the Criminal Indictment
“ raised and pursued at the Instance of *THOMAS*
“ *MILLER* of *Barskimming*, Esq; his Majesty’s
“ Advocate, for his Majesty’s Interest, against
“ *KATHARINE NAIRN*, Widow to the deceased
“ *Thomas Ogilvie* of *Eastmiln* in the County of
“ *Forfar*, and *PATRICK OGILVIE*, Lieutenant of
“ the eighty-ninth Regiment of Foot, Brother-
“ german to the said deceased *Thomas Ogilvie*,
“ Pannels, with the Lords Justice-Clerk and
“ Commissioners of Justiciary their Interlocutor
“ pronounced upon the Relevancy thereof, to-
“ gether with the Depositions of the Witness
“ adduced by the Prosecutor for proving the
“ same, and the Depositions of the Witness
“ adduced for the Pannels in Exculpation, they,
“ by a great Plurality of Voices, find the Pannels
“ guilty of INCEST, as libelled, during the Life
“ of the now deceased *Thomas Ogilvie* of *Eastmiln*:
“ And they further find, by a great Plurality of
“ Voices, the said Pannel *KATHARINE NAIRN*
“ guilty of MURDER, by poisoning the said
“ *Thomas Ogilvie* her Husband; and the said
“ Lieutenant *PATRICK OGILVIE* Pannel guilty
“ *Art and Part thereof*. In Witness whereof the
“ said Chancellor and Clerk have subscribed these
“ Presents upon this and the preceding Page,
“ Place and Date foresaid, in their Name and by
“ their Appointment.

(Signed) *GEO. SUTTIE*, Chan.
ALEX. SHERIFF, Clk.”

Immediately upon the reading of the above Verdict, his Majesty’s Advocate judicially appeared in Court, and craved that the Lords might proceed to pronounce a Sentence *Condemnator* upon the said Verdict.

Mr. *ALEXANDER LOCKHART*, as Procurator for both Pannels, *represented*, That, during the short Space of Time that he and the other Council for the Pannels have had to recollect the Proceedings in the Course of this Trial, and upon hearing the Verdict itself, as now read in Court, sundry

Particulars have occurred to the Council for the Pannels, which they are humbly to insist upon as jointly and severally relevant why no Judgment can pass against them upon this Verdict; and as, in Support of some of these, there will be Occasion to refer to the Records of the Proceedings themselves, which till now have been in the Hands of the Jury; and as it is their earnest Desire to state these in the most proper and becoming Manner, he therefore moved the Court, in Behalf of both Pannels, That they be allowed a reasonable Time to prepare, state, and support the Particulars, of the Heads of which they shall furnish a Note to his Majesty’s Advocate this very Night.

ADVOCATUS answered, That the Record of the Trial has been open, and subject to the Consideration of the Council for the Pannels, during the whole Course of the Trial: That, if any Objection is to be taken against the Course of Procedure during the Trial, it is necessary that such Objection should be taken and tried before the Jury is discharged: But as the Council for the Pannels have moved no Objection or Plea in Arrest of Judgment, and have only moved for a Delay, in order that they may have further Time to find out and move such Plea, he insisted, That this is no Plea; and therefore craved Judgment upon the Verdict, unless the Council for the Prisoners shall state a special and legal Plea, why such Judgment should not pass.

“ The Lord Justice-Clerk and Commissioners
“ of Justiciary, having considered the foregoing
“ Debate, declare, That they will proceed to
“ give Judgment upon the Verdict, unless the
“ Procurators for the Pannels will forthwith
“ state special Reasons in Arrest of Judgment.
“ (Signed) *GILB. ELLIOT*, I. P. D.”

“ The Lord Justice-Clerk and Commissioners
“ of Justiciary, having heard the Procurators
“ for both Parties, upon the Reasons for Arrest
“ of Judgment, they appoint a Minute of Debate
“ to be made up and ingrossed in the Record of
“ Court; and supersede advising the said Verdict
“ and Debate till To-morrow at Eleven o’Clock
“ before Noon; and continue the Diet till that
“ Time; and ordain the Pannels to be carried
“ back to Prison.”

Curia Jusficiaria, S. D. N. Regis, tenta in Nova Sessionis Domo de Edinburgh, decimo quinto die mensis Augusti, anno millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Jusficiarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale Moor, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, Commissionarios Jusficiarie dict. S. D. N. Regis.

Curia legitimè affirmata.

Intran.

KATHARINE NAIRN,
AND
PATRICK OGILVIE,
Present Prisoners in the *Tolbooth* of *Edinburgh*;
PANNELS:

Indicted and accused as in the preceding Sederunts.

LOCKHART, *RAE*, *CROSBIE*, and *DUNDAS*, for the Pannels, by this Minute, *represented*, That

no Judgment ought to pass on this Verdict, in respect that, so far as any Thing is found against the Pannels, the same is void and null; the Proceedings in the Course of this Trial having been most informal and irregular. Particularly, between the Hours of Three and Four of the Afternoon of *Monday* the 12th Instant, the Jury arose from their Seats, and dispersed into different Corners of the House; some of them, on that Occasion, even going out of the Room where the Court sat; and continued so dispersed, eating and drinking, and conversing in private with different Persons, and particularly, with the Council for the Prosecutor, for the Space of half an Hour and better, a Witness being then under Examination, and a Part of her Deposition reduced into Writing before they had so dispersed; till at last the Clerk, at the Desire of one of the Judges, called over the List of Assize, when they again assembled and took their Seats, one or more Persons having conversed in private with the Witness then under Examination, during the Time the Jury had been dispersed; the said Witness being *Anne Clark*, against whom Objections had been proponed by the Pannels, but over-ruled, and a Protest for Remeid of Law taken thereon. This, it is apprehended, was an actual Adjournment of the Trial; at least, it had all the bad Effects of an Adjournment, an Opportunity being given to converse with the Jurymen in private, to sollicite them, and to offer Evidence, which the Pannels and their Council had no Opportunity to see or hear; an Event which the Law of this Country has been particularly careful to avoid; and has considered the preventing such Things, and giving absolute Security against them, to be a fundamental Point in a Trial by Jury, as appears by the Act 1587, chap. 91. whereby, "Our Sovereine Lord, considering the Wranges alledged sustained by diverse Noblemen and others, Lieges of this Realme, being accused of Treason, be solleliting, boasting, and menacing of the Assize, after they were inclosed, the Accusers and others Persones, their Favourers, having Liberty to pass to the said Assize, and to produce to them sick Writs and Witnessès, and uther Probation, as they pleased, to verify the Crime outwith the Presence of the Partys accused; quhairby the just Defence of their Lives, Lands, and Honours, was taken away; therefore our said Sovereign Lord, with Advice and Consent of the Estates of this present Parliament, has statuted, declared, and ordained, That, in all Times coming, the hail Accusation, Reasoning, Writes, Witnessès, and uther Probation, and Instruction whatsoever of the Crime, shall be alledged, reasoned, and deduced to the Assize in Presence of the Party accused, in Face of Judgement, and no otherways."

From which Statute it is plain, the Legislature meant effectually to guard against every Opportunity of making any Impression upon the Minds of Jurymen, excepting by what was said and done in open Court, and in Presence of the Pannels; and all the salutary Effects of this Statute must be eluded, if Opportunity is given for the Council for the Prosecutors, or others, to sollicite, practise upon, or argue with the Jurymen, during the Course of the Trial, in private, by permitting them to leave their Seats, disperse through the House, and converse privately with whatever Person they think proper: That, in like Manner,

about Four of the Clock in the Morning of *Tuesday* the 13th of *August*, at least, between the Hours of Three and Five of the Morning of that Day, the Jury dispersed again in the same Manner; and, in their Absence, Part of the Deposition of *Elizabeth Sturrock*, one of the Witnessès, was taken down: That, about that Time, the Court likewise broke up, no *Quorum* of the Judges continuing on the Bench, the Lord *Kaims* only remaining there, the rest retiring and conversing in private with sundry of the Jury and others; and, upon that Occasion likewise, the Jury eat, drank, and conversed in private with different Persons, and in particular, with the Council for the Prosecutor; whereby the Trial was again interrupted: That no Roll was called; nor was it any ways ascertained that they re-assembled, the Lord *Kaims* only calling out, *Gentlemen of the Jury, Are you all there?* and the Depute-Clerk of Justiciary answering, *I see fifteen*; but no Answer was returned by the Jurymen themselves. That, in this Case, the Court was most unquestionably adjourned, as no *Quorum* of the Judges remained sitting on the Bench; and, though no Act of Adjournment appears in the Record, yet, it is humbly apprehended, That *that*, instead of mending Matters, renders them worse; for an Adjournment *via facti*, is, unquestionably, as much an Adjournment as one made by an Order of Court, having all the bad Consequences of it, and many more. That it is an adjudged Point, that, after a Jury is charged with a Pannel, the Court cannot be adjourned till the Jury is inclosed. This was solemnly determined in the Case of *Janet Ronald*, who was tried, in *May* 1763, at the Circuit-Court of *Perth*, for the Crime of giving Poison to her Sister; in which Case, after the Proof was concluded, and while his Majesty's Advocate was addressing the Jury, one of the Jurymen happened suddenly to be taken ill, and appeared incapable of doing his Duty at that Time; for which Reason the Court was adjourned till next Morning, when that Jurymen being recovered, the Jury again re-assembled, were inclosed, and returned a Verdict against the Prisoner, finding her *guilty* Art and Part of the Crime libelled. It was moved in Arrest of Judgment, That the Court having been adjourned before inclosing the Jury, and the Jurymen dispersed, and an Opportunity given to sollicite and practise on them in private, the Verdict was void and null, and no Sentence could follow in Consequence thereof. The Matter, on Account of its Importance, was referred to the Court of Justiciary at *Edinburgh*, where it was solemnly debated in Presence of the whole Judges; and, after Informations had been given in on this Point, and recorded in the Books of Adjournal, the Court being of Opinion, that this Adjournment vitiated the whole Proceedings, did not pronounce any Sentence on this Verdict, but assilzied the Pannel, and dismissed her from the Bar: That the Adjournment of the Court in the present Case ought to have the same Effect to vitiate all the subsequent Proceedings, and to procure an *Absolutor* to the Pannels; since every bad Consequence that can be figured or imagined to result from an Adjournment by Act of the Court, must result also from an Adjournment *via facti*. That about Three o'Clock of the Afternoon of *Tuesday* the 13th of *August*, at least, some Time between the Hours of Two and Four of the Afternoon of that Day, the Jury again dispersed, and conversed in private

private with sundry Persons in different Parts of the Houſe, and continued diſperſed for the Space of half an Hour or upwards; after which they again returned to their Seats: That all theſe various Adjournments and Diſperſing of the Jury, it was out of the Power of the Pannels, or their Council, to prevent; the Jury being actually diſperſed, on all theſe ſeveral Occaſions, before they were aware, no Motion having been made publickly for Leave of the Court to diſperſe, and the Pannels and their Council being intent upon the Buſineſs that was going on, and that Attention firſt interrupted by the Noiſe the Jurymen made when actually diſperſing: That it is in vain, in the preſent Caſe, for his Maſteſty's Advocate to plead the Neceſſity of the Jury being reſreſhed in ſuch a Caſe; for they were reſreſhed on ſeveral other Occaſions beſides thoſe above-mentioned, at which Times the Reſreſhments were always given them in their Seats; and it is apprehended that ought always to be the Caſe, as it is a material Point, that the Quality and Quantity of the Reſreſhments they take, particularly the Wine, and other ſtrong Liquors, ſhould be regulate by the Court, under whoſe immediate Inſpection every Thing of that Nature ſhould be given them; but by Jurymen diſperſing, and drinking Liquors, in what Quantity and of what Quality they pleaſe, in private, and while removed from the Inſpection of the Court, there is a Hazard of their becoming intoxicated with the Liquors they drink, which may be of the moſt dangerous Conſequences to the Security of thoſe who are tried, and conſequently to the Lives and Liberties of the Subjects in this Country in general. That the bad Effects of all theſe ſeveral Adjournments were ſeverely felt by the Pannels in this Caſe; they ſerved to protract the Trial, and what Impreſſions were communicated to the Jurymen, when diſperſed, or what Quantities of Liquors they ſwallowed, are Circumſtances which cannot be known to the Pannels or their Council: But after the laſt Time the Jurymen were diſperſed, and when the Evidence on the Part of the Pannels began to be adduced, ſeveral of the Jury ſhewed a very great Impatience, and inſiſted, that that Evidence which the Pannels thought material for them ſhould be cut ſhort. And ſome of them particularly diſputed the Relevancy and Propriety of the Questions put by the Council for the Pannels with great Heat, inſomuch that ſome of the Judges, and other Jurymen, were obliged to interpoſe, in order that the exculpatory Proof might go on; and the Council for the Pannels were obliged to paſs from many Witneſſes, in order to procure Attention from thoſe Aſſizers. Hence, though thirty-three Hours were ſpent in hearing calmly the Proof adduced for the Proſecutors; yet the Proof for the Pannels, after being heard by thoſe Jurymen with great Impatience, was put an End to in about three Hours. By this means the whole Proof relative to the Conduct of *Alexander Ogilvie*, which the Pannels had inſiſted much upon in their Defences, was prevented; ſome of the Jurymen ſaying, that they had nothing to do with *Alexander*. That at one Period of the Trial, one of the Jury retired from his Place, and continued abſent a conſiderable Time; yet the Proof went on in the mean Time, the Witneſſes were examined, and their Depoſitions taken down in Writing in the mean Time, he paying no Attention thereto, nor

was he capable of doing ſo at the Time; ſo that he could no more judge of what was ſaid or done at that Time, than if he had been twenty Miles abſent: That on ſundry Occaſions Jurymen did retire without Leave aſked or given, and went out of the Room where the Court was ſitting: That it is in vain for his Maſteſty's Advocate to plead the Neceſſities of Nature as an Excuse in ſuch Caſes; for there is a Remedy known and commonly practiſed; when thoſe Neceſſities oblige the Jurymen to withdraw, *viz.* Leave is aſked of the Court, which orders a Macer to attend the Jurymen, that no Perſon may have any private Intercourſe with him during the Time he withdraws, and the Trial is ſtopt till he returns.

That, by the Act concerning the Regulation of the Judicatories, paſſed in the third Seſſion of the ſecond Parliament of King *Charles* the Second, in the 10th Article concerning the Juſtice-Court, it is enacted, "That, in all Criminal Purſuits, "the Defender, or his Advocates, be always "the laſt Speaker, except in Caſe of Treafon "and Rebellion againſt the King." Which Act, though altered as to Proſecutions not extending to the Loſs of Life, or to Demembration, before the Court of Juſticiary, or in Circuit-Courts, and where the Evidence is not taken down in Writing, by the Act 21mo *Geo.* II. chap. 19. §. 18. yet remains in full Force as to all other Criminal Courts, and as to all Trials brought in this Court which may extend to the Loſs of Life or Limb, and when the Evidence is taken down in Writing. That this Statute notwithstanding, after the Advocates for the Pannels had concluded their Speeches to the Jury, and nothing remained, by the Forms of Court, but to incloſe that Jury for the Purpose of returning their Verdict, one of the Judges did addreſs himſelf to the Jury, in a Speech concerning this Trial, and the Credibility of particular Witneſſes, whereby the Pannels were deprived of a legal and moſt material Privilege, *viz.* the Impreſſion that muſt be left by the laſt Pleader upon the Minds of the Jury in their Behalf.

That, beſides all theſe Informalities committed during the Courſe of Procedure, the Record is very defective, though the Defects cannot at preſent be ſo particularly pointed out, as the Council for the Pannels have not yet had an Opportunity of inſpecting it. However, they do condeſcend on the following Defects: That ſundry Admiſſions made by his Maſteſty's Advocate, in Point of Evidence, favourable for the Pannels, are not taken down; ſo that the Record paſſed to the Knowledge of the Aſſize, without bearing theſe Admiſſions. One of theſe Admiſſions was, paſſing from the Crime of Inceſt during a Part of the Time libelled; another was relative to the Conduct of *Alexander Ogilvie*: That the Proteſts for Remeid of Law taken for the Pannels at different Parts of the Trial, are not ingroſſed in the Record, though that was ſpecially inſiſted for at the Time they were taken, and Precedents pleaded on and produced; neither is the Condeſcendence relative to the Malice of *Anne Clark*, which was made for the Pannels, but found not relevant by the Court, mentioned in the Record; and this is the more material, that the Omiſſion of this Condeſcendence was uſed as an Argument with the Jury for the Credit of *Anne Clark's* Teſtimony, by the Judge who was the laſt Speaker on this Trial; though, it will

will be remembered, that when the Council for the Prosecutor had concluded the rest of his Proof, he gave Notice to the Court, That as the Council for the Pannels had charged Malice against *Anne Clark*, one of the most material Witnesses for the Prosecutor, and meant to adduce Witnesses for proving that Malice, he judged it necessary, on his Part, to adduce some Witnesses in order to obviate that Objection, and to shew that this Witness was so far from bearing Malice against the Pannels; that, after she had been once precognosced, she had withdrawn and secreted her Person, when a Warrant by this Court was out against her; in order to avoid her being brought as a Witness in this Cause.

That the Verdict appears to be informal; and the Council for the Pannels apprehend it will be found a special one, when applied to the Interlocutor of Relevancy: That it does not bear that the Jury considered the Writs produced, but only the Depositions of the Witnesses, though Writings were produced both by Prosecutor and Pannel; particularly, the Declarations of the Pannels when examined; the Questions put to them by the Sheriff of *Edinburgh*, which they are said to have refused to answer; *Anne Clark's* Letter to the Lord Advocate; the alledged Letters from one of the Pannels; a Letter from Lord *George Beauclerk*; a Letter from Colonel *Morris*, in whose Regiment the Pannel *Patrick Ogilvie* served, attesting his good Character. Therefore the Verdict has proceeded on a partial Consideration of the Evidence. And the Inattention of the Jury to the whole Evidence, appears from another Particular, *viz.* in their finding the Pannels guilty of the Incest as libelled, which includes the whole Month of *January*; though it is in Proof, that the late *Thomas Ogilvie* was not married till the 30th Day of that Month. That if Time were allowed to the Council for the Pannels, to consider the Verdict, and inspect the Records, and prepare Arguments in Support of the Positions they have now laid down, they apprehend there is good Cause why Judgment should not pass on this Verdict. They have set forth these Objections in Obedience to the Court's desiring them to condescend, and craved, that more Time may be allowed them to state these Objections more fully, or any other which may occur, and Liberty given them to inspect the Record; and have Copies of the Verdict; which has been refused them by the Clerk. And this Demand, they apprehend, is the more reasonable, that they have only had a Recess of fourteen Hours, from the Time that the Jury were inclosed, after enduring the Fatigues of a Trial which lasted for forty-three Hours; so that they are not in a Condition at present to argue their Objections so properly, as they will be when more Time is allowed them. All and each of the Facts set forth they offer to prove, and they crave that a Proof may be allowed accordingly.

HIS MAJESTY'S ADVOCATE and SOLICITOR GENERAL answered, That the Conduct of the Defence for the Pannels in this Trial has been extraordinary from first to last, as appears from the Defences compared with the Proof in Exculpation. That after a Trial of forty-three Hours Continuance; before a Jury of the most respectable Character, and after a Verdict returned finding the Pannels guilty, an Attempt is now made to

disappoint publick Justice, by a Plea in Arrest of Judgment, unknown in the Law, unsupported by any Precedent, and in itself irrelevant and frivolous. That this Plea has been introduced with a Declamation upon the Liberty of the Subject, and of the Importance of preserving a Jury Trial; and yet the Plea itself tends, if it has any Meaning, to prove, that no Trial of a Capital Crime in this Country can be taken by a Jury; because the Length of such Trials must, in most Cases, make it necessary for Jurymen to refresh themselves, and to retire for answering the Necessities of Nature; and if these Things cannot be permitted by the Court, the necessary Consequence is, that no such Trial can proceed by Jury; and in order to bring such Criminals to Justice, a new Form of Trial must be invented. That when a Plea so groundless and frivolous is, for the first Time, taken up in Behalf of two Pannels, whose Rank and Situation in Life enable them to bring many learned Council to argue and give Countenance to such a Plea; in Behalf of two Pannels convicted by their Country of the most atrocious and dangerous Crimes; it becomes the Dignity of the Court to hear fully, and then to give such a Judgment as will shew that the Law knows no Distinction of Persons; and that the Criminal Law in this Country, upon which the Security of the Government and the Safety of the People depends, must have its Course with equal Effect against the greatest as well as the meanest of the Subjects. That this Trial has been conducted with more Attention and Favour for the Defence of the Pannels, than any Trial that has occurred in the Memory of any of the Members of the Court. That the strictest Orders were given that no Jurymen should retire, even for relieving the Necessities of Nature, without Leave of the Court, and being attended by a Macer of the Court; which was accordingly punctually executed throughout the whole Course of the Trial. That when it became necessary for the Jury to refresh themselves from Time to Time, for greater Dispatch, and to prevent Confusion, they left their Bench, and were refreshed at a Table immediately below, at, and under the Eye of the Court; and the Insinuation, that some of the Jury may have taken too much Liquor, is false and injurious to the Knowledge of the Court, and was not so much as insinuated in the Debate when the Jury was present, and is now, for the first Time, thrown into this Minute. One of the Jurymen being indisposed, rose from his Seat and walked for some Time behind the Seat, but heard the whole Evidence. That no Criminal Trial, where such Refreshment of the Jury has been necessary, was ever carried on in a Manner so little exceptionable as the present; and the Tendency of the Pannels Plea is to shew, that no Criminal has been legally condemned in *Scotland*, in any Case, where the Trial has continued for such a Time as to require Refreshment to the Jury, or the Retiring of any Jurymen, or the Relieving the Necessities of Nature. That during the Time the Jury were refreshing themselves the first Day, *Anne Clark* was under Examination, which lasted eight Hours, and remained in her Place, under the immediate Eye of the Court, till her Examination was resumed upon the Return of the Jury to their Places; and no Person spoke to her, except the Macer of Court, when he gave her some Bread and Wine. And during the

the whole Course of the Trial, upon Notice given, that any of the Jury had retired to ease Nature, the Proceedings stopped till his Return; so that, though from the Necessity of the Thing the Court did, for some short Intervals, stop Proceeding in the Proof, yet there was no Adjournment of the Court; and this appears from the Record of the Court, which the Pannels cannot disprove; and the Court remained full, without one Moment's Interval, during the whole Course of the Trial; and as all the Facts stated in the Plea offered for the Pannels passed in Presence of the Court, and as it is not pretended that any Wrong was done, or any Exception taken, in Behalf of the Pannels, to any Part of the Procedure during the whole Trial, far less after the Jury was inclosed, no Proof can be allowed of the Facts upon which the Plea is founded, and the Court must take them upon their own Knowledge. The late Case of *Janet Ronald* has no Relation to the present Case; for there the Court was adjourned, and the Jury dismissed after they were charged with the Pannel, which was found to be contrary to Law: That the Insinuation thrown out against the Jury, That they were impatient to hear the Evidence for the Pannels, is likewise false and injurious to the Knowledge of the Court: That after the Profecutor concluded his Evidence, which he abridged as much as possible, the Council for the Pannels proceeded to open their Defence by a Proof, That, after the Pannels were committed to Prison, the Cattle at the House of *Eastmilk* were sold by *Alexander Ogilvie*; and it appearing clearly from their own Evidence, that this Roup proceeded from an Order of the Pannel *Patrick Ogilvie*, it was observed by one of the Jury, that this Fact did not appear to be material to the Issue; and as they found themselves much exhausted by Fatigue and Want of Rest, they would not be able to attend to such Evidence as might be material for the Pannels Defence; which was submitted to the Consideration of the Pannels own Council: And they did accordingly declare, That they gave up that Article of their Proof.

The Protest taken by the Pannels for Remeid in Law, is extant in Process, and makes a Part of the Record of this Trial. The Objection to the Evidence of *Anne Clark*, founded upon Malice, was clearly disproved before the Jury by Evidence: That she was so far from harbouring Malice against the Pannels, that, on the contrary, after she was precognosced before the Sheriff, she withdrew herself from the Place of her Abode, and concealed herself in different Places about this City under a false Name, in order to prevent her being adduced as an Evidence in this Trial; and although his Majesty's Advocate, perceiving the Danger of protracting this Trial to an unnecessary Length, did not insist to have this Part of the Evidence taken down; yet it appeared so strong to the Pannels own Council, that, when they came to state the Grounds of their Allegation of Malice, and to adduce their Witnesses in Support thereof, the Judge Examiner gave his Opinion, that the Condescendence, as stated by them, was not relevant; and they did not insist for the Opinion of the Court; which was plainly giving up and passing from this Objection of Malice, or any Proof thereof.

That the Verdict is accurate and formal in all Respects. — There is no Necessity that the Verdict should mention the Evidence upon which the Jury proceeded: That all the written Evidence adduced before the Jury was in Behalf of the Profecutor, and no written Evidence whatever was proved or adduced before the Jury in Behalf of the Pannels; and if it can be supposed, that the Jury did not take under their Consideration this Part of the Profecutor's Evidence, it was so far favourable for the Pannels; and he appeals to their Lordships Knowledge, that, in most Trials before this Court, the Declarations of the Pannels, and other written Evidence, are referred to in the Libel, and produced before the Jury; and many Verdicts have been returned, upon which Execution passed, wherein no Mention is made of their having considered such written Evidence; for it is in their Power to take that Evidence under their Consideration, as a Ground of their Verdict or not, as they please.

That it is the undoubted Right of the Council for the Pannel, to be the last Speaker upon the Import of the Evidence, and the Profecutor has no Reply; but it is the inherent Right of the Court, and essential to public Justice, to correct Mistakes in Law or in Fact, by which false Impressions upon the Jury may be made by the Council on either Side: That the Verdict, with respect to the Incest, is unexceptionable, and properly applies to the Charge in the Libel.

That no Admission was made by his Majesty's Advocate, that is not properly entered upon Record: That he passed from the Incest charged to have been committed after the sixth of *June*, in Presence of the Court and Jury, and the Verdict properly applies to the Libel as so restricted: That the Council for the Prisoners had Access to the Record during the whole Course of the Trial, and since that Time; and it is improper to move the Court for an Arrest of Judgment till they have further Time to consider the Record, in order to discover what Objections they can there find in Support of their Plea. In respect of all which, Judgment ought to be pronounced.

After reading over the foregoing Minutes judicially, in Presence of the Pannels and Court, the Lords proceeded to advise the same, and pronounced the following Interlocutor:

“ The Lord Justice-Clerk and Commissioners
“ of Justiciary, having considered the foregoing
“ Debate, and knowing that the whole of this
“ Trial, from first to last, was carried on under
“ the Eye, and in Presence of the Court; and
“ that the whole of it was conducted with as
“ much Regularity and Accuracy as ever was
“ done in any Trial before the Court, they find
“ the Reasons pleaded in Arrest of Judgment not
“ relevant, and repell the same; and they also
“ repell the Objections made to the Form or
“ Substance of the Verdict.

(Signed) GILB. ELLIOT, I. P. D.”

On pronouncing of which Interlocutor, Mr. ALEXANDER LOCKHART, Advocate, Procurator for the Pannels, protested for Remeid of Law; and thereupon took Instruments in the Hands of the Clerk of Court.

Then there was a Petition given in and presented to the Court by the said *Katharine Nairn* Pannel, signed by Mr. *Alexander Lockhart*, and Mr. *Henry Dundas*, her Lawyers, bearing, That the Petitioner has the Misfortune, in the criminal Prosecution now depending against her in this Court at the Instance of his Majesty's Advocate, to have a Verdict returned against her by a Plurality of Voices, finding her guilty of the Crimes of which she was charged: Whereupon his Majesty's Advocate having moved for Judgment, sundry Objections were stated upon her Part, why no Judgment can pass against her upon that Verdict: That, abstracting from these, she now begs to represent to the Court, That she is pregnant; and though she cannot take upon her, from her Inexperience in these Matters, positively to say how far she is advanced in her Pregnancy, according to her best Opinion, she judges she may be about three Months gone with Child.

Therefore praying, it might please their Lordships, to direct the proper Inquiry to be made into her present State and Condition as to her alledged Pregnancy; and upon the same being properly certified, to supersede Judgment against her, if any Judgment can pass upon the Verdict, till after Delivery.

Which Petition being read in Court, and judicially adhered to by her,

“ The Lord Justice-Clerk and Commissioners of Justiciary, having heard this Petition, they grant Warrant for Letters of Diligence, at the Instance of his Majesty's Advocate, for citing three or more skilful Midwives to compare before their Lordships against To-morrow, being *Friday* the sixteenth Day of *August* current, at Nine o'Clock in the Forenoon, to inspect the Petitioner *Katharine Nairn* Pannel, and make Trial whether or not she the Petitioner be pregnant or with Child; and accordingly to give their Opinion or Judgment to the Court therein; and continue the Diet against the Petitioner until the said Time; and appoint her in the mean time to be carried back to Prison; and, for the Purpose aforesaid, the said Lords appoint the Persons following, to wit, Mrs. *Johnston*, Mrs. *Hamilton*, Mrs.

“ *Duncan*, and Mrs. *Hill*, known Midwives, to be cited as above.

(Signed) GILB. ELLIOT, I. P. D.”

“ The Lord Justice-Clerk and Commissioners of Justiciary having considered the foregoing Verdict of Assize, dated and returned the fourteenth Day of August current, against *Katharine Nairn*, Widow of the deceased *Thomas Ogilvie* of Eastmilm in the County of Forfar, and *Patrick Ogilvie*, Lieutenant of the eighty-ninth Regiment of Foot, Brother-german to the said deceased *Thomas Ogilvie*; whereby, by a great Plurality of Voices, the said *Katharine Nairn* and *Patrick Ogilvie* are found guilty of Incest as libelled, during the Life of the now deceased *Thomas Ogilvie* of Eastmilm; and the said *Katharine Nairn*, guilty of Murder, by poisoning the said *Thomas Ogilvie* her Husband; and the said Lieutenant *Patrick Ogilvie* Pannel, guilty Art and Part thereof: In respect of the said Verdict, they, by the Mouth of *Isaac Gibbs*, Dempster of Court, decern and adjudge the said *Patrick Ogilvie* Pannel, to be carried from the Bar back to the Tolbooth of Edinburgh, therein to remain, to be fed upon Bread and Water only, in Terms of the Act of Parliament in the twenty-fifth Year of the Reign of his late Majesty King *George the Second*, intituled, An Act for preventing the horrid Crime of Murder, until Wednesday the twenty-fifth Day of September next to come; and upon that Day to be taken forth of the said Tolbooth, and carried to the common Place of Execution in the Grass-market of Edinburgh, and then and there, betwixt the Hours of Two and Four of the Clock after Noon of the said Day, to be hanged by the Neck by the Hands of the common Hangman, upon a Gibbet, until he be dead; and his Body thereafter to be delivered to Dr. *Alexander Munro*, Professor of Anatomy in Edinburgh, to be by him publicly dissected and anatomized, in Terms of the said Act; and ordain all his moveable Goods and Gear to be escheat and inbrought to his Majesty's Use; which is pronounced for Doom.*

(Signed) GILB. ELLIOT.
ALEX. BOSWELL.
AND. PRINGLE.
JAMES FERGUSON.
GEO. BROWN.”

Curia

* The Proceedings in this Trial being transmitted to London, for the Consideration of his Majesty and his Privy-Council, the following signed Opinion of Mr. *McCarty*, an eminent English Counsellor, was presented with them:

“ I have read a great deal of the Proceedings in the Affair of the unhappy Prisoners, *Katharine Nairn* and Lieutenant *Patrick Ogilvie*, under Sentence of Death, for the heinous Crimes of Incest and Murder. Crimes of so black a Dye, charged on Persons who, until that Time, had preserved unblemished Characters, should be attended with the most evident Proofs to gain Credit in the Opinion of Mankind, at least of the most judicious Part of it. Among the Vulgar, it is much to be lamented, every Calumny, however ill-supported, finds an easy Admittance.

“ It seems to me extremely hard on the Prisoners, that they should be tried at the same Time for Crimes of very different Natures. The Indictment charges, That they have presumed to commit, and are guilty Art and Part of both, or one or other of the said Crimes of Incest and Murder, &c. Adding the two Crimes in one Indictment, makes the Prisoners be exposed to a greater Odium, and creates a stronger Prejudice against them. I think, in the Law of England, a Charge, that the Prisoner at the Bar was guilty of one or other of two Crimes, would have vitiated the Indictment. It is laid down as a Rule in *Co. Entr.* 278. that the Fact is never laid in the disjunctive. And in *5 Mod.* 137. *Rex* against *Stocher*, it was ruled, that an Indictment, setting forth, that the Defendant *murderavit, vel murderari causavit*, is not good; for these are different Crimes.

“ In the present Case there is a further Disadvantage; for, as I am informed, the Trial for Incest, and the Trial for Murder, are to be had in a quite different Manner. In the first, the Trial is *Januis clausis*; and in the other it is *Januis apertis*; the last Method being more public, is less exceptionable. In the Case of these unfortunate Prisoners, the whole was carried on *Januis clausis*; every Allegation and Deposition in Support of one Branch of the Indictment, had an Effect on both; but this, I think, was rather Prejudice than real Conviction.

“ I am of Opinion, that, if the Crimes charged are considered severally, and the Evidence produced to support one Crime is taken singly, without the Assistance of the other, no Jury in England would have found the Prisoners guilty.

“ If the Facts alledged as a Proof of the Incest were given as a Proof of the carnal Knowledge on an Indictment for a Rape, it is impossible a Jury could find the Defendant guilty. I think they would not be admitted as a Proof of criminal Conversation, to intitle a Husband to Damage on an Action of Trespafs. There is not one Fact attempted to be proved, that

Curia Justiciaria, S. D. N. Regis, tenta in Nova Sessionis Domo de Edinburgh, decimo sexto die mensis Augusti, anno millesimo septingentesimo sexagesimo quinto, per Honorabiles Viros Dominum Gilbertum Elliot de Minto, Baronetum, Dominum Justiciarium Clericum, Alexandrum Boswell de Auchinleck, Andream Pringle de Ale Moor, Jacobum Ferguson de Pitfour, et Georgium Brown de Coalston, Commissionarios Justiciarie dicti S. D. N. Regis.

Curia legitime affirmata.

Intran.

KATHARINE NAIRN,
Prisoner in the Tolbooth of Edinburgh; PANNEL:
Indicted and accused as in the former Sederunts.

“ The Lord Justice-Clerk and Commissioners of Justiciary, in respect that Grizel M^cQueen, Relict of Dr. Hamilton, and Agnes Ker, Wife of William Hill, one of the Letter-carriers in Edinburgh, two of the four Midwives named Yesterday, and cited in consequence of the Warrant then granted for to have appeared this Day, do only compear; and that Excuses are offered and sustained for the other two; therefore they grant Warrant for citing Mary Crawford, Wife of William Richardson, Baker in Edinburgh; Mary Angus, Widow of Hugh

“ Sheills, Wig-maker there; and Margaret Watson, Widow of William Petrie, Merchant there; all known Midwives, to compear instantly before this Court, in order to the Effect that they, or such of them as the Court shall appoint, may, upon Oath, inspect the Pannel Katharine Nairn, and make Trial, whether or not she be with Child, and accordingly to give their Opinion and Judgment thereupon.
(Signed) GILB. ELLIOT, I. P. D.”

Conform to Warrant granted Yesterday and this Day, by the Lord Justice-Clerk and Commissioners of Justiciary, for citing of Midwives to inspect the Pannel, *Compeared*, in Presence of the said Lords, Agnes Ker, Wife of William Hill, late one of the Letter-carriers in Edinburgh; Margaret Watson, Widow of William Petrie, Merchant there; Grizel M^cQueen, Widow of Dr. Hamilton; Mary Crawford, Wife of William Richardson, Baker in Edinburgh; and Mary Angus, Widow of Hugh Sheills, Wig-maker in Edinburgh; being all solemnly sworn, depone, That they shall faithfully try, and true Report make to this Court, of their Opinions and Judgment, whether the Pannel Katharine Nairn is with Child or not, as they shall answer to God. (Signed)

AGNES HILL. MARY RICHARDSON.
MARG. PETRIE. MARY SHEILLS.
GRIZEL M^cQUEEN. GILB. ELLIOT.

The

“ that may not be literally true; and yet the Defendants be innocent of the Crime of carnal Knowledge. The Conjectures of Women of very indifferent Characters, and of very malicious Dispositions, may naturally lead to the worst Things; but these Conjectures are not Evidence, when there is a Possibility that the Parties may be innocent. I do not know that, in our Law, any Presumption of a criminal Conversation operates in any Circumstance, but that of being *solus cum sola, et nudus cum nuda*; in all other Circumstances a positive Proof is required. It often happens, that a Man is indicted for a Rape, and acquitted; and yet the Court directs a Prosecution for an Assault with an Intent to commit a Rape. In Cases of that Nature, I doubt not but the Witnesses in the present Case would have boldly asserted, that a Rape had been actually committed. The Mind of the principal Witness was strangely prepossessed; she could hear distinctly what the good Lady Eastmiln could neither hear nor see.

“ If they were to be tried on the Murder singly, the Proof there will appear as defective. There is not one positive Proof, that Thomas Ogilvie died of Poison. The Surgeons who attended, declare, that the Symptoms might arise from natural Causes, a violent bilious Cholick. It was proved, that Thomas Ogilvie, the Day before his Death, and some Days before that, had complained of Pains in his Bowels, and had called for, and taken Drums in several Places, to procure Ease. These most certainly were not the Effects of Poison taken on the Morning of the Day on which he died. Why might not these Pains have increased the Day on which he died, without the Interposition of any Poison? The Matter might have been cleared up by opening the Body. Surgeons were present, and ready to perform the Operation, but were prevented by the Person who has spirited up the Prosecution, and who is to be the only Gainer by the Death of the Prisoners.

“ The great Rule of Evidence is, to have the best Proof the Nature of the Case can admit. That certainly has not been produced in this Case: It was not opposed by the Prisoners, but it was opposed by the Man who wishes their Destruction. The Incest is supposed to be certain, because the Husband is supposed to have been poisoned; and, on the other hand, the Man is believed to be poisoned, because there is a supposed Proof of Incest.

“ Under these Circumstances, it is difficult to find any Means to prove the Innocence of the Prisoners, after a Verdict and Judgment. The 19th Article of the Union confirms the Jurisdiction of the Court of Session; and in the same Terms it confirms the Jurisdiction of the Court of Justiciary. It mentions nothing of an Appeal from the Court of Session to the House of Lords, yet those Appeals are frequent. It mentions nothing for or against Appeals from the Courts of Justiciary: It certainly does not exclude them. There lies an Appeal from the Court of Exchequer in Scotland to the House of Lords. To admit an Appeal from the two supreme Courts in Scotland, where Property only is concerned, and not to admit an Appeal from the third supreme Court, where Life, Honour, Property, and Posterity are concerned, appears somewhat extraordinary. By the same Article of the Union, it is enacted, that no Causes in Scotland be cognoscible, or any Judgment from thence be recognised, received, or altered, by the Court of Chancery, Queen's-Bench, or Common-Pleas, or any other Court in Westminster-Hall. This negative Clause as to Westminster-Hall, and the Courts there, seems to imply a Power of recognoscing and altering Causes and Judgments in the House of Lords. I think it is the common Rule of Construction.

“ I believe there are few Instances of Appeals from the Court of Justiciary; but that is not a Proof that such Appeals cannot lie. I remember a Petition of Appeal was sent from Scotland in the Affair of Barrisdale: There was some Difficulty made about presenting the Appeal. Lord Bath was applied to; but he said, it was a Branch of Business he never meddled in, nor was he disposed to meddle for the future in any public Affair, unless it was such as was of the highest Importance to the Nation; however, he would go to the House, and mention it to the Chancellor: and, in some Days after, being called upon, he said, he mentioned the Affair to the Chancellor, but that it was unnecessary to struggle as to the Petition, as the King, out of his gracious Disposition, would give the same Relief that was aimed at by the Petition.

“ If there is no Way open from the Court of Justiciary to the House of Lords, it is the only Court in Great-Britain which is not subject to that Jurisdiction; for Writs of Error go from the King's-Bench to the House of Lords, even in Cases of High-Treason. — It is not a common Practice, I confess; but yet it has been done. I see neither Reason nor Law why the Proceedings of the Court of Justiciary might not fall under the Review of the supreme Court, as well as those of the Court of Session.

Sept. 14, 1765.

(Signed) A. M^cCARTY.”

In consequence of this, Lieutenant Ogilvie was respited from time to time till the 13th of November, 1765, when (his Majesty's fourth Reprieve being expired) he was carried from the Tolbooth in Edinburgh, and was executed in the Grass-Market, amidst an innumerable Concourse of People. The Day before his Execution he signed and delivered a Paper, in order to be made public, of which the following is an authentic Copy:

“ I Lieutenant Patrick Ogilvie, Brother-german to the deceased Thomas Ogilvie of Eastmiln, considering myself upon the Brink of this mortal Life into Eternity; and as I have but few Hours to live, would chuse to employ them in the Way that would most conduce to my eternal Happiness: And though my Years be few, and my Sins many, yet I hope, through
“ God's

The said five Midwives above-named, having removed out of Court with the Pannel to another Room, and re-entered into the same after some short Space of Time, depone unanimously, From what they have observed, they cannot give a positive Opinion, whether the Pannel is pregnant or not; and that they cannot depone that the Pannel is with Child; nor can they depone that she is not with Child. (Signed)

'AGNES HILL. MARY RICHARDSON.
MARG. PETRIE. GRIZEL M'QUEEN.
MARY SHEILLS. GILB. ELLIOT.

“ The Lord Justice-Clerk and Commissioners
“ of Justiciary, in respect of the foregoing
“ Report, delay pronouncing of Sentence against
“ the said *Katharine Nairn* Pannel, till the third
“ *Monday of November* † next to come, at Twelve
“ o’Clock before Noon, in this Place, and con-
“ tinue the Diet till that Time; and grant
“ Warrant to the five Midwives before-named,
“ along with Mrs. *Johnston* another known Mid-
“ wife, and already cited for that Purpose, and
“ who, upon Report, will also be put upon
“ Oath, That they, by Turns, may visit and
“ inspect the Person of the said *Katharine Nairn*
“ Pannel; and ordain the said Midwives to
“ report their Opinion and Judgment to the
“ Court the said Day, anent the said *Katharine*
“ *Nairn* her Pregnancy, or being with Child;
“ and appoint the Pannel in the mean time to be
“ carried back to Prison.

(Signed) GILB. ELLIOT, I. P. D.”

COPIES of the LETTERS mentioned in the
Minute of Debate in Arrest of Judgment, p. 516,
which were produced in the Course of the TRIAL,
but were not proved, and did not enter the Record.

LETTER by ANNE CLARK to his Majesty’s
Advocate.

LORD ADVOCATE,

Upon my coming to Town, I am informed,
that you heave been searching for me. It would
never bread in my Breeft to kept out of the
Way, had it not been for Terror of Imprison-

ment; but houping you will be more favourable
to me I shall weat upon you Tomorrow Morning
at Eight of the Clock.

Sunday Evening
Eight of the Clock.

ANNE CLARK.

To the Right Honourable Lord Advocate.

LETTER from Lord George Beauclerk, Com-
mander in Chief of his Majesty’s Forces in North
Britain, to Lord Justice-Clerk.

MY LORD,

By a Letter I have just received from the Lord
Advocate, I find Notice has been taken in Court,
That, notwithstanding of the Order of the Court
for confining of *Anne Clark* in a separate Room in
the Castle; yet, after being separated, she was
again remanded back to the same Confinement:
It is very true; and I have the Honour to acquaint
your Lordship, that it was done by my Orders;
as it was represented to me, that the Room in
the Gunner’s House she was by Desire put into,
was by no means a Place to keep a Prisoner in
Safety; and I am determind, that all Prisoners
intrusted to the Care of the Military under my
Command, shall always be put in Places of Se-
curity. I have the Honour to be, my Lord,

Your Lordship’s

Holyrood-house,
Aug. 12, 1765.

Most obedient humble Servant,

G. BEAUCLEBK.

To the Right Honourable the Lord Justice-Clerk.

LETTER from Staats Long Morris, Esq; to
Mr. James Smith, Writer to the Signet.

SIR,

Huntley-lodge, Aug. 3, 1765.

This Day I received your Letter of the 31st of
July, requesting an Attestation of Lieutenant
Ogilvie’s Behaviour while he was under my Com-
mand. — His Conduct, as an Officer, was unex-
ceptionable; and he was always thought by my-
self, and the other Officers of the Regiment, to
be an inoffensive harmless Man. I am, Sir,

Your most obedient, and very humble Servant,

STAATS L. MORRIS.

To Mr. James Smith, Writer
to the Signet, *Edinburgh*.

“ God’s Grace, and the Interposition of my blessed Redeemer, that the Gates of Heaven will not be shut upon me, in what-
“ ever View I, as a Criminal, may be looked on by the Generality of Mankind; and, I hope, those who best knew me,
“ will do me Justice when I am gone. As to the Crimes I am accused of, the Trial itself will shew the Propensity of the
“ Witnesses, where Civility, and possibly Folly, are explained into actual Guilt; and which possibly had the greater Effect
“ in making them believed; and of both Crimes for which I am now doomed to suffer, I declare my Innocence; and that
“ no Persuasion could ever have made me condescend to them.

“ I freely forgive every Person concerned in this melancholy Affair; and wherein any of them have been faulty to me, I
“ pray God to forgive them.

“ My Council and Doers have done their Duty for me, for which I thank them sincerely, considering the Care they have
“ taken of me, and am forry it is not in my Power to give them a better Reward.

“ The Ministers of this City have been at great Trouble about my eternal State, which I have always gratefully acknow-
“ ledged, and will do to my last Breath, for the Care they have been pleased to take of me: I am forry, Time being so
“ precious now, I have it not in my Power to express my Gratitude more so, for their Goodness and Attendance towards me;
“ and, I hope, their Labours in my Behalf will not be in vain.

“ Captain *James Robb*, and the other Keepers of the Prison under him, have also shewn me great Kindness since my Con-
“ finement, for which I thank them, and thought it my Duty to declare the same.

“ I desire to die in Peace with all Men, even my greatest Enemies, begging Forgiveness to them, as I hope for it from that
“ God in whose Presence I am soon to appear; hoping for the Pardon of my Sins, and Entrance into eternal Bliss, through
“ the Merits and Intercession of my Redeemer, to whom I recommend my Spirit: Come, sweet Jesus, come quickly, and
“ receive it.

(Signed) PATRICK OGILVIE.

“ P. S. Mean time I beg Leave to clear Mr. *John Fenton* of an Affair laid to his Charge; such as, his being guilty of
“ keeping me from making a Confession to the World before I died; this, I hope, will be a Warning for the future from
“ such-like Mistakes to the World, and hope they will be forry for their false Suspicion now.

Edinburgh Tolbooth, Nov. 12, 1765.

(Signed) PATRICK OGILVIE.”

† On the 18th of *November*, 1765, the High Court of Justiciary met, agreeable to their Adjournment of the 16th of *August*;
when the Consideration of the Case of Mrs. *Ogilvie* was resumed, and the Midwives appointed by the Court to visit her,
having emitted their Declaration upon Oath, That they adjudged her to be in the sixth Month of her Pregnancy, the Court,
in consequence thereof, again superseded the pronouncing of Sentence until the second *Monday* in *March*.

Mrs. *Ogilvie* was delivered of a Daughter *February* 27th, 1766, in the *Tolbooth*; from whence she found Means to escape
on the 15th of *March*; the Court of Justiciary, who met on the 10th, having, on account of her being so lately brought to
bed, further adjourned to the 17th; on which Day she was to have received Sentence.

A N
A P P E N D I X,

C O N T A I N I N G

T R I A L S,

A N D

P A R T S O F T R I A L S,
A R G U M E N T S i n L A W,
S P E E C H E S, a n d o t h e r M A T T E R S,

Proper to Complete or Illustrate the foregoing

T r i a l s a n d P r o c e e d i n g s.



L O N D O N :

Printed in the Year M.DCC.LXVI.

A P P E N D I X.

N U M B E R I.

The Case of Robert, Earl of Essex, and the Lady Frances Howard.

Some MEMORIALS touching the Nullity between the Earl of Essex and his Lady, pronounced September 25, 1613, at Lambeth, (and the Difficulties endured in the same,) by George, Archbishop of Canterbury*.



BEING at the Court at *White-Hall*, on the 12th of *May*, 1613, or thereabouts, his Majesty moved me, that I would be a Commissioner in a Controversy to be begun between the Earl of *Essex* and his Lady, for the separating of them; and when his Majesty had ended those few Words with me, my Lord Chamberlain, who was then in the Gallery; spake also unto me to that Purpose. It was unto me a Matter very strange, having heard before of some Discontentments between that Noble Couple; but never imagining that Matters were come to that Head. My Answer was alike to both, *That I did not know the Ground whereupon they intended to move; but that, if I were to be a Judge in any such Question, I would pray, that other Bishops, being near the Town and Court, might be joined with me.* The Persons that were named then, were, my Lord of *London*, my Lord of *Ely*, and my Lord of *Litchfield*, (for at that Time was my Lord of *Bath* with the Queen's Majesty at *Bath*.) Besides, I prayed both the King's Majesty, and my Lord Chamberlain, *That before any such Thing were entered into, I might speak privately with my Lord of Essex, for the satisfying of mine own Mind;* which by both was permitted unto me. The Day after, I sent for the Earl; and having private Speech with him, only about the Ability of his Body, and nothing else, I found him generally much reserved in Talk, but only avowing the Ability of himself for Generation; and that he was resolved never to lay any Blemish upon himself that Way. I knew not well what to make of this; for I did not then understand, that some Lords had met before at *White-Hall* on both Parts, (the Lord Privy-Seal, the Lord Chamberlain, the Earl of *Southampton*, and the Lord *Knowles*, as afterwards I heard) to settle an Order

by Consent, how this Prosecution should be; that is to say, That a Separation should be made, and my Lord's Honour every Way preserved.

Within a Day or two; coming to *White-Hall*, I had Speech with the Lord Chamberlain; in the Gallery going towards *St. James's Park*. I might not reveal all Particulars of that which passed in private; but yet I told his Lordship, *That I had spoken with the Earl of Essex; and I perceived it was like to be a Matter of great Difficulty, and therefore wished his Lordship to be well advised; before any thing was brought into Publick.* I told him, *That he must proceed either upon Confession or Proof: That it was probable, the Earl would not confess his own Impotency, for then he blemished himself: That my Lady's Oath in that Case was not sufficient; and how other Proofs might be had; I could not conceive: That the Earl in open Estimation was to be thought an able Man: That his Father was not thought in that Kind insufficient.* The Lord Chamberlain replied, *That, perhaps; the Father's Sin was punished upon the Son: That it was Truth; that the Earl had no Ink in his Pen: That himself had confessed, that he could not know a Woman, and that; before divers Noblemen, and some of them his own Friends, naming, as I remember, the Earls of Northampton and Worcester, and the Lord Knowles.* All this while I never dreamed of *Impotentia versus hanc*, but conceived, that they would charge the Earl simply with Disability. The Lord Chamberlain then seemed unto me fully resolved to proceed, and told me whom he would have in the Commission, *the Bishops of London, Ely, and Litchfield, the two Chancellors of the Exchequer and Dutchy, my Judges;* (for so he called them) *Sir Daniel Dun, Sir John Bennet, Dr. James; and Dr. Edwards.* I told his Lordship, *That I liked the Persons very well.* The next News I heard was about a Day or two after, *That the Commission was out under the Great Seal;* which I wondered at, by reason that I thought, that my Words to the Lord Chamberlain being well weighed, would have moved some longer Consideration. Well: The Commission is brought; it is accepted, and Proceeding decreed; the Earl of *Essex* is called; the Libel is put in. When we saw it, and that it contained *Impotentia versus hanc*, most of us, who were not acquainted with

* The Proceedings between the Earl of *Essex* and Lady *Frances Howard*, in *State Trials*, Vol. 1. p. 317, being but short, and very imperfect, wanting the Arguments of the Civilians, &c. this Account, wrote by Dr. *George Abbot*, Archbishop of *Canterbury*, with the Speech he intended to have made, and King *James's* Letter to him, will give great Light into that Affair, and help greatly to explain it; and should be read with those Proceedings in Vol. 1.

the Project before, were much amazed at it. I told the Council for my Lady, *That they had laid a very narrow Bridge for themselves to go over: So said my Lord of London, and divers of the rest; only my Lord of Ely was still silent. My Lord of Litchfield, two several Times, uttered Speeches, as much grieving and repining at this Controversy: That he was Ordinary to the Earl of Essex, and had been in his House at Chartley, which he saw to be well governed; and the Earl did bear himself most religiously therein, to his great Comfort: That his Wife had the Honour to be Cousin-German to the Countess of Suffolk; and therefore he had no Reason but to wish well to the Earl of Essex and his Lady both. Yet, if he had been worthy to be consulted withal, he should have thought that seven Years had been little enough to have deliberated, whether it were fit to bring such a Business into Question before the World.* Another Time he told us, *That it was very good, that we should proceed with great Wariness in this Cause; for, saith he, the World looketh on us what we do; and there were not more Eyes upon the Earl's Father losing his Head, than there be upon the Earl now losing his Wife.* He told me afterwards, *That he had Ill-will for those Speeches, and complained that some among us did tell Tales of all that was said and done.* (And so it appeared afterwards, that Sir J. Caesar and Sir Daniel Dun did.) Sir Thomas Parry, in all his Speeches, privately murmured against this Nullity, till he came to Windsor; where, the Day that the King heard us, the Lord Chamberlain, in my Presence, spake privately with him and Sir Julius Caesar about this Matter; and from that Time forward, Mr. Chancellor of the Dutchy was altered. My Lord of Ely, also, for a great while, was in Dislike of the Separation, (as I have credibly heard he opened himself to Sir Henry Savile) until such Time as the King spake with him, and then his Judgment was reformed. But Truth it is, that among us he said nothing.

Now the Earl's Answer is taken, which appeareth. In it there were divers Things very observable. He used no ill Speech of his Lady, for which we all much commended him. I gave him so strict a Charge to speak the Truth, requiring him, as he would answer me before God at the last Day, to deliver nothing for Favour or Affection, but to inform us in the Verity, that it wrung from him something which I supposed he intended not to speak so plainly. He gave the Reason of his having no Motions to know his Lady carnally, and of his thinking that he never should. *When I came out of France, I loved her; I do not so now, neither ever shall I.* When he was to answer to the Article, that she was *Virgo incorrupta*; he smiled, and said, *She saith so, and she is so for me.* Sir Daniel Dun caught these Words, and bid the Register set down then, *Credit articulum esse verum.* These Things gave me no great Encouragement to the Business; but yet being at very little Leisure, I let Matters go on, and in mine own Part resolved nothing. Then the Witnesses were deposed, but not published. The Inspectresses were chosen, who came most unwillingly unto it; and howsoever Sir Julius Caesar and Sir Daniel Dun (whom we never suspected to be as Parties in the Cause, as afterwards they appeared to be) made all clear and fair Weather; yet my Lord of London told us openly, *That he being with them, found that the Ladies knew not well what to make of it; that they*

had no Skill, nor knew not what was the Truth; but what they said, was upon the Credit of the Midwives, which were but two, and I knew not how tampered with. Then came the Lady Frances to take her Oath, with the seven Compurgators. I noted therein some Things. A Paper was brought, containing, *Verbis præcis*, what her Ladyship would swear. We saw it, and considered it, and found it too bare and slight to enforce any thing. The Commissioners advised, that it should be more full. Dr. Steward accordingly drew it; but he must go forth to the Lady, to know whether she would swear it. At last it was agreed unto. When she came to subscribe it, after the Oath taken, one or two of her Brothers standing at her Back, put her in Mind that she must not write her Name *Frances Essex*, which she most willingly remembered, and subscribed *Frances Howard*. We saw my Lord of Litchfield's Wife to be one of the seven. We were afterwards informed very credibly, That the Lady Knevet had declared her Sorrow, that she was used in such an Action, and said, *That she wept all the Day about it.* These Things pleased me little; that no body took Comfort in the Business.

Things go on in a Course till *Midsummer-Day*. Then did the King deal with me privately, as if he had received divers Complaints against me. The first was, *That we delayed the Proceeding, inasmuch as the Meeting was put off, from the 18th of June, till the 2d or 3d of July.* My Answer was, *We had rather gone too fast: We had sat Forenoon and Afternoon: The Term now grew to an End, and we had many Businesses to dispatch of the King's: That the Commission-Day for Causes Ecclesiastical was put off for a Week, by reason of Midsummer-Day falling on a Thursday; and consequently, that our Proceeding in this Cause, which commonly attended the other Commission, was of Necessity to be deferred.* But my principal Answer was, *That we could not shorten it; for the Council on both Parts had agreed upon that Day in July, and so it was upon the Acts: Howsoever, therefore, the Council for my Lady moved openly in Court to abbreviate the Time, yet the Council for my Lord would not renounce nor alter their Term probatory, but kept them close unto it.* Another Objection was, *That I acquainted not the King, from Time to Time, how Matters did go.* I answered, *That I knew not myself; for as yet there was no Publication of Witnesses; when any thing came to my Knowledge, his Majesty should understand it.* It was added, *That divers Persons repaired unto me, who wished not well to the Business.* Belike, said I, they mean the Earl of Southampton, who came in the other Day, when we were all sitting together: But his Coming was about John Cotton's Cause; and I never had a Word with him in all my Life, touching this Business. No, said the King, and smiled, *it is Sir Henry Nevile.* Indeed, quoth I, he was with me the other Day, and this very Morning: But your Majesty well knows what was the Reason. It was touching that Cause, which your Majesty commanded me to send for him about. I delivered him your Mind the one Day, and he gave me an Answer the other. At this Time, his Majesty cast out some Words, as if he wished well to the Nullity; but it was so obscurely, that I did not conceive that earnestly he desired it. After this Day, the Complaints were many which were made to the King against me, and many Threats were used, and divers Tricks

Tricks were played, to urge me to yield to the Nullity. One was, *That I should suffer the Earl of Essex to go out of Town.* I answered, *He had made his Answer, and had his Proctor, and it was our Custom then not to stay Men.* His Majesty commanded me to inquire, if his Presence were not necessary; and if it were, then I should stay him. I sent to Sir Daniel Dun, to Sir John Bennet, and to Dr. Steward; and they all agreed, that there was no Need of his Lordship's being in Town. And of this I sent Word to the Lord Chamberlain, and my Lord of Essex was permitted to depart. One while it was given out, that I was moved by the Queen to cross them; when, in Truth, I had not spoke with her thereabout: Another while, that I had spoke with the Earl of Essex at first, and hence his Lordship grew less pliable; when they knew about what it was, and were told of it before. And it was not forgotten, that when I gave Charge to the Earl of Essex, to answer truly to the Positions in the Libel, I named the Case of my Lord of Devonshire and the Lady Rich, as if I had compared this Cause unto theirs. When afterwards the Earl's Council took Exception to the Libel, it was given out, that they were animated by me to oppose; whereas I never spake with them, nor knew any thing of their Purpose. And ever that was one, that there were Delays used. Yea, it was to my Face delivered as a Threat, that Archbishop Grindal had been overthrown for not giving Consent to the Divorce of Dr. Julio, as implying, that the same would be my Case.

About this Time, the Lords; and the rest of the Feoffees, were to meet at Mr. Sutton's Hospital, about the settling of it. The Day that we were to come thither, my Lord Chamberlain, in the Privy Gallery at Whitehall, shewed his Anger towards me, that we had not sent for the Keys to his Lordship, and that he might deliver over the Cause. But when I came to the Charter-House, there was delivered me a Letter, written all with my Lord's own Hand, and directed to the Lord Archbishop, the Lord Chancellor, and the Lord Privy-Seal; wherein he did twice take Exception to me by Name, and, in a sort, braved me, that so he might pick a Quarrel to me; whereunto I replied not, but bore it with Patience.

A little before Whitsuntide, his Lordship was very kind to me, and of his own Accord proffered me a Chamber at Greenwich, which my Lord, my Predecessor, had; but after twice proffering of it, and my accepting of the same, his Lordship fell off strangely, and I never spake of it more. These Complaints and Threats made me to suspect all was not well; for what needed these Things to me, in a Matter of Justice?

The Time now grew on, that his Majesty was to go abroad in Progress on a Sunday, which was the Day before the Council for my Lord were to put in their Answers and Exceptions to the Libel. The Lord Privy-Seal shewed me a Letter of the King's to his Lordship, wherein he was to expostulate with me for delaying the Business. I gave his Lordship Answer what was done, and his Lordship professed that he was satisfied, and that no Man could do more than I did. On the Monday, the Council for my Lord put in their Answer, which was round and picquant. The Lord Chamberlain had Notice of it, and complained thereof to the King. I sent his Majesty

the Copy thereof, and received from the King a Letter, written all with his Majesty's own Hand; shewing Dislike thereof. At that Time, Sir William Button threatened Sir Daniel's Servant hard for that Answer, as the said Sir Daniel divers Weeks after told me. The Commissioners considered of the Answer, and disallowed it, giving Order, that no Record should remain of it, but that it should be utterly defaced. This was very well accepted, and now my Lord of Canterbury was a very honest Man. But till this was done; their Followers gave out, that the King had in two Letters so schooled the Archbishop, as he was never schooled in all his Life.

Things now being quiet, I called Sir William Button one Commission-Day unto me, and spake thus to him: *Sir William Button, you have followed this Business from the first, and have been present at the acting of all Things. Have you ever seen me, in Word or Deed, do any Matter that doth not become me?* (for indeed hitherto I had no Way declared myself, because we were not come to consider of the Proofs.) *What is then the Cause that I am thus complained upon, that I cannot one Day be quiet?* His Answer unto me was, *That the Lord Chamberlain was every Way a kind Father to his Children; but in this of his Daughter, he was so passionate till it had an End, that he lay as on a Grid-iron, broiling till the Matter were accomplished.* Quoth I, *It shall not be delayed by me.* Now, the Council on both Sides drew on to inform us; wherein I noted, that whereas the Libel was laid in Nature of *Maleficium versus hanc*, my Lady's Council; upon the shutting up of the Cause, would not apply themselves thereunto, neither would they willingly hear of it; which seemed strange, since all the Books which they brought, particularly to the Cause, did mention that; and Doctor Steward had publickly and expressively said, *That it was that which they did mean.* This troubled me somewhat, because I perceived that they themselves could not tell what to make of it. But afterwards fell out another Matter, which very much alienated my Judgment from the Cause: It appeared, that Sentence could not be given, till the Time that the King entering his Progress, was gone as far as Windsor, and then his Majesty was soon to depart to Farnham. Sir Daniel Dun told us, *That he was to attend the King in Progress; that he must be at Farnham; that he was old and lame; that it would be too great a Trouble for him to come back again at the Day of Sentence.* He therefore prayed, *That we would hear him deliver his Judgment of the whole Matter.* This Proffer seemed wondrous strange to most of us; and putting it by handsomely, we resolved not to trouble him therewith: And in this Opinion we arose. But afterwards, my Lord of Litchfield cometh to my Study Door, where I and my Lord of London were about another Business, and telleth us, That my Lord of Ely, and Mr. Chancellor of the Exchequer, were very desirous to hear Sir Daniel speak; and that he, for his Part, was of the Mind that it would do very well, and therefore he importuned us both to give Consent unto it; we imagining no great Harm could come thereby, assented, and the next Day is appointed for that Purpose. There Sir Daniel cometh with a formal Declaration, divided into six Parts, to every one of which he spake so largely, that with a little replying of ours, it spent a whole Afternoon. Matters which I most

observed therein, were these: He told us, *That by our Commission we might hear this Cause summarily. He brought a Book, That he who hath Power to hear a Matter summarily, is in Nature of an Arbitrator chosen by both Parties, and therefore may judge in Discretion, as he shall think fit; and more to that Purpose. I thought with myself, that this was strange Doctrine in a Matter of Marriage; that as Arbitrators, we might adjudge a Wife to her Husband, or not adjudge her, according to our Discretion. In his discoursing of my Lord's Impotency, versus banc, he beat upon the Matter of Maleficium, and yet by no Means he would have it to be that apparently. He insisted much, That the Sentence was to be given in general Terms, not naming any particular Impotency. I told him, In such a Sentence, the World look that we should yield a Reason of that which we did. He replied, That it was fit to give no Reason. And here, said Mr. Chancellor of the Exchequer, a Judge is not to give a Reason of his Sentence, but only to God. I would give no Reason to any Prince in the World. I was once called before Queen Elizabeth, about a Sentence which I gave, and she demanded of me the Reason thereof; I told her, A Judge was bound to give no Reason of that which he pronounced, but only to God. I marvelled much at these Things, and at last replied, Well, let it be, we acquaint not the World with the Reason of that which we do; yet is it not fit, that I who am the Judge, and must pronounce the Sentence, know the Ground of that which I am to pronounce? Here, after a little pausing, one of them said, Yes, for you may see that in the Books and Depositions. Quoth I, But I cannot see that there which may satisfy me. But Mr. Chancellor, said I, and Sir Daniel Dun, Commissioners, you perhaps be not driven to it, yet I shall be forced of Necessity to tell Men the Reason of the Sentence: For as soon as this Cause is sentenced, every Man who is discontented with his Wife, and every Woman discontented with her Husband, which can have any reasonable Pretence, will repair to me for such Nullities. If I yield unto them, here will be strange Violations of Marriages; if I do not, I must not tell them, that it was fit for my Lord of Essex, but it is not so for you; for the Law knoweth no Persons, but is indifferent to all. If I then repel them, I must shew a Reason: Your Case is not like that of my Lord of Essex; for his Case was thus, yours is thus. And so must I deliver the Reason, or Men will not be answered. In this Time of debating, I asked Sir Daniel Dun, I pray you, Master of the Requests, what Examples have we of any Nullity in England, pronounced in this Kind? Might a Man see any Precedent of it? For I would be loath to do a Thing that never was done before. Yes, saith he, there be Precedents thereof. In Anne of Cleve's Case we have an Example, and another in one Bury, which I have here in my Book; and thereupon out of a Note-Book of his own, he read now a Line or two, and then two or three other Lines in another Place, and so forward. My Answer was, I did not think that King Henry's Separation from Anne of Cleve, was for any such Matter, but upon a Precontract. I said, King Henry the VIIIth was a strange Prince in that Kind: He put himself into many Marriages; and when he began that with Anne of Cleve, he feared lest the Emperor, and King of France, should combine with the Pope against him, and therefore he was desirous to strengthen himself with the Protestant Princes in Germany; and for that he thought this*

Marriage was much becomeful. But afterwards growing into Peace with one or both of those Princes, he grew soon weary of the Marriage, because he liked not the Woman. But then I promised to consider further of these two Cases. This was the End of that Day's Labour, which when at Night I had recounted with myself, I thought it was an audacious Part, for such a one as Sir Daniel was, to teach us out of such poor Grounds, both what to do, and how to do. I found by my Observation, that it was a set Match, that thus he should be heard; that he was prepared for the Purpose; for no Man upon the sudden, or one Day's Warning, could deliver so much, and so digested. And now I began to assure myself, that he did not shew himself a Judge, but was a Stickler for the Nullity. I much suspected the Conscience of the Man, knowing him reasonably well before, both out of mine own Estimation of him, and out of the Judgment of my two Predecessors, the Lords Whitgift and Bancroft, who held him for a Man most corrupt. Yet the next Day I sent unto him for his Note-Book, and I caused the Record of Anne of Cleve to be brought unto me. Reading over all the latter, I found not one Word tending to the present Case. Good Lord! thought I; how doth this Man deceive me! Perusing his own Book for that of Bury, I found it to be nothing but the Pleadings of Advocates on both Sides, when about the 40th of Eliz. there was some Question in the Common Law Courts about Bury's Land; Bury himself being dead many Years before. But I saw more in this Book against the Cause now in Hand, than for it; and by some other Writings in my House, I discovered that Bury's Divorce, Anno 1561, was for want of his S—s; which Dr. Steward also, being now of Council for my Lady, and who formerly stood for Bury's Brother against the supposed Son, publicly acknowledged. These Things made me in my Heart much dislike the Cause, and procured in me a hard Opinion touching Sir Daniel Dun, who should not have wronged me, being my Officer, as Dean of the Arches.

Within few Days after, the Message cometh to us, that we were all to attend the King at Windsor. This accordingly was done. The Morning before the Hearing, the Lord Chamberlain in my Presence spoke first earnestly with the Chancellor of the Exchequer, and afterward with the Chancellor of the Dutchy, who that Day fell from us, as appeared by the few Words that he had before the King. Some few Days before that, had Sir John Bennet, by Sir William Button and Dr. Edwards, been otherwise dealt withal, earnestly to give Consent to the Nullity; but that Day we dealt in it more than three Hours. His Majesty propounding the Matter, asked, *How Things did stand?* Sir Julius Caesar said, *That Sir Daniel Dun was best able to speak unto it.* And then, *ex composito*, Sir Daniel begins, and tells a great Tale, and especially insisteth upon *Non potuit*. When he had done, I answered him, and shewed the Want of Ground for that Conclusion, out of other the Earl's evident Answers, *That the Non potuit was for Lack of Love, and not for Want of Ability.* I challenged Sir Daniel for abusing the King with a false Report, and especially for his two Precedents of Bury's Case, and that of Anne of Cleve. Amongst us, was divers Ways shewed the Insufficiency of the Proofs;

Proofs; that the Libel was laid short to the Cause, and the Proofs were short of the Libel; that we had very many Times called upon the Council for my Lady, that they should look that they rightly laid their Matter, and made their Proof strong; that in the End, they complained not of the Judges, when the Fault was in themselves: (Where my Lord of *Litchfield* added, *That himself fearing the worst, had gone to Doctors-Commons, and warned the Council for my Lady, that they should look to it.*) Among other Things there uttered, Sir *Daniel Dun* said, *What a Disgrace will this be to my Lord Chamberlain and his Daughter, if it should not now go forward! My Answer was, They should have looked to that before they did begin it: We were not the Men that set the Matter on Foot, if it were a Disgrace, they put it on themselves. But, quoth I, must I, to save any Man from Disgrace, send my Soul unto Hell, to give a Sentence whercof I saw no Ground? I will never do it.* My Lord of *London*, Sir *John Bennet*, and Dr. *Edwards*, did carry themselves well that Day, although Sir *John Bennet* had much Opposition from the King himself. When we saw the King earnest, I fell down on my Knee, and with Tears in mine Eyes; I said, *I beseech your Majesty, if ever I have done you any Service, whom I do serve with a faithful Heart; or may do you any Service, rid me of this Business.* I had said before, *That I was the unfittest Man that might be, to judge of such a Cause; I was no married Man, I was no Lawyer, and I had not had the Time, by reason of my infinite Businesses, to read so much of that Matter, as other Men had.* I observed that Day many Things in his Majesty's Carriage of the Matter: He was earnest, but gracious and moderate. He found Fault with the Libel, and said, *That Complaints were made that we went too slow, but he perceived we went too fast.* He marvelled that my Lord of *Worcester*, and the Lord *Knowles*, were not examined as Witnesses. He constantly professed, *That he believed that my Lord of Essex was impotent for a Woman.* He told us, *That some of the Earl's Friends had put a Woman to him, and he would not touch her.* His Majesty said, *That the Earl was once purposed to have gone to Poland, to have tried whether he might be unwitched.* To which Things my Reply was, *I would to God we might see these Things legally proved. That his Majesty much disliked that Course, and therefore he set the Course now in Prosecution; and therefore if there were any Error in it, he had done the Lord Chamberlain Wrong, and he must take it upon him.* In Sum, I found his Majesty much troubled what to do, as I gathered, especially by these Words, *If my Lord of Canterbury, and my Lord of London, had a Negative Voice, we must either begin all again, and have a new Libel; or we must have a new Commission, and put other Adjuncts.* The Conclusion from his Majesty was, *That we should all meet at Lambeth on the Morrow, and if we could unanimously consent, then go to the Sentence; if not, we should put it off unto another Day, and certify him of it, and so farther understand his Pleasure.* When the King was risen from his Chair, he fell to inveighing against these Marryings of young Couples, before they be acquainted one with another. He told us the Inconvenience of it, how he knew in *Scotland* a Father who married his only Child to a Man against her Will: That she withstood it; yet her Father forced her to marry him: That

being gone Home with her Husband, after a very few Days she run away from him: That her Father jerked her, and sent her Home again: That not long after, she poisoned her Husband, and was burnt for it, while the King was in *Scotland*. After his Majesty's going out, I followed him, and told him, I evidently perceived, that it was in the Earl of *Essex*, *Vitium Animi non Corporis*. His Majesty swore he thought so. There passed some other Speech from the King to me, touching his own lying with the Queen the first Night that he married her. But at the last, I kissed his Hand and departed. After I was gone, the Lord Chamberlain speaking somewhat against me, the King replied, *The Archbishop hath so adjured me to be rid of this Matter, that I cannot tell what to say to him.* This did Sir *Julius Caesar* tell me that Day at Dinner, at *Eaton College*, letting me know, that the King found no Fault with me: But afterward, the King coming to Dinner, after his Meat had stayed for him on the Table more than a Quarter of an Hour, he fate him down in his Chair, and casting his Leg over one Side of it, he eat no Meat for a great Space of Time; neither said he any Word, but fate musing to himself; which every Man observed. And it was given out by some in the Court, that I was gone away in the King's Displeasure. Within some few Days after, it was also more Ways than one brought credibly to my Ears, That the Archbishop and my Lord of *London* should be hereafter kept to their Spiritualities, and should meddle no more in Temporal Matters: And within a while it came so far, as that they should have their Temporalities taken from them. Sir *John Bennet* was at *Windsor* moved by Sir *Thomas Lake* in the Lord *Fenton's* Name, and afterwards by the Lord *Fenton* himself, That he should alter his Opinion, and make his Peace with the King, for his Majesty was not well pleased with him.

As I came Homeward from *Windsor* in my Coach, and all that same Night, two Things did run much in my Mind; the one of them was, What a strange and fearful Thing it was, that his Majesty should be so far engaged in that Business: That he should profess, that himself had set the Matter in that Course of Judgment: That the Judges should be dealt withal beforehand, and, in a sort, directed what they should determine: That the like Example had not been seen: That his Majesty did win himself much Honour in the Case of *Sutton's Hospital*; that notwithstanding all Importunity, he had suffered the Judges to do their Conscience. This strange Moving to the contrary, did make me marvellously suspect, that it was no direct Matter; and, as a dutiful Servant to my most gracious Master, I wished in my Heart, that his Majesty's Hand might be taken off the Business. The other Point was, that we had all this while, in our Debatings, never, or very little, meddled with Points of Divinity. And I thought with myself, that much might be said therein against *Maleficium*, and the Nullity to be pronounced there-upon *versus hanc*; for out of this we could never get in all our Talking, though they would never cleave fast to it. I therefore, having formerly revolved some such Things in my Mind, rose early on the Day that we were to debate Things at large, and set down my Mind in Writing out of something in Divinity. The Copy of this appeareth.

The Day after we came from *Windsor*, (being *Tuesday*) we met, and all the Forenoon we insisted on that which I had briefly written: But to deliver my Conscience freely before God, I received no Kind or Shew of Satisfaction. My Lord of *Ely* sat little less than dumb, as if he had never dreamed of any such Matter. Divers of the Commissioners wondered at him; that he, who had spent so much Time in reading of the Canonists touching this Question, should not think upon Divinity. Briefly up and down by others somewhat was said, but nothing to Contentment. After Dinner, Sir *John Bennet* propounded Reasons out of the Law, but without any Satisfaction. I observed two special Points that Afternoon: The one was, that we all thought my Lord of *Essex* his Answer to the Libel, was neither plain nor sufficient. And now it was remembered; that my Lord of *Litchfield* had put to him certain Questions, that four Things were necessary to Generation; *Membrum virile*, Ereption, Penetration, and *Ejaculatio Seminis*; which, although they were then smiled at, and since that Time much Sport had been made at the Court and in *London* about them; yet now our married Men on all Hands wished that punctually his Lordship might have been held to give his Answer unto them. This instructed me, that the Proofs were not full. A second Thing was, that when towards the Evening, I wished that a Reconciliation might be laboured between my Lord and my Lady, that it should best become us, my Lord of *Ely*, who from the first Beginning of the Process had been always very silent, spake home about that, much disliking that any such thing should now be fought; that it was too late; that it might be the Cause of poisoning and destroying one of another, to bring them together again. Well, when we could not agree upon our Conclusion; we were enforced to put all off unto a longer Day; and as the King commanded, I was to certify his Majesty of it. I wrote a Letter to the King, praying humbly that I might be freed from the Trouble of this Cause, or, at least, give no Sentence in it till I were a married Man, and so might better understand the Business. I inclosed also six Reasons of Sir *John Bennet*'s, taking Exceptions in Law against the Nullity. And withal I joined mine own Reasons in Divinity, of which I said in my Letter, that I knew not where to seek an Answer to them; meaning, that the Commissioners had given me none. These Reasons afterwards cost me a great deal of Trouble.

The next Progress in this Controversy was, that I was advertised, that it was his Majesty's Pleasure that the Cause should be put off until the 18th of *September*; and withal there was brought a new Commission of Adjuncts, whereinto my Lords of *Winchester* and *Rochester* were put. The Day that I perceived this, acquainting the two Chancellors of the *Exchequer* and *Dutchy* therewith, in the Gallery at *Lambeth*, I told them, *That I hoped now, that for my Part, I should be freed from any Trouble therein farther, for I did desire to be rid of it.* They both answered me, *That they desired in like Sort to be quit of the Matter.* A good Business, thought I, that no body taketh Comfort of it, unless it be Sir *Daniel Dun*; of whom I forgot before to note, that on the Day of meeting, next after our coming from *Windsor*, he, with a great deal of Insolency, challenged me for my Speech before his Majesty the Day

before. *Do not abuse the King*, Sir *Daniel Dun*. I remembered it was in mine own House, and if I had rattled him according to his Deserts, my Lord Chamberlain would have said it had been done for his Sake; and in the Progress, Sir *Daniel* having the King's Ear, would have made Things worse than they were; and I therefore forbore him with such Patience, that some of the Commissioners told me afterwards, that they wondered how I could endure those Behaviours, at the Hands of a Man of his Quality: But yet they commended me for it. Now grew I to consider what were the Reasons why these two Commissioners were joined to us; and therein I had many Advertisements from divers Friends, divers Ways. We resolved for my Lord of *Winton*, That it was supposed, that there was no great Amity between him and me: That when I was Dean there, there was some Disagreement between us, which they supposed yet continued: That he had an old Grudge to me, for having the Archbishoprick, which his Lordship so much desired. Besides, it was some Tickling unto him, that his Gravity and Learning should either win in the Archbishop, or lay some Blemish upon him, if he stood out. Certain it is, that Sir *William Button* was with him; and, doubtless, would tell him how acceptable this Service would be to his Majesty. I heard of good Credit, and secretly; That he was put in Hope to be made a Privy Counsellor; and the Fame was general, That for the Father's Labour the Son should be made a Knight. It seemeth, at the first, that he had no great Fancy unto it; but being wrought upon; he consented; so that he might be required by his Majesty to be present. This was done by a Letter from *Salisbury*, which, at his being at *Lambeth*, he shewed me; that I should take Notice, that he had not come, unless he had been commanded. I leave him for the Time, only signifying, that in the Vacation, he sent for divers Books from *London*, and had Dr. *Steward* much with him, to inform him in all Particulars. Yet I may not forget, that while he held off his Consent, some hard Opinions were raised of him at Court; as I found by a Letter from my Lord of *Litchfield* to me. For there he was found Fault with, that he attended not the King at *Farnham*, or at *Andover*. And there Blame was laid, that Mr. *Love*, who was so great with my Lord of *Winton*, was like to get the Warden's Place at *Winchester*, Dr. *Harmar* being reported to be dead. Concerning the Bishop of *Rochester*, it was well known that he had opened himself before the King's going in Progress, that he liked well of the Nullity. Coming once or twice while we were about it, he, with some in my House, disputed earnestly for it. He was a great Dependant of my Lord of *Litchfield*. This was a Way to make him well esteemed, and to arise high in Preferment. But, in Truth, he should not have verified the Report which Archbishop *Bancroft* on his Death-bed gave of him, together with *Butler* and *Carrier*, to the King by a Message, unless he did some such Thing. When he was put into the Commission, he in divers Places seemed to be much offended, that he was made one. His Grief was, that he was set in Opposition against me: He would never give his Voice to it, unless I consented. These, and the like Things he spake, as elsewhere, so to some of my Servants in my House at *Croydon*: For,
under

under another Colour, he came three Times in the Vacation to me; but I never spake a Word with him about that Matter, as knowing it would be an Argument against me, that I laboured to draw away the King's Commissioners; and the End shewed, that I had no great Reason to trust him. Besides these two Adjuncts, the new Commission itself seemed very strange unto me. There were eight made of the *Quorum*; and it was so laid, that if three of them, with two other, consented, the Sentence might be given; so that, by the Words thereof, if seven had denied, five might have pronounced and prevailed. A Matter so uncouth, that, as I credibly heard, my Lord of *Winton* himself found much Fault therewith. Again, there was a Clause, *Legibus, Statutis, Ordinationibus, Constitutionibus quibuscunque non obstantibus*; so resolved they were to have it dispatched. Every thing now stood at a Pause; and my Lord of *Ely* (who, at first, delivered his Judgment against it to Sir *Henry Savile*, as I heard it avowed upon good Credit; but afterwards said, he was better instructed by the King) began to hearken what Men said of the Matter, as appeared by Speech which he had with Sir *John Peyton*; to whom, notwithstanding, he told some Things of the Insufficiency of my Lord of *Essex*. The Weather grew fair; he hoped the overflowing of the Isle of *Ely* would cease; he would go down in his Visitation; he came and took his Leave of me, but not one Word of the Nullity.

Now was his Majesty abroad, and I had more Leisure to consider of this Question. I read what I could; I conferred with many Men about divers Circumstances, so to inform myself the better. I prayed frequently to God to direct me aright. I often perused the Depositions, but I found little Satisfaction. I perceived most of the Lords had a great Dislike of this Proceeding; that the better Sort of Men had generally a Detestation of it; that the Judges and Lawyers much condemned it. I heard many strange Stories of the Lady's Carriage. Something was freely spoken of a Woman arraigned at *Bury*; and how to shut that up, and so to free the Earl, this Course was consented upon.

These Things, though out of Charity I entertained not as absolutely true, yet the Concurrence of them from so many, made me that I could not condemn them. Besides, now grew the Rumour strong, that a new Husband was readily provided for her: Whereof I called to Mind the Opinion of Sir *Henry Nevile*, delivered to me at *Windfor*; and I did not forget a Speech of *Overbury's*, once to me in that Kind. I understood, that at *Christmas* last, there was a Reconciliation wrought between the Earl and his Lady, howsoever it fell out. Yea, that when the Lords met at *Whitehall* about the Manner of Separation, there was three Times that Day a Likelihood to make them Friends; which we thought implied no Disability of my Lord of *Essex*, even in their own Opinion. I farther understood, that whereas it was whispered among us, the Commissioners, That at *Christmas* last, my Lord of *Essex* being in Bed with his Lady, should labour a Quarter of an Hour carnally to know her, and in the

End should say, *Frankey, it will not be*, and so kissed her, and bid her good Night: That this was not true; but that the Earl, the Night before his going from *London*, at the End of *Trinity* Term, said, with Tears in his Eyes, *That when he went to Bed to her at Christmas last, he had forgiven all Things as clearly as he wished that God should forgive him his Sins; but when they were alone, she reviled him, and miscalled him, terming him Cow, and Coward, and Beast: And he added, That she was as bitter a Woman as any was in the World: Which Things so cooled his Courage, that he was far from knowing, or endeavouring to know her.* These Matters, together with the small Joy which the Commissioners had to deal in the Business, made me have no great Fancy unto it. On the other Side, I heard that my Lord Chamberlain, or his Followers, gave out, that what was done, was performed by the King's Direction, otherwise it had not been begun; and therefore, they expected that his Majesty should see it effected; that they rested themselves on him. I was much grieved that they had this Advantage on my Master, who being so engaged, as I thought, could not well go backward or forward: And, to increase my Sorrow, I was privately advertised from Court, that his Majesty did mean himself to give an Answer to my Reasons above-mentioned. I heard another Way, that his Majesty in the Progress wrote much with his own Hands. From another Friend I was told, That the King, with his Answer to the Reasons, had written to me a sharp Letter. Yea, by another I learned the Contents of the Letter, which was full of Sharpness.

These Things in the Summer kept me full of Expectation of some great Discontentment. Yet my Heart still assured me, that I was guilty of no Wickedness. I found all Persons with whom I spake, of my Mind, for the Dislike of the Nullity. In many Businesses to and from the King by Letters, I found nothing but well. His Majesty sent me Warrants for three Bucks; as formerly he had done, and with some Kindness joined.

Thus I was tossed in my Thoughts; and in all my Troubles, I had Recourse to God in Prayer.

By this Time, the 18th of *September* draweth nigh, and I am informed, That my Lord of *Winchester*, the *Tuesday* before, was come to Town; and that besides my Lady's Council, Sir *Julius Caesar*, and Sir *Daniel Dun*, did, at *St. Mary Overy's* House, daily attend his Lordship. I expected no great Good of this; only from the King I heard nothing but well. For some few Days before, his Majesty had been at *Whitehall*, where I kissed his Hand, and he did not only look merrily upon me, but he gave me Promise of the Bishoprick of *Lincoln*, for my Brother, as I understood it. Some other Matters also passed quietly in Speech, and I found no Disturbance. But on the 17th of *September*, the Day before our new Meeting at *Lambeth*, my Lord of *Litchfield* being sent from the King, bringeth divers Papers unto me sealed up. I opened them, and found there my Reasons first; secondly, an Answer to them*; and, thirdly, a Letter, all written with

* See *State Trials*, Vol. 1. p. 319, 321. for the Archbishop's Reasons, and the King's Answer to them: But the King's Letter to the Archbishop is there omitted; but here inserted, after the Archbishop's intended Speech, at the End of this Case.

the King's Hand unto me. I read them all presently, without any Abatement, whereunto I was helped by my Fore-knowledge, that such Things would come. I said little unto it; only I asked my Lord of *Litchfield*, *Whether he knew what those Papers contained?* He told me; *That the King had read unto him the Answers to the Reasons, and had given him the Letter to seal up in a Paper; but in Reverence to his Majesty, he held it not his Duty to look into it.* Growing afterward in some Speech of our next Day's Business, I told him plainly, *That having spent much Time in this Vacation, in perusing the Books, I could not find any where, but especially in the Answer of my Lord of Essex, that which would give me Contentment.* I read the Places, and my Lord confessed with me, *That there was not enough.* He told me also, *That unless I gave my Consent to the Separation, that he would never give his:* So much Reverence in him did I find both then, and divers Times before, against this Divorcement. At last he mentioned one Thing which pleased me wondrous well, and that was, *That we should call for my Lord of Essex again, and new examine him, upon some Points to be farther declared, ad informandum animum Judicis.* For hence, either we should know so much as might persuade us to decree a Separation, or the World might be satisfied that we had no Reason for it. These Things thus settled, his Lordship separateth. Then I withdrew myself to my Study, and read over again and again the Papers from the King. I found them very sharp, and perceived by the Time that they arrived unto me, that they were detained till that Day, that I might be overwhelmed with them on the sudden, and have no Time to deliberate, before we were to come the second Time to sit in Judgment. These Things did much trouble me, so that I did sleep but a little that Night. I revolved many Things, and much tumbling I had in my Mind. It grieved me infinitely, that the King should make himself a Party therein; that some Unthankfulness, and other Matters, were little less than Reproaches unto me: Methought, my faithful Heart to my Master deserved no such Sharpness. I devised how I might give the King Contentment, and it was some Comfort to me, that we thought upon a Course of new examining my Lord of *Essex*. But as Things stood, I could not force my Conscience, which cried upon me, *That it was an odious Thing to GOD and Men, to give such a Sentence, without better Warrant.* I here cast what might befall to the Church in my Disgrace; how *Papists* would scorn at it; how it might be my own Ruin, and that divers Ways; a Hazard to my Friends, and to the Commissioners which were of my Mind; how my Lord of *London* had a Wife and Children, which might all be overthrown at one Blow. But after Midnight sleeping, towards the Morning, I considered on the other Side, That my Conscience was more unto me than all the World; that it was a fearful Thing, in Place of Judgment, to give a Sentence against mine own Heart; that *Olivarius*, the Chancellor of *France*, upon such an Occasion, grew mad, and died in it; that the Manner of our Sentence must be, *Solum Deum præ oculis habentes, à rei veritate inspecta:* All which, and the like Meditations, did much preponderate with me. Then I slept again, and now rising, I found my Heart much settled, to persist in that which I held to be Truth. I

poured out earnestly my Prayers to God, and was now strongly resolved to leave all to God, remembering, That he had preserved me from my Mother's Womb; that he had from Time to Time rid me out of all my Troubles; that his Power was the same still; that he would never forsake me, if I turned not from him. I forgot not, *That the Hearts of Kings were in the Hand of the Lord;* that I had Experience of the Graciffulness, both of GOD and the King, the Year before; when standing earnestly in a good Cause, that Prince *Henry* should not marry a *Papist*, I received some sharp Words from the King for my Labour; but the next Day his Majesty used me very kindly again. To this I added, That Poverty, Imprisonment, Death itself, were Things contemptible to a resolved Mind: That some of my Predecessors, as Archbishop *Cranmer*, and my Lord *Grindal*, had given good Examples of these Sufferings, and they were recorded in the Catalogue of the Righteous. These Thoughts thus revolved, I read again the Letter from the King, and drawing out into a Paper all the sharp Words, I considered them again and again, and methought they were not altogether so bitter as I apprehended them; that they were wrung from his Majesty by my Lord Chamberlain's Importunity; that my Master had deserved at my Hands, that I should bear patiently twenty times more; and that all was nothing, so the Clearness of my Conscience might be preserved. With these Resolutions on the *Saturday* I came to *Lambeth*, where I met with the News of *Overbury's* Death, and the Sound of some fearful Apprehensions thereupon bruited about the City. I made Trial of my Lord of *London's* Constancy, telling him, *aut cedendum, aut cadendum.* I found him most resolved, avowing unto me, *That if he should pronounce for the Dissolution of the Marriage, he thought the Devil would that Night fetch away his Soul.* Yea, he was earnest on me to persist where I began, telling me, *That the Eyes of the whole Church of England were upon me, and expected of me, that I should shew myself a worthy Man.* At last we came to sit, where my Lords of *Winchester* and *Rochester* took their Places. The Commission was read, the Fact, and Manner of the Process was opened, and nothing notable done, saving that my Lord of *London* proposing, that it was fit that my Lord of *Essex* should be called to explain himself farther, for the fishing out of the Truth, all the Commissioners most willingly assented thereunto, (yea, my Lords of *Winchester* and *Rochester* expressly,) saving Sir *Julius Caesar*, who softly declared his Dislike thereof, in my Hearing. When the Court was risen, I spake with my Lord of *Litchfield*, and not thinking fit to return any thing to the King in Writing, I prayed him to acquaint his Majesty how Things stood; and to tell him, that upon this Course of new calling my Lord of *Essex*, I hoped in the End, we should give his Majesty Satisfaction. The *Sunday* I spent at *Croydon*, and preached on that Text of Christ's raising the Widow's Son of *Naim*, to the great Comfort of mine own Heart. That Day I conferred with a Friend, and settled some Courses, if any Trouble should befall unto me. I was also by a good Friend informed, that my Lord of *Essex*, on that *Sunday* Morning, having five or six Captains and Gentlemen of Worth in his Chamber, and Speech being made of his Inability, rose out of his Bed, and taking up his Shirt,

Shirt, did shew to them all so able and extraordinarily sufficient Matter, that they all cried out Shame of his Lady, and said, That if the Ladies of the Court knew as much as they knew, they would tread her to Death.

On the *Monday* we met at *Lambeth* again, and Information was given on the Part of my Lady. These Things passed quietly. When the Court was risen, my Lord of *Litchfield* told me, That he had made his Majesty acquainted with our Proposition on *Saturday*; but that his Majesty was strongly against it, my Lord of *Essex* should any more be called, and that by no means he would endure it, for that peradventure the said Earl, either being provoked by the late Challenge between him and Mr. *Henry Howard*, or otherwise instigated by the Earl of *Southampton*, might speak somewhat which might marr the Business. This made me still suspect that all was not right, and I replied to my Lord, *If that be denied us, and we have no farther Proof, I shall never give Sentence for the Nullity: As good declare my Mind at first, as at last, and I pray you so acquaint his Majesty.* When I went homeward, I much revolved this in my Heart, thinking, Good Lord! What a Case is this? Shall any Truth be kept from us? Are they afraid to have all out? Do they only look to attain their own Ends, and care not how our Consciences be intangled and ensnared? On the *Wednesday* we met again, and now Dr. *James* is come to us, and by and by cometh in my Lord of *Ely*, who, as it seemed, had meant to have kept him away, but the King sent an express Messenger for him, requiring him, by a Letter, to be there on the *Tuesday* Night. Now are we *plena Curia*. Before we sat down, Sir *Thomas Lake* delivereth a Message unto me from the King, That his Majesty desired a speedy End of this Business; that it had hung long, and the World was in Expectation of it; that the Term grew on, which would be full of Businesses: That his Majesty on *Monday* was to go to *Windsor* to meet the Queen, and my Lord Chamberlain with him; that therefore he would have us to fall close to our Work, not to trouble ourselves on the Morrow to come see the King, who would come late to *Whitehall*, because some Ceremonies were to be performed, as upon the last Day of hunting; that we should not attend his Majesty till *Friday*, but that the Sentence must be given on *Saturday*. My Answer was publicly, *That there should be no Stay in me, and that therefore on the Morrow we would sit Forenoon and Afternoon, if the Commissioners so pleased; and if they thought good, I would not refuse to sit until Midnight.* But in mine own Heart I perceived, that all the Care was, that the Matter might be dispatched before the Queen spake with the King, whom they supposed not to wish well to the Business. We go to our Court, and Sir *Thomas Lake* stayed to hear the Information on my Lord's Part. It was strange, to see how my Lord of *Winchester* carried himself that Day, partly to play his Prizes before Sir *Thomas Lake*, who might make Report of it to his Fame, and partly to shew his Ludimagisterial Disposition. He snapped up my Lord's Council, that they could not speak a Word, but he caught it before it was out. *I know what you will say, when indeed he knew not, neither was it any such Matter as he imagined. God Almighty will tell you a Tale for that; I tell you, Doctor Bennet, I have as much Law as*

you, I am as good a Lawyer as you are. He fell divers Times on my Lord of *London* personally, and would needs know of him openly, *How many Times in a Year a Man was bound carnally to know his Wife.* In a Word, with Scoffs, and imperious Behaviour, he played the Advocate all that Day, to the great Offence of the Standers by, so that it was publicly spoke of in *London*, which, I think, came to his Ears; so that ever afterward he carried himself more tractable. I was forced to bear it, because of avoiding new Complaints.

The Point most observable that Day, was, that both my Lord of *Winchester*, and my Lord of *Ely*, did deny Maleficiation, so that by no means they would have this Question to proceed in that Nature, which I openly did thank them for, and bound it upon them, before all the Commissioners and Standers by, telling them, *That the same was my Opinion.* But I asked my Lord of *Winchester*, who sat by me, *What he then held it to be?* He told me privately, *That he held it to be a natural Impotency, which was before the Marriage.* I asked him, *What that might be, and whence he gathered it?* He answered, *I have heard divers Particulars, which are enough to persuade me if they be true. Yea, my Lord, said I, if they be true, I have heard as many to the contrary. I wish that we might examine whether they be true or no; that were fair Proceeding. It is my Grief, that it is not permitted unto us, to try whether all these Matters be so or not. This might satisfy a Man's Conscience.* So we parted that Night.

On the *Thursday*, at Ten of the Clock, we met in *Lambeth-Hall*, where my Lady's Council took on them to answer some Scruples objected by Dr. *Ferrand*. But Dr. *Martin*, when no body spake of it, fell to wipe away that Objection, that my Lord had not sworn, *cum septima manu*. Upon his Speech, the Commissioners took hold of it, and it then being urged strongly, my Lady's Council stood at first, as if they had been blasted with Lightning. Afterward they grew extreme angry with Dr. *Martin*, that he had proposed it; but the Issue was, there could no Answer be given unto it; but in the Sight of all the Standers by, this was broke off with Shame and Confusion of Faces. We dined not that Day, but about One or Two of the Clock we withdrew ourselves privately into the Parlour. I had thought there to have had Dr. *Edwards*, and the rest who liked not of the Nullity, to propound their Doubts, and so in Order; and last of all, I would have spoken. But there I found a contrary Course resolved, which my Lord of *Winchester* seemed much to dislike. But my Lord of *Litchfield*, Sir *Julius Caesar*, and Sir *Daniel Dun*, had set the Clock, and they must have their Will. The six Reasons are produced, which Sir *John Bennet* had delivered the Day after we came from *Windsor*, and the Copy whereof was by me sent to the King. All these must in their Order be debated. One was about the Unperfectness of the Libel, in which we all received Satisfaction, that the Libel was well to so much Purpose as now they declared they would have it. The other five, my Lord of *London*, Sir *John Bennet*, Dr. *James*, and Dr. *Edwards*, maintained: I allowed of three of them absolutely; and the other two, that was Inspection of my Lord's Body, and a Time to be assigned by the Judge, to try whether they might carnally know one another, I held to be fit, when those Reasons were proposed; but now such Flames and Quarrels

Quarrels were arisen, I thought not amiss now to be forborne. My Lord of *Litchfield*, with a Pen, did note what every Man resolved, but principally my Words, with a Purpose to shew them to the King, as I conceived, and afterwards I found it to be so. I was desirous therefore, that his Majesty might see I was not obstinate, but settled to yield to Reason. And again, I supposed that this Candor of mine would make some of them yield to us, where they saw there was unevitable Truth. But I found it far otherwise; for our Afternoon's Work was, that they gave shuffling and shifting Answers to the Objections, such as themselves had studied all the Vacation; but no Care was, whether they were true and satisfactory, or not. And to what Sir *Daniel* proposed, all seven of them consented, without Sticking or Scruple, so that I might imagine it was a set Play. Upon the first Scruple debating, Sir *Julius Caesar* finding the Difference of Opinions, and that our Lawyers stuck strongly unto it, *Let us, saith he, put it to the Question, and let the major Part of Voices determine it.* When I saw this to be the Proceeding, the Lord, thought I, deliver me from such Judges! But yet observing their Manner, I possessed my Soul in Patience. When it grew to be dark, that the King might understand that I was willing to allow Time to all that might be said, I remembered Sir *John Bennet* to read the Sentence of the *Rota Romana*, where, in the Pope's own Consistory, about the Year 1585, a Judgment was reversed, which an Archbishop in *Spain* had given for a Nullity, in a Case being ours altogether, because, after the triennial Cohabitation, he had not assigned a Time for the married Couple to make Trial again, and to use Fasting and Prayer. This Repeal was read at large, and so was another of the *Rota*, in the same Kind. But both these were slighted, as Matters of nothing, and so I think had *St. Paul* been, if he had been there. I urged that of *Alexander III.* That even in *France* itself, no Nullity had been allowed; but that it was *Consuetudo generalis Ecclesie Gallicanæ*; and that *Ecclesia Romana* did know or practise no such Thing. This was slighted like the former, and I perceived it was but in vain to speak to them, for they were resolved, and be it good, or be it bad, the Matter should be done.

On the *Friday* Morning I went to *Whitehall*, and looking somewhat heavily, the King cometh to me, and to my Lord Chancellor, and offereth us both his Hand to kiss. He might perceive by my Countenance that I was not a little troubled, and that was perceived by divers of the Lords, who privately let me know their Minds, that we had a foul and strange Matter in Hand at *Lambeth*. At last, the King takes me aside, and after propounding three or four Businesses, walking, he took me to the Window, and asked me, *How that great Cause did go forward?* I told his Majesty, *That I had no Liking of it; that I had received a Letter and Writing from him which very much troubled me, for I knew myself to be his dutiful Servant, and had not deserved ill of him; that it was nothing to me whether she remained Wife to the Earl of Essex, or were married to another Man; but that I might not give Sentence where I saw no Proof; that I had lived fifty-one Years, almost, and had my Conscience uncorrupted in Judgment; that I knew not how soon I was to be called before God, and I was loath, against that*

*Time, to give a Wound to mine own Soul; that all my Grief was, that his Majesty's Hand was in it; that for other Men I cared not; that I chose rather to die an honest Man than a wise Man; that he must never afterward expect true Service of me, for how could I be true to him, who was false unto God? That if he marked it well, this was no Time to disgrace his good Servants: I told him, That if his Majesty pleased to let the Matter alone, as he did all other Causes, I would make good my Part against all England, on the Peril of my Head. The King answered, That I would have no Lawyers. I replied, Yes, enough, there is not an honest Lawyer in England that would not be on my Side. His Majesty asked me, Whether the rest of the Commissioners, Yesterday, did not persuade me. I told him, No; but their Dealing rather drove me the contrary Way. For (said I) I came thither ingeniously to yield to any Truth that should be shewed me; but they, on the contrary Part, in a factious Course went wholly together, and what one said, another said, be it well, or be it ill, without any Scruple. To my Speech, That it was an Example that never had been in England; the King said, Yes, Bury's Case. I beseeched his Majesty, That he would not believe that Cause to be any such Matter; for if he would pardon me, it should not be long before that I would shew, that his Separation was for lack of his S—s. In this debating, the King was very desirous to know, what should be the Reasons whereupon I stood, that I might have Satisfaction. My Answer was, That when I was in Place of Judgment, I would not conceal the Reasons of my Sentence, but it was to no Purpose to speak them now; it would but put his Majesty to a new Trouble to hear them, and then some Man must answer them, who looked to his own End, and to make a plausible Answer, which would not content me, without Ground of Truth. A great Part of the Time, that I had this Speech with the King, my Eyes were full of Tears, which I saw much moved my gracious Master, and especially my earnest Desire, That I might do my Conscience. I perceived the King was much overcome by this my honest Dealing: And then, whilst his Majesty went to speak with my Lord Privy-Seal, and my Lord Chamberlain, who stood all this while at the farther End of the Gallery; and to whom, I conceived, the King told much of that which I had spoken; I went my ways to *Lambeth*, to Dinner. Now grew I confident to do my Conscience right, whatsoever came of it. That Day I dined privately; but yet my Lord Bishop of *Bath* was with me, whom when I had acquainted with so much of the Cause as I thought fit, I received no Discouragement from him. My Heart was much ealed, and now I thought I should no more be troubled. Yet between Three and Four o'Clock, after Dinner, my Lord of *Litchfield* cometh to me from the King, and bringeth a written Treatise upon the present Argument, which was the Work of a *Scotchman*, I know not who. I received it, and promised that Night to read it; as indeed I did, riding in my Coach to *Croydon*; for thither I thought fit to withdraw myself, though it were late, for avoiding of more Perturbation. This Treatise no way pleased me, but I thought it the Work of some hungry Fellow, who lacked twenty Shillings to buy Food to his Belly. Here, finding it the Day of the End of my Quarter, I settled much of my domestick Business. I forgot not to commend myself, and the whole Cause, to
God*

God by Prayer. I meditated many Things in my Bed: In the Morning I rose early, and before Day, in my Study, I set down some Heads, what I would speak unto. Then went I early to Lambeth, and there supplied my brief Notes, digesting my Matter of Sentence into Order; being resolved to speak large, and Home to the Cause, without Touch of any Person more than I must needs. By this Time most of the Commissioners were come. I sent for my Lord of London, Sir John Bennet, Dr. James, and Dr. Edwards, singly and severally into my Study: I required them, before God, not to speak any thing for Respect to me, but to do that, which in their Learning and Conscience they thought to be just, and to speak that *intrepid*, without Blemish to any Man, but soundly to the Matter. I found them all avowing, That in their Souls, they found no Warrant for the Nullity. I then wished severally, Dr. James, and Dr. Edwards, to deliver their Sentence, with some Reasons adjoined, not many, but of the strongest. I told Sir John Bennet, that this Day I expected he should shew himself a worthy Man, that he should deliver his Judgment *per extensum*; that they had laboured to blemish his Skill, and to slight his Learning especially; therefore, both for his Conscience and his Credit, he should shew what was in him, to maintain an honest Cause. If Sir Daniel Dun, and Sir Julius Caesar, who came after him, should bespatter him in their Choler, or lay any Imputation upon him, he should find that some of us would take it off him. To my Lord of London, I said, *We have three that speak first, who, I trust, will lay such a Foundation in the Hearts of the Hearers, as shall not be removed. But the other Side have this Advantage over us, they are seven of them, Lawyers and Bishops, to answer what our three have said; and perhaps with weak Men, such a Stream of such Persons may much prevail: But let not that dismay you, my Lord, only take this Course: Deliver, first, your own Meditations; and then, having taken with your Pen some of the Absurdities, which, in the Sentence, some of them will deliver, blast those; and let the Auditors see, that by you the Stream is turned. Then leave it to me, and I doubt not, in Almighty God; but to batter their Nullity to Dust: That though they have it by the major Part of Voices, yet, the World shall see what the Cause is, and they shall have little Comfort by it. I am very well provided; I am no way afraid; and you shall see, I will not be Tonguetied.* So confident was I in the Honesty of the Cause, and in the Helps of Almighty God, that I was not now afraid of ten thousands of People; but did long to be at the Business, as the Lord truly knoweth.

When now I was alone, revolving my Meditations, Sir Julius Caesar cometh into my Study to me, telleth me, *That he wondered that my Lord of Winchester was not come; that it was even Ten o'Clock; that therefore it was fit, that the Hour should be continued from Ten to Twelve.* I assented thereto; and by some of the Commissioners the Time was prorogued. Then cometh in Sir Thomas Lake, with a Message from the King, which he must not deliver till all the Commissioners were come together. So he was forced to stay. Between Ten and Eleven cometh in my Lord of Winchester; who, as afterwards found, had been all the Morning at the Court. I told him, *We had stayed for him two Hours and a half.* His Lordship slightly excused it. Then, in the

Gallery, Sir Thomas Lake told us, *That his Majesty had sent him unto us, to deliver two Things. The one was, That in our Sentence we should take heed of gauling of any Person. My Answer was, That from the Beginning of this Process, we had ever been wary not to offend in that Kind; and that he should be much to blame, who, in the Conclusion, would transgress that Way. And so said the rest. The other was, That we should not in any long Manner, but compendiously, deliver what we had to say. I prayed Sir Thomas Lake to explain that farther, whether we were only to say Yea or No; and no more: For I would obey the King's Commandment.*

Tu Regina jube, mihi jussa capessere fas est.

He answered, *That he could not say so, but that we were to speak briefly. Yea, but said Sir Julius Caesar, I know the King's Mind; for I was Yesterday with him, and he told me, that he expected that we should go no farther than Yea, or Nay, for of Reasons there would be no End. Yea, saith he, the King told me he was promised so much. By whom? said I. I think, quoth he, by your Grace. Not so, said I: But I said, indeed, Let every Man deliver his own Conscience, I will not perturb the Sentence. No more indeed will I. Then he replieth, I know the King expecteth we should say no more, than I do like this Sentence, or, I do not like it. And that you know, Sir Daniel Dun, is the Manner of the Delegates, and not to go farther. It is so, saith Sir Daniel. Upon this, the Bishops all said, *We were best to proceed in that Fashion.* To which I replied, *I will not be wilful, but if it be agreed upon, and it be the King's Pleasure, I will obey. But look you to it; for if any Man give a Reason, I am no more bound than he, but that I will return the Reason of my Opinion and Judgment.* They all said, they would be observant of it: Thus Sir Thomas Lake was dismissed. Then we called for the Sentences on both Sides, which the Council had ready. They disliked that which was Absolutory of the Earl of Essex; and we approved it. We found Fault with the other Sentence; AnnulATORY, both for the whole; and because some Parts in it, in our Judgment, were apparently false. But they persisted in their Intention: So we went into the Hall, where myself, my Lord of London, Sir John Bennet, Dr. James, and Dr. Edwards, freed my Lord of Essex. The Bishops of Winton, Ely, Litchfield, and Rochester, together with the two Chancellors, and Sir Daniel Dun, pronounced for the Nullity, and subscribed the Sentence, my Lord of Winton pronouncing it. We perceived that they were afraid we should at large speak our Reasons openly, being the last who were to speak.*

The three Bishops of Winton, Ely, and Litchfield, went immediately to the Court, hoping to receive great Thanks for their Service, but they waited a full Hour, e'er they could speak with the King; however they sped afterward. And we were glad that we were freed of the Trouble. And now, I, who would not have given the Sentence for all the Gold in India, do expect God's Pleasure, what will become of this Business hereafter, and submit myself to God's Providence; who ever preserveth those that trust in him.

THIS Narration is wholly written with mine own Hand, and was finished the second of October, 1613, being the eighth Day after the giving of the Sentence. And I protest before Almighty God,

God, that I have not willingly written any Untruth therein: But have delivered all Things fairly, to the best of my Understanding; helping myself with such Memorials and Notes as I took from Time to Time, that if there were Occasion, I might thus at large set down the Truth to Posterity, when this Case shall be rung from Rome Gates, or the Fact hereafter be questioned.

GEORGE Canterbury.

Some observable Things, since September 25, 1613, when the Sentence was given in the Cause of the Earl of ESSEX, continued unto the Day of the Marriage, December 26, 1613.

THE Sentence being given for the Nullity, the Minds of Men in their several Places were wonderfully distracted, and every one spake according to their Fancies. But for the most Part there was a Detestation of the Thing, and a great Dislike of those that gave the Sentence, which was expressed by all Courses that Men durst adventure upon. On the other Side; there was a strange Applauding and Commending of those who withstood the Separation; and from all Parts a Testimony came unto them, that they had done like honest Men, albeit the only Scope which they aimed at, was the Discharge of their Conscience, and not vain popular Applause. The Archbishop, the Day after the Sentence, went to the Court, to *Whitehall*, and waited on the King to Chapel, standing also by him in the Closet, where he was strangely looked on by the King, as he was also by some of the Lords; but nothing being said unto him, he took no Notice of it, but bore all patiently. This Strangeness of the King held on at *Hampton-Court*, and elsewhere; and it came to the Archbishop's Ear, that the King spake divers Times hardly of him, but much magnified them of the Affirmative Part, and especially my Lord of *Winchester*, as the worthiest Man in the Kingdom. Some Things were done also in Recompence to divers of them; as Sir *Julius Caesar's* Son was made a Knight, my Lord of *Winton's* Son also had the same Reward, which some merry Fellow blighted with the Name of Sir *Nullity Bilson*; and the Bishop of *Litchfield* must remove to *Lincoln*; and as for *Litchfield*, it must be bestowed on Mr. Dean of *St. Paul's*, that so Doctor *Cary* might be preferred to the Deanery of *Paul's*, for which it was generally supposed he should pay well. But now it run current, that the Archbishop must no more have to do with naming any to Church-Livings, but some Lords in Court should dispose of all; and principally it must be provided, that Dr. *Abbot* must never be preferred, no, not so much as to *Litchfield*, so far was he from *Lincoln*, which was formerly promised unto him. These Things grew detestable to the People, who feared that even Religion would smart for it; but the Parties most maligned were silent and patient, expecting God's Leisure, and Malice enough from some other Men. The first Thing of Bitterness that appeared, was a Letter from *Royson*, under the King's Hand and Signet, directed to the Commissioners in the former Sentence, but brought to the Archbishop about three Weeks after the Sentence. This was a most sharp Letter, complaining that they of the

Negative Part, for so they were stiled, had hindered the Act to be made upon the Sentence; had solemnly protested against that which was done; had given unto themselves other Titles than were in the King's Commission; had glorified themselves in that which was done; by which they laid an Imputation upon the King's Conscience, who had declared himself for the Divorce; and other Things of the like Nature. This Letter being read to the Commissioners, the Archbishop said; That he knew not what it meant; for he understood of no Man that protested; nor knew nothing of any Man's arrogating of Titles to him; or glorifying himself: And as for the Act, he supposed it to be made up in common Form, and never heard ought to the contrary, neither meddled with any thing therein, but left it to the Register, and what he had done with it, he could not tell. Furthermore, he asked all the Commissioners particularly; if they knew what this meant; or if any of them were able to charge those of the Negative; with the Points quarrelled at; who all, with one Consent, denied that they could; and expressly averred, that there was no such Thing done at the Time of the Sentence, as had been complained upon. When standing thus in Admiration, Sir *Daniel Dun* took upon him to understand the Matter, and said, that if the Register were called, it would appear there was something in it. *Barker*, the Register, is sent for, and being demanded whether he had made up the Act, he said, that he had drawn it up in a Form that he liked; but some other of the Commissioners did dislike it. And thereupon he shewed two Forms, the one more large, the other more brief; but both of them having in it, that the Archbishop, and the rest of the Negative Party, protested against the Sentence. Here every Man wondered at him, out of what Ground he should do this; and all the Commissioners, with one Consent, very much rebuked him, professing that there was no such Protestation used. For the rest of the Charge in the King's Letter, *Barker* freed all in all Things, save only Dr. *Edwards*, who was absent by reason of his sore Eyes. The Archbishop, upon this, desired the Commissioners to suspend their Judgment touching Dr. *Edwards*, till he might answer for himself; saying, that Honour, Justice, and Charity, required so much in his Behalf; and adding withal, that he doubted not but it would prove some mistaking of the Register's Part, to whom it was apparent that small Credit was to be given, since he had so grossly set down of them, that they protested, when all the Commissioners could witness the contrary. Moreover, he desired Mr. Chancellor of the *Exchequer*, and Sir *Daniel Dun*, to certify the Lord Chamberlain, how free and innocent from those Aspersions the rest were found, and that from Top to Toe it was nothing but Misprision. Before this Truth was discovered, it was known that a Gentleman of the Earl of *Northampton's* had said to Sir *John Levison*, and that, as from his Lordship, *That there was something descried, which would break the Archbishop's Back*: Such Account was made of this Business.

Thus Things passed silently until the next Week, when upon the *Thursday*, being High Commission Day, Dr. *Edwards* being amended, repaired to *Lambeth*. His Coming was watched; and then was delivered to the Archbishop a second Letter from the King, commending the Con-
 rence

rence of all to the Act, to be made up in common Form; but requiring the Commissioners to convene Dr. *Edwards* and the Register before them, and to charge them with all the fore-remembered Matters, and to learn where the Fault did lie. It was also commanded, that they should require the said Doctor and Register, to set down in Writing what had passed between them; and if it were found that Dr. *Edwards* were to blame, he should be suspended till the King's Pleasure were farther known.

These Things are fallen upon; and Dr. *Edwards* shewed that the Register had wronged him, and that no Part of the Accusation was true, *in modo et forma*, appealing to the Commissioners, what Faith might be given to *Barker* contesting against him; when it had been manifestly proved, that he had forged the Matter of Protestation against my Lord of *Canterbury*, my Lord of *London*, and the rest. Time is assigned to them to deliver in their Writings; and accordingly, about two Days after, Dr. *Edwards* bringeth to the Archbishop his Answer, denying the Points whereon he was accused. But *Barker* brought nothing till a Fortnight after; and then, by Candle-light, when the High Commission was risen, and the Commissioners were departed, he delivereth a long Writing to the Archbishop, who could not read it that Night; but reproved him for detaining it so long.

On the Morrow, my Lord of *Canterbury* perused this Declaration; and as he found it to be uncertainly and diffidently set down for some other Circumstances, so he discovered there one Thing much to be observed, and that was, that *Barker* delivered; That some few Days after the Sentence, the Lord Chamberlain sent for him, finding Fault that the Act was not made up. And there Speech was; That some desired to have their Titles put in, as well as the Titles of others; and for that, *Barker* named Sir *John Bennet*. Whereunto the Lord Chamberlain said, *I know no Title that he hath: Yes, said Barker, he is Judge of the Prerogative Court of Canterbury.* But *Barker* concludeth the Narration; That himself finding that he had named Sir *John Bennet* unjustly, therefore was in Mind to excuse him; and was about to say, that he had done him Wrong; but the Lord Chamberlain was so angry, that he could not bring it forth; but went his Way, leaving the Lord in that Opinion.

By this it was descried, that in the first Letter Sir *John Bennet* was aimed at, as well as Dr. *Edwards*, to put some Disgrace upon him; which made Men wondrously marvel at the vindicative Mind of some Men, who sought for an Occasion to do other Men Disgrace. The End of the Matter was, That no Man could be touched; and therefore the Archbishop, taking Sir *Julius Caesar* with him, acquainted the King (who was now returned from *Royston*) with the State of the whole Matter; informing his Majesty, that Fault fell on no Man save the Register; and therefore, if his Highness were pleased to have him punished, it might be so: But for the Thing itself, since the Report was more than there was Cause, Mr. Chancellor of the *Exchequer* said, It was better to let it die, and stir in it no farther. To this the King assented, being not willing that any Punishment should be laid on the Register; whereby it appeared, that the Intendment was,

in the stirring of these Coals, to have burnt some greater Persons than *Barker*, the Register.

All this while it was confidently given out, That because the Sentence had been opposed; there should a Book be written in the Defence of it; and one while it should be by a Divine, and that sometimes was my Lord of *Winton*, and sometimes my Lord of *Ely*; and it was said; they were earnestly about it: Another while, it should be by a Civilian, and then Sir *Daniel Dun* must do it: But at other Times it must be by a *Scotchman*, who had written somewhat of that Argument before the Sentence; and other while two *Scotchmen* must join together about it: And to make the Thing the more probable, the Lord *Felton* sent to the Archbishop for the Copy of the *Scotchman's* Writing, which was sent unto him; and after copying of it out, it was returned to my Lord of *Canterbury* again. This Speech of a Book continued about nine Weeks in all; but at last Dr. *Stuart*, and Dr. *Bird*, were sent for to the Lord Chamberlain, and their Judgment was asked concerning that Point. Their Advice was; That it should by no means be meddled withal; but that Things should die of themselves: But no Questioning by Writing; for so it might go on to the World's End: For one Book might breed another; and so, they whom it concerned should never be in rest. This was resolved on; and afterwards there was no more Speech of Writing, saving only faintly and whisperingly; but nothing to the Purpose. It seemed that the Commissioners who were for the Nullity had enough of it, and desired no more to bring themselves on the Stage, being so by all Men exclaimed upon for that which they had done.

The Bishop of *Winton*, after the Sentence; went down with great Jollity, full of Hope and Glory; but within a while after, he grew much daunted, as some about him, and namely his own Daughter, reported; for he heard many Ways of the strange Detestation which the World had of the Deed; and the Nick-naming of his Son much affected him: But his Advertisements from Sir *Richard Norton*, his Son-in-Law; did much trouble him: For Sir *Richard* wrote divers Times from *London* to his Wife; That he could come in no Place; but his Father-in-Law was railed upon: That Men told him, that he thought he had a Wife, but it was no longer than my Lord of *Winton* pleased; for whensoever he offended him, he could make a Nullity between them. Besides, the said Sir *Richard* told Mr. *John More* of *Lincoln's-Inn*, divers Times, *That it was such a Disgrace unto him to hear how the World talked of that Sentence, that although my Lord of Winton promised to give him, his Wife, and Family, their Diet and Entertainment so long as he lived, yet he would get him to his own House, and live there, where he had Means sufficient, and not be subject to that perpetual Scorn, which would follow him so long as he remained in his Father-in-Law's Company.*

By these, and the like Passages, it was guessed; that the rest of the Commissioners, who were for the Sentence, had little Comfort in themselves of that which they had done. On the other Part, the Archbishop, and those who stood with him, had their Honesty and Justice sounded out every Day more and more; and many Messages were brought them, and divers Letters written

written unto them, or shewed them by some Friends, from sundry of the Bishops in the Land, from the Universities, from many godly Preachers out of all Parts, which was an exceeding Consolation unto them, among the many Frowns which they did bear, That there was an universal Concurrence of all honest Men to approve that which which they had done. And the Archbishop had privately, from many great ones in Court, and Nobles, and worthy Personages elsewhere, such Significations of their good Acceptance which he did, that it cheered him much inwardly, and he was nothing dismayed.

Now, about the middle of *November*, the Wheel was turned about: For since nothing could be gained by speaking hardly of the Negative Part, they thought they would make Use of them another Way, and that should be by making the World believe, that they had now given Approbation of the Fact. And thereupon it was, in Court and *London*, assseverantly given out, and the Fame of it went far and near, That the Archbishop, and the rest, after more mature Deliberation, had testified their Concurrence with the rest of the Commissioners, and all now were of one Mind. Men did not hastily believe this; but yet divers of good Rank came and sent to the Archbishop and the rest, to know whether those Things were so or no. And when it was found to be but a Jargon, it gave a great deal of Contentment, and removed away much Scandal which formerly was taken. Yet again afterward it was bruited, the second Time, That my Lord of *Canterbury* had given the King Satisfaction in the Matter; and my Lord of *London*, on such a *Sunday*, had come and submitted himself to my Lord Chamberlain, and the rest had relented. Nay, it went so far, that *Yelverton*, the King's Solicitor, and a great Dependent upon the House of *Suffolk*, told Mr. *Pye*, the Counsellor, and Mr. *Cholmeley*, the Earl of *Essex's* Solicitor, coming unto him about Books to be drawn up, for passing back the Jointure of the Lady *Frances's* Part, and the Portion of the Earl of *Essex's* Part, *That the gainsaying Commissioners were now consenting, and the great Man beyond the Water was come over*; which he knew so assuredly, that he had seen it ratified by the Subscription of the Archbishop and the rest. Yea, farther, he added, that there was great Reason, at the first, wherefore my Lord of *Canterbury*, and the others, should stand against the Separation; for they had just Cause, at the first, to fear that this Fact might be drawn into Example, and so Marriages ordinarily be violated; but now it was resolved that no more such should be permitted, and thereupon they assented. These Things were enforced to be endured with Silence, for the avoiding of Clamour, and making of Trouble.

But now behold an admirable Device of the Bishop of *Litchfield*, which sheweth what his own Opinion was of the Validity of the Sentence. I will set it down as it came to be acted.

On the 26th of *November*, *Searle* the Proctor cometh to my Lord of *Canterbury* at *Lambeth*, and bringeth with him a Writ of *Certiorari* out of the Chancery, directed to the Commissioners in the Cause between the Lady *Frances* and the Earl of *Essex*. The Archbishop was prayed to open it, and so he did, and there found that four of them, *sub sigillis vestris*, were required to certify *Recordum Sententie* into the Chancery. The Arch-

bishop asked *Searle*, *If this were an usual Thing?* Who answered, *No, he had not known any such Thing before*: It is replied, *What then should be the Reason thereof?* Answer was made, *That since the Matter was controverted in the Sentence, lest there should be Question of the Marriage afterwards, the Earl of Somerset would have the Sentence lying by him under the Great Seal of England ratified*. The Archbishop thought that to be but a weak Hold, yet charged *Searle* to see such an Instrument drawn, and a Certificate should accordingly be made. On the *Wednesday* after, *Barker*, the Register, cometh to *Lambeth*, and sheweth a Form of a Draught in Paper, how the Certificate should be returned in the Names of all the Commissioners specially put down. The Archbishop, in the reading of it, found five or six Lines having a black Line drawn under them; and thereupon, the more marking the Words contained in them, found that which he liked not. Thereupon he asked *Barker*, *Who lined those Words?* *Barker* said, *He himself did*. The other asked, *What was the Reason of it?* And it was answered, *Because Sir John Bennet, and some other of the Doctors with him, had disliked that Sentence*. Quoth the Archbishop, *And they had Reason for it: Who put them first in?* *Barker* said, *None but himself*. Quoth the Archbishop then, *May not the Certificate stand as well without those Words as with them?* To which *Barker* answered, *Yes*. Then said the Archbishop, *Let them be stricken out*. Here the Register, with somewhat ado, faintly made Answer, *That the Commissioners on the other Side would by no means have them out*. The Archbishop said, *Then I perceive it is a Device to entangle us: I am ready to certify the Sentence as the Writ requireth, but I will none of this*. *Barker*, *I am first in the Commission, and for my Place sake, I would have looked, that I should have been conferred withal, what had been fit to return, and not to have had this Trick put upon me, that either I must certify that which crosseth my Judgment at the Time of giving the Sentence, or I must be forced not to certify at all*. So *Barker* departed, and all was quiet until the *Monday* after; at which Time the Archbishop was early at *Whitehall*, the Council sitting that Morning. There, in the Waiting Chamber, at the End of the Privy-Gallery, the Bishop of *Litchfield* cometh to him, and saith, *My Lord, we have received a Writ of Certiorari out of the Chancery, to certify the Sentence for the Nullity*. Yea, saith the Archbishop, *and I am ready to certify it*. But, saith the Bishop, *he who framed the Writ hath made it, sub sigillis vestris, and doth not know that there is a Seal of Office for the Delegates; it should have been sub sigillo communi*. Before the Archbishop could reply, in cometh the Lord Chancellor, and to him cometh out of the next Chamber the Lord Chamberlain; and then those two Lords, together with the Bishop of *Litchfield*, drew themselves to a Window, and there had they secret Communication about the altering of the Form of the Writ, as the Effect declared; for that Afternoon, a Cause being to be heard touching *Alimony*, from Sir *Pexal Brocas* to his Lady; and the Committees in it being the Bishop of *Litchfield*, and Mr. Chancellor of the *Dutchy*, and my Lord of *Canterbury* being Umpire; before Mr. Chancellor was come, *Bembo*, Deputy to the Clerk of the Crown, came into the Parlour at *Lambeth*, and had private Speech with the Bishop of

of *Litchfield*. The Archbishop going out into the Garden, *Litchfield* followed him, and told him, *That Mr. Bembo had brought another Form of a Writ*; and thereupon shewed him the Words *sub communi sigillo*. The Archbishop bid him do as he thought good, and withdrew himself into the low Stone Gallery, whither *Litchfield* followed him, and used these Words: *My Lord, here is a Form of a Certificate, which hath been thought fit to use in the Business of my Lord Chamberlain; and I hear your Grace taketh Exception to some Things in it.* Then he pulled out the very Paper which *Barker* formerly had shewed. The Archbishop answered, *My Lord, have I not Reason to take Exception to these Words, that post omnimodam veritatis disquisitionem, post probationes idoneas et de jure requisitas, we gave such a Sentence? For to subscribe this, were to proclaim myself a dishonest Man upon Record: For if these Things be true, why did I deny to join in the Sentence?* Quoth *Litchfield*, *This here is true; for it cannot be denied, but some probationes idoneæ et de jure requisitæ were used; and we do not say that all were.* The Archbishop answered, *You shall do well, therefore, to certify post probationes aliquas, and I will join with you; but as it standeth now indefinitely, it will be taken as if all had been used; I pray you therefore to alter the Certificate, and make Things plain.* My Lord, quoth *Litchfield*, *I will deal plainly with you: Because the Words were in, and Doubt was made, whether they should pass or no; the King's Majesty hath been acquainted with the Business; and he, by a Letter from Sir Thomas Lake, hath sent Word expressly, that he will have them in.* The Archbishop said, *Let them then certify who will avow those Words, for I cannot condescend unto them. And hath not that Person done a good Office, who hath informed the King hereof; that Distraction may still be among the Commissioners, and there may never be an End of Difference?* The Bishop said, *My Lord, I could wish that you would yield unto the King, and so give him Satisfaction.* The Archbishop answered, *What would you have me do? I gave the Sentence as I was persuaded in Conscience, and since that Time I have been silent, and meddle no Way in the Matter: I did what I did upon long Deliberation; and I may not in Private, upon no Ground since appearing to me, cross that which I have done in Publick.* It was farther added, *That there was Reason to suspect, that they did ill Offices, who held those Things still on Foot: That there never was any Man, who sought to grace himself by disgracing others, but it met him at the Lane's End, at one Time or another.* These Things passed then; and after the Cause heard between Sir *Pexal Brocas* and his Wife, the Bishop of *Litchfield* said to the Archbishop at his Parting, *My Lord, you will give us Leave to certify then as we purpose?* To which the Archbishop answered, *Yea, with all my Heart.*

The next Morning, the Archbishop remembered, that by the Carriage of Things in such Fashion as was pretended, he might be tricked: For if the Names of all the Commissioners were put into the Certificate, and four of them might certify under a common Seal, it should not be known hereafter, but that he and his Fellows concurred therein, and that, with the Words which were excepted against: He therefore sent for *Barker*, and in the Presence of Sir *John Bennet*, and two Servants, being Publick Notaries, he expostulated with *Barker*, as serving Mens Turns, rather than caring

for Peace; and then punctually he delivered these Things.

First, *The Writ requireth me to certify the Sentence; and I am ready to do it.*

Secondly, *If the whole Procefs be desired, I am willing to certify that also.*

Thirdly, *For the Words in Question, because they were put in without my Privity, and they may as well be left out as put in, by your own Saying, I pray to be forborn for returning of them.*

Fourthly, *I require you to conceal these Things as much as you may, that the World take no new Alarm of any Difference between the Commissioners.*

The Archbishop spake of returning the whole Procefs, because he had heard, that at the first, it was meant it should be so; but *Dr. Stuart*, and, perhaps, some other of the Civilians, dissuaded that by all Means; lest, if the whole were on Record in the Chancery, every Man that list, hereafter, might censure that Sentence, and sift the Grounds whereon the Commissioners proceeded; it was good, therefore, to take away that Occasion.

When Matters were thus resolved, the Bishop of *Litchfield*, who meant to play his Prizes in this Service, speaketh to *Bembo*, to draw some Preface or Conclusion, to add to the Certificate; that it might not only be signed with the Great Seal, as after the Form of an *Inspeximus*; but that his Majesty might add a Confirmation to it: And when *Mr. Bembo*, as unacquainted with this Fashion, did not fit the Bishop's Humour, his Lordship took on him to do it himself. He drew up, therefore, a strange Writing, as was informed by a credible Person that saw it, containing barbarous *Latin*, and no good Congruity of Sense. But the Matter of it was, that his Majesty having the Authority of the Pope now in himself, and in *scrinio pectoris*, having Power to ratify, did, *ex plenitudine potestatis*, confirm that Divorce to all Intents and Purposes. In an Evening *Dr. Martin* was sent for to the Lord Chamberlain, and there was the Bishop with his Papers. The Doctor, as it hath been credibly delivered, being shewed that Writing, and his Opinion thereupon being asked, did utterly dislike it, and said, *That the King claimed nothing of the Pope's Power; but took that as his own; which the Pope had usurped: That the King had spoke before by his Judges Delegate, and had nothing more to do: That if the Sentence were not good already, no Confirmation could make it good.* And when the Bishop was earnest in Defence of his Device, there was a little Heat stricken between the Doctor and him, so that these Words passed from the said Doctor: *You do, as much as in you lieth, spit in the Face of the King our Master, by laying on him all the Matter; whereas the Scandal that hath already been, is this, that his Majesty is said to deal so much in the Matter.* My Lord, you are to blame to enter into these Things without Advice of Men skilful in the Law: *Hath Dr. Stuart or Dr. Bird been acquainted herewithal?* The Bishop said, *No; but for this Matter, I know as much Law as the best of you all.* *Dr. Martin* replied, *No: Your Lordship thinketh, that because you have read two or three Chapters of the Canon Law about this late Business, you know as much as we do, who have spent all our Lives in that Profession: I tell your Lordship, I have studied the Law these two and thirty Years; and therefore, you shall give me Leave to believe*

believe that I know more therein than you can. I am the King's Advocate, and therefore may suffer nothing with my Consent to pass dishonourable to my Master.

Upon these Contestations, the Lord Chamberlain was much troubled, saying, *What a Matter is this, that Men should be of such contrary Opinions! What shall we do?* When the Bishop murmured much that his Counsel was not followed, Dr. Martin said thus: *My Lord, in a Business of this Importance, I will not wish your Lordship to follow my single Advice, but let this be done; To-morrow let Sir William Button, in your Lordship's Name, come to Doctors-Commons; and let him get together Sir Daniel Dun, Dr. Stuart, and Dr. Bird, and I will attend them; and then we will consult jointly what is fit to be done.*

This Advice was much liked; and on the Morrow, being Friday, they all assembled, and, for two Hours, all Points were debated; but the Conclusion was, *That there should be no farther Confirmation: For this was to proclaim, that the Sentence was defective in itself, which would make a great Buzz in the World:* And therefore, the Counsel was in general, *That too much had been done, and for the Time to come the Care must be, how to lay it asleep fairly.*

This Resolution being taken, the next Knack was, that so many of the Commissioners as were for the Sentence, should be called together; and they should be made acquainted with this, that the Bishop might be fairly put off. On the Saturday Night, therefore, in the Dark, at Sir Julius Caesar's House in the Strand, met the Bishops of Ely, Litchfield, Rochester, the two Chancellors of the Exchequer and Dutchy, and Sir Daniel Dun, and well near for an Hour, they privately debated what they thought fit, but, as it seemeth, resolved as before, and so departed.

A Friend being the next Day with the Lady Caesar, and knowing of the Meeting, asked her, *What about it was?* She answered, *It is something about the late Nullity; but what it is, I do not know. It seemeth, that they who were the Doers in it, think somewhat is amiss. They suppose all is not well about it, and I for my Part think so also.*

A Man would have supposed, that all these Things should have contented the Bishop of Litchfield; but he was so far in Love with his own Invention, that yet he would not be beat off; and therefore, to merit the more, he once again moveth the Lord Chamberlain to send to Sir Francis Bacon, and to Mr. Felvorton, being of the King's learned Council, to know their Opinion: Which being done; and they two, for the Reasons above-named, concurring with the Civilians; the Bishop, as it hath been credibly related, said of them, together with the rest, *They are all Fools.* And so ended this Stratagem; but the Worker thereof was not yet for an End.

From the Beginning of this whole Question of the Nullity, the Bishop of Litchfield had carried himself variously, sometimes being vehement in Words, publickly against the Separation, and other Times in Deed; giving Furtherance to it. Many Speeches he had privately with the Archbishop, making Shew of much Honesty and Respect to him, which the Archbishop ever warily observed; thinking, notwithstanding, that these had been Testimonies of the working of his Conscience, conflicting in itself, but not resolved what to do. In the mean time, from the Court, from London, and out of the Country, the Arch-

bishop was still called upon by divers worthy Friends, *That he should take heed of that Bishop: That he was ever, and in all Things naught: That he did all the worst Offices that possibly he could, and was still stirring the Coals, to procure to himself a Reputation; that he was zealous of the House of Suffolk.* The Archbishop forgot not those many Warnings, but carried himself very warily towards him: Yet out of Charity, it still came in his Mind, *He is a Bishop, I know no Evil of him; I ought not to condemn a Man upon a Generality; I have no particular Proof of his Misbehaviour in this Behalf: Although he dealt ill with the late Lord Treasurer, and most falsely with the Archbishop Bancroft in his Life-time, and after his Death; and for that Cause was detested by both of them; yet an honest Man may think, that Experience hath reformed him, and now he is amended.* Yet it much affected the Archbishop, that all Men spake so ill of him; and one Speech of an old Courtier, a very honest Knight, entered far with him. For about a Fortnight before the Marriage, the said Courtier speaking privately with the Archbishop, among other Words, he used this: *I know not what the Bishop of Litchfield doth among you; but he hath made a shift to be taken for a Knave generally with us in the Court.* Now, whether the next Prank will verify so much or no, let the Reader judge. Eight Days before the Marriage, on a Saturday Morning, that Bishop cometh to Lambeth, and in private Conference with the Archbishop, he telleth him, *That out of his Love and Respect to his Grace, he was come voluntarily, as of himself, to know his Mind about one Matter, and it was this. On St. Stephen's Day, said he, the Lord Chamberlain meaneth to have this great Marriage go forward: Now it may, perhaps, be desired, that a Licence should be given by you, that the Banes may not be asked; which if you like not to grant, I may be the Means to free you from being moved to it.* The Archbishop said, *What have I to do with granting of a Licence? It belongeth not to me: But wherefore should there be any Need of a Licence? The Marriage is intended to be publick; Masques and Shews are made for the same; all England taketh Notice of it, and therefore it were good, that the Banes were openly asked, as the Manner is of such Marriages as are made in the King's Chapel. Yea, the Lady Elizabeth herself had her Banes asked. My Lord, saith Litchfield, there is some Cause why it should be done without publishing the Banes: For peradventure somebody may step up, and make a Disturbance. You know what a mad, naked Fellow came into St. James's, after the Death of the Prince; if such a one should come in now, what a Work would it make?* The Archbishop wondered within himself, to hear such a Reply, and thought surely, that it was no mad Body that they should need to stand in fear of, but they suspected somewhat else. But his Answer was, *My Lord, there come no such into the King's Chapel; there be Doors and Officers to keep such out. But if it should be suspected, that any would oppose, it is best the Banes be asked, for then there will be some Warning of the Gain-saying; whereas, otherwise, if at the Time of the Marriage one should suddenly start up, it would make a greater Trouble.* Notwithstanding the Bishop went on, *That a Licence would cut off all the Doubt.* The Archbishop answered, *But what have I to do with granting a Licence in the King's Chapel? It belongeth to the Ordinary of the Place, and that is my Lord of Bath, as Dean of the Chapel.* Litchfield replied, *He*

He never granted any, and he hath no Seal for that Office. It was answered, He never granted any, because no body ever desired it; but the Manner was, that the Banes were published. But as for the Seal of the Office; who doth not know that any Seal will serve? And none better than his Bishop's Seal, it being said, Datum sub sigillo nostro Episcopali, quo in hoc casu, or hoc tempore utimur. King James, at the first, did use the Seal of Queen Elizabeth, till a new one was made. The Bishop proceedeth, Yet it would be fit that you granted the Licence, if it be requested. To this the Archbishop said, I shall do that which never any of my Predecessors did. Yes, quoth Litchfield, if you would seek your Records, you should find some so granted. The Archbishop answered, I have inquired of my Officers, and they tell me, That no such Thing was heard of, in omni Hominum Memoria. But, my Lord, I know that my Lord of Bath hath it under the Great Seal of England exclusively to the Archbishop; so that in direct Words there is a Restraint, that he may not meddle there. Yea, but, quoth Litchfield, you have an Act of Parliament, enabling you to grant Dispensations to the King and his Children; and therefore it belongeth to you. Said the Archbishop, Do not you think that I understand the Act of Parliament as well as you? My Lord, Do you think that that Statute was made for these ordinary Graces and Dispensations? Why, is not your Lordship able, within your Diocese, to grant a Licence, that a Marriage may be solemnized, and not the Banes asked? Yes, saith he, I may: Nay, every Archdeacon may do it within his Jurisdiction. Then, my Lord, quoth the Archbishop, must an Act of Parliament be made to grant the Archbishop Power to do that which every Archdeacon may do within his Precinct? There is surely some other Matter in it. But I marvel, my Lord, that you are now so earnest for the Archbishop's Licences, when, as I have heard, in the Days of my Predecessor, when you were Bishop of Rochester, you would not suffer the Archbishop's Licences to pass within your Diocese: No, saith he, it was for Westminster that I did strive, not for the Diocese of Rochester. And it is true, that there be Records in that Church, that the Monks did contend with the King about divers Questions. I had Reason, therefore, to stand for the Privileges of my Church. It was answered, So hath my Lord of Bath to stand for the Right of the King's Chapel. The Archbishop seeing how earnest the Man was, in so unreasonable a Thing, said farther, My Lord, you have mine Answer, but let me now tell you one Thing. It is six Weeks ago, that I heard from the Court, and many Times since I have had it reiterated, that such a Trick should be put upon me: That although it needed not, yet I should be moved for granting this Licence, because thereby I should be constrained, either to grant it, and so cross my former Sentence, and involv'dly give my Consent to the Nullity, or I should deny it, and so grate once again upon the King's Displeasure. You see now I have given you a fair Answer, which may free me from both. But, my Lord, I pray God you do good Offices in this Business. I fear you put yourself into many Things, which may be better forborn. But let me tell you, there was never any Man, who sought to raise himself by wronging another, but at one Time or other he had enough of it. It is now almost three Months since this Sentence was given, and since that Time, I have not meddled with the Matter, for offending the King. I am silent; and no way oppose, and Men have their End; yet cannot

I be quiet. I would have you know, that God beholdeth these Things, and remembreth them. And for my Part, I am not blind, I see well what is done; and I shall not always be silent. The Time will come, that I must speak; and it shall appear I am not Tongue-tied. This made the Bishop not so forward as before; but Occasion or a farther Speech being offered, the Archbishop went on, and said, The Sentence which I gave, was in the Fear of God, and according to my Conscience: And if that had been done, which was convenient, and we called for, there needed not to have been any Division in Judgment. For, my Lord, you may remember when you came to me at Croydon, and brought these Papers from the King, after the reading whereof I slept little that Night; how desirous I was to give his Majesty Satisfaction; and therefore pray'd you, fetching out the Process unto you, to tell me whereupon I should ground my Sentence. You shewed me one Article, That he had not known her, nor he thought that he never should. I told you then, Yea, that was for want of Love, for he said, When I came out of France, I loved her; I do not so now, neither ever shall I. It is want of Love. To this the Bishop said, Yea, and the Earl added, That he had done his best oftentimes, carnally to know her, but he found an Imperfection in himself. The Archbishop replied to this, Ob, my Lord! Never say so; for his Lordship's Answers, upon his Oath, are to the contrary: He found no Defect, or Impediment in himself. And if I shall speak my private Opinion, although I would not have you believe it, I think the Earl as able a Man for a Woman, as any is in England. And I think to the contrary, quoth Litchfield. The Archbishop went on: But, my Lord, when your Lordship and I had these Difficulties in our Mind at Croydon, you told me of one Thing, which I embraced as an Oracle from Heaven. And that was, that to rid ourselves of these Distractions, we had no other Way but to call the Earl of Essex again upon his Oath, that so giving us a fuller Answer, we might either have good Ground to pronounce for the Nullity, or Matter to give Reason why we might not condescend unto it. I approved this, and you know how the next Day, in publick Court, it was moved, and my Lords of Winchester, Ely, Rochester, and yourself, gave very good Liking to it; and no Man said any thing against it, except Mr. Chancellor of the Exchequer, who softly spake; I know not whether that will be permitted. But you may remember, you were intreated to deliver this to the King at Theobalds, from whom you brought Word, That it should not be granted, because the Earl of Essex, being partly provoked by his falling out with Mr. Henry Howard, and partly being counselled by the Earl of Southampton, would speak all Things to hinder the Nullity. My Answer then was, That he was to speak upon his Oath, and we would most strictly examine him. When that was denied, which should have led us to the Truth, I must confess I had never any Mind to pronounce for the Separation. The Bishop seemed to take no great Pleasure to hear these Things thus repeated, but fared, as if he could have wished, that they all had been forgotten. The Conclusion of all was, that the Bishop seemed to be well satisfied that no Licence was given, and promised the Archbishop to take care that he should no farther be troubled with it, assuring him, That he did ever good Offices to him, whereof the King could give Witness, and would; and he would ever make
the

best of Things. To which the Archbishop said, If he did, he would take it for a Kindness at his Hands; and so he departed.

Accordingly, the next Day the Banes were asked in the Chapel, and there was nothing but fair Weather, the Archbishop attended the King in the Closet. On the *Monday* the King went to *Hampton-Court*; and that Day the Bishop of *Bath* and *Wells* came to *Lambeth*: He told the Archbishop; that he had a direct Message unto him from the King, and that was, That his Majesty did much marvel, that he spake not with him about the Sentence: That the King expected Satisfaction and Submission. His Lordship added, That he perceived that the King had some Scruple in his Mind, which he wished should be removed before his going to the Communion on *Christmas-Day*. The Archbishop knew not that the Bishop of *Litchfield* had dealt any Way treacherously with him, and therefore was constrained to answer, in general, That he knew not what to say to his Highness. He persuaded himself, that in giving of the Sentence he had done his Duty, and therefore could not tell how to make a Submission where he conceived no Fault. If in any Circumstance he had erred, he was ready to testify his Sorrow for it; but he knew no such Thing; yet if his Majesty was displeas'd at him, to signify his Obedience to his King and Sovereign, to whom he was so much bound, he would not refuse, if the King were pleas'd to restrain him of his Liberty, and lay him in the Tower all the Days of his Life, to submit himself unto it patiently, without murmuring.

Furthermore, he prayed the Bishop of *Bath*, (who, on the *Morrow*, was to go to *Hampton-Court*) to signify humbly to his Majesty, That he had nothing in this World more precious than his Life; and that he wished, that he had given that Life as a Redemption, that the King's Hand had never been in that Business. And withal he said, that at the coming of the King, he would attend his Majesty.

On *Wednesday* Night, the King came to *White-hall*; and on the *Thursday*, after Dinner, my Lord of *Canterbury* went to the Court, where they were all busy about Plate and Jewels against the Marriage. Notwithstanding, he had hastily Speech of divers Matters with the King; and in the End, he said privately unto his Highness, *May it please your Majesty, I understand by my Lord of Bath and Wells, That your Majesty expects that I should give you an Account about the Matter of the Lord of Essex and the Lady Frances: I can say nothing more than this, That I was put into the Commission as a Judge, and at the Time of Sentence I did my Conscience; and since I have not meddled with the Matter. Yes, saith the King, I hear you denied a Licence to be granted, for not asking of the Banes; which I wonder you would do, since the Sentence was passed. No, said the Archbishop, I denied no Licence; but I advised, that the best Course was, that the Banes should be asked, according to the Custom used in the Chapel.*

Secondly, I said, *That if any Licence should be granted, it belonged not to me to give it, but to the Ordinary of the Place, the Dean of the Chapel, who hath it under your Majesty's Great Seal, exclusive to the Archbishoprick. Yea, said the King, My Lord of Bath said so; but I am told it is otherwise. The Archbishop replied, Nay, it is so indeed.*

And Thirdly, said he, *My Answer was, That never any of my Predecessors granted a Licence for any thing done in the King's Chapel: I have received Information so, from my Officers. It had then been Presumption in me to attempt that which belonged not unto me. This is another Matter, saith the King, Were these your Answers? I was told otherwise. But I will take some other Time to speak with you. The Archbishop, after this, attended half an Hour, and nothing being said, he departed.*

The same Night, a Friend coming to *Lambeth*, told my Lord, *That he had been that Day with the Lord Knowles, where he found, that the Bishop of Litchfield had exceedingly wronged my Lord of Canterbury: For he had reported all the Speech about the Licence, in a spiteful Manner; said, it was absolutely denied: That the Archbishop gave out, That the Earl of Essex was very potent for a Woman; and that he intended to question this new Marriage, at one Time or other, that it should never take Effect.*

This, said the Gentleman, made a great Stir among them; and the Archbishop was much blamed, that he would never make an End: But they were much troubled at it, as fearing themselves, that all was not sure. *But, quoth he, when I had told them, that this was some ill Office of the Bishop of Litchfield, who had every Day new Inventions to puzzle them, that he might so much the more indear himself unto them, by signifying his Zeal for them; and that I knew how fairly my Lord of Canterbury had answered him, (for so indeed he did) and that he was so far from disturbing the Marriage, that he intended to be present at it; they were not only appeas'd, but seem'd much content, that his Grace would be there: And this I assure you to be true.*

When the Archbishop heard this, he was now satisfied, that the Man who had done him all the Wrong, was the Bishop of *Litchfield*; from whom he resolv'd afterward to be very wary how he trusted him. Yet, professing that he forgave him with all his Heart, on the *Christmas-Day* he attended the King, and received the Communion with his Majesty; and so, coming Home to Dinner, Sir *Charles Cornwallis* came along with him. This Gentleman is one, to whom, for his Love, the Archbishop was much beholden; and after Dinner they grew privately into Speech of all these fore-remembered Stirs; where the Knight found much Fault that so many Tricks were put upon the Archbishop; blamed infinitely the Bishop of *Litchfield*; promised to acquaint some of his great Friends with his Qualities, and assur'd to make Things be rightly understood; and took away with him that Report, wherein he seem'd much to joy, that the Archbishop would be at the Marriage.

On the *Morrow*, being *St. Stephen's Day*, the Archbishop went to the Court, attended the King to Chapel, went down to the Marriage, (where, not the King, but the Lord Chamberlain, gave the Bride) had a Pair of Wedding-Gloves, and so came Home to Dinner; where he sat with much Comfort, as being glad, that since Things must be so; they were come to an End: And so prayed God to bless his Church, the King, and Kingdom; and himself; that he might be free from so many Vexations, as for a long Space undeservedly had followed him.

The SPEECH intended to be spoken at Lambeth, September 25, 1613, by George, Archbishop of Canterbury, when it came to his Turn to declare his Mind concerning the Nullity of Marriage between the Earl of Essex and the Lady Frances Howard.

[Seven of the Commissioners having before declared themselves that they would give Sentence for a Nullity, and great Reason being to think, that the Bishop of London, Sir John Bennet, Dr. James, and Dr. Edwards, would give Voices against the Nullity.]

MY Lords, and you the rest of the Commissioners, I have had a great Contention and Deliberation within myself, in what Manner I should utter my Judgment in this present Cause, since, after the Speech of those three who first began, so great a Stream and Concurrence together of the rest, (my Lord excepted, who spoke last) have given their Opinions for the annulling of the Marriage. But yet I hold not myself concluded thereby, but that I may declare my Judgment, having learned that *Suffragia* among wise Men are as well *appendenda* and *ponderanda*, as *numeranda*: And it was no Shame for *Phocion* in *Athens*, upon good Ground, to contradict the whole City; neither was *Paphnufius* in the Council of *Nice* the less respected, when he stood against the whole Synod; nay, it was his Honour, that by delivering of his Sentence, he altered the Resolution which that whole Assembly had intended to take, which I freely acknowledge I have no Hope to effect at this Time. And yet, though I have not that Hope, but might very well spare this Labour, yet my Conscience telleth me, that it becometh me to speak in a Matter of this Importance, because, not only, *Deum timeo*, I fear God, which I doubt not but all of this Company doth; but I am afraid of God, lest he should be angry with me, if in this Case I be silent. And I think it is expected of me, since I am here present, that I should not sit as an Idol, and only fill a Room; for that were to lay an Imputation on myself, that I had undertaken a Cause, which in publick I durst not offer to maintain.

I must acknowledge, that in delivering of my Mind in this Business of so great Weight, I do find two Defects, that I cannot so pertinently speak unto the Purpose as divers of the Judges here: The one is, That I am no Lawyer; and the other is, That I am no married Man; by both which I am disabled, that I cannot speak with that Confidence concerning some Particulars, as most of you, the Commissioners, are able to do; but in lieu thereof, I have endeavoured to furnish myself some other Way concurrent to this Purpose: As by reading, by conferring with some whom I do trust, with pondering thereupon, so that it hath lost me much Sleep at several Times, with frequent Prayer unto God, that he would direct me aright; which I have more begged of God in this Cause, than ever in any that was before me in Judgment. And besides, I bring with me *animum candidum*, a Mind devoid of Passion, or any Perturbation, which inclineth to no Part for Fear or for Favour, for Spleen or for Hatred: From which, I thank God, in pronouncing of Sentence, I ever have

been free, remembering that Judges are in the Place of God; and as *Jehosaphat* said, 2 *Chron.* 19. *Non hominis judicia exercetis sed Domini, et quicquid judicaveritis in vos redundabit.* He then who sitteth in the Place of God, and in pronouncing of Sentence will vary from Justice, he leaveth God, and sheweth himself worthy to lie in the Flames of Hell, for abusing of the Trust which is committed unto him, which I hope I shall not do. And *cui bono?* To what End should I transgress in Judgment for either Side, when I have no Reason to be partial for either, since it is indifferent to me in any Particular, whether this Question receive one or other Determination.

Where, lest I should be mistaken, I think it not amiss, as publickly I have done divers Times before, to let the World know what my Judgment is concerning the Impotency of a Husband towards his Wife: That since Marriage in young Couples is for carnal Copulation and Procreation thereupon, and that it is the Intendment of those which contract Matrimony to receive Satisfaction in that Kind, that if this Nobleman be not able to perform those marital Rights unto his Lady, he doth unto her a very great Injustice to retain her as his Wife; and we shall perform a great Part of Injury and Cruelty towards her, if we do not free her from this Burthen and Yoke. We are bound in Conscience to do it, since it is in Truth no Marriage, but a pretended Matrimony, that Consummation being wanting, which was one of the first Things in Intention when they two came together: For *impossibilitas officii*, by a received Maxim, *solvit vinculum Conjugii*. But the Point is, that before the Separation be pronounced, it must appear unto the Church, that there is good Cause for the same; which must not be upon light Surmises, or questionable Suggestions, but upon evident Declarations and Proofs, which may give full Contentment to the Conscience of the Judge. The Marriage was overt and in the Face of the Church, whereby they were joined into one; let the Reason of Separation be as clear as that was, if it possibly may be; or let it be so apparent, that the Church may well know, that there is Ground to stand upon for pronouncing of a Nullity. Now this is it which I doubt will not fall out in this Case of my Lord of *Essex*; there is not Proof sufficient to inform the Minds of the Judges that this Knot should be dissolved, and themselves set at Liberty the one from the other. And then you understand what the general Rule is, *Quod dubitas, ne feceris*. And in this Controversy there seem in my Judgment many Reasons of doubting, that the Separation desired ought not to be granted: You shall hear some few of them.

1. The first Scruple which ariseth in my Mind, is from the Uncertainty of that Proceeding, which we have had in this Business. For in the handling of it formerly, we had it propounded, that there must be a Nullity *propter maleficium versus hanc*. That was it which we debated, and for the which we turned our Books; that the Council for my Lady did still insist upon, not naming the Words indeed, but by a Periphrasis, or Circumlocution, describing the same. And it cannot be forgotten, how Dr. *Stuard*, being told by one or more of the Commissioners sitting then in Court, that his whole Speech did still point out *maleficium*, he answered, it is true, that is it which we intend. The Authorities always brought

out of the Canonists were in direct Terms upon *maleficium*, the Proofs intended nothing else. And we all understand, that to have an Impotency unto a Man's own Wife, and an Ability unto other, and that incurably, and that for some latent Reason; which cannot be known, is the Case of *maleficium*; and that is the Matter alledged in the Libel, and whereupon my Lord is examined. And yet, now since we sit upon the second Commission, *maleficium* is disclaimed. One of my Lords (my Lord of *Winchester*) hath avowed it, that he dislikes that *maleficium*; that he hath read *Del-Rio*, the Jesuit, writing upon that Argument, and doth hold him an idle and fabulous Fellow; that he rather supposeth it to be God's own handy Work, than any thing from the Devil. Another of my Lords (my Lord of *Ely*) hath assented thereunto, and *maleficium* must be gone. Now I for my Part will not absolutely deny, that Witches by God's Permission may have a Power over Men, to hurt all, or Part in them, as by God they shall be limited; but how shall it appear that this is such a Thing in the Person of a Man? The Question is, *An factum sit*, and how it shall be discovered? But to make it a Thing ordinary, as the *Romish* Writers do beyond the Seas, I take it to be a Fable, acknowledging that for Truth, which a Bishop well versed in that Argument did lately write, that Maleficia is the very Garbage of Popery; a Thing so base, that we who have learned Christ aright, should despise and contemn, allowing it no Place amongst us. Which Course it were a Shame if we should not observe, since the Papists themselves grow very weary of it; and that even in *France*, where there hath been more ado with this Maleficia than in any other Country; for there the common Sort, at the Time of their Marriages, were wont to be afraid to have the Words of Conjunction in Matrimony to be spoken aloud, *Quos Deus conjunxit, nemo separet*, or the Benediction to be publickly given, lest some Witch or Sorcerer in the same Instant should tie a Knot upon a Point, or play some other forcing Trick, whereby the new Bridegroom, so long as that Knot lasted, should be disabled from actual Copulation with her whom he had married. And for avoiding of that Hazard, they had therefore their Matrimonies celebrated in the Night-time, and in some private Place, where none came but such Friends as they dared to trust. This Superstition grew so common, and Men were so abused by the Fright that came thereof, that the Prelates of *France*, about thirty Years since, in a Council at *Rheims*, made this Decree against it. * *Peccare graviter admonemus eos, qui noctu vel clanculum benedictionem nuptialem sibi dari procurant propter metum maleficii: Maleficium enim se vitare posse, credere debent, si eo pietatis affectu ad conjugium accedant, qui præscribitur in sacris literis, videlicet ut cum timore Domini, et amore filiorum, magis quam libidine impulsu copulentur, devotè susceptis penitentiæ et Eucharistiæ Sacramentis.* And the Year after that, another Council in that Kingdom doth speak yet more plainly. † *Et quia Christiano nomine indignus error nostro seculo inolevit, ut signationibus, consignationibus, vinculis et nexibus Matrimonia impediuntur: Hæc Synodus communionem Ecclesiæ interdicat omnes eos, qui hujusmodi superstitionibus utuntur:*

monetque fideles, ne hujusmodi commentis fidem habeant; sed in Deo fiduciam certam constituent, nec idcirco matrimonia noctu fiant, sed in luce et frequentia hominum. If it be rotten ripe in *France*; if it be *Error indignus Christiano nomine*; if Men must not *fidem habere hujusmodi commentis*; What do we with it here in *England*? Let it be cast away as a rotten Rag of Popery. And yet I do now find, that in the very Sentence which is this Day to be given, it falleth directly upon the Description of *Maleficium versus hanc*. So that what should I think of this Case of my Lord's, which is built on such a Foundation as no Man will stand to? We are on it, and off it, and avow it we dare not, yet fly from it we will not. This moveth Scruple in me, how I should assent to that whereof I can learn no Certainty from the Council of my Lady, nor from you that be the Judges, who speak for this Nullity: I dare not rest my Building on such a sandy Foundation.

2. Another Matter which troubleth my Mind, is the Novelty of that which is now set on Foot; a Thing unheard of in our Church, and unknown in our Kingdom. We have many Stories, old and new, of Things done in this Land; we have Registers extant in every Diocese; we have Acts and Records which specify those Accidents which have fallen out in the Days of our Forefathers. I have caused Search in many Places to be made, and so I know have some of you, the Commissioners; and I have called upon you for the same, but I can have no Precedent of any such Example that hath passed in our Kingdom. No Memory of Man can express unto me the Name of that Person, whose Marriage was annulled for Impotency towards his Wife, when he found an Ability of carnal Copulation with any other Woman. It is this Year, 1613, that hath set abroad this present Imagination, for the former Ages knew it not. It is safe walking in the Ways which are treaded out unto us. We have great Reason for our Doings in these human Actions, when we do those Deeds which formerly were done by our Predecessors. I have had many worthy Men, which have gone before me in the Place which I now hold, Men learned, Men judicious, great Discoverers of Impostures; Men that have done great Services for the Nation where we live; but of them never any had such a Case before them, they never gave Sentence for a Nullity of Marriage upon such an Inability. I know not whether it be a Happiness or Unhappiness, that I must be the first to sit in a Commission for determining such a Controversy.

I know, to meet with this Objection, it is whispered sometimes, that there is an Example, and that is *Bury's* Case, which is urged as a Precedent unto this now in Question. But indeed, that is no Pattern of this; the Dissimilitude is great between the one Case and the other; for *Bury* had his S—s stricken off with an Horse, that nothing but a little of one of them remained. I will read you the very Case, which if any Man doubt of, shall be avowed unto him. Thus then it doth follow.

John Bury, Esquire, was lawfully seized in his Demesnes as of Fee, of, and in divers Manors, Lands and Tenements, within the County of *Devon*. The said *John Bury* did, the 20th Day

* *Bochellus* in *Decret. Eccles. Gallic. lib. 3. tit. 5. cap. 176. anno 1583.*

† *Idem, lib. 1. tit. 14. cap. 7. ex Concilio Bituricensi, anno 1584.*

of November, in the first Year of Queen Mary, marry one *Willimot Gifford*, and they lived together three Years; and the said *Bury* could not carnaliter cognoscere dictam Willimotam.

Afterwards, viz. the 17th of May, 1561, the said *Willimot* called the said *Bury* before the Ecclesiastical Judge, and charged him to be impotentem ad coëundum cum dicta Willimota, propter vitium perpetuum, et incurabile impedimentum ad generationem, et ejus inhabilitatem, &c. and thereupon desired to be divorced. In the Proceeding before the Judge, it was proved by divers Witnesses, of which two were Physicians, that the said *Bury* had but one little S—e, and that no bigger than a Bean. It was also deposed by divers Matrons; that the said *Willimot Gifford* remained a Virgin; and incorrupt; and the said *Bury* confessed no less: Upon which Proof, and Confession of *John Bury*, the Ecclesiastical Judge pronounced Sentence of Divorce, and did thereby separate them.

Afterward the said *John Bury* took to Wife one *Philippa Monjoy*, his first Wife, *Willimot Gifford*, being then alive; and the said *Philippa* had a Son in the Time of their continuing together, *John Bury's* first Wife being alive.

Afterwards, the said *Willimot* being still living, the said *Monjoy*, of her own Accord, without any Sentence of Divorce, forsook the said *John Bury*, and married one *Langeden*, with whom she continued. The said *John Bury*, and his first Wife *Willimot*, died; the said *Monjoy* and *Langeden* then living, married together.

The Question is, Whether, *John Bury* being divorced from *Willimot Gifford* for Impotency; the second Marriage, solemnized between the said *John Bury* and *Monjoy*, during which Time the Issue Male was born, be in Law a Marriage or not.

It appeareth by the Proceſs made in the Cause; and the Words of the Sentence grounded upon the same Proceſs, that the first Marriage was pronounced to be void, *propter defectum et vitium testicularum*, which made the said *John Bury* impotentem et ineptum ad actum generandi, et coitum conjugalem. And so in all Respects this second Marriage with *Monjoy* is void, and of no Effect: For either this Cause of the Dissolution of the first Matrimony is true, which is always to be presumed, until the contrary do appear, and

then the same Cause doth make the second Marriage void also; or else, if it any ways appear, this Cause of the Dissolution of the first Marriage to be false; *Et Ecclesia erat decepta, quia satis potens ad generandum, et quod in ipsa generavit.* And in that Case the first Marriage is good in Law, *et debet redire ad priora connubia*: And so the second Marriage is utterly void.

We are of the Opinion above laid down.

<i>John Loyde,</i>	<i>Edward Crompton,</i>
<i>Henry Jones,</i>	<i>Robert Fourth,</i>
<i>John Hone,</i>	<i>William Farrand.*</i>
<i>Nicholas Stuard,</i>	

Whether this be true or no, I appeal to Dr. *Stuard*, who is here in Presence, and of Council for my Lady, who, I know, will affirm it, because, not long since, being asked by me of it, he confessed the same. And here is Dr. *Farrand*, now of Council for my Lord, who was used for his Advice in this Case of *Bury*; and Dr. *Hone* is yet living, who can testify the same. For I will suppose, that a Man cannot forget such a famous Case as that was wherein himself was employed: But if all these were dead, I know where Records be, which still will continue. If this then were the Matter in Question touching *Bury*, *defectus testicularum*, what is this to the great Controversy now depending before us? And if this be the only Precedent, that should be the Inducement, that the Sentence to be given in this Cause is not new, but the like hath been heard of before; I am where I was: We are now to act a Novelty, a Thing strange, and unheard of in the Church of England, whereof let other Men be the Managers, I may have no Hand in it.

But perhaps it will be said, that in some other Countries, and especially in France, these Things are well known; and the Examples of one Kingdom, especially being so near unto us, may be an Inducement for us to do the like, since the Reason is the same. My Answer thereunto is, That I that live in England, am to frame myself to those Things, which I find in the Church of England, whereof I see no Reason but there should be as great Esteem, as of any Church in the World. In the Days of our Forefathers, as our Nation was held a very noble Nation, so was

* In the short Case of Mrs. *Catherine Weld*, (Daughter to Lord *Aston*) and *Edward Weld*, Esq; her Husband, printed in 1733, the Cases of *Bury* and *Essex* are thus quoted in p. 42, 43: "The famous Case of *John Bury*, Esq; of the County of Devon, in the Reign of Queen *Elizabeth*, is a proper Caution in respect to such Demands for annulling Contracts of Marriage, since such Nullities often occasion much Noise and Confusion; and instead of hurting none, as has been asserted on the other Side, almost always have stirred up implacable Malice in the Party declared incapable, and the Consequences have not seldom brought a Disreputation on the Court who pronounce it.

"In order to which, let us return a little to the History of *Bury's* Case. His first Wife *Willimot* libelled him for Insufficiency as to carnal Encounters, and upon Inspection it appeared he had but one little Testicle, of the Size of a small Bean. The Ecclesiastical Court, on this and other corroborating Evidence, gave Sentence with the Libel, and, so far as they were able, annulled the Marriage.

"*Willimot* quickly took the Advantage of this Sentence, and married again. *Bury* was, it seems, not at all satisfied with this juridical Sentiment of his Incapacity, but married also a second Wife, *Philippa*, by whom he had a Son. This afterwards drew the Succession to *Bury's* Estate into Question, on the Legitimacy of this Son. The Common Lawyers were unanimously of Opinion, that the Church Authority exerted in pronouncing the Nullity being plainly deceived in the very Ground upon which it went, that Sentence was in itself void, and the first Marriage between *Bury* and *Willimot* remained notwithstanding it good.

"It is with some Reluctance I mention the Case of the Earl of *Essex* and Lady *Frances Howard*, the most famous Instance in our Kingdom of a Sentence of this Kind, which was given by the Majority of a Court of Delegates, composed of the greatest Bishops and Men who were skilled in the Civil Law; yet, notwithstanding the Solemnity of Interrogatories, the Earl of *Essex's* direct Answer that she was a Virgin for him, the Verdict of Inspectresses, the Pomp of Compurgators, and all the other Colours which could be invented to gloss their Proceeding; yet so scandalous was this Decision in the Eyes of the World, that it lost the Characters of all those Judges who concurred in pronouncing Sentence, and fastened the Nick-name of Sir Nullity on one of the Sons of a Bishop concerned in it, when he was soon after knighted."

And Page 47. "*Bury's* Case was indeed an odd one, but it had no Effect when quoted to the Bishops and Doctors in my Lady *Essex's* Case; and though so many hard Censures have fallen on those who decided it against the Validity of the Marriage, yet the Event did in some Measure justify their Opinions; since the Lord *Essex*, though he ventured on a second Marriage, yet had not Issue by the Lady."

the Church of *England* held a very famous Church. *Ecclesia Anglicana*, as might easily be shewed out of *Matthew Paris*, and by divers Things in some later general Councils, did carry a greater Sway. And why should we at this Time, in any thing, yield unto any Church in the World, since it is a Thing well known, that the Knowledge of Divinity doth abound here beyond all other Nations? And Men of this Land have beat down the Power of the Pope, and made evident divers Questions in Matters of Theology, beyond all the Parts of Christendom: But beyond this, I do know, that the Customs of Churches, even by the Determination of the Pope himself, ought to be the Rule of Judgment in this Nature. We have a famous Place interserted into the Body of the Law, written by Pope *Alexander* the III^d unto the Bishop of *Amiens* in *France*. It is worth your hearing; * *Quod sedem Apostolicam consulisti super his, quæ tibi dubia existunt, gratum gerimus et acceptum, et tua exinde fraternitas non parum commendanda videtur. Ex tua siquidem parte nobis est intimatum, quod quædam mulier tui Episcopatus cuidam viro nupsit, asserens quod ob utriusque inguinis rapturam, genitalia ejus abscissa fuissent, necdum ab eo cognita fuisset, qui utique factus leprosus, se pariter et sua domui reddidit infirmorum. Mulier vero ad domum patris reversa sicut asseris invenis, alio viro nubere desiderat, et conjugali affectu conjungi. Unde licet Romana Ecclesia non consueverit propter talem infirmitatem, vel propter alia maleficia, legitimè conjunctos dividere, si tamen consuetudo generalis Gallicanæ Ecclesiæ habet, ut hujusmodi matrimonium dissolvatur; nos patienter tolerabimus, si secundum eandem consuetudinem, eidem mulieri cui voluerit nubendi in Domino concesseris facultatem.* By this we do find, that the Church of *Rome* itself doth grant no Separations in Matters of Matrimony, where the Church of *France* doth; and if the Pope permit in *France* itself, that a Divorce should be made, it is but a Toleration, and not this neither, but where it is *consuetudo generalis Ecclesiæ Gallicanæ*; which if you will apply unto this Cause in Question, you must shew me, that in *England* it hath been a general Custom, that a Nullity in Marriage may be pronounced *propter impotentiam versus hanc*; which if you cannot shew, as indeed you cannot, nor give any true Example that ever hath been of any such Separation within this Church; I may both in Law and Conscience conclude, that I dare not introduce any Novelty, and so consequently pronounce for the Nullity of this Marriage. Many Things are done in *France*, whereof if we in *England* had the Examination, we should peradventure find the Fact different from that which they conceived; or if we agree in the Fact, we should give another Sentence. It is not unknown how, within the Space of one Year, there hath been much ado in *France* about two Women, *Magdalen* and *Louyse*, pretended to be possessed with a great many Devils, and how *Verrine*, a principal Spirit in one of them, hath avowed and maintained the Mass, Invocation of Saints, Adoration of Images, and a great many other Points of the Grossness of Popery; and a Book hereof hath been printed and reprinted in *Paris*, with the Approbation of the State, and Allowance of learned Men; in which the Church of *England* would certainly dissent, and proclaim

the whole Business to be but an Imposture; as the very like was in the Days of Queen *Elizabeth*, when the Devils of *Denbam* were said to possess *Sarah Williams* and her Sister, and some other Persons; and much ado was made of it, and divers fond People believing those Knacks, turned Papists thereupon; yet the Issue of all was, that it proved no better than a shameful Delusion, and a great abusing of credulous and light-believing Persons.

3. But now to proceed farther: If it shall be said, It is not the Novelty, nor the Want of Custom here in *England*, which should prejudice the Truth; *valeat veritas*, wherefoever or whensoever it appears: The Proofs are evident whereupon we do stand, and that will enforce the Sentence. My Answer thereunto is, Let that be made manifest and clear and perspicuous unto the Conscience of an understanding Man, and I shall concur with you: But how shall I find this in a Matter of this Quality? Because it is nothing else but Truth which we do aim at, it were fit that all Probations, if not which are possibly, yet at the least which reasonably may be had, should be got together to enforce a Conclusion of this Consequence. My Books tell me, *In valore matrimonii investigando quæcunque probationes possibiles adhibendæ sunt, et potius debent esse superflua quàm diminutæ.* It is *Solomon's* Saying, *Prov. 25. It is the Honour of a King to find out a Thing.* And wherein can Judges bestow their Time better in a Point of Difficulty, than to search and search again, by all honest and good Means, to know what is the Bottom of that which lieth secret, that they may satisfy their own Conscience, and the Conscience of others, in the Sentence which they give, and leave no Kind of Scruple, which may trouble their own Thoughts? Whether these Things have been done in this present Case, I appeal to your own Consciences; whether the Writers do not mention divers Things; whether the Council for my Lord have not spoke of fundry Matters; whether we that be the Judges, have not thought of divers Courses convenient to be held; of all which no Piece or Parcel hath been permitted unto us. The Proofs then which we have had, do arise only out of the Depositions, and if there be not Proof sufficient, where shall we seek for it? Let us then consider them. I will tell you my Opinion of them. I find nothing in them all, which is not in Substance contained in the Answers of my Lord of *Essex*: A Noble Personage saith, that in the hearing of divers Things, the Earl hath said, that he was not able to know his Lady carnally; the Earl thinking this to be true. But this is but a Relation of Wonder spoken extrajudicially; and therefore for the understanding of the Truth therein, we are to have Recourse unto that, which by the said Earl is judicially deposed. Divers Witnesses do speak, that the Earl and the Lady have lived and lain together for divers Years; my Lord doth acknowledge it in his Answer; the Matrons and Midwives do declare, that in their Judgment, my Lady is a Virgin, and therefore, that she was never known carnally by the Earl; himself confesseth that he did never know her. So that now, all in Substance depending upon his Lordship's Answer, it ought to be our Labour to scan that

* De frigidis et maleficiatis, cap. 2. in Supplemento.

exactly, and to judge of it circumspectly. Doth not he then say, *in responsione ad quartum*, That though divers Times, in the first Year of their Cohabitation, he did attempt to know her, (which divers Times may be twice or thrice, and no more) yet in the two latter Years he did never attempt it? But doth he not say plainly, *responsione ad tertium*, That since the Time of his Marriage, he had not, nor hath any Sickness or Impediment, to hinder him, but that he might have had, and may have carnal Knowledge with a Woman? This is for the general, that he hath no Impediment: But, *in responsione ad quintum*, doth he not descend more particularly unto his own Lady; that it is true that he did never carnally know the said Lady *Frances*? Mark now what followeth; but that to the Act of carnal Copulation he did not find any Defect in himself. Indeed he was not able to penetrate into her Body; but he layeth the Fault of that upon her, as may be seen in his Answer unto the 7th Article. And it may not be forgotten, that in the End of the Answer to the 4th Article, he saith, that sometimes she refused him. These Things are evident, and cannot be denied. The only Matter which maketh Shew against this, is, that he acknowledgeth that he hath lain by her, and hath had no Motion to have carnal Knowledge of her; but especially, that in the End of his Answer unto the 6th Article, *And believeth he never shall*. These Words are the Shield and Buckler of the contrary Part; but how easily do they vanish away, or fall to the Ground! For I appeal unto you all, who were present at the Examinations, (and those were ten of us in Number, who now sit here present) whether the Earl did not openly subjoin that to his Answer; *When I came out of France, I did love her; but I do not so now, neither ever shall I*. I appeal unto the Conscience of you all, except my Lord of *Winton*, and my Lord of *Rochester*, who were not then Commissioners, whether this be so or no: Here then is the Matter, it is the Want of Love, which restraineth all Motions of carnal Concupiscence, and not any Impotency; it is *defectus voluntatis*, and not *defectus potestatis*. Let Discontentment be removed, and there will be an End of all the Inability: Married Men best know these Things; but out of common Reason, there can be no great Longing, where there is no great Liking; many Things they say fall out between Man and Wife, that for some good Space of Time there is no carnal Conjunction, and yet no Impotency concluded thereby may be. The Case is famous of *Pulcheria*, Sister unto the Emperor *Theodosius* the younger, who having vowed Virginitie, was notwithstanding afterward, for great Reason of State, thought fit to be married unto *Martianus*, who thereupon was chosen Emperor; she would not condescend thereunto, till she had Promise from him, that her Virginitie should be preserved, and with such a Promise he did marry her, so that they lived together in shew as Man and Wife, but indeed as a Brother and a Sister. Our Stories do make mention, that he who was called Saint *Edward* in *England*, I mean King *Edward* the Confessor, did marry a Lady, the Knowledge of whose Body he never had, neither did this wedded Couple ever endeavour to break their Virginitie. The Writers do declare no other Reason hereof, but that they had an Opinion, that to live in

Virginitie, was the more meritorious, according to the Superstition of those Times. Now were it not a strange Argument, to conclude in this Manner, that because *Martianus* had not conjugal Copulation with *Pulcheria*, therefore he was a Man impotent; or, because King *Edward* had not carnal Knowledge of his Wife, therefore he could not know her? I know the Circumstances of this present Question do differ from those, but the Ground of the Argument is the same. Want of Act upon private Reason, will never enforce a Want of Power. And this is our Case, as I understand it, which maketh me unwilling to consent to this Nullity.

4. There followeth now another Argument, which I shall deliver briefly. We have always agreed, that the Chapter in the Law, which containeth our Case, is the Chapter *Litera de frigidis et maleficiatis*; for if it be not there, it is no where to be found. When we have delivered many Things appertaining to this Cause out of the best Writers of the former Ages, or of our own Time; as that my Lord should be inspected, or that Physicians should use their Art to discern and remove Impotency, if any were to be found, or that Fasting, Prayer, and Alms should be exercised to overcome this Evil, and divers other Points of like Nature; it hath still been answered to us, so say the Interpreters, but it is not in the Law; or it is in the Decrees which bind not, but it is not in the Decretals; or it is a Counsel and Exhortation, but it is no Mandate or Injunction. I now therefore mention something, which is in the Law, and in the very Body of this Law, and it is the Pope's Mandate; and that is, that my Lord should have given his *juramentum cum septima manu*, as well as my Lady; for Want whereof, the whole Proceeding is annulled. This is the Pope's Commandment, *Quocirca mandamus*, and it requireth the Oath of both, *ipsis cum septima propinquorum manu firmantibus juramento, se commisceri carnaliter nequivisse*, then *proferatis divortii sententiam inter eos*. This is a Thing so clear, that when on *Thursday* last, by chance, there fell mention of it; the Council for my Lady (*Dr. Stuard* and *Dr. Bird*) were so far from giving Answer to it, that, to speak plainly, they stood as Men blasted or blighted with Lightning, and knew not which Way to turn them; as was manifest not only unto us, but to all the Standers by; which I do not utter to do them any Wrong, for they are worthy Men, both learned and faithful to the Cause which they undertake; but the Note is, that this Objection can receive no true Answer. I know, that since that Time there hath been Labour made, to give a Salve to this Sore, but no Man's Wit can do it. I said, and say still, that no Man's Loquence, neither any Man's Eloquence, can persuade me, that *ipsis firmantibus juramento* is of the singular Number. I know there hath been tumbling and turning of Books, to find some Shew to meet with this Objection, but nothing can be found, which will hold out this Water. The Proceeding therefore doth appear to be unperfect and defective in that, which is mainly required by the Law, which makes me to conclude in this Fashion against some unperfect Speech touching my Lord of *Essex* his affirming or denying of his own Inability towards my Lady; that either he doth confess it, or deny it: If he do acknowledge it,

where is then his Oath *cum septima manu*, which the Law imposeth? If he do deny it, where is then your Proof of his Inability, since you ground the whole Substance of the Nullity upon his Lordship's Answer, *that he could not know her carnally?*

I must yet crave Patience to go a little farther. One other Exception which I take unto this Nullity, is the Manner of the Sentence, which by us is to be given, which hath ever been resolved should be in general, not expressing any Reason particular wherefore we do give it. To say that my Lord is *impotens in genere versus hanc*, and not to tell wherein, is to propound a Riddle to the World, which no Man understandeth. It were a strange Thing in Learning, to say, that such a Creature is Animal, and not to tell whether it be a Man, or a Horse, or a Fish, or a Bird. And although it hath been said, and strongly maintained, (by Sir *Julius Cæsar* and Sir *Daniel Dun*,) *That it is enough in a Sentence to pronounce a Thing in general, and that the Judge is bound to give no Reason of it;* yet I would be glad to know whether, howsoever I will conceal the particular Reason from the Hearers or Standers by, yet were it not fit, that I who am the Judge, and must give the Sentence, or at least consent unto it, should know the Ground whereupon I do give it? Give me Leave to speak my Conscience; I think a Sentence, *propter latens aliquod impedimentum*, which is *perpetuum et incurabile versus hanc*, is nothing but a Device to serve a present Turn, which we must deliver in such obscure Words, to blind Posterity that comes after, and to amuse those which will inquire into it, as if we had known something which we held not fit to utter, when in Truth we know nothing. I find the Texts of the Law do still set down the Reason, and give a Case particular, as Frigidity, or Section, or Unfitness of the generative Part, or some such other Matter; but for an Inability, *propter latens impedimentum*, my Dulness is such, that in the whole Book I cannot discover: And it is a Mystery that cannot enter into me, how a Man should be potent unto other Women, and impotent to his Wife, if it be not in Case of Phrensy, which is not *latens impedimentum*, and which also findeth *lucida intervalla*. It was the Assertion of him in the Law, (*Cap. Literæ.*) *That he did not know his Wife, but that he had a Power to know other Women.* But what wise Man doth believe him? Or what is there in the Text which doth declare it to be true? I will end this Point with that of our Saviour in the 29th of *St. Matthew*, That there are three Sorts of Eunuchs, or Men unfit to marry; the one is of God's making, the second is of Men's making, and the third is of their own making. The first are they that are past from their Mother's Belly, who either are *frigidi*, or such as have not Members fit for Generation, or some apparent Debility. The second are those who are castrated by Men, or by some Violence have that hindred in them, whereunto by Nature they are fit in respect of Procreation. I will not here dispute that idle *Maleficium*, because yourselves are flown from it. The third hath no Coherence with this Nobleman. Let me know then, in which of the former two you do place it. Is he past from his Mother's Womb? Why then do you give him Leave to marry again? that he who hath deluded and frustrated one, may also delude another. If he

be in the second Rank, why do you not tell us what the Violence is which he hath sustained from Men, or from any other Creature? Let us have, I pray you, some kind of Satisfaction, and let not this Ænigma in general blind us; lest the World should say, that wilfully we shut our Eyes against the Truth.

6. One Reason I have more, why I yield not to this Nullity, and then I have done. It is drawn from the Inconveniencies which will follow thereupon, if we dissolve the Matrimony in such Case as is now desired. I look first on the Detriment and Harm which will follow, if the Marriage do continue in Force and in Vigour, and I do find, that all the Inconvenience doth redound but to one Person. Between a Lady and her Husband there is some Discontentment, which Time and God's Grace may easily remove: There is then an End of that Controversy. Or, if the Disagreement shall never be appeased, it is no more but one Lady doth want that Solace which marital Conjunction would afford unto her; which many a good Woman is enforced to endure, and yet commits no Sin, neither labours to violate the Laws of the Church: For suppose the Husband be sick of some long Disease, or languishing Weakness, must not the Wife sustain it with Patience and Quietness? Suppose the Husband be Captive in some foreign Nation, or Prisoner in his own Country, whereby Occasion of marital Complexion is taken from the Wife, no Divine will pronounce, that a Separation is in this Case to be sought. Let a Woman do that in Modesty, which others are enforced to do out of Necessity; and let her expect God's Leisure, in Fasting and in Prayer, and in other Humiliation. This is all the Inconvenience which ariseth to one Person, if she have not the Performance of conjugal Duty.

But look on the other Side, what are the Incongruities, or rather Absurdities, which will easily follow, if such Dissolutions of Marriages be permitted. I will name only two. The first is the Hazard of violating and annulling of Marriage by an ordinary Practice; for if the Gap be open, who will not run in? And the Judge must dispense the Law indifferently to all, if the Proofs be accordingly; for we may not say, that it is for noble Personages, and great Peers in the State, and not for others of inferior Rank. Whatsoever Couple therefore have no Children, and live discontented, come presently to take Part of this general Jubilee: And, albeit they know in their Consciences, that it which they attempt is unlawful; yet, to satisfy their Fancy, they will collude the one with the other, and enter a Prosecution secretly agreed upon, howsoever in open Shew they seem to differ the one from the other: And who can doubt, but for Money or Favour, they may procure Witnesses, and others who are to be used by the Formality of the Law, to testify and depose so much as serves the Turn? By which means we are at a fair Pass, when not only the Marriage-Bed shall be defiled, and Adulteries made frequent, which is against the second Table of the Law, but Perjury shall be committed, and God's Name taken in vain, which is repugnant unto the first Table.

A second Inconvenience is the Danger, lest both Parties which are freed from their Matrimony, should divers Years after be returned to

it again, when perhaps the Husband by a second Wife hath Children, and the Wife by a second Husband hath Store of Issue also; for there is no Doubt in the Law, but if a Man supposed to be *frigidus*, and therefore divorced, shall afterwards marry, and by begetting of Children shew himself not to be impotent, but apt for Generation, this Man is to be taken from his second Woman, and returned to his first Wife; and the Woman for whose Marriage a Nullity was pronounced in respect of the Insufficiency of her Mate, must be now taken from her second Companion, and returned to the first. Of this the Reason is apparent, *quia decepta est Ecclesia*; they adjudged him to be impotent upon wrong Information, whom Experience and Truth hath declared to be potent. And what Man can foretel, how Variety of Times may produce other Judgments? There may be Question of Land or Inheritance, of Legitimation or Illegitimation; and a wife Man would be unwilling to bring it on the Stage when he is dead and gone, and to make it the Fable of the World, whether his Children be born lawfully, or to be reputed in the Rank of Bastards. The World is subject to much Mutability, and Judges of future Times may peradventure be led with the Power of some great Persons, and perhaps may think upon other Considerations, that it is but a Conceit, that a Man should be potent unto another Woman, and impotent to his Wife; or that the Common Law doth not know any *Maleficium*; or that they do not believe, that there may be *latens impedimentum, perpetuum et incurabile versus hanc*, when they see that the Husband is, in Shew of the World, a lusty, able Man, and hath well proved his Potency, by begetting three, or five, or seven, or ten Children upon another Woman. These are pretty Things, if a Man do well consider them, and will serve to make Distraction between Kinsman and Kinsman, and make Work for the Lawyers, and keep the Courts at *Westminster* that they shall not be idle; which if we could not learn otherwise, yet *Bury's* Case before remembered doth teach us, who was divorced from his Wife in the third or fourth Year of Queen *Elizabeth*, and when his Brother had enjoyed his Land until the fortieth Year of the said Queen, then was he thrust out of it, and the questioned Son, or his Heir, was put into Possession of it by Trial of Law; a great deal of Money being spent in that Contention, and both Civilians and Common Lawyers in great Numbers were entertained of both Sides; and yet the Controversy was not so appeased, but that of my certain Knowledge, within these three Years it had been raised again, and a strong Device was laid how to bring this about again; only myself withstood it, and would not give way unto it, when I was divers Times consulted thereabout; conceiving very well, that it would not be long before some Prohibition would come out of some of the King's Courts, because the Common Law disliked, that Men's Inheritance, especially after Judgments, should be disturbed, when the Parties whom most of all it concerned, are dead long before, and cannot answer for themselves; whereas, peradventure, if themselves had been living, they could have answered that for themselves which other Men know not. And there ought to be a settled Course in all Things appertaining to Inheritance.

By this Time, I hope you see, that it is not out of Willfulness, or prejudicate Conceit, that I have impugned this Nullity, but out of Ground of Reason, and out of Scruple of Conscience, which is it that must accuse me, or excuse me, before the ever-living God. I know you have heard what other Men have said, and they have answered for themselves. Upon all which Grounds I make this Conclusion, That howsoever this Matter of Separation with great Earnestness hath been pursued, yet it is the surer and the safer Way to leave it as we find it, and in no Case to dissolve it. I oft remember that Saying, which is frequent among the Canonists, *Tolerabilius est aliquos contra statuta hominum dimittere copulatos, quam conjunctos legitimè contra statuta Domini separare*. That concerneth us who be the Judges; and for the Parties themselves, who perhaps can be content to be severed, and to marry elsewhere, let them know this from me, that they may best expect a Blessing from God when they live in that State where fewest Scruples shall arise in their Mind: From which, whether they shall be free in leaving their old Conjunction, and betaking themselves unto a new, I refer to their wiser Thoughts, when in all Probability, if any Cross or Thwart shall arise in their new-intended Matrimony, this Perplexity and Anguish will still follow their Souls, that they have done that, whereof in their truest Meditations they have no Ground of Conscience, and therefore that it is the Hand of God upon them, who giveth not a Blessing unto that which was unduly sought.

You have thus at large heard my Opinion against the Annulment of this Marriage. Now, if you ask me, What would you then have done concerning this Couple of Noble Personages? my Answer is, that I would have a Reconciliation by all means to be laboured; and although that be difficult to bring about, yet it is the more Honour when it is effected. Charity will forgive, and forget the highest Offences. It is *St. Augustine's* Judgment, *That in the greatest Breaches between Man and Wife, Reconciliation is the best; and the worthiest Pains that can be bestowed, is to bring that about*. There wanteth only one or more good Mediators, and then great Things will be compassed. The Disagreement was inconceivable between God and Man, yet Christ, that great Mediator, did take it away. The Breach was very bitter between *England* and *Spain*, yet our most blessed Sovereign, as a gracious Intercessor, did give an End unto it. Let Divines be used now, as much as Lawyers have been used heretofore. Take the godly Counsel of the one, which will be given freely, as you have taken the Advice of the other with much Expence of Money. This I wish for, this I pray for; and if my Counsel had been used, before Things grew to this Height, I would have used my best Means to have wrought an Atonement. But because there is no Hope thereof, and this doth expect a legal Decision, proceed you that please unto this Separation. Give your Sentence *in scriptis*, as you have declared your Opinion *in verbis*. Five might have served the Turn by the Words of the Commission, if seven had dissented; but you have seven Suffrages, and therefore proceed; only this I crave of the Register, that he do make his Act, that this Sentence is given,
 Joanne

Joanne *Episcopo* London. D. Joanne Bennet *milite*,
D. Francisco James, D. Thoma Edwards *dissen-*
tientibus, *potissimum* verò Georgio *Archiepiscopo*
Cantuariensi *renitente*.

This is the Substance of that Matter which the Archbishop of *Canterbury*, out of certain Notes which he had drawn up, was ready to have uttered; and no one material Point is added thereunto, as appeareth unto me; the Writer hereof, comparing it with the Notes at such Time as I ended the writing of this; which was on the 28th of *September*, 1613, three Days after the Time when it should have been spoken.

The KING's Letter to the Archbishop of
Canterbury.

My Lord,

AFTER I had received, and read your Papers, which the Bishop of *Litchfield* brought me; I found it very necessary that I should make Answer thereunto at my first Leisure: For whereas, before, at my last Meeting with you, ye seemed to me to be only as yet unresolved what Sentence to give in this Business, till you had heard it thoroughly disputed; that by that Means ye might be fully informed of the State of the Cause; it appears now by these Papers; that you have, after your last Day's Consultation, put on a negative Resolution, grounded upon Fundaments of Divinity and Conscience, as you think, which hath moved me to send you herewith my Judgment upon your Arguments, in regard that I did ever hold it necessary, that in a Matter of this Weight all my Commissioners should be as near of one Mind, as might be; and therefore I would be sorry that your private Conceits should so blind your Judgment, as to make you and your Followers draw the Catharrows (*perplex or torment*) against your Yoke-fellows; for, that I may now open plainly my Heart unto you, at my first reading of your Papers from the Bishop, I chance to cast mine Eye first upon the Paper of your Arguments, before I had looked upon your Letter, and lighting upon your first Words, *Inasmuch as we do firmly believe, &c.* I protest I thought it had been some strange Confession of Faith, that you had intercepted amongst some of the Sectaries; but when I had read out the rest of that first Article, God is my Judge, I thought that Paper had been some Pasquil made against this Divorce, which coming to your Hands ye had sent me, and therefore without reading any farther therein, I looked upon your Letter, which resolved me of all these Doubts; but after that I had fully perused, and rightly considered of all your Papers, I found your Principles so

strange, and your Doubts so far sought, that I thought it necessary, as I have already said, to set down unto you my Observations upon them. But to conclude my Letter with that Plainness that becometh one of my Quality, I must freely confess, that I find the Grounds of your Opposition so weak, as I have Reason to apprehend, that the Prejudice you have of the Persons, is the greatest Motive of breeding these Doubts into you; which Prejudice is the most dangerous Thing that can fall in a Judge for misleading of his Mind. And the Reason moving me to this Apprehension, is partly grounded upon your last Words to me at your parting from *Windsor*, and partly upon a Line scraped out in your Paper of Doubts; for I am sure you think me not so blunt a Secretary, but that I can read a Line so scraped out. In your last Speeches with me, you remember you told me what Assurance you had of the Earl's Ability out of his own Mouth, which you said you could not but trust, because he was so religious a Nobleman. But when I told you of the other Party's contrary Affirmation, you remember how you used the Word of Iniquity; and how far your interlined Line seems to have a Harmony with this Word, yourself can best judge. Now then, if I would ask you what Proof you have of the one's Religion more than the other's, you must answer me, by judging upon the Exterior; and how deceivable that Guess is, daily Experience teaches us. — But with a holy Protestation that I never knew any thing but good in the young Earl. Was not this the Ground of Master *Robert Bruse's* Incredulity, because he knew the Earl of *Gowery* to be truly religious; and did not beg a Register. See *Botwell* in his Preface of his Book *De viris illustribus*. And as for your Judgment of the other Party, Christ's Precept is the best Answer unto you, *Nolite judicare*. But if the Question were to judge of the Earl's Inclination, whether is it likely that you or I could best judge of it; I, he having been bred with my late Son, and served him so long; or you, that never spoke with him but once or twice in your Life, and never knew either Good or Evil of him but out of his own Mouth? I will conclude, therefore, with inverting the Argument; that if a Judge should have a Prejudice in respect of Persons, it should become you rather to have a kind of Faith implicit in my Judgment, as well in respect of some Skill I have in Divinity, as also that I hope no honest Man doubts of the Uprightness of my Conscience; and the best Thankfulness that you that are so far my Creature, can use towards me, is, to reverence and follow my Judgment, and not to contradict it, except where you may demonstrate unto me that I am mistaken, or wrong informed, and so farewell.

JAMES R.

N U M B E R II.

*The Case of a Murder in Hertfordshire, found amongst the Papers of that eminent Lawyer, Sir John Maynard, Serjeant at Law, and some Time one of the Lords Commissioners of the Great Seal of England, viz.**

The Case, or rather History of a Case, that happened in the County of *Hertford*, I thought good to report here, though it happened in the fourth Year of King *Charles* the First; that the Memory of it may not be lost by the Miscarriage of my Papers or otherwise. I wrote the Evidence that was given, which I and many others did hear; and I wrote it exactly according to what was deposed at the Trial at the Bar of the *King's Bench*.

Jane Norkott, the Wife of Arthur Norkott, being murdered, the Question was, How she came by her Death?

THE Coroner's Inquest, on View of the Body, and Depositions of *Mary Norkott*, *John Okeman*, and *Agnes* his Wife, were inclined to find *Jane Norkott* a *Felo de se*; for they informed the Coroner and the Jury, that she was found dead in her Bed; the Knife sticking in the Floor, and her Throat cut.—That the Night before she went to Bed with her Child (Plaintiff in this Appeal) her Husband being absent, and that no other Person, after such Time as she was gone to Bed, came into the House, the Examinants lying in the outer Room, and they must needs have seen or known if any Stranger had come in: Whereupon the Jury gave up to the Coroner a Verdict that she was *Felo de se*. But

afterwards upon Rumour amongst the Neighbourhood, and their Observation of divers Circumstances, which manifested that she did not nor could possibly (according to those Circumstances) murder herself; thereupon the Jury, whose Verdict was not yet drawn into Form by the Coroner, assented, and desired the Coroner, that the Body which was buried might be taken up out of the Grave, which the Coroner assented unto; and thirty Days after her Death she was taken up, in the Presence of the Jury and a great Number of People: Whereupon the Jury changed their Verdict; and the Persons being tried at *Hertford* Assizes, were acquitted; but so much against the Evidence, that Judge *Harvey* let fall his Opinion, that it were better an Appeal were brought, than so foul a Murder escape unpunished. And, *Paschæ quarto Caroli*, they were tried on the

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Appeal,

* Communicated (many Years ago) to the Editor, by Dr. *Rawlinson*, F. R. S.

This Account being from the MS. Notes of so great a Man, we here insert, though rather a Narrative than a Trial. We have received several Narratives and Historical Accounts of Murder, which are not proper for this Work; however, one of the most remarkable of them we shall give an Account of.

The Case of JOAN PERRY, and her two Sons, JOHN and RICHARD PERRY, for the supposed Murder of WILLIAM HARRISON, Gent.

William Harrison, Steward to Lady *Campden*, at *Campden* in *Gloucestershire*, about seventy Years of Age, went August 16, 1660, to receive my Lady's Rents, which he did; and not returning Home that Night, gave Cause to suspect he was murdered. After some Time, *John Perry*, his Servant, gave Information before a Justice of Peace, That his Brother *Richard* had robbed and murdered him, and his Mother stood by whilst it was done; and that *Richard* had once before broke open his Master's House, and robbed him.—At the following Assizes, *Joan*, *John* and *Richard Perry* had two Indictments preferred against them, one for breaking open the House of Mr. *Harrison*, and robbing him of 140*l.* in the Year 1659; and the other for robbing and murdering him, Aug. 16, 1660. Upon the last Indictment, the then Judge of Assize, Sir *Christopher Turner*, Knt. would not try them, because the Body was not found: On the former Indictment for the Robbery, they pleaded Not Guilty; but on People's persuading them, they retracted their Plea, and pleaded Guilty; begging the Benefit of his Majesty's most gracious Pardon and Act of Oblivion, which was granted them: And though they pleaded Guilty to this Indictment, being prompted thereto, yet they all at their Deaths denied it. Yet at this Assize, *John Perry* persisted in his Story, That his Mother and Brother had murdered his Master, and that they had attempted to poison him in Gaol for discovering it, so that he durst not eat or drink with them. And

At the next Assizes following, *Joan*, *John* and *Richard Perry*, were, by the Judge of Assize, Sir *Robert Hyde*, Knt. tried upon the Indictment of Murder, and pleaded Not Guilty; when *John's* Confession before the Justice was proved *viva voce*, by several Witnesses who heard the same. He then told the Court, *He was mad, and did not know what he had said*. The other two, *Richard* and *Joan Perry*, declared they were wholly innocent of what they were accused; that they knew nothing of Mr. *Harrison's* Death, nor what was become of him; and *Richard* said, his Brother had accused others as well as him, to have murdered his Master; which the Judge bidding him prove, he said, That most of them that had given Evidence against him, knew it; but naming no body, nor any body speaking to it, the Jury found them all Guilty.

Some Days after, being brought to the Place of Execution, which was on *Broad-way-Hill* within Sight of *Campden*, the Mother (being reputed a Witch, and to have so bewitched her Sons, they could confess nothing while she lived) was first executed:

Appeal, which was brought by the young Child against his Father, Grandmother; and Aunt, and her Husband Okeman; and because the Evidence was so strange, I took exact and particular Notice. And it was as follows:

After the Matters above-mentioned related; an ancient and grave Person, Minister to the Parish where the Fact was committed, being sworn to give Evidence, according to Custom, deposed, *That the Body being taken up out of the Grave, thirty Days after the Party's Death, and lying on the Grass; and the four Defendants being present, were required each of them to touch the dead Body. Okeman's Wife fell upon her Knees, and prayed God to shew Tokens of her Innocency. The Appellant did touch the dead Body; whereupon the Brow of the Dead, which before was of a livid and carrion Colour, (in Terminis, the verbal Expression of the Witnesses) began to have a Dew, or gentle Sweat, arise on it, which increased by Degrees till the Sweat ran down in Drops on the Face; the Brow turned to a lively and fresh Colour, and the Deceased opened one of her Eyes, and shut it again; and this opening the Eye was done three several Times; she likewise thrust out the Ring or Marriage Finger three Times, and pulled it in again; and the Finger dropped Blood from it on the Grass.* Sir Nicholas Hyde, Chief Justice, seeming to doubt the Evidence, asked the Witnesses, Who saw this besides you?

Witness. I cannot swear what others saw: But, my Lord, (said he) I do believe the whole Company saw it; and if it had been thought a Doubt, Proof would have been made of it, and many would have attested with me. Then the Witness, observing some Admiration in the Auditors, spake farther: "My Lord, I am Minister of the Parish, and have long known all the Parties, but never had Occasion of Displeasure against any of them, nor had to do with them, or they with me; but, as I was Minister, the Thing was wonderful to me: But I have no Interest in the Matter, but as called upon to testify the Truth, and that I have done." (This Witness was a very reverend Person, as I guessed, of about seventy Years of Age; his Testimony was delivered gravely and temperately, but to the great Admiration of the Auditory.) Whereupon, applying himself to the Chief Justice, he said, "My Lord, my Brother here present is Minister of the next Parish adjacent, and I am sure saw all done that I have affirmed:"

Therefore that Person was also sworn to give Evidence; and did depose in every Point — *the sweating of the Brow — the Change of the Colour — thrice opening the Eye — and the thrice Motion of the Finger, and drawing it in again; only the first Witness added, that he himself dipped his Finger in the Blood which came from the dead Body to examine it; and he swore he believed it was Blood.*

I conferred afterwards with Sir Edward Powell, Barrister at Law, and others, who all concurred in the Observation: And for myself, if I were upon Oath, can depose, that these Depositions (especially the first Witness) are truly reported in Substance.

The other Evidence given against the Prisoners, viz. the Grandmother of the Plaintiff, and against Okeman and his Wife, That they confessed they lay in the next Room to the dead Body that Night; and that none came into the House till they found her dead the next Morning; therefore if she did not murder herself, they must be the Murderers. To that End further Proof was made,

First, That she lay in a composed Manner in her Bed, the Bedcloaths not at all disturbed, and her Child by her in Bed.

Secondly, Her Throat cut from Ear to Ear, and her Neck broke. So that if she first cut her Throat, she could not possibly break her Neck in the Bed. *Non Contra.*

Thirdly, There was no Blood in the Bed, saving a Tincture of Blood on the Bolster whereon her Head lay, but no Substance of Blood at all.

Fourthly, From the Bed's Head there was a Stream of Blood on the Floor, which ran along until it ponded in the Bendings of the Floor to a very great Quantity; and there was also another Stream of Blood on the Floor at the Bed's Foot, which ponded also on the Floor to a very great Quantity; but no Continuance or Communication of Blood of either of those two Places, from one to the other, neither upon the Bed, so that she bled in two several Places; and it was deposed, turning up the Matt of the Bed, that there were Clots of congealed Blood in the Straw of the Matt underneath.

Fifthly, The bloody Knife was found in the Morning sticking in the Floor, a good Distance from the Bed; but the Point of the Knife, as it stuck, was towards the Bed, and the Haft from the Bed.

Lastly, There was the Print of a Thumb and four Fingers of a Left Hand.

Sir

executed: (*Strange Ignorance and Superstition!*) After which, Richard, being on the Ladder, professed, as he had done all along, That he was wholly innocent of the Fact for which he was to die, and that he knew nothing of Mr. Harrison's Death, nor what was become of him; and did, with great Earnestness, beg and beseech his Brother (for the Satisfaction of the whole World and his own Conscience) to declare what he knew concerning it. But he, with a dogged and furly Carriage, told the People, he was not obliged to confess to them; yet, immediately before his Death, said, *He knew nothing of his Master's Death, nor what was become of him, but they might hereafter possibly hear. — It is strange that a Judge would order the Execution of three Persons, for the supposed Murder of a Man whose Body was not found, or heard of at the Time of Trial, upon the Confession of a Madman or an Enthusiast!* — However, Mr. Harrison, some Years after, appeared alive; and in a Letter to Sir Thomas Overbury, of Burton in Gloucestershire, gave an Account, how that very Night, August 16, returning Home, after receiving the Rents, he was set upon, and forced by several Stages to the Sea-Side, put on board a Ship, and carried into Turkey, where he was sold for a Slave to a Physician, and continued with him for about a Year and three Quarters, when his Master died; then he made the best of his Way to a Sea-Port, and with great Difficulty got on board a *Hamburgh* Ship bound for Portugal, and arrived safe at Lisbon; from whence, by the Means of an *English* Merchant, he got on board an *English* Vessel, and arrived safe at Dover, and from thence to his own Home, to the Surprise of all the Country. This Account was sent with the following Letter from Sir Thomas Overbury to Dr. Shirley, who published it:

"SIR,

"I herewith send you a short Narrative of that no less strange than unhappy Business, which some Years since happened in my Neighbourhood; the Truth of every Particular whereof I am able to attest: And I think it may very well be reckoned among the most remarkable Occurrences of this Age. You may dispose of it as you please; and in whatever I can serve you, you may freely command me, as

Burton, Aug. 2, 1676.

"Your most affectionate Kinsman and humble Servant,

"THOMAS OVERBURY."

Sir *Nicholas Hyde*, Chief Justice. How can you know the Print of a Left Hand from the Print of a Right Hand in such a Case?

Witness. My Lord, it is hard to describe; but if it please that Honourable Judge to put his Left Hand upon your Left Hand, you cannot possibly place your Right Hand in the same Posture; which being done, and appearing so, the Defendants had Time to make their Defence, but gave no Evidence to any Purpose.—The

Jury departed from the Bar; and returning, acquitted *Okeman*, and found the other three Guilty; who being severally demanded why Judgment should not be pronounced, said nothing but severally, *I did not do it, I did not do it.*— Judgment was given, and the *Grandmother and Husband executed*; but the Aunt had the Privilege to be spared Execution, being with Child. I inquired if they confessed any thing at their Execution, but they did not, as I was told.



N U M B E R III.

The Proceedings against Mr. Benjamin Leech, Bricklayer, at the Old-Bailey, October 14, 1682, for a Contempt, in offering a frivolous Plea to the Court.

THE Poll for Election of Mayor for the Year ensuing being continued by Adjournments from *Michaelmas-Day* to the 2d of *October*, one *Benjamin Leech*, Bricklayer, being a Freeman and Liveryman of the City of *London*, came to *Guildhall* to poll, wherein in Discourse he was charged to have said to this Effect, *That Sir William Prichard should never be Lord-Mayor, unless he came in by Stealth, as North and Rich were Sheriffs*; for which he was, without any Constable or other legal Officer, carried before

Sir *John Moor*, Lord-Mayor, before whom he owned the Words, or Words to that Effect; whereupon he was, by the Lord-Mayor, committed immediately to the *Compter*, from whence he was bailed next Day, giving his Recognizance, with Sureties, to appear at the next Sessions at *Guildhall*; which Sessions of the Peace being adjourned to the 13th of *October* to the *Old-Bailey*, there was a Bill of Indictment preferred and found against the said *Mr. Leech*, the Tenor of which followeth, *viz.*

London. ff. JURATORES pro Domino Rege, super sacramentum suum presentant, quod Benjaminus Leech nuper de London, Bricklayer, existens persona mala et perversae dispositionis, secundo die Octobris, anno regni Domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ Regis, fidei Defensoris, &c. tricesimo quarto; machinans, et false et maliciose intendens pacem dicti Domini Regis infra civitatem London, inquietare et perturbare, ac diversas differentias et dissentiones inter cives civitatis predictæ, et alios ligeos et subditos dicti Domini Regis infra hoc regnum Angliæ, de et concernens electione Maioris civitatis predictæ, et vicecomitum civitatis predictæ et comitatus Middlesex, suscitare, movere, et procurare; et quendam Willielmum Prichard Militem, adtunc, et adhuc unum Aldermannorum civitatis predictæ, et adtunc in electione pro Maiore civitatis predictæ, existens pro uno anno adtunc et adhuc venturo; necnon quosdam Dudley North Armigerum, et Petrum Rich Armigerum, qui quidem Dudley North et Petrus Rich nuper pro antea debito legitimo modo, secundum antiquas privilegias et consuetudines civitatis predictæ, electi et jurati fuerunt vicecomites civitatis London et comitatus Middlesex; et electionem præfat. vicecomitum per cives civitatis predictæ factam in maximum odium, contemptum, et scandalum inferre, ipse predictus Benjaminus Leech postea, scilicet dicto secundo die Octobris anno supradicto, apud London, videlicet, in parochia Sancti Michaelis Bassishaw,

London. ff. THE Jurors for our Lord the King, upon their Oaths do present, that *Benjamin Leech*, late of *London*, Bricklayer, being a Person of an evil and perverse Disposition, the second Day of *October*, in the thirty-fourth Year of the Reign of our Lord *Charles* the Second, by the Grace of God of *England, Scotland, France, and Ireland* King, Defender of the Faith, &c. devising, and falsely and maliciously intending the Peace of our said Lord the King within the City of *London* to disquiet and disturb, and divers Differences and Dissentions amongst the Citizens of the City aforesaid, and other the Liege People and Subjects of our said Lord the King within this Kingdom of *England*, of and concerning the Election of a Mayor and Sheriffs of the City aforesaid, and County of *Middlesex*, to stir up, move and procure; and one Sir *William Prichard*, Knight, then, and yet one of the Aldermen of the City aforesaid, then in Election of Mayor of the City aforesaid, being for one Year then and yet to come; and also one *Dudley North*, Esquire, and one *Peter Rich*, Esquire, which *Dudley North* and *Peter Rich* lately before that Time, in a due and lawful Manner, according to the ancient Privileges and Customs of the City aforesaid, were elected and sworn Sheriffs of the City of *London* and County of *Middlesex*; and the Election of the aforesaid Sheriffs by the Citizens of the City aforesaid made, into the greatest Hatred, Contempt, and Scandal to bring, the aforesaid *Benjamin Leech* afterwards, that is to say, the said second Day of *October*, in the Year above-said, at *London*, viz. in the Parish of *St. Michael Bassishaw*,

Bassishaw, in Warda de Bassishaw, London. predicti. in Guildhall civitatis predictae, ibidem ad predicti. machinationes et intentiones suas melius perficiend. habens colloquium cum quodam Thoma Smyth in Guildhall predicta, adtunc et ibidem falso, illicite, injuste et maliciose dixit, retulit, et in auditu diversorum liegeorum et subditorum dicti Domini Regis, civium civitatis predictae, publicavit, Quod Prichard (presatum Willielmum Prichard Militem, innuendo) non foret Dominus Maior, (Dominus Maior civitatis predictae innuendo) nisi foret Dominus Maior illicite, et per furtum, Anglice by Stealth, prout vicecomites (presatum Dudley North et Petrum Rich, vicecomites civitatis predictae et comitatus predicti, innuendo) fuerunt vicecomites civitatis et comitatus predictae: Ad magnam disturbance pacis dicti Domini Regis, ad magnum opprobrium gubernatorum et gubernationis civitatis predictae; necnon ad scandalum, opprobrium, et defamationem presati Willielmi Prichard Militis, et presati Dudley North et Petri Rich debito modo electi vicecomitum civitatis et comitatus predictae, in malum exemplum omnium aliorum consimili casu delinquentium, ac contra pacem dicti Domini Regis nunc, coronam et dignitatem suam, &c.

Whereunto the Defendant offered the Plea following.

Leech ad s' } ET predictus Benjaminus Leech, in propria persona sua venit et defendit Domini } vim et injuriam quando, &c. et omnem Regis. } contemptum et quicquid, &c. et petit iudicium de indictamento predicto, quia dicit quod juratores pro Domino Rege predicto, qui indictamentum illud fecerunt et presentaverunt, adinde retornati et impannellati fuerunt per quosdam Dudley North Armigerum, et Petrum Rich Armigerum, tanquam vicecomites civitatis London, qui quidem Dudley et Petrus tempore pannelli et retornatus illius per eos sic facti, non fuerunt nec eorum alter fuit vicecomites dictae civitatis London, per quod idem indictamentum sic factum et presentatum per huiusmodi juratores sic ut presertur impannellatos et retornatos per personas tunc non existentes vicecomites civitatis predictae, vigore statuti in huiusmodi casu editi et provisi, vacuum in lege existit et nullius effectus, et hoc paratus est verificare; unde petit iudicium de indictamento illo, et quod indictamentum illud cassetur, &c.

W. Thompson.

Which said Plea being ingrossed in Parchment, and signed by William Thompson, of the Middle Temple, Counsellor at Law, was on Saturday Morning delivered into Court by the Defendant, who pressed that the Plea might be received, and he and his Bail dismissed from further Attendance for that Time: Whereunto it was answered, that the Court would consider thereof till the Afternoon. In the Afternoon, the Defendant attended with Mr. Thompson his Council, and Mr. Osborn, of the Inner Temple, Counsellor at Law, attended for the King: The Court being sat, the Plea was read, and then Mr. Osborn moved, that the Plea ought not to be received, for that it was a new Plea without a Precedent, and that it could not

Bassishaw, in the Ward of Bassishaw, London, aforesaid, in the Guildhall of the City aforesaid, there his aforesaid Contrivances and Intentions the better to perform, having Discourse with one Thomas Smyth in Guildhall aforesaid, then and there falsely, unlawfully, unjustly and maliciously did say; relate, and in the hearing of divers the Liege People and Subjects of our said Lord the King, Citizens of the City aforesaid, publish, That Prichard, (the aforesaid Sir William Prichard Knight, meaning) should not be Lord Mayor, (Lord-Mayor of the City aforesaid meaning) unless he would be Lord-Mayor unlawfully, and by Stealth, as the Sheriffs (the aforesaid Dudley North and Peter Rich, Sheriffs of the City and County aforesaid, meaning) were Sheriffs of the City and County aforesaid: To the great Disturbance of the Peace of our said Lord the King, to the great Disparagement of the Governors and Government of the City aforesaid, and also the Scandal, Disparagement and Defamation of the aforesaid Sir William Prichard, and the aforesaid Dudley North and Peter Rich, in due Manner elected Sheriffs of the City and County aforesaid, to the evil Example of all others in the like Case offending, and against the Peace of our said Lord the King that now is, his Crown and Dignity, &c.

Whereunto the Defendant offered the Plea following.

Leech at } AND the aforesaid Benjamin Leech, the Suit of } in his proper Person, doth come our Lord } and defend the Force and Injury, the King. } when, &c. and all Contempt and whatsoever, &c. and prays Judgment of the Indictment aforesaid, because he saith the Jurors for our Lord the King aforesaid, who that Indictment made and presented, were thereunto returned and impannelled by one Dudley North Esquire, and one Peter Rich Esquire, as Sheriffs of the City of London, which Dudley and Peter at that Time of the Pannel, and the Return thereof by them so made, were not, nor either of them was Sheriffs of the said City of London, by which the said Indictment so made and presented by such Jurors so as aforesaid impannelled, and returned by Persons then not being Sheriffs of the City aforesaid, by Force of the Statute in the like Case made and provided, is void in Law and of none Effect, and this he is ready to verify; whereupon he prays Judgment of that Indictment, and that that Indictment might be quashed, &c.

W. Thompson.

be tried or determined there; that it was a frivolous Plea, and ought not to be received, and so left it to the Judgment of the Bench. Upon which Mr. Thompson allowed, that such a Plea had rarely been made use of, because the like Case had rarely or never happened, but the Reason thereof did justify its Legality, and therefore pressed that the Plea might be accepted; that it never was hitherto denied to any Man to plead to an Indictment of this Nature, what he thought fit in his own Defence, especially when he offers the same under Council's Hand; that this was a ready Way to determine who were legally Sheriffs; if the Plea was not good in Law, the Attorney-General or the King's Council might demur

demur to it; that if the Matter alledged in the Plea was false, Issue might be taken thereon, which might soon be tried by a Jury; but if the Matter should appear to be true, there was not so much as any Colour in Law for those worthy Gentlemen, Mr. *North* and Mr. *Rieb*, to take upon them to return Juries; and therefore, in the Behalf of his Client, demanded again that the Plea might be received; the Truth or Validity thereof being not to be determined, till some Answer should be made thereunto by Replication or Demurring in Writing.

In Answer thereunto Mr. Justice *Levinz* (being the only Judge then present) was pleased to express himself to this Effect: That he desired to see the Statute mentioned in the Plea, whereupon it was read, viz. the 11 H. 4. c. 9. Then Mr. Justice *Levinz* spake to this Effect: That this Statute was made to prevent the Nomination of Juries to the Sheriffs; and though it be thereby provided that Pannels should be returned by the Sheriffs without Denomination of any, yet he was of Opinion that it could not extend to the Case in Hand, seeing the worthy Persons that attended there, were owned as Sheriffs by Lord-Mayor, Mr. Recorder, and several Aldermen there present, and that he made no Difference between Sheriffs *de facto* and *de jure*; and that these Persons being there so allowed, he must look upon them as Sheriffs *de jure*: That a Gaol-delivery had been held, wherein above forty Prisoners had been tried; and that if this Plea should be allowed, all the Proceedings against them would come in Question: And then asked Mr. *Thompson*, What if all the Felons at an Assizes should insist upon the like Plea, must all

further Proceedings stop, till the Sheriff goes Home and fetch his Letters Patents?

Whereupon Mr. *Thompson* said, That he thought in that Case such Stop could not be prevented, the Law being plain.

Then Mr. Justice *Levinz* said further to this Effect, That he had considered of this Matter; and that in his Judgment the Plea was a frivolous Plea, and ought not to be received; but yet he being the only Judge then present, he should advise my Lord-Mayor and the rest of the Bench to take Advice of all the Judges, before an absolute Determination whether the Plea ought to be refused or not.

Upon this Sir *John Peak* said, We will not receive the Plea; with whom agreed Sir *James Edwards*, Sir *James Smith*, Sir *Thomas Beckford*, and Sir *Robert Jefferies*, and the Lord-Mayor also.

Sir *George Treby* the Recorder said, That he was of Opinion with Mr. Justice *Levinz*.

Upon this *Leech* was pressed to plead Not Guilty: Which he refused, saying several Times, He would plead no other Plea than what he had offered. Then the Court gave him half an Hour's Time to advise with his Council, who withdrew and advised accordingly, and returned with the same Resolution not to alter his Plea, and tendered his Plea again to the Court, who again rejected it: And because he would plead no other Plea, he (being first asked, whether he would submit to the Court and ask Pardon; and refusing so to do, having as he apprehended done no Wrong) was fined Twenty Marks, and committed to *Newgate* till he should pay the same; which was done that Night, and *Leech* thereby discharged.



NUMBER IV.

The Trial of Robert Frances, Gent. for the Murder of Thomas Dangerfield, at Justice-Hall in the Old-Bailey, the 16th Day of July, 1685, in the first Year of his Majesty's Reign, before the Right Hon. Sir James Smith, Knt. Lord-Mayor of London, Sir Thomas Jenner, Knt. Recorder of the said City, and one of his Majesty's Serjeants at Law, and others his Majesty's Justices.*

London Jury.

<i>Thomas Anger,</i>	<i>Stephen Coleman,</i>
<i>Philip Perry,</i>	<i>Henry Cremer,</i>
<i>Philip Stockes;</i>	<i>Stephen Gibons,</i>
<i>Luke Poe,</i>	<i>Simon Chapman,</i>
<i>John Warfield,</i>	<i>Joseph Speed,</i>
<i>Christopher Johnson,</i>	<i>Richard Shaw.</i>

ROBERT FRANCES, Gent. was indicted for assaulting *Thomas Dangerfield*, in the Parish of *St. Andrew's, Holborn, London*, with a Bamboo Cane, to the Value of 6d. striking it

into his Left Eye, of which Wound the said *Thomas Dangerfield* is since dead †.

The Witnesses against the Prisoner were many; and most of them very positive; deposing, That they saw the said *Robert Frances* coming to the Side of the Coach, in which *Mr. Dangerfield* was; and that there he thrust his said Cane into his Eye; after which, running into *St. Thavie's-Inn*, in *Holborn*, he was presently seized, and sent to *Newgate*; where when he went in; one of the Retinue of the Prison telling him that *Dangerfield* would die, he the said *Frances* replied, *That if he should die, it would save the Hangman*

* Though we have not been able to procure *Dangerfield's* Trial for a Libel; yet shall insert the Trial of *Mr. Frances* for killing him, from the Sessions-Paper of that Time, with his Speech at *Tyburn*, as it will give some Light to the History of that Time.

† *Bishop Burnet*, in his *History of his own Times*, Vol. 1. p. 537, says, "*Dangerfield*, another of the Witnesses in the *Popish Plot*, was also found Guilty of *Perjury*, and had the same Punishment (as *Oates*,) but it had a more terrible Conclusion; for a brutal Student of the Law, who had no private Quarrel with him, but was only transported with the Zeal of that Time, struck him over the Head with his Cane, as he got his last Lash: This hit him so fatally, that he died of it immediately. The Person was apprehended, and the King left him to the Law; and though great Intercession was made for him, the King would not interpose, so he was hanged for it." — The Bishop here seems mistaken; for I do not find *Dangerfield* was convicted of *Perjury*; or that he got his Death on the last Lash. — *Rapin*, Vol. 2. 744, says thus, "The next Victim to the Catholics, not long after *Oates*, was *Thomas Dangerfield*, who discovered the pretended Meal-Tub Plot, which he had laid to the Charge of the Protestants. But afterwards not being able to maintain before the Council what he had deposed, he confessed, he was persuaded to invent it by the Countess of *Porwis*, and the *Popish* Lords in the *Tower*. Moreover, he had published a *Narrative* of all the secret Practices used as well to corrupt him, as to render the Plot probable. As he owned he had received Money from the late King and the Duke of *York*, the last would never suffer such an Offence to go unpunished, when he came to be King. *Dangerfield* therefore was committed to Prison, and indicted for publishing a scandalous LIBEL. He was tried, and brought in Guilty by the Jury; after which he received judgment at the *King's-Bench* Bar, That he should stand twice in the Pillory; that he should be whipt from *Aldgate* to *Newgate* on one Day, and from *Newgate* to *Tyburn* on another; and should pay a Fine of five hundred Pounds. The Scourging was executed with Rigour, though with less Cruelty than on *Oates*. The second Day, *Dangerfield*, after the whipping was over, being in a Coach against *Hatton-Garden*, *Robert Frances*, a Barrister of *Gray's-Inn*, came to the Coach-side; and using some insulting Expressions, *Dangerfield* returned a reproachful Answer, [*Frances* said, *How now, Friend, have you had your Heat this Morning?* Upon which the other, with two or three Curses, called him *Son of a Whore*.] *Frances*, having a small Cane in his Hand, thrust it into his Eye, with all his Force, which in two Hours put an End to his Life. *Frances* was condemned to be hanged, and was executed accordingly; the King, though strongly solicited for a Pardon, not thinking proper to leave such a Crime unpunished."

"*Sir William Williams*, who had been Speaker of the House of Commons, for publishing an infamous Libel, (as Speaker, by Order of the House of Commons) called *Dangerfield's Narrative*, was fined by the Court of *King's-Bench* 10,000*l.* but, upon paying 8000*l.* of it, Satisfaction was acknowledged upon Record, *Easter Term*, 1 *Jac.* 2. *K. B.* 2 *Shower* 471.

"Upon an Information against the Defendant, (*Sir William Williams*) for publishing a Libel called *Dangerfield's Narrative*, he pleaded that he was at the Time of Publication Speaker of the House of Commons; and, as such, had a Right to publish the Votes and Acts of the House; and that the *Narrative* was printed and published as Parcel of the Proceedings. The Court would not debate the Formalty of such an idle insignificant Plea (as they were pleased to call it) but gave judgment for the King, *Easter Term*, 2 *Jac.* 2. 1686, *K. B. Shower Rep.* 471. pl. 436. *Comb.* 18. See *Atkins's Power of Parliaments, &c.* The King against *Williams*. — It is observable, that *Sir William Williams* was not Speaker of the House of Commons at the Time this Case was adjudged, though he was when the Offence, of which he was accused, was committed. — The Lord Chief Justice *Wright* asked the Defendant's Council, Whether an Order of the House of Commons could justify a scandalous, infamous and flagitious Libel? 2 *Shower* 471." *A Digest of the Laws concerning Libels*, 410. p. 75.

"As the Proceedings against *Sir William Williams* were very extraordinary, so was the Punishment: The Fine was the heaviest that ever was imposed in any Court for the like Crime. *Sir Bartholomew Shower*, one of the Reporters of this Case, says, *Sir William Williams*, being fined 10,000*l.* paid 8000*l.* of the Money, and thereupon Satisfaction was acknowledged on Record. I own, when I find *Sir William Williams* in this same Reign most violently persecuting the Seven Bishops for a Libel, in the Character of Solicitor-General, I am apt to think, that the Fine was imposed in *Terror* to others; and that the only Purpose of suing *Sir William Williams*, was to make a Precedent of an Insult upon the Commons, whose Privileges, if the Designs then on Foot had prevailed, must soon have fallen to nothing." *Digest of the Laws concerning Libels*, p. 118, 119.

a Labour. Mr. Dangerfield, after he was carried to the Gaol, cried out very much of the Anguish of his Eye, saying, *Oh, my Eye! Oh, my Eye! Forbear to make a Noise.* A Physician being brought to give his Advice, whether it was requisite to bleed him, he found him desperately ill, and vomiting extremely. The Chirurgeon being likewise sent for, probing the Wound, found it to be mortal; and he, with others, did verily believe, that it occasioned his Death. Mr. Frances, in his own Defence, alledged, That coming to the Coach, he asked Dangerfield, *If he had not been beaten?* Upon which Mr. Dangerfield calling him *Son of a Whore*, he, in his Passion, gave him a slight Blow with his Cane; which he verily believed could not kill him; and that he did it out of no Malice or Hatred. He called several Witnesses, who gave him a very good Character, but spoke very little to the Fact; whereupon he was found Guilty. — The Reverend Mr. Samuel Smith, the Ordinary of Newgate, gives this Account of him:

“ I went to Mr. Robert Frances his Chamber, because he desired me to take a particular Care of him; and found him in a serious, good Frame and Composure of Mind; willing to resign himself to the all-wise Ducture of God’s Spirit, and his Determination for Life or Death. First I prayed with him, and then entered upon an Inquiry into his Life and Conversation, precedent to the Crime of killing Mr. Dangerfield. He was very free to give an Account of himself. He said; that he was born of Protestant Parents, and bred up in good Literature; that twenty Years since he was a Student in *Christ-Church College* in *Oxford*; that afterward he went over Sea with Sir *Joseph Williamson*, his late Majesty’s Ambassador, as an Attendant on him; that for fourteen Years last past he hath been of the Society of *Gray’s-Inn*, and practised in the Law; that he did not lead any extravagant Life till this unhappy Crime. He acknowledged that he saw Dangerfield in the Pillory at *Westminster*; and that on the Day in which he was whipped to *Tyburn*, Mr. Frances was with a Friend at a Coffee-house near to *St. Andrew’s Church* in *Holborn*; and thought not to have stayed there, because he was to dine that Day with his Friend, and was, in the Afternoon, to have managed a Cause for a Client at *Guildhall*, so that he was going Home from the said Coffee-house: But a Report coming thither that Dangerfield was in his Return from *Tyburn*, and very near, he left his Wife in his Friend’s Hand, and went to meet the Coach in which Dangerfield was, only out of Curiosity (as he saith) to observe how he looked after his being whipped. He said, that the Coach did not stop, but he went to the Side of it, and said, *Have you had your Heat To-day? How is it now with you?* Dangerfield, upon those Words, (he says) called him *Son of a Whore*, and said, *What have you to do with me?* Mr. Frances being asked by the Ordinary, what moved him to kill Dangerfield, he replied, that his Passion was stirred up at Dangerfield’s reviling Language, and said, that he only intended to beat him with a Bamboo Cane, which was furzed and worn out at the End of it: But the Coach moving onward, the Cane

“ wounded Dangerfield in the Eye; but he intended only to have thrust it at his Breast. He also said, that he had a short Sword, and yet used it not, because he did not design to kill Dangerfield.

“ Mr. Frances being told by the Ordinary, that the very Thrust proved fatal, and was a very inhuman Act toward a Person in his Distress; to this Mr. Frances replied, that he never bore any Malice nor Grudge to Mr. Dangerfield, nor was he moved to that Act by any Person whatsoever; only God left him to himself, for the Punishment of his former Sins, to run into this sudden Effort of Passion. Mr. Frances was much affected with my Discourse, and wept in praying with him: He was very attentive to the Sermons and Prayers on the Lord’s Day, more than the other Criminals; so he seemed very penitent, and I hope that this Sentence of Death on him did awaken him to a serious recalling to Mind whatsoever former Sins he might be guilty of, in order to make his Peace with God, who is the Searcher of all Hearts, and only knows who are truly penitent.”

The Dying Speech of ROBERT FRANCES, of Gray’s-Inn, Esq; July 24, 1685. Delivered by his own Hand to the Ordinary, at the Place of Execution, desiring the same might be published.

I Am here by the Divine Permission and Providence of God become a Spectacle to God; Angels and Men; for a rash, extravagant and imprudent Act, wherein I do confess; I have not only offended against the Government and Courts of Justice, but against *Christianity*, and even the Rules of Morality itself: Nevertheless, (I hope) not only the Court, but all unbiassed Men, from the several Circumstances of the Fact, are satisfied that I had no malicious Intent of doing what fell out, nor had any Grudge or personal Prejudice to him upon any Account whatsoever; more than what all honest and good Men could not but have, that love the King and the Government. The solemn Truth of all which I have declared, not only upon the Holy Sacrament I received from Mr. *Master*, but also that I never knew nor saw him before that unhappy Moment, save once at a Distance in the Pillory at *Westminster*; and do now, as a dying Man, solemnly avow and protest the same: And therefore I hope I may boldly say I am not conscious of any Guilt before God as to the Malice: However, God in his great Wisdom has been pleased to suffer this great Calamity to fall upon me: And I hope this his severe Chastisement is in order to bring me to himself, when softer Means had not sufficiently done it. All them that know me (I am sure) will do me that Justice, as to believe I am far from having done it either wilfully or mercenarily, (as most untruly is reported.) And that these Honourable Persons are above the Thoughts of such unworthy Things, for which they have been as maliciously as falsely traduced upon my Score; I beg their Pardon for the Scandal I have unhappily been the Occasion of, and desire this Acknowledgment may be by them accepted as a Reparation, since to disown it at this Time of my Death, is all the Satisfaction I am able to make them.

As to my Religion, (however I have been represented) there are People that knew me at the University, and since that can be my Witnesses, how obedient and zealous a Son of the Church of *England* (by Law established) I have been.

And these worthy Divines that did me the Favour to visit me in Affliction, will give the World an Account (as Occasion serves) of my Integrity therein: And if I had been as zealous in the Service of God, as my Prince, he would not have left me so much to myself, as to have permitted me to have fallen into this unexpected Extremity.

And as for my Morals, the Honourable Society of *Gray's-Inn* will answer for me, that in above these twelve Years Time, I have had the Honour of being admitted a Member of that Society, I never had any Quarrel or Controversy with any Member thereof; and all Persons with whom I have had Conversation, I question not, will give a good Character of my innocent and peaceable Behaviour.

I pray God Almighty preserve and bless his most Sacred Majesty, his Royal Consort Queen *Mary, Catherine* the Queen Dowager, their Royal Highnesses, and all the Royal Family; and grant that there may never want one of that Royal Line to sway the Scepters of these Kingdoms as long as Sun and Moon endure. In the Union and Love of his Subjects, strengthen him that he may vanquish and overcome all his Enemies, which I am glad to have seen so much Prospect of, and am only sorry I am cut off from seeing my so much desired Satisfaction of those happy Days all his good Subjects will enjoy under his auspicious Government. I pray God forgive me my Sins, that have made me unworthy of that Blessing.

Blessed be the Lord, that I have lived so as not to be ashamed to live, or afraid to die; though I cannot but regret my being made a Sacrifice to the Faction, who I am satisfied are the only People that will rejoice in my Ruin; for there is no Man that loves his Prince, but will lament that nothing less than the Blood of an inoffensive Man (save in this single Extravagance) can satisfy them for the sudden intemperate Transport of Zeal and Passion against one so notoriously wicked and infamous; for I do protest before Almighty God, (before whom I shall immediately appear) that when I went to the Coach-side, I did not intend so much as to speak to him, or believe I could have had Opportunity of so doing, much less of doing him any Harm. Neither is it probable I should with a small Bamboo Cane, no bigger than a Man's little Finger, without any Iron upon it, much less a Dart in it, as it was most industriously spread abroad to prejudice me in the Opinion of the World: For, if I had had such a wicked Design intentionally, I had a little short Sword by my Side much more proper for such a Purpose. And further, if I had believed or known that I had done any Harm to him, I had

Opportunity enough of escaping afterwards; which I never endeavoured. Now all these Things being duly weighed, with their several Circumstances, I leave my sad Case to the Consideration of all sober and charitable Men. However, I would not have this to be interpreted as a Reflection upon the Court, who I doubt not are by this Time satisfied, (and Mr. *Recorder* did in open Court declare) that in their Consciences they did not believe I maliciously designed him the Mischief that happened, but that it was purely accidental. But in the strict Construction of Law I was found guilty of Murder.

But that which most sensibly afflicts me, and is worse to me than Death, that I cannot suffer alone, but that they have not only raised Scandals upon me in particular preparatory to it, but upon my poor innocent Wite, as if my Jealousy of her had been the Reason of my Animosity to *Dangerfield*; when I am morally certain she never saw him in her whole Life, save that fatal Moment; and no Couple (as hundreds can witness) have lived in better Correspondence. And besides that, she is as virtuous a Woman as lives, and born of so good and loyal a Family, that if she had been so inclined, she would have scorned to have prostituted herself to such a profligate Person: But, on the contrary, (God is my Witness) I never had any such Thoughts of her, and do as verily believe, as there is a God in Heaven, I never had any Reason; she having always been the most indulgent, kind and loving Wife that ever Man had; and in my Conscience one of the best of Women; nay, I am so far from suspecting her Virtue, that she is the only Loss I regret on Earth, and can freely part with every Thing else here below without repining, which in all my Trouble I have owned before all People, and particularly Mr. *Mester*, Mr. *Ordinary*, and Mr. *Smithies* of *Cripplegate*, who can all testify those Tears and endeared Expressions that have passed between us, when any of them did me the Kindness to visit me in my Distress.

And I do from the Bottom of my Heart freely forgive the Witnesses that swore against me those Words I never spoke; for, as I shall answer at the great Tribunal, I said no other or more Words than these; *How now, Friend, have you had your Heat this Morning?* For all the Ill they have done me, give them Repentance, Good God! Even for these that have contributed to the shedding of my Blood, I pray thee shed thy Bowels of Mercy.

I do heartily thank those Noble and Honourable Persons, and all other my Friends, that have so charitably interposed with his Majesty on my Behalf (though it hath proved unsuccessful). I pray God nevertheless to return their kind Endeavours a thousand fold into their own Bosoms: Lord, return it to them and theirs.

Lord Jesus, receive my Soul: *Thy Will be done on Earth as it is in Heaven. Amen, Amen, Amen.*

ROBERT FRANCES.

N U M B E R V.

Proceedings against Richard Baxter, Clerk, for a seditious Libel, at Guildhall, before Lord Chief Justice Jeffreys, May 30, 1685. I Jac. II. (Taken by the Prisoner's Friends.)

The INDICTMENT.

Rex versus Baxter.*

Pasch. I Jacobi Secundi. Rot. 35.

London. ff. **Q**UOD Richardus Baxter nuper, de, &c. Clericus existens person' seditiosa et factiosa pravæ mentis, impiæ, inquietæ, turbulent' disposition' et conversation', ac machinans, practicans et intendens, quantum in ipso fuit, non solum pacem et communem tranquillitat' dict' Dom' Regis infra hoc regnum Angl' inquietare, molestare et perturbare, ac seditionem, discord' et malevolent' int' ligeos et fideles subdit' dict' Dom' Regis movere, p'curare et excitare, verum etiam sinceram, piam, beatam et pacificam Protestan' Religion' infra hoc regn' Angl' usitat', ac Prelat', Episcopos, aliosq; Clericos in Ecclesia Anglicana legibus hujus regni Angl' stabilit', ac Novum Testamentu' Dom' Salvator' nostri Jesu Christi in contempt' et vilipend' inducere et inutile reddere; quodq; p'd' R. B. ad nequissimas, nefandissimas et diabolicas intention' suas pred' perimplend', perficiend' et ad effect' redigend', 14 die Febr', anno regni dict' Dom' Jacobi Secundi, &c. primo, vi et armis, &c. apud, &c. falso, illicite, injuste, nequit', factiose, seditiose et irreligiose fecit, composuit, scripsit, impressit et publicavit, et fieri, componi, scribi, imprimi et publicari causavit, quendam falsum, seditiosum, libellosum, factiosum et irreligiosum librum, intitulat' *A Paraphrase on the Testament, with Notes doctrinal and practical*: In quo quidem falso, seditioso, libelloso, factioso et irreligioso libro int' al' content' fuer' hæ falsæ, factiosæ, malitiosæ, scandalosæ, et seditiosæ sententiæ de eisdem Prelat', Episcopis, aliisq; Clericis Ecclesiæ hujus regn' in his Anglican' verbis sequen', videl't, *Note, Are not these Preachers and Prelates (Ep'os aliosq; Clericos præd' Ecclesiæ hujus regn' Angl' innuend') then the least and basest that preach and tread down Christian Love of all that dissent from any of their Presumptions, and so preach down not the least but the great Command?* Et ult' idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in p'd' falso, scandaloso, seditioso et irreligioso libro, int' al' content' fuer' hæ al' falsæ, libellosæ, scandalosæ, seditiosæ et irreligiosæ Anglican' sentent' sequen', videl't, *Note,*

*It is Folly to doubt whether there be Devils, while Devils incarnate live here amongst us, (Clericos pred' hujus regni Angl' innuendo) What else but Devils sure could make ceremonious Hypocrites (Clericos pred' innuendo) consult with Politick Royalists (ligeos et fidel' subdit' dict' Dom' Regis hujus regni Angl' innuendo) to destroy the Son of God for saving Men's Health and Lives by Miracle? Quere, Whether if this withered Hand had been their own, they would have plotted to kill him, that would have cured them by a Miracle, as a Sabbath-Breaker? And whether their Successors (Prelat', Episcopos, aliosq; Clericos Ecclesiæ hujus regni Angl' qui deinceps fuerint innuendo) would silence and imprison godly Ministers (seipsum R. B. et al' factiosas et seditiosas p'son' infra hoc regn' Angl' contra leges hujus regni ac Liturg' Ecclesiæ infra hoc reg' stabilit' p'dican' innuendo) if they could cure them of all their Sickneses, and help them to Preferment, and give them Money to feed their Lusts? Et ult' idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falso, libelloso, scandaloso et irreligioso libro, inter al' content' fuer' hæ al' falsæ, libellosæ, scandalosæ, seditiosæ et irreligiosæ Anglican' sentent' sequen' de et concernen' Ep'is p'd' et Ministris Justitiæ hujus regn' Angl', videl't, *Note, Men that preach in Christ's Name (seipsum R. B. et al' factiosas et seditiosas p'son' infra hoc regn' Angl' contra leges hujus regn' Angl' et Liturg' Ecclesiæ hujus regn' per legem stabilit' pred' innuendo) therefore are not to be silenced, though faulty, if they (pred' malæ dispo'it' factiosas et seditiosas person' pred' iterum innuendo) do more Good than Harm; dreadful then is the Case of them (Episcopos et Ministros Justitiæ infra hoc regn' Angl' innuendo) that silence Christ's faithful Ministers, (seipsum R. B. et al' seditiosas et factiosas p'son' pred' innuendo.) Et ulterius idem Attorn' dict' Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod ad excitand' popul' hujus regn' Angl' in illicit' Conventicul' convenire, et defamand' Justit' hujus regn' in puniendo illicit' Conventicul', in al' loco in pred' falso, scandaloso, seditioso et irreligioso libro, int' al' content' fuer' hæ al' falsæ, scandalosæ, libellosæ, seditiosæ et irreligiosæ Anglican' sentent' sequen', videl't, (1.) *Note, It was well that they considered what might be said against them, which now most Christians do not in their Disputes.* (2.) *These Persecutors,***

* Tremain's Pleas of the Crown, p. 45.

and the Romans, had some Charity and Consideration, in that they were restrained by the Fear of the People, and did not accuse and fine them as for Routs, Riots and Seditions. (3.) They that deny necessary Premises are not to be disputed with. Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falso, scandaloso, seditioso et irreligioso libro, int' al' content' fuer' hæ al' falsæ, libellosæ, scandalosæ, seditiosæ, et irreligiosæ Anglican' sententiæ sequent' de et concernen' Episcopis et al' Clericis hujus regn' Angl', videl't, (3.) *Let not these proud Hypocrites (Episcopos et al' Clericos Ecclesiæ hujus regn' Angl' innuendo) deceive you, (subdit' dicti Dom' Regis hujus regn' Angl' innuendo) who by their long Liturgies and Ceremonies, (Liturg' et Ceremon' Ecclesiæ hujus regn' Angl' innuendo) and Claim of Superiority, do but cloak their Worldliness, Pride and Oppression, and are religious to their greater Damnation.* Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falso, scandaloso, seditioso et irreligioso libro, int' al' content' fuer' hæ al' falsæ, libellosæ, scandalosæ, seditiosæ et irreligiosæ sentent' Anglican' sequent' de et concernen' Clericis hujus regn' Angl', (2.) Note, *Priests now are many, (Clericos Ecclesiæ hujus regn' Angl' innuendo) but Labourers few; what Men are they that have, and do silence the faithfullest Labourers, (seipsum R. B. et al' facti'as et sediti'as p'son' pred' innuendo) suspecting that they are not for their Interest? (interesse Clericor' Ecclesiæ hujus regn' Angl' innuendo.)* Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falso, scandaloso, seditioso et irreligioso libro, inter al' content' fuerunt hæ al' falsæ, libellosæ, scandalosæ, seditiosæ, et irreligiosæ sentent' sequen' de et concernen' Clericis hujus regn' Angl', videl't, (3.) Note, *Christ's Ministers use God's Ordinances to save Men, and the Devil's Clergy (Clericos Ecclesiæ hujus regn' Angl' innuendo) use them for Snares, Mischief and Murder.* (2.) They (Clericos Ecclesiæ hujus regn' Angl' innuendo) will not let the People (subdit' hujus regn' Angl' innuendo) be Neuters between God and the Devil, but force them (subdit' hujus regn' Angl' innuendo) to be informing Persecutors. Et ulterius idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege dat Cur' hic intelligi et informari, quod in al' loco in pred' falso, scandaloso, seditioso et irreligioso libro, int' al' content' fuerunt hæ aliæ falsæ, libellosæ, scandalosæ, seditiosæ et irreligiosæ sententiæ Anglicanæ sequen' de et concernen' legibus hujus regn' Angl' contra illicit' Conventicul', et ad excitand' popul' convenire in illicit' Conventicul', videl't, (2.) Note, *To be Dissenters and Disputants against Errors and tyrannical Impositions upon Conscience (leges et statut' hujus regn' Angl' contra person' factios' et Liturg' Eccl' hujus regn' Angl' adversar', Anglice, against Dissenters, edit' et provis' innuendo) is no Fault, but a great Duty.* In magnam Dei omnipotent' displicent', in contempt' leg' hujus regn' Angl' manifest', in malum et perniciosissim' exemplum omniu' al' in tali casu delinquen', ac contra pacem

dicti Dom' Regis nunc, coron' et dignitat' suas, &c. Unde idem Attorn' dicti Dom' Regis nunc general' pro eodem Dom' Rege pet' advisament' Cur' hic in premiis' et debit' legis process' versus ipsum prefat' R. B. in hac parte fieri ad respond' dicto Dom' Regi de et in premiis', &c.

ON the 28th of February, -1684-5, Mr. Baxter was committed to the King's-Bench Prison by the Lord Chief Justice Jeffreys's Warrant, for his *Paraphrase on the New Testament*, printed a little before, which was called a scandalous and seditious Book against the Government. On the 6th of May, which was the first Day of Term, he appeared in *Westminster-Hall*, and an Information was ordered to be drawn up against him. May 14th, he pleaded *Not Guilty* to the Information. May 15th, he being much indisposed, moved by his Council, That he might have farther Time given him for his Trial; but it was denied him; and Jeffreys cries out in a Passion, "I will not give him a Minute's Time more to save his Life. We have had (says he) to do with other Sort of Persons, but now we have a Saint to deal with; and I know how to deal with Saints as well as Sinners. Yonder (says he) stands Oates in the Pillory, (as he actually did at that very Time in the New Palace-Yard,) and he says he suffers for the Truth, and so says Baxter; but if Baxter did but stand on the other Side of the Pillory with him, I would say, two of the greatest Rogues and Rascals in the Kingdom stood there." On May 30th, in the Afternoon, he was brought to his Trial before the Lord Chief Justice Jeffreys at *Guildhall*. Sir Henry Ashburst, who could not forsake his own and his Father's Friends, stood by him all the while. Mr. Baxter came first into Court, and with all the Marks of Serenity and Composure, waited for the Coming of the Lord Chief Justice, who appeared quickly after with great Indignation in his Face. He no sooner sat down than a short Cause was called and tried; after which the Clerk began to read the Title of another Cause: *You Blockhead you, (says Jeffreys) the next Cause is between Richard Baxter and the King; upon which Mr. Baxter's Cause was called.* The Passages mentioned in the Information, were his *Paraphrase on Matth. v. 19. Mark ix. 39. Mark xi. 31. Mark xii. 38, 39, 40. Luke x. 2. John xi. 57. and Acts xv. 2.* These Passages were picked out by Sir Roger L'Esstrange, and some of his Companions: And a certain noted Clergyman (who shall be nameless) put into the Hands of his Enemies some Accusations out of *Rom. xiii. &c.* as against the King, to touch his Life, but no Use was made of them. The great Charge was, "That in these several Passages he reflected on the Prelates of the Church of England, and so was guilty of Sedition, &c." The King's Council opened the Information at large with its Aggravations. Mr. Wallop, Mr. Williams, Mr. Rotheram, Mr. Atwood, and Mr. Phipps were Mr. Baxter's Council, and had been see'd by Sir Henry Ashburst.

* Mr. Wallop said, "That he conceived, the Matter depending being a Point of Doctrine, it ought to be referred to the Bishop his

* We could never find (though great Inquiry has been made among the Dissenters) that this Trial was ever taken in Short-Hand, which is a great Pity, because it must have been very curious; so have inserted this short Account, which shews the Temper of the Chief Justice, and the cruel Usage of the Prisoner, taken from *Calamy's Life of Baxter*.

“ Ordinary; but if not, he humbly conceived
 “ the Doctrine was innocent and justifiable,
 “ setting aside the *Innuendos*, for which there was
 “ no Colour; there being no Antecedent to refer
 “ them to, (that is, no Bishop or Clergy of the
 “ Church of *England* named.) He said the Book
 “ accused, *i. e.* the *Comment on the New Testament*,
 “ contained many eternal Truths: But they who
 “ drew the Information, were the Libellers, in
 “ applying to the Prelates of the Church of
 “ *England* those severe Things which were written
 “ concerning some Prelates, who deserved the
 “ Character he gave. My Lord, (says he) I
 “ humbly conceive the Bishops Mr. *Baxter* speaks
 “ of, as your Lordship if you have read Church-
 “ History must confess, were the Plagues of the
 “ Church and the World.”—“ Mr. *Wallop*, (says
 “ the Lord Chief Justice) I observe you are in
 “ all these dirty Causes; and were it not for you
 “ Gentlemen of the Long Robe, who should have
 “ more Wit and Honesty than to support and
 “ hold up these factious Knaves by the Chin,
 “ we should not be at the Pass we are at.”—“ My
 “ Lord, (says Mr. *Wallop*) I humbly conceive,
 “ that the Passages accused are natural Deductions
 “ from the Text.”—“ You humbly conceive,
 “ (says *Jeffreys*) and I humbly conceive; swear
 “ him, swear him.”—“ My Lord, (saith he)
 “ under Favour, I am Council for the Defendant;
 “ and if I understand either *Latin* or *English*,
 “ the Information now brought against Mr.
 “ *Baxter* upon so slight a Ground, is a greater
 “ Reflection upon the Church of *England*, than
 “ any thing contained in the Book he is accused
 “ for.” Says *Jeffreys* to him, “ Sometimes you
 “ humbly conceive, and sometimes you are very
 “ positive: You talk of your Skill in Church-
 “ History, and of your understanding *Latin*
 “ and *English*; I think I understand something
 “ of them as well as you; but in short must
 “ tell you, that if you do not understand your
 “ Duty better, I shall teach it you.” Upon
 “ which Mr. *Wallop* sat down.

Mr. *Rotheram* urged, “ That if Mr. *Baxter*’s
 “ Book had sharp Reflections upon the Church of
 “ *Rome* by Name, but spake well of the Prelates of
 “ the Church of *England*, it was to be presumed,
 “ that the sharp Reflections were intended only
 “ against the Prelates of the Church of *Rome*.”
 The Lord Chief Justice said, “ *Baxter* was an
 “ Enemy to the Name and Thing, the Office
 “ and Persons of Bishops.”—“ *Rotheram* added,
 “ That Mr. *Baxter* frequently attended Divine
 “ Service, went to the Sacrament, and persuaded
 “ others to do so too, as was certainly and
 “ publickly known; and had, in the very Book
 “ so charged, spoken very moderately and
 “ honourably of the Bishops of the Church of
 “ *England*.”—“ Mr. *Baxter* added, “ My Lord,
 “ I have been so moderate with respect to the
 “ Church of *England*, that I have incurred
 “ the Censure of many of the Dissenters upon
 “ that Account.”—“ *Baxter* for Bishops!
 “ (saith *Jeffreys*) that’s a merry Conceit indeed!
 “ turn to it, turn to it.”—Upon this *Rotheram*
 “ turned to a Place, where ’tis said, *That great*
 “ *Respect is due to those truly called to be Bishops among*
 “ *us*; or to that Purpose.—“ Ay, (says *Jeffreys*)
 “ this is your *Presbyterian* Cant, *Truly called to*
 “ *be Bishops*; that is himself, and such Rascals
 “ called to be Bishops of *Kidderminster*, and other
 “ such like Places; Bishops set apart by such

“ factious, snivelling *Presbyterians* as himself; a
 “ *Kidderminster* Bishop he means, according to
 “ the Saying of a late learned Author; *And every*
 “ *Parish shall maintain a Tythe-Pig Metropolitan.*”
 Mr. *Baxter* beginning to speak again, saith *Jeffreys*
 “ to him, “ *Richard, Richard*, dost thou think we’ll
 “ hear thee poison the Court? *Richard*, thou art
 “ an old Fellow, an old Knave; thou hast
 “ written Books enough to load a Cart; every
 “ one is as full of Seditious (I might say Treason)
 “ as an Egg is full of Meat: Had’st thou been
 “ whipt out of thy writing Trade forty Years ago,
 “ it had been happy. Thou pretendest to be a
 “ Preacher of the Gospel of Peace, and thou hast
 “ one Foot in the Grave; ’tis Time for thee to
 “ begin to think what Account thou intendest to
 “ give: But leave thee to thyself, and I see thou
 “ wilt go on as thou hast began; but by the Grace
 “ of God I’ll look after thee. I know thou hast
 “ a mighty Party, and I see a great many of the
 “ Brotherhood in Corners, waiting to see what
 “ will become of their mighty *Don*; and a Doctor
 “ of the Party (*looking to Doctor Bates*) at your
 “ Elbow; but by the Grace of Almighty God,
 “ I will crush you all.”

Mr. *Rotheram* sitting down, Mr. *Atwood* began
 “ to shew, That not one of the Passages mentioned
 “ in the Information ought to be strained to that
 “ Sense, which was put upon them by the *Innuendos*,
 “ they being more natural when taken in a milder
 “ Sense; nor could any one of them be applied to
 “ the Prelates of the Church of *England*, without a
 “ very forced Construction: To evidence this, he
 “ would have read some of the Text; but *Jeffreys*
 “ cried out, “ You sha’n’t draw me into a Con-
 “ venticle with your Annotations, nor your sni-
 “ velling Parson neither.”—

“ My Lord, (says Mr. *Atwood*) I conceive
 “ this to be expressly within *Roswell*’s Case, lately
 “ before your Lordship.” (*Vide Vol. 3. p. 1053.*)
 —“ You conceive, (saith *Jeffreys*) you con-
 “ ceive amiss; it is not.”—“ My Lord,
 “ (saith *Atwood*) that I may use the best Au-
 “ thority, permit me to repeat your Lordship’s
 “ own Words in that Case.”—“ No, you
 “ sha’n’t, (says he) you need not speak, for you
 “ are an Author already, though you speak and
 “ write impertinently.”—“ Says *Atwood*, “ I
 “ cannot help that, my Lord, if my Talent be
 “ no better; but it is my Duty to do my best
 “ for my Client.”—*Jeffreys* thereupon went on,
 “ inveighing against what *Atwood* had published;
 “ and *Atwood* justified it to be in Defence of the
 “ *English* Constitution, declaring that he never
 “ disowned any thing he had written. *Jeffreys*
 “ several Times ordered him to sit down, but he
 “ still went on. “ My Lord, (says he) I have
 “ Matters of Law to offer for my Client;”
 “ and he proceeded to cite several Cases, wherein
 “ it had been adjudged, that Words ought to be
 “ taken in the milder Sense, and not in the strained,
 “ by *Innuendos*. “ Well, (says *Jeffreys* when he
 “ had done) you have had your Say.”

Mr. *Williams* and Mr. *Phipps* said nothing;
 “ for they saw it was to no Purpose. At length
 “ says Mr. *Baxter* himself, “ My Lord, I think I
 “ can clearly answer all that is laid to my Charge,
 “ and I shall do it briefly; the Sum is contained
 “ in these few Papers, to which I shall add a
 “ little by Testimony.”—“ But he would not
 “ hear a Word: At length the Chief Justice summed
 “ up the Matter in a long and fulsome Harangue.

“ ’Tis notoriously known (says he) there has
 “ been a Design to ruin the King and Nation;
 “ the old Game has been renewed, and this has
 “ been the main Incendiary: He is as modest
 “ now as can be; but Time was, when no Man
 “ was so ready at; *Bind your Kings in Chains, and*
 “ *your Nobles in Fetters of Iron; and, To your*
 “ *Tents, O Israel! Gentlemen, for God’s sake,*
 “ don’t let us be gulled twice in an Age, &c.” —
 And when he concluded; he told the Jury,
 “ That if they in their Conscience believed he
 “ meant the Bishops and Clergy of the Church
 “ of England, in the Passages which the Infor-
 “ mation referred to, they must find him Guilty;
 “ and he could mean no Men else; if not, they
 “ must find him *Not Guilty.*” —

When he had done; says Mr. *Baxter* to him;
 “ Does your Lordship think any Jury will pré-
 “ tend to pass a Verdict upon me upon such a
 “ Trial?” — “ I’ll warrant you, Mr. *Baxter*,
 “ (says he) don’t you trouble yourself about
 “ that.”

The Jury immediately laid their Heads together
 at the Bar, and found him *Guilty*.

As Mr. *Baxter* was going from the Bar, he
 told the Lord Chief Justice, who had so loaded
 him with Reproaches, and yet continued them,
 That a Predecessor of his (meaning Sir *Matthew*
Hale) had other Thoughts of him. Upon which
 the Judge replied, “ *That there was not an honest*
 “ *Man in England, but what took him for a great*
 “ *Knave.*”

He had subpoena’d several Clergymen, who
 had appeared in Court, but were of no Use to
 him, through the Violence of the Chief Justice.

The Trial being over; Sir *Henry Ashurst* led
 Mr. *Baxter* through the Crowd, (I mention it to
 his Honour, says Bishop *Kennet*) and conveyed
 him away in his Coach. On *June 29* following,
 he had Judgment given against him; he was
 fined five hundred Marks; to lie in Prison till
 he paid it, and be bound to his good Beha-
 viour for seven Years.

Mr. *Baxter* afterwards obtained the King’s
 Pardon, by the Mediation of the Lord *Powis*:
 His Fine was remitted; and on *Wednesday, No-*
venber 24, Sir *Samuel Astry* sent his Warrant to
 the Keeper of the *King’s-Bench* Prison to discharge
 him; but he gave Sureties for his good Be-
 haviour; his Majesty declaring (for his Satis-
 faction) that it should not in him be interpreted
 a Breach of the good Behaviour for him to reside
 in *London*, which was not allowable according to
 the *Oxford Act*: And this was entered upon his
 Bail-Bond. Notwithstanding this, he continued
 some Time after in the Rules; and on *February*
28 following, removed to a House he took in
Charter-House-Yard, where he preached to a
 separate Congregation without Interruption as
 long as he lived; his Death happening after the
 Revolution, viz. *December 8, 1691*.

The Defendant was found Guilty on this Infor-
mation, and after Exceptions taken in Arrest of
Judgment and over-ruled, the Court gave
Judgment, and fined him 500 l. and ordered
him to give Security for his good Behaviour
for Seven Years. — The Case is reported,
3 Mod. 68. — Tremaine, p. 47.



N U M B E R VI.

Proceedings against Mr. CRONE, May 19, 1690.

[This Case of *Crone* is taken from Lord *Clarendon*’s Diary 16⁸⁹/₉₀ and 1690,
 printed at the End of his Letters, published 1763.]

“ **M**ARCH 6, 16⁸⁹/₉₀. *Thursday*. One Mrs.
 “ *Clifford*’s House was searched last Night,
 “ about Midnight, for one *Crone*; who, they
 “ say, came lately out of *France*. He was
 “ betrayed by one *Fowler*, who came over with
 “ him. But *Crone* not being found, the Mes-
 “ senger seized Mrs. *Clifford*, and carried her
 “ away this Morning to his House. About
 “ Noon, *Crone* was taken upon the *Exchange*,
 “ and brought before my Lord *Shrewsbury*,
 “ who committed him close Prisoner to the
 “ *Tower* for High Treason, in levying War
 “ against their Majesties.

“ *May 19, 1690. Monday. Crone*’s Trial, which
 “ had been put off once before; and it being
 “ alledged, that one of the Witnesses was not to
 “ be found, it was put off till *Friday* Fortnight.

“ *June 6. Friday. Crone* was brought to
 “ his Trial; in which were many remarkable

“ Passages. The Judges were very severe, espe-
 “ cially the Chief Baron. The Jury sat up all
 “ Night.

“ *June 7. Saturday*. About Noon the Jury
 “ brought in their Verdict, that *Crone* was
 “ Guilty; though one of them declared, he was
 “ not satisfied that the Evidence spoke Truth;
 “ and he urged Sir *Robert Atkins*’s Book in De-
 “ fence of Lord *Russel*’s Innocency; (See *Vol. 3.*
 “ *p. 537.*) but it signified nothing. The Pri-
 “ soner being then asked, why Sentence should
 “ not be awarded against him, he said, There
 “ was an Error in the Indictment before the
 “ Grand Jury; that the Bill was indorsed *Billa*
 “ *Verra* instead of *Vera*. The King’s Council
 “ not being there, it was put off till Five in
 “ the Afternoon; and then the Prisoner insisted
 “ to be heard; the Court appointed to hear it
 “ argued on *Thursday* next, and assigned Council

“ to

“ to the Prifoner: In the mean time Sentence
“ was refpited.

“ June 8. *Whitfunday*. In the Morning Mrs.
“ Clifford was with me. She told me, ſhe had
“ been to fee Crone; that he was in a Rage to
“ think of Death; that he ſaid, he was too young
“ to be a Martyr; and that ſhe did believe,
“ rather than die, he would tell all he knew.

“ June 9. *Monday*. Mrs. Clifford told me,
“ ſhe had been again with Crone; that he was in
“ a better Humour, and talked courageouſly.

“ June 12. *Thursday*. In the Morning Crone’s
“ Plea was argued and over-ruled. The three
“ Chief Judges and *Eyres* were in Court.

“ June 19. *Thursday*. In the Morning Lord
“ Nottingham went to Crone in *Newgate*, upon a
“ Letter (as was ſaid) he had from him laſt
“ Night. My Lord (as it is given out) urged
“ him much to confeſs, that he might deſerve
“ his Life; but the Fellow ſaid, he had told all
“ at his Trial, and that he knew nothing more.
“ Upon which his Lordſhip ſaid, he doubted he
“ ſhould ſee him no more, for he would certainly
“ die To-morrow, if he did not confeſs; but he
“ would acquaint the Queen with what he had
“ ſaid. In the Evening, Lord *Monmouth* and
“ Lord *Lincoln* were at *Newgate*, preſſing Crone
“ to make a full Confefſion, making him many
“ fair Promiſes, in caſe he would be ingenuous:
“ But he ſtill ſaid, he could ſay nothing. At
“ Ten at Night Mr. *Finch* brought him a
“ Reprieve till *Wednesday* next.

“ June 25. *Wednesday*. Crone was this Day
“ to have been executed; the Sledge was at
“ *Newgate*, and all the People thronged together,
“ as uſual upon thoſe Occaſions; but he was
“ again reprieved, in Hopes he would deſerve
“ his Life by the Confefſion he might make.”

[Thus far from Lord *Clarendon*.]

The next Day, *June 26*, he was ſent for, as
appears by the following Warrant*:

“ Theſe are, in his Maſteſty’s Name, to require
“ you to bring Mr. *Matthew Crone*, a
“ Prifoner in your Cuſtody, attainted of
“ High Treafon, to my Office in *Whitehall*
“ this Afternoon; for which this ſhall be
“ your Warrant. Given at the Court at
“ *Whitehall*, the 26th Day of *June*, 1690.

To Major *Richardſon*,
Keeper of *Newgate*.
NOTTINGHAM.”

By the following Liſt of Perſons, excepted out
of the Act of Indemnity, which paſſed 1690,
one would think this Mr. *Crone* was a Perſon of
ſome Conſequence. Their Names were,

<i>William</i> , Marquis of <i>Powis</i> .	<i>Theo.</i> Earl of <i>Huntingdon</i> .
<i>Robert</i> , Earl of <i>Sunderland</i> .	<i>John</i> , Lord <i>Melford</i> .
<i>Roger</i> , Earl of <i>Caſtlehaven</i> .	<i>Thomas</i> , Lord <i>Howard</i> .
<i>Nathaniel</i> , Lord Biſhop of <i>Durham</i> .	<i>Thomas</i> , Lord Biſhop of <i>St.</i> <i>David’s</i> .
<i>Henry</i> , Lord <i>Dover</i> .	<i>William</i> <i>Molineux</i> .
Sir <i>Edward</i> <i>Hales</i> .	Sir <i>Edward</i> <i>Herbert</i> .
Sir <i>Francis</i> <i>Wythens</i> .	Sir <i>Richard</i> <i>Holloway</i> .
Sir <i>Edward</i> <i>Lutwych</i> .	Sir <i>Richard</i> <i>Heath</i> .
Sir <i>Thomas</i> <i>Jenner</i> .	Sir <i>Roger</i> <i>L’Eſtrange</i> .
Sir <i>Nicholas</i> <i>Eutler</i> .	<i>Edward</i> <i>Petre</i> .

Thomas *Tildeſley*.
Rowland *Tempeſt*.
Obadiab *Walker*.
Richard *Graham*.
Robert *Lundy*.

— *Townley*, commonly
called Col. *Townley*.
Edward *Morgan*.
Robert *Brent*.
Philip *Burton*.
MATTHEW CRONE.

How long he lay in *Newgate* does not appear;
but that he was a conſiderable Time in Cuſtody,
appears by Mr. *Crone*’s Letter to Major *Richard-*
ſon, though without Date, and ſpelt as wrote †.

To Major *Richardſon*.

“ SIR,

“ IF you pleaſe, I would be glad you would
“ let me have a Chamber in the Preſs-Yard,
“ not that I would expect any more Libertie
“ theire then I have hear. Only I am deſireous
“ to be in the hearing of People, for you cannot
“ be unſcible how troubleſom itt is to your
“ Serv^{ts}, nay ſometimes to yourſelfe, when you
“ are pleaſed to chide my Mother for ſtaying ſo
“ late; but beleive me, Sir, ſhe cannot help it,
“ for none can heare us, and ’tis unſerting when
“ any body comes to let her out, which ſome-
“ tymes obleidges her to neglect my Buſineſs
“ when it ſhould be lookt after, therefore I know
“ ’tis the ſame Thing to you whether I lye theire
“ or heare. You are ſcible how lonnge I have
“ laine under Uncertaintys, and I can ſee no
“ Alteration, therefore am aſhamed to requeſt
“ or petition for any more Liberty then I have
“ hitherto had, though God knows I much want
“ it, as you may beleive, haveing been very
“ neare three quarters of a Yeare cloſe Prifoner
“ heare and in the *Tower*, and with my Con-
“ finem^t as could Comfort as ever poore
“ Criminall receivd. Pray, Sir, excuſe me for
“ this; ſince I can never have the Hon^r of ſee-
“ ing you. I deſire my humble Service may be
“ given to your good Lady and the reaſt of your
“ Family; and that if it ſtands with your Like-
“ ing, I may be removed; if not, aſſure your-
“ ſelfe I ſhall at all Times willingly comply with
“ that which may ſeem moſt agreeable to you,
“ and am, Sir,

“ Your reale Friend and humble Servantt,

“ M. CRONE.”

Thursday Night.

The famous, or rather infamous, Mr. *Fuller*,
in his Pamphlet, intituled, *A brief Discovery of*
the True Mother of the pretended Prince of Wales,
p. 24, ſays, (if he is to be credited) “ Mr. *Crone*,
“ with myſelf, was ſent to *England* with ſeveral
“ Commiſſions and Letters from King *James*,
“ for raiſing Men.” — *Page 28*, “ After my
“ laſt Return from *France* with Mr. *Crone*, I
“ informed his Maſteſty of all I knew: Mr.
“ *Crone* was ſeized, and ſent Prifoner to the
“ *Tower*.” — *Page 29*, “ They (the *Jacobites*)
“ finding their whole Deſign unravelled, and
“ that I had diſcovered all I knew, and Mr.
“ *Crone* ſafe, and to be ſuddenly tried, which
“ might make him confeſs, they (the *Jacobites*)
“ got me poiſoned, in Hopes to have prevented
“ *Crone*’s Trial; but it pleaſed Almighty God to
“ reſtore me to my Health after ten Weeks

* From the Collection of Papers of Major *Richardſon*, many Years Keeper of *Newgate*, in the Hands of the Editor.

† From the original Letter among Major *Richardſon*’s Papers.

“ Sickness. I was able to come to the *Old-Bailey*, where Mr. *Crone* was tried and condemned for High Treason. He had several Reprieves from Time to Time, on his Promise of making a full Confession; but as he was lingering it out, about six Months after his Conviction, I received a Letter from the Earl of *Melford*, King *James’s* Secretary, in which I was promised King *James’s* Pardon, and all the Favour I could desire from him and the Court of *France*, and 500*l.* if I would return to *France*, and recant what I had done. I carried this Letter to King *William*, who sent me to Lord Chief Justice *Holt* for his Advice; but his Lordship was of Opinion, it was all a Trick to invalidate my Evidence, they being apprehensive of Mr. *Crone’s* Confessions; which they must know would be so agreeable to my Informations, that the Heads of King *James’s* Party had been entirely at King *William’s* Mercy: And this Matter highly concerned the *French* Court; for, had *Crone* been just to him that gave him his Life, there might have been

“ but small Encouragement from *England* to the *French*, and consequently no Plotting now. They of King *James’s* Party made it their Interest to have *Crone* hanged, and stop his Mouth; and that, as I am well informed, occasioned his making almost a full Discovery: Though he went for *France*, as soon as he was let out of *Newgate*, being invited back with great Promises. I must thank him for his Justice to me in his last and most authentic Confession: He affirms on Oath, That all my Information was true. For the Confirmation of this, I appeal to any Member of Parliament that heard Mr. *Crone’s* or Lord *Preston’s* Confessions read before that honourable House. After this, it may seem strange to some, how the House came to be so angry with me. I beg Leave to inform them, That the Jacobites, by Mr. *Crone’s* going off, knew they had partly secured themselves from the just Power of the Law.”

See the Trial of this *William Fuller* for a Cheat and Impostor, *Vol. 5. p. 441.*



N U M B E R VII.

CROSBY'S Case.

Rex versus Crosby, alias Philips. B. R.*

CROSBY was indicted for High Treason; and at the Trial at Bar he excepted against the Evidence of Mr. *Aaron Smith*, because he had been set in the Pillory upon a Judgment given against him in this Court, upon an Information, 34 *Car. 2.* the Record of which he produced. Mr. Solicitor-General *Trevor* and Mr. *Cowper*, on Behalf of *Aaron Smith*, agreed, That the Infamy was always a Consequence of the Guilt, and not of the Punishment; and therefore (by them) if an innocent Man hath an infamous Judgment given against him, for a Crime that does not deserve such Judgment, this will not render the Party infamous. Then for Application, they said, that the Crime of which Mr. *Aaron Smith* was accused, did not deserve such Judgment; and therefore shall not take away his Testimony. And

Sir *Samuel Eyre*, Justice, seemed to be of that Opinion.

But *Holt*, Chief Justice, gave no Opinion as to this Point, saying, that he could not impeach the Record; but he was of Opinion, that the general Act of Pardon, 2 *Wil.* and *Mar.* gave Mr. *Smith* a new Credit, but did not work by way of Restoration, to restore him to his old Credit: As, if a Person be attainted of Felony, he is now incapable of making a Purchase to hold, or to give Evidence; but if the King pardons him, he is now become a new Creature, and may do both; but he is not restored to inherit to those Persons, to whom he was inhe-

ritable before: And the Difference is, between a Civil Disability, which the Pardon cannot cure, (*Co. Lit. 234.* Sir *Ar. Ingram’s* Case) and a Criminal Disability, which the Pardon may take away. And for these Reasons the Testimony of Mr. *Aaron Smith* was admitted.

But the principal Point of Treason charged upon Mr. *Crosby* being the writing of certain treasonable Papers, which the King’s Council endeavoured to prove by Comparison of Hands, having no other Evidence; the Prisoner, *Crosby*, produced the Copy of the Act of Parliament for the Reversal of the Attainder of *Algernon Sidney*, Esq; (*Vide Vol. 8. p. 472.*) in which it is declared, that the Comparison of Hands is not legal Evidence. Upon which the Jury found the Prisoner Not Guilty. — Mr. *J. Foster*, in his Reports of Crown Cases, *p. 198.* says, “ In Mr. *Sidney’s* Case, it was said, *Scribere est agere.* This is undoubtedly true under proper Limitations, but it was not applicable to his Case. Writing being a deliberate Act, and capable of satisfactory Proof, certainly may, under some Circumstances with Publication, be an Overt-Act of Treason. And I freely admit, that had the Papers found in Mr. *Sidney’s* Closet been plainly relative to the other treasonable Practices charged in the Indictment, they might have been read in Evidence against him, though not published. — But Papers not capable of such Connection, whilst they remain in the Hands of the Author unpublished, as Mr. *Sidney’s* did, will not make a Man a Traitor.”

* It is great Pity this Trial (if taken at large) could not be procured, for the Arguments of the Court and Council must have been curious; so have inserted this short Account from Lord *Raymond’s* Reports, *Vol. 1. p. 39.* See also *Salkeld* 689.

N U M B E R VIII.

The Proceedings against the three Nonjuring Clergymen, Mr. Collier, Mr. Cook, and Mr. Snatt, for publickly absolving Sir William Perkins and Sir John Friend at Tyburn, April 3, 1696.

THE Editor of the *State Trials*, in Vol. 4. p. 660, says no more than this:

“*Jeremy Collier*, a Nonjuring Minister, publickly absolved them at the Gallows.”

This Affair made a great Noise at that Time. *Bishop Burnet*, Vol. 2. p. 174, says, “A very unusual Instance of the Boldness of the Jacobites appeared upon that Occasion: These two had not changed their Religion, but still called themselves Protestants; so three of the Nonjuring Clergymen waited on them to *Tyburn*; two of them had been off with *Friend*, and one of them with *Perkins*; and all three, at the Place of Execution, joined to give them public Absolution, with an Imposition of Hands, in the View of all the People: A Strain of Impudence, that was as new as it was wicked! since these Persons died; owning the ill Designs they had been engaged in, and expressing no Sort of Repentance for them. So these Clergymen, in this solemn Absolution, made an open Declaration of their allowing and justifying these Persons in all they had been concerned in: Two of them were taken up, and censured for this in the *King’s-Bench*, the third made his Escape.” The Account published at that Time by Permission of the Sheriffs, is as follows:

An Account of what passed at the Execution of Sir William Perkins, and Sir John Friend, at Tyburn, on Friday, April 3, 1696.

THE Prisoners being drawn in a Sledge from *Newgate* to the Place of Execution, were permitted to have the Assistance of three Nonjuring Ministers of their own chusing, *viz.* *Mr. Collier*, *Mr. Cook*, and *Mr. Snatt*.

Sir William Perkins came first up into the Cart, and had some private Discourse with one of the Ministers.

Sir William Perkins. When must I deliver my Paper?

Minister. When all is over.

Then the Executioner went to put the Rope about *Sir William Perkins’s* Neck.

Sir William Perkins. May not I pray before it be put on?

Executioner. Yes, Sir, if you please.

Then *Sir John Friend* came into the Cart; and the three Ministers and Prisoners all kneeling down, *Mr. Cook* read some Prayers out of the Morning-Prayer, and the Office for Visitation of the Sick: And then the Ministers standing up, asked them, whether they were in Charity with all

the World? And if they had offended any, whether they did ask them Forgiveness? And whether they did desire the Absolution of the Church? Upon their Answer, That they did; they all laid their Hands upon their Heads, and *Mr. Cook* pronounced the Absolution, which ended in these Words: *And by his Authority committed to me, I absolve thee from all thy Sins, in the Name of the Father, &c.*

Sir William Perkins. When are we to deliver our Papers?

Minister. Now, if you please.

Mr. Sheriff. Take what Time you please, Sir, for your Devotions, we will wait your Leisure.

Then the two Prisoners continued in their private Prayers, *Sir William Perkins* making use of the Prayers in the *Whole Duty of Man*, and *Sir John Friend* read some Prayer out of a written Paper; and afterwards, *Sir William Perkins* delivered to the Sheriffs a Paper.

Mr. Sheriff. If you require any more Time, you shall have it. You say this is your Paper?

Sir William Perkins. Yes, Sir; and I desire you to dispose of it as you think fit.

Mr. Sheriff. Have you any thing to say, by way of Confession or Denial, of the Fact for which ye come hither to suffer?

Sir William Perkins. What I think fit to say, is contained in that Paper.

Mr. Sheriff. If you desire any more Time, you may have it; you shall have your Liberty:

Then *Sir John Friend* held a Paper up.

Mr. Sheriff. What do you say, *Sir John*?

Sir John Friend. Sir, here is a Paper, I desire it may be printed; for I came here to die, and not to make a Speech; but to die, and to resign myself to God; and I desire it may be printed, for all People to see it. (*For both their Speeches, see Vol. 4. p. 659, 660.*) And I have no more to say, but to beg of God to receive my Soul; I resign my Soul to him.

Mr. Sheriff. The Lord have Mercy upon you.

Sir John Friend. I hope the Lord will have Mercy on me.

Mr. Sheriff. *Sir John*, if you desire any more Time, you shall have it; we will wait on you with great Willingness.

Sir John Friend. I thank you, Sir. *Mr. Sheriff*, I desire the Cart may not be too hasty to go away, ’till we give a Sign.

Mr. Sheriff. You shall have your own Time; take your Time, communicate your own Sign, and the Cart shall not go before.

Then the Ropes were tied about them.

Sir

Sir *John Friend*. I have no Animosity against any Man; I freely forgive all, and I hope God, for Christ's sake, will forgive me.

Then their Caps were put on.

Sir *John Friend*. My Saviour had a Crown of Thorns for me; the Lord receive my Soul; the Lord have Mercy upon me.

Then the Executioner asked them both Forgiveness; and they answered, We freely forgive you.

Sir *John Friend*. Will not the Things lie in my Way?

Executioner. I will remove them. If you please, tell me when I may pull your Caps over your Eyes.

Prisoners. When you will.

Sir *William Perkins*. The Lord receive my Spirit. Executioner, had I best hold up my Legs, or stand in the Cart when it goes away?

Executioner. It is best to stand, Sir, I think.

Sir *William Perkins*. But then my Feet will hang in the Cart.

Executioner. If you please, give me Notice when you will have the Cart go away.

Sir *John Friend*. Stretch forth thy Arms, O Lord, and receive my Soul, and carry it into Heaven, I beseech thee. Executioner; when we knock, go away.

And after a few Ejaculations, they gave the Sign, and the Cart drew away.

They both of them gave Money to the Executioner; and having hung above half an Hour; being a considerable Time after they were dead, they were cut down and quartered, according to the Sentence.

For this Act of theirs, Mr. *Cook* and Mr. *Snatt* were committed to *Newgate*, and ordered to be prosecuted by the Attorney-General; but Mr. *Collier* kept out of the Way, and was not taken. — On this Occasion, Mr. *Collier* published the following Defence of himself:

A Defence of the Absolution given to Sir William Perkins at the Place of Execution, April the 3d.

MY being present, and in some measure officiating, at the Place of Execution on *Friday* last, has been extremely misunderstood. The *Weekly Intelligence*, together with the *Remarker*, have censured this Action with a great deal of Liberty and Heat. I thank God I am not easily disturbed with intemperate Language, especially when it is given without Occasion. So that if Matters had gone no farther, I could have passed over the ill Usage, and said nothing. I confess, having received Notice that some Persons of Figure threatened me with Imprisonment, I took a little Care of myself; and as it happened, not without Reason: For on *Monday* about Twelve at Night, six or eight Persons rushed into my Lodgings, broke open a Trunk, and seized some Papers of Value, though perfectly inoffensive and foreign to their Purpose. And since, I understand there is a *Bill* found against me for *High Misdemeanors*. And now one would think I had done something very extraordinary.

I shall therefore make a brief Report of Matters of Fact, and leave the World to judge, whether all these Censures and Severities are deserved or not.

Sir *William Perkins* (whom I had not seen for four or five Years last past) after his Trial,

desired me to come to him, in order to his Preparation for another World. I accordingly visited him in *Newgate*, as I thought myself obliged by my Character. I was put in the List of those who had Leave to see him by public Order, and had the first two Days the Liberty of conversing with him in private. Afterwards I was not permitted to speak or pray with him alone; a *Keeper* being always present. At last even this Permission was recalled, insomuch that I could never see him from *Wednesday* Morning, *April* the 1st; till *Friday* at the Place of Execution. Sir *William*, being under an Expectation of Death from the Time of his Sentence, had given me the State of his Conscience, and therefore desired the solemn Absolution of the Church might be pronounced to him by me the last Day. And understanding I was refused Admittance on *Friday* Morning, he sent me Word that he would gladly see me at the Place of Execution. I went thither, and gave him the Absolution he requested, it being impracticable for me to do it elsewhere. This Office I performed Word for Word in Form, as it stands in the *Visitation of the Sick*. And now where lies the great Crime of all this? When a Man has declared his Sorrow for all the Faults and Miscarriages of his Life, and qualified himself for the Privilege of Absolution, with what Justice could it be denied him? Ought not dying Persons to be supported in their last Agonies, and pass into the other World with all the Advantage the Church can give them? I am surprized, so regular a Proceeding as this should give so much Offence, and make so much Noise as I perceive it has done. Some People, I understand, are displeas'd at the Office being performed with *Imposition of Hands*. Now this is not only an innocent, but an ancient Ceremony of Absolution. It was the general Practice of the Primitive Church in such Cases, long before there were any Exceptions to the *Roman Communion*. It is, in the Opinion of several Fathers and good modern Expositors, referred to by the Apostle, *1 Tim.* 5. 22. It is likewise prescribed the *Assisting Presbyters* in our own *Ordination Form*. But I suppose I need say no more in Defence of this Circumstance. To proceed: Others seem very much shocked at the Thing itself; and think it a strange Presumption to admit a Person charged with so high a Crime, to the Benefit of Absolution. With Submission, this is concluding a great deal too fast. Are all People damned that are cast in a Capital Indictment? If so, to what Purpose are they visited by Divines, why are they exhorted to Repentance, and have Time allowed them to fit them for Death? But if they may be acquitted hereafter, notwithstanding their Condemnation here; if they may be recovered by Recollection, by Repentance, and Resignation, why should the Church refuse them her Pardon on *Earth*, when she believes it is passed in *Heaven*? The Power of the *Keys* was given for this Purpose, that the Ministers of God might *bind* or *loose*, as the Disposition of the Person required. The latter I sincerely believed to be Sir *William's* Case: I judged him to have a full *Right* to all the Privileges of *Communion*: And therefore had I denied him Absolution upon his Request, I had failed in my Duty, and gone against the Authority both of the *Ancient* and *English* Church. If it is said that the Nature of this Gentleman's Charge required his being absolved in private; to this I answer,

answer, So he had been, had I been permitted to visit him the last Morning: But this Liberty was refused me more than once; and I hope I shall not be blamed for Impossibilities of other Men's making. In short, he seemed very desirous of Absolution at my Hands, as being the only Person acquainted with his Condition. Privately it was not in my Power to give it him; so that he must either receive it publickly from me, or not at all. But Sir *William* confessed himself acquainted with the intended *Assassination*. Pray, did he confess it to me, and have I revealed any Part of his Confession? Then I had been guilty of *High Misdemeanor* indeed: I had broke the 113th Canon, and been pronounced *Irregular* by the Church; and he that falls under *Irregularity*, is for ever after incapable of executing the Office of a Priest. (Dr. *Heylin's Introduction to Cyprian*, Angl. p. 6.) I confess there is an Exception in the Canon, but that does not reach the Case in Hand, even upon the largest Supposition. Well! But Sir *William* owned this Charge before the *Committee*. How could I know that? I neither saw Sir *William* after his Examination, till *Friday Noon*, nor the *Votes* which mentioned it till after that Time. But he confessed it in his *Paper*. What then? Which Way does the *Paper* concern me? It is well known Sir *William Perkins* was a Man of Sense, and bred to *Law* and *Letters*, and needed no Help to assist him in writing a few Lines. Besides, I was not permitted to come near him for more than two Days before he suffered: Neither was he allowed so much as Pen and Ink till the last Morning. Then it was that he penned his *Speech*, as I am told by those who were present; and having read it before the *Keeper*, delivered a Copy of it to a Friend, which was not shewed to me till after the *Execution*. Indeed, I did believe he would leave some *Paper* behind him, both because it is customary upon such sad Occasions, and because on *Tuesday Night*, when he expected Death on *Wednesday*, he desired Pen, Ink and Paper, for that Purpose.

And now, after all, I desire to know in what single Circumstance I have misbehaved myself, or done any thing unbecoming my Profession? It is very hard a Man must be persecuted for performing the Obligations of his Office, and the Duties of common Friendship and Humanity. As for any Methods of *Murder*, I dislike them no less than those who rail loudest; and nothing but a mercenary Malice could suggest the contrary: But if the Functions of the Priesthood, and the Assistances of Religion, and the reading the Public *Liturgy*, are grown a Crime, I am not concerned at the Imputation. I hope the complying Clergy will take some Care to check the Disorders, and inform the Ignorance of their People a little better. If they are unreprieved for these slanderous Excesses, their Pastors must one Day expect to account for it.

As for those in *Power*, it is possible they may have been governed by Mis-reports, and sudden Repentment: If so, second Thoughts, and the Reason of the Case, will put a Stop to their Severities. And that this may be the Issue of the Business, I think myself obliged to wish, as well for their sakes as my own.

April 9th, 1696.

JER. COLLIER.

On this Occasion the following Declaration of the Archbishops, &c. appeared:

A Declaration of the Sense of the Archbishops and Bishops, now in and about London, upon the Occasion of their Attendance in Parliament, concerning the irregular and scandalous Proceedings of certain Clergymen, at the Execution of Sir John Friend and Sir William Perkins.

WE the Archbishops and Bishops, now in and about London, upon Occasion of our Attendance in *Parliament*, having seen a printed Paper, intituled, *A true Copy of the Papers delivered by Sir John Friend and Sir William Perkins to the Sheriffs of London and Middlesex, at Tyburn, the Place of Execution, April 3, 1696*: And being also certainly informed of the most irregular Behaviour of Mr. *Cook*, Mr. *Collier**, and Mr. *Snatt*, in pretending to *absolve* the said Criminals at their Execution, to the great Scandal of the Church, and of our holy Religion, have therefore thought ourselves obliged to declare our Sense of the same, as here followeth:

1. As to the Paper before mentioned, we cannot but observe, that in that Part to which Sir *John Friend* is intituled, among many other Things there delivered as his private Opinion, (for which we must leave him to God) there are mingled some Things concerning the Church of *England*, to the great Dishonour and Reproach of it. That venerable Name is, by the Author of that Paper, appropriated to that Part of our Church which hath separated itself from the Body; and more particularly, to a Faction of them who are so furiously bent upon the restoring of the late King, that they seem not to regard by what Means it is to be effected. We have a sad Instance of it in this very Person, who (as was deposed at his Trial) was privy to the horrid Design of *Assassination*, and yet neither discovered it, nor shewed any Dislike of it, but as *he was afraid it might ruin King James and his Affairs*; and was ready also, together with others of the same *Christian Principle* (as the Author of his Paper is bold to call it,) to act in Conjunction with an Army of *French* Papists, for the Ruin of their Country, and the Extirpation of that Religion which they themselves do profess.

2. As for Sir *William Perkins*, who also professed to die in the Communion of the Church of *England*, we cannot think he meant any thing else by it, than that he adhered to the same violent Faction: Being assured (as we are by very good Information,) that both he and Sir *John Friend* had withdrawn themselves from our public Assemblies some Time before their Death; which makes us the less wonder to find in both their Papers so light, and even favourable, a Mention of that most inhuman Design of assassinating his Sacred Majesty: And especially in that of Sir *William Perkins*, who, though he was publickly convicted of his having engaged so many in that horrible Sin, yet, after all, could think to clear himself of it with this wretched Excuse: *'Tis true I was privy to the Design upon the Prince, but was not to act in it.* Blessed be God, there never was any

* This Mr. *Collier* was a very learned and ingenious Man, and the Author of the *Great Historical Dictionary*, in Folio; — of the *Ecclesiastical History*, in Folio; — of the *View of the Stage*; and many other Pieces.

of our Church, that in any Change of Times could have this laid to his Charge, that he was so much as *privy* to a Design of Assassination.

Lastly, For those Clergymen that took upon them to absolve these Criminals at the Place of Execution, by laying all three together their Hands upon their Heads, and publicly pronouncing a Form of Absolution; as their Manner of doing this was extremely insolent, and without Precedent, either in our Church, or any other that we know of; so the Thing itself was altogether irregular.

The Rubrick in our Office of the Visitation of the Sick, from whence they took the Words they then used, and upon which, if upon any thing in our Liturgy, they must ground this their Proceeding, gave them no Authority nor no Pretence for the absolving these Persons; nay, as they managed the Affair, they acted in this Absolution far otherwise than is there directed.

That Rubrick is concerning sick Persons, and it is there required, *First*, That the sick Person shall be moved to make a special Confession of his Sins, if he feel his Conscience troubled with any weighty Matter; and then, after such Confession, the Priest shall absolve him, if he humbly and heartily desire it. But here they absolved, and that publicly, Persons condemned by Law for execrable Crimes, without so much as once moving them at that Time to make a special Confession of their Sins, at least for those Sins for which they were condemned. And on the other Side, here were Persons absolved that did not humbly desire Absolution, as feeling any such weighty Matter to trouble their Conscience; but on the contrary, in Sir John Friend's Paper it is declared, that he had a great deal of Satisfaction in suffering for that Cause, which he firmly believed to be the Cause of God, and true Religion.

If these Ministers knew not the State of these Men's Souls, before they gave them Absolution, as it is manifest two of them, Mr. Snatt and Mr. Cook, did not as to Sir William Perkins, (they having since declared that they had not spoke with Sir William till they were at the Place of Execution,) how could they, without manifest Transgression of the Church's Order, as well as the prophane Abuse of the Power Christ hath left with his Ministers, absolve them from all their Sins?

If they were acquainted with these Men's Sentiments declared in their Papers, then they must look upon them, either as hardened *Impenitents*, or as *Martyrs*.

We are so charitable to believe that they would not absolve them under the former Notion, for that had been, in Effect, sealing them to Damnation: But if they held these Men to be *Martyrs*, then their absolving them in that Manner was a Justification of those grievous Crimes for which these Men suffered, and an open Affront to the Laws both of Church and State.

Upon the Consideration of these Things, and for the doing of Right to our Church, which may otherwise suffer, among such as are Strangers to our Constitution, by the evil Principles and Practices both of the aforesaid Criminals and the three Clergymen that assisted them, who all pretended to be Members of the Church of England; we do declare, That we disown and detest all such Principles and Practices, looking upon them as highly schismatical and seditious,

dangerous both to the Church and State, and contrary to the true Doctrine and Spirit of the Christian Religion. And we also take this Occasion to warn and exhort all the People committed to our Charge, to beware of such Seducers, and to avoid them; lest (as the Apostle St. Peter speaks) they be led away with the Error of the Wicked, and fall from their stedfast Adherence to the Principles of the true Church of England, as it was established at the blessed Reformation of Religion, and as by God's especial Providence it continues to this Day. April 10th, 1696.

Tho. Cantuar.

Sy. Eliensf.

Jo. Ebor.

Gil. Hereford.

H. London.

Jo. Norwich.

N. Duresme.

Ric. Peterb.

P. Winchester.

Ed. Gloucester.

W. Cov. and Lich.

Rob. Chichester.

Tho. Roffen.

E. Asaph.

A farther Defence of the Absolution given to Sir William Perkins, occasioned by a Paper, intituled, A Declaration of the Archbishops and Bishops, &c.

ABOUT a Fortnight since I published the foregoing Defence of the Absolution given to Sir William Perkins. 'Tis true, the Vindication was not drawn out into any great Length, neither did I imagine it necessary. That which was said, was in my Opinion sufficient to satisfy any candid and impartial Reader. If the Argument was any where over-contracted, it was in that Part which mentions *Imposition of Hands*. Here I confess the Proofs were but generally named, and the Force and Improvement of them left in some measure to Collection. My Desire to undeceive the People, and to silence their Clamours as soon as might be, the Disadvantage of my Retirement, and the Plainness of the Case, were the Reasons why I was no fuller upon that Head: But now I have a fresh Opportunity to treat the Point more at large, the late Declaration, &c. of the Bishops having given me a just Occasion to resume the Argument. I must own the Perusal of this Declaration surprized me very much. I could not imagine these Reverend Prelates would have published so unsupported a Censure; nor engaged their Character so far in this Affair. I am almost amazed an innocent Conduct should be thus misconstrued, and the Charge run so high without Proof, or Provocation to defend it.

The Declaration begins with some Remarks upon the Papers of Sir William Perkins and Sir John Friend: These Exceptions I shall pass over, as being unconcerned in their Defence. Indeed, my Resolution upon the whole is, to engage no farther than the Justification of my own Conduct; as being unwilling to have any unnecessary Disputes with these Reverend Prelates.

The pretended Irregularity objected against Mr. Snatt, Mr. Cook, and myself, relates wholly to the Absolution given to those two Gentlemen at the Place of Execution. The Performance of this Office, the Bishops are pleased to say, was extremely insolent and without Precedent in the Manner, and altogether irregular in the Thing.

I shall endeavour to justify my Practice against every Point of the Accusation, and prove the Absolution defensible, both with respect to Manner and

and Form, to Persons and Occasion. And 1st, with respect to the Manner. And here I shall make good three Things.

1st, That giving Absolution with Imposition of Hands was the general Practice of the ancient Church.

2^{dly}, That the Performance of this Ceremony was allowed to Priests, and sometimes to Deacons, as well as Bishops.

3^{dly}, That Imposition of Hands is enjoined the *Assisting Presbyters* by our own Church in the Office of Ordination, and by Parity of Reason is fairly applicable to the present Case.

First, That giving of Absolution with Imposition of Hands, was the general Practice of the ancient Church.

To begin with *Tertullian*, who lived in the Beginning of the third Century. This Father understands that Place of the Apostle, *Lay Hands suddenly on no Man*, (1 Tim. 5. 22.) of the Offices of Penance and Absolution. (*L. de Pudic. cap. 18.*) And (*cap. 22.*) he alludes to the same Custom in these Words, *Carnem laniatam prosterrens*, as *Albaspineus* observes, (*Albasp. Obser. l. 2. p. 97. Not. in Tertull. p. 181.*) Indeed the Design of his Book, *De Pudicitia*, plainly determines the Author to this Sense. Here he treats professedly of those who were to be finally excluded from Church Communion, and denied the Discipline of Penance. He disputes nothing about Confirmation, or Orders; so that it is evident the Imposition of Hands, mentioned by him, must relate to Penitential Absolution.

St. *Cyprian's* Council of *Carthage* is express to the same Purpose. Here *Nemesianus*, *Crescens*, *Secundinus*, and *Vincentius*, Bishops of *Thubuni*, *Cirta*, *Carpi*, and *Tiberis*, all of them agree, that the Church's Peace, and the Expedients of Reconciliation, were to pass through this Form of Imposition of Hands.

The 80th Canon of the fourth Council of *Carthage* enjoins, That during the whole Time of Abstinence, (I suppose either stated or occasional) the Priests (*Sacerdotes*) should lay their Hands upon the *Penitents*.

The 11th Canon of the third Council of *Toledo*, in the Directions for the Methods of Penance, is positive for the frequent Use of this Ceremony; which made *Albaspineus* conclude, That *Absolution-Prayers* and *Imposition of Hands* were repeated and customary in such Cases. (*Albasp. Obser. l. 2. p. 86.*)

To conclude this Point. The learned Dr. *Hammond*, in his Annotations on the Text above-mentioned, (1 Tim. 5. 22.) refers the laying on of Hands to *Absolution*. "The Apostle (says he) exhorts *Timothy* that he should not make too much Haste to receive those who were under Censures, to Absolution. For that was the Thing which would most probably make him Partaker, or guilty of their Sins, which the Censures were designed to reform in them, but would not do so, if, before they had approved their Repentance and Reformation, they were received to the Peace of the Church." This learned Divine cites a great many Authorities in Defence of his Opinion, which the Reader may consult at his Leisure.

Secondly, The pronouncing the Absolution with Imposition of Hands, is no Encroachment upon the Episcopal Authority, but plainly allowed to the Order of *Presbyters*.

This Point I shall make good from several plain Testimonies of St. *Cyprian*, whose Authority must be granted to be unexceptionable, both with respect to the Antiquity and Character of the Person. Indeed it is to this Father that we are principally obliged for the Remains we have of the Discipline and Government of the Primitive Church.

Now St. *Cyprian* is categorical in the Case, and affirms roundly, that in lesser Crimes than those of the Lapsed, the Penitent could not be admitted to full Communion, unless the Bishops and Clergy had laid their Hands upon him. *Nisi prius illi ab Episcopo et Clero manus fuerit imposita.* (Ep. 17. p. 39. Ed. Oxon.) Now where the Bishops and Clergy are thus contradistinguished, the Order of Priests must be comprehended in the latter, in the most restrained Construction. I might produce his 15th and 16th Ep. (p. 34, 37.) for the same Purpose; but because these Testimonies run much in the Words of the former, I shall wave the Recital.

This Father, in his 18th Ep. tells his Priests and Deacons; That they need not expect his coming Home, to reconcile the Lapsed; but if any of the Laity were in Danger of Death, a Priest, and if a Priest could not be had; and the Necessity was extreme; a Deacon, was a sufficient Authority to hear their Confession, to lay Hands upon them, and consign them to the Peace of the Church. The same Advice, upon the same Occasion, is repeated, (Ep. 19. p. 41.) From whence it is evident, that Imposition of Hands was no reserved incommunicable Privilege of the Bishops, but delegated as low as the Deacons, upon emergent Necessity, and visible Approaches of Death. These Authorities of St. *Cyprian* are all double charged, and prove two Points at once. They prove, that Imposition of Hands was a general Appendix to Absolution, and that it was within the Commission of the Priest to officiate in the Ceremony. To proceed:

In the 13th Canon of the first Council of *Nice*, the *Viaticum* is ordered to be given to those who are at the Point of Death. And by the *Viaticum*, *Albaspineus* proves, that Absolution with Imposition of Hands was meant, and not the *Eucharist*: And that such an Absolution might be given by those who were no more than Priests. (*Albasp. Not. in quosdam Can. p. 131.*) I could amass a great many more Testimonies, were it necessary; but I conceive, what has been said already, may be sufficient to vindicate my Practice from the Charge of Encroachment and Singularity.

Thirdly, Imposition of Hands is enjoined the *Assisting Presbyters* by our own Church in the Office of Ordination, and by Parity of Reason is fairly applicable to the present Case.

If our Church had thought the Imposition of Hands too much for the Character of Priests, she would not have prescribed them a Share in it at her Ordinations. But since she has allowed them this Liberty in the most solemn Exercises of Authority, why should she deny it in inferior Cases? To assist in the Conveyance of an Authority seems a greater Mark of Power, than the executing any Branch of the Authority conveyed. If the Presbyters are permitted to lay their Hands upon the Clergy, why not, à fortiori, upon the Laity? St. *Hierom* affirms plainly (Ep. ad *Evagr.*) that the Powers of a Priest comprehend those of a Bishop, excepting in the Point of Ordination.

Our Church has never condemned this Father's Assertion; why then may not the first *absolve* with Imposition of Hands; no less than the other?

But there is no Appointment of this Ceremony in the *Absolution-Rubrick*. True: Neither is there any Prohibition. The *Rubrick* is perfectly silent both as to Posture and Gesture, and yet some Circumstances of this Nature must of Necessity be used.

Now since our Church allows the Priest Imposition of Hands in another Case, and does not forbid it in this; Is it any Harm if our Liberty moves upward, and determines itself by general Usage and primitive Practice? Our Church has always professed a Regard for the Patterns of Antiquity: We cannot do her a greater Honour, than by conforming to the Solemnities of the purest Ages, than by making the Discipline of *Fathers* and *Councils* the Rule of our Behaviour*: Especially when we are not bound up by National Law, and particular *Constitution*. Thus much for the *Manner*.

I come now to justify the Thing and the Occasion.

It is objected by these *Reverend Prelates*, that the three *assisting Clergymen* pronounced a *Form of Absolution*, &c. With Submission, I hope a *Form* is better than *no Form*; especially when it was a *Form Rubrically* appointed; a *Form* drawn up by the public Authority of the Church, confirmed by *Canon*, and Act of *Parliament*; a *Form* the most pertinent and proper to the Occasion of any in the *Liturgy*. I am sorry to see the solemn Offices of Religion mentioned with such seeming Coldness, and Abatements of Expression. Were it not that I am unwilling to give these *Reverend Prelates* the Trouble of a Question, I would gladly understand, what *Form* they could have fixed on more suitable to so sad an Occasion? I am sure that *Form* of Absolution is the most solemn and authoritative of any in the *Service-Book*. Now if ever the Church exerts herself, ought it not to be in Cases of the greatest Necessity? Can her most comfortable Administrations, and the highest Acts of her Authority, be better employed than for the Relief of dying Persons, who are combating the *King of Terrors*, and stand just upon the Brink of Eternity? Upon the whole, I am surprized they should say the *Rubrick* gave us no Pretence of Authority to *absolve those Persons*. Does not the *Rubrick* give the Priest a Power to pronounce the *Absolution*, and to judge of the Condition of the Penitent? This cannot be denied. And why then had we no Pretence of Authority? *Because the Rubrick relates to the Sick*. To this I answer; Had the Church left us a stated *Office* for *Persons Condemned*, and we had refused to make Use of it, there had been some Force in the Objection; but as the Matter stands, I humbly conceive there is none at all. The Church, without Question, would have *Condemned Persons* taken care of, as well as others, and their Spiritual Necessities supplied. And if so, is it not more Respect to the Church to officiate in Forms of her own setting forth, than in private and unauthorized Compositions? And if the Function was to be performed in the public Devotions, I desire to know what Part of them

could have been more proper than the *Office of Visitation of the Sick*? If we consider the Design of the Church, and especially the *Rubrick* before the *Absolution*, we shall find that she intended this *Office* to prepare People for the other World, and considered them rather as dying, than likely to recover. This appears evidently from the Questions and Advices ordered to be asked and given; so that wherever Death is in View, the *Office* cannot be unseasonable, nor misapplied. And can any Persons be more certain of Death than those who are publickly condemned, who lie under fatal *Sentence*, and irresistible Power; who have the Force of the County to dispatch them, and are just ready to receive the Stroke? As to the previous Questions, they were put and answered, the *Absolution* was desired, and the *Confession* received in Prison; and in short, the Church's Directions were observed in every Particular. But we did not move them to make a *special Confession of their Sins at that Time*. With Submission, Where lies the Necessity, or even the Expediency of such a Practice? Does our Church oblige dying Persons to public Confession? Does she require them to throw open the Retirements of Conscience, and the Secrets of private Life, to the View of the World? I am at a Loss to understand why we should be charged with Omissions on such Accounts as these.

The *Declaration*, &c. proceeds with great Vehemence, and charges us with *manifest Transgression of the Church's Order, and prophane Abuse of the Authority of Christ*. These are hard Words, but I hope altogether undeserved. It is true, they instance only in Mr. *Snatt*, and Mr. *Cock*, but I must own the Objection lies equally against myself; for I never saw Sir *John Friend* during his whole Imprisonment. But in assisting at his Absolution, so far as laying on my Hand amounts to, I did no more than what is easily defensible. I grant I had no immediate and particular Knowledge of his Condition, neither was it necessary. Our Church, in Conformity to Antiquity, has made the Priest the proper Judge of the Qualifications of the *Penitent*, and supposes him fit to be trusted, and believed in that Affair. Now Mr. *Snatt* and Mr. *Cook*, (upon whose Judgment and Integrity I can very well depend) had given me a general Account of Sir *John's* pious Disposition, and that he was well prepared for all the Assistance the Church could give him. The having so good Information from first Hands, from proper and authorized Judges, is sufficient to warrant my Part in Sir *John's Absolution*. This, besides what has been said, I shall make good from two parallel Instances.

First, It is well known that Bishops of the ancient Church used to give a Sort of *Certificates* to those that travelled; by virtue of which, they were not only entertained and accommodated, but admitted to full Communion all over *Christendom*. (*Albasp. Not. in Can. p. 115.*) From whence we may observe, that personal Acquaintance, and particular Examination, are not necessary to give a Right to the Privileges of Christianity. Where the Credentials are good, the Church is to inquire no farther; she is to presume upon the Probity of the Person recommended, and to treat him accordingly.

* Bishop *Sanderfon*, that eminent Casuist, about a Day before his Death, desired his Chaplain, Mr. *Pullen*, to give him Absolution; and at his performing that Office, he pulled off his Cap, that Mr. *Pullen* might lay his Hand upon his bare Head. *Walton's Life of Bishop Sanderfon*, p. 49. Folio Edit.

Secondly, Our own Church, in some of the highest Administrations, acts upon Principles of Trust and Confidence. She conveys her Privileges, and exercises her Authority, without always insisting on personal Inquiry and immediate Proof. At the giving of *Holy Orders*, neither the Bishops, nor the assisting Presbyters, are always personally acquainted with those they *Ordain*. The Prudence of our Church does not tie us up to such unreasonable Rigours. Both Practice, and the *Ordination Form*, suppose the contrary. And why then may not the Priest assist in *Absolution* as well as *Orders*, without any previous Experiment of the State of the Person? Why may not he in the first, as well as the latter Branch of his Authority, act upon the Warrant of unexceptionable Testimony? By all Parity of Reason and Force of Consequence, the Practice is no less defensible in one Case, than in the other.

If it is objected, That the joining of all the three Clergymen in the Imposition of Hands is unprecedented, and exceptionable; to this I answer, That if the Action was lawful, singly performed, I cannot imagine how a Concurrence of more authorized Persons should make it otherwise? Is there any Harm in Union and Solemnity? Or can Religion be treated with too many Circumstances of Advantage? What *Canon* is there that stints the Assistance to *One*, and forbids a Plurality of Persons? *Timothy* had the Hands of the *Presbytery* laid upon him, (1 Tim. 4. 14.) which, without Doubt, exceeded the Number now objected. Our Church, at her *Ordination*, allows this *Ceremony* to all the Presbyters present. And in the very Case of *Absolution*, the Penitent was to receive *Imposition of Hands* from the Bishop and Clergy; as appears from the Testimony of *St. Cyprian* above-mentioned. Farther,

These *Reverend Prelates* argue, that *we must either look on the Persons absolved as Impenitents, or Martyrs*; and they make their Advantage of each Branch of the Supposition. But, with Submission, I see no Necessity of granting the Disjunction. For there may be a third Way of considering the Matter. To speak to my own Case: I absolved *Sir William Perkins* as a Penitent; and I suppose every body must be absolved under that Consideration: For *Absolution* supposes both Sin, and Repentance, in the Notion of it. But as for the *Matter* of *Sir William's* Repentance, that is never likely to be known from me. Neither am I in the least affected with the Bishops Inference. For supposing I received a defective *Confession*, am I accountable for that? However, I neither do nor am obliged to declare my Opinion in this Matter. But thus far I am positive, that there was nothing confessed to me, which the *Canon* obliges me to reveal: And what the *Canon* does not enjoin me to discover, it enjoins me not to discover. (*Can. 113. Vid. first Defence.*) And so there is an End of this Dispute.

I hope by this Time it may appear, that I am neither unfurnished with *Reason*, or *Precedent*, to justify what I have done. However, I shall give one late Instance for the whole Case, and so conclude.

At the Execution of *Mr. Ashton*, Jan. 1690, *Absolution* was given him in the same Form, with *Imposition of Hands*, at the same Place, and upon the same Occasion; and a justifying *Paper* left by the Person that suffered. Now at that Time there were no Exceptions made either

to *Manner*, or *Thing*. The Performance was so far from displeasing, that the *Sheriff* gave his Thanks for the *Solemnity* of the *Office*. There were no Complaints either at *Lambeth*, or *Whitehall*, no public Invectives, no seizing of *Body* and *Goods*; in short, no Signs of the least Dissatisfaction. And who could imagine; that the bare repeating of an Action should raise such a Storm upon us now, which was so perfectly inoffensive before? To punish in this Manner, without Warning or *Precedent*, without Canon or Law, is (with Submission) somewhat unintelligible.

And now having defended myself, I shall reply nothing to all the unkind Reflections, and tragical Language of the *Declaration*. It is probably within my Power, to turn some of these *Reverend Prelates* Artillery upon them. But my Regard to their Character, and Inclination not to displease, makes me wave the Advantage.

However, their extraordinary Usage has done me the Honour of an Opportunity to forgive them, which I thank God I heartily do.

April 21, 1696.

J. C.

P. S. I have just now received a Sheet, called, An Answer to my Defence, &c. As for that little which is material in this Paper, it is already satisfied, and I do not love needless Repetitions. And therefore to begin and end in a Word with this Answerer; If he has any thing remarkable, it is, in my Opinion, his Ill Language; and that I can both pity and despise. April 25.

There were several Pamphlets published on this Occasion, against and in Defence of this Proceeding, but these are sufficient to shew the Nature of the Controversy.

In July following, *Mr. Cook* and *Mr. Snatt* were brought to the Court of *King's-Bench*, and the Proceedings against them are thus briefly related in *Comberbach's Reports*, p. 382.

Sitting in Middlesex, coram Holt, Chief Justice,
2 July, 1696.

Rex versus Shadrach Cook & Will. Snatt, Clericos.
Indictment for absolving Traitors.

“ UPON an Indictment setting forth, that
“ Sir *John Friend* and *Sir William Perkins*
“ being attainted, and about to be executed at
“ *Tyburn*, for High Treason, &c. the Defendants conspiring and intending (as much as in
“ them lay) to justify, or at least to extenuate
“ and lessen their Crimes, and to induce his
“ Majesty's Subjects to believe that they died
“ rather as Martyrs than as Traitors, and to
“ incite the King's Subjects to commit the like
“ Treasons, they did take upon them to absolve,
“ and did pronounce a Form of *Absolution* of
“ them the said *Sir William Perkins* and *Sir John*
“ *Friend*, without any Repentance, or any Signs
“ of Repentance, by them given.

“ It was proved, that the Defendants asked
“ the Criminals the several Questions directed by
“ the *Rubrick* in the Office of *Visitation of the*
“ *Sick*, and *Mr. Cook* pronounced the Words of
“ *Absolution* of one of the Traitors; *Mr. Snatt*,
“ and one *Mr. Collier*, (who is not now indicted)
“ laying their Hands upon his Head, and after

“ the Words pronounced, saying; *Amen*; and
 “ Mr. *Collier* pronounced the Words as to the
 “ other Traitor, they all three laying on their
 “ Hands, &c. It was proved; that the Defen-
 “ dants were earnestly requested by Sir *William*
 “ *Perkins* and Sir *John Friend*, to assist them at
 “ the Place of Execution; and therefore the
 “ Jury were directed to acquit them of Con-
 “ spiracy, (though the Attorney-General said the
 “ Indictment was not for Conspiracy, and *Con-*
 “ *spirantes* was put *adjectively* only to introduce
 “ the other Matter; and therefore was not
 “ material:) And *Holt* directed the Jury; that
 “ this Proceeding of the Defendants was certainly
 “ scandalous and irregular; for if the Criminals
 “ had before made a private Confession, the
 “ Absolution should have been private likewise;
 “ but if they would give a public Absolution;
 “ they ought to have required as public Con-
 “ fession, and particularly with respect to those
 “ Crimes for which they were attainted, being
 “ so notorious, &c. However, if the Jury were
 “ of Opinion they did it only ignorantly, and by
 “ Mistake, (in which Case it is properly conu-
 “ sible in the Spiritual Court) then to acquit
 “ them; but if they did it with a Design to
 “ affront the Government, and to vilify the
 “ Justice of the Nation, then to find them
 “ Guilty: But at the Instance of the Defendants
 “ Council, it was directed to be found *Specially*,
 “ that *Snatt* laid his Hand on the Head, and was
 “ assistant, while the other pronounced the Words
 “ of Absolution, and afterwards *Snatt* said, *Amen*,
 “ (it being laid *quod pronuntiaverunt*). And
 “ accordingly the Jury acquitted them of the
 “ Conspiracy, and found *Cook* guilty of the rest,
 “ and as to *Snatt*, *ut supra* *.

Pro Rege.

Attorney-General,
 Solicitor-General,
 Mr. *Conyers*,
 Mr. *Cowper*,
 Mr. *Mountagu*.

Pro Defendentibus.

Sir *William Williams*,
 Sir *Fra. Winnington*,
 Mr. *Broderick*,
 Mr. *Phipps*,
 Mr. *Mompesson*.

When this Special Verdict was argued, or how this Matter ended, does not appear: But at the Sale of the late Earl of *Clarendon's* Manuscripts, in *Covent-Garden*, *April 1763*, the following Argument was purchased in Manuscript.

The King against Cook and Snatt.

IT is an Indictment for a Misdemeanor on which a *Special Verdict* is found. I am, by your Lordship's Appointment, Council for the Defendants.

The Indictment sets forth, That whereas Sir *John Friend* and Sir *William Perkins* were severally convicted and attainted of High Treason, in conspiring the Death of the King, and adhering to his Enemies, and according to due Course of

Law; and Judgment thereon severally given, were drawn to *Tyburn*, to be there put to Death; *Jeremy Collier*, and these two Defendants, well knowing the Premises, but intending to withdraw the King's Subjects from their Allegiance, and to incite them to commit the like Treasons, at the Gallows, being in the Cart with Sir *John Friend* and Sir *William Perkins*, and immediately before their Execution, conspiring, designing, and intending that execrable, horrible, and detestable High Treason, for which Sir *John Friend* and Sir *William Perkins* were attainted and then instantly to die according to due Course of Law, to justify, or at least to extenuate, diminish, or set at nought; and to insinuate into the King's Subjects, and persuade them, that Sir *John Friend* and Sir *William Perkins* were about to die innocent and undeservedly, and rather as Martyrs than Traitors; and to incite the King's Subjects to commit the like Treasons, unlawfully and contumaciously, as Priests of the Church of *England*, in the Presence and Sight of a great Concourse of People, and in the Hearing of a great many of them, laying their Hands on the Heads of Sir *John Friend* and Sir *William Perkins* in the said Cart, then and there took upon themselves to absolve them, and did pronounce them to be absolved, from all their Sins, without any Repentance by the said Sir *John Friend* and Sir *William Perkins*, or either of them, for the High Treason aforesaid first declared.

To this Indictment these two Defendants pleaded Not Guilty: And the Issue being tried before your Lordship, the Jury find this Special Verdict, That *Cook*, *Snatt*, and *Collier* laid their Hands on Sir *John Friend*, and *Cook* pronounced the Absolution, and *Collier* and *Snatt* said, *Amen*: That *Collier* and these two Defendants laid their Hands on Sir *William Perkins*, and *Collier* pronounced the Absolution, and *Cook* and *Snatt* said, *Amen*: And that *Cook* and *Snatt* assisted, and assented to the said Absolution.

As to the Conspiracy, they find the Defendants Not Guilty; and as to all the rest of the Indictment, they find the Defendants Guilty: But whether, on the whole Matter, the Defendants, or either of them, be guilty of the Matters and Things charged on them in the Indictment (besides the Conspiracy) or no, the Jury pray the Advice of the Court. And thereupon it now comes before your Lordship. And

I hope, with Submission to your Lordship, as this Indictment is, these Defendants shall be discharged. And to that End I shall crave Leave humbly to lay before your Lordship some Considerations on these three Points:

First, Whether what is laid in this Indictment will amount to an Offence?

Secondly, If it be an Offence, I shall humbly submit it to your Lordship, Whether the Examination of it doth not belong to another Jurisdiction? And,

* 5 *Modern*, p. 363. reports the Case thus:

Term Mich. 9 W. 3. B. R. 1697. Rex versus Cook, Snatt & Collier.

“ They were found Guilty upon an Indictment for the following Crime, *ff.* Sir *John Friend* and Sir *William Perkins* were convicted for High Treason, in conspiring the Death of the King; and the Defendants, being present with them at the Place of Execution, did, all of them, lay their Hands on Sir *John Friend*, who shewed no Repentance for the Crime for which he was about to die; and *Cook* pronounced the Absolution, and *Snatt* and *Collier* said, *Amen*.

“ That they all three likewise laid their Hands on Sir *William Perkins*, who was likewise impenitent of this Crime; and *Collier* pronounced the Absolution, and *Cook* and *Snatt* said, *Amen*; and that they all assisted and assented to the said Absolution.

“ The Jury made a Special Conclusion in their Verdict, Whether the laying on the Hands of three, and but one at a Time pronouncing the Absolution, makes them all guilty of the whole Matter? *Adjourn*.

Thirdly, If it should be an Offence, and punishable in this Court, yet there can be no Judgment given against them on this Indictment.

But before I come to these Points, I must crave Leave to explain what I take to be the Meaning of one Expression in the Indictment, and that is, *Absque aliqua penitentia per eos pro alta prodicione prædicta prius declarata.* By *penitentia*, though it usually amongst the Canonists signifies *Penance*, and sometimes *Repentance*, Absolution and Penance, yet in this Place I take it for Repentance only. And by the Words *pro alta prodicione prædicta prius declarata*, is meant, publickly declared for that particular Offence. For on the Evidence it appeared, there was a general Repentance of all their Sins; and there might have been a private, particular Repentance of this very Treason to the Priests, whilst they were in the Prison, according to the Rule of the Canonists, *Posse in una die confessionem audiri, et in altera injungi penitentiam*: As I find it cited by the greatest Casuist and best Author I have met with on this Occasion, *Valerius Reginaldus de Requisitis in Confessione*, l. 8. n. 11. fol. 230. But when this was objected at the Trial, the King's Council answered, The Repentance ought to be as public as the Absolution. Therefore, to reduce it all to a Case on this Indictment, I take it, these Gentlemen (especially Mr. Cook, for Mr. Snatt's Case doth somewhat differ) did publickly absolve Sir John Friend and Sir William Perkins, as they were about to be executed for High Treason, without their particular Repentance publickly declared for the Crimes for which they suffered. And I shall humbly submit it to your Lordship, whether this be any Offence in these Gentlemen, or in either of them. They were Persons, that by Order, at least by Leave of the Court when Sir John Friend and Sir William Perkins were attainted, were permitted and appointed to officiate with the condemned Criminals to prepare them for another World, when they were about to leave this by the Judgment of our Law. Accordingly they officiated, and were several Times with the condemned Criminals in the Prison; where we may very well presume, that they brought their Penitents to a particular Confession and Repentance, though we could not prove it at the Trial; because the Penitent was dead, and the Absolver the Person indicted.

And besides, the Absolver was not obliged to discover the Confession; nay, it is expressly forbidden by the 113th Canon of our Church, made by the Convocation in the Year 1603; which was called by the King's Writ, and confirmed under the Great Seal, according to the Form of the Statute 25 H. 8. c. 19. as my Lord Vaughan tells us in his Reports, fol. 329. And the King or Convocation, but certainly both of them with their joint Power, may make Orders and Ordinances, which shall bind all the King's Subjects, but more especially the Clergy, as may plainly be inferred from the Statute 25 H. 8. c. 19. And so are our Books, 21 E. 4. 45. Bro. Abr. Ordinary, pl. 1. Moor 755, 783. 2 Cro. 37. Noy 100. and 2 Ventr. 44. And so hath been the Practice, in the first Volume of the *Histcry of the Reformation*, fol. 225. and the second Volume, fol. 60, 69, and 70. In a Case of this Nature, I must beg Leave of your Lordship to make use of the Writings of Divines and other Authors, and not strictly confine myself to our

Books of Common Law: For our Law Books are silent in this Case; and indeed I do not find any other Authors speaking directly to the Point. Therefore, I must be forced to look into the Nature of Absolution, the Power of the Clergy, the Practice of Divines, and other collateral Matters, for some Light herein; which makes me dread growing tedious, and becoming very tiresome to your Lordship's Patience.

And, my Lord, as to this particular Case, these Canons are in some Manner confirmed by Act of Parliament: For the Statute 13 Car. 2. c. 12. sect. the last, which seems to set aside the Canons of 1640, doth establish the Church as it was in the Year 1639; and then these Canons were in Force and practised. For the King who then reigned, at his Coronation, (the first that was after the making of these Canons) did not only swear to maintain to the Church the Laws of St. Edward, but likewise to preserve to the Bishops, and Churches committed to their Charge, all Canonical Privileges, 1 *Rushworth's Collection*, fol. 201. And the Power of Secrecy seems to me a Privilege; and these Canons are now received and observed as Laws amongst the Clergy. And, my Lord, neither the Indictment nor Evidence did deny that there was a private Repentance. Now, that a private Confession and Repentance had been sufficient, appears from the Rule of the Canonists, *Non tenetur penitens tertio audiente confiteri, quia confessio cum sacerdote fit in persona Dei omnia exploratissime cognoscentis, excludit omnem testem*, Val. Reg. lib. 6. n. 78. fol. 182. *De Sacramentali Confessione.* Nay, the Confession to God Almighty only is held sufficient: *Exaudi, Domine, preces nostras, et consentiam tibi. Parce peccatis, ut quos conscientie reatus accusat, indulgentia tuæ miserationis absolvat, &c.* as is set down in the *Ordo Romanus de Officiis Divinis*, in the tenth Tome of the *Bibliotheca Patrum*, fol. 30. and is *verbatim* rendered into *English* in our Liturgy, in the *Commination*, and in the Form of Prayer appointed to be used on the 30th of *January*, and in that appointed for our last general Fast. And I shall presume to offer to your Lordship's Consideration some Reasons, why such a private Confession to God Almighty, or to his Minister here on Earth, is sufficient for Absolution. One is drawn from the Nature of the Thing itself. No Man is obliged by Law to do any Act to any other Person, from whom he can receive no Benefit by so doing. And the People cannot absolve, it is only the Priest can do it; and therefore to him alone must be made the Confession and Repentance. And so is *Linwood*, the last Impression, fol. 337. on the Words, *Debito caret fructu*, says he, *Fructus igitur sive utilitas penitentiae est absolutio à peccatis, quam quis non consequitur ab eo qui non est suus iudex, nec habet potestatem eum ligandi vel solvendi.* And the same Author, speaking concerning Confession; fol. 327. *Verbo confessionis, hath these Words, Confessio tripliciter fit, aut in foro animæ interius coram Deo, aut in foro penitentiae exterius coram Dei vicario, aut in foro contentioso coram iudice.* And then he adds, *Confessio est legitima coram sacerdote peccatorum declaratio.* And there is not, as I can find, the least Hint of making any Confession or Repentance to the People, but only to the Priest, and that may be in private. But in this Case there was likewise a public Repentance declared, which the Priests might well take for a Repentance of that Offence

as well as for any other. That Repentance indeed was general: For Traitors being by no Decree foreclosed Absolution, and no particular Form being prescribed; these Gentlemen followed the Rubrick in the Form there set down for the *Visitation of the Sick*, which may very well be taken to have been designed for all that are in Danger of Death; and so our greatest Divines have taken it. The learned Dr. *Duport*, in his *Greek* Version of our Liturgy, renders this Office by a Word that signifies as well to be in Peril or imminent Danger, or the like, as to be visited with Sickness; which likewise answers the Canonists Description or Denomination of this Sort of Absolution; to distinguish it from the common and sacramental Absolution, they call it *Absolutio in articulo mortis*, without distinguishing between a natural and violent Death, or between the Innocent and Malefactors. And if our Law had designed to have excluded Malefactors from the Benefit of this Office, it would have used the same Caution as it doth against others in the Office for Burial of the Dead, where it says, it shall not be used to those that die unbaptized, excommunicated, or are *Felo de se*. And I do not find Malefactors that suffer by the Hand of Justice excluded that Office, and I think it is often performed for them; why then must this of Visitation of the Sick be denied them? There is no other Office or Form appointed for these Sort of Persons. And then, where there is no Law there is no Transgression, they are left to their own Method and Form, and therefore may use that set down in the Common-Prayer as well as any other. And here the Priests asked Sir *John Friend* and Sir *William Perkins*, if they repented truly of all their Sins, and were in Charity with all the World? The Penitents answering in the Affirmative, the Absolvers advising Forgiveness, did, at the Request of the Penitents, in the Form set down in the Liturgy, pronounce the Absolution, neither of the Criminals signifying that he felt his Conscience troubled with any weighty Matter. And, with Submission to your Lordship, such Signification ought to be previous to the Motion for a Special Confession, for the Words are, *If he feel his Conscience troubled*; which I think is fully explained by the second Homily of Repentance, which condemns Auricular Confession, and then adds, “ I do not say but that, if any do find themselves troubled in Conscience, they may repair to their learned Curate or Pastor, or to some other godly learned Man, and shew their Trouble and Doubt of their Consciences to them, that they may receive at their Hands the comfortable Salve of God’s Word.” But it no where enjoins such Confession and Repentance, much less doth it command the Priest to exact them from the Penitent. There is no Order for the Priest to examine whether he doth find his Conscience troubled, if the Penitent doth not intimate it to the Priest. There is no Direction for the Priest to ask him any Question about it. And *Val. Reg. l. 2. c. 2. n. 13.* out of *Sotus*, gives us this Definition or Description of the Office and Duty of a Confessor in these Words, *Officium quidem Confessarii de se non est interrogare penitentem, sed audire confitentem*: And going on, he gives this Reason, *Cum in foro penitentiali non procedatur sicut in criminali per vim coactivam ad extorquendam à reo confessionem, sed per*

spontaneam voluntatem confitentis. I acknowledge, that in the Church of *Rome*, to make Absolution a compleat Sacrament, a special Confession is required; as is directed by our Church, when the Penitent signifies that he feels a Burthen on his Conscience: But neither in these, nor in any other Cases, wherein special Confession is required, is it any where ordered to be public. It is sufficient that it is made to the Priest alone; and the common Practice in these and all other Cases is to have it private: All other Persons are excluded the sick Man’s Chamber. But supposing, my Lord, that the Meaning of the Rubrick should be taken to be, that the Priest should move him to make such a special Confession, this is only directory; it is not compulsory, any more than the preceding Paragraphs, where the Priest is to admonish the sick Person to make his Will, and declare his Debts, and, if he be of Ability, to give charitably to the Poor. And it would be difficult to maintain an Indictment on any of these Paragraphs against a Priest, for absolving a sick Man without admonishing him to make his Will, declare his Debts, or be liberal to the Poor, who perhaps starved for want of such Relief. Certainly in those Cases the Rubrick would be looked on to be only directory: And why not so in this? The like Exposition hath been made on other Acts of Parliament. The Statute 21 *Jac. 1. c. 4.* against vexatious Informers, enacts, That no Information shall be received, filed, or entered of Record, before the Informer hath made Oath that the Offence was committed within the County where it was laid, and, as he believes, within a Year before exhibiting the Information; and this Oath to be entered of Record. Yet I believe, it cannot be shewn that any such Oath hath at any Time been made, nor Informer nor Officer indicted for preferring, filing, entering, or receiving any Information without such Oath; for that Statute hath (as to that Part) been always held to be directory, that the Judge or Officer might require it, if they thought fit; but they are not thereby obliged in any Case to exact it from the Informer, any otherwise than as their own Discretions guide them, 1 *Cro. 316*. But taking the Clause in the Case now before your Lordship to be compulsory, yet it is not to be universally observed to all Penitents; it is only in some Cases, where the Persons are not qualified without such special Confession, and the Priest is to consider and determine of the Qualifications: For Absolution is purely spiritual, and so left to the Priest, that he is the only Judge thereof. And if it might not be thought improper, I should crave Leave briefly to mention the Opinions of some of the Fathers of the Church on this Occasion.

St. Chrysostom says, The Father judges no Man, but hath committed all Judgment to the Son; and the Son, till his second Coming, hath left all Judgment to his Ministers. And *St. Jerom*, speaking of the Priests, hath these Words, *Qui claves regni caelorum habentes quodammodo ante diem judicii judicant*. And *St. Gregory the Great* says of them, *Principatum superni judicii sortuntur, ut vice Dei quibusdam peccata retineant, et quibusdam relaxent*; and therefore *Tertullian* calls Excommunication *Præjudicium futuri seculi*. And the learned Prelate *Usher*, in his Answer to *Malone* the Jesuit, saith, “ We acknowledge most willingly, that the principal Part of the Priest’s

“ Ministry is exercised in Matter of Forgiveness
 “ of Sins.” And it farther appears by what I
 before cited out of *Linwood*, and likewise by
 another Expression in the same Book, *fol. 335.*
 on the Words *Competentis literaturæ*, where he
 says, *Episcopus est iudex tam animarum quam cor-*
porum; Presbyter vero non est iudex nisi animarum.
 And *fol. 337.* the Word *Sacerdotum* is thus
 explained, *Qui deputati sunt ad audiendas confessiones:*
 And in the next Paragraph he hath these Words,
Verbum Dei dimittit peccata, sacerdos autem est iudex.
 And, my Lord, what I would infer from these
 Divines and *Linwood*, is, that the Priest being
 the Judge of the State of the Soul of the Penitent,
 he must at his Peril, as he will answer it to God
 Almighty, take care of the Confession and Ab-
 solution; and if he errs, he may perhaps be
 punished for it in another World, but not in this.
 We usually esteem it a hard Case to punish a Man
 for erring in his Judgment, for not being so wise
 as he ought to be, or so understanding as another.
 No Judge is in any Case, at Common Law, to
 be punished for an erroneous Judgment, either
 by Action or Indictment, *9 E. 4. 3. a. Pl. 10.*
1 Len. 324. Hut. 120. And our Divines tell us,
 that God Almighty will judge us by our Wills,
 not by our Understandings. And therefore, if
 these Gentlemen were mistaken in what they did,
 it being only an Error of their Judgments,
 though it may be deemed an imprudent Action,
 yet I hope it will not be adjudged criminal.
 And, my Lord, there may be this farther Reason
 given, why it should be left to the Priest to judge
 of the Repentance, and give the Absolution when
 he sees Occasion. Suppose, my Lord, an inno-
 cent Man should be condemned for Treason or
 Felony, as it happened in the Case of the Uncle
 condemned and executed for the Murder of his
 Niece, mentioned in my Lord *Coke's* third *In-*
stitutes, 232. And the like Case happened in
Gloucestershire between thirty and forty Years since,
 when *Joan Perry* and her two Sons (*See p. 29,*
30.) were executed for the Murder of one *Har-*
rison; and after they were executed, the Person
 supposed to be murdered came into the Country,
 and *vivâ voce* proved the Innocency of those
 Persons that were condemned and executed for
 that fancied Murder. Now supposing, in such
 a Case, the Person to be executed obstinately
 and resolutely denies the Fact, shall the Priest
 refuse him Absolution? And because the innocent
 Person will not accuse himself of what he was not
 so much as in Thought guilty, must he therefore
 die the second Death for his other Sins, for which
 he does repent? For they are still retained by the
 Priest, who refuses to give him Absolution.
 Because such Persons cannot condemn themselves
 for what their Consciences do not accuse them,
 can there be no Forgiveness, no Absolution for
 them? Will not Charity allow they may be saved,
 and consequently entitled to Absolution? Nay,
 will not Charity extend to those that suffer in an
 ill Cause, through a Fault in their Understanding?
 And I hope that the Errors of our Judgments, as
 well as the Weakness of our Memories, may be
 pardoned amongst our secret Sins; and therefore
 such Persons may not always be denied the
 Benefit of Absolution. It is no where denied
 to Traitors; nay, the Canonists say, *In articulo*
mortis, omnes sacerdotes quolibet penitentes à quibus-
vis peccatis et censuris absolvere possunt, Val. Reg.
l. 1. n. 58. fol. 9. And he there cites a Council

for it, where it was so determined. Nor is
 there any particular Form or Method prescribed
 for their Repentance or Absolution; therefore,
 methinks, a general Repentance may deserve a
 general Absolution; and perhaps, in some of
 these Cases, the Priest had been to blame, if he
 had denied Absolution.

And now, with your Lordship's Patience, I
 will look into the Practice of Divines in such-like
 Cases; though it cannot be expected that I should
 bring many Precedents to warrant this, because
 it is seldom that Absolution is given at the Place
 of Execution; the Ordinary, or some other Di-
 vine performing that Office, usually doing that
 in private, when they have free Access to the
 Prisoner: And if it were not so done here, it was
 because, after these Divines were appointed to
 be with the Criminals, and to prepare them for
 another World, and had been with them, and,
 as we say, received their Confession and Repen-
 tance for the Crimes for which they were con-
 demned, and perhaps had thereupon given them
 Absolution; yet after this, for two or three Days
 immediately preceding the Execution, they were
 kept from them, and not permitted to come to
 them till they were in the Cart at the Place of
 Execution: And it may be intended, that the
 Absolution that was then given them, was for the
 Sins which they had committed since they saw
 them last. Therefore, unless the King's Council
 can shew me a Case with such Circumstances, they
 cannot expect from me a direct Precedent to justify
 our Proceedings. But I shall crave Leave to
 mention a few that I think will bear some Pro-
 portion to the Case now before your Lordship.
 I shall begin with that of *John Twyn*, who was
 tried, convicted, and attainted at the *Old-Bailey*,
 the 20th of *February, 1663*, the Narrative of which
 was then printed by Authority. He was con-
 victed for printing and publishing a treasonable
 Libel; and my Lord Chief Justice *Hyde*, before
 whom the Trial was, saith, (*State Trials, Vol. 2.*
p. 538.) “ I shall not spend my Time in Discourse
 “ to you to prepare you for Death: I see a grave
 “ Person, whose Office it is, and I leave it to
 “ him. Do not think of any Time here: Make
 “ your Peace with God, which must be done by
 “ Confession, and by the Discovery of those that
 “ are guilty of the same Crime with you. God
 “ have Mercy upon you; and if you do so, he
 “ will have Mercy upon you.” Afterwards, and
 before he came to be executed, the Ordinary
 pressed him to a Confession of those others con-
 cerned with him, which he refused; and yet the
 Ordinary offered to administer the Sacrament to
 him. From whence I would infer, that it is the
 Office of the Ordinary to prepare condemned
 Criminals for another World, and consequently
 he must be the Judge when they are prepared.
 And next, though the Chief Justice was of
 Opinion, that God Almighty would not pardon
 him but on the Confession of his own Fault and
 the Discovery of his Accomplices, yet the Or-
 dinary tendered him the Sacrament, which
 comprehends the Absolution, when he obstinately
 refused to make any such Discovery; (*See Twyn's*
Speech and Behaviour in State Trials, Vol. 8.
p. 386, 387.) and yet no Indictment against
 him for it. My Lord *Strafford*, when he was
 going to be beheaded, being denied to speak
 with Archbishop *Laud*; as he passed by his Grace's
 Lodgings, seeing the Archbishop at his Window,

the Earl of *Strafford* bowing himself to the Ground, said, *My Lord, your Prayers and your Blessing.* The Archbishop lifted up his Hand, and bestowed both. There was not Time or Opportunity for his Grace to pronounce the Absolution at large, nor to lay his Hands on the Head of the Penitent, as these Defendants did, but he came as near it as he could; he lifted up his Hands, and bestowed both his Prayers and Benediction, and that without any particular Confession or Repentance. And though his Grace was afterwards proceeded against, and, as they then called it, tried for High Treason, and all the Dirt thrown on him that *Prynne* and several others could rake up against him, and his whole Life searched into, and every particular Action narrowly traced, and even his Reputation, when he was a Scholar at the University, produced as Evidence against him; yet this Blessing, this Absolution was never so much as mentioned, though they had often Opportunity so to do, when it was urged (as frequently it was) that his Grace and the Earl of *Strafford* were very intimate Friends and Acquaintance, and went hand in hand to destroy the Government both in Church and State: And yet this Action was publicly taken Notice of, as we find by the Historians of those Times, *Rusworth* in the Earl of *Strafford's* Trial, fol. 782. *Franklyn's Annals*, 901.

Now, my Lord, Blessing and Absolution in such Circumstances amount to the same. No Man blesses the Impenitent. The Form that the Archbishop then used is not set down, nor is it, with Submission to your Lordship, any ways material. There are several Forms of Absolution, which in Sense and Virtue are the same, as Archbishop *Sparrow* has it in his *Rationale on the Common-Prayer*; where he shews us, that there are three several Forms of Absolution in the Liturgy; as first, in the Morning and Evening Prayer, *He pardoneth and absolveth, &c.* The second is used in the Visitation of the Sick, *By his Authority committed to me, I absolve thee, &c.* The third is at the Sacrament, *Almighty God, &c. have Mercy upon you, &c. pardon and forgive you, &c.* The like Form is appointed to be used in Case of imminent Danger at Sea, and stiled an Absolution. And, saith that Reverend and Learned Prelate, "All these several Forms in Sense and Virtue are the same; for it is all one as to the Remission of Sins in the Penitent, whether the Priest absolve him after this Form, *Almighty God, who hath given me and all Priests Power to pronounce Pardon to the Penitent; he pardons you—* Or thus, *By Virtue of a Commission granted to me from God, I absolve you—* Or lastly, *God pardon you.*"

I must now, my Lord, in my Way, crave Leave to observe, that Criminals, be their Offences never so heinous, though they do not confess them, or shew any Repentance for them, yet they are not kept from the public Service of the Church; nor are they denied or refused to be admitted to the blessed Sacrament, where they have the Benefit of this third Absolution, and that in public. What Reason then can there be to deny them this Absolution, for the giving which these Gentlemen stand now indicted, which hath not, I believe, been at any Time denied to any Malefactors, either in this or any other Part of the whole Christian World? The Emperor of *Germany*, in his Manifesto against those Persons

that killed his Officers and Ministers at *Prague*, as a great Aggravation of their Offence, says, they did it without giving them a Moment of Time to repent, or make Confession, or receive the Sacrament, which is never denied to the worst Offenders, 1 *Rusworth* 7. — Without giving them a Moment of Time to repent, or make Confession, or receive the Sacrament — It is in the Disjunctive, my Lord; and there by *Confession* and *Repentance* cannot be meant of that particular Fact for which they were then put to Death, for that was the Service of the Emperor their Master, and the Manifesto stiles the Authors of their Deaths, *barbarous, cruel, and inhuman Murderers.* But I shall proceed to give your Lordship another Instance, where there hath been a public Absolution to a Criminal condemned, and that even at the Place of Execution, without any special Repentance for the Crime for which he was about to suffer. And that was in the Case of Sir *Thomas Armstrong*, who, by Judgment of this Court upon an Outlawry for High Treason, for conspiring against the King's Life and Government, was executed at *Tyburn* in *June* 1684. In the Court he insisted on his Innocency, and so he did in a Speech which he likewise left with the Sheriff at the Place of Execution; yet, notwithstanding that, the Reverend Divine that then assisted to prepare him for another World, did in Effect the same with these Gentlemen that are now Defendants, (which I humbly submit to your Lordship's Consideration): For, after a long recommendatory Prayer, he useth this Benediction; *The Grace of our Lord Jesus Christ, and the Love of God the Father, and the Fellowship of the Holy Ghost, be with us, and in a particular Manner with this thy Servant, now in the Minute of Death, and Day of Judgment.* And then speaking to Sir *Thomas Armstrong*, says, *Now, Sir, commend yourself to God by your Devotions, make yourself ready, and then let that be the last Thing you do.* Sir *Thomas Armstrong* says, *Sir, I hope in God my Sins are pardoned, and I do pray for it heartily. I forgive the World all their Offences they have committed against me.* Then the Doctor says, *I pray God shew Mercy to you, as you express Charity to them;* and then immediately followed the Execution. I have dwelt the longer, my Lord, on this Particular, because it must needs be of very great Authority, the Reverend Divine that then assisted being (Dr. *Tennison*) now Archbishop of *Canterbury*. (See *State Trials*, Vol. 3. p. 985.) And the Circumstances of that Case are much the same with ours: In the Indictment the same Offence was laid as against Sir *John Friend* and Sir *William Perkins*, he suffered at the same Place, and that Reverend Divine was likewise with him in the Cart. There was also a Paper delivered by the Criminal to the Sheriff, declaring his Innocency; yet Absolution was publicly given at the Time and Place of Execution. Not indeed in the same Words as these Defendants used, but in those that are as effectual. I think it is apparent, that no particular Form of Words is requisite to an Absolution. Whether we think the Power of the Church authoritative, or only declarative, whatsoever is an Execution of that Power that is given by our Saviour in *St. John*, and denotes the Priest's absolving, or the Priest's declaring that God doth absolve them, or the Priest's recommending them to God for Mercy or a Pardon for their Sins, that, with Submission to your Lordship, is as much an Absolution, as

when the Priest doth in his own Person absolve them. So it is in our Morning and Evening Service, and in the Communion, and the Service at Sea, as I have before mentioned; and yet the Rubrick stiles them Absolutions. The whole Christian Church, for the first ten Ages, used that Form of Recommending, and no other; and the Greek Church doth still retain the same. St. Cyprian *De lapsis*, fol. 136. the Oxford Edition, on the Words, *Pro vobis Deum rogare possumus*, the Learned Oxford Annotators say thus — And I may well stile them the Learned Annotators, since that great Master and Judge of all Learning, the present Bishop of Worcester (Dr. Stillingfleet,) in his *Vindication of the Trinity*, fol. 155, 164. stiles them so. Their Annotations are in these Words, *Quantumvis nunc temporis formula judiciaria et potestativa (Ego te absolvo) quasi tradita à Christo per Apostolos feratur, ex adverso compertissimum habetur per decem priora secula in usu minime receptam, imo nec adhuc in Ecclesia Orientali invaluisse.* And that Absolutions, Ordinations, and Consecrations were in a deprecatory Form, plainly appears from *Morinus*, l. 8. *De administratione penitentiae*, c. 12. sect. 7. fol. 397. *Ipse Domine remitte, dimitte, condona peccata hujus N. &c.* And this, he says, was the common and vulgar Absolution in the Greek Church. So *Theodorus*, who wrote his *Penitentials* towards the latter End of the sixth Century, (it was published *per Jacobum Pettit*, in Quarto, Anno 1677, at Paris) in the first Book, and the first Chapter, page 26, is this Absolution, *Deus omnipotens sit adjutor et protector tuus, et præstet indulgentiam de peccatis tuis*; and many others of the like Nature are *sparsim* through both the Volumes. In the Roman Pontifical there is this Absolution, *Misereatur vestrum omnipotens Deus, et dimissis peccatis vestris perducatur vos ad vitam æternam.* And likewise in the *Ordo Romanus I* before cited, fol. 61. is this, which is stiled *Absolutio singularis*: *Frater N. absolutionem et remissionem peccatorum tuorum, per invocationem sacri nominis Dei, et per ministerium nostrum, percipere merearis hic et in æternum.* And in the same Page are several other Absolutions plural and singular, penned after the same Manner, in such a deprecatory Form, and all stiled Absolutions. And in none of these Absolutions do I see any Enumeration of particular Offences, nor have I found in any of these Penitentials, that Malefactors are excluded from this Absolution. Mr. *Newland*, who was about two or three Years since condemned and executed for the Murder of Mr. *Thomas*, did positively deny that he was guilty of that Fact, or of aiding, assisting, or abetting thereunto. Yet Mr. *Stevens* not only gave him the Sacrament, and that three Times, with other Company; but likewise gave him Absolution, as Mr. *Stevens* himself hath since in Print published to the World. And what is lawful and justifiable at *Newgate* before three or four Persons, cannot become a Crime at *Tyburn*, though it be done in the Presence of five hundred People; for the Place or Number of People cannot alter the Nature of the Fact; and make an innocent Action an horrid Crime. I am credibly informed, that in the Case of *Anderton* the Printer; who was executed for High Treason about four or five Years since, there was the same Form of Prayer used for him by the Divine that then assisted; (*State Trials*, Vol. 8. p. 71.) and that at this very Place of Execution. In the Case of

Mr. *Astton*, who was likewise executed for High Treason, though he expressed no Sorrow for his Crime, and left a Paper behind him justifying the Fact for which he died, (*Vol. 8. p. 482.*) yet the same Form of Prayer, the very same Absolution, and at the same Place of Execution, with all the Circumstances of the present Case, were used and performed for him; and instead of any Reprimand for so doing, the Sheriff of *Middlesex* said thus to the Absolvers, as I had it from one that was then present, and set it down in Writing; *Gentlemen, I thank you for performing the last Offices so decently.* And, my Lord, my Clients do insist on it, that on these Precedents and this Encouragement, they were induced to act as they did at the Execution of Sir *John Friend* and Sir *William Perkins*. I have, my Lord, looked into the Treatises of some Divines upon this Occasion; and though I find a mighty Stir about Auricular Confession, whether the Church doth require that or no, yet I cannot perceive that it is by any insisted on, that there must be in any Case a public Confession or Repentance, no, not even in those Cases where public Penance is enjoined, unless in some few, where the Ecclesiastical Court hath made it Part of the Penance. Mr. *Prynne*, in his *Canterbury's Doom*, fol. 192, 3. tells us, that one Mr. *Adams* preached at St. *Mary's* Church in *Cambridge*, Anno Domini 1637, and maintained special Confession to the Priest to be necessary; for which being summoned before the Vice-Chancellor, he and several other Doctors ordered Mr. *Adams* to make a Recantation of that Doctrine, and declare it was only requisite in those Cases where People could not quiet their own Consciences; and likewise to declare, that it is against true Christian Liberty, that a Man should be bound to the enumerating of his Sins, as hath been used heretofore in the Times of Ignorance and Popery. There were indeed some Doctors that did oppose this Recantation, and justified Mr. *Adams*, insisting it was needful to make such Confession to the Priest; but none pretended it was in any Case requisite to be made to the People. But, as I said before, the Vice-Chancellor, and the major Part of the Doctors, ordered the aforesaid Recantation, and well they might; for it is *verbatim* taken out of the second Homily of *Repentance*, which Book of Homilies was composed by many eminent Prelates of our Church, and the Reading of it enjoined by the Rubrick, which is Part of the Act of Uniformity. And that Homily doth further say, that it is most evident and plain that Auricular Confession hath not its Warrant from God's Word; and it cites St. *Austin*, who says, *What have I to do with Men, as though they were able to heal my Diseases?* And if a Penitent be not compelled by the Laws of God or holy Church to make a particular Confession of his Sins to the Priest, who gives that Absolution, much less is he any ways obliged to satisfy the Curiosity of the People by enumerating of his Offences, or publicly declaring a Repentance for his Sins. Nor do they any where distinguish the Case of condemned Criminals from others: But the Rules concerning it are general, *Et generaliter dictum generaliter intelligendum est.* Whatever I find spoken concerning Absolution is expressed indefinitely, which falls under another Maxim, *Indefinitum æquipollet universali.* And, my Lord, one Reason why I take it to be lawful to pronounce

nounce Absolution to condemned Malefactors; is, that be their Crimes never so great, the Sword of Justice doth not strike deeper than the Grave, and there is still Room for a *Deus misericors anime ejus*, a Lord have Mercy on his Soul.

Thus I have, with all Humility, submitted to your Lordship's Consideration what I have to say, why the Fact; of which these Gentlemen stand accused, should in itself be no Offence. Neither can it be made a Crime, with Submission to your Lordship, by any ill Intention that can be suggested to be adherent to it: For the Actions of Men shew their Hearts; and if their Works are not evil, you cannot from them *in foro humano* prove their Minds corrupt. Omitting the Reason given by my Lord Chief Justice *North*, on the Reversal of the Judgment in the Case of *Barnardiston* and *Soame*, (*State Trials*, Vol. 7. p. 441, 442, &c.) I shall trouble your Lordship but with two Cases, and the Reasons of them, to prove the Truth of this Assertion. The one is *Elliot's* Case, in the last Impression of *Croke's Charles*, fol. 608. where my Lord Chief Justice *Vaughan* says, it is clear and undoubted Law; that whatsoever is in itself lawful cannot have an unlawful Intent annexed to it; for then the most innocent Act of a Man's Life would be liable to severe Censures. And he instances in this, that a Man might then be indicted for High Treason; for drinking Water with a Design to lessen and destroy the Customs and Revenue, thereby intending to dethrone the King. The other Case that I would mention is in *Dyer*, f. 296. pl. 19. in these Words: "A Subject of this Realm, being a Merchant of London, departed out of this Realm without Licence of the Queen, only to the Intent that he might live there free from the Laws of this Realm, and out of his due Obedience to the Queen, and not upon any Account of Merchandizing; Whether such a Departure were any Offence or Contempt to the Queen, or not? And by the Opinion of almost all the Justices, such a Departure, before an express Prohibition or Restraint by Proclamation, or Writ of *Ne exeat regnum* awarded by the King or Prince, is not any Offence or Contempt; for it is a Thing indifferent to depart the Realm, and the Purpose and Cause, which is secret in the Heart, is not examinable." That is the Reason given in the Book: And *Jenkins*, a Man much for Prerogative, in his second Century, cap. 70. fol. 88. agrees this Case to be Law, and says, that the Common Law doth not allow an Intent to be issuable or triable, and gives this Reason for it, *Cor hominis est inscrutabile*. Now, my Lord, those that will not allow Absolution to be a very good Act, must grant that it is at least indifferent. And then the Cause, Purpose, End or Intent of it being secret in the Heart, is not examinable, and therefore cannot be justly said to be done for raising a Rebellion, or causing a Disturbance in the Kingdom. And I do not know that in any Case a Man is punishable for an ill Intent, except in one Species of Treason, the Compassing the King's Death; and in that Case the Intention must be proved by some Overt-Act directly tending to the Fact designed.

2. But I come now to the second Point, That if this shall be deemed an Offence, yet it is not enquirable nor punishable in this Court. I must humbly submit it to your Lordship's Judgment,

whether the Power of Absolution, which is given to the Apostles and their Successors by the Author and Establisher of all lawful Power, both Ecclesiastical and Civil, in these Words; in the twentieth Chapter of *St. John*, v. 23. *Whose soever Sins ye remit, they are remitted; and whose soever Sins ye retain, they are retained*, be not an Authority far above all sublunary Jurisdictions; and these Gentlemen, the Successors of the Apostles, not to be called to an Account for what they did in the Execution of that Authority, but by him alone who delegated that Power to them. But supposing it should be examinable here on Earth, with Submission to your Lordship, it is only in that Court, by those Persons or that Sort of Men; who conveyed to these Gentlemen that Power given by our Saviour. And this I shall endeavour to prove, First, From the Nature of the Thing itself. Their Commission for it is their Ordination, which Laymen cannot give. Nor is it to be tried by the Common Law; for Profession in Religion, or *infra sacros ordines*, is only triable by the Ordinary, *Co. Lit.* 132. b. 2 *Inst.* 492.

That very learned Prelate, the present Bishop of *Worcester*, in his Charge to his Clergy, fol. 43. tells us out of *Cajetan*, *Officium curæ animarum est præcipuum ac spiritualissimum Dei donum*. And the Bishop is substituted by our Saviour to give the Ordination, which he doth in these Words, *Receive the Holy Ghost now committed unto thee by the Imposition of our Hands. Whose Sins thou dost forgive, they are forgiven; and whose Sins thou dost retain, they are retained*. Now, methinks, a Man must naturally infer from hence, that since this Authority is derived from our Saviour by the Bishops; if any Persons on Earth can visit and reform the Errors or Abuses in the Execution of this Power, it must be those who are intrusted to give the Ordination: And of Things of this Nature their Courts have usually had the Conuance. Nay, the Privileges of the Clergy in old Times went much further; for our pious and devout Ancestors, following the Directions of the Son of *Syrach*, *Ecclesiasticus* 7. 29, 31. *Fear the Lord, and reverence his Priests*, thought they could not pay sufficient Respect and Honour to the Clergy, unless they exempted them from all Temporal Jurisdiction. So that even in Temporal Offences, and those of almost the highest Nature, Murder, and Felony of course, and even in Sacrilege, if the Ordinary would demand the Prisoner for his Clerk, he was immediately taken from the Temporal Court, and subjected to the Ordinary's Jurisdiction, *Stanford's Pleas of the Crown*, 123. and 3d *Institut.* 114. And *Horn*, in his *Mirror of Justice*, c. 3. sect. 4. asserts, that if, in a Temporal Court, a Clerk accused of any Case criminal or mortal, pleads that he is a Clerk, the Judge hath no farther Conuance of the Cause; for the Church is so enfranchised, that no Lay Judge can have Jurisdiction over a Clerk. And the Abridgment of the Book of *Assizes*, Tit. *Corona*, fol. 74. says, that if a Clerk will not pray the Benefit of his Clergy, yet if the Judge knows him to be so, he will not give Judgment of Death against him, as against a Layman. And these Privileges would have remained to this Day, if Acts of Parliament had not altered them. And if the Clergy were exempted from the Temporal Jurisdiction for Offences of so high a Nature, if the Argument

à majori

à majori ad minus holds good, they must certainly have been exempted from being punished in Temporal Courts for all their lesser Crimes; and must still be so, where no Statute Law interposes, and that will lie on the other Side to shew.

And so far of late Years have the Clergy been thought and esteemed to be exempt from the Secular Power, that on the Treaty of the *Spanish Match*, it was agreed, that the *Infanta*, who was then designed to be our Queen, should have her Popish Clergy, and a Superior over them. And the 14th Article runs thus, "That if any Secular Judge shall apprehend any Ecclesiastical Person for any Offence, he shall forthwith cause him to be delivered to the aforesaid Superior Ecclesiastick, who shall proceed against him according to the Canon Law." These Articles were then sworn to by the King, Prince, and Privy-Council; and therefore we must believe it to be done on very good Advice. This is taken Notice of by Mr. *Rushworth*, in his first Volume; fol. 87. And although how far and in what Cases Spiritual Persons were formerly out of the Reach of the Secular Power, may admit of some Debate; yet nothing is more plain than that Spiritual Causes cannot be determined by the Civil Power. *Judex secularis de rebus spiritualibus cognoscere non debet*, says *Fleta*, l. 6. c. 37. f. 429. There is (as the incomparably learned Bishop of *Worcester* has it, in his Charge to his Clergy, fol. 35.) a Common Law Ecclesiastical, which, although in many Things it may be the same with the Canon Law that is read in Books; yet hath it not its Force from any Papal or Legatine Constitutions, but from the Acceptance and Practice of it in our Churches: And such a Law, my Lord; is coeval with the very Government itself. The learned *Selden*, in his Notes on the 17th Chapter of *Fortescue*, says, that in Time of Paganism the *Druids* were the Lawyers, and determined Controversies; the same Persons were their Priests and Judges. And Sir *Henry Spelman*, in his Discourse of Law-Terms, tells us, that in the Infancy of Christianity the Bishops and Clergymen did hear and determine all Causes amongst the Christians. And how those Matters were settled, when Christianity came to be established amongst us, Sir *Thomas Smith* will acquaint your Lordship, in his Treatise *De Republica et Administratione Anglorum*; a Book I have often heard cited in this Court, not only at the Bar, but by very learned Judges on the Bench. In his third Book, the 11th Chapter, are these Words: *In quatuor potissimum causarum generibus Archiepiscopi Episcopique peculiarem jurisdictionem sortiuntur, in testamentis et legatis, in decimis et mortuariis, in nuptiis, adulterio aut fornicatione, et in iis demum omnibus quæ ad ordinem et decus Ecclesiasticum conservandum et religionem constabiliendam pertinent; nam majores nostri rempublicam primo ordinarunt, postea fidei Christianæ nomen dederunt, et potestatem sic constitutam, cum ea quam Apostoli, doctores, theologique religionem invexerunt, semper retinuerunt; quicquid ad conscientie forum pertinebat, illis utpote peritioribus, et ob vitæ sanctimoniam mcrumque probitatem laudatissimis, quibusque confidebant, maxime delegabant.* I shall not take up your Lordship's Time to prove, out of *Magna Charta*, and other old Laws, that the Clergy have Rights, Liberties, Privileges and Immunities; but taking that for granted, shall proceed to examine, whether this Case doth any way, and how, concern their Rights and

Privileges. It cannot be denied, but that to be exempt from the ordinary and common Jurisdiction is an Immunity, and to have Conusance of Causes is a Liberty and Privilege: But the Question still is, if the Clergy are in Cases of this Nature exempt from the common Jurisdiction of the King's Temporal Courts, and the Ecclesiastical Judges have Conusance of the Offence (if an Offence it be) of which these Gentlemen stand accused? My Lord *Coke*, in his 5th Report, in the Cause of the King's Ecclesiastical Law, fol. 9. says, "As in Temporal Causes the King, by the Mouth of his Judges of Justice, doth judge and determine the same by the Temporal Laws of *England*; so in Causes Ecclesiastical and Spiritual, as namely, Blasphemy, Apostacy from Christianity, Schisms, Ordering, (that is, Ordination) Admissions, Institutions of Clerks, Celebration of Divine Service, and others, the Conusance whereof belongs not to the Common Law of *England*, the same are to be determined and decided by Ecclesiastical Judges; according to the King's Ecclesiastical Laws of this Realm." In the Case of *Holt and Dighton*, in the twelfth of King *James* the First, (it is reported 1 *Rolle's Rep.* 410.) who were brought up into this Court by *Habeas Corpus*, the Return whereof was, that they were committed by the High Commission Court, and the Cause of their Commitment was, that they were demanded by the High Commission Court if they would conform themselves to the Custom of the Church of *England*, and receive the Sacrament kneeling; and for that they would not give a direct Answer to it, they were committed; and though it was moved by Serjeant *Harvey* to have them discharged, yet *Coke* and *Doderidge* said, that the High Commission Court had Jurisdiction of Schisms and Heresies, and in that Case they were accused of a Schism, and therefore they had Jurisdiction of the Cause; and so the Court remanded them.

Now, my Lord, within all and every one of these Descriptions of Spiritual Causes comes this that is now before your Lordship; for, according to that of Sir *Thomas Smith*, this concerns Orders or Ordination, for it was by Virtue of their Ordination that they did it. It relates to the Decorum of the Church, and concerns the Establishment of Religion; for the Indictment says, it was done to the Scandal of the Protestant Religion now by Law established. And that it is Matter of Conscience, is in itself apparent. The Case comes likewise within my Lord *Coke's* Description of Spiritual Causes; for it concerns Ordering and the Celebration of Divine Service; for the Question is, Whether they performed it as they ought to do? And the Indictment itself shews it, which not only stiles the Defendants Clerks, but says they did it *ut Presbyteri Ecclesiæ Anglicanæ*; which intimates it was done in celebrating Divine Service. And if kneeling at the Sacrament be a Matter of Ecclesiastical Conusance, and out of the Reach of the Temporal Courts; though the Rubrick is much more plain and express in that than in our Case; yet if that Nonconformity be called a Schism, it is only examinable in the Spiritual Courts, whether ours be so or no. And the rather, my Lord, shall the Bishop's Court, or the Bishop himself, judge this Matter, for that, by the Common Law Ecclesiastical, the Bishop is appointed the Visitor of all that enter into holy

Orders, and he is to see if they live and act according to their Ordination, and to punish them that do amiss. And Absolution is one of the great Ends of Ordination; and for this Purpose doth the Bishop make his frequent Visitations. Now, my Lord, where the Law doth appoint a particular Visitor, he alone is to look to that Charge; and no one else to interfere: And that is the Reason why a *Mandamus* did not formerly go out of this Court to restore a Monk or Friar, nor at this Time for a Fellow of a College, a Proctor of *Doctors-Commons*; or the like: And, I think, on that Point the Cause of *Exeter College* was adjudged against Dr. *Berry* in the House of Lords. To this I must crave Leave to add, that where the Ecclesiastical Court hath Conusance of any Cause, all other Things that are incident or relating to it are likewise within their Jurisdiction: *Cognitio principalis trahit ad se accessorium*. And the Books are so full of Instances thereof, that I need not mention any. And if any inferior Officer transgresses, in acting or doing that which belongs to Ecclesiastical Conusance, the Archbishops and Bishops are to punish it, and the Temporal Judge is not to interfere. Exactions and Extortions look more like Temporal Offences, than what these Defendants stand now convicted of; for those in their own Nature tend to stir up the People to Sedition and Rebellion; yet these Offences, when committed by Spiritual Men or in Ecclesiastical Affairs, by the Common Law our Courts could not meddle with them. Mr. *Prynne*, in his Animadversions on my Lord *Coke's* fourth Institutes, fol. 233. cites this Record out of the Petitions in Parliament, Anno 18 E. 1. *Homines de London' conqueruntur de officialibus et ministris Ecclesie de multimodis vexationibus et exacti-onibus nimis onerosis, per quas plus extorquent de populo quam omnes curie laicales; et petunt quod Rex opponat remedium festinanter, ne destruat populus in occulto*. The Beginning of the King's Answer is somewhat doubtfully penned. Mr. *Prynne* gives it in a distinguishing Character: *Si curia Regis possit emendari, faciat*. But the rest of the Answer is direct; *Cancellarius emendet in temporalibus, Archiepiscopus faciat in spiritualibus*. But these Oppressions and Extortions, it seems, continued; and some Attempts there were to punish them by Indictments at Common Law; but such Indictments were thought illegal: For in the Close Roll of * 16 E. 3. par. 2. mem. 12. dorso, I find a special *Supersedeas processibus omnibus et singulis coram justiciariis nostris inchoatis seu factis contra viros Ecclesiasticos, cujuscunque conditionis aut status fuerint, super extorsionibus et excessibus per ipsos in nostri ac jurium coronæ nostræ prejudicium in exercitio jurisdictionis Ecclesiasticæ factis*: And that there

should be no more new Indictments against them before the next Parliament. And in the Close Roll 17 E. 3. par. 1. m. 24. dorso, is the like Writ to the Justices of Oyer and Terminer for the County of *Hereford*, in which there is a *Supersedeas* to stay the Proceedings at Common Law against some particular Persons for those Offences. And in the Close Roll of 18 E. 3. m. 14. dorso, (Sir *William Dugdale* is mistaken in the Year, when he calls it the 17th) is the Summons to Parliament, the next Parliament after the aforesaid Writs; and the Summons runs thus: *Quia pro quibusdam arduis et urgentibus negotiis, honorem Dei, et decus et defensionem ecclesie Anglicanæ, et salubre regimen populi et regni nostri Angliæ summe contingentibus, ordinavimus parliamentum nostrum, &c.* At which Parliament there was an Act made, which is in the printed Statutes 18 E. 3. c. 6. in these Words: "Whereas Commissions be newly made to divers Justices to make Inquiry upon Judges of Holy Church, whether they made just Process or excessive in Causes Testamentary, and other, which notoriously pertaineth to the Conusance of Holy Church; the said Justices have inquired, and caused to be indicted Judges of Holy Church, in blemishing the Franchise of Holy Church, that such Commissions be repealed and from henceforth defended." And so the Officers of the Ecclesiastical Courts went on with their Oppressions and Extortions, and the Temporal Courts could not lay hold of them for those Offences, as appears by several Petitions and Answers in the Parliament Rolls, 21 E. 3. n. 51. 1 H. 5. n. 23. till the Statute 21 H. 8. c. 5. brought them within the Conusance of the Courts of Common Law. And if the Archbishops and Bishops can alone, (the Statute being out of the Case) exclusive of all Secular Power, look after and punish the Irregularities of their Commissaries, though they tended to the Prejudice of the King and his royal Prerogative, their Power must be full as great over all Ecclesiasticks, and in an eminent Manner over the Clergy, in all Matters relating to their Function, and especially in all Things which concern the Discipline of the Church, of which the Bishops are Judges, as well as of the Doctrine. *Braeton*, in his fifth Book, *De exceptionibus*, c. 2. fol. 401. a. treating concerning the Jurisdiction of Courts, hath this Expression: *Clericus in nullo conveniendus est coram judice seculari, quod pertinet ad forum Ecclesiasticum, sicut in causis spiritualibus, vel spiritualitati annexis, ut si pro peccato vel transgressione fuerit penitentia injungenda, et quo casu judex Ecclesiasticus habet cognitionem; quia non pertinet ad Regem injungere penitentias, nec ad judicem secularem, nec etiam ad eos pertinet cognoscere de iis*

* Rot. Claus. 16 Ed. 3. par. 2. mem. 12. dorso, in Turri London. *Rex dilectis et fidelibus suis Hugoni de Courtney, Comiti Devon', et Sociis suis, Justiciariis nostris ad diversa transgressiones, oppressiones et extorsiones, damna, gravamina et excessus nobis et populo nostro illata in Com' Devon' audiend' et terminand' assignat' salutem. Cum in ultimo concilio nostro apud Westm' tento, ad requisitionem Prelator' regni nostri Angliæ, concessimus, quod processibus omnibus et singulis coram Justiciariis nostris inchoatis seu factis contra viros Ecclesiasticos, cujuscunque conditionis aut status fuerint, super extorsionibus et excessibus per ipsos in nostri ac jurium coronæ nostræ prejudicium in exercitio jurisdictionis Ecclesiasticæ factis, ad exigend' in ipsos hijs occasionibus promulgand' usque ad proximum parliamentum nostrum supersedeatur; et quod inquisitiones super extorsionibus et excessibus hujusmodi contra eos per Justiciarios citra dictum parliamentum nullatenus de novo fiant: Vobis mandamus, quod omnibus processibus coram vobis in com' predict' inchoatis versus quoscunque viros Ecclesiasticos, pro extorsionibus et excessibus per ipsos in nostri et jurium coronæ nostræ prejudicium in exercitio jurisdictionis Ecclesiasticæ factis, usque ad proximum parliamentum nostrum supersederi faciatis; et Vic' nostr' com' predict' detis in mandatis, quod exigend' in ipsos vel eorum aliquem p' missa occasione promulgand' usque ad dictum parliamentum nostrum supersedeat: ac vos inquisitionibus super extorsionibus et excessibus hujusmodi contra dictos viros Ecclesiasticos citra parliamentum predict' de novo capiend' similiter supersedecatis, juxta promissionem nostram predict'.* (T. prefato Custode apud Kenyngton, 15^o die Novembris.)

Per Concilium.

Eodem modo mandatum est Thomæ de Berkele, et Sociis suis, Justic' ad diversa transgressiones, &c. in com. Som. (T. ut supra.)

And there is a Space in the Roll, supposed to be left for entering of other Writs of the like Nature, that were then issued forth.

quæ sunt spiritualibus annexa. And if the Temporal Courts cannot hold Plea *de penitentia injungenda*, certainly they cannot punish *pro penitentia non declarata*. Besides, I think it cannot be denied, that Absolution is Spiritual, *vel saltem spiritualitati annexa*. More Instances I could produce, if I thought it necessary, to prove that where the Ecclesiastical Court hath Conusance of the Celebration of Divine Service or other Spiritual Matters, it must hold Plea of what is incident or belonging to it; and therefore of the Mind, Intention, and Design with which any Spiritual Office is performed, if such Mind can be fathomed, and Intention punished. And I presume, my Lord, there will be no Occasion to prove that all the Rights, Liberties, Privileges and Immunities, that the Clergy lawfully enjoyed in the Time of Popery, do still belong to the present Church of *England*, unless they are taken away or altered by Act of Parliament; for though the Errors were corrected, and Abuses reformed in Matters of Doctrine and of foreign Jurisdiction, yet the legal Rights of the Church, and Power of the Clergy, were not shaken or invaded by the Reformation.

3. And now, my Lord, I come to the third and last Point I propose to speak to; and that is, supposing what these Gentlemen stand accused of is an Offence, and that this Court hath Conusance of it; yet, with Submission to your Lordship, there is no Judgment to be given against us on this Indictment. I believe the King's Council cannot shew me any Rule at Common Law concerning Absolution. So that, if we are guilty of any Offence, it is for not observing the Rubrick. If we have acted according to the Letter and Intent of that; no Indictment will lie against us for the Fact we are now accused of: And if we have deviated from the Rubrick, then the Indictment ought to have been framed on the Act of Uniformity. It is a Rule laid down in our Books, That where a Statute makes that an Offence which was not so before, an Indictment for that Offence must conclude *contra formam statuti*. So is *1 Saunders 249. 2 Rolle's Abr. 82. 1 Croke 449. and Jones 379.* And I could instance in many Precedents that are drawn accordingly. I shall mention some few on this very Act of Parliament: They are all in the same Term, *Mich. 15 & 16 Q. El.* in this Court, and against the same Person, *Robert Johnson*, of *St. Clements-Danes*, Clerk. One of the Indictments is *for speaking against the Book of Common-Prayer*, *contra formam Statuti*: Another against him, *for omitting the Litany, Epistle and Gospel, in saying the Divine Service*: Another against him, *for christening a Child, and not signing him with the Sign of the Cross*: Another against him, *for marrying a Couple without a Wedding-Ring*: Another against the same Person, *for saying Morning and Evening Service without a Surplice*. And though the Preamble and Inducement to every one of these Indictments make an heavy Complaint against the Person that is so indicted, as if he intended to destroy the Protestant Religion by Law established, and overthrow the Government, yet they all conclude *contra formam statuti*. Now, my Lord, according to the Rule and Precedents I have cited, this Indictment that is now before your Lordship should have set forth, that the Defendants did not move *Sir John Friend* and *Sir William Perkins* to a special Confession of their Sins, but without it gave them Absolution,

contra formam statuti. But supposing, my Lord; it should be answered, that the Indictment is rather for the ill Intention of the Defendants, than for not observing the Rubrick; with humble Submission to your Lordship, if such an Indictment may be brought, yet this before your Lordship is not rightly framed, but is insufficient and uncertain in relation to that very Intent: For the Indictment says, These Defendants conspiring, intending, and designing the execrable, horrible, and detestable Treason, for which *Sir John Friend* and *Sir William Perkins* were then just going to be executed, to justify, or at least to extenuate, diminish, and undervalue, &c. did absolve them. Now, my Lord, *non constat* which they aimed at, Justifying or Undervaluing; and they cannot be found guilty of all: For though the Verdict be general as to this, yet it is according to the Indictment, which is in the Disjunctive, *Et in disjunctivis sufficit unum verificari*. Therefore our Common Law doth always require Certainty, but especially in Indictments; they ought to be certain to every Intent, that a certain Judgment may be given on them. Where a Man in pleading sets forth his Title by a Conveyance, in which are the Words *give, grant, release, confirm, bargain, sell, &c.* he must shew which of them he makes Use of, and which he applies to his Purpose, or else his Plea is naught, *1 Ventr. 109*. The Return of a *Habeas Corpus* sets forth the Commitment, *Et hæc est causa captionis seu detentionis*, adjudged an ill Return, *1 Ventr. 324*. In *Trinity Term* last, in this Court, there were several Indictments against *Baker* and others for exercising the Trade of a Rope-maker, *existens misterium infra regnum Angliæ vel Walliæ*; and there, altho' the Offence was the same whether it were a Trade in *England* or *Wales*, yet for the Incertainty which the Disjunctive made, the Indictment was quashed. And in the last Term (*H. 9 W. 3. B. R.*) *Sanky* and another Quaker were brought tip by *Habeas Corpus*, and the Return set forth a Commitment by two Justices, by Virtue of the Statute *27 H. 8. c. 20.* reciting a Certificate from the Commissary, that a Cause of Subtraction of Tythes or other Ecclesiastical Duty was depending in the Ecclesiastical Court, to which the Defendants refused to answer. In that Cause, though the Words of the Act of Parliament are strictly pursued, which gives the same Remedy where the Fact is for other Ecclesiastical Dues as it does for Tythes, yet because the Certificate on which the Return was grounded, did not set forth in particular for what the Suit was commenced in the Ecclesiastical Court, but only in the Disjunctive, for that Reason the Commitment was held insufficient, and the Parties discharged. In *Mr. Rowe's Case, Bendlow*, fol. 60. in *Replevin*, the Plaintiff claims Common appurtenant to a Manor or a Messuage called *Cursall Grange*, by Prescription, and they were at Issue on the Prescription; but in Arrest of taking the Inquest, it was shewn to the Court, that the Prescription was uncertain for the Common, to wit, To the Manor or Messuage; where he ought to have claimed it to one only. And the Court adjudged them to re-plead, though the Place itself was expressly and certainly named and called *Cursall Grange*. In the same Book, fol. 177. pl. 39. an Ejectment *de una acra terræ sive prati* adjudged ill; and so is the same Case reported, *Dyer 264. pl. 39. and 1 And. 31. pl. 73.* An Inquisition on
a diem

a *diem clausit extremum* finds, that a Man was seized *de uno messuagio sive tenemento*, was held void and insufficient, *Ley. 9. 13 Rep. 48.* So an Ejectment *de uno messuagio sive tenemento* is ill, even after a Verdict, *1 Rolle's Rep. 7, 334. 2 Rolle's Abr. 80. 3 Leonard 228. Ley. 43. 2 Cro. 621. 1 Siderfin 295. 1 Cro. 188.* and many other Books. And in *Noy's Reports*, on the like Occasion, it is said, that a Writ in the Disjunctive is void. And in *Popham*, fol. 203. it is held, that an Ejectment *de burgagio sive tenemento* is naught. Though indeed in Serjeant *Hardresse's Reports*, fol. 173. in the Case of *Danvers versus Willington*, it was held, that an Ejectment *pro uno messuagio sive burgagio in Hay infra Muros* was good enough; but the Reason given was, because *messuagium et burgagium* signify the same Thing in a Borough. There was a Cause (*Pasch. or Tr. 8 W. 3.*) about two Years since in this Court, it was an Indictment against *Stocker*, for that he *fabricavit, seu fabricari causavit*, a certain Bill. Exception was taken to it, because it was in the Disjunctive, whereas it ought to have been positive and particular. And I think the Council for the Prosecutor could never get over that Exception; and, to the best of my Remembrance, there was but one Answer that was aimed at, and that was, that the Offence and Fact were the same; for he that caused it to be counterfeited, might be truly said to counterfeit it: But I think that was not held a good Answer to that Exception. But in our Case that cannot be pretended: *Justificare* and *Vilipendere* are of a very different Signification. The very Indictment doth insinuate as much; *Justificare, vel saltem extenuare, diminuerere, et vilipendere.* The *vel saltem* doth shew, that the subsequent Words are not of so great Force as those precedent. And indeed almost opposite they are; for he that justifies, denies that it was an Offence; whilst he that diminishes or undervalues it, says truly, it was an Offence, but not so great as is pretended. And, my Lord, by reason of this Uncertainty, the Court must be in Doubt what Judgment to give; for it is evident, he that would justify Sir *John Friend's* Offence would deserve a greater Punishment, than he that should only lessen it, and say it was not so great an Offence as *Charnock's*. Such an Invasion is not so horrid and villainous, nor of so deep a Dye, as that barbarous Assassination that was intended. After such a Manner, methinks, a Man might lawfully extenuate an Offence, when it would be highly criminal to maintain and justify the Fact. Besides, *Vilipendere* may be taken to vilify, contemn, and condemn the Fact; and must that be thought a Crime? And the *non* afterwards, with those other Aggravations that are there added, cannot mend the Matter: For all that Harangue of persuading Persons that Sir *John Friend* and Sir *William Perkins* were innocent, and the inciting the People to Treason and Rebellion, depend purely on the Justification or Extenuation of the Crime; for, if the Fact were justified, People would be sooner induced to follow their Example, than if it were acknowledged to be an Offence, but the Heinousness of it lessened, diminished, or vilified. And which of these Defendants aimed at, was doubtful to him that drew the Indictment, doubtful to the Jury, and therefore I hope the Court will give no Judgment on it. Besides this, my Lord, there is, I presume, another Exception that may

prove fatal to this Indictment; and that is, the insufficient setting forth the Attainers of Sir *John Friend* and Sir *William Perkins*, in not shewing when, where, or before what Judges they were attainted, which, with Submission to your Lordship, ought of Necessity to have been done. I acknowledge that a bare Inducement requires not much Certainty: But when it is such a Matter, on which the whole doth so depend that you can make nothing without it, and when it is traversable, then it is Substance, and must of Necessity be certainly expressed. For Instance, if *J. S.* be accused, either civilly or criminally, of an Offence, which is not so but with relation to a Fact of *J. D.* there the Fact of *J. D.* must be certainly expressed. As in *Hely 73. 3 Cro. 752. Plowman*, a Constable, was indicted for suffering one, who was arrested *pro quadam feloniam antea factam*, to escape; and because it was not shewn what Felony it was, and when done, he was discharged. So in this Case, if it be an Offence to absolve Traitors, whether they are attainted or no, then the Treason ought to be specially and particularly set forth, and when and where it was committed: But if it be not an Offence to absolve Traitors, unless they are attainted, then that Attainder ought to be as fully and plainly expressed as the Time and Place where those Traitors were executed, which in this Indictment is carefully set forth. And that this Indictment is faulty in this Particular, I shall endeavour to prove, as well by Precedents, as by the Opinions and Judgments in our Books of Law. But inasmuch as this Indictment is *primæ impressionis*, I must trespass on your Lordship's Patience, whilst I refer to other Precedents in which Records are mentioned and recited, and from a Parity of Reason reduce them to the present Case. I shall begin with Precedents of Declarations. If an Action of Debt be brought against a Sheriff for the Escape of one in Execution, the Time and Place, and the Court in which the Judgment was obtained, is always mentioned, *Hern. 74. Robinson 311. Brown's Entries, 1 par. 18. 2 par. 15. Brownlow's Lat. Rediviv. 33. Thompson 122. and Vidian 193, 197.* and several other Books.

So against a Sheriff for not taking one in Execution that was in his Presence, sets forth the Judgment, and out of what Court, when and where the Execution issued. *Upper Bench Precedents 79. Ashton 57. 2 Brownlow 35, 36.*

An Action for maliciously indicting the Plaintiff for Felony sets forth, when, where, and before whom the Indictment was. *Vidian 145. Hansard 24, 25, and 53.*

An Information against one for taking and carrying away the Goods of a *Felo de se*, sets forth the Inquisition, and before whom it was taken. *Old Book of Entries, 225. b.*

An Information for intruding into Lands which came to the King's Hands by Attainder, sets forth the Record of Attainder, where, when, and before whom. *Rastall's Entries 387, 412. Plowden's Commentaries 547. Ashton 181.*

And so, my Lord, in all good Precedents, where Records of Attainder are mentioned, the Time, Place, and Court are always set forth. So is *Wiat's Attainder, Co. Entries 79. Rastall 413. b. Plowden's Com. 449.*

So is *Littleton's Attainder, Co. Entries 422. b.* And *Trussell's Attainder, Co. Entries, 246. b.* the Duke

Duke of Somerset's Attainder, *Co. Entries* 481. and the Attainder of *John Bary*, in the same Book, *fol.* 699.

So if the Master of the *Crown-Office* takes an Inquisition concerning the Escape of any Prisoners of this Court, according to the 39th of *H. 6. c. 33.* the Record on which they were committed is fully taken Notice of, as I have seen a Precedent, *Mich. 4 & 5 El. rot. 7.* In the Case of Mr. *Braddon* and Mr. *Speake*, the Indictment doth not only say that my Lord *Essex* did murder himself at such a Time and Place, but adds further, *as by Inquisition taken at the Tower of London aforesaid, upon View of the Body of the said Arthur Earl of Essex, and now in this Court remaining of Record, does more plainly appear,* (*State Trials*, Vol. 3. p. 855.) So the Indictment against *Tasborough* and *Price*, for suborning *Dugdale* to retract his Evidence that he had given against the Popish Recusants, &c. (*Vol. 2. p. 1017.*) sets forth the Record, where and before whom such Convictions were. So in the Case of *Thompson*, *Pain* and *Farewel*, for printing and publishing a scandalous Pamphlet relating to Sir *Edmundbury Godfrey's* Death, (*Vol. 3. p. 505.*) the Information doth not begin like this Indictment, *Whereas Green, Bury, and Hill were attainted of Murder;* but sets forth, that it was in such a Court, in such a Year and Term, with the Indictment and Attainder at large, and where the Record is to be found.

I could instance in many more Precedents of the like Nature; but I fear I have tired your Lordship's Patience too much already, and therefore shall conclude with one that will lead me to the Opinions and Judgments in our Books of Law, which I hope will be of Use to fortify the Precedents I have cited to prove this Indictment vicious. It is in *Keilway* 193. An Inquisition that finds the Attainder of one *Bays*: The Record is large, and therefore I shall not recite it, nor make any other Observations on it than what are in the very Report; which are in these Words: "*Memo-*
"*randum.* This Inquisition was drawn by good
"*Advice,* that is to say, by the Council of King
"*Henry* the 7th; yet the Inquisition which entitled
"*the King* to the Land, by reason of the At-
"*tainder* of the said *Bays*, doth not make any
"*Mention* of the Indicters, nor of the Names
"*of the Justices* of Peace who took the Indict-
"*ment,* but only the Day of the Indictment
"*taken,* and the Day of his Attainder, without
"*expresly* mentioning what kind of Felony, but
"*pro quadam felonia,* and the Names of the
"*Justices* before whom he was attainted." These are the Words of the Reporter: And, my Lord, that this Case is of general Concern, appears by the next Case in that Book, *Keilway* 194. An Indictment was found on the Escape of certain Persons convict, without shewing before what Justices the Conviction was; and after the Matter was considered at the Bar and the Bench, the Indictment was held insufficient: But says that Case, "The Names of the Justices of Peace
"*before* whom the original Indictment was taken
"*is* not material, nor the specifying of the
"*Felony,* *prout patet supra* in the Case of *Bays*;
"*for* where the Court is instructed to whom to write
"*to* certify the Record, all the Special Matter
"*shall* come in by the Certificate: And although
"*the Justices* of Gaol-Delivery, or other Justices,
"*before* whom the Conviction or Attainder is,
"*do* not certify the Original, it is not material,
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" so that they certify the Body of the Record of
"*the Attainder* or Conviction." These are the
Words of that Book: And, my Lord, it must
be on the same Reason, that where a Man pleads
a Conviction of Recusancy, he must shew before
whom it was, *Noy* 89, 97. And so are the
Precedents in *Winche's Entries* 522, 523, 524.
2 Brownl. 15. *Hern.* 503. So in an Action for
maliciously indicting a Man for Treason, it is not
sufficient to say he did indict the Plaintiff; nay,
if he adds *coram* such Persons, Justices of the
Peace, and omits *ad gaolam deliberand' assignat'*, it is
ill, *2 Cro.* 357. And in an Action for maliciously
indicting a Man of Perjury, he must set forth the
Indictment, and shew that it was preferred before
one that had Conusance of such Matters. And
that is not all; he must likewise shew, that the
Cause in which he swore was *coram iudice*, *3 Cro.*
725. He that pleads a Presentment in a Court
Leet, must set forth the Day when the Court
was holden, *2 Saunders* 290. *1 Ventris* 107. And
therefore to plead that at *quandam curiam* he was
amerced, is ill, *Modern Rep.* 75.

An Indictment of Maintenance *in quodam placito*
coram Domino Rege pendente, not mentioning where
the *King's-Bench* sat, was held fatal in Arrest of
Judgment, *1 Ventr.* 302.

An Indictment for a second Offence, where the
Punishment is greater than for the first, ought to
recite the former Conviction, *1 Lennard* 295.
So it was done in *Roger Booth's* Case, *Mo.* 666.
pl. 913. In *3 Keble* 737, an Indictment for a
second Offence of Printing did set forth the first,
but did not say where it was; therefore *Twisden*
held the Indictment naught. And if there be a
Necessity of setting forth so precisely the first
Conviction, to make the second Offence the
greater, methinks, in Reason, it must as certainly
be set forth, where it gives the very *esse* to the
Offence. And if such a general Way of referring
to Records should be allowed in Indictments, it
would not only overthrow all the Precedents and
other Authorities I have cited, but the Defendants
must needs lie under several Inconveniencies.
They would then be cut off from the Privilege
of pleading *Nul tiel Record*, or traversing it, as
was done in *Bays's* Case before-mentioned: For,
although such a Traverse might amount almost to
the General Issue, yet comprehending Matter of
Law, the Defendants may plead it specially,
Hobart 127. And if the Defendants plead the
General Issue, how shall they know where to go
to find out the Record, to see whether a true
Copy be produced against them? And it cannot
be a sufficient Answer to say, that the Indictment
sets forth that *debite et legitime* they were convicted
and attainted; it must be shewn after what
Manner they were attainted, that the Court may
judge whether it was legally done or no. In
Patrick Harding's Case, in the first Year of this
King and the late Queen (it is reported in *2 Ventr.*
316.) the Indictment against him was for High
Treason, and did set forth that he adhered to the
King's Enemies. The Jury found, that he listed
and sent Soldiers to the *French* King, then an
Enemy to our King and Queen: But the Court
held the Indictment too short there, because it
mentioned *hostibus et inimicis* generally; whereas
it should have set forth who those Enemies were,
that the Court might take Notice whether they
were Enemies, as the Law intended.

In the Case of *Woodly and Bezly*, 2 Cro. 291. *Wolverton* 213. 1 *Brownlow* 114. In Debt for Rent upon a Lease for Years, the Plaintiff derives his Title by the Grant of the Reversion by way of Bargain and Sale in Fee from the first Lessor; and declares, that by Indenture of such a Date, one grants, bargains and sells for Money to him the Reversion in Fee, which Indenture was inrolled such a Day *secundum formam statuti*; and on *nil debet* pleaded, there was a Verdict for the Plaintiff: Yet Judgment was arrested; because the Plaintiff had not shewn in what Court the Indenture was inrolled; though it might have been, and undoubtedly it was alledged, that it was but a Conveyance to the Title, and an Inducement to the Action, and *secundum formam statuti* shews it was *debite et legitime*: So in *Allen* 19. King against *Somerland*. In Debt for Rent, the Plaintiff declares on a Lease for Years made by a Stranger, who bargained and sold the Reversion *per indenturam debito modo inrotulat' in Curia Cancellaria*. After a Verdict for the Plaintiff, on *nil debet* pleaded; it was moved in Arrest of Judgment, that he had not alledged the Inrollment to be within six Months, nor *secundum formam statuti*; and though it were said to be *debito modo*, yet that would not mend the Matter, nor aid the Incertainty, and therefore Judgment was arrested. So in the same Book and Folio, *Colman* against *Painter*. In an Action by the Lessee against his Lessor, on a Covenant for peaceable Enjoyment, he assigns for Breach a former Lease to *J. S.* The Defendant pleads, that the Lease to *J. S.* was with Condition of Re-entry for Non-payment of Rent, and that before the Lease made to the Plaintiff, the Rent was behind, and *legitime demandat' secundum formam indenturæ*, and upon Non-payment he re-entered, and made the Lease to the Plaintiff: And upon Demurrer it was resolved, that the Demand was insufficiently alledged; for, says the Book, he ought to set forth certainly, when and where it was made, that it might appear to the Court to be legal.

I shall trouble your Lordship but with one Case more to this Point; it is in 3 *Lennard* 72. A *Quo Warranto* was brought by the Queen against Sir *John Constable*, who claimed certain Wreck in the County of *York*. The Defendant pleaded, that *Edward Duke of Buckingham* was seized of such a Manor, to which he had Wreck appendant, and that he was *de alta proditione debito modo attinetus*, and that found before the Escheator; and shewed further, that that Manor descended to *Q. Mary*, who granted the same to the Earl of *Westmoreland*, who granted the same to the Defendant: Upon which it was demurred; and Exception was taken to the Plea, because the Attainder is not fully and certainly pleaded. It was argued by *Plowden*, Council for the Defendant, that the Attainder was certainly pleaded, *scilicet, debito modo attinetus*: For, says he, it is shewn that the Wreck is appendant to the Manor, and then if he hath the Manor, he hath the Wreck also: And if he had the Manor, it is not material to the Queen how he hath it; for the Queen doth not claim the same, but

impeacheth the Defendant for using there such a Liberty. But he there grants, that if the Heir of the Duke had demanded the Manor there against him, the Attainder ought to have been pleaded certainly. And if so much Certainty be required in pleading an Attainder that makes a Title to an Estate, that Attainder must needs be as fully, as clearly, and as certainly set forth, that is the Ground-work and Foundation of an Indictment for that which is called a very great Offence; which is not for absolving two Persons in the Parish of *Paddington*, nor for absolving two impenitent Traitors, but for absolving two Persons attainted of High Treason, who did not repent of that Treason of which they were attainted.

There are; my Lord, I think; some other Faults in the Indictment. It mentions, That Sir *John Friend* and Sir *William Perkins* were attainted for High Treason, in compassing the King's Death, and adhering to his Enemies; which were two Treasons in each of them, and consequently four in all. Yet afterwards the Indictment says; That these Defendants intending to justify the horrid Treason aforesaid, (in the Singular Number.) So in the Conclusion; that the Absolution was given *absque aliqua penitentia pro alta proditione prædicta prius declarata*, without shewing which Treason in particular was unrepented of; and each of them was not obliged to repent of all the Treasons, for they were not all his own. And is like the Case this very Term in this Court, where a Rescous was returned against two Persons; that they had rescued *J. S. prædict'*, without shewing which, and there was *J. S. senior*, and *J. S. junior* before-mentioned; and for this Incertainty that Return was quashed. And it seems to me to bear some Resemblance to the Case of *Tindall* and *Cobbs*, 3 *Lennard*, fol. 9, 10. In an Action of Waste, the Declaration shews the Demise of the Manor of *Wolverton* and other Lands, and assigns the Waste *in quodam bosco vocal' Wolverton Wood, parcel' præmissor'*; and it was held insufficient, for that it could not be Parcel of the Manor and other Lands also.

I must likewise humbly submit it to your Lordship, whether the Fact itself be sufficiently set forth, *et eos absolvi pronuntiaverunt*, pronounced them to be absolved: Whether it does not refer to somewhat to be done hereafter, and ought not rather to have been, *eos absolutos pronuntiaverunt*.

The Proclamation for Evidence before the Jury is sworn, which ought to be after, and several other Informalities in the Indictment and Proceedings, I should have spoken to; and have justified and maintained the Imposition of Hands, from the Doctrine and Practice of our Church; and likewise have said somewhat to the Matter that is specially found, to prove that these Defendants are thereby acquitted of the whole: But these Things will (I doubt not) be much better done by such other Council as your Lordship shall please to hear for the Defendants. I am sensible I have already been too tedious, for which I humbly beg Pardon of your Lordship, and pray your Judgment for the Defendants.



N U M B E R IX.

A List of the Lords for and against Sir John Fenwick's Bill.

IN Sir *John Fenwick's* Trial, (*Vol. 5. p. 136.*) read as followeth:
After the Division of the House of Commons, on passing the Bill of Attainder, the Bill was

carried up to the House of Lords, who passed the same; when the following Lords voted for and against the Bill; which is omitted in *State Trials, Vol. 5.*

Bishops for the Bill.*

Canterbury,	Norwich,
Litchfield,	Peterborough;
Sarum,	Gloucester;
Chester,	Bristol,
Ely,	Lincoln,
Oxon,	Chichester.

Bishops against the Bill.

London,	Exeter,
Durham,	St. David,
Winton,	Hereford,
Rochester;	Bath and Wells.

Lords Temporal.

Prince George,	Bradford,
Norfolk,	Romney,
Southampton;	Tankerville;
Richmond,	Abergavenny;
St. Albans,	Delawarr,
Bolton,	Berkley,
Schomberg,	Morley,
Newcastle,	Exre,
Oxford,	Wharton;
Derby,	Sidney,
Suffolk,	Lovelace;
Bridgewater,	Howard,
Bolingbroke,	Raby,
Manchester,	Vaughan,
Rivers,	Ward,
Stamford,	Culpeper,
Sunderland,	Lucas,
Sandwich,	Rockingham;
Essex,	Berkley,
Macclesfield,	Cornwallis,
Radnor,	Osborn,
Portland,	Ossulston,
Monmouth,	Cholmondley,
Montague,	Ashburnham,
Marlborough,	Weston,
Scarborough,	Herbert,
Warrington,	Haversham.

In all 66

Lords Temporal.

Leeds;	Rochester;
Pembroke,	Abington;
Somerset,	Carlisle,
Ormond,	Torrington,
Northumberland,	Hereford,
Devonshire,	Weymouth,
Hallifax,	Longueville,
Normanby,	Willoughby of Eresby;
Lindsay,	Ferrers,
Dorset,	Fitzwater,
Kent,	Willoughby of Brook,
Huntington,	Chandos,
Northampton;	Hunsdon,
Bristol,	Brooke,
Winchelsea,	Leigh,
Kingston,	Fermyn,
Carmarthen,	Byron,
Thanet,	Clifford,
Scarsdale,	Granville,
Bath,	Arundel,
Craven,	Dartmouth;
Burlington,	Guilford,
Feversham,	Godolphin,
Suffex,	Jefferies,
Berkley,	Lemster,
Nottingham;	Pawlet.

In all 60

* See *Historical Account of Trials and Attainders*, Vol. 2. p. 238.



N U M B E R X.

The Case, with the Proceedings against Major John Bernardi, Mr. Counter, Mr. Blackburn, Mr. Cassels, Mr. Chambers, and Mr. Meldrum, on Account of the Assassination-Plot, in King William's Reign.

*Wrote by Major John Bernardi, in Newgate, after he had been there near thirty-three Years a Prisoner, (though in the Historical Part abridged) without any Allowance from the Government, and who could never be admitted to Bail, or take his Trial.**

MAJOR *John Bernardi* was the Son of *Francis Bernardi*, descended of an ancient Noble Family, Counts of the Holy Empire, &c. This *Francis* was sent to *England* by the Serene Republic of *Genoa*, with Credentials from the Duke and Governors of that State, in the Character of Agent, and afterwards of that of Resident, from 1651, until after the happy Restoration of King *Charles II.* We find, that on *Tuesday, Sept. 16, 1651*, on a Report from the Speaker,

It was resolved by the Parliament to receive *Francis Bernardi*, Agent from the Commonwealth of *Genoa*, according to the Rule for receiving Agents.

Henry Scobell, Cler^r Parliament^r.

And on the 22d of *June, 1660*, Signior *Francis Bernardi* was appointed Resident from the said Commonwealth to *England*, to congratulate his Majesty on his happy Return to his Kingdoms. But about two Years afterwards the Republic sent over another Person to succeed the said Signior *Francis Bernardi*; and as he was born in *England*, at the Time when his Father Count *Philip de Bernardi* was here also in Embassy, and loving the Country as the Place of his Nativity, he lived and died in this Kingdom, having spent near thirty thousand Pounds in Hospitality, and indulging a particular Taste in Gardening, being the most famous Gentleman in the Kingdom of his Time for fine Gardens. He lived some Time near *Windsor*, when first out of his Ministry; but removed afterwards into *Worcestershire*, to be more remote and unknown. Here his Son *John* began to entertain Thoughts of getting from under his Father's Discipline, who used him with great Severity; sometimes confining him like a Criminal in a little dark Room for Trifles, allowing him only Bread and Small Beer; and whilst so confined, no body durst relieve him, or let him out. Thus this *John Bernardi* was unhappily destined to Confinement in his Youth by an unkind Father, and in his Old Age to undergo the like rigid

Fate by unprecedented Acts of Parliament, without ever being heard, or proved criminal by any Court in the Kingdom.

Accordingly *John Bernardi* escaped from his Father in the Year 1670, leaving him asleep in his Bed; and going out of his Gate, he kneeled down on the Ground, protesting and praying that he might never return, whilst his Father lived. He began his Journey towards *Coventry*, and though pursued, had the good Luck to escape, and got to Sir *Clement Fisher's* Seat at *Packington* near that City, whose Lady was the heroick Mrs. *Jane Lane*, who protected and conducted King *Charles II.* after the Battle of *Worcester*, (so often mentioned in the History of those Times) and who was very intimate with young *Bernardi's* Father: But Sir *Clement* and his Lady were gone to *London* two Days before, whither young *Bernardi* followed them. On hearing his Case, they did not persuade him to return; but recommended him by Letter to Captain *Littleton Clent*, a Relation of her Ladyship's then in Garrison at *Portsmouth*, and equipped him with Necessaries and Money for his Journey. On his Arrival at *Portsmouth* the Captain received him very obligingly, and entered him in his own Company, and taught him all the Duty and Exercise of a Soldier. This Life young *Bernardi* was very fond of, and passed through various Posts (in *Holland*) in the Army; for he had seven Commissions in all, five of which were conferred on him by his Highness the Prince of *Orange*, the sixth by the States-General and the Prince of *Orange*, and the seventh by King *James II.* before the Revolution. He attained the Rank of a Captain at twenty-seven Years of Age. At the Siege of *Maestricht* he lost an Eye, and was shot through one of his Arms, the Bones of which were dashed to Splinters; after wrapping his Arm in the Flap of his Coat, he crowded back to the Breach, and fell down to the Bottom amongst the Dead, (the Ground being covered with them;) when a Soldier under

* As many People are unacquainted with the Reasons why those Persons, suspected of being concerned in the Assassination-Plot, lay so long in *Newgate*, without being either bailed, tried, or discharged; this Account, wrote by Major *Bernardi*, (one of those taken up and confined) will explain the Cause of it.

his Command seeing him fall, jumped after him, took him up in his Arms, and ran to the Trenches with him, where Surgeons are always waiting on those Occasions; and thus saved his Ensign from bleeding to Death. The Prince of Orange hearing of it, immediately promoted *Bernardi*, and ordered him, with the other wounded Officers, to be conducted to *Bois-le-duc*: But *Bernardi* not being able to endure the jolting of the Carriage, was laid on the Ground, till his Servant went to get Men to carry him back to the Hospital. When he was pretty well recovered, he went with his Arm in a Sling to *Utrecht*: But not being able to do Duty for some Time in his Regiment, he made his Address to a Maiden Lady, well born and bred, but near twice as old as himself, he being then about twenty; but her Fortune being considerable for one in so low a Post, he married her in *April* 1677, and lived with her eleven Years. In 1687, when King *James II.* demanded the six Regiments he had lent the *Dutch*, and they refused to return them, about sixty Officers quitted that Service; amongst whom was Captain *Bernardi*, who thinking it his Duty to obey the Commands of his Prince, came to *England*. In 1688, when the Prince of *Orange* landed in *England*, and succeeding in his Enterprize, King *James II.* after many Difficulties and Dangers risked by him, got privately away from *Rockester* over into *France*; when Major-General *Kirk* was sent by the Prince of *Orange* to all the Regiments then in *England*, with an Association to be signed by all the Officers, the Contents of which were to bind them under their Hands to stand by and defend the Prince against all Persons whatsoever, and all the Officers that refused to sign it, were ordered to quit their Commands. Captain *Bernardi* refused to sign such Association, and quitted his Employ, went to *London*, and solicited for the Prince of *Orange's* Pass for himself and Family, being six in Number, to go out of the Kingdom, the only Favour he desired, which was granted him; those Persons that went without a Pass being in Danger of their Lives, or being plundered by the Mob. Captain *Bernardi* got safe to *Calais*, and found many *English* Gentlemen arrived there before him, some of whom were his Acquaintance, and in great Distress for Want of Money to bear their Charges to *Paris*, having been stripped of all they had by the Tumults in *England*. *Bernardi* having got to the Value of above one hundred Pounds in Cloaths, Linen, Tent and Field-Equipage, pawned them all to a Broker for less than half their Value, to assist some of those Gentlemen; whereby he lost his Goods, not having an Opportunity of redeeming them in Time. Captain *Bernardi* arriving at *St. Germain's*, King *James II.* told him, that he was just going to *Ireland*, and had then about twenty-three hundred of his Subjects arrived at *St. Germain's*. The *French* King granted Orders for them to march to *Brest*, where the late Earl of *Dover* was ordered to meet and receive them: In the mean time King *James* went to *Brest*, where the *French* King had ordered a large Fleet, of about thirty-five Sail, to receive him and his Soldiers, and land them in *Ireland*; and in getting thither was the famous Battle with Admiral *Herbert* in *Bantry-*

Bay. But King *James's* Affairs growing bad in *Ireland*, he sent Major *Bernardi* (made a Major in *Ireland*) to *Scotland*, to accompany the Earl of *Seaforth*, then going to raise Men for King *James*: But receiving the News of King *James's* being defeated at the Battle of the *Boyne*, the Earl of *Seaforth* dismissed his Forces, and sent them to their Places of Abode, without consulting his Uncle, his Officers, &c. who were greatly exasperated: Whereupon Major *Bernardi* desired to go to *England*, which Major-General *Bouchan* approved of, and sent for the Laird of * *Glencoe* to come with forty of his Vassals to receive *Bernardi* at *Invergary*, and to conduct him to the Braes of *Monteth*, which was performed in the Night-time, for Fear of the Garrisons that lay in the Way.

Bernardi proceeded on his Journey from the Braes of *Monteth*, under the Conduct of a Guide appointed him by Colonel *Graham*, and arrived at *Edinburgh* in the Month of *November*, 1691. The Rulers of that City having heard that some Gentlemen were come from the Highlands, ordered their Gates to be shut, and a general Search to be made for them. *Bernardi's* Landlord getting Notice of it, conducted him out of Town, but half an Hour before that Order was put in Execution; otherwise his Journey at that Time had terminated in the *Tolbooth*, or some other Prison in *Edinburgh*; but escaping that and other Dangers, he travelled on from thence to *London*, meeting with no more Difficulties at that Time, than those of a long Winter Journey. But Misfortunes may be compared with evil Habits, it being no easy Task to get out of either, when once unhappily fallen into the Road of them. And this proved to be *Bernardi's* Case; for, having finished his Affairs in *London*, by disposing of some Effects he had left with a Friend when he went out of *England*, and by selling his *Scotch* Horses, he purposed to go over into *Flanders*, and meeting with two Gentlemen of his Acquaintance ready to go out of Town, in order to make the same Voyage, he went with them to *Colchester*, where they were recommended to a Master of a Ship, who was in a short Time to carry over a Lady of great Quality to *Ostend*; but the Wind happening to be fixed in the East, the Lady ordered her Trunks to be put on Shipboard, and then went to a Gentleman's House about five Miles off, charging the Master to send for her as soon as the Wind came fair. *Bernardi* and his two Friends met with two other Gentlemen, who were Strangers to them, and also unknown in the Town, who were come thither to get a Passage over in the same Ship. They joined Company, and lodged all together for some Nights at Mr. *Cook's*, then Post-master in *Colchester*; but having Notice of some busy People's Inquisitiveness about them, *Bernardi* and his two Friends went to a Gentleman's House, about a Mile out of the Town, and the other two Gentlemen went to the Master of the Ship's House. The second Night after *Bernardi* and his two Friends went into the Country, intimation was given to them, that Sir *Isaac Rebow*, a Justice of the Peace, had issued out his Warrant to apprehend them, and bring them before him;

* This Laird of *Glencoe* was a little while afterwards, with his Lady and Vassals, barbarously murdered. See Bishop *Burnet's* History of his own Times, Vol. 2. p. 88, 89. for an Account of this cruel Affair. See also a Quarto Pamphlet, intituled, *Murder will out*. The *English* Parliament voted this a barbarous Massacre.

and the Wind coming fair the same Night, they went directly to the Master of the Ship's House, in order to go on board. The Master of the Ship told them, that he had sent a Messenger for the Lady two Hours before, and expected her in an Hour more; and sent one of his Men to conduct them on Ship-board, and said he would follow them, with the other two Gentlemen at his House, as soon as the Lady came. A Message came from the Lady, that she could not possibly come before the next Day in the Afternoon. *Bernardi* and his two Friends continued on Ship-board to avoid the Justice's Warrant. The next Day towards the Evening, came a Company of Train-Bands, with five hundred Mob, to the Key, where the Ship lay dry, at Low Water, about two Miles from the Town. This Captain of the Train-Bands commanded his Men to go on board, and to bring all the Persons they found in the Ship to him. These Orders were obeyed; and *Bernardi*, and the two Gentlemen with him, were seized and carried directly to *Colchester* Gaol, where the other two Gentlemen and the Master of the Ship had before been made Prisoners. The Lady had set out in order to go on board, but being told what had happened, she returned back, and never appeared; upon which six Justices assembled to break open and search her Trunks, exposing even her foul Linen to the View of hundreds of People; but their Worships could not discover who she was, neither had *Bernardi* or any of the other four Gentlemen the least Knowledge of her, but by Name and Title, which was the Countess of *Erroll*; having never seen her. When the six wise Men had finished their Search of the Lady's Goods, they strictly examined and searched their five Prisoners separately, and charged them with having treasonable Papers and Pamphlets, though no such were found about them, neither had they any; but some such Things were found amongst the Lady's Goods. These Justices sent an Account of their Proceedings to the Earl of *Nottingham*, then Secretary of State, and thereby represented Major *Bernardi* and the other four Gentlemen to be Accomplices with the said Lady, and committed them to the County Gaol at *Chelmsford*; from hence they writ to their Friends, and got themselves removed by *Habeas Corpus* to *London*, and gave Bail before a Judge, to appear in the Court of *King's-Bench* the then next Term. Before the Term Two of the Five went off, either by Composition or Bilking their Bail; but *Bernardi* and his two Friends appeared, in Hopes and Expectation of being discharged by the Court: But the Attorney-General opposed their being discharged, having Instructions from the Secretary of State so to do, alledging that they were guilty of Treason. The Court ordered them into Custody of a Messenger, where they remained confined near seven Months. *Bernardi* having for many Years been well known to my Lord *Romney*, who was the other Principal Secretary of State, writ a Letter to his Lordship; and, by his Favour, they all three were admitted to Bail again upon the first Day of *Michaelmas* Term, to appear on the last Day of the same Term. They appeared accordingly; but the Attorney-General still went on with his Charge against them, and affirmed to the Court, that the treasonable Papers found in the Lady's Trunk, together with such

other Evidence as would be produced in *Essex*; was sufficient to bring them to their Trial; and therefore he moved the Court to bind them over to *Chelmsford* Assizes, and they were bound over accordingly, twelve of their Friends giving five hundred Pounds Security each for their Appearance; and in order to their Defence, they applied themselves to four eminent Council in *London*, and gave them Breviates and large Fees to plead their Cause; and provided Coaches to carry them down, and to attend and bring them back again. The Day before the Assizes began, they went down with their Council, Sir *Creswell Levinz*, Sir *Bartholomew Shower*, Counsellor *Dolben*, and another whose Name the Author hath forgot. The six prosecuting Justices were got there before them, with their subpœna'd Witnessess, who were all heard by the Grand Jury the next Day, upon an Indictment preferred against them; but for want of sufficient Evidence to find the Bill, the Grand Jury rejected it, and gave in their Verdict *Ignoramus*; whereupon they were discharged in Court by Proclamation; and the six Justices galloped Home to *Colchester* in all Haste, as soon as they heard that the Grand Jury had thrown out the Bill of Indictment. This Prosecution, under close Confinement sometimes, and under Bail at other times, continued about a Year and a half, which put Major *Bernardi* to the Expence of some hundreds of Pounds, and his two Fellow-Sufferers to as much.

Major *Bernardi*, soon after he was discharged, went over to *Holland* with the Earl of *Nottingham's* Pass, and returned again within the Time limited by the Pass, and appeared at the Secretary's Office as he was enjoined, that my Lord might know he had not exceeded the Time prescribed him to return in; and by so doing he obtained some Favours from his Lordship afterwards. Not long after his Return from *Flanders*, he judged it to suit best with his Circumstances at that Time to retire into the Country, to be out of Harm's Way, and less liable to Company and Expence; for his five hundred Miles Journey from the Highlands of *Scotland* to *London*, with the undeserved Imprisonment and Prosecution which he suffered by the officious Justices, had very much impaired his Substance. And although nothing less than his Life was aimed at by the *Essex* Justices, yet his Sufferings then were but Fleabites, in comparison to the unprecedented Hardships laid upon him soon after. He returned from a pleasant Country-House near *Brentford*, where he had resided about a Year and a half, and where he employed much of his Time, and some Expence, in improving and beautifying the Gardens there; but the Premises being made over to Doctor *Ward*, Prebend of *Salisbury*, in Part of his Lady's Portion, *Bernardi* was obliged to quit the House on that Account, and came to *London* at *Christmas* 1695: A fatal Remove from a quiet Country-Abode to a Sea of Troubles, which in great Measure is to be imputed to his Misfortune in meeting with one Captain *Rookwood* by Accident at a Tavern! Captain *Rookwood* was then lately come from *France*, and had been an Acquaintance of *Bernardi's* of about seven Years standing, though they had not seen each other for some Years then last past. *Rookwood* frankly told *Bernardi*, that he was quite tired out in foreign Service; that his Brother had a good Estate, and Interest

Interest enough to obtain Leave for him to come Home; and that he was come over to that End, but kept himself a little private, until his Brother had gained him a Licence to appear; it being then made criminal by a Law, for any Subject to come from *France* without Leave from the Government. Within two Months, or thereabouts, after *Bernardi's* Arrival in Town, a horrid Conspiracy to assassinate and murder his late Majesty King *William*, was discovered, and many Proclamations came forth, offering a thousand Pounds Reward for securing each Man inserted in those Proclamations. Several were taken upon the first, and more were apprehended daily upon the repeated Proclamations. Captain *Rookwood* came to *Bernardi* on a *Saturday*, soon after the horrid Plot broke out, and his Countenance and Behaviour seemed to discover him to be under some Disturbance of Mind. *Bernardi* thereupon asked him, if any Evil had happened to him? To which he answered, No; but said, that if any body should be so malicious as to give Information of his being come over at that Time; he should certainly be taken up. But it seems his Name was in a Proclamation, which came out upon that very Day, to seize him as one of those who were concerned in the said Assassination-Plot, though *Bernardi* had not then heard any thing of the Matter, and *Rookwood* concealed it from him, intending, as appeared by his Behaviour afterwards, to spend that Evening with *Bernardi*; but *Bernardi* told him, that he was under a Promise and Engagement to sup that Night at a Tavern on *Tower-Hill*. Captain *Rookwood* thereupon earnestly replied, that if the Meeting there was not upon private Business, he desired he might be one of the Company; with which *Bernardi* readily complied, and he and *Rookwood*, with other Company, supped there accordingly; and making it too late to go Home to their Lodgings, *Rookwood* and *Bernardi* stayed all Night at the Tavern, and went to Bed together there. The next Morning, being *Sunday*, some Constables and other armed Men came into the House, and entered the Room where *Bernardi* and *Rookwood* were in Bed, and producing their Warrant to search for and seize them, they demanded Submission thereto. *Bernardi* and *Rookwood* readily yielded to their Authority, not making the least Resistance, and got up and dressed themselves as soon as possibly they could; but the Constables Orders being to carry them, and all the People belonging to the Tavern, before the Recorder of *London*, who was then gone to Church, they were obliged to remain in the Tavern until Noon, guarded by twenty Men. This Delay gave *Bernardi* Time and Opportunity to make some Inquiry into the Cause of all that Hurly-Burly. The senior Constable told him, that a Neighbour's Servant-Maid came to the Tavern the Night before, and seeing some Gentlemen at Supper, she asked a Drawer who they were? And he making her a surly Answer, she went with her Brother, a Journeyman Shoemaker, directly to the Recorder, and gave Information, that some evil-minded Men were at the Tavern, and that the People of the House refused to discover who they were; and therefore it was reasonable to believe, that they might be such Persons as the Government then sought for, by divers Proclamations. It was then near the latter

End of *February*, and the before-mentioned horrid Conspiracy was discovered about the Middle of the same Month. The Constables having Notice of the Recorder's being at Home, they carried *Bernardi* and *Rookwood* with all the Tavern Family before him, who examined them very strictly and separately, and told them that he could do no less than commit them at that disturbed Time, though he found no other Cause than Suspicion for so doing; and therefore, as a Favour, would send them to the two Compters, and not to *Newgate*, that they might with less Difficulty and Expence obtain their Liberty, when the Storm was blown over. He ordered the Tavern Family to give Bail the next Day. *Bernardi* and *Rookwood* remained quiet under their respective and different Confinements near a Month, without any Communication with each other, either by Letter or Message, in all that Time. Captain *Charnock*, *King* and *Keys*, were taken upon the first Proclamation, which came forth on or about the 22d Day of *February*; and were tried and convicted of High Treason *March* 11, 1695-6, and were all three executed on the 18th of the same Month.

Upon the 23d of *March* came forth another Proclamation, in which *Bernardi's* Name was inserted, and a Reward of a thousand Pounds was thereby offered to apprehend him. Captain *Rookwood* reposing an entire Confidence in the Friendship of one Mr. *George Harris*, intrusted him with the Knowledge of his and *Bernardi's* being Prisoners in the Compters, as before related. And here it is to be observed, that although Captain *Rookwood* was in a Proclamation, which came forth but the Day before he and *Bernardi* went together to the Tavern on *Tower-Hill*, and of which, without Doubt, he had been apprised at the Time of his first coming to *Bernardi*, who then knew nothing of the Matter; yet Captain *Rookwood* thought fit to conceal the same from the Knowledge of *Bernardi* as long as he could, and judging it conducive to his Safety, he changed his Name, and prevailed on *Bernardi*, by earnest Intreaty, to do the like, but without acquainting him with the Proclamation, as a Reason for his so doing. Captain *Rookwood* was often visited in the Compter by his Minion the said Mr. *Harris*, to whom he had communicated these Particulars: And as soon as the Proclamation of the 23d of *March* came forth, which was the last that was published to apprehend Conspirators, and was published at some Weeks Distance from the rest, *Harris* went and discovered Captain *Rookwood* and *Bernardi* for the Reward, and they were taken out of the Compters, by a Detachment of the Guards, in the Night of the 24th of the same Month of *March*, and were carried to the Tilt-Yard Guard, and examined by the Lords of the Council the next Day, and committed *March* 25, 1696, close Prisoners to *Newgate*, loaded with heavy Irons, and put into separate, dismal, dark and stinking Apartments, not being allowed to speak to each other from the Time of their being taken out of the two Compters. *Bernardi* did never see *Rookwood* afterwards, who was soon after tried and condemned, and was executed at *Tyburn*, with *Cranburne* and *Lowick*, on the 29th Day of *April* following.

It may be here demanded, How came *Bernardi* not to undergo the like Fate with *Rookwood*? To which he answers, That it was not by Favour, but

but for want of Evidence to hang *Bernardi*; though to have taken away his Life at that Time without Proof, had been tender Mercy, compared to the Cruelty of the severe and long Confinement he has since endured. None of the Discoverers of the said horrid Plot, who were about ten or twelve in Number, ever so much as mentioned *Bernardi's* Name, unless *Harris* might make some Mention of him*, who had no other Knowledge of him, but by seeing him and his Friend *Rookwood* sometimes together; in which Case he might speak Truth with respect to *Bernardi*, but no farther. *Harris's* View was the two thousand Pounds Reward, which he received, and which must, no doubt, with him have been a Consideration highly preferable to Captain *Rookwood's* Friendship, though the Captain had been a true Friend to *Harris* for many Years, and, according to all Accounts, as kind to him as a good Father could possibly be to a beloved Son. Captain *Rookwood* was proved, by one of the chief Discoverers of the Conspiracy, to have been one Night in their Assembly and Councils, and then unhappily to have given his Consent to the designed bloody Act against King *William*, which cost him his Life. Had or could *Bernardi* at that Time have been drawn into their vile and pernicious Councils, with respect to that horrid and most dishonourable Design, his Rank and long Service must necessarily have rendered him a welcome Guest amongst the Conspirators, and consequently he must have shared Captain *Rookwood's* Fate, without any possible Means of escaping it. Those who suffered Death upon the Account of the Assassination-Conspiracy, were eight in Number, namely, Captain *Charnock*, King and *Keys*, Major *Lowick*, Captain *Rookwood* and *Cranburne*, and Sir *William Perkins* and Sir *John Friend*. Sir *John Fenwick* suffered for another Species of Treason, as shall herein after be particularly related and explained. The nine before-mentioned being executed, there still remained many close Prisoners in *Newgate* upon that Account; but Evidence being wanted to convict any more of them, the *Habeas Corpus* Act was suspended for nine Months, to prevent them from gaining their Liberty by Law; and this was done with a View of finding out Evidence against them within that Time. The Suspension of the Act expiring, several of them entered their Prayer at the then next Sessions and Term, to be tried or admitted to Bail. The first who entered such their Prayer were three Gentlemen who were Brothers, and related to the Earl of *Bath*, Captain *Stow*, Captain *Walbank*, and Mr. *Blackburn*, and some others, and they were all bailed out and discharged, though they were taken by Proclamation, and a thousand Pounds Reward was paid for each of the first five Persons. The

remaining Number in Confinement then, were only *Bernardi*, Captain *Counter*, Mr. *Cassels*, Mr. *Meldrum*, and *Chambers*; and they being locked up close in separate dismal Parts of the Gaol, and most of them unknown to each other, could neither communicate or do any Thing for themselves in order to their Liberty, nor could know what had been done for others: But the good Success of those before-mentioned caused their Friends abroad officiously to enter Prayers for them at the second Sessions after the *Habeas Corpus* Act came in Force; whereupon they were all of them taken out of their close Holes, and were carried to the *Old-Bailey*, in order to be tried or bailed. Mr. *Constantine Phipps* (who was afterwards Lord Chancellor of *Ireland*) was appointed their Council to move for them, and asked *Bernardi*, If any Application had been made to the Solicitor of the Treasury? *Bernardi* answered, No; alledging, that as there was no Law to keep them any longer confined, their Friends judged it needless to apply to any body for Favour; little dreaming that an Act of Parliament would be obtained to secure and continue their further Confinement, a Practice never known or heard of before. As soon as they were produced in Court in order to be tried or bailed, the Solicitor of the Treasury stood up and whispered the Judges upon the Bench: And though that Sessions, being a Sessions of Gaol-Delivery, could not lawfully be determined without either trying or bailing these State-Prisoners, the Judges being obliged by Law to deliver the Gaol; yet, upon the whispering Motion of the Solicitor of the Treasury, the Judges adjourned the Court for a Fortnight, and immediately after a Bill was brought into Parliament, and an Act passed within that Time to confine them for a Twelvemonth, on a supposed Probability still of finding out some Evidence against them in that Time†. But how came it, that the same prudent Precaution for the Safety of the State, and to bring vile Conspirators to condign Punishment, was not made Use of against those that prayed their Trial at the Sessions before, and thereby obtained their Discharge, and some of whom were committed upon the Oath of one Witness? It will not sure be difficult to solve this Question. Mr. Solicitor of the Treasury neither spoke aloud nor softly against them; and why he was so good-natured may be easily understood, having, no doubt, been properly talked with by them; which was a very unfortunate Omission in the Conduct of *Bernardi* and his Fellow-Sufferers, in not properly bespeaking Mr. Solicitor's Favour for them. And here a very singular and deplorable Passage happened, relating to Mr. *Blackburn*, who being bailed out and discharged, with those who had

* Captain *Harris*, in his Evidence at *Rookwood's* Trial, Vol. 4. p. 686. says, He met *Rookwood*, *Blackburn*, *Bernardi*, *Counter*, and others; and with two or three of them talked of going to *Turnham-Green*, and attacking the Prince of *Orange*.

† By an Act 8 W. 3. "to attain such of the Persons concerned in the late horrid Conspiracy to assassinate his Majesty's Royal Person who are fled from Justice, unless they render themselves to Justice, and for continuing several others of the said Conspirators in Custody;" in the last Clause of which are these Words:

"And whereas the Persons hereafter named, viz. — *Counter*, *John Bernardi*, *Robert Cassels*, *Robert Meldrum*, *James Chambers* and *Robert Blackburn*, have been committed, and are still in Custody in *Newgate*, for the said Conspiracy and Treason: Be it enacted by the Authority aforesaid, That the said — *Counter*, *John Bernardi*, *Robert Cassels*, *Robert Meldrum*, *James Chambers*, and *Robert Blackburn*, and such other Persons who shall hereafter render themselves, or shall be apprehended, and against whom there shall be Evidence upon Oath of their being concerned in the said barbarous and bloody Conspiracy of assassinating the Person of his Sacred Majesty, shall be detained and kept in Custody, without Bail or Mainprize, until the first Day of *January 1697*, unless they shall be sooner bailed by Order of Council, signed by six of his Majesty's most honourable Privy-Council."

first entered their Prayers to be tried, was taken up again upon the same Account, and, without any fresh Charge or Information against him, put into the Custody of a Messenger, at the Time when the House of Commons were passing the Bill for continuing the Confinement of the five last-mentioned State-Prisoners; and the Bill being carried up to the House of Lords for their Concurrence thereto, Mr. *Blackburn* was added to the said fatal Number in the Lords House by way of Amendment to the Bill, and sent again to *Newgate*. Mr. *Chambers*, another of the last-mentioned State-Prisoners, who had also entered his Prayer at the Term with the first to be tried or bailed, was brought up to the Court of *King's-Bench* by *Habeas Corpus*, in order to be bailed; but one of his Bail refusing to swear himself worth five hundred Pounds, *Chambers* was remanded back to *Newgate*, where he remained, with the rest, under the Parliament's Confinement, till released by Death. The first Act expiring, a second (9 *W. 3. c. 4.*) was soon passed to continue them in Prison another Year; unless, as in the former Act, they should sooner be bailed or discharged by Order of Council, signed by six Privy-Counsellors. And at the End thereof, all Prospect of finding out any Evidence against them seeming to be entirely vanished, a third Act (10 & 11 *W. 3. c. 13.*) was passed, confining them during the Pleasure of his late Majesty King *William*. And even some of the Members of that Parliament afterwards told *Bernardi*, and others of the Number so miserably confined, that the very Intention of that Act was purely to lay them under dutiful Obligations to King *William* for their Liberty, and thereby also at the same Time to pay his Majesty a Compliment; and that the Members did not in the least doubt of his Majesty's Clemency to them, but that in a little Time he would set them free. King *William* was afterwards accordingly applied to in their Favour, not long before his Death, by the late Earl of *Burlington*; and his Majesty was graciously pleased to promise his Lordship, that he would deliver them in a short Time. But the King's Illness and Death following soon afterwards, and before any Order was given for their Discharge, the good and gracious Design of his Majesty for the Deliverance of these unhappy Men (if he really intended it) was most unfortunately frustrated and prevented. The Act for their Confinement, by the Demise of King *William*, being determined, (as they were advised) they entered their Prayer at the next Sessions to be tried or bailed, but were opposed by the Attorney-General, and neither was granted. Afterwards another Act of Parliament (1 *Ann. st. 1. c. 29.*) was procured to be passed, confining them during the Pleasure of Queen *Anne*. Her Majesty was graciously pleased to release Captain *Counter*, the first named in the said Acts of Confinement. Major *Bernardi* thereupon petitioned the Queen for his Liberty, and prevailed upon his Grace the late Duke of *Buckingham*, then Lord President of the Council, to deliver his Petition to her Majesty; which was so done at the Intercession of her Grace the Duchess of *Buckingham* his Consort, and her Lady Mother the late Countess of *Dorchester*, both of them being so very good as strenuously to move his Grace to undertake it, urging that such Acts of Compassion and Charity were generous and

excellent in Persons of Quality, and well becoming a good and great Man in high Station. The Queen was graciously pleased, upon the Duke's Motion, to consent to *Bernardi's* Liberty; but his Grace afterwards cautiously laying the Petition before the Privy-Council, it was by them referred to Sir *Edward Northey*, the then Attorney-General, which might give him an Opportunity to obstruct the Queen's intended Clemency, for politic or other Reasons. Upon this Reference, it took up some Time and Expence to attend and solicit the Dispatch of Mr. Attorney's Report, which, when made, nevertheless appeared to be in *Bernardi's* Favour. The Lord President called for the Report, in order to have the Sentiments of all the Lords in Council, how and in what Manner *Bernardi* should be delivered and discharged; but the late Earl of *Oxford*, then Lord Treasurer, at the same Time took the Opportunity to move that Mr. *Blackburn* might have his Liberty as well as *Bernardi*; and thereupon his Grace the President and his Lordship the Treasurer differed in Council about the respective Discharges of *Bernardi* and *Blackburn*, whereby both their Pretensions to their Liberty, though so near succeeding (to all Appearance) dropped, and never could be revived again to the Queen's Death. How far those two great Statesmen were sincere in attempting the Liberty of *Bernardi* and *Blackburn*, or either of them, or played booty, God alone knows; the Windings, Turnings and Labyrinths of Politicians not being easily traced and found out by a well-meaning honest Man. The Earl of *Oxford* afterwards was often applied to in their Behalf, and sometimes by Persons of greater Honour and Quality than himself; and his Lordship made more Promises than he had Buttons upon his Coat, Waistcoat and Cloak, and some of them upon his Honour, that these Prisoners should soon be set at Liberty, if they would but have a little more Patience; but all his Lordship's Promises were by him either forgot, or thro' his most refined Policy, neglected to be performed.

By the Demise of the Queen they had again Liberty, by Virtue of the *Habeas Corpus* Act, to pray for their Trial or to be bailed; and in order thereunto they entered their Prayer accordingly, at the first *Old-Bailey* Sessions, and were by that Court referred to *Michaelmas* Term following. They retained three or four eminent Council at Law, and fee'd them to move and plead for them. Seven or eight Motions were made that Term, at different Times, in their Behalf, and several Rules of Court were obtained at great Expence, before they could bring the then Attorney-General, Sir *Edward Northey*, to appear and defend their Motions. At last the then Lord Chief Justice *Parker* told Serjeant *Webb*, (one of the Council for the Prisoners) that the Court consented to their being brought to the Bar by *Habeas Corpus* on the *Monday* following, being the last Day of the Term, in order to admit them to Bail, bidding the Serjeant in the mean time to direct his Clients to give in the Names of such substantial Men as they intended to bring into Court to bail them. This glimmering Favour proved only as a little enlightening before Death, as will appear by the Sequel. The Prisoners were accordingly brought up by their Keepers from *Newgate* to the Court of *King's-Bench*, the last Day of the Term, when the Chief Justice

before-named, having Notice of their being there, was pleased to ask Serjeant *Webb*, their Council, if they had Bail ready in Court? And being answered in the Affirmative, his Lordship was pleased to reply, That Wonders were to be done presently, Wonders indeed, and such as were never heard of before! The Prisoners were called and brought into Court, and thereupon the same Gentleman made an Harangue against them of above an Hour long; and although, towards the End of his very bitter and invective Speech against those helpless Wretches, who were obliged to receive all his Fire and Huffs, he was so ingenuous as to declare, that he had never heard of any Evidence charging them with the Crime they were committed for, yet he was pleased also to declare, that he was very well satisfied of their Guilt, by the Proceeding of the first Parliament against them, and would therefore remand them back to *Newgate*, which accordingly he did. At the Meeting of the next Parliament Matters were so ordered, that another Act (1 *Geo. 1. st. 2. c. 7.*) was prepared and procured to pass both Houses very expeditiously, to continue them in Prison during his late Majesty King *George's* Pleasure. If it was intended still to debar these unhappy Men from the Benefit of the Law, it would have been Charity to have told them so, when they entered their Prayer to take their Trial or be bailed at the Demise of *Queen Anne*, and not to have drilled them on with Hopes of Relief all that long Term, when none was intended them; impoverishing them at the same time by great Expence of Council's Fees, and otherwise, in attempting it, to the reducing and bringing them into a starving Condition in Gaol. Several Petitions were afterwards delivered to his late Majesty King *George* in the Name and Behalf of these Wretches, imploring his Sovereign Compassion, and setting forth, as an Instance of his great Mercy upon another Occasion, his pardoning many condemned for actual Treason against his Majesty's Person; whereas these had been long miserably confined as Prisoners of State, purely upon bare Suspicion only of being concerned in a Conspiracy against a deceased Monarch, of which the least Proof could never be made out against them; yet their Petitions were not minded. The Court of *England* hath the least Regard to Petitions of any Court in *Europe*, and so it hath been for many Reigns past; which Neglect is chiefly to be imputed to the Prime Ministers and other Great Men: His Majesty having a Petition put into his Hand, generally gives it to one of the Lords near him, where it is too often thrown aside, and never heard of more. In most other Courts particular Days are appointed to read Petitions, inserting in the Margin of each Petition, to the Effect following, *viz.* consented to, or not consented to; and an Office is settled wherein to lodge Petitions, where the Deliverers take them out, and by that Means all Petitioners soon know how far they are, or are not, to prevail upon such their submissive and most humble Application.

By the Demise of his late Majesty King *George* the First, which happened at *Hanover*, on or about the 11th Day of *June*, 1727, *Bernardi* and his two Fellow-Sufferers, being all the Survivors of the said miserable State-Monuments, had again Liberty by Law to pray for a Trial or to be admitted to Bail; whereupon *Bernardi*, on the 16th Day of

June, 1727, moved the Court of *King's-Bench* by his Council for an *Habeas Corpus* to bring him up, in order to be tried, bailed or discharged, according to Law; such Council at the same Time apprising the Court, that *Bernardi* had, so long ago as the 25th Day of *March*, 1696, been committed to *Newgate* by the late Duke of *Shrewsbury*, then Secretary of State, on Suspicion of being concerned in a horrid Conspiracy to assassinate his late Majesty King *William III.* but without any Proof, there not being so much as the Oath of one single Witness made against him, nor was it specified in his Commitment that he was charged upon Oath; and no Proof at any Time afterwards ever appearing against him, to induce the bringing him to a Trial, several Acts of Parliament had been made to keep him in Prison, and by the last of them he was confined during the Pleasure of his said late Majesty King *George I.* by whose Decease *Bernardi* was become intitled to his Liberty, there being no Law then in Force to detain him in Prison; and the Court then made a Rule for such *Habeas Corpus* accordingly; though the Motion was strongly opposed by the Attorney-General Sir *Philip Yorke*, who, though a young Man, had sprung up quickly to that great Post in the Law, through the early Favour and Countenance of the before-mentioned Chief Justice, and his own shining Merit, built upon so nursing and advantageous a Foundation. Mr. Attorney-General (but sure he was only in Jest) objected in particular to the Motion as not proper or regular, without producing the original Commitment, which, for want of due Care in keeping and preserving the Records of *Newgate*, after upwards of one and thirty Years, and the Change of the several Keepers within that Time, was not then to be had; but that weighty Objection was over-ruled by the Court. Afterwards Sir *John Fortescue Aland*, then one of the Judges of the Court of *King's-Bench*, and now one of the Judges of his Majesty's Court of *Common-Pleas*, declared in Court, that the same Matter had been moved upon the Demise of *Queen Anne*, when the Chief Justice *Parker* before-mentioned declared his Opinion, that the Court had a discretionary Power either to bail or discharge the Prisoners, then brought up to the Court of *King's-Bench* by *Habeas Corpus* in the like Case; yet nevertheless, at the same Time, he remanded them back to *Newgate*. *Bernardi's* Council thereupon waved the *Habeas Corpus*, and desired to take nothing by his Motion, as conceiving the Expence only certain, (which *Bernardi* was ill able to bear) and the Success doubtful; and besides the Judges Commissions were not then renewed, who of themselves could not subsist longer than six Months from his present Majesty's Accession to the Crown. It was therefore thought expedient and more adviseable for *Bernardi* to seek Relief by petitioning the King for his Royal Favour and Clemency, than to make any farther Trial to be discharged or bailed by the Court of *King's-Bench*. A Bill was soon after brought into Parliament, and speedily passed into an Act (1 *Geo. 2. st. 1. c. 4.*) to continue his Imprisonment, with his other two Fellow-Sufferers *Blackburn* and *Cassels*, during his present Majesty's Pleasure. A printed Case was delivered to all the Lords and Commons against the Bill, while the same was under the Consideration

ration of the Two Houses, as is herein after set forth. And *Bernardi* preferred several Petitions to the King and Queen, both before and after the said last-mentioned Act passed; the Tenor or Purport of which Case and Petitions are as followeth, *viz.*

The most sad and deplorable Case of Robert Blackburn, John Bernardi, and Robert Cassels, humbly offered against the Bill now depending in Parliament for continuing their Imprisonment, after a Confinement worse than Death by them already undergone, of upwards of one and thirty Years in Newgate.

IN *March* and *April* 1696, they were committed: The Crime they were charged with in their respective Commitments was High Treason, in conspiring the Murder and Assassination of his late Majesty King *William III.* but without Proof, there being not so much as the Oath of one single Witness made against any of them, nor is it specified in their Commitments, that they were charged upon Oath: That no Proof appearing against them whereby to bring them to a Trial, several Acts of Parliament had been made to keep them in Prison, the last of which left them to his late Majesty's Pleasure, and then by the Demise of the King they were become intituled to their Liberty: That the Persons charged with this most horrid and detestable Crime were originally Six, namely, *James Counter, Robert Meldrum, James Chambers, Robert Blackburn, John Bernardi* and *Robert Cassels*: *Counter* was set at Liberty by *Queen Anne*, and *Meldrum* and *Chambers* died in Prison; so that there were then remaining only the last Three of these miserable, wretched and most unfortunate Prisoners, who solemnly disclaim, and from their Hearts ever did and do abhor and detest, the said villainous Crime so laid to their Charge as aforesaid: And although their Number was then reduced to Three as before-mentioned, yet nevertheless by that Bill they were intended to be further confined: That they were reduced to extreme Miseries by their said tedious Confinement of one and thirty Years and upwards, in a melancholy, dismal and loathsome Gaol, and by their great Age, Infirmary and Poverty; and though they had been confined close Prisoners of State in *Newgate* for upwards of one and thirty Years as aforesaid, yet they had never had one Penny Allowance from the Government.

Wherefore, and in regard to the unprecedented and unparalleled Hardships of their Case, it was humbly hoped the said Bill should not pass. Subscribed,

Newgate,
July 5, 1727.

Robert Blackburn.
John Bernardi.
Robert Cassels.

Copies of Commitments follow, whereby it plainly appears that none of the said three Prisoners were committed upon Oath.

THES E are, in his Majesty's Name, to authorise and require you to receive into your Custody the Body of ——— *Bernardi*, herewith sent you for *High Treason*, in conspiring the Assassination and Murder of the King; and you are to keep him safe until he shall be delivered

by due Course of Law, and for so doing this shall be your Warrant. Given at the Court at *Whitehall*, the 25th of *March*, 1696.

To the Keeper of *Newgate*,
or his Deputy.

SHREWSBURY.

(*Vera Copia, examinat. per James Fell.*)

N. B. The Commitments of Mr. *Blackburn* and *Cassels* are to the same Effect with *Bernardi's*.

None of the said six Prisoners were committed upon any Oath, except *Counter*, who was charged upon the Oath of one Witness, as may appear by the following true Copy of his Commitment:

Middlesex.

RECEIVE into your Custody the Body of *John*, alias *James Gunter*, alias *Counter*, alias *Rumsey*, herewith sent you, charged before me, upon the Oath of *George Harris*, Gent. for *High Treason*, in conspiring to assassinate his Majesty, and to procure an Invasion of this Kingdom by the *French*, being the Person mentioned in his Majesty's Proclamation, and there called *Counter*, alias *Rumsey*; and in order to a further Examination, you are him safely to keep, until he shall be discharged by due Course of Law; and for so doing this shall be your Warrant. Given under my Hand and Seal, this 29th Day of *May*, 1696.

S. LOVELL, Recorder.

(*Vera Copia, examinat. per James Fell.*)

A Copy of the Keeper's Certificate, setting forth that none of the said three Prisoners were committed upon Oath; which Certificate was annexed to one of *Bernardi's* Petitions to the King.

WHEREAS *James Gunter*, alias *Counter*, alias *Rumsey*, *James Chambers*, *Robert Meldrum*, *Robert Blackburn*, *Robert Cassels*, and *John Bernardi*, were committed to *Newgate* in 1696, for conspiring to assassinate his late Majesty King *William the Third*, as appears by Copies of their several Commitments, signed by *James Fell* the Keeper of *Newgate*, and by his Head Turnkey *Bodenham Rouse*, which I have seen and examined:

I hereby certify, that none of the before-named Persons are charged upon any Oath specified in the said Copies of their respective Commitments; except the aforesaid *Counter*, who stands charged in his Commitment for the said Crime, upon the Oath of one *George Harris*, Gent. Given under my Hand this 15th Day of *August*, 1727.

THOMAS ALLEN.

True Copies of Petitions to the King and Queen, and of an Affidavit of two eminent Surgeons, are herein after set forth as followeth:

To the KING'S Most Excellent Majesty.

The most humble Petition of Major *John Bernardi*,
Sheweth,

THAT your Petitioner now is, and for upwards of one and thirty Years last past has been a State-Prisoner in *Newgate*, committed the 25th of *March*, 1696, by the then Earl of *Shrewsbury's* Warrant, as Secretary of State, and therein

therein charged with *High Treason*, in conspiring the Murder and Assassination of his late Majesty King *William*; but without any Proof, or so much as any Information upon the Oath of one single Witness, that your Petitioner could ever hear of: Neither hath, in all the said Time of thirty-one Years and upwards, any Prosecution been had against your Petitioner, for the said horrid supposed Crime, which your Petitioner doth disclaim, and from his Heart ever did and doth abhor and detest.

That by two Acts of Indemnity, the one in the third, and the other in the seventh Year of the Reign of his late Majesty your most gracious Father King *George* the First, the Crime alledged against your Petitioner in his Commitment is pardoned; but by the said Acts the Imprisonment of your Petitioner was continued during his late Majesty's Pleasure.

That your Petitioner is advised, that by the Demise of his said late Majesty, your Petitioner became intituled to his Liberty, and ought not to be detained in Prison by any Law now in Being; and has very lately applied to your Majesty's Judges of the Court of *King's-Bench* to be discharged from his Confinement, but without Success.

That your Petitioner, by his so long Imprisonment, is reduced to great Straits and Want, and great Infirmity of Body; and his Life is in Danger by his close Confinement in *Newgate*, as by Affidavit of two eminent Surgeons, herewith produced, and sworn before one of your Majesty's Judges of the *King's-Bench*, and filed in the said Court, may appear. And your Petitioner is now upwards of seventy Years of Age, great and the best Part of which Time has been very uncomfortably worn out by your Petitioner, in a melancholy, dismal and loathsome Gaol, where it has cost your Petitioner above seven hundred Pounds for his Lodging.

That in regard to all such your Petitioner's sad and deplorable Circumstances, and advanced Old Age, your Petitioner most humbly hopes he may be deemed a fit Object of your Majesty's Charity and Clemency, and more especially at this Juncture of your Majesty's Accession to the Throne.

Wherefore your Petitioner doth most humbly beseech your Majesty, that he may, for the present, for the Benefit of his Health, and to save Expence, be removed from *Newgate* to the *King's-Bench* Prison, till such Time as your Majesty shall graciously see Cause to order your Petitioner's absolute Discharge.

And your Petitioner shall ever pray, &c.

Ex Parte Johannis Bernardi Ar'
in Banco Regis.

JOHN WHEELER the Elder, and *John Wheeler* the Younger, his Son, both of the City of *London*, Surgeons, jointly and severally make Oath, That Major *John Bernardi*, who now is, and for upwards of one and thirty Years last past, as these Deponents have been informed, and verily believe, hath been a State-Prisoner in *Newgate*, hath frequently had very ill Fits, occasioned by a miserable Lameness and Swelling in his Arm, by Humours flowing to an old Wound. And these Deponents further say, That

they have attended him many Times in such Illness, for about twelve Years last past, as his Surgeons, laying his Arm often open to the Bone by large Incisions, which have continued open and running Wounds for several Months after every such Operation; and his Torments occasioned thereby have frequently brought Fevers upon him, to the endangering his Life. And these Deponents further say, That in these Deponents Judgment, the Cause of contracting such sharp and gross Humours hath proceeded, and doth proceed from the Length and Closeness of his Confinement; which, if continued, will still endanger his Life, in these Deponents Judgment; and the rather by reason of his advanced Old Age, he being now, as these Deponents have been informed, and do believe, upwards of seventy Years of Age.

JOHN WHEELER.

JOHN WHEELER, jun.

Jurat' apud Serjeants-Inn, in
Chancery-Lane, 15^o Die
Junii, 1727, coram

JA. REYNOLDS.

To the KING's Most Excellent Majesty.

The humble Petition of Major John Bernardi,

Sheweth,

THAT your Petitioner, by an Act of Parliament lately made, being intirely left to your Majesty's most gracious Pleasure, after having suffered near thirty-two Years close Imprisonment in *Newgate*, on Suspicion of being concerned in a most horrid Conspiracy against his late Majesty King *William*.

That your Petitioner hath always prayed and petitioned to be tried, as often as he could do it by Law, to be acquitted or condemned; yet he never could be heard or brought before any Court, to have his Guilt or Innocence proved.

That your Petitioner was not charged upon any Oath, of his being a Conspirator in that horrid Plot, which is evident by his Commitment: No Man ever being taken up for *High Treason*, and so charged, but the same was always specified and expressed in his Commitment, (as your Petitioner is advised.) For Instance, Mr. *Counter* is only charged upon the Oath of one Evidence; the Distinction sufficiently appeareth by the Copy of his Commitment, and that of your Petitioner, hereunto annexed.

That your Petitioner hath humbly set forth his great Age, Infirmity and Poverty, by a former Petition delivered into your Majesty's most gracious Hand; your Petitioner being above seventy Years old, suffering insupportable Miseries by frequent Ulcerations in his Limbs, occasioned by his long and close Confinement, attested upon the Oath of two eminent Surgeons, and annexed to his former Petition to your Majesty.

Your Petitioner therefore most humbly implores and supplicates your Majesty, in your Sovereign Compassion and great Goodness, to grant that your Petitioner may be removed from *Newgate* to your Majesty's *Bench* Prison for the present, for the Benefit of more Air, and less Expence, until your Majesty may be graciously pleased to grant your Petitioner entire Liberty.

And your Petitioner shall ever pray, &c.

To the QUEEN's Most Excellent Majesty.
The humble Petition of Major John Bernardi,
Sheweth,

THAT your Petitioner hath been a close Prisoner of State in *Newgate* near thirty-two Years, and is now destined to a longer Confinement, by an Act of Parliament lately made to that End, leaving your Petitioner to his Majesty's most gracious Pleasure.

That your Petitioner was not committed upon the Oath of any Evidence, as appeareth by the Copy of his Commitment annexed to his Petition, delivered also to his Majesty's most gracious Hand this Day.

That your Petitioner and the rest had their Case delivered to the Members of both Houses of Parliament, whilst the Act for their longer Imprisonment was under their Consideration; a Copy of which is hereunto annexed.

That your Petitioner is one of the oldest Commission-Officers in the Kingdom, having served the States of *Holland* fifteen Years by the King of *England's* Consent and Approbation; your Petitioner bearing five of his then Highness the Prince of *Orange's* Commissions in several Stations of Honour, the first of which bears Date above fifty-four Years ago; and your Petitioner hath been much wounded in the said Service.

That your Petitioner's Grandfather and Father were both Counts of the Empire, &c. though his said Father and your Petitioner were both born Subjects of this Kingdom.

That your Petitioner hath his before-mentioned Commissions, and the Imperial Patent, to produce in Testimony of the Truth thereof.

That your Petitioner hath already suffered a Punishment a thousand-fold worse than a present or violent Death, and never could obtain the Favour to be brought before any Court of Justice, to have his Guilt or Innocence proved; kept in Prison near thirty-two Years, by Methods never heard of before; and is now nigh worn out with Old Age, Decrepidness, and Poverty.

* To *Blackburn's* Petition, to the same Effect, was added the following Certificate :

Middlesex, J. THESE are to certify, That upon Search made amongst the Records of the Sessions of Gaol-Delivery of *Newgate*, held for the County of *Middlesex*, it appears by the said Records, that on the 2d Day of *April*, 1696, *Robert Blackburn* was committed to the said Gaol of *Newgate*, by the Right Honourable the Duke of *Shrewsbury*, Principal Secretary of State, for High Treason, in conspiring the Assassination of the late King. And I do further certify, That at the Sessions of Gaol-Delivery of *Newgate*, held for the said County, at *Justice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on the 9th Day of *September*, 1696, the said *Robert Blackburn* was delivered to Bail by the Court, for his personal Appearance at the next Sessions of Gaol-Delivery, to be held for the said County, to answer to all such Matters, as on his said late Majesty's Behalf should be objected against him; and not to depart the Court without Licence; and in the mean time, to be of his good Behaviour; that then, &c. At which said next Sessions of Gaol-Delivery, to wit, at the Sessions of Gaol-Delivery of *Newgate*, held for the said County, at *Justice-Hall* aforesaid, on the 14th Day of *October*, 1696, the said *Robert Blackburn* personally appeared in open Court; and was by the said Court discharged of his Recognizance. And I do hereby further certify, That it appears by the said Records, That on the 7th Day of *January*, 1696-7, the said *Robert Blackburn* was committed to the said Gaol of *Newgate*, by Sir *William Trumball*, Knight, one of his late Majesty's Most Honourable Privy-Council, Principal Secretary of State, for High Treason, in conspiring the Murder and Assassination of the said King. Dated this 10th Day of *August*, 1708, in the seventh Year of the Reign of our Sovereign Lady *Anne*, by the Grace of God Queen of *Great-Britain*, &c.

S. HARCOURT, Clerk of the Peace, and Gaol-Delivery of *Newgate*, for the County of *Middlesex*.

IT appears, by the foregoing Certificate, that *Robert Blackburn* was committed the 2d of *April*, 1696.

That on the 9th of *September* following, he was admitted to Bail.

The 14th of *October*, 1696, he was discharged.

The 7th of *January* committed again for the same Fact; though taken up at the *Buoy and Nere*, by one Captain *Nash*, for attempting to go to *Flanders* without a Pass. By Captain *Nash* left in Custody of a Messenger nine Weeks. Then committed, by Sir *William Trumball*, Knight, to *Newgate*, and never examined, or any Oath against him, that ever he heard of; and then detained till an Act passed to imprison *Counter*, *Meldrum*, *Chambers*, *Bernardi* and *Cassels*, who were all Strangers to, and never seen by *Blackburn* till in *Newgate*; and then he was inserted in the amended Bill, which came down from the Lords to the Commons.

He has been now almost thirty-three Years in Prison, and no Allowance from the Government, though a State-Prisoner. He was not one of those, for whom the thousand Pounds was offered.

These several Allegations have been reported true, by Sir Edward Northey, and Sir Robert Raymond; therefore he hopes to have his Majesty's Relief.

Your Petitioner therefore most humbly implores and beseeches your Majesty, in your Sovereign Compassion and Pity, to move the King to grant the Prayer of your most miserable Petitioner, which is but one Prison for another, until the King of Kings in his Divine Providence shall deliver your Petitioner out of this changeable World, or that his Majesty may be graciously pleased to grant him more Liberty in it.

And your Petitioner shall ever pray, &c.*

To the QUEEN's Most Excellent Majesty.

The humble Petition of Abigail Bernardi, Wife to the most unfortunate Major John Bernardi, who hath for upwards of one and thirty Years last past been confined a State-Prisoner in *Newgate*,

Sheweth,

THAT your Petitioner, on the 25th of *June* last, did deliver to the King's Most Excellent Majesty an humble Petition on the Behalf of the said unfortunate Prisoner, thereby praying, for the Reasons therein contained, that he might for the present, for the Benefit of his Health and to save Expence, be removed from *Newgate* to the *King's-Bench* Prison, till such Time as his Majesty should graciously see Cause to order his absolute Discharge, as by the said Petition, Reference being thereunto had, more fully may appear.

That in the Reign of his late Majesty, in the Time of the *Preston* Rebellion, many Prisoners under Condemnation and Sentence of Death for *High Treason*, (but reprieved) for the sake of their Health obtained an Indulgence of a Removal from one Prison to another, where the Closeness of their Confinement endangered their Lives, as is now the Case of the said unfortunate *Bernardi*, who, although he hath already undergone a Confinement worse than Death, was committed only upon Suspicion of a very horrid and most detestable Crime, in conspiring the Murder and Assassination of his late Majesty King *William*, but without any Proof, or as much as the Oath

of one single Witness against him; neither hath any Proof been found against him, or he brought to any Trial, in upwards of one and thirty Years Time; and as he hath been always ready and desirous to take his Trial, he hath, from time to time, regularly entered his Prayer to be tried.

Your Petitioner therefore doth most humbly beseech and supplicate your Majesty, in your Sovereign Compassion and great Goodness, to intercede with the King's Most Excellent Majesty for the Removal of your Petitioner's unfortunate Husband, the said Major *John Bernardi*, from *Newgate* to the *King's-Bench* Prison.

And your Petitioner shall ever pray, &c.

To conclude this Point, it is manifest by the before-recited Copies of Petitions, Cases and Certificates, and distinct Allegations of the said Major *John Bernardi*, that he was not guilty even of as much as Misprision of Treason, having never had, directly or indirectly, any Knowledge of the said horrid Conspiracy.

Here are two Passages to be curiously inquired into; the first of which is, How *Bernardi* came to be put into a Proclamation? The Answer to this is not at all difficult. Undoubtedly it was by reason of *George Harris's* Information of his being then in the Compter with Captain *Rookwood*; which *Rookwood* was accused upon Oath, though *Bernardi* never was. And this seems to be more unquestionably evident, in regard the Proclamation, wherein *Bernardi* is named, did not come out until the very Morning before *Bernardi* and *Rookwood* were taken out of the Compter by the Guards at Midnight, upon *Harris's* Information, which was five Weeks after the Discovery of the Plot, and *Bernardi's* Name was never inserted in any former Proclamation.

The next and second Question is, On what Grounds he was first confined by Act of Parliament? To which *Bernardi* answers, That the Duke of *Shrewsbury* having inserted in his Commitment the following positive Words, *viz. for being concerned in the horrid Conspiracy, &c.* though not a Syllable of any Charge upon Oath, his Grace's Word under his Hand was not to be called in Question by the Parliament, in Favour of a poor inferior supposed Enemy to the Government: And how *Bernardi*, or any other Man, could have the Confidence to set forth so positively, by Petitions to the King, and a Case to the Parliament, that he was never charged upon

Oath; if he had ever known or heard of any Evidence against him, and in which (if the contrary had been Fact) he might easily have been contradicted, is not to be accounted for. He affirms, and with great Truth, that he never lay under the Odium of being guilty of any base or dishonourable Act in the whole Course of his Life, until the Commencement of his present deplorable Sufferings; which may gain some Credit from his several Promotions in Commission from time to time, both Abroad and at Home: And laying aside all true Notions of Honour, no Man in his Senses, having Capacity or Common Sense enough to judge of his own Interest, could sure be so infatuated as to engage in so horrid an Action; because no Prince upon Earth, being a Christian, could or would ever countenance such a Man afterwards, though what he did might turn to such Prince's Service. We have an Instance of it at Home, of one *Sir Paul Whitford*, who murdered *Doristlaus*, *Oliver Cromwell's* Ambassador at the *Hague*. This base and wicked Act might tend to the Service of King *Charles II.* when in Exile; however the King, after the Restoration, never suffered *Whitford* to appear in his Presence, though he had been a Favourite before; and if his Majesty allowed him any thing, it was done so privately, that no body knew it, and he lived and died in a remote Part of the Kingdom.

Bernardi quitted to the Amount of about five hundred Pounds a Year, which he had coming in by Employs, and by his Wife's Fortune, upon King *James's* demanding his Subjects Home from the *Dutch* Service; and it may be therefore reasonable to believe, that *Bernardi* was in some Esteem with the King as long as his Majesty lived; and nothing but a Fool or a Madman could be so stupid as to forfeit such an Advantage, by engaging in a vile, wicked, and most dishonourable Action, which neither King nor Subject could justify.

It may not be improper here, for manifesting and clearing up *Bernardi's* Innocence beyond all Contradiction, to give a particular Relation of what passed before the Lord Chief Justice *Holt*, upon the Evidence given before his Lordship, upon *Bernardi's* being suspected to be concerned in the said horrid and detestable Conspiracy, the Witnesses and Discoverers of which were Captain *George Porter**, Mr. *Le Rue*, Captain *Blair*, Captain *Fisher*, Mr. *Ubank* or *Hewbank*, Mr. *Bartram*, Captain *Boyce*, and some others, whose Names have

* This *George Porter*, the principal Evidence in the Assassination-Plot, and against *Sir John Fenwick* and the rest, was tried for the Murder of *Sir James Hacket*; and his Trial is here inserted.

The Trial of George Porter, Esq; for the Murder of Sir James Hacket, of Scotland, Knt. at the Sessions of the Peace, Oyer and Terminer, held at Justice-Hall in the Old-Bailey, London, on Wednesday, Thursday, Friday, and Saturday, the 10th, 11th, 12th, and 13th Day of December, 1684, before the Honourable Sir James Smith, Lord-Mayor of the City of London, Sir Thomas Jenner, Knt. one of his Majesty's Serjeants at Law, and Recorder of the aforesaid City; together with other Justices of London and Middlesex.

J U R Y.

Ralph Box, Esq;
William Moyer,
Walter Coventry,

Jacob David,
John Palmer,
Ralph Izzard,

John Easton,
John Fauster,
Roger Attley,

Thomas Harrison,
Francis Smith,
William Drinkwater.

GEORGE PORTER, of London, Esq; was indicted for killing *Sir James Hacket*, in the Parish of *St. Bride's, London*, on the 11th of October, 1684, in the thirty-sixth Year of his Majesty's Reign. The Case and Circumstances appearing on the Trial were, That the Deceased and the Prisoner, being at the *Duke's Theatre* in *Salisbury-Court*, after the Play ended, a great Croud happening upon their coming out, and *Sir James* endeavouring to make way for his Children with his Cane, gently moving it, happened to push Mr. *Porter* on the Back; who asked, *What the Meaning of it was?* But *Sir James*, as he designed him no Affront, took no Notice of what he said; and still pressing for more Room, accidentally hit Mr. *Porter* on the Nose or Mouth, and made it bleed; upon which the Prisoner supposing himself to be affronted, and jostled or brushed by the

have escaped the Author's Memory: They were all ordered to assemble at the said Lord Chief Justice's Chambers in *Serjeants-Inn* in *Chancery-Lane*, which they did, and were there examined upon Oath by his Lordship, in order to the Trials of Major *Lowick*, Major *Bernardi*, Captain *Knightly*, and Captain *Rookwood*, which Four were designed to be tried next after the Condemnation and Execution of Captain *Charnock*, Mr. *King*, Mr. *Keys*, Sir *William Perkins* and Sir *John Friend*, for being concerned in the said vile and villainous Plot. Captain *Boyce* deposed upon his Examination, that he had known Major *Bernardi* a Captain in the *Dutch Service*, where he bore a very good Character, but that he had not seen him in five Years then last past. Mr. *Le Rue* deposed, that he also knew Major *Bernardi*, but could lay nothing to his Charge; and that the last Time he was in his Company, to the best of his Remembrance, was at least two Years before the Assassination-Plot was discovered. Captain *Porter* and the rest declared, that they never had any Knowledge of Major *Bernardi*. Thereupon Major *Bernardi* was struck out of the Number or List of the Four designed for Trial, and Mr. *Cranburne* was appointed to be tried in his room, to make up Number-Four. They were all Four tried accordingly, and condemned. Three of them, viz. Major *Lowick*, Captain *Rookwood*, and Mr. *Cranburne*, were executed soon after. Captain *Knightly*, who pleaded guilty, was by great Intercession reprieved, and some Time after pardoned upon the Terms of Banishment. Now followeth a Remark upon a mistaken Notion frequently broached and argued abroad, to the great Prejudice and Wrong of Major *Bernardi* and his two remaining Fellow-Sufferers, *Blackburn* and *Cassels*, viz. That there was one Evidence against them, and only one to be come at, they having artfully spirited away and decoyed out of the Kingdom one other Evidence, who could have proved them concerned in the Fact, which was the Ground and Foundation of the Parliament's passing the first Act for their Confinement. Major *Bernardi* takes upon him positively to deny that Fact, and to affirm that nothing can be more false and untrue; for no one Evidence or Discoverer of that abominable Conspiracy was ever prevailed on to abscond or quit the Land, or

ever absented himself, while the Government had any Use or Occasion for him. Mr. *Goodman* indeed, the Stage-Player, had been a Copartner Evidence with Captain *George Porter* against Sir *John Fenwick*, who was charged by them with being concerned in a different Species of Treason, with other Persons of Quality, by endeavouring to procure an Invasion from *France*, two Years before the Assassination-Plot broke out, though Sir *John Fenwick* was not accused by *Goodman* and *Porter* till that Time. True it is, that the said *Goodman* was soon after influenced by a Bribe and fair Promises (as is supposed) to quit the Kingdom, thereby to prevent Sir *John Fenwick's* being convicted of *High Treason* by the Common Law; which occasioned the Parliament's passing a Bill of Attainder against him, which took away his Life. But that was not the Case, in any respect, of *Bernardi*, *Counter*, *Meldrum*, *Chambers*, *Blackburn* and *Cassels*, or any of them: Neither was *Goodman* ever so much as mentioned or charged with the Knowledge of, or of being in any Manner concerned in, the Assassination-Plot; so that he neither was, nor could be an Evidence against any one upon that Account.

Providence was so gracious, merciful and indulgent to Major *Bernardi*, in the midst of his Miseries and Afflictions in *Newgate*, as to provide him a second virtuous, kind and loving Wife, in the Year of our Lord 1712, who hath proved to him a true Helpmeet, having by her good Management and Industry, and great and kind Care of him, contributed much to his Support and Comfort, and to the keeping of his Heart from breaking, under the worst of his Hardships, Difficulties and Distress. And by her he hath had, during his Confinement in *Newgate*, Ten Children, who, in respect of Charge and Expence under his strait and narrow Circumstances, and under his Immurement, or being buried alive, have been no small Burthen to him; yet he esteems them great Blessings bestowed upon him by Almighty God, at whose Tribunal, after this miserable and wretched Life ended, he knows he shall appear innocent of the heinous and monstrous Crime laid to his Charge, and for the bare mistaken Suspicion of which, he hath in three Reigns (and for near a Year and three Quarters in a fourth) been so severely treated: And then

the Deceased, (who had the Cane still in his Hand,) drew his Sword, and, without further Consideration, run the Deceased into the Thigh, so that the Weapon appeared both Ways, cutting likewise his Fingers, whilst he struggled to draw it forth; whereupon the Prisoner recovered his Sword, (the Deceased at that Time sinking down) but had no further Opportunity to push at Sir *James*, e'er it was seized by a Gentleman present; whereat the Prisoner expressed much Indignation, and getting it once more at Liberty, stood upon his Guard, saying, *He had served one already as he had deserved*, or to that Effect; yet the Deceased, after the Wound received, went Home in a Coach, and lived till the 26th following, and then died in the Parish of *St. Martin's in the Fields*. — The Defence the Prisoner made, was, That he had received a Push in the Mouth, as he verily believed, from the Deceased, and by that Means became so rashly unfortunate, as to run him through the Thigh; adding, That he knew not the Person that fell through this Occasion, and therefore could have no premeditated Malice against him, &c. whereupon the Jury returning their Verdict, found him Guilty of Manslaughter only; by which Means he was not found guilty upon the Statute of Stabbing; upon which Statute he was charged with a second Indictment: But the next Heir brought an Appeal. At the next Sessions, held the 16th and 17th of *January*, 1684, Mr. *Porter* prayed the Court, that he might be admitted to his Clergy; but was answered, that an Appeal being already brought and allowed, it could not be granted. Then he desired he might have his Prayer recorded; but that not being practicable in such Cases, he was only admitted to Bail, himself entering into a Recognizance of 1000*l.* and his Sureties 500*l.* each; and ordered to move it by his Council the succeeding Term, at the *King's-Bench* Bar. Though at the next Sessions held at the *Old-Bailey*, the 25th of *February* following, Mr. *Porter* pleaded his Majesty's most gracious Pardon, for killing Sir *James Hacket*, which was read and allowed, and he discharged †.

This Captain *Porter*, as a Reward for giving Evidence against *Charnock*, *King*, and *Keys* (his Servant,) Sir *John Friend*, Sir *William Perkins*, Brigadier *Rookwood*, Mr. *Cranburne*, Sir *John Fenwick*, &c. had a Pension settled on him of 250*l.* per Annum, which he enjoyed till about *June* 1728: For the Probate of the Will of this *George Porter*, late of the Parish of *St. James's*, *Westminster*, Esq; was granted in the Prerogative-Court of *Canterbury*, *July* 4, 1728, unto *Elizabeth Porter*, his Widow and Executrix; so entered in the Pension-Office Books, and in Auditor *Harley's* and Auditor *Foley's* Office, *July* 1728. Captain *Fisher* had likewise a Pension of 250*l.* per Annum, for being an Evidence in that Plot, as had others, but lesser Sums.

† Captain *Porter*, in *Rookwood's Trial*, Vol. 4. p. 681. was excepted against by the Prisoner's Council, as incapable of being a Witness, standing convicted of Felony, for killing Sir *James Hacket*, Knt. 36 Car. 2. But having got the King's Pardon, was allowed a legal Witness, though not burnt in the Hand. See Vol. 4. p. 681, for *Dangerfield's* and other Cases quoted there.

he shall, if not sooner delivered by any King upon Earth, God Almighty's Vicegerent here below, be delivered from the *English* Bastile (vulgarly called *Newgate*) by the great and merciful God himself above, the King of Kings and only Ruler of Princes. It may not be improper here to distinguish our said *English* Bastile from that in *France*, and to shew in what Circumstances they materially differ. To which End know, candid Reader, that a State-Prisoner in the Bastile in *France* pays not, nor is squeezed out of any thing for his Lodging, Meat, Drink or Ease, nor is loaded with Irons, nor put in Dungeons, or otherwise ill used in Prison; but he is always handsomely provided for, and allowed a liberal Subsistence by the Government, according to his Rank and Degree: But in our said *English* Bastile no State-Prisoner has any Allowance made him from the Government, and in case he hath not of his own, he must live upon Charity, if he can be so happy as to meet with it, or starve: And in case he hath any known Substance, he must expect to be squeezed out of a great Part of it, or he shall have much worse Lodging than many a tolerable Dog-Kennel of a kind good-natured Country 'Squire would make, be loaded with Irons, and used worse than a Dog. And all this is permitted or connived at, under a Government, the Voice of whose People is almost perpetually boasting of *Liberty* and *Property*, the Words *Liberty* and *Property* being ever uppermost, and at their Tongues End, and they constantly exclaiming against *Arbitrary Power*: But God alone knows the Sincerity and Soundness, or the Hollowness and Deceitfulness of Men's Hearts. Can it be accounted for, that so much Oppression should be suffered to be practised in a free and Christian Nation, (as *England* is); and, on the contrary, that so much Humanity and Relief should be shewn and used to State-Prisoners in Distress in *France*, under an absolute and arbitrary Government? Sure it cannot proceed from the *French* being more honest, more polite, more humane, less malicious and revengeful, or of a more generous and Christian Temper, than the *English*. For my Part, I am so far from asserting it, that I will not so much as think it. But this I will affirm, that what I have before observed with respect to the different Usage of Prisoners, in the two several Bastiles of the different Nations, is not more strange than true. And now I have nothing more to add hereunto, but my Hope and earnest Desire, that such as, out of Curiosity or otherwise, shall give themselves the Trouble to read this small Tract, will be pleased to judge favourably of me; to which Intent I was chiefly moved and induced to the Pains of writing it in my Old Age, and to prevent an infamous and odious Character of me from being wrongfully and injuriously handed down and transmitted to Posterity; the very Thoughts of which have been more grievous to my Mind, and more piercing and wounding to my Spirit, than all the rest of my Hardships and Sufferings, which will ever be the Case of a Man well born, having an honest Heart, a Soldier, and a Man of Honour. Such a Man can ill bear Reproach and Disgrace, not having deserved it, and to whom his good Name and Fame must be ever dearer, and by him held in much greater Esteem, than any other Thing in Life, nay, even than Life itself. And the Author

being old, as before-mentioned, and (as he doth hereby frankly own) unlearned, and not skilled in Letters, having chiefly been trained up in War, and not much in Scholarship, he humbly hopes the same may in some measure plead his Excuse for such defective Words as may be found in this his short Narrative, and for the Plainness and Uncorrectness of its Style. Untruths or Misrepresentations there are none in it, to the best of his Knowledge and Memory; nor hath he intentionally, or at all, to the best of his Judgment, herein reflected upon any Person whomsoever in any wise, or upon the Power, Justice, or Wisdom of the several Parliaments, by whose renewed Acts, from time to time, his Confinement in Prison hath been spun out to so great a Length; nor upon the Courts of Justice, and learned Judges presiding therein, who have had the several Opportunities before-mentioned of discharging or bailing him according to Law, further or otherwise than as any Reflection upon any of them, from the particular Facts by him herein plainly, truly and impartially stated, may naturally and unavoidably arise and result.

One very great Misfortune it hath been to the Author, and the last that he will trouble his Reader withal; and which would scarce, in the Case of another, be deemed a Misfortune, but rather on the contrary be esteemed a very great Blessing, *viz.* That he hath lived to so great an advanced Old Age, which most People would naturally desire to do, Life, generally speaking, being sweet, and the very Thoughts of Death abhorrent and shocking to Nature; though Death, when all other Friends fail, is most certainly a kind and sure Friend and Deliverer in Time of Need, from Chains and Gaols, an Hell upon Earth: But to explain and make out, that the Author's having lived so long hath been a Misfortune to him, the same is verified in this, that he hath thereby survived almost all his Contemporaries, Friends and Acquaintance, who have contributed to his Support. And it is now too late in the Day, and under Confinement, for him to hope or expect to make any new Acquaintance or Friends, whereby he may reap any Advantage or Assistance under his present difficult Circumstances, unless this his little Tract may perchance make him some Friends among the good-natured, generous and charitable Part of Mankind, who shall not be void of all Sense, Notion and Fellow-Feeling of another's Suffering; nor be perfect Strangers to all Humanity, Pity, Commiseration and Compassion; nor profane that sacred Petition in the *Lord's Prayer*, *viz.* *Forgive us our Trespases, as we forgive them that trespass against us*, as it is to be feared many do, by having it in their Mouths, when they themselves, with hardened Hearts, cannot forgive even the Innocent and Guiltless, who have not trespassed against them. And so the Author concludes with bidding his Reader heartily farewell; and in Attestation of the Truth of what he has writ, he takes the Freedom to subscribe his Name.

Newgate,
March 1, 1728.

JOHN BERNARDI.

He died at his Chambers in the Press-Yard in *Newgate*, the latter End of *September* 1736, in the 82d Year of his Age, having been a State-Prisoner about forty Years in that Gaol, without Trial or any Allowance from the Government.

N U M B E R

N U M B E R X I.

Proceedings against William Gregg, at the Old-Bailey, 19th January, 1707-8, for High Treason, before Lord Chief Justice Holt, and other Judges.*

THE Post-master of *Brussels* discovered a Correspondence between Mr. Secretary *Harley's* Office and the *French*, and communicated his Knowledge to the Government here; whereupon Mr. *William Gregg*, a Clerk in that Office, was taken into Custody of a Messenger, and, after several Examinations before the Council, was committed to *Newgate*; and on the 19th of *January* was indicted of High Treason for compassing the Death of the Queen, and also for adhering to her Enemies. The Indictment imported, "That he had sent Letters to Monsieur *Chamillard*, one of the *French King's* Prime Ministers, particularly one dated the 28th of *November* last, and others, wherein were inclosed the Proceedings of both Houses of Parliament, in relation to the Augmentation of our Forces; also a Copy of a Letter from the Queen to the Emperor, and Copies of private Business sent to the Duke of *Savoy*, &c." To which Indictment *Gregg*

pleaded Guilty; and the Recorder pronounced Sentence of Death upon him †. Whereupon the House of Lords took into Consideration this Affair, and appointed the following Committee to examine him:

The Duke of <i>Somerset</i> ,	Lord Visc. <i>Townshend</i> ,
The Duke of <i>Devonshire</i> ,	Lord <i>Halifax</i> ,
The Duke of <i>Bolton</i> ,	Lord <i>Somers</i> .
Earl of <i>Wharton</i> ,	

Die Jovis 18 Martii, 1707.

WE Your Majesty's most dutiful and obedient Subjects, the Lords Spiritual and Temporal in Parliament assembled, having been informed, That *William Gregg*, a Clerk in the Office of the late Secretary Mr. *Harley*, had been indicted for High Treason, in holding Correspondence with Your Majesty's Enemies, and

* This Affair of *Gregg's* having made a great Noise in the World at that Time, and many People at this Time quite unacquainted with it, and being quoted by Mr. Justice *Foster* and others, we shall give an Account of it, from the best Authorities.

† Bishop *Burnet*, in his *History of his own Times*, Vol. 2. p. 494—497. says, "At this Time Discoveries were made very unlucky for Mr. *Harley*: One *Gregg*, a Clerk, whom Mr. *Harley* had taken into a particular Confidence without Inquiry into the former Part of his Life, for he was a vicious and a necessitous Person, who had been Secretary to the Queen's Envoy in *Denmark*, but dismissed for his ill Qualities. The Lords, who were appointed to examine *Gregg*, could not find much out by him: He had but newly begun his Designs of betraying Secrets; and he had no Associates with him in it. He told them, that all the Papers of State lay so carelessly about the Office, that every one belonging to it, even the Door-keepers, might have read them all. *Harley's* Custom was to come to the Office late on Post-Nights, and after he had given his Orders, and wrote his Letters, he usually went away, and left all to be copied out when he was gone. By that means he came to see every thing, in particular the Queen's Letter to the Emperor. The Lords ordered the Report and Examinations to be laid before the Queen in an Address, in which they represented to her the Necessity of making *Gregg* a public Example: Upon which he was executed. He continued to clear all other Persons of any Accession to his Crimes, of which he seemed very sensible, and died much better than he had lived."

Judge *Foster*, in his *Reports*, p. 198. takes Notice, "That the Papers found in Lord *Preston's* Custody, those found where Mr. *Layer* had lodged them, the intercepted Letters of Doctor *Henzey*, were all read in Evidence as Overt-Acts of the Treason respectively charged on them. And *William Gregg's* intercepted Letters might in like manner have been read in Evidence, if he had put himself upon his Trial. For those Papers and Letters were written in Prosecution of certain determinate Purposes, which were all treasonable and then in Contemplation of the Offenders, and were plainly connected with them. But Papers not capable of such Connection, while they remain in the Hands of the Author unpublished, as Mr. *Sidney's* did, will not make a Man a Traitor. Lord *Hale* (1 *Hale*, p. 119—123;) mentioneth two Circumstances as concurring to make Words reduced to Writing Overt-Acts of Compassing the King's Death, *That they be published, and that they import such Compassing.*

"Sending Intelligence to Rebels or Enemies, which in most Cases is the most effectual Aid that can be given them, will make a Man a Traitor, (except what is done in case of superior Force) though the Intelligence should happen to be intercepted; for the Party in sending did all he could, Treason was complete on his Part, though it had not the Effect he intended. So ruled by the Judges assembled in the Case of *William Gregg*, Mess. *Tracy*, *Dod*, *Price*, and *Denton*; and by the Court of *B. R. Trin.* 31 of the late King, in the Case of Dr. *Henzey*." *Foster*, p. 217. And p. 218. adds,

"For *Gregg* was indicted for *Compassing the Death of the Queen*, and also for *Adhering to her Enemies*; and *Henzey's* Indictment was in the same Form; and so was Lord *Preston's*. And the Writing and Sending the Letters of Intelligence, which in the Case of *Gregg* and *Henzey* were stopped at the Post-Office, was laid as an Overt-Act of both the Species of Treason. So that, admitting for Argument's sake, which is by no means admitted, that it was not an Overt-Act of *Adhering*, since the Letters never came to the Enemy's Hands, and consequently no Aid or Comfort was actually given; yet the bare Writing and Sending them to the Post-Office, in order to be delivered to the Enemy, was undoubtedly an Overt-Act of the other Species of Treason. In *Gregg's* Case the Judges did resolve, that it was an Overt-Act of both the Species of Treason charged on him. And in *Henzey's*, the Court adopted that Opinion, and cited it with Approbation.

"Though the Cases of these Men were in Substance the same, the Charge against them varied in one Particular. *Gregg's* Indictment chargeth, that the Letters were sent from the Place where the *Venue* is laid, into Parts beyond the Seas (*in Partes transmarinas*) to be delivered to the Enemy. *Henzey's*, with much greater Propriety, and agreeable to the Truth of the Case, chargeth, that the Letters were sent from the Place where the *Venue* is laid, to be delivered in Parts beyond the Seas to the Enemy. As the Letters never went abroad, this was undoubtedly the safer Way of laying the Charge."

betraying to them Secrets of the highest Importance; and that upon his Trial he had confessed the Indictment, and by that means had prevented the Examinations, whereby the Public might have been truly informed of the particular Nature and Circumstances of his Crime; we thought ourselves indispensably obliged, in Duty to Your Majesty, and for the future Safety of the Kingdom, to do all that was in our Power to find out the Rise and Progress of this dangerous Correspondence.

In order thereto we made our humble Address to Your Majesty for all Papers relating to the Charge against *William Gregg*; and Your Majesty having been graciously pleased to give Orders, that the Papers should be laid before us; we referred those Papers to a Committee, and directed them to examine *Gregg*, and to report the said Examination to the House, as also what they observed upon the Papers, together with such other Matters as they should think proper, upon their Inquiry into the said Affair: And the Report having been made, and taken into Consideration by the House, we humbly conceive it to be very highly for Your Service to lay the same before Your Majesty*.

REPORT CONCERNING GREGG.

The House having appointed a Committee to examine William Gregg, who is a Prisoner in Newgate, convicted for High Treason, and having also been pleased to refer to the same Committee several Papers, which, upon the humble Address of the House, had been laid before your Lordships by Her Majesty's Command, do humbly take Leave to inform the House, That the Effect of the several Papers referred to the Committee, is as follows.

I. **A** Copy of *Gregg's* Letter, which was intercepted, dated the 28th of *November*, 1707, O. S. sent to Mr. *Chamillard*, inclosed in a Pacquet from *Marechal Tallard*, directed to Mr. *Robineau*, his Steward, at *Paris*.

In this *Gregg* sends to Mr. *Chamillard* a Copy of the Queen's Letter, written with her own Hand to the Emperor.

In the same Letter, *Gregg* takes Notice of two Letters sent by him to Mr. *Chamillard*, the one dated the 24th, the other the 28th of *October* last, which he understood *Robineau* had put into his Hands.

That perceiving by *Robineau's* Letter to his Master, that Mr. *Chamillard* desired to know the *Marechal's* Sentiments of *Gregg*, *Gregg* had himself written to him.

In Expectation of his Answer, *Gregg* flattered himself that the Paper then sent was of that Importance, that there could be no longer Doubt of the Devotedness of a *Scottishman* for *France*; not to speak of his Zeal for the Service of his Prince, who had found Refuge there.

That the Lines under which he had drawn a Stroke, were the Thoughts of the Lord Treasurer, which he had added with his own Hand to the first Draught of the Letter.

The same Letter contained some other News.

II. There was a Copy of a Letter, dated the 25th of *November*, O. S. in the same Pacquet,

subscribed *William Gregg*; in which Notice is taken of what *Robineau* writes to Mr. *Tallard* concerning him, and that he himself had written to the *Marechal*, and desired *Robineau* to deliver the inclosed according to the Address, as being of great Consequence.

III. The Copy of a Letter from *Marechal Tallard* to *Robineau*, dated the 10th of *December*, N. S. in which Mr. *Tallard* says, That as to the Letters of which *Robineau* made mention in his of the 25th and 28th of *November*, that he had delivered them according to the Address. Mr. *Tallard* knew nothing of their Contents, but by the same Post which brought his Letters.

That he was obliged for the Offers, but could make no Use of them while he was a Prisoner: When the Peace was made, he would give Proof of his Acknowledgment to him who made the Offers, and would endeavour to engage the Person to whom the Letters were addressed to do the same. In the interim *Robineau* was to tell the Person to whom he delivered the Letters, for whom the *Marechal* had the utmost Consideration, That he was much obliged to him for desiring to know his Thoughts, before he would determine what to do; that the Offers made did not suit with the present Time, at least as to him, &c.

IV. An original Letter of the 2d *December*, 1707, to Mr. *Robineau*, from *Gregg*, to felicitate him for being delivered from an importunate Man, as would appear by *Marechal Tallard's* Letter, unless his last to Mr. *Chamillard* had not made him determine otherwise.

V. Copy of another Letter of *Gregg* to Mr. *Chamillard*, dated the 23d of *December*, O. S. which was also taken in *Marechal Tallard's* Pacquet, in which he pretends to give Mr. *Chamillard* an Account of what passed in Parliament, with the Queen's Answer to the Address of the Two Houses, and his Excuse for not sending the Address itself.

VI. A Letter of *Robineau* to Mr. *Tallard*, 26th *December*, N. S. from *Paris*, (transcribed by *Gregg* in his own Hand) in which he says, he was going to *Verfailles* to deliver the Answer with which he was charged; that he received every Post Letters from the same Person, and that he took care to deliver them, according to the Address.

VII. Another of the 30th *December*, 1707, N. S. that he had been to deliver, as Mr. *Tallard* had charged him, the Answer which was desired of Mr. *Tallard*.

VIII. Another Letter in *Gregg's* Hand, dated the 30th *December*, 1707, found in *Gregg's* Closet, written to Mr. *Chamillard*, giving an Account of the Intention to send Mr. *Palmes* to *Savoy*, and to take several other *German* Courts in his Way.

IX. A Confession of *Gregg*, delivered to the Lords of the Committee, and signed by him.

On *Thursday* the 12th of this Instant *February*, the Committee appointed by your Lordships went to *Newgate*, in order to examine *William Gregg*.

They acquainted him with your Lordships Order, and told him, That as the Crime of which he stood attainted was of the most heinous Nature, so there were some Circumstances so extraordinary, which attended his Case, that the House of Lords

* *Die Martis*, 23 *Martii*, 1707. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Address of this House, and the Reports therein contained, with the several Examinations annexed, presented to Her Majesty Yesterday, and Her Majesty's most gracious Answer thereunto, shall be forthwith printed and published.

thought it might be of Service to her Majesty and the Kingdom, to have all the Beginning and Progress of his treasonable Correspondence fully laid open; that her Majesty, upon the Application of the House, had ordered all former Examinations and Papers concerning him to be laid before them.

They told him farther, That if he, by a true, ingenuous and full Confession, would deserve it, he might have Ground to hope the House of Lords might intercede in his Behalf for Mercy from her Majesty, which otherwise he had no Reason to look for.

He was also told, That being a Man of Understanding, he was not to expect to be asked Questions, but was to give an Account of himself, when, and how he became first employed, when and by what Instigation he was drawn in to correspond with the Queen's Enemies, and how far it proceeded.

He said, That one Mr. Gregg, the late King's Resident at *Copenhagen*, was his Kinsman, and sent for him thither, and he continued with him about three Years, till his Death, which happened about two Months before the late King died.

That Mr. *Vernon* was sent Envoy to *Denmark*, and took him, whom he found there, into his Service, in which he continued about two Years and an half, and then he was discharged from his Service by Mr. *Vernon*.

Mr. *Vernon* coming for *England* about his private Affairs, while Gregg was in his Service, and staying here some Time, in that Interval Gregg received some Letters from Mr. Secretary *Harley*, which gave him Occasion after to apply to him.

The 9th of *December*, 1704, Gregg came to *England*, and soon made Application to Mr. Secretary *Harley* for Employment, but was not recommended to him by any body.

The 3d of *January* he saw him first at his Office, where he attended often.

The 5th of *February*, 1705, Mr. *Jones*, the Secretary's First Clerk, came to him, and told him, the Secretary would speak with him. He attended on the Secretary the same Day, who asked him, If he would be willing to be employed in his own Country? Gregg said, He was willing to be sent upon any good Errand. Mr. Secretary told him, It was to give an Account of the Proceedings of the ensuing Parliament, which was to be held under the Duke of *Argyle*.

The 6th of *February* he went to the Office, and Mr. Secretary told him, he should be dispatched in a few Days.

To make some Trial of him (as he supposed) Mr. Secretary asked him, If he could give an Account of the Court of *Denmark*? Gregg said, He was willing to do it as well as he could; and accordingly in some Time he drew up a State of that Court, and it was not disapproved.

He attended daily, and on the 20th of *April* Mr. Secretary *Harley* gave him a Note of 20*l.* to be paid by his Steward in *Scotland-Yard*.

On the 23d of *May*, 1705, he was ordered to go for *Scotland*, and about a Week after set forwards on his Journey. When he was dispatched, a Note of 30*l.* was given to him.

Mr. Secretary always amused him, with telling him, he should have Instructions for his Directions

in *Scotland*; but at last ordered him to draw up some Queries himself about the State of Affairs in *Scotland*, which he did, and they were approved.

Some of the Queries were, What were the Designs of the several Parties? What Correspondence between the *Highlands* and *St. Germain's*? How affected to the House of *Hanover*? &c.

He was also ordered to form a Cypher of Letters, whereby to design the Great Men there.

The 2d of *June*, 1705, he arrived at *Edinburgh*, and wrote to Mr. Secretary the *Thursday* following; being ordered to direct all his Letters to *Thomas Bateman* in *Scotland-Yard*.

Mr. Secretary promised the Receipt of his Letters should be acknowledged, and he pressed often for it, to know they came to Hand, fearing his Letters were intercepted, because he was suspected as a Spy in that Country; but though he wrote thrice a Week, he never heard one Word from Mr. Secretary, or by his Order, during his whole Stay in that Country.

Being asked by the Lords, If he was recommended to any body in *Scotland*? he answered, No.

The 15th of *October* he arrived at *London*, and the next Day waited on Mr. Secretary, who thanked him for his Letters, and told him, he had named him to the Queen, upon Occasion of a Paper he had sent: But Gregg said, he believed the Queen had never heard of his Name, till this last unhappy Accident.

On the 29th of *October* Mr. Secretary ordered him 25*l.*

He attended daily, and pressed much to be sent abroad, particularly to go with Mr. *Metbuen* when he was sent to *Savoy*, but it was declined.

On New-Year's-Day Mr. Secretary dropped a Word which startled him much: He told him, he would fix him; which Gregg understood was bringing him into his Office.

Upon this he presented a Petition, that he might not be in the Office, because the Salary was small; and being in Debt, he could not live on it.

He attended every Day. The Secretary inquired of him, What he knew of Languages? He said, he knew some *French* and *German*, but knew *Latin* better than either.

The 16th of *April*, 1706, he was admitted into the Office, and a Note was given upon Mr. *Jones*, as for one of the Clerks; and Mr. Secretary told him, it was only to keep his Hand in Use, and that he would provide better for him.

The 16th of *May*, copying a Letter sent to Mr. *Vernon*, That he was to consider of somebody fit to be left behind, Gregg thought it to be intended in his Favour, and wrote to Mr. *Vernon* on that Occasion, desiring his Countenance.

But the 28th of *May*, Mr. Secretary writing Word to Mr. *Vernon*, That he had Leave to come at his own Time, but must leave somebody behind, and this being wrote before any Answer could come from thence, Gregg saw nothing was meant for him in the former Letter.

Gregg made Offers of Service to Mr. *Pulteney* when he was to go; but he said, he was provided.

Then he told Mr. Secretary, his Mind was depressed by his Debts, and desired to be thrown abroad; and to go with Sir *Philip Meadows*; but that was refused, and *Strahan* was sent.

Then

Then Mr. Secretary asked; What would make him easy? And he gave in a List of his Debts, amounting to about 35*l*.

Since that, Mr. Secretary has ordered him at several Times about 20 or 25*l*. in the whole; the last Sum was 7*l*. in *October* last, Part of a Bill of 14*l*. for which Debt he was pressed at that Time.

Being asked by the Lords, If his Debts only made him so desirous to be gone? he said, At the Rate the Business was managed in the Office, it was a perfect Drudgery.

Their Business seldom began till about Eleven or Twelve at Night, and they stayed till Two or Three, or later; though sometimes not above two Letters to dispatch, and he thought himself happiest who could get away soonest.

The Method was, First, the Letters were taken in Short-hand, afterwards wrote fair, then sent to Mr. Secretary's House to be signed, and after returned to the Office to be entered; so that they were obliged sometimes to stay till Four o'Clock in the Morning.

He said, That in *April* last, when *Hill* the Messenger was sent to *Turin*, the Pacquet was left to him, though the youngest Clerk, to be made up, and delivered to the Messenger.

In that Pacquet there was a Letter to Sir *John Norris*, and another to Mr. *Chetwind*, most of the last Letter was in Cypher; *Gregg* entered both those Letters. There was also another Letter to Sir *Cloudfly Shovell*, and Letters from the Lord Treasurer. He put them all up in the Pacquet, and after gave them to *Hill*.

Being asked, If he knew by the Letters what the Design was? *Gregg* said, he understood *Thoulon* was to be besieged: He could not read the whole, but knew enough to find out that. He said, it was wrote in the Cypher of the other Office by Mr. *Harley*, the Earl of *Sunderland* being sick at that Time.

The Queen's Letters *de Cachet* are made up before they are brought to the Office, but the Clerks are trusted to make up other Letters.

The Lords Committees required him to give the whole Relation of his Correspondence, when it began, and how long it had been carried on.

Gregg said, the first Motive of his writing to *France* was in order to get Money, by obtaining a Pass, and that his first Letter was the 24th of *October* last.

From his first entering into the Office, he had always a great Hand in perusing the *French* Prisoners Letters: That convenient Opportunity, and his Poverty, gave him the Temptation.

The *French* Prisoners Letters came under a general Cover, directed to Mr. *Lewis*. *Marechal Tallard's* Letters are under a flying Seal, the rest of them come always sealed, but are opened at the Office.

Generally Mr. *Lewis* threw them down on the Table, and left the perusing them to the Clerks, to Mr. *Mann* and *Gregg*; and since Mr. *Mann* left the Office, they have been trusted wholly to *Gregg*.

If *Gregg* observed any thing that he thought material, he made an Extract of it, and shewed it to the Secretary or Under-Secretary. He mentioned a particular Extract he had made out of a Letter of Mr. *Chamillard's* to *Marechal Tallard*.

Letters came from *Nottingham* every Post; sometimes twenty Letters came to them in a Day from *France*: Those came always sealed. From the Time he came into the Office, these Letters were never perused either by the Secretary or Under-Secretary, which he is sure of, because they were sealed when he looked on them. He cannot for that Reason say, but Mr. *Lewis* might sometimes look in *Marechal Tallard's* Letter, because that had a flying Seal; but the rest were left sealed, as they came by Mr. *Lewis*, to the Clerks Perusal.

Gregg said, he had a Dispute with Mr. *Lewis* upon the account of these Letters; *Gregg* declaring, he thought it not to be a Business fit for the Under-Clerks to be trusted with.

Mr. Secretary *Harley* wrote a Letter in Answer to one from Mr. *Pontchartrain*, thanking him for his Civility to one *Middleton*.

In transcribing it, *Gregg* found it so ill-turned, and the *French* so bad, that he acquainted the Secretary with it at Eleven o'Clock at Night, in *October* last. This Letter was stopped, and lay a Month in the Office; but after Mr. *Lewis* sent it away as it was wrote at first.

The rough Draught of the Queen's Letter to the Emperor, as it was altered by the Lord-Treasurer, was left in the Public Book of the Office, to be entered, the same Night it was to be sent away: There, *Gregg* said, he found it and transcribed it, and any other Clerk of the Office might have done it as well as he.

All the Books in the Office lie in a Press, the Key is always in the Door, and not only the Clerks, but the Chamber-keepers may have Access.

All Letters, except those wrote to the Duke of *Marlborough*, are entered in the Books, but those are only copied in loose Sheets. *Gregg* said, he had copied many of those.

The Draught of the Queen's Letter to the Emperor was prepared by Mr. *Lewis*; it was then written in the Hand of Mr. *Thomas*, Mr. *Harley's* Domestic Clerk; the Addition was in the Lord Treasurer's own Hand. Mr. *Mann* saw it as well as *Gregg*. *Mann* said to *Gregg*, that what was added by the Lord Treasurer, was much the brightest Part of the Letter.

Gregg said, he sent all his Letters to *France* under the Cover to Mr. *Robineau*: He owned he sent the Copy of the Queen's Letter to Mr. *Chamillard* the same Night the Queen's Letter was dispatched to the Emperor.

Gregg said farther, That the Letter in the Queen's own Hand was given to *Gregg* by Mr. Secretary himself about One o'Clock at Night, and he was solely intrusted to put it up in Sir *Philip Meadows's* Pacquet, after every body had left the Office.

Robineau, in his Letter to *Gregg*, took Notice, That he had delivered his Letters to Mr. *Chamillard*, and that Mr. *Chamillard* sent to advise with *Marechal Tallard* upon *Gregg's* Proposal.

Upon this, *Gregg* wrote a Letter to *Marechal Tallard*, of which he said he had no Copy, but pretended to repeat the Words of the Letter to the Lords Committees.

The Lords Committees told *Gregg*, it would be expected by the House, that he should be very clear and particular in declaring by what Advice or Encouragement he first began such a Correspondence.

a Correspondence. He said, By none at all: He was tempted to it by the Devil, and the Hopes of getting Money.

He said, That upon hearing a *French* Perriwig-maker was committed to *Newgate* for High Treason, he had desired to be admitted again to the Lords of the Cabinet-Council.

But he would not own that he knew the Man, but said, he had since heard his Name was *Valiere* or *Clarke*; he was told so by a Gentlewoman who came to see him since his Condemnation.

He said, he held no Correspondence in *England*, but only in sending the Common Letter of the Office, with other printed News-papers, to some Gentlemen.

Gregg said, he had been long acquainted with one *Crookshanks*, who promised him, that if he would procure a *French* Pass, he should have two hundred Guineas; and *Gregg* undertook to procure the Pass.

The first Time he wrote to Mr. *Chamillard* was the 24th of *October* last.

Brown a Merchant, Father-in-law to *Crookshanks*, and one *Bollinger* a Merchant, were acquainted with this Agreement about the Pass, and they dined together at *Brown's* House, and *Brown* undertook for the Money, if the Pass could be procured.

Gregg said, he acquainted *Bollinger* of his having sent a Copy of the Queen's Letter to Mr. *Chamillard*, at the *Cross-Keys* Tavern in *Covent-Garden*, and shewed him Extracts of *Marechal Tallard's* and *Robineau's* Letters. He said also, That he read the Extracts of their Letters at another Time in *English* to *Brown* and *Crookshanks*.

The Lords Committees asked him, To what End he told *Bollinger* of what he had done, in sending the Queen's Letter to Mr. *Chamillard*? He only said, It was downright Madness.

The Lords Committees asked him, If any body came to him? He said, one Mr. *Arbutnot* came to him, and no body else, and his Business was to bring him Charity.

The Lords Committees asked Mr. *Gregg*, If he had no more to acquaint their Lordships with? He said, No: And being told by them that it concerned him very much to consider of it; that the Lords observed, he had told them nothing but what he knew they had Means in their Hands to be fully informed of, without his saying any thing, and how hard it would be for the House of Lords to believe that he would venture upon such a Correspondence, without some Support or Encouragement; he persisted in it, that he had no more to say.

As the Lords Committees were risen up, and had called for the Keeper to take Mr. *Gregg* away, he took a brown Paper out of his Pocket, which was sealed up, and took out of it a Paper, which he said he had prepared against the Queen's Birth-day, and desired the Lords to read it. It purported to be a Petition to the House of Commons. He pretended he knew not how to get it delivered, because he concluded all the Papers sent by him would be delivered to Mr. Secretary *Harley*.

The Lords finding the Paper to be addressed to the House of Commons, told him, It was not proper for them to receive it, and delivered it immediately back to him again.

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The Lords Committees, as they went away, told *Gregg*, That if he would recollect himself, and set down in Writing any thing that he thought might be for his own Service, or of Use to the Queen and her Government, he might send it to them, and the Keeper should have Directions to convey it safely.

The next Morning *Gregg* sent a Letter to the Lords Committees, which as soon as they had perused, they returned to him again by a Gentleman, with the following Message:

“ The Lords of the Committee have ordered me to return this Paper to you, they being of Opinion that it is not material to the Examination for which they were sent to you by the House.”

The Lords Committees think themselves obliged to acquaint the House, That they did not observe *Gregg* to be under any Disorder or Terror from the Apprehension or Sense of his Danger.

The Indictment of *Gregg* for his treasonable Correspondence with her Majesty's Enemies, was brought before the Lords Committees, which Indictment he confessed upon his Trial, and Judgment was thereupon given against him.

The Lords Committees do think it their Duty to acquaint the House, That they having been informed by means of the Keeper of *Newgate*, that one *William Gregg* had been formerly in *Newgate*, and indicted for counterfeiting the Coin of the Kingdom, and that it was talked amongst the Turnkeys in the Prison, that this was the same Man; they sent to search the Books in *Newgate*, and found there, That in *May* 1697, *William Gregg* and *Elizabeth Gregg* were indicted for counterfeiting the Coin. Thereupon they sent for Mr. *Tanner*, who has the Custody of those Records; he brought the Indictment before them, and it appeared, that *Elizabeth Gregg* was found guilty and executed, but that *William Gregg* was acquitted; and that *Thomas Holloway* and *Simon Newport* were the Witnesses at the Trial, who, as was said, are both dead since that Time.

But one *Thomas Kinslerley* and *James Biddle* declaring, That they both knew that *Gregg*, who was then indicted, very well, and believed they should know him again if they saw him; the Lords Committees sent them severally to see *William Gregg* now in *Newgate*, and they both of them did declare, That they believed and were confident, that the same Person now in *Newgate* was the same *William Gregg* who was then indicted, and whose supposed Wife was then found guilty, and burnt; and they did both of them voluntarily make Oath to this Effect, and *James Biddle* swore, That after the Trial, the Discourse in the Neighbourhood was, that *Elizabeth Gregg* took the whole Matter upon herself at the Trial.

Their two Affidavits are laid before your Lordships.

After one of these Persons had been to see *William Gregg*, *William Gregg* wrote a Letter, directed to the Lords of the Committee, in which he did very positively deny that he was the Person who had been tried for Coining in *May* 1697.

May it please Your Most Excellent Majesty,

WE Your Majesty's most dutiful Subjects, the Lords Spiritual and Temporal in Parliament assembled, having entered into a serious Consideration

Consideration of the said Report, have unanimously come to the following Resolution thereupon:

That it is our Opinion, that the Crime of which *William Gregg* stands attainted, is of so heinous a Nature, and attended with such extraordinary Circumstances, that it may prove of very pernicious Consequence, if he should not be made an Example.

May it please Your Majesty,

It is Your Majesty's Glory, and the Happiness of *Europe*, that You are at the Head of one of the greatest Confederacies that ever was known in History; and it is the common Concern of the whole Alliance, that Your Councils should be kept with the strictest Secrecy: But in the Papers now laid before You, Your Majesty will be pleased to observe, That some of Your Resolutions of the greatest Moment, and that required the utmost Secrecy, have been sent to Your Enemies by the same Post they were dispatched to the Allies; That all the Papers in Mr. Secretary *Harley's* Office have, for a considerable Time, been exposed to the View even of the meanest Clerks in that Office; and that the Perusal of all the Letters to and from the *French* Prisoners was chiefly trusted to *Gregg*, a Person of a very suspicious Character, and known to be extremely indigent. It is not easily to be known what ill Consequences may have attended such Negligence, but we depend upon it, that these Matters being thus plainly laid open to Your Majesty, we shall be secured against any Dangers of this Nature for the future.

Her MAJESTY'S Most Gracious Answer.

My Lords,

I Am sorry that any who have been employed by those in My Service should have proved false to their Trust, and injurious to the Public.

The Examples you lay before Me, will, I do not doubt, be a sufficient Warning to keep all Matters of Importance as secret as may be, and to employ such only as there shall be good Grounds to believe will be faithful.

Gregg lay one hundred Days under Sentence before he was executed: But a few Years after Mr. *Francis Hoffman* (a Person of some Note) wrote thus in a Pamphlet to the Public*.

I Was abroad at the Time of Mr. *Gregg's* Trial, which has made so much Noise; and the great Esteem People had of the Duke of *Marlborough* on account of his glorious Successes, occasioned them to think very hardly of the Honourable Mr. *Robert Harley*, then one of the Secretaries of State, when they heard his Grace would have laid down, unless the other was removed; and Mr. *Harley* having been reflected on, ever since he was made a Peer and Lord Treasurer, on *Gregg's* Account, I thought myself obliged by Truth and Justice, to give the following Account, as I received it from Mr. *Lorrain*, a Man of Character; and

“ Mr. *Lorrain* did, in a most solemn Manner, declare to me, not only his being fully convinced of Mr. *Harley's* Innocence, but told me of so many Endeavours to corrupt *Gregg's* Conscience, not only with repeated Offers of Life, but of great Preferments and Advantages. It is apparent from hence, that some Persons stabbed as directly and villainously at Mr. *Harley's* Life then, as *Guiscard* did since. I have printed, and caused to be published, a true Copy of a Letter written to me by Mr. *Lorrain* himself, of what relates to Mr. *Gregg*, while he was under Mr. *Lorrain's* Care, with *Gregg's* dying Speech, and am, &c.

FRANCIS HOFFMAN.”

A true Copy of the Ordinary of Newgate, the Reverend Mr. Paul Lorrain's Letter to Francis Hoffman.

My good Friend,

“ WHEN you were with me Yesterday, you know I was in Haste to go to *St. Andrew's*; and could not, for that Reason, give you the Account you then desired; but promised it you against this Morning.

“ That I may be as good as my Word, I have (being now engaged in Business from Home) left this to refresh your Memory, in what I once, and more than once, told you about Mr. *William Gregg*.

“ When that unfortunate Person was under Sentence of Death for High Treason, I (according to the Duty of my Place) constantly visited him, prayed with him, examined him, and applied such Directions and Exhortations to him, as I thought most suitable for the well disposing him, and preparing him for another World.

“ I found him to be a Man of Parts, and very sensible of his heinous Crime, which he readily confessed, and for which he expressed great Horror, Sorrow and Repentance.

“ I often pressed him to discover who (if any) were concerned with him in that *Treasonable Fact*.

“ And pressed him also, (in an especial Manner, upon his eternal Salvation, and as he should answer it at the great Tribunal of God) freely to tell me, whether Mr. *Harley* did know any thing of it, or was any ways concerned, or to be concerned in it.

“ To which he answered me, with the greatest and solemnest Asseseration and Protestation imaginable, (he being all the while upon his Knees, and calling the great God to Witness) that *that* Honourable Gentleman, Mr. *Robert Harley*, knew nothing of it, neither was to know, nor to be concerned in it.

“ Which he having said, and often repeated to me, I then grew jealous of those People that frequently came to him, who (as he told me) were so far from offering him any thing to quiet his Conscience, that on the contrary, they gave a great Disturbance to it.

“ It seems, that among the rest, some Friends of that Honourable Gentleman's coming to see this Prisoner, I then expressed some Dislike of

* See Secret Transactions during the hundred Days Mr. *William Gregg* lay in Newgate, under Sentence of Death for High Treason.

“ his being so much disturbed, by Persons that
 “ resorted to him, even at those Hours when
 “ myself was to be at Prayer with him; but I
 “ knew not who those Persons were that thus
 “ came to him, and my endeavouring to keep
 “ them from him, was with no other Design
 “ than for the Good of that poor Man’s Soul,
 “ who did all along express to me his great
 “ Desire of being in the Chapel, and privately in
 “ his Room with me, as much as possible.

“ And as he also told me, that he was proffered
 “ his Life, and a great Reward, if he would
 “ accuse his Master; so I must own to you, I
 “ was very uneasy at his frequent Visitors,
 “ especially when I considered how they disturbed
 “ his Mind, and how much they took up of his
 “ precious Moments, and hindered him from his
 “ Devotions, and my Assurances to him therein.

“ I urged him many and many Times and
 “ Ways to clear his Conscience, and not violate
 “ it for the whole World, telling him, that it
 “ was infinitely better to die with a good Con-
 “ science, than make Shipwreck of it, and
 “ save his Life here; yea, and gain all the World,
 “ by laying a false Accusation on that Honourable
 “ Person, or any other he knew to be innocent,
 “ for that would certainly make him miserable
 “ both here and ever, &c.

“ With such like Expressions and Admonitions
 “ (God’s Grace intervening) I fixed his (then
 “ unsettled) Conscience, weaned him from the
 “ vain Hopes and Desires of this Life, and
 “ directed his Thoughts and Affections to far
 “ better Things, which I told him it was possible
 “ for him to obtain, if he earnestly and entirely
 “ laboured after them.

“ He thanked me for my good Advice, and
 “ the great Concern I shewed for his eternal
 “ Welfare, and said, he would now give the
 “ deaf Ear to the World, and so hoped God’s
 “ Ear would be open to his Prayers, &c.

“ At the Place of Execution, he thanked me
 “ publickly for all my Pains with him, which
 “ had proved so happy to his Soul, praying God
 “ to bless me and my Family.

“ Then he delivered a Paper into my Hand,
 “ for me to publish; in which Paper, he (among
 “ other Things) acknowledges God’s Mercy to
 “ him, in preventing him from prostituting his
 “ Conscience to save his Life.

“ Now the Reason why I did not presently
 “ publish that Paper, was this:

“ That it was commanded and kept from me
 “ by the then present Sheriffs, Sir *Benjamin Green*
 “ (to whom I was then Chaplain) and Sir *Charles*
 “ *Piers*, even from the Time of its Delivery,
 “ which was the 28th of *April*, 1708, to the 6th
 “ of *May*, then next ensuing; at which Time,
 “ having received it again, I waited with it on
 “ the Right Honourable the Earl of *Sunderland*,
 “ then one of her Majesty’s Principal Secretaries
 “ of State, who immediately gave me Leave to
 “ publish it.

“ Telling me withal, that I was the properest
 “ Person to authorize such Papers, as were thus
 “ delivered to me.

“ Upon this, I forthwith sent it to the Press,
 “ and it then appeared under my Name, as you
 “ may see by the printed Copy here inclosed.

I am, Dear Sir,

Your very humble, and
 affectionate Servant,

PAUL LORRAIN.

Christ’s-Hospital,
Tuesday Morning,
June 13, 1711.

*A Copy of William Gregg’s Paper, delivered by him
 to the Sheriffs of London and Middlesex, Sir
 Benjamin Green and Sir Charles Piers, and
 Paul Lorrain, Ordinary of Newgate, at Tyburn,
 the Place where he was executed for High Treason,
 on Wednesday the 28th of April, 1708. Printed
 from the Original, and published by Authority.*

“ THE Crime I am now justly to suffer for,
 “ having made a great Noise in the World,
 “ a Paper of more than ordinary Length will be
 “ expected from the Criminal; who therefore
 “ takes this last Opportunity to profess his utter
 “ Abhorrence, and sincere Repentance of all his
 “ Sins against God, and of the heinous Crime
 “ committed against the Queen, whose Forgive-
 “ ness I most humbly implore, as I shall heartily
 “ pray for her Majesty’s long Life and happy
 “ Reign over her united People, and Success
 “ against her Enemies, with my parting Breath;
 “ this being all the Satisfaction I can make
 “ injured Majesty.

“ I declare, in the next Place, the Reparation
 “ I would make (were it in my Power) to those
 “ of her Majesty’s Subjects I have wronged in
 “ any kind.

“ And particularly the Right Honourable
 “ *Robert Harley*, Esq; whose Pardon I heartily
 “ beg for basely betraying my Trust. Which
 “ Declaration, though of itself sufficient to clear
 “ the said Gentleman, yet for the sake of those
 “ whom it was my Misfortune not to be able
 “ to satisfy in my Life-time, I do sacredly
 “ protest, that as I shall answer it before the
 “ Judgment-Seat of Christ, the Gentleman afore-
 “ said was not privy to my writing to *France*,
 “ directly nor indirectly.

“ Neither I, his unworthy Clerk, any ways
 “ necessary to the Miscarriage before *Tboulon*,
 “ nor the Losses by Sea; all which happened
 “ before the first of my Letters, which was
 “ written the 24th of *October*, 1707.

“ As for my Creditors, as I am in no Con-
 “ dition to satisfy them; so I earnestly beg they
 “ would forgive me, and I pray God to make
 “ up their Losses to them seven-fold.

“ For my own Part, I do freely forgive all
 “ Men, and die in perfect Charity with them,
 “ not without humble Hopes of finding For-
 “ giveness, through the Merits of Jesus Christ,
 “ with God, who in Mercy touched my Con-
 “ science so powerfully from the Beginning, as
 “ to prevent my prostituting the same to save
 “ my Life; for which Instance of his Love, (to
 “ be preferred before Life itself) I bless and
 “ magnify his holy Name, with unspeakable
 “ Joy and Comfort, at my Death, nothing near
 “ so ignominious, as would have been such a
 “ Life.

“ After this Confession, the Duty of a dying
 “ Man leads me to profess the Religion in which
 “ I was brought up, and do now die, which is
 “ the *Protestant*:

“ The Scandal given whereunto, by my
 “ enormous Practices, cannot be better taken
 “ away, than by my publishing to the World
 “ my hearty Sorrow for those sensual Pleasures
 “ which have proved my Bane.

“ Wherefore let all that shall read this poor
 “ Paper, take Warning by me to shun the like
 “ youthful Lusts, to which whoever gives up
 “ himself, cannot tell how far they may (when
 “ indulged) carry him, even to the committing
 “ of

“ of such Crimes, as he thought himself incapable of some Time a Day.

“ Of which sad Truth, I (to my woeful Experience) am a melancholy Instance; but at the same Time, I appeal to the great God, before whom I am now going to appear, that notwithstanding all the Pains taken to make me out an old Offender, by fastening on me the Crime of counterfeiting the Coin, this is the first Fault that ever I ventured upon, which was not out of Zeal for the Pretender, whom I not only disown at my Death, but solemnly declare, that in all my Life I never thought he had any Right to these Realms, how foolishly soever I may have rendered myself obnoxious in this Particular.

“ But the only Motive of my mad Undertaking was Money, of which I never received any, on account of the Ship Pass, though I have met with the more just Reward of such secret Services, intended by

W. GREGG.”

After which Mr. Hoffman adds thus: “ Here it is evident, that he lay in *Newgate* after Sentence of Death passed on him for High Treason, in corresponding with her Majesty’s Enemies, from the 19th Day of *January*, 1707, to *April* the 28th, 1708, which was the Day of his Execution, as a Traitor, at *Tyburn*.

“ So that, in the whole, he lay under Sentence of Death, from the Time of his Sentence to the Day of his Execution, *one hundred Days*.

“ All which Time Mr. Lorrain laboured very diligently and devoutly with him, by good Admonitions, and frequent Prayers to God for him and with him, that he might not violate his Conscience, nor betray his Master.

“ While, on the other Side, Gregg often declared to Mr. Lorrain, no Manner of Solicitations, or Offers of Life, Preferment, and great Advantages were wanting, to induce him to bring Mr. Harley’s innocent Blood on his Head.

“ So long a Respite from Death, as one

“ hundred Days, was enough to make any Man so unwilling to die, as to make him to do any thing to save his Life, right or wrong; and Mr. Lorrain said, Gregg so often wavered in his Mind about it, being put so much, and so often, in Hopes of living with Splendor by certain Persons, that he almost resolved to say and do any thing Mr. Harley’s Enemies would have him.

“ Against which, Mr. Lorrain fortified his Mind, with all Manner of upright Industry, and at length with final Success. So that Gregg gave a deaf Ear to all their farther Attempts.

“ Here was one hundred Days hard Struggle between Life and Death, *Innocence* and *Party-Malice*.

“ Who those Persons were that offered Gregg his Life, with great Preferments and Advantages (if he would but accuse his Master) may not uneasily be guessed at; for most of the Time he was locked up, none but People of Note were permitted to come near him, who made him strange Promises, and often repeated them.

“ And here it would be worth while to examine how, and why, a certain Person got out of *Newgate*, who was justly confined there for Life, by Act of Parliament.

“ Submitting to stop Gregg’s dying Speech for eight Days only.

“ And then, when it was published by another Hand, for the two Sheriffs of *London* to send Mr. Lorrain to the Earl of *Sunderland*, to ask Leave to print a dying Speech they had commanded, and kept from him, till to keep it any longer, or indeed so long, was a burning Shame to them, but of no Manner of farther Service.

“ From hence you may conclude, how generous it was to say to Mr. Lorrain, “ *You are the proper Person to give Authority to this Paper, and I will give you my Word, you shall come to no Trouble for the printing and publishing it.*”



NUMBER XII.

IN *State Trials*, Vol. 6. p. 17. after the Execution of the Earl of *Derwentwater*, read as followeth:*

“ The Lord *Kenmure* made no Speech, nor delivered any Paper; but the following Letter of his to a Nobleman, was printed soon after his Death.

A true Copy of a Letter written by the Lord Viscount Kenmure to a certain Nobleman, the Day before his Execution.

My very good Lord,

“ **Y**OUR Lordship has interested yourself so far in mine and the Lords my Fellow-Prisoners Behalf, that I should be the greatest

“ Criminal now breathing, should I, whether the Result of your generous Intercession is Life or Death, be neglectful of paying my Acknowledgments for that Act of Compassion.

“ We have already discoursed of the Motives that induced me to take Arms against the Prince now in Possession of the Throne, when you did me the Honour of a Visit, three Days since, in my Prison here: I shall therefore wave that Point, and lament my Unhappiness, for joining with the rest of the Lords in pleading Guilty, in Hopes of that Mercy, which the Generals *Wills* and *Carpenter* will do us the Justice to say was promised us by both of them.

“ Mr. *Piggot* and Mr. *Eyres*, the two Lawyers employed by us, advised us to this Plea; the

* From the *Historical Account of Trials and Attainders for High Treason*, Vol. 2. p. 315.

“ avoiding of which might have given us farther
 “ Time for looking after the Concerns of another
 “ Life, though it had ended in the same Sentence
 “ of losing this, which we now lie under.
 “ Thanks be to the Divine Majesty, to whose
 “ infinite Mercy, as King of Kings, I recom-
 “ mend myself, in Hopes of Forgiveness, tho’ it
 “ shall be my Fate to fail of it here on Earth.

“ Had the House of Commons thought fit
 “ to have received our Petition with the same
 “ Candour as yours has done, and recommended
 “ us to the Compassion of the Prince now
 “ reigning, we might then have entertained some
 “ Hopes of Life; but the Answer from *St.*
 “ *James’s* is such, as to make us have little or
 “ no Thoughts of it.

“ Under these dismal Apprehensions then of
 “ approaching Dissolution, which I thank my
 “ good God for his holy Guidance I have made
 “ due Preparation for, give me Leave to tell
 “ you, that howsoever I have been censured on
 “ account of the Family of the *Gordons*, which
 “ I am an unhappy Branch of, that I have ever
 “ lived and will die in the Profession of the
 “ Protestant Religion, practised in the Church,
 “ governed by Bishops; and that I abhor all
 “ King-killing Doctrines, that are taught by the
 “ Church of *Rome*, as dangerous and absurd:
 “ And that though I have joined with some that
 “ have taken Arms, of that Persuasion, no other
 “ Motive, but that of exercising my Loyalty to
 “ the Person called the *Pretender*, whom I firmly
 “ believe to be the true Son of the late King
 “ *James* the Second, and in Defence of whose
 “ Title I am now going to be a Sacrifice, has
 “ induced me to it.

“ Your Lordship will remember the Papers I
 “ have left with you, and deliver them to my
 “ Son. They may be of Use to his future
 “ Conduct in Life, when these Eyes of mine are
 “ closed by Death, which I could have wished
 “ might have stolen upon me by the ordinary
 “ Course of Nature, and not by the Hands of
 “ an Executioner.

“ But as my blessed Saviour and Redeemer
 “ suffered an ignominious and cruel Death, and
 “ the Son of God made Flesh did not disdain
 “ to have his Hands and Feet nailed to the
 “ Cross, for the Sins of the World; so may I,
 “ poor miserable Sinner, as far as human Nature
 “ will allow, patiently bear with the Hands of
 “ Violence, that I expect suddenly to be stretched
 “ out against me.

“ Your Lordship will also, provided there is
 “ no Hopes of a Reprieve this Night, make me
 “ acquainted with it, as soon as possible, that I
 “ may meet that Fate with Readiness, which in
 “ a State of Uncertainty I expect with Uneasiness.
 “ I must also be pressing with your Lordship,
 “ that if, in case of Death, any Paper under my

“ Name should come out, as pretended to be
 “ written by me, in the Manner or Form of a
 “ Speech, you will not believe it to be genuine;
 “ for I that am heartily sorry for disowning my
 “ Principles, in one spoken before your Lord-
 “ ship, and the rest of my Peers, will never add
 “ to that Act of Indiscretion, by saying any thing
 “ on the Scaffold, but my Prayers, for the
 “ Forgiveness of my poor self, and those that
 “ have brought me to be a Spectacle to Men
 “ and Angels, especially since I must speak in
 “ my last Moments according to the Dictates of
 “ my Conscience, and not prevaricate, as I did
 “ before the Lords, for which I take Shame to
 “ myself; and such a Method of Proceeding
 “ might do Injury to my Brother *Cornwall*,
 “ who, I am told, is in a much fairer Way
 “ than I am, of being not excluded from
 “ Grace.

“ I have nothing farther, than to implore your
 “ Lordship to charge your Memory with the
 “ Recommendations I gave you to my Wife,
 “ and the rest of my Children; beseeching God,
 “ that he will so sanctify their Afflictions, that
 “ after the Pains and Terrors of this mortal
 “ Life, they may with me be translated to the
 “ Regions of everlasting Joy and Happiness:
 “ To which blessed State of Immortality, your
 “ Lordship shall also, while I am living, be
 “ recommended in the Prayers of,

My very good Lord,

From my Prison in the Tower of London,
 Feb, 23, 1715.

Your most affectionate Kinsman, &c.
 KENMURE.

“ When the Lord *Kenmure* was brought on
 “ the Scaffold, he was attended by two Divines,
 “ Mr. *H—s*, and Mr. *Cockburn*, the latter
 “ being not sent for till the Night before, and
 “ told by him, *He had so little Thoughts of dying*
 “ *then, that he had not provided a black Suit, that*
 “ *he might have died with more Decency; for which*
 “ *he was sorry.* As soon as he came on the
 “ Scaffold he kneeled down, leaning one of his
 “ Hands on the Rail, and the Divines prayed
 “ with him. He seemed to be very sincere and
 “ fervent in his Devotions, often lifting up his
 “ Hands and Eyes to Heaven: He had the
 “ Undertaker, Mr. *Roome*, with him, to take
 “ Care of his Body, and a Surgeon, who was
 “ to direct the Executioner in doing his Office,
 “ which he did, by drawing his Finger over that
 “ Part of his Neck where the Blow was to be
 “ given. The Viscount kissed the Officers and
 “ Gentlemen on the Scaffold all round, and
 “ some of them twice or thrice; and being asked,
 “ Whether he had any thing to say, or any
 “ Speech to deliver, he said, *No.* He prayed
 “ for the Pretender, and repented of his having
 “ pleaded guilty, and died after a very courageous
 “ Manner.”



N U M B E R XIII.

The Trial of the Reverend Mr. William Hendley, for preaching a Charity Sermon at Chislehurst, in Kent, for the Charity Children of St. Ann's, Aldersgate, London; and of George Campman, Robert Hicks, Filiar Harding, and Walter Prat, the Schoolmaster, and Trustees for the Charity Children, for collecting Money for the same; at Rochester Assizes in Kent, before Sir Littleton Powis, Knt. one of his Majesty's Justices of the Court of King's-Bench, July 15, 1719.

*The C A S E.**

ON Saturday, August 23, 1718, upon Leave obtained, first, from the Bishop of *Rochester*, (*Atterbury*, then Bishop of the Diocese) and secondly, from the Reverend Mr. *Wilson*, Rector of *Chislehurst*, to preach two Charity Sermons for the Children of *St. Ann's, Aldersgate*; the Schoolmaster with four or five more carried down some of the Children to *Chislehurst*.

Immediately after they arrived, they were taken up, and carried before Sir *Edward Bettison*, Bart. *Thomas Farrington*, Esq; Justices of the Peace, and Major *Stephens*, High Sheriff of the County; by whom they were asked, how they dared to come strolling and begging about the Country, without Licence or Authority first obtained? To which they answered, That if Archbishops and Bishops thought it a good Work to preach for such Children, they imagined it to be a good Work to collect for them: To which the Justices replied, They cared not for Archbishops or Bishops, and were resolved the Thing should not be pursued.

On Sunday, August 24, a Sermon was preached by the Reverend Mr. *Hendley*, suitable to the Occasion: The Sermon being ended, the Reverend Mr. *Wilson* (whose Curate read Prayers) put on a Surplice, and repaired to the Altar to read the Offertory Sentences before the Prayer for the Church Militant; when Mr. *Wilson* made his Offering in one of the Communion Patens, and then gave them to Mr. *Campman* and Mr. *Prat*, two of the Trustees for the Children, to collect for them from Pew to Pew.

The People gave liberally, till they came to Mr. *Farrington*, who not only refused giving, but seized the Collector, asserting it was illegal, and no Collection should be made; that the Children were Vagrants, and sent about begging for the Pretender. Mr. *Hendley* called out from the Pulpit, and commanded them to proceed; Mr. *Wilson* (from the Altar) did the like; but

the Collector's answered, they could not. Mr. *Wilson* came down, and said he would collect in Person, and Mr. *Hendley* called for a Common-Prayer Book, and read the several Rubricks which authorized these Proceedings, and told the Justices, they could not answer disturbing Divine Service, and must expect a Complaint to the Bishop of *Rochester*. The Justices said, they cared not for the Bishop, or them either, and were charged by Sir *Edward Bettison* and Captain *Farrington* to desist from collecting.

In the mean time, the Rector had good Success in collecting, many People crowding up to give before their Turn; and others, kept back by meer Force, threw their Money into the Plate. Mr. *Farrington* made a Snatch at the Plate to take the Money; when Mr. *Wilson* ordering the Money to be brought to the Altar, Mr. *Wilson* took one Paten and Mr. *Hendley* the other, and decently placed them thereon. Mr. *Farrington* pressed to come within the Rails; Mr. *Hendley* held the Door, and told him, his Place was not there, and forbid him touching the Money. Then Sir *Edward Bettison* came up to Captain *Farrington*, who called for a Constable, who came up with a long Staff; upon this they were ordered to disperse, upon Pain of being guilty of a Riot, being seconded by Sir *Edward Bettison*; when Mr. *Wilson* and Mr. *Hendley* told them, that the Service of the Church was not finished, for the Prayer for the Church Militant was not read, nor the Blessing given; and if any Riot, it was occasioned by the two Justices. Sir *Edward* answered, that the Service was finished, and forbid them to proceed; and that all concerned in bringing down the Charity Children should suffer for what was done. Mr. *Wilson* then called the Churchwarden to tell the Money with him, and agree to the Disposal of it according to the Rubrick. The Justices countermanded the same, whom Mr. Churchwarden rather chose to obey.

Upon this Mr. *Wilson* and Mr. *Hendley* told the Money on the Lord's Table, and committed

* Taken from a Pamphlet, intituled, *Charity still a Christian Virtue; or, An impartial Account of the Trial of the Reverend Mr. Hendley, &c. for preaching a Charity Sermon at Chislehurst, in Kent.*

it that Afternoon into the Custody of the Bishop of Rochester. In the Evening, the Rector, the Preacher, and three Persons who brought the Children down, were taken into Custody, and bound over to the Quarter-Sessions at Maidstone, as Rioters and Vagrants.

These Gentlemen appeared at Maidstone upon their Recognizance, but no Bill being found against them, they moved to be discharged; but the Justices obliged them to put in fresh Bail for their Appearance at the next Assizes, when they appeared, and the following Indictment was found against them.

Kent. ff. *JURATORES* pro Domino Rege super sacramentum suum presentant, quod Willielmus Hendley nuper de Chislehurst in comitatu Kantiae Clericus, Georgius Campman nuper de eadem Painter, Robertus Hicks nuper de eadem Labourer, et Filiar Harding nuper de eadem Packer, et Walterius Prat nuper de eadem Upholsterer, existentes personae seditiose et male dispositi, ad gubernationem hujus regni sub excellentissimo Domino Georgio nunc Rege feliciter stabilito maxime averssi, et iniqui lucri avidi, et nequiter et injuste intendentes grandes denariorum summas illicite lucrari et obtinere sub colore colligendi eleemosinas et alias charitates et dona ad sustentationem et mantentionem diversorum puerorum et puellarum, scilicet viginti puerorum, et triginta puellarum; vicesimo quarto die Augusti, anno regni dicti Domini Georgii, nunc Regis Magnae Britanniae, &c. quinto, apud Chislehurst in comitatu Kantiae praedicto, inter sese et quamplurimas alias male dispositas personas juratoribus praedictis ignotas, conspiravere et confederavere cum praedictis pueris et puellis pro oberrare, itinerari, et vagari ad diversas parochias in comitatu Kantiae praedicto; et in aliis comitatibus Angliae in parochialibus ecclesiis et aliis parochiis illicite et injuste lucrari, colligere, et obtinere diversas grandes denariorum summas, colore et praetextu colligendi eleemosinas et charitatis dona pro sustentatione et mantentione praedictorum puerorum, puellarumque. Et juratores praedicti super sacramentum suum ulterius presentant, quod praedictus Willielmus Hendley, Georgius Campman, et Walterius Prat, in prosecutione et performance conspirationis praedictae, et juxta conspirationem et confederationem praedictam inde prius habitam ad nequissimas intentiones suas praedictas ad effectum redigendas, postea, scilicet vicesimo quarto die Augusti, anno quinto supra dicto, apud parochiam de Chislehurst praedictam in comitatu Kantiae praedicto, cum praedictis pueris et puellis, seu aliquo seu aliqua eorum, adtunc non existentibus; residentibus, vel residente, nec nato; seu nata, infra parochiam de Chislehurst praedictam; itineraverunt, iverunt et vagati fuerunt ad parochialem ecclesiam de Chislehurst praedictam; et in parochiali ecclesia de Chislehurst praedicta, die dicto, scilicet vicesimo quarto die Augusti, anno quinto supra dicto; sese cum praedictis pueris et puellis et multis aliis male dispositis personis juratoribus praedictis ignotis, assemblaverunt in ecclesia parochiali de Chislehurst, praedicto tempore celebrationis divini servitii in eadem: Ac praedictus Willielmus Hendley adtunc servitii et ibidem secundum conspirationem praedictam, inde ut perfertur, hic illicite et injuste, absque licentia dicti Domini Regis; seu alia legali auctoritate quacunque; incitavit et rogavit parochiantes et alias personas in eadem Ecclesia adtunc et ibidem existentes, dare eleemosinas, et alia charitatis dona, sub colore et praetextu charitatis exhibere pro praedictis pueris et puellis. Ac idem Georgius Campman, et Walterius Prat, non ex-

istentes guardiani ecclesiae parochialis praedictae, vel alii officarii de dicta parochia, seu inhabitantes seu commorantes in, seu infra dictam parochiam de Chislehurst, secundum conspirationem praedictam, ut perfertur, inde hic illicite et injuste, sub colore et praetextu colligendi eleemosinas et charitatis dona pro sustentatione et supportatione praedictorum puerorum et puellarum, ad Rolandum Tryon parochianum praedictae parochiae de Chislehurst, et alias personas in eadem ecclesia tunc existentes, durando tempore divini Servitii in eadem ecclesia tunc celebrandi, illicite et injuste accesserunt, et requisiverunt eos dare eleemosinas, et charitatis dona, pro illicitis propositis praedictis: Ac iidem Georgius Campman, et Walterius Prat, adtunc et ibidem sub colore et praetextu colligendi eleemosinas et charitatis dona, adtunc et ibidem in prosecutione confederationis et conspirationis praedictae, et secundum conspirationem et confederationem praedictam, inde prius ut perfertur, ac absque aliqua legali auctoritate, collegere, recepere, et obtinere diversas summas moneti, in toto attingere ad tres libras, a praedicto Rolando Tryon, et aliis parochianis et inhabitantibus praedictis et aliis personis in parochiali ecclesia praedicta existentibus, in maxima disturbance quietis celebrationis divini Servitii in eadem ecclesia tunc celebrandi per Georgium Wilson Rectorem ejusdem ecclesiae; in maxima defraudatione et deceptione praedicti Rolandi Tryon, ac praedictorum aliorum parochianorum parochiae de Chislehurst praedictae et praedictarum personarum in eadem ecclesia tunc existentium; in malum et pessimum exemplum omnium in simili casu delinquentium contra leges, ac in contemptum dicti Domini Regis, legumque suarum; necnon contra pacem dicti Domini Regis, coronam et dignitates suas.

MITCHELL.

The Sum of which Indictment in English runs thus:

THE Jury for our Lord the King present, That William Hendley, late of the Parish of Chislehurst, in the County of Kent, Clerk, George Campman, lately of the same, Painter, Robert Hicks, lately of the same, Labourer, Filiar Harding, lately of the same, Packer, and Walter Prat, lately of the same, Upholsterer, being evilly and seditiously disposed to the Government of this Kingdom, under our most excellent Lord George, King of, &c. and averse to the happy Establishment thereof, and wickedly desirous of Gain; and most horribly and unjustly intending to procure to themselves unlawful Gains, under Pretence of collecting Charities, Alms, and Gifts for the Sustenance and Maintenance of Boys and Girls, viz. twenty Boys, and thirty Girls; on the 24th Day of August, in the fifth Year of our said King, did, in the aforesaid Parish of Chislehurst, with several other ill-disposed Persons (to the Jury unknown) conspire and confederate with the said Boys and Girls, to wander up and down in Kent; and divers other Parts or Counties in England, in order to collect great Sums for the aforesaid Purposes. And, that the said William Hendley, George Campman, &c. in order to put their said wicked Intentions in Execution, did, on the 24th Day as above-mentioned; at the aforesaid Parish, with the said Boys and Girls (none of them being Natives of that Parish) wander, itinerate, and stroll to the said Church; and there did assemble in the said Parish-Church at the Time of Divine Service; and there, at the Time of Divine Service, the said William Hendley (to prosecute his Conspiracy, without any Licence from the King, or legal Authority) did incite and ask of the

the Parishioners, Charities, Alms, and Gifts; though neither *George Campman* nor *Walter Prat* were Churchwardens, or otherwise Officers of that Parish, yet they did there, in Divine Service, unlawfully extort these Charities, amounting to the Sum of three Pounds, from *Rowland Tryon*, and other Inhabitants, to the great Disturbance of Divine Service, at that Time celebrating by *George Wilson*, Rector of that Church; to the great Defrauding and Cheating of *Rowland Tryon*, and the other Parishioners; for a wicked and evil Example of all offending hereafter in the same Manner against the Laws; and in Contempt of our said King and his Laws, and against the Peace of the said King, his Crown and Dignity.

To which they pleaded Not Guilty.

The Jury were,

Sir Thomas Roberts, of *Cranbrook*, Bart.
William Honeywood, of *Cberiton*, Esq;
Edward Gulston, of *West Farley*, Esq;
Richard Lewin, of *Lee*, Esq;
John Smith, of the same, Esq;
Edward Hodsdon, of *Lewisbam*, Esq;
John Sijb, of *Greenwich*, Esq;
William Clapham, of *Eltham*, Esq;
William Simons, of *Marden*, Esq;
Henry Wraigh, of *Offspring*, Esq;
John Gore, of *Minster*.
John Batchelor, of *Raynham*, Esq;*

The Council were,

For the Plaintiffs,	For the Defendants,
Serjeant <i>Darnell</i> ,	Serjeant <i>Comyns</i> ,
Mr. <i>Baynes</i> ,	Sir <i>Constantine Phipps</i> ,
Mr. <i>Marsh</i> .	Mr. <i>Blondell</i> .

Mr. *Marsh*, with a Warmth, alledged, That in Time Charity Schools might raise such Sums of Money; as to enable them to make head against the Government; their Drums beat to Arms, and their Trumpets sound a most dreadful Alarm; the Protestant Religion had its Quarters beaten up at *Chislehurst*, and the Terror had struck the Head Quarters in Town; the Sum of three Pounds was raised even in that little Parish, and suppose ten thousand Parishes in *England*, from each of which if that Sum was raised, it would be enough to bear the Chevalier's Charges into *Italy*, and help him to consummate the Marriage with the Princess *Sobieski*, upon whom he might get new Pretenders; to the great Disquiet of the Protestant Interest; and that if a Stop were not put to these Proceedings, in Time the Clergy would grow up into Friars Mendicant; and then quoted several Acts of Parliament against Vagrants, to prove the Defendants were within the Meaning of them; and shewed the Illegality of collecting Money without Letters Patents or Briefs†; and then called the Justices, Constable, and others, to prove the bringing down the Charity Children to *Chislehurst*, the Preaching, and collecting Charity for them after they were forbid, &c.

The Defendants proved that they had the Bishop's and Incumbent's Consent, by the Oaths

of *John Reeves*, *William Moor*, *Richard Neeves*, and *Thomas Shackleton*.

William Tryon, Esq; and *George Jefferies* proved that the Justices were the Authors of the Disturbance.

To prove the Archbishop of *Canterbury* preached at *St. Dionis Back-Church*, for the Charity Children of *Shadwell*, the Reverend Mr. *Hume*, Mr. *Tryon*, Captain *Thomas Shackleton*, and *Richard Payne* were called; who proved the same. And

That the Archbishop of *York* did the same, was proved by Captain *Thomas Shackleton*.

Mr. Archdeacon *Spratt* offered in Evidence, that he had seen the House of Lords present at a Sermon at *Westminster*, when a Collection was made for poor Children not thereunto belonging; and offered the three Rubricks for the Defendants Vindication, viz. the last after the *Nicene Creed*, the first after the Offertory, and the last after the Communion Service; but the Judge overruled them, by urging, That the Collection was restrained to a fixed Time.

Serjeant *Darnell* spoke chiefly relating to the Acts of Parliament made in the Reigns of Queen *Elizabeth*, King *Charles II.* and Queen *Anne*, made against Vagrants and Wanderers from their Parishes, and insisted these Collections were illegal; as did Mr. *Baynes*.

Sir *Constantine Phipps* insisted it was legal, as they had the Bishop's and Rector's Licence; and that if what they had done was illegal, it was cognizable only in the Ecclesiastical Courts; and that if the House of Lords were present at such a Collection, as Mr. Archdeacon *Spratt* had deposed, and that he had seen the late Lord Chancellor *Cowper* and the late Lord Keeper *Wright* encourage such Collections, sure there could be no Illegality in it; and then proceeded to shew the Defendants were not within the several Acts of Parliament quoted; as did Mr. *Comyns* and Mr. *Blondell*, who insisted, That such Proceedings would discourage Charity-Schools, and put an End to that noble Institution, &c. and that there was no Precedent for this Proceeding.

The Judge summed up the Evidence, and observed what dangerous Consequences might happen from these Collections; and was a little suspicious, that Mr. *Hendley* had Cardinal *Alberoni's* Leave, as well as the Bishop of *Rocheſter's*, to make this Collection, to carry on worse Designs under the specious Colour of advancing Charity; and seemed confirmed in his Suspicion, because the Manner of collecting had some Resemblance with that of the Cardinal's in *Spain*; for he laid a Tax upon the People, which they were forced to pay, and gave it the specious Name of a Free Gift, *alias* Charity. If this Stratagem was to spread in *England*, by the subtle Artifices of this political Cardinal, the Nation is in Danger of paying double Taxes. Upon the whole, the Judge wished, that he had his eleven Brethren to consult with, upon the Bench; but as that was not possible, he directed the Jury to bring in their Verdict for the Plaintiffs; when the Jury went out, and returned in a few Minutes with a Verdict, Guilty; upon which the Judge fined them 6s. 8d. each, and told them, if they did not like the Verdict, they might bring a Writ of Error.

* The Publisher of *The Account of this Trial* says, p. 43. "N. B. The Jury for the County was industriously set aside, and the above-mentioned were impanelled out of the Grand Jury."

† It is great Pity this Trial was never taken down in Short-Hand; it would have been very entertaining, as well as useful.

The Council for the Justices urged for a larger Fine, for that the Defendants had become Plaintiffs in the Bishop's Court; and therefore prayed, that such a Fine might be laid upon Mr. *Hendley*, &c. as might either satisfy the Charges they should be at in the Bishop's Court, or make the Opponents desist. But the Judge refused their Request, and told them, That should serve for the present; but if they came before him again, they should have their Deserts.

We shall here conclude (the Account of) this Trial, with an original Letter wrote by Sir *Littleton Powys*, to the Lord *Parker*, Lord Chancellor, upon the Occasion.

To his Excellency the Right Honourable Thomas Lord Parker, Lord High Chancellor of Great-Britain, one of his Majesty's Lords Justices, London.

Henley, near Ludlow, Aug. 4, 1719.

My Lord,

Taking London in my Way between *Lewes* and *Kingston*, came to your Lordship's House the Morning before I went to *Kingston*, but your Lordship was then sitting. I did then intend to have informed your Lordship of what occurred in the Circuit thitherto, relating to the Public, especially in *Kent*: And after I came from *Kingston*, I found your Lordship was gone out of Town; and before your Return, I set out for my Country Concerns here in *Shropshire*, till near next Term; so that what Account I give your Lordship must be by Letter.

Though your Lordship has heard how the Verdict went in the Trial at *Rocheſter**, yet perhaps it may not be unacceptable to your Lordship, to have some Abstract of the Matter arising in it. It began at Six in the Morning, by my Appointment, and held till Twelve. The Court was very full of Clergymen, and a great Auditory; and I gave both Sides Liberty to expatiate as they pleased, especially the Defendants, that they might not say but that they had a full and fair Trial. Most of the Witnesses for the Prosecution were unwilling, and did prove the Facts but meanly; but afterwards the Witnesses for the Defendants did, upon questioning, prove all the Facts very fully upon all the Defendants, viz. *Hendley* the Preacher, the Schoolmaster, and the two Collectors, being all who were served with Process. Serjeant *Comyns*, Sir *Constantine Phipps*, and Mr. *Blondell*, were Council for the Defendants. After an Harangue upon the Virtue of Charity, and how essential to Christianity (though I thought the Texts they cited proved another Sort of Charity, viz. Good-Nature and Good-Neighbourhood, but I thought it not proper then to take Notice of the Distinction) they insisted chiefly,

1. That it would discourage all Charity, and Charity Schools, which would thus be in Danger of Subversion.

2. That every Parson might order Collections in his own Parish, for what Charities he pleased, especially if approved of by the Bishop.

3. That the Rubrick in the Communion-Service, a Common-Prayer Book being produced in Court, does imply that the Parson and the Bishop are intrusted in Collections of Charity in

the Church; for it says, that if the Parson and Churchwardens disagree in the Distribution, the Bishop shall determine.

4. That the Parson of the Parish, and also the Bishop of *Rocheſter*, did give *Hendley* Leave to preach this Sermon, for this Purpose.

5. That though the Sermon was done, yet the Prayer for the Holy Catholic Church at the Communion-Table was not quite finished, as were not also the Sentences for exciting Charity, when Mr. *Farrington*, the Justice of the Peace, interrupted the Collection.

6. That the two present Archbishops have preached Charity Sermons, in *London*, for the Children of other Parishes there.

7. That there is no Precedent of such an Indictment ever before.

Too much Time was spent on both Sides, relating to what Power the Bishops had antiently in the Distribution even of Tythes and Profits relating to the Church, and their Rights to licence Preaching, and to direct what is to be done in Churches, and that Laymen are not to intermeddle there.

Serjeant *Darnell*, Mr. *Baynes*, and Mr. *Marſh*, were *pro Rego*. The Substance of what they all said is herein mentioned, intermixed with my own Thoughts in my summing up to the Jury.

I first said, That there were three Things much insisted on by the Defendants Council, and answered by the Council on the other Side, which I thought ought to be pared off, and put out of the Case, viz.

1. All Jealousy of discouraging all Charity, and Charity Schools; for that they remained just as they were before, as long as they kept within the Bounds of their proper Parishes. But this Case was quite of a different Nature, relating to arbitrary Collections, and that in other Parishes, and the coming of fifty Boys and Girls together begging for that Purpose; and if this was practised, it might do more Harm to Charity Schools, by making them odious to their Parishes, whose Poor would be injured, by lessening the Charity to them.

2. It ought to be put out of the Case, whether Mr. *Hendley* was authorized to preach there, or not; for that I thought it the same Case if the Parson of the Parish himself had then preached, [It was at my Tongue's End, if the Bishop himself had preached, as indeed it was the same; but I thought it better not to heat the Question by a Supposal of the Bishop's Preaching] for that the Preaching was not the Point, being used only to excite Giving; but the true Point was, *Whether the Collection was without lawful Authority; and therefore the Collecting of it in the Church is not a jot better, in Point of Law, than if the fifty Boys and Girls had stood at the Market-Place, and the Collectors had there received the Charity of all whom they could assemble about them.*

3. Another Matter I thought proper to be pared off (though so much debated on both Sides) whether it was a Crime (I suppose the Crime suggested in the Bishop of *Rocheſter*'s Court) to interrupt the Collection before the Prayer for the Holy Catholic Church, and the Sentences for Charity, were fully read; since they thought, that if such Collecting is an unlawful Act, the proper Time to stop it is just when

* Occasioned by a Charity-Sermon preached at *Chislehurst* by one *Hendley* of *Islington*. He died not long after.

it begins, or soon after, as was done here by Mr. *Farrington*; for otherwise Common-Prayer, or a Sermon, might be used to justify and give a Sanction to any unlawful Act, and this Stop might as well have been in the Middle of the Common-Prayer, or of the Sermon, in case the unlawful Collection had then begun: So that the true Point is, Whether the Collection was unlawful; and upon that all the Case depends.

As for the Assertion, That every Parson of a Parish may order Collections in his Parish for Charities, when and for what he pleases; I declared my Opinion, that he could not; it not being any Part of his Function, like reading Prayers, Preaching, Christening, Burying, &c. and I knew not how he was made Judge of the Times and Objects of all Charities within his Parish, though he might preach as much as he pleased upon the general Duty of Charity.

As to the Rubrick in the Communion-Service, I said, I thought that was to be taken *secundum subjectam materiam*, viz. the ordinary Collection at the Communion, which is ever then used to be made for the Poor of that Parish, but should not extend to every Collection the Parson should appoint for any foreign Charity, and that I did not till now hear that the Clergy did claim such a Power. And farther, I said, that I thought those Words of the Rubrick did not imply such a Power in the Parson: For the Words being, "the Money given at the Offering shall be disposed of to such pious and charitable Uses as the Parson and the Churchwardens shall think fit, wherein if they disagree, it shall be disposed of as the Ordinary shall appoint;" such a Power of appointing a Collection at Pleasure, is as much implied in the Churchwardens as in the Parson, for they have as much Liberty to disagree from the Parson in the Distribution, as the Parson has to disagree from them; and so the Churchwardens might also appoint Collections for what Charities they pleased: But that I thought that the Parson and Churchwardens, either jointly or severally, could not appoint any Collection for Charity otherwise than in common Form for the Poor of their own Parish, and that those are the charitable Uses intended by the Rubrick, and particularly at the Communion, to the Service of which those Words of the Rubrick are subjoined. I hope your Lordship, on reading that Part of the Rubrick at the End of the Communion-Service, will be of my Opinion, which I then suddenly declared, as to the Implication, and do not since alter, unless otherwise convinced.

As to what was mentioned of the two present Archbishops, it was for the Poor of the same Town, though of a different Parish*; and all the Circumstances of those Cases do not now appear, nor were they litigated, as this Case is.

As to the Objection, That there is no Precedent of such an Indictment ever before: There never

was such an Attempt before, that fifty Boys and Girls should go into another Parish, in another County, and make a kind of Migration in such a Body, really begging, though with great Formality. And though much might be said (as the Council for the King insisted) to bring them within the Statute of Vagrants, especially seeing the Statute of 39 *Eliz.* c. 4. paragr. 2. says, *That all Persons calling themselves Scholars, going about begging, shall be accounted Vagrants*; yet I judged it not proper to put the Case upon that Point, when I thought it so clear otherwise, and fit so to be mentioned.

I also told the Jury, that this Case did consist of two Parts; the first but particular, and the other very general.

As to the particular, it is relating to the Maintenance of the Poor, which is not of a Spiritual Nature, but a mere Lay Concern, and relating to the Civil Government; and the several Acts of Parliament do plainly esteem it as such, by ordering the Rates and Collections for the Poor, and putting the whole Management into the Lay Hands of the Justices of the Peace, and the Overseers of the Poor, who are to be nominated by the Justices of the Peace, and accountable to them, and by their Directions to set the Poor at Work, if they thought proper; and therefore a Justice of Peace, being then in the Church, might well take it to be a Matter within his Jurisdiction, and that he might stop such a new and extraordinary Proceeding, newly begun among the Clergy, relating to the Maintenance of the Poor, and a Collection made by Strangers, without the Consent or Assistance of the Churchwardens or Overseers of the Poor of that Parish.

But this Case, if under a general Consideration, is of a vast Extent, and mighty Consequence to the King and the People, and at which the very Legislature may take great Umbrage. The levying of Money is the tenderest Part of our Constitution, and if it may be done arbitrarily, under the Shew and Form of Charity, (which may comprize all good Works and all good Intentions) it cannot be said whither it may go; any more than it can be said whither these fifty Boys and Girls may go: For as, by the same Reason, they may go into all the Parishes in England, so Collections, as for Charities, may be set up in all the Churches in England by the Clergy, as often as they please: And though it be said, it is all but voluntary Giving, yet it is a Sort of Compulsion, by the Solemnity in the Church, and vying with others, and being marked out, if refusing, or giving meanly.

In the Time of Charles I. the Parliament took great Offence at some Attempts for Free Gifts to the Crown; and we hear that Cardinal *Alberoni* is now setting up the like all over Spain.

But besides, here in England no Collection †, even for Charity (unless for the Poor of the same Parish) is, by Law, to be made, but by the Leave and

* Charity Sermons are preached in London frequently in the Parish Churches there, for the Charity Children of different Parishes. The *British* Charity School on *Clerkenwell-Green* have an annual Charity Sermon, preached before the Stewards and Gentry of the *Welch Feast*, on the 1st of *March*, for their Benefit, and generally at a different Church each Year, and are never molested.

† In the Year 1745, when the Rebellion was on Foot, at the several County Meetings then held for subscribing Sums of Money to raise Men, &c. for the Defence of his Majesty's Person and Government, several Gentlemen, in different Counties, objected to it, as against Law; and that no Money could be raised but by Authority of Parliament, or the King's Licence, &c. But my Lord Chancellor *Hardwicke*, in his Speech (when Lord High Steward) at passing Sentence on the Rebel Lords, p. 38. has these Words, "Men of Property, of all Ranks and Orders, crowded in with liberal Subscriptions, of their own Motion, beyond the Examples of former Times, and un-compelled by any Law; and yet in the most legal and warrantable Manner, notwithstanding what has been ignorantly and presumptuously suggested to the contrary."

Permission of the King, gathering of Money being so nice a Matter, that it must not be done, even for Charity, without his Leave, in the most compassionate Cases; and thence the antient Method of Briefs under the Great Seal, has been used, even upon extreme great Losses by Fire. And the Statutes of 4 and 5 of Anne have put the whole Management of Briefs under the Regulation of the Court of Chancery, and impower the laying great Fines upon the Offenders. But this Method were giving a Go-by to all Royal Licences, and putting it in the Power of the Clergy to do all Acts of Charity of themselves, at the Expence of the People, and to be sole Judges of the Occasions, and to make what Application and Account they please.

I told the Jury, that I was very clearly of Opinion, in Point of Law, this was a Case of dangerous Consequence, and was an Invasion not only on the King's Prerogative, but also upon the Legislature, and that I thought the Defendants guilty.

The Jury stayed out but a little while, and brought them in all Guilty. I then told the Defendants Council, that if they did not like my Opinion, in Point of Law, they might bring their Writ of Error; and the Indictment being so special, it did equal a special Verdict, and they might have the Opinion of a special Court if they pleased.

I then set a Fine of a Noble upon each Defendant, saying, it was so small only because it was made a Question; but now that a Verdict had settled it, there would be very heavy Fines upon those who should presume to offend in like Manner hereafter. Yet I heard that some Gentlemen in the Town had thereupon said, that I had been too favourable to them by so small Fines: But it was far from my Intention of any Favour to them, but of Service to the King; whereas, if great, it might have been said, that, while they were prosecuted for levying Money on the People, the Prosecution was only to levy Money upon them, when it was really to settle the Point: And great Fines might have raised Compassion, and perhaps a Collection for them. It would be great Satisfaction to me, if your Lordship be of the same Opinion with me, as to the Smallness of the Fines; I am sure I intended it for the best.

I gave Mr. Woodford a News-Paper, wherein was an Advertisement, which I thought very fit to be shewed to Superiors: That the Bishop of London had issued a Circular Letter to all his Clergy, to collect Charities in their Parishes for the poor Vicarages in England, which I thought much a-kin to the late Collection in Kent, or rather more dangerous, not only by raising a vast Sum of Money, (if the like in all Dioceses) but also by marking out People how far affected to the Church throughout England, and casting some Reflection upon Queen Anne's Bounty, and upon a beneficial Explanation after by his present Majesty, yet as if to be supported by begging: And this done in a Time of Taxes, which must appear the more heavy after such Collections; and the Clergy would thus gain a Power of raising Money as they please, and applying it as they please. How this Project goes on, I know not; but sure it ought to be stopped: And for that Purpose, a Thing very apposite was mentioned in the Debate of the late Trial in Kent; That commonly about Christmas, when it is hard with the Poor for want of Work, in great Frost and

Snow, then the Bishop of London does send a Circular Letter, to the Parishes within the Bills of Mortality, to make Collections for the Poor, to be put into the Hands of the Lord-Mayor. But it was also alledged in the same Trial, that precedent to such Circular Letter of that Bishop, the King sends a Letter, under his Sign Manual, to that Bishop, authorizing and requiring him so to do. This deserves to be inquired into, and, if true, it is a Case in Point against this new Letter of the Bishop of London, if without the King's Licence.

A Man of Rochester, worth nothing, was convicted before me of drinking the Pretender's Health. I ordered him to be whipped, in open Market, twice, till his Back was bloody, with a Month between the first and second Whipping.

And at Lewes, a Man of Rye was convicted before me for drinking the Health of King James the Third, and saying, he knew no such Person as King George. He had run out a good Estate by Looseness, and had nothing left but an Annuity of thirty Pounds per Annum for his Life. I fined him a hundred Pounds, and committed him till paid, and that he would find good Sureties for his good Behaviour for three Years next after the Payment of the Fine. I told him, that by his paying a hundred Pounds to King George, he would certainly know there is such a Person.

Your Lordship's Notion, against setting a State Offender in the Pillory, was certainly very right, and did so convince me, that I have ever since ordered corporal or pecuniary Punishments upon them, as having a better Effect upon shameless People, and without giving the Mob an Opportunity to be troublesome.

I declared in all my Charges in this Circuit, as I did the two last Terms at Westminster, that the Number of base Libels, and seditious Papers, is intolerable, and that now a quicker Course will be taken about them; for that now the Government will not be so much troubling itself to find out the Authors of them, but as often as any such Papers are found on the Tables of Coffee-houses, or other News-houses, the Master of the House shall be answerable for such Papers, and shall be prosecuted as the Publisher of them, and let him find out the Author, Letter-writer, or Printer, and take Care, at his Peril, what Papers he takes in.

This last was a Maiden Circuit, which had not been known before, and is to be attributed to the late good Law of Transportation, which is well put in Execution in the Counties near London, whence Transporting is easy, but not so well in other Parts of England. The Treasury would save much Money, partly by paying fewer Rewards of forty Pounds, and partly by not long maintaining Fellows in Gaol, if some Rates were agreed to be given to Merchants to carry them off speedily.

Your Lordship's Order of Notification, to the Justices of Peace, had a very good Effect, for they appeared much better this Circuit than formerly, especially in Surrey; where I told them, that I would request your Lordship, that you would please to acquaint his Majesty, at his Return, how very well, in particular, his Justices of Peace in Surrey had appeared, upon his Pleasure being notified to them for that Purpose.

I did, in all my Charges, inform the Audience of the Occasion and Necessity of that Notification, for that there was grown a Sort of general Neglect,

all over *England*, of the Appearance of the Justices of Peace at the Assizes, when the Judges had often Matters to inform them of, by Command of his Majesty; and Trials of Felons were often imperfect, by the Non-attendance of the committing Justice of Peace; and that their Attendance was a Respect due to the King and his Government, upon those solemn Occasions: And that it is no Hardship upon them; there being three Excuses, which will be readily admitted, if upon the Call mentioned to the Court, barely upon the Word of some other Justice, or Proof upon Oath by some other Person, *viz.*

1. If not fit to travel, by Age or Want of Health.
2. If living out of the County.
3. If then actually out of the County.

But if Justices of Peace shall remain at Home, about their private Affairs, or to avoid the Trouble of a Journey to the Assizes, it ought to be looked on as a Neglect of the Duty of their Office: For they are not called only to notify to the People,

that they are in Commission, but to answer to their Names in Person.

Many of those in Commission do not act, and have not taken the Oath of Office: Whereupon I ordered, in open Court, each Clerk of the Peace, against next Term, to transmit to your Lordship a List of such as reside in the County, and refuse to act; yet that he does, in the mean time, know of them, if they persist in such Refusal; that so it may be their own doing, if they are put out of the Commission, after his Majesty's Favour to them in being put in.

I fear I have tired your Lordship with this long, though abridged, Account: But your Lordship's Pardon will be an Addition to all your former Favours to,

My Lord,

Your Lordship's most faithful

and most humble Servant,

LITTLETON POWYS.



N U M B E R X I V.

CURL's Case.

Mich. Term. 1 Geo. II.

Dominus Rex vers. Edmund Curl.

*An obscene Book is punishable as a Libel.**

Information exhibited by the Attorney-General against the Defendant *Edmund Curl*, for that he *existens homo iniquus et sceleratus, ac nequiter machinans et intendens bonos mores subditorum hujus regni corrumpere, et eos ad nequitiam inducere, quendam turpem, iniquum et obscænum libellum, intitulat' Venus in a Cloyster*, or, *The Nun in her Smock, impie et nequiter impressit et publicavit, ac imprimi et publicari causavit*, (setting forth the several lewd Passages) *in malum exemplum, &c.* and of this the Defendant was found guilty. And in *Trinity Term* last, it was moved in Arrest of Judgment by *Mr. Marsh*, that however the Defendant may be punishable for this in the *Spiritual Court* as an Offence *contra bonos mores*, yet it cannot be a Libel for which he is punishable in the *Temporal Court*. *Libellus* is a Diminutive of the Word *Liber*, and it is *Libellus* from its being a Book, and not from the Matter of its Contents. In the Case *De Libellis famosis*, my Lord *Coke* says, That it must be against the Public, or some private Person, to be a Libel: and I do not remember ever to have heard this Opinion contradicted. Whatever tends to corrupt the Morals of the People, ought to be censured in the *Spiritual Court*, to which properly all such Causes belong.

“ What their Proceedings are I am a Stranger to: But for me it is sufficient to say, I do not find any Case, wherein they were ever prohibited in such a Cause. In the Reign of King *Charles II.* there was a filthy Run of obscene Writings, for which we meet with no Prosecution in the *Temporal Courts*; and since these were Things not fit to go unpunished, it is to be supposed that my Lords the Bishops animadverted upon them in their Courts. In the Case of the *Queen versus Read*, 6 *Ann. B. R.* there was an Information for a Libel in writing an obscene Book, called, *The fifteen Plagues of a Maidenhead*; and after Conviction, it was moved in Arrest of Judgment, that this was not punishable in the *Temporal Courts*; and the Opinion of Chief Justice *Holt* was so strong with the Objection, that the Prosecutor never thought fit to stir it again.

“ *Mr. Attorney-General contra.* I do not observe it is pretended there is any other Way of punishing the Defendant; for if the *Spiritual Court* had done it, Instances might be given; and it is no Argument to say, we meet with no Prohibitions; such a way of Argument would construe them into all Sorts of Jurisdictions. What I insist upon is, that this is an Offence at Common Law, as it tends to corrupt the Morals of the King's Subjects, and is against the *Peace* of the King. *Peace* includes good Order and Government, and that *Peace* may be broken in many Instances without an

* *Strange's Reports*, Vol. 2. p. 788.

“ actual Force. 1. If it be an Act against the
 “ Constitution or Civil Government. 2. If it
 “ be against Religion. And, 3. If against Mo-
 “ rality.

“ 1. Under the first Head fall all the Cases of
 “ seditious Words or Writings, 2 *Roll. Abr.* pl. 2.
 “ *Vent.* 324. 3 *Keble* 841. and the Case of the
 “ *Queen* versus *Bedford*, *Mich.* 12 *Ann.* whose
 “ Treatise of *Hereditary Right* was held to be a
 “ Libel, though it contained no Reflection upon
 “ any Part of the Government.

“ 2. It is a Libel, if it reflects upon Religion,
 “ that great Basis of Civil Government and
 “ Liberty; and it may be both a Spiritual and
 “ Temporal Offence, *Cro. Jac.* 421. 2 *Roll.*
 “ *Abr.* 78. pl. 2. 1 *Vent.* 293. 3 *Keble* 607,
 “ 621. In *Tremayne's Entries* 226. there is a
 “ Sentence to have a Paper fixed upon the
 “ Defendant's Head, intimating, that he had
 “ uttered blasphemous Words, tending to the
 “ Subversion of Government. There is one
 “ *Hall* now in Custody on a Conviction as for
 “ a Libel, intituled, *A sober Reply to the merry*
 “ *Arguments about the Trinity.* And *Pasch.* 10
 “ *Ann. Regina* vers. *Clendon*, there was a Special
 “ Verdict on a Libel about the *Trinity*, and it was
 “ not made a Doubt of in that Case.

“ 3. As to Morality. Destroying the Peace
 “ of the Government, for Government is no
 “ more than public Order, which is Morality.
 “ My Lord Chief Justice *Holt* used to say,
 “ *Christianity is Part of the Law*: And why not
 “ Morality too? I do not insist that every im-
 “ moral Act is indictable, such as telling a Lie,
 “ or the like: But if it is destructive of Mo-
 “ rality in general; if it does, or may, affect
 “ all the King's Subjects, it then is an Offence
 “ of a public Nature. And upon this Distinction
 “ it is, that particular Acts of Fornication are
 “ not punishable in the Temporal Courts, and
 “ Bawdy-Houses are. In Sir *Charles Sedley's*
 “ Case it was said, that this Court is the *Custos*
 “ *Morum* of the King's Subjects, 1 *Sid.* 168.
 “ and upon this Foundation there have been
 “ many Prosecutions against the Players for
 “ obscene Plays, though they have had Interest
 “ enough to get the Proceedings stayed before
 “ Judgment, *Tremayne's Entries*, 209, 213, 214,
 “ 215. *State Trials*, Vol. 3. Lord *Grey's* Case.
 “ — *Mich.* 10 *Wil.* 3. *Rex* vers. *Hill*, the Defen-
 “ dant was indicted for printing *some obscene*
 “ *Poems* of my Lord *Rocheſter's*, tending to the
 “ Corruption of Youth; upon which he went
 “ abroad, and was outlawed; which he would
 “ not have done, if his Council had thought it
 “ no Libel. The Spiritual Courts punish only
 “ personal Spiritual Defamation by Words; if it
 “ is reduced to Writing, it is a Temporal Offence,
 “ *Salk.* 552. *Mo.* 627. and it is punishable as a
 “ Libel. My Lord *Coke*, in the Case *De Libellis*
 “ *famosis*, had nothing in View but scandalous
 “ defamatory Libels. *Libellus* is not always to
 “ be taken as a technical Word; in this Case it
 “ may stand as an obscene little Book. And as
 “ to the Case of *Read*, there was no Judgment,
 “ but it went off upon the Chief Justice's saying,
 “ *Why don't you go to the Spiritual Court?* Which
 “ was giving a false Reason for that sudden
 “ Opinion: Now it appears there is no Instance
 “ of the Spiritual Court's intermeddling, where
 “ it is reduced to Writing, or in Print.

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“ Chief Justice *Raymond*. I think this is a
 “ Case of very great Consequence; though, if
 “ it was not for the Case of the *Queen* versus
 “ *Read*, I should make no great Difficulty in it.
 “ Certainly the Spiritual Court has nothing to
 “ do with it, if in Writing: And if it reflects on
 “ Religion, Virtue, or Morality; if it tends to
 “ disturb the Civil Order of Society, I think it
 “ is a Temporal Offence. I do not think *Libellus*
 “ is always to be taken as a technical Word.
 “ Would not *Trover* lie *de quodam libello intitulat'*
 “ the New Testament, and does not the Spiritual
 “ Court proceed upon a Libel?

“ *Fortescue* J. I own this is a great Offence;
 “ but I know of no Law by which we can punish
 “ it. Common Law is common Usage, and
 “ where there is no Law there can be no Trans-
 “ gression. At Common Law, Drunkenness,
 “ or Cursing and Swearing, were not punishable;
 “ and yet I do not find the Spiritual Court took
 “ Notice of them. This is but a general Soli-
 “ citation of Chastity, and not indictable. Lady
 “ *Purbeck's* Case was for procuring Men and
 “ Women to meet at her House, and held not
 “ indictable, unless there had been particular
 “ Facts to make it a *Bawdy-House*. To make it
 “ indictable, there should be a Breach of the
 “ Peace, or something tending to it, of which
 “ there is nothing in this Case. A Libel is a
 “ technical Word at Common Law; and I must
 “ own the Case of the *Queen* versus *Read* sticks
 “ with me, for there was a Rule to arrest the
 “ Judgment *nisi*. And in Sir *Charles Sedley's*
 “ Case there was a Force, of throwing out Bottles
 “ upon the People's Heads.

“ *Reynolds* J. It is much to be lamented, if
 “ this is not punishable: I agree there may be
 “ many Instances, where Acts of Immorality
 “ are of Spiritual Cognisance only; but then
 “ those are particular Acts, where the Prosecution
 “ is *pro salute animæ* of the Offender, and not
 “ where they are of a general immoral Tendency;
 “ which I take to be a reasonable Distinction.
 “ *Read's* Case is indeed a Case in Point: But I
 “ confess I should not have been of that Opinion.
 “ *Libellus* does not *ex vi terminis* import Defa-
 “ mation, but is to be governed by the Epithet,
 “ which is added to it. This is surely worse
 “ than Sir *Charles Sedley's* Case, who only exposed
 “ himself to the People then present [naked,]
 “ who might chuse whether they would look
 “ upon him or not; whereas this Book goes all
 “ over the Kingdom. Drunkenness and Swearing
 “ were punishable in the Spiritual Court, before
 “ the Acts which made them Temporal Offences,
 “ and in which the Jurisdiction of the Spiritual
 “ Court is saved.

“ *Probyn* J. inclined this to be punishable
 “ at Common Law, as an Offence against the
 “ Peace, intending to weaken the Bonds of Civil
 “ Society, Virtue, and Morality. But it being
 “ a Case of great Consequence, it was ordered to
 “ stand over for a further Argument.

“ And this Term *Page* J. came into the *King's*-
 “ *Bench* in the room of Justice *Fortescue*; it was
 “ to have been spoke to by Mr. Solicitor-
 “ General and myself. But *Curl* not having
 “ attended me in Time, I acquainted the Court
 “ I was not prepared; and as my Want of being
 “ ready proceeded from his own Neglect, they
 “ refused to indulge him to the next Term.

[2 A]

“ And

“ And in two or three Days; they gave it as
 “ their unanimous Opinion; That this was a
 “ Temporal Offence. They said, it was plain
 “ the Force used in *Sedley's* Case was but a small
 “ Ingredient in the Judgment of the Court, who
 “ fined him 2000*l.* (2 *Marks*,*) and if the
 “ Force was all they went upon, there was no
 “ Occasion to talk of the Court's being *Censor*
 “ *Morum* of the King's Subjects. They said, if
 “ *Read's* Case was to be adjudged, they should
 “ rule it otherwise: And therefore in this Case,
 “ they gave Judgment for the King. And the
 “ Defendant was afterwards set in the Pillory,

“ as he well deserved.” ——— This *Edmund*
Curl stood in the Pillory at *Charing-Cross*, but was
 not pelted, or used ill; for, being an artful,
 cunning (though wicked) Fellow, he had con-
 trived to have printed Papers dispersed all about
Charing-Cross, telling the People, He stood there
 for vindicating the Memory of *Queen Anne*;
 which had such an Effect on the illiterate Mob,
 that it would have been dangerous even to have
 spoken against him: And when he was taken
 down out of the Pillory, the Mob carried him
 off, as it were in Triumph, to a neighbouring
 Tavern.

* *Sir Charles Sedley* was indicted at Common Law for several Misdemeanors against the King's Peace, and which were to the great Scandal of Christianity; and the Cause was, for that *He shewed his naked Body in a Balcony in Covent-Garden to a great Multitude of People*, and there did such Things, and spoke such Words, &c. mentioning some Particulars of his Misbehaviour, as throwing down Bottles (pissed in) *vi et armis* among the People, *Keble's Reports*, Vol. 1. p. 620. *Fortescue's Reports*, 99, 100. And this Indictment was openly read to him in Court; and the Justices told him, That notwithstanding there was not then any *Star-Chamber*, yet they would have him know, that the Court of *King's-Bench* was the *Custos Morum* of all the King's Subjects; and that it was then high Time to punish such profane Actions, committed against all Modesty, which were as frequent, as if not only Christianity, but Morality also had been neglected. After he had been kept in Court by Recognizance from *Trinity* Term to the End of *Michaelmas* Term, the Court required him to take his Trial at Bar: But being advised, he submitted himself to the Court, and confessed the Indictment, 15 *Car.* 2. 1663. The *Michaelmas* Term following; the Court considered what Judgment to give; and inasmuch as he was a Gentleman of a very antient Family (in *Kent*) and his Estate incumbered, (not intending his Ruin, but his Reformation) they fined him only 2000 *Marks*, and to be imprisoned a Week without Bail, and to be of good Behaviour for three Years, *Sid.* 168. pl. 29. *Digest of the Law*, p. 60 and 116.



N U M B E R X V.

*The Trial of William Hales, for forging a Promissory Note for 6400*l.* in the Name of Thomas Gibson, Esq; and Partners†, and for publishing the same as a true one, knowing it to be false and counterfeit, at the Session of the Peace, and Oyer and Terminer, for the City of London, held at the Old-Bailey, on Monday the 9th Day of December, 1728, before Mr. Justice Page and Mr. Baron Carter.*

Cryer. O Y E Z, Oyez, Oyez: All Manner of Persons, that have any thing to do at this Sessions of *Oyer and Terminer*, holden for the City of *London*, and *Gaol-Delivery* of *Newgate*, holden for the City of *London* and County of *Middlesex*, draw near and give your Attendance. ——— Oyez; You good Men of the City of *London*, summoned to appear here this Day upon the Trial between our Sovereign Lord the King and *William Hales*, answer to your Names, on Pain and Peril that shall come thereon.

James Seymour, Samuel Cranmer, &c. called.

Clerk of the Arraigns. *William Hales*, look to your Challenges.

Samuel Cranmer ———

Mr. Serj. Baynes. My Lord, I have a Paper delivered to me. There are three worthy Persons on this Pannel, we desire may be set aside.

Mr. Justice Page. You know what the Law is; If *Mr. Attorney* consent they should be withdrawn, very well.

Mr. Serj. Baynes. We know there are enough, my Lord.

Cl. of Arr. *Richard Knollys.*

Mr. Serj. Baynes. He is related to *Mr. Gibson*.

Mr. Serj. Whitaker. Prove it.

Mr. Baron Carter. Pray, how is *Mr. Gibson* concerned?

Mr. Serj. Darnell. It is for a Note of *Mr. Gibson's*.

Mr. Justice Page. I would recommend it to *Mr. Attorney*. I would have this Trial without any Colour of Unfairness whatsoever; and as *Mr. Gibson* is concerned, if he be really a-kin, I would advise *Mr. Attorney* to waive him.

Mr. Attorney-General, (Sir Philip Yorke.) My Lord, I am sure it is our Desire that this Trial should proceed with all the Fairness imaginable,

† This Trial (taken in Short-hand by Order of *Mr. Gibson*) should have come in Vol. 9. p. 67. being the first of *Hales's* Trials; but not procuring it Time enough to insert in its proper Place, have given it here; as it completes all the Trials at large, relating to the Forgeries of *Mr. Hales* and *Kinnerley*: Though a short Account of this Trial, from the Sessions-Paper of that Time, is printed in Vol. 9. p. 68—71.

therefore, without entering into the Question how far Mr. Gibson is concerned, or, if he is, what Consequence that may have, I waive this Gentleman.

Then the twelve Jurors, who were sworn, were counted, and their Names were as follows, viz.

Samuel Cranmer,	John Pott,
William Howard,	Richard Chauncy,
Thomas Swayne,	James Coulter,
Thomas Port,	Harvey Spragge,
Ralph Knox,	Joseph Jackson,
Cornelius Mason,	Robert Knaplock.

Cl. of Arr. Cryer, make Proclamation.

Cryer. If any one can inform, &c.

Clerk of the Arraignment opened the Indictment, which is as follows, viz.

London. ff. **FURATORES** pro Domino Rege super sacramentum suum presentant, quod Willielmus Hales, nuper de London, Auri-faber, Anglicè Goldsmith, existens persona malorum nominis et fame ac conversationis inhonestæ, ac injuste et fraudulenter machinans et intendens quendam Thomam Gibson, necnon quosdam Johannem Jacob et Robertum Jacomb, participes ejusdem Thomæ Gibson, ac diversos alios dicti Domini Regis nunc ligeos et subditos, de magnis denariorum summis fraudulenter et inique decipere et defraudare, septimo die Septembris, anno regni Domini Georgii Secundi, nunc Regis Magnæ Britanniæ, &c. secundo, apud London prædictæ, scilicet, in parochia Sancti Dunstani in Occident', in warda de Farringdon extra, vi et armis, &c. falso, fraudulenter, et deceptivè fabricavit et contrafecit, et fabricari et contraferi causavit, quoddam scriptum in verbis et figuris sequentibus, videlicet;

August 27th, 1728.

I promise to pay to George Watson, Esq; or Bearer, the Sum of six thousand four hundred Pounds, at Demand, the like Value received. For myself and Partners,

£. 6400.

THO. GIBSON.

ad grave damnum præfat' Thomæ Gibson, et prædict' Johannis Jacob et Roberti Jacomb, participum ejusdem Thomæ Gibson, in malum exemplum omnium aliorum in hujusmodi casu delinquentium, ac contra pacem dicti Domini Regis, coron' et dignitat' suas, &c. Et juratores prædicti super sacramentum suum prædictum ulterius presentant, quod prædictus Willielmus Hales nequiter et deceptivè machinans et intendens præfat' Thomam Gibson, necnon prædict' Johannem Jacob et Robertum Jacomb, participes ejusdem Thomæ, ac diversos alios subditos et ligeos dicti Domini Regis nunc, de magnis denariorum summis fraudulenter et inique decipere et defraudare, postea, scilicet prædicto septimo die Septembris, anno secundo supradicto, apud London prædictæ, scilicet, in parochia et warda prædictæ, vi et armis, &c. quoddam scriptum falso fabricatum et contrafactum in verbis et figuris sequentibus, videlicet,

August 27th, 1728.

I promise to pay to George Watson, Esq; or Bearer, the Sum of six thousand four hundred Pounds, at Demand, the like Value received. For myself and Partners,

£. 6400.

THO. GIBSON.

scienter, illicite, et fraudulenter produxit et publicavit, et produci et publicari causavit, tanquam verum et

legitimum scriptum, (dicto Willielmo Hales adtunc et ibidem bene sciente scriptum ult' mentionat', per ipsum Willielmum Hales sic ut præfertur product' et publicat', falso fabricat' et contrafact' fuisse) ad grave damnum præfat' Thomæ Gibson, et prædict' Johannis Jacob et Roberti Jacomb, participum ejusdem Thomæ, in malum exemplum omnium aliorum in hujusmodi casu delinquentium, ac contra pacem dicti Domini Regis nunc, coron' et dignitat' suas, &c. Et juratores prædicti super sacramentum suum ulterius presentant, quod prædictus Willielmus Hales machinans et fraudulenter intendens præfat' Thomam Gibson, necnon prædict' Johannem Jacob et Robertum Jacomb, participes ejusdem Thomæ Gibson, ac diversos alios dicti Domini Regis nunc subditos, de magnis denariorum summis fraudulenter et inique decipere et defraudare, prædicto septimo die Septembris, anno secundo supradicto, apud London prædictæ, scilicet, in parochia et warda prædictæ, vi et armis, &c. falso, fraudulenter, et deceptivè fabricavit et contrafecit, et fabricari et contraferi causavit, quoddam scriptum geren' dat' vicesimo septimo die Augusti, anno Domini millesimo septingentesimo vicesimo octavo, in se purportans, quod prædictus Thomas Gibson pro seipso et participibus promisit solvere Georgio Watson, Arm', aut latori, summam sex mille quadringent' librarum, super demand', consimili valore recept', ad grave damnum præfat' Thomæ Gibson, et prædict' Johannis Jacob et Roberti Jacomb, participum ejusdem Thomæ Gibson, in malum exemplum omnium aliorum in hujusmodi casu delinquentium, ac contra pacem dicti Domini Regis, coron' et dignitat' suas, &c. Et juratores prædicti super sacramentum suum ulterius presentant, quod prædictus Willielmus Hales nequiter et deceptivè machinans et intendens præfat' Thomam Gibson, ac prædict' Johannem Jacob et Robertum Jacomb, participes ejusdem Thomæ Gibson, ac diversos alios subditos dicti Domini Regis nunc, fraudulenter et inique decipere et defraudare de magnis denariorum summis, postea, scilicet, prædicto septimo die Septembris, anno secundo supradicto, apud London prædictæ, scilicet, in parochia et warda prædictæ, vi et armis, &c. quoddam scriptum falso fabricat' et contrafact', geren' dat' vicesimo septimo die Augusti, anno Domini millesimo septingentesimo vicesimo octavo, in se purportans, quod prædictus Thomas Gibson pro seipso et participibus promisit solvere Georgio Watson, Arm', aut latori, summam sex mille quadringent' librarum, super demand', consimili valore recept', scienter, illicite, et fraudulenter produxit et publicavit, et produci et publicari causavit, tanquam verum et legitimum scriptum, (præfato Willielmo Hales adtunc et ibidem bene sciente scriptum ult' mentionat', per ipsum Willielmum Hales sic ut præfertur product' et publicat', falso fabricat' et contrafact' fuisse) ad grave damnum præfat' Thomæ Gibson, et præfat' Johannis Jacob et Roberti Jacomb, participum ipsius Thomæ Gibson, in malum et perniciosum exemplum omnium aliorum in consimili casu delinquentium, ac contra pacem dicti Domini Regis nunc, coron' et dignitat' suas, &c.

N. B. This Indictment was found under the Commission of Oyer and Terminer, and not upon the Gaol-Delivery.

Cl. of Arr. Upon this Indictment the Defendant hath been arraigned, and pleaded Not Guilty; and for his Trial he puts himself upon God and his Country, which Country you are.

Your Charge is to inquire, &c.

Mr.

Mr. *Strange*. May it please your Lordship, and you Gentlemen of the Jury; This is an Indictment against *William Hales*, of *London*. The Indictment sets forth, That he being a Person of ill Fame and Reputation, and intending to deceive and defraud *Thomas Gibson*, *John Jacob*, *Robert Jacomb*, and divers others, did, on the 7th of *September*, forge and counterfeit, and caused to be forged and counterfeited, a certain Note, viz. "August 27, 1728. I promise to pay, &c." This is laid to be to the great Damage of the said *Thomas Gibson*, &c. and to the evil Example of others in like Case offending, against his Majesty's Peace, &c. It sets forth, That, from the same evil Intentions, he did produce and publish, and caused to be produced and published, a certain Note following, viz. "August 27, 1728. I promise to pay, &c." That he published this as a true and lawful Writing, knowing the same to be false, forged, and counterfeit. It sets forth, That he forged and counterfeited, and caused to be forged and counterfeited, a certain Writing, dated *August 27, 1728*, purporting that the aforesaid *Thomas Gibson*, for himself and Partners, promised to pay *George Watson*, or Bearer, 6400*l.* Gentlemen, the Indictment sets forth, That on the same 7th of *September*, in this City, the said *William Hales* did produce, and caused to be produced, a Writing, which purported that the said *Thomas Gibson* had promised to pay *George Watson*, or Bearer, 6400*l.* and published this, knowing it to be forged at the same Time. And this is laid to be to the great Damage of the said *Thomas Gibson*, &c. and to the evil Example of all others in like Case offending. To this Indictment he hath pleaded Not Guilty. But if we prove the Fact, it becomes your Duty to convict him thereof.

Mr. *Attorney-General*. May it please your Lordship, and you Gentlemen of the Jury; I am of Council in this Case for the King. The Charge against the Defendant Mr. *William Hales* is for forging a Note in the Name of Mr. *Gibson*, payable to *George Watson*, Esq; or Bearer, for no less a Sum than 6400*l.* and publishing this Note as a true one, knowing it to be false and counterfeit: For, though the Fact is laid different Ways in the Indictment, yet it is upon one and the same Note, and the Difference consists only in the Form of alledging it.

This, Gentlemen, is the first Case of the most extraordinary Scene of Forgery that hath come under Examination in this Place, committed in such a Manner, and attended with such Circumstances, as make it necessary to be prosecuted with the greatest Weight and Solemnity, for an Example and Terror to others. All Kinds of Forgery are Crimes of a most pernicious Nature, as they tend to weaken and destroy that Faith and Commerce which ought to be maintained amongst Men: But Forgery in the Case of negotiable Notes, which have a particular Currency given to them by Act of Parliament, whereby private Credit is greatly assisted and Trade carried on, is one of the most dangerous, and, if it should prevail, the Consequences, tho' not easy to be foreseen, would certainly be extensive and destructive. Such is the Nature of the Offence whereof the Prisoner stands accused: But howsoever heinous that may be, his Guilt will depend entirely upon the Evidence of the Fact.

Gentlemen, the Advantage taken to commit this Forgery was from an Act of Kindness and Civility done to the Defendant. He some Time ago prevailed with one Mr. *Booth*, Book-keeper to Mr. *Gibson*, to accommodate him with two Covers for Letters franked by Mr. *Gibson*, in order (as he pretended) to send News into the Country: A Practice, which I fear is too common, but I hope this Instance will have some Effect to make it less frequent. It will appear to you, from several Circumstances, That the Note in Question was made on one of these Covers: For, Gentlemen, it is a Promissory Note, subscribed, *For myself and Partners, Thomas Gibson*. The Body of the Note is all of one Hand-writing, not pretended to be Mr. *Gibson's*. When we come to the Subscription, there is a Rasure at the End of the Word *For*, which, upon holding the Paper against the Light, is plainly to be seen. The Manner of Mr. *Gibson's* Writing being pretty wide and loose, the Letter *o* in the Word *For* appears to have been crouded between the other two Letters *F* and *r*, and is remarkably of a different Character and fresher Ink than the others. From hence the Manner of making the Forgery seems to have been, by rasing out the two *e's* at the End of the Word *Free*, or at least the greatest Part of them, and inserting an *o* in the manner I have mentioned, and then adding in the same Line, after this Word thus made to be *For*, these other Words, *Myself and Partners*; which standing a little above the Name *Tho. Gibson*, serve as a proper Subscription to this Note. It will appear likewise, that the Stroke at the Beginning of the *m* in the Word *my* is of the older kind of Ink, and probably was at first Part of one of the *e's* in the Word *Free*. There is something observable in the Figure and Appearance of the Paper itself: The old Folding, which is most worn, answers to that which probably might have been the Fold of a Cover of a Letter, and the Paper is torn off at one Side and at the Top.

This, Gentlemen, being the Nature of the Writing, and the Manner in which it was transformed from the Direction of a Letter to a Note of this Value, we shall, in the next Place, lay before you the Use which was made of it. And, Gentlemen, the Time pitched upon for this Purpose, will be material for your Consideration. Mr. *Gibson* was gone to *Bath*, and it was thought proper to date the Note the Day before he went. No Use was made of it till some Time after he was gone, that there might be no Room for applying to the Person himself. The Day, and Time of the Day, which were chosen to put it off, were *Saturday* at Night; when probably there would be no Opportunity of making Inquiries till the *Monday* Morning following, and consequently a whole Day might be gained. This being the Opportunity resolved upon, it will appear, that on *Saturday* the 7th of *September* Mr. *Hales* made Use of an Instrument, that hath confessed himself to have been drawn in by him, one *Thomas Rumsey*, a young Fellow bred to the Sea, who was absolutely under his Influence; told him he must go with him into the City, bid him put on a particular Suit of Cloaths, and observing that he had a laced Hat upon his Head, advised him to leave that behind him, and gave him a plain one. To make him appear still more like a Man of Business, Mr. *Hales*, as they

they went along the *Strand*, bought him a Pocket-Book or Letter-Cafe. Thence he carried him to *Middle-Row*, and bought him a dark Periwig, bid him put it on, and said, it became him very well. Thus equipped, he took him to *John's* Coffee-house in *Sheer-Lane*; and when they were there, *Rumsey* not knowing about what he was to be employed, a Porter came in with a Letter. Without the Porter's saying one Word, *Hales* asked, if he did not want *Rumsey*? The Porter answered, Yes; and produced a Letter directed to *Rumsey*, which Mr. *Hales* took, and readily found inclosed in it this Note for 6400*l.* payable to *George Watson*, or Bearer. In the Letter were two Names written with Sums against them thus, *Lady Harriot Elliott* 4300*l.* *Sir John Hynde Cotton* 2100*l.* and underneath, *payable to them or Bearer*. These Names only being in the Letter, Mr. *Hales* took upon him to order *Rumsey* to write under them, *James Moreton, Esq; or Bearer*; and when this was done, that Part of the Letter with the Names was torn off, and put into the Pocket-Book (which had been bought for the Purpose) together with the Note for 6400*l.* and a Bank-Note of 20*l.* and two of 25*l.* each. Then the Prisoner gave it to Mr. *Rumsey*, with Directions to carry these Notes to the Shop of Mr. *Snow* and *Poltock* without *Temple-Bar*, and there take their Cash-Note, payable to *James Moreton, Esq; or Bearer*, for 70*l.* the Produce of the Bank-Notes; and in Exchange for this forged Note, to take one of their Notes, payable to the *Lady Harriot Elliott* or Bearer, for 4300*l.* and another to *Sir John Hynde Cotton* or Bearer, for 2100*l.* The Prisoner gave strict Instructions to *Rumsey*, that, if at Mr. *Snow's* he should be asked where he lived, he should answer, at the upper End of *Bond-Street*; if he should be asked his Name, he should say, *Thomas Fowler*, or any other Name besides his true Name; that it was indifferent what, so it was not the right Name. *Rumsey*, thus instructed, went immediately to the House of Mr. *Snow* and *Poltock*, which *Hales* took care to shew him. Mr. *Poltock* took the small Bank-Notes, and gave his Note for them; but observing the Appearance of the Note for 6400*l.* that it was written on a dirty Scrap of Paper, and the Difference of Hand-writings in it, would have nothing to do with that. During this Time *Hales* kept at a little Distance; and *Rumsey* returning without Success, he directed him to go to Mr. *Hoare's*, and (as he had concerted in the former Instance) to pay in a small Sum of Money not exceeding 70*l.* and take their Note for it, and to exchange the Note of 6400*l.* for their Notes. The Names of the Persons to whom the Notes were to be made payable were then to be changed; for the Stratagem was, to make Use of the Names of Persons that dealt at the several Shops, in order to gain Credit to the Transaction. Therefore the Names of two Honourable Persons, well known at Mr. *Hoare's*, were pitched upon; and the new Direction which the Prisoner gave to *Rumsey* was, to take one of Mr. *Hoare's* Notes for 4300*l.* payable to *Sir Richard Grosvenor* or Bearer; and another for 2100*l.* payable to *Sir John Hynde Cotton* or Bearer; and there also if he was asked to give in his Name, *Thomas Fowler*. When it was near dark, *Rumsey* went to Mr. *Hoare's*, and exactly pursued his Orders. They made him out a small Note for the Cash, and gave such Credit to Mr. *Gibson's* Name, as to

give him the Notes he desired, in lieu of the 6400*l.* Note; all which Mr. *Rumsey* delivered immediately to Mr. *Hales*, who waited for him at a Fruit-stall not far from the Shop.

Gentlemen, Mr. *Hales* being now possessed of three Notes of Mr. *Hoare's*, one for 70*l.* another for 2100*l.* and a third for 4300*l.* the next Part of his Scheme was to negotiate and exchange them for other Notes from Hand to Hand, in order to entangle the Affair, and make it difficult to trace out the Cheat: Therefore his next Orders to *Rumsey* were, to carry the Note for 4300*l.* payable to *Sir Richard Grosvenor* or Bearer, to Mr. *Brassey's*, and exchange it for smaller Notes. *Rumsey* went thither that Night, and took four smaller Notes of Mr. *Brassey's* in lieu of Mr. *Hoare's*, viz. two of 1000*l.* each, one of 1200*l.* and another of 1100*l.* But though these Notes of Mr. *Brassey's* were given out on *Saturday Sept. 7th* at Night, they were made to bear Date on *Monday the 9th*; because, it being late in the Evening, the Cash-Book was made up for that Day. These four new Notes Mr. *Rumsey* delivered to Mr. *Hales*, who waited for him again at a very small Distance from Mr. *Brassey's* Shop.

The next Part of the Scheme was to change these Notes into negotiable Securities equal to Cash, in which there was probably a double View; partly to intricate the Affair still further, and partly for the greater Convenience of carrying off the Fruits of their Iniquity, when that should become necessary: Therefore the Prisoner sent *Rumsey* to Mr. *John Hals*, a Broker in *Exchange-Alley*, and directed him to acquaint him, that he came from Mr. *Samuel Palmer*, in *Mansel-Street, Goodman's-Fields*, with Orders to buy *South-Sea* and *India* Bonds to the Value of 3400*l.* against *Monday* Morning following.

Thus the Matter rested till *Monday the 9th of September*: But on the *Sunday* the Prisoner was not wanting in making his Preparations. He then appointed one *Robert Hall*, his Taylor, to meet him at *Lloyd's* Coffee-house in *Lombard-Street*, at Eight of the Clock the next Morning, without letting him into the Secret of what he was to do. *Hall* went accordingly, and there found one *Samuel Lee* waiting for Mr. *Hales*; an Instrument made use of by the Prisoner in another Transaction, which will one Day appear as rank a Forgery as this. About Nine *Hales* came, and gave to *Hall* Mr. *Brassey's* Note for 1200*l.* directing him at the same Time to go and receive 650*l.* in Guineas, and have it indorsed off. He told *Hall*, that if he was asked, he should tell them he lived in the *Hay-Market*, or any where else except the real Place of his Dwelling, and that his Name was *John Roberts*. So here is another sham Name and Place of Abode. He obeyed these Orders, received the Money, not in Gold, but in three Bank-Notes; and when the Persons in Mr. *Brassey's* Shop inquired his Name, he told them *John Roberts*. Whilst *Hall* was in the Shop, he observed that Mr. *Hales* walked by; so jealous was he of his Agents, or at least so vigilant to see how Things succeeded. *Hall* delivered the Bank-Notes, together with Mr. *Brassey's* Note, on which the 650*l.* was indorsed off, at *Lloyd's* Coffee-house; and afterwards met him again at *Janeway's* Coffee-house in *Cornhill*. There *Hales* returned these Bank-Notes to *Hall*, and ordered him to go to the *Bank*, and there receive the Money upon them in Gold. Mr.

Hales was still so jealous or impatient, that whilst *Hall* was at the Bank receiving the Money, he took Occasion to come in there upon Pretence of changing a Guinea, and taking no Notice of *Hall*, went away; after which *Hall* went with him to a Tavern, and paid him the 650*l.* which he received at the *Bank*.

Gentlemen, thus far the Design succeeded well. Here are several good Notes obtained, and some Cash got, without Discovery: But the Occasion of that will arise out of the Part which *Rumsey* was to act on the *Monday* Morning.

Gentlemen, you observe there are two Notes of Mr. *Hoare's* behind, whereof no Account hath been yet given, viz. that of 70*l.* and that of 2100*l.* payable to Sir *John Hynde Cotton*, to put off which Mr. *Rumsey* was employed. It will appear, that Mr. *Hales* kept *Rumsey* continually with him, and lodged him in his House on *Saturday* and *Sunday*; and on *Monday* Morning, when he went into the City, brought *Rumsey* with him, took Care to shew him Mr. Alderman *Hankey's* Shop, and directed him to exchange these two Notes for 70*l.* and 2100*l.* for Mr. *Hankey's* Notes. *Rumsey* went to the Shop, and they having no Difficulty about exchanging Mr. *Hoare's* Notes, accepted them, and gave him two of their own, one for 1100*l.* and another for 1050*l.* both payable to *Samuel Palmer* or Bearer; and the remaining 20*l.* was paid in Money. As to the Note for 1100*l.* the whole was received upon that at Mr. Alderman *Hankey's* the same Day, by a Person who called himself *Samuel Lane*.

Gentlemen, the next Part of the Transaction relates to the *South-Sea* and *India* Bonds for 3400*l.* which had been ordered to be procured by *Hals* the Broker. On *Monday* Morning *Rumsey* received the Money of Mr. *Hales*, with Directions to carry it to *Hals*, and pay for these Bonds. Whilst *Rumsey* was gone to transact this, it appears that Mr. *Hales* was upon this Occasion also uneasy and impatient, thought *Rumsey* stayed too long, and sent a Porter for him to *Hals's* Office, by the Name of *Thomas Fowler*; and that *Rumsey* answered to that Name, and went along with the Porter.

Gentlemen, we shall next produce to you the Account made up by Mr. *Hals*, or Mr. *Cole* his Partner, which will appear to have been made out in these feigned Names, *Samuel Palmer, Esq;* per *Thomas Fowler*; whereas no such Persons had any thing to do in the Transaction, but the whole was negotiated by *Hales* and *Rumsey*. And it will be proved, that whenever the Prisoner sent *Rumsey* upon any of these Errands, he considered the Questions which were likely to be asked, and gave him Instructions how to make proper Answers, and some of them in Writing.

While these Things were transacting, the Accident happened that led to the Discovery. About Eleven o'Clock on *Monday* Morning, Mr. *Humphreys*, a Servant of Mr. *Hoare* and his Partners, who carries out Notes and receives Money abroad, carried the Note for 6400*l.* to Mr. *Gibson's*, and, Mr. *Phillips* the Cash-keeper being abroad, left it with Mr. *Cramlington*, another of the Servants, with Directions to pay the Money upon it to Mr. *Bromfield* at the *Bank*, who was to place it to Mr. *Hoare's* Account. When Mr. *Phillips* came Home, he was surprized to find such a Note with Mr. *Gibson's* Hand to it; the Note not of his own Writing, though it is always

his Practice to write the Body of his Notes as well as the Subscription. And no Notice having been given of it by Mr. *Gibson*, upon this he conceived a Suspicion, and resolved not to pay it till he had first spoke to Mr. *Jacomb*. The Note was shewn to Mr. *Jacomb*, who, upon finding out the Rasure, and observing the other Circumstances which I at first mentioned to you, immediately suspected it to be a Forgery, and took Methods for the Discovery. He found out, that one of Mr. *Hoare's* Notes had been exchanged for Bank-Notes, and traced out the Numbers; upon which Notice was immediately given at the *Bank*, that if any of those Notes were brought for Payment, they should be stopped, and the Person secured. It happened soon after this, that Mr. *Hales*, designing to get the Remainder of the Effects into his Pocket, carried *Rumsey* within Sight of the *Bank*, (who was so ignorant a Person, that he asked him whether it was a Church) and directed *Rumsey* to receive Money there on two Bank-Notes, each for 200*l.* Part of the Bank-Notes given out by Mr. *Brassey*; and thereupon the Officers of the *Bank* stopped *Rumsey*, and inquired into the Matter. Mr. *Rumsey* was first interrogated how he came by these Notes; and after much Hesitation and Difficulty, at last said, he had them from a Gentleman that stayed for him at *Robin's* Coffee-house in the *Old-Jewry*. Upon this they sent a Constable, and found Mr. *Hales* there, having in his Hand Mr. *Brassey's* Note for 1100*l.* This Note he endeavoured to conceal, but was prevented. They brought him to the *Bank*, and upon Search found about him the very Effects which were the whole Produce of Mr. *Hoare's* three Notes, except about the Sum of _____ which was wanting. He was asked, how he came by them, and by the Note signed with Mr. *Gibson's* Name, payable to *Watson*, with which he procured them. The Account he gave was, that he had them from one Mr. *Samuel Palmer*: But he there declared, that all the Effects that he had about him were the Produce of this Note, and wrote down in a Paper how he had disposed of the rest.

Gentlemen, this will appear to you to be the Nature of the Case; and upon this Mr. *Hales* was committed, and *Rumsey* secured. And, Gentlemen, I apprehend, that, though this be a long Series of Facts, yet it will amount to a clear Evidence against the Prisoner. No reasonable Man can expect Proof to be made of the very Act of Forgery. Such Iniquities are Deeds of Darkness, and those who commit them do not call Witnesses to attest the Performance: But next to that we have the strongest Evidence. What arises out of the Note itself is of great Weight: The Circumstance of the Rasure and Alterations, which I will not repeat: The Body of the Note not of Mr. *Gibson's* Writing, whereas it is his constant Practice to write the whole Note with his own Hand, and that too in a different Form of Expression from the present Note: There is no Person of the Name of *George Watson*, with whom he hath any Dealings. Another Circumstance material to be taken into Consideration is the immediate exchanging all these Effects, without any apparent Occasion. One Banker's Note exchanged for another, Mr. *Hoare's*, Mr. Alderman *Hankey's*, Mr. *Brassey's* — All of them Persons of great Credit — What Account can be given, without any Reason appearing, why one

one of these Gentlemen's Notes should be exchanged for another, but to darken and intricate the Affair?

Add to this the Consideration of the Persons concerned: Mr. Hales, a Bankrupt not discharged, employing such Agents as I have described to you; himself lurking about in a concealed Manner; all these Circumstances shew the Man was doing a wicked Thing, which would not bear the Light, nor his appearing in it. But what amounts to a Demonstration, is his directing these Agents to take upon them feigned Names and Places, to dress themselves in Masquerade, and to take Notes in the Names of other Persons, who were absolute Strangers to the Transaction.

As this is Evidence of the Prisoner's publishing a forged Note knowingly, it is Evidence likewise that he forged it: For, if a Person hath a forged Note in his Custody, and taketh such Methods to put it off and give it a Currency, it is a strong Proof against him of the Forgery itself; and properly turns it upon the Defendant to give a clear Account how he received it, upon what Consideration, and in what Way of Business; more especially in this Case, where the Note is for so great a Sum of Money, that no body can pretend to be at a Loss or under any Difficulty to shew how they came by it.

Gentlemen, when the Witnessess shall have given you an Account of these Things upon their Oaths, I apprehend there can remain no Doubt but the Charge of Forgery against the Prisoner is just, and this Prosecution necessary.

Call Philip Booth, who was sworn.

Mr. Solicitor-General, (Hon. Mr. Talbot.) Mr. Booth, do you know the Prisoner at the Bar, Mr. Hales?

Mr. Booth. Yes, Sir, I do know him.

Mr. Sol. Gen. How long have you been acquainted with him?

Mr. Booth. Ever since the Year 1703.

Mr. Sol. Gen. Can you remember the Time — how was he brought up at that Time?

Mr. Booth. I remember him at the Shop of Sir Stephen Evance several Years before their Failure.

Mr. Sol. Gen. Do you remember any thing of a franked Letter?

Mr. Booth. About a Year and a half ago he came to me, desiring me (Mr. Gibson being a Member of Parliament, and his other Friends out of Town) that I would do him the Favour to give him two Franks. He brought two Sheets of Paper; I desired Mr. Gibson to frank them, who wrote on them, *To Robert Booth, Esq; Bristol. Free Tho. Gibson.*

Mr. Sol. Gen. How did he write his Name?

Mr. Booth. *Tho. Gibson.*

Mr. Sol. Gen. What did you do with them?

Mr. Booth. I gave them to Mr. William Hales.

Mr. Sol. Gen. Sir, look on that Note. Are you acquainted with the Hand of Mr. Gibson? See whether you take any Part of the Note to be of his Hand-writing?

Mr. Booth. The Name is his.

Mr. Sol. Gen. Is there any other Part of the Note, which you take to be his Hand-writing?

Mr. Booth. The *FI* take to be Part of the Word *Free* — the *F* I take to be Mr. Gibson's Hand-writing.

Mr. Sol. Gen. What is the *r*? Look carefully upon it.

Mr. Booth. The *r* may be Mr. Gibson's; but the *o* seemeth to be crouded in between the *F* and the *r*.

Mr. Sol. Gen. Do they seem to be of the same Hand, or of a different one?

Mr. Booth. Crouded in irregularly.

Mr. Sol. Gen. Are they of the same Ink?

Mr. Booth. I take them to be of a different Ink. The *r* is his Letter; but I take it there is some Alteration: Here is a plain Rasure, where the Letters *my* are written.

Mr. Sol. Gen. What Distance from the *r*?

Mr. Booth. The Rasure is probably where the two *e*'s stood.

Mr. Sol. Gen. The *my*, and the Word following, do you take them to be Mr. Gibson's Writing?

Mr. Booth. No, Sir.

Mr. Sol. Gen. Take Notice of the Fold.

Mr. Booth. This seems to be the Fold of a Letter.

Mr. Sol. Gen. If you take that to be the Fold of a Letter; Is that the usual Place for the folding of a Letter?

Mr. Booth. There must be some Alteration on the left-hand Corner.

Mr. Sol. Gen. Make your own Observations. Look on the Top of it; Doth that seem the Fold of the Paper as at first, or cut or torn off from any other Paper?

Mr. Booth. I believe it is not the original Fold of the Paper as it is now.

Mr. Sol. Gen. Look on that Side next me; Doth it seem cut or torn off?

Mr. Booth. Yes, it is not the original Selvedge of the Paper.

Mr. Sol. Gen. Is the original Selvedge of the Paper in any other Part? Is it cut off, or the original Selvedge?

Mr. Booth. The original Selvedge is not there.

Mr. Sol. Gen. Is it cut off?

Mr. Booth. I cannot tell; I query, whether cut or torn off.

Mr. Sol. Gen. Have you lived with Mr. Gibson long?

Mr. Booth. Eight Years.

Mr. Sol. Gen. Have you seen any Notes of his giving?

Mr. Booth. Yes, Sir.

Mr. Sol. Gen. What is his common Manner of signing Notes?

Mr. Booth. *For myself and Co.*

Mr. Sol. Gen. Read that Note, and give an Account to the Jury, wherein you think it agrees with his ordinary Way of writing Notes, and wherein it differs.

Mr. Booth. Mr. Gibson generally begins with *I promise to pay*, and concludes his Notes *For Self and Co.* but never mentions *Value received.*

Mr. Just. Page. Consider of what Avail this is to prove that it is not written by Mr. Gibson, because it is different from the Manner of his Stile. It is certainly allowed by all not to be a Note written by Mr. Gibson.

Mr. Sol. Gen. My Lord, this is a Forgery, the Proof whereof depends upon a vast Variety of Circumstances, and every one of them is corroborating.

Mr. Just. Page. I submit it, whether it be of any Avail or not; the Cause will be long enough.

Mr. Sol. Gen. My Lord, this is one Circumstance. We know not what Reply they will make,

make, and this is our Time to give in our Evidence — We hope therefore your Lordship will bear with us, and permit us to take our own Method.

Mr. Just. Page. Go on then your own Way.

Mr. Sol. Gen. We shall ask but one Question more; Those Notes that are signed by Mr. Gibson, of whose Hand-writing are they?

Mr. Booth. All his own.

Mr. Sol. Gen. Did you ever see any Promissory Note signed by Mr. Gibson, where the Body of it was wrote by any other Hand?

Mr. Booth. Never, to the best of my Knowledge.

Mr. Sol. Gen. As to *Self and Partners*, do you ever remember his writing in his Notes these Words, or always *Self and Company*?

Mr. Booth. *Self and Company* always.

Mr. Sol. Gen. In what Part of the Note? In a straight Line, or under?

Mr. Booth. In a straight Line.

Mr. Sol. Gen. Do you know that he ever signed a Promissory Note written by any other?

Mr. Booth. Never, to my Knowledge.

Mr. Sol. Gen. How long have you been with him?

Mr. Booth. Eight Years.

Mr. Sol. Gen. In what Place?

Mr. Booth. Book-keeper.

Mr. Sol. Gen. Did you see the Note when first brought to Mr. Gibson's? Had it the same Creases in it?

Mr. Booth. Yes, Sir.

Mr. Sol. Gen. One Question more I would ask; Are the Letter *o*, and the Words following, of the same Ink?

Mr. Booth. Here seems to be an accidental Dash of the Pen, as if the Hand shook.

Mr. Sol. Gen. I apprehend the Gentleman mistakes my Question: Sir, I ask, whether you take the Letter *o* to be of the same Ink with the Word *my* and the following Words? Sir, I desire you will look once more distinctly on it, and tell us whether you apprehend the Letter *o* to be of the same Ink with the Word *my* and the following Words?

Mr. Booth. There seem to be some Fragments of a Letter?

Mr. Sol. Gen. Might there be the Fragments of the Letter *e*?

Mr. Booth. There are the Remains of the Letter *e*.

Mr. Sol. Gen. Then I ask you, whether these Remains of the Letter *e*, appear of the same Ink with the Word *my* and following Words?

Mr. Booth. No, nothing like it.

Mr. Sol. Gen. You have observed (I suppose) his Manner of Franking — Pray, Is it *Free* or *Frank*?

Mr. Booth. *Free* always.

Mr. Sol. Gen. One Question more; Have you observed, in his general Way, that the Space between the *F* and the *r* is so great? Suppose the *o* was out, would there be more Room between the *F* and the *r* than Mr. Gibson usually makes? You seem to be a very sensible Person, Sir; Is it further between the *F* and the *r*, than the Distance that Mr. Gibson usually makes?

Mr. Booth. I believe that he might make that Distance of Space, but cannot say that he always doth so; he often writes close.

Mr. Sol. Gen. This Frank (I think you say) was directed *To Mr. Robert Booth, Bristol*; I ask you, Whether that Direction was not written over the Words *Free Thomas Gibson*?

Mr. Booth. Yes, it was.

Mr. Sol. Gen. What Distance was there?

Mr. Booth. It was on a large Sheet of Paper: The Direction was very small, being only *To Mr. Robert Booth, Bristol*; and could not fill up a large Space.

Mr. Sol. Gen. What Distance do you think between the Top of the Word *Free*, and the Bottom of these Words of Supercription immediately over it?

Mr. Booth. I believe there might be an Inch.

Mr. Sol. Gen. The Question that I ask is, Whether, after this Direction *To Mr. Robert Booth, Bristol, Free Thomas Gibson* was not perpendicularly?

Mr. Booth. I cannot say on what Part of the Letter.

Mr. Sol. Gen. Was *Free Thomas Gibson* wrote so much on the Side, that it was possible that any other Words should be wrote above it?

Mr. Booth. I believe that it might be so.

Mr. Sol. Gen. Here is a Direction *To Mr. Robert Booth, Bristol*; Where was the Word *Bristol*? Was it towards the left Hand, or was it towards the Bottom of the Supercription?

Mr. Booth. I cannot say how much to the Bottom; but I know that Mr. Gibson generally wrote loose.

Mr. Sol. Gen. Whereabout was the Word *Free* wrote?

Mr. Booth. Towards the left-hand Corner, and *Bristol* towards the right-hand Corner.

Mr. Sol. Gen. I ask one Question more; Did Mr. Gibson ever give Franks, without writing himself the Supercription?

Mr. Booth. I know not but that sometimes he may.

Mr. Strange. I desire he may fold it thus, (*producing a Sheet of Paper which he had folded*) This half Sheet as large as you can: — Suppose you see where the Name *Thomas Gibson* is wrote, I inquire whether, when the Direction was over it, there was Room to tear off such a Paper as this, (*shewing the Note*) and have none of the Direction? You see the Distance from *Free Thomas Gibson* to the Top of the Paper; Was the Folding so large, that there might be the Direction torn off, and yet this (*the Note*) remain?

Mr. Booth. As I remember, it was a very large Sheet of Paper, and very largely folded. This I remember the more particularly, because Mr. Hales hath endeavoured the same Thing since, and I have some of them by me. I believe the Paper was large enough that there might be the Direction torn off.

Mr. Sol. Gen. Pray, will you look where Mr. Gibson's Name is wrote, and tell me whether you apprehend that End is torn or cut?

Mr. Booth. This was the torn End, and the other answers exactly.

Mr. Robert Booth called and sworn.

Mr. At. Gen. Sir, have you ever had any Letter by the Post from Mr. *William Hales*?

Mr. R. Booth. No, Sir; I never had any Letter from him by the General Post.

Mr.

Mr. At. Gen. Can you recollect that you ever had a Letter from any body, franked with the Name of *Thomas Gibson*?

Mr. R. Booth. I never had, I am positively sure of that.

Mr. At. Gen. Do you live at *Bristol*?

Mr. R. Booth. Yes, Sir.

Mr. At. Gen. Do you know of any other Person there of your Name?

Mr. R. Booth. None at all.

Mr. At. Gen. Pray, had you ever any Letter from Mr. *Hales*, either franked or otherwise?

Mr. R. Booth. No, nor ever any Correspondence with him.

Thomas Rumsfey called and sworn.

The Note proposed to be read, and read accordingly.

August 27, 1728.

I promise to pay to *George Watson, Esq; or Bearer, the Sum of six thousand four hundred Pounds, at Demand, the like Value received. For myself and Partners,*

£. 6400.

THO. GIBSON.

Then the Note was handed about amongst the Jury.

Mr. At. Gen. Now, Gentlemen, it is proper for you to take Notice of the Observations that have been made by the Witnesses upon the Appearance and View of the Note, the Size and Folding of the Paper, the Rasure, the Difference of the Ink, the Letter *o* in the Word *For*, and the other Letters. I desire that you will look on it, and judge whether the Side of the Paper next to the Name hath been torn off from something else, or is as it was originally. We shall, in the next Place, shew the Use that was made of this Note.—Mr. *Rumsfey*, do you know the Defendant, *William Hales*?

Rumsfey. Yes, Sir.

Mr. At. Gen. How long have you known him?

Rumsfey. I knew him above a Twelve-month ago.

Mr. At. Gen. Did you see him at all in *September* last?

Rumsfey. Yes, Sir.

Mr. At. Gen. What Trade or Business are you of yourself?

Rumsfey. I have been at Sea ever since six Years of Age, except when in Harbour.

Mr. At. Gen. Well, Sir; What Time was it in *September* that you saw Mr. *Hales*, and what Business did he employ you in?

Rumsfey. I saw him every Day.

Mr. At. Gen. Did you see him *September* the 7th?

Rumsfey. Yes, Sir.

Mr. At. Gen. What Day of the Week was it?

Rumsfey. *Saturday*.

Mr. At. Gen. What did he say to you?

Rumsfey. He bid me go into the City, and to dress me in these Cloaths.

Mr. At. Gen. What Cloaths had you on before?

Rumsfey. A lightish-coloured Coat, with a red Waistcoat and Breeches.

Mr. At. Gen. Did he say any thing about your Hat?

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Rumsfey. When he spoke to me to go into the City with him, I had then a laced Hat on, a new Hat, with a broad open Lace.

Mr. At. Gen. What did he say to you about it?

Rumsfey. He told me, he had rather I should wear a plain one, and asked if I had one; I told him, No; he then desired me to take his own.

Mr. At. Gen. What Time of the Day was this?

Rumsfey. About Four or Five in the Afternoon, as near as I can guess.

Mr. At. Gen. Did he tell you on what Business you were to go into the City?

Rumsfey. No, Sir.

Mr. At. Gen. Whence did you set out?

Rumsfey. From his own House in *Duke-Street, Westminster*.

Mr. At. Gen. When you came into the *Strand*, did you do any thing there?

Rumsfey. He went into a Shop, and bought me a Pocket-Book. (*Produces the Pocket-Book.*)

Mr. At. Gen. Let us see it. — When you had bought that, where did you go afterwards?

Rumsfey. To *Holborn*, to a Place where they sell Perukes.

Mr. At. Gen. Was it *Middle-Row*?

Rumsfey. I believe it might be; but I never was there before.

Mr. At. Gen. Did he tell you he would present you with one?

Rumsfey. Yes, Sir.

Mr. At. Gen. What Sort of one was it?

Rumsfey. I have it in my Pocket. (*Pulls out a dark-coloured Peruke.*)

Mr. At. Gen. Put it on; I do not observe that you wear now a dark Peruke; Did you use to wear one?

Rumsfey. No, Sir.

Mr. At. Gen. What Peruke had you on before, when he made you change it?

Rumsfey. This, Sir, that I have here, (*a light-coloured Peruke.*)

Mr. At. Gen. After he had fitted you with a Peruke, whither did he carry you?

Rumsfey. To *John's* Coffee-house in *Sheer-Lane*. He did not tell me whither we were going, nor for what.

Mr. At. Gen. What happened there?

Rumsfey. We went into a back Room, and had Pen and Ink brought us. Immediately a Porter came in.

Mr. At. Gen. Did the Porter speak to you?

Rumsfey. No; he asked the Porter, if he wanted me? He said, Yes. The Porter produced a Letter directed to me, and he bid me open it.

Mr. At. Gen. What did you find in it?

Rumsfey. I found a Note for 6400*l.* payable to *George Watson, Esq; or Bearer*.

Mr. At. Gen. Look on that; tell us whether you believe that to be the Note?

Rumsfey. Yes, Sir; I take that to be the same Note, to the best of my Knowledge.

Mr. At. Gen. What else did you find in the Letter?

Rumsfey. I found written *Lady Harriot Elliott 4300*l.* Sir John Hynde Cotton 2100*l.* payable to them or Bearer.*

Mr. At. Gen. Where was it written?

Rumsfey. In the Body of the Letter.

Mr. At. Gen. Was there any thing wrote to you in the Letter?

Rumsey. No, Sir; I remember only these two Names and Sums.

Mr. At. Gen. What did he order you to write under these Names?

Rumsey. *James Moreton or Bearer.*

Mr. At. Gen. After he had bid you write this Name, what did he do with the Paper?

Rumsey. Tore these Names off.

Mr. At. Gen. What did he do with the rest of the Letter?

Rumsey. I know not.

Mr. At. Gen. When he had torn off these Names, together with what you had added, what did he do with that Part?

Rumsey. He put it in the Pocket-Book, with the Note of 6400*l.* and a 40*l.* Note and two other Notes. He then ordered me to go to Mr. Snow and Poltock's Shop, to give them the 40*l.* Note and the two other Notes, and to take their Note, payable to *James Moreton or Bearer.*

Mr. At. Gen. For what Sum?

Rumsey. I cannot tell exactly the Sum, but suppose it about 70*l.* If I was asked, what *Moreton*, I was to tell them that he lived at the upper End of *Bond-Street*; but I never knew him. He ordered me to desire for the 6400*l.* Note, their Notes for 4300*l.* payable to *Lady Harriot Elliott*, and 2100*l.* payable to Sir *John Hynde Cotton*, or Bearer.

Mr. At. Gen. What further Directions did he give you?

Rumsey. If my Name was asked, he bid me say that it was *Thomas Fowler*, or any other; it was an indifferent Thing, and I might make use of any Name but my own. He had been so very kind to me, and I had so good an Opinion that he designed no Ill, that I readily did as he ordered me.

Mr. At. Gen. After he had given you this Pocket-Book with these Notes and Instructions, whither did you go?

Rumsey. To Mr. Snow and Poltock's.

Mr. At. Gen. Whither did Mr. Hales go?

Rumsey. A little Way to shew me the House.

Mr. At. Gen. What happened at this Shop?

Rumsey. I asked for their Note for the small Notes, which they readily gave me. I then produced the other Note, and desired their Notes; the Gentleman said, he did not care to accept it, because it was not all of Mr. *Gibson's* own Hand-writing.

Mr. At. Gen. Did he mention any other Reason?

Rumsey. I remember not.

Mr. At. Gen. Did he ask your Name?

Rumsey. I think he did, and I told him *Thomas Fowler*.

Mr. At. Gen. Did any thing further happen there?

Rumsey. No, Sir.

Mr. At. Gen. What did you do then?

Rumsey. I went back; Mr. Hales met me a little Way off, on that Side of *Temple-Bar* next the Shop.

Mr. At. Gen. Had he appointed to meet you there?

Rumsey. No, Sir.

Mr. At. Gen. Was it within View of the Shop?

Rumsey. Yes, Sir.

Mr. At. Gen. What did you say to him, when you came back?

Rumsey. He asked me what I had got, and I told him; then we went back to *John's* Coffee-house, where I gave him the Note; he then bid me write, instead of *Lady Harriot Elliott*, Sir *Richard Grosvenor*.

Mr. At. Gen. On the same Paper, or another?

Rumsey. I cannot say.

Mr. At. Gen. Did he bid you strike out the Name *Lady Harriot Elliott*?

Rumsey. No; but write on a plain Paper, *To Sir Richard Grosvenor 4300*l.* to Sir John Hynde Cotton 2100*l.* payable to them or Bearer.*

Mr. At. Gen. After this, what further Directions did he give you?

Rumsey. He ordered me to go to Mr. Hoare's in *Fleet-Street*; he went opposite to the Shop, and shewed me the Shop.

Mr. At. Gen. What Time of the Afternoon was it?

Rumsey. A little before it was dark.

Mr. At. Gen. What o'Clock?

Rumsey. Half an Hour or three Quarters before it was dark.

Mr. At. Gen. What Instructions did he give you to observe at that Shop?

Rumsey. To receive for this Note their Notes for 4300*l.* to Sir *Richard Grosvenor*, and 2100*l.* to Sir *John Hynde Cotton*, payable to them or to the Bearers.

Mr. At. Gen. Did he give you Directions about taking any other Note?

Rumsey. I have a Notion of some other Note, but I cannot say positively what it was, but it did not exceed 70*l.*

Mr. At. Gen. Did he give you any thing in Notes or Cash?

Rumsey. Much the same as before.

Mr. At. Gen. You say you had a Note from Mr. Poltock; Did Mr. Hales return that to you?

Rumsey. I cannot say positively; but it was that, or some other Notes, not exceeding 70*l.*

Mr. At. Gen. Did he give you any Directions as to your own Name?

Rumsey. The same as before, *Thomas Fowler*.

Mr. At. Gen. When you went to this Shop, what Peruke had you on?

Rumsey. The dark one, and the other in my Pocket.

Mr. At. Gen. What passed at Mr. Hoare's Shop?

Rumsey. I received their Notes, one for 4300*l.* payable to Sir *Richard Grosvenor* or Bearer, the other for 2100*l.* payable to Sir *John Hynde Cotton* or Bearer.

Mr. At. Gen. What did you give for them?

Rumsey. The Note of 6400*l.*

Mr. At. Gen. What for the smaller Note?

Rumsey. I cannot tell.

Mr. At. Gen. For what Sum was that?

Rumsey. I remember not, but it did not exceed 70*l.*

Mr. At. Gen. Where did you find Mr. Hales?

Rumsey. He told me he would wait for me at a Fruit-stall at the End of a Court about six Doors further. I went thither, and delivered the Notes.

Mr. At. Gen. Did you deliver him the Notes at the Fruit-stall?

Rumsey.

Rumsey. I cannot be positive whether there, or at the Coffee-house.

Mr. At. Gen. Do you know the Court where the Fruit-stall was? Was it *Mitre-Court*?

Rumsey. I know not, not being acquainted with the Town.

Mr. At. Gen. How far from *Mr. Hoare's*?

Rumsey. About six Doors.

Mr. At. Gen. When you gave him the Notes, did you deliver them with the Pocket-Book, or without?

Rumsey. Pocket-Book and all.

Mr. At. Gen. Where did you go afterwards?

Rumsey. He took a Coach, and bid the Coachman drive to the *Royal-Exchange*.

Mr. At. Gen. Whither did he go when he came there?

Rumsey. He went out of the Coach, went a little Way with me to *Janeway's* Coffee-house, called for Pen, Ink and Paper, and bid me write 1200*l.* 1100*l.* 1000*l.* 1000*l.* to *Samuel Palmer* or Bearer.

Mr. At. Gen. What Instructions did he give you about *Samuel Palmer*?

Rumsey. To say that he lived in *Mansel-Street*, in *Goodman's-Fields*.

Mr. At. Gen. After you had done this, whither did you go next?

Rumsey. Next he carried me to *Mr. Woodward's*, a Banker in *Exchange-Alley*. It was then dark. He bid me desire their Notes for these Sums, payable to *Samuel Palmer* or Bearer, in Lieu of the 4300*l.* Note of *Mr. Hoare's*.

Mr. At. Gen. What happened there?

Rumsey. They said they could not do it.

Mr. At. Gen. Where did you go next?

Rumsey. I went to him, who was close by the Door. He took me to *Mr. Brassey's*, bade me desire their Notes for the same Sum, in lieu of *Mr. Hoare's* Note payable to *Sir Richard Grosvenor*. They gave me the Notes; they asked me, what *Mr. Palmer* it was? I said, that he lived in *Mansel-Street*, *Goodman's-Fields*.

Mr. At. Gen. Did you say any thing further of him?

Rumsey. I think not; if I did, it was what *Mr. Hales* directed me.

Mr. At. Gen. Did they ask your Name?

Rumsey. I am not positive; if they did, I told them as elsewhere, *Thomas Fowler*.

Mr. At. Gen. Whither did you carry the Notes?

Rumsey. I carried them to *Mr. Hales*.

Mr. At. Gen. Where was he?

Rumsey. He was by a Shop at the Corner of a Court; he was in the Court, and came to me there. This was a little beyond *Mr. Hals's* Door. He bid me ask the Price of *South-Sea* Bonds, and ask them, whether they could get 1000*l.* worth by *Monday Morning*? They said, they believed they could. We then went to *Janeway's* Coffee-house.

Mr. At. Gen. What did he then?

Rumsey. He called for something, paid for it, went to *Stocks-Market*, thence took Coach, and went Home.

Mr. At. Gen. Where did you go? Did you leave him there?

Rumsey. No, I supped with him.

Mr. At. Gen. Did he make any further Appointment with you?

Rumsey. He bid me be ready on *Monday Morning* in the same Cloaths.

Mr. Sol. Gen. Where was you?

Rumsey. I was at his House; he lodged me there.

Mr. Sol. Gen. Did any thing else happen on *Saturday*?

Rumsey. No, Sir.

Mr. Sol. Gen. Was you to put on the same Hat and Peruke?

Rumsey. Yes, Sir; and he ordered the Man to comb and powder it.

Mr. Sol. Gen. On *Monday Morning* did you do as directed?

Rumsey. Yes, and he then told out twenty Broad Pieces and ten Guineas.

Mr. Sol. Gen. Those Notes that you received at *Mr. Brassey's*, do you know the Date of them?

Rumsey. Yes, Sir; *Monday Morning, September* the 9th.

Mr. Sol. Gen. What did you with them?

Rumsey. I delivered them to *Mr. Hales*.

Mr. Sol. Gen. What did you do on *Monday Morning*?

Rumsey. He then walked to *Janeway's* Coffee-house; he did not tell me whither he was going, nor what I was to do.

Mr. Sol. Gen. What happened there?

Rumsey. He read the News, bid me call for what I wanted, he would pay for it; I drank two Dishes of Chocolate.

Mr. Sol. Gen. What did you there?

Rumsey. He told me, that it was too soon to go to *Mr. Hals's* for the Bonds, it being then between Eight and Nine o'Clock; so he told me, that he would send me with some Notes to *Mr. Alderman Hankey's*.

Mr. Sol. Gen. What Directions did he give you?

Rumsey. He went opposite to *Mr. Alderman Hankey's*.

Mr. Sol. Gen. What Notes did he give you?

Rumsey. One Note of 2100*l.* another of *Mr. Hoare's* for 70*l.* payable to *Samuel Palmer* or Bearer.

Mr. Sol. Gen. What did you do after you received these Directions?

Rumsey. I went to *Janeway's* Coffee-house, and there delivered the Notes to him.

Mr. Sol. Gen. But first did you not carry them to *Alderman Hankey's*?

Rumsey. I got them changed there, delivered them to *Mr. Hales* at *Janeway's* Coffee-house, one of 1050*l.* and another of 1100*l.* both payable to *Samuel Palmer* or Bearer, and 20*l.* in Money. He gave me these again, and the 20*l.* in Money.

Mr. Sol. Gen. What did you do with the Money?

Rumsey. He bid me keep it in my Pocket, with the rest of the Money that I had received of him. He then sent to *Mr. Hals's* for the Bonds.

Mr. Sol. Gen. What Quantity?

Rumsey. A thousand Pounds worth.

Mr. Sol. Gen. In whose Name did you buy them?

Rumsey. In *Mr. Samuel Palmer's*.

Mr. Sol. Gen. Who directed you to buy them?

Rumsey. *Mr. Hales*.

Mr. Sol. Gen. What Name did you take?

Rumsey. *Thomas Fowler*, as before.

Mr. Sol. Gen. What did you do with the Bonds?

Rumsey.

Rumsey. I delivered them to Mr. *Hales*; he sent me to see for 2400*l.* worth more; I came back and told him, that I could get no more than 400*l.* worth more.

Mr. Sol. Gen. What then?

Rumsey. He sent me for 2000*l.* of *India Bonds*, and gave me Notes to pay for them all.

Mr. Sol. Gen. Do you know what the Notes were that he gave you?

Rumsey. I cannot tell; but I believe that they were some of the Notes that I had received before.

Mr. Sol. Gen. What did you do with them?

Rumsey. I went and bought the Bonds. The Notes coming to more, they gave me the Balance in Money; and I desired them to give me a Bag, which they did.

Mr. Sol. Gen. Was there any Account made up by Mr. *Hals*?

Rumsey. His Clerk cast it up on a Paper, and gave me a Note what they came to.

Mr. Sol. Gen. Have you that Note by you?

Rumsey. No; I gave it with the Bonds to him.

Mr. Sol. Gen. What was you directed next?

Rumsey. I told him, that I was to go to Mr. *Edward Jasper* to receive my Pay. He bid me put it off. I told him that I could not. He bid me, when I had received it, to return to him. I went and received it, 35*l.* odd Money. I then came to him, and desired him to take the remaining Money. He said, that he had not Time to reckon it, but bid me come to him at *Janeway's*. He bid me not go through *Fenchurch-Street*.

Mr. Sol. Gen. For what Reason?

Rumsey. He did not tell me the Reason.

Mr. Sol. Gen. Was any Shop that you was at there?

Rumsey. Yes, Mr. Alderman *Hankey's*.

Mr. Sol. Gen. Did you observe his Directions?

Rumsey. Yes, I came back to *Janeway's* Coffee-house through *Leadenball-Street*.

Mr. Sol. Gen. Was he there?

Rumsey. Not at first, but I stayed for him.

Mr. Sol. Gen. What Time of the Day was it?

Rumsey. About Two o'Clock, *Monday Noon*.

Mr. Sol. Gen. What Directions did he give you then?

Rumsey. He bid me dine with him. I thought he was going Home directly; but he turned aside to the *Bank*, which I asked him if it was a Church. He told me, it was the *Bank*. He gave me two Notes of 200*l.* each, bidding me, when I had received the Money, to come to him at *Robin's* Coffee-house in the *Old-Jewry*. He peeped through the Sash-Door, and directed me to a Gentleman at the left-hand Side. I went to him, who directed me to the other Side. They bid me stay a little. One of them went out and called a Constable, and stopt me.

Mr. Sol. Gen. What did they ask you?

Rumsey. I was so confused and surprized, that I could not give a sensible Answer.

Mr. Sol. Gen. Had you any Name given you to go by at the *Bank*, if asked your Name there?

Rumsey. Yes, Sir; at every Place I was to say *Thomas Fowler*.

Mr. Sol. Gen. I would have you recollect yourself, whether, when you was receiving the Money, Mr. *Hales* came in to do any thing?

Rumsey. No, not at all.

Mr. Sol. Gen. Afterwards was you present when Mr. *Hales* was brought in?

Rumsey. I saw him carried up Stairs, but spake not to him.

Mr. Sol. Gen. Was you present at his Examination?

Rumsey. No, Sir.

Mr. Sol. Gen. Did you receive any more Money than what you have mentioned?

Rumsey. No, Sir, nor knew nothing till he gave me Directions.

Mr. Sol. Gen. You say, that they seized you at the *Bank*; Did you acquaint them where the Person was that gave you the Notes?

Rumsey. I told them at *Robin's* Coffee-house in the Alley near the *Bank*.

Mr. Sol. Gen. Did they go to find him according to your Directions?

Rumsey. Yes, Sir.

Mr. Sol. Gen. Did you see them bring any body back in Custody?

Rumsey. They brought him secured, and carried him up Stairs.

Mr. Sol. Gen. Did you see him?

Rumsey. Yes, Sir.

Mr. Sol. Gen. Was that Person, that you saw in the Room, the same that gave you the Bills (that you brought to the *Bank*) at the Coffee-house?

Rumsey. Yes, Sir.

Mr. Sol. Gen. Pray, will you look on that Note? Is that the Note that you received of Mr. *Hales*?

Rumsey. Yes, I take it to be the same Note; that was for 6400*l.* and the Name was *Gibson*; it was payable to *George Watson, Esq;* or Bearer.

Mr. Serj. Darnell. Mr. *Rumsey*, pray was not you engaged to go a Journey somewhere with Mr. *Hales*?

Rumsey. He told me on *Monday Morning*, that he was about going into the Country.

Mr. Serj. Darnell. Where was you to go?

Rumsey. He told me not where; but asked me to ride out with him, and directed me where to get a Pair of Boots.

Mr. Serj. Darnell. On your Oath, was not the Peruke bought for riding in?

Rumsey. No, Sir.

Mr. Serj. Darnell. What was your Apprehension of these Things?

Rumsey. He having been so kind to me, I had a good Opinion of him.

Mr. Sol. Gen. What of this Transaction?

Rumsey. I thought that there was nothing wrong in it.

Mr. Serj. Darnell. When was it that he told you first of his going into the Country?

Rumsey. On *Monday*.

Mr. Serj. Darnell. Did he not mention it on *Saturday*?

Rumsey. No, Sir.

Mr. Serj. Darnell. Did not he mention *Harlow*?

Rumsey. No, Sir.

Mr. Serj. Darnell. You say, that this Note was sent inclosed to you when at *John's* Coffee-house; Were there no Names in the Letter but those two you mentioned, nor no Directions what to do with it?

Rumsey. No, Sir.

Mr. Serj. *Darnell*. You say, that you have been acquainted with Mr. *Hales* ever since the 8th of *June*; between that and *September* did you transact Affairs for him?

Rumsey. No; he desired me once before to write a Promissory Note, but no Name to it.

Mr. Serj. *Darnell*. You say, that you lay at Mr. *Hales's* House on *Saturday* Night *September* the 7th; Did not you lie there the Month before?

Rumsey. I lay there from the 8th of *June*, or thereabouts.

Mr. Serj. *Darnell*. Sir, you say, that you went in Disguise; Did any then know you? What Occasion was there for this Disguise?

Mr. Just. *Page*. A Person in this Town every body may know; therefore it was proper to go in a Disguise that no one might know him in. I find that they would have it thought that these Cloaths (the red Waistcoat and Breeches and Peruke) were for riding out: When you went first, did you go with them?

Rumsey. Yes, my Lord.

Mr. Serj. *Darnell*. When did he talk of riding out?

Rumsey. On *Monday* Morning he said, he had Business to ride out on *Tuesday* or *Wednesday*.

Mr. Serj. *Darnell*. When you lay at his House on *Saturday* or *Sunday* Night, did he bid you be ready on *Monday* Morning, and have on the same Cloaths?

Rumsey. Yes.

Mr. Serj. *Whitaker*. Give me leave to propose to the Court a Question, to ask the Witness, whether he had ever been concerned in negotiating Bills, or doing such Business for any body?

Mr. Just. *Page*. He saith, he never did do any thing for Mr. *Hales*, but this Job of these Bills, except once writing a Promissory Note.

Mr. Serj. *Whitaker*. My Lord, that Question was confined to Mr. *Hales*: But I would desire, that he may be asked the same Question in general.

Mr. Just. *Page*. No, but he shall not indeed.

Mr. Serj. *Whitaker*. My Lord, we will now call other Witnesses to confirm the several Steps that were afterwards taken.

Mr. Poltock called and sworn.

Mr. Serj. *Whitaker*. Sir, look on that Paper; Have you ever seen that before? Tell us who brought it to you?

Mr. *Poltock*. A young Man on a *Saturday* came to my Shop; he said that he had Money to pay; he pulled out a Bank-Note for 50*l.* I apprehended that it might be for some Customer. I asked him where the Person lived; he told me about *Bond-Street*. I looked on the Note, and saw it was signed *For Wanly and Company*. Afterwards he produced this Note; said he, I have another Note. I looked upon it wistfully, and told him thereupon, that I would not take it. Why not? (said he.) Because (said I) not wrote by Mr. *Gibson*. It is (said he) signed by him. I told him that I would not meddle with it. He said, it was late, and he should have a good deal of Trouble with it; and was going to shew me some Paper to confirm its being Mr. *Gibson's* Hand. I told him, that as I would not receive

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the Note, I would not regard it. He laid before me a Paper with two Names and Sums, *Lady Elliott's* and another Name.

Mr. Serj. *Whitaker*. Pray, Sir, mind the Folds, and see whether or no it is the very same Paper.

Mr. *Poltock*. Yes; I told the young Man, when he shewed it me, that Mr. *Gibson* on such a Paper as this would not write a Note for such a Sum; therefore I would not meddle with it.

Mr. Serj. *Whitaker*. You saw the Witness that was last examined; Is he the same Person that brought you the Note, or not?

Mr. *Poltock*. If he had the same Wig on, I believe I might know him.

Mr. Serj. *Whitaker*. Let him put the Wig on. (*Rumsey puts on the dark Wig.*)

Mr. *Poltock*. Yes, I verily believe that that is the same Person, though I never saw him before nor since. He was a good genteel young Man, with a dark Wig.

Mr. Serj. *Whitaker*. What Cloaths had he on?

Mr. *Poltock*. I cannot directly say, not knowing.

Mr. *Sol. Gen.* Now we are going to Mr. *Hoare's* Shop.

Mr. Turner called and sworn.

Mr. *Sol. Gen.* Mr. *Turner*, look on that Paper; When did you see it first?

Mr. *Turner*. On *Saturday* Evening, *September* the 7th last.

Mr. *Sol. Gen.* Pray, can you recollect with yourself, who it was that brought it you?

Mr. *Turner*. Sir, I did not see Mr. *Rumsey* when he came into the Shop first.

Mr. Richard Hoare called and sworn.

Mr. *Sol. Gen.* Mr. *Richard Hoare*, pray tell us when you saw that Bill first?

Mr. *Hoare*. On the 7th of *September* last, about Seven o'Clock in the Evening. That Gentleman (as I take it) produced Mr. *Snow's* Note, and a Bank-Note of 25*l.* for which I gave him our Note for 70*l.* After which he produced this Note of Mr. *Gibson's* Hand, and another Paper, desiring our Notes for that Sum. I had not been long in the Business, and not knowing Mr. *Gibson's* Hand-writing, called Mr. *Turner* to transact that Affair, after I had given the 70*l.* Note.

(*The Note read.*)

Sir Richard Grosvenor, Bart. 4300*l.*

Sir John Hynde Cotton 2100*l.*

Mr. *Sol. Gen.* Whose Hand-writing is this?

Rumsey. It is mine, Sir.

Mr. *Sol. Gen.* Do you remember what you did with that Note, or where you delivered it?

Rumsey. At Mr. *Hoare's*.

Mr. *Sol. Gen.* Mr. *Turner*, will you give us an Account what was done upon the producing that Bill?

Mr. *Turner*. Mr. *Hoare* sent for me. I think there lay upon the Counter both the Note Mr. *Rumsey* brought for 6400*l.* and this little Direction. I made these Notes payable accordingly, knowing that *Sir John Hynde Cotton* did Business at Mr. *Hoare's* Shop.

[2 D]

Mr.

Mr. Sol. Gen. Doth he?

Mr. Turner. Yes, Sir, he frequently doth.

Mr. Sol. Gen. Produce the three Notes given at Mr. Hoare's Shop.

Mr. Turner. These are the Notes (*producing the Notes*) which I gave in Exchange for Mr. Gibson's Note, and the 70*l.* Note Mr. Hoare wrote, and I signed them, and gave them to Mr. Rumsley.

Mr. Sol. Gen. You say, these are the Notes that you gave in Exchange for that Note; Do you know what became of that Bill afterwards?

Mr. Turner. After that I had delivered these Notes, I had this Note (*Mr. Gibson's 6400*l.* Note*) in Exchange, brought into Mr. Hoare's Cash, in lieu of the other.

Mr. Sol. Gen. Did you send it out?

Mr. Turner. Yes, upon *Monday Morning*.

Mr. Sol. Gen. Will you give us an Account what was done upon this?

Turner. I know nothing further.

Mr. Sol. Gen. These Notes which you have produced, can you give an Account what became of them, or when they were brought back to Mr. Hoare's?

Mr. Turner. I did nothing further about them.

(*The Notes read.*)

I promise to pay Sir John Hynde Cotton, or Bearer, two thousand one hundred Pounds, on Demand, for Mess. Benjamin and Henry Hoare and Partner.

WILLIAM TURNER.

Sept. 7th, 1728.

I promise to pay to Sir Richard Grosvenor, or Bearer, four thousand three hundred Pounds, on Demand, for Mess. Benjamin and Henry Hoare and Partner.

WILLIAM TURNER.

I promise to pay James Moreton, Esq; or Bearer, seventy Pounds, on Demand, for Mess. Benjamin and Henry Hoare and Partner.

Sept. 7th, 1728.

WILLIAM TURNER.

Mr. George Lee called and sworn.

Mr. Sol. Gen. Where is it that you live?

Mr. Lee. At Mr. Brassley's in *Lombard-Street*.

Mr. Sol. Gen. Did you ever see that Note before? (*Mr. Hoare's Note for 4300*l.**)

Mr. Lee. Yes, Sir.

Mr. Sol. Gen. Upon what Occasion, or when was it?

Mr. Lee. It was on *Saturday Sept. 7th* brought by Mr. Rumsley to Mr. Brassley's in *Lombard-Street*, near Seven o'Clock in the Evening.

Mr. Sol. Gen. What passed upon it?

Mr. Lee. Being brought there by him, he pulled a Paper out of his Pocket, desiring four Notes payable to *Samuel Palmer*. I have three of them by me, and an Account of the other. One was for 1200*l.* two for 1000*l.* each, the other for 1100*l.*

Mr. Sol. Gen. What did you give him them in Exchange for?

Mr. Lee. Mr. Hoare's Note for 4300*l.*

Mr. Sol. Gen. Did you ask who *Palmer* was?

Mr. Lee. He told me that he lived in *Mansel-Street*, in *Goodman's-Fields*. I asked him, whether he was a Merchant? He said, that he could not tell. We had a Person dealt with us before of that Name. I asked, whether it was he? He said, that he could not tell. I inquired at *Woodward's*, where Mr. Hoare doth Business; they said, that there had been a Person there of the same Name. I began to suspect something. I then went to Mr. Hoare's, to inquire whether it was their Note; they acquainted me that it was, and shewed me Mr. Gibson's. I said; that I believed the Name was Mr. Gibson's Hand, but not the Body of the Note.

Mr. Sol. Gen. This Transaction was on the *Saturday, Sept. 7th*; How came the Bills to be dated the 9th?

Mr. Lee. Our Accounts were balanced for that Day, it being late in the Evening; therefore they were dated the 9th.

Mr. Sol. Gen. What became of them afterwards?

Mr. Lee. They came back again: Two of them came the same Day, the other the next Morning.

Mr. Sol. Gen. Who brought them?

Mr. Lee. The most of the Money was paid to Mr. Hals the Broker; there was 650*l.* paid to a Person who brought one of the Notes in the Morning; I believe that it was about Ten o'Clock. We asked him his Name; he said, it was *John Roberts*. He wanted to have 650*l.* to be wrote off from one of the Notes, and wanted the Money for it. As I had some Reason to suspect on the *Saturday Night*, and he coming so soon on the *Monday Morning*, I asked him, whom he came from? He said, Mr. Mansel. I hesitating, he said, the Gentleman that it was to; I said, *Palmer*; he said, *Palmer* in *Mansel-Street*. I did not know but that there might be some Demur on Mr. Hoare's Note; therefore to protract Time, I told him that he might receive the Money at the Bank. I gave him Bank-Notes:

No. 11, payable to Mr. Hankey, 100*l.*

106, payable to Mr. Collett, 50*l.*

131, payable to Mr. Charles Shales, 500*l.*

Which together made up 650*l.*

Mr. Sol. Gen. You wrote off 650*l.* Did you deliver the Note, when indorsed, to the Person that brought it?

Mr. Lee. Yes, Sir.

Mr. Sol. Gen. This was a 1200*l.* Note; How was the other 500*l.* paid?

Mr. Lee. The other Part was paid off at several Payments to Mr. Hals.

Mr. Sol. Gen. As you have given an Account of that Note, can you give an Account of the other?

Mr. Lee. Two to Mr. Hals, Sir, at several Payments.

Mr. Sol. Gen. How much was each for?

Mr. Lee. A thousand Pounds.

Mr. Sol. Gen. Well then, of these Notes two for a thousand Pounds each have been paid; Hath the 1100*l.* Note been paid?

Mr. Lee. Four hundred and twenty Pounds have been paid as Part of the 1100*l.* and the rest is out-standing still.

Mr. Sol. Gen. Do you remember the Form of the Person that came to you by the Name of *Roberts*?

Roberts? Is that Man the Person? (*Pointing to Robert Hall.*)

Mr. Lee. Yes, Sir, I believe that is the Person.

Robert Hall called and sworn.

Mr. Sol. Gen. *Mr. Hall*, pray what Trade are you of?

Hall. A Taylor, Sir.

Mr. Sol. Gen. Did you ever work for *Mr. Hales*?

Hall. Yes, Sir, several Years.

Mr. Sol. Gen. Do you know him?

Hall. Yes, very well, Sir.

Mr. Sol. Gen. Had you any Conversation with him in *September* last?

Hall. Yes, Sir.

Mr. Sol. Gen. Did he send for you?

Hall. He sent his Footman for me, *September* 8th, *Sunday* Night.

Mr. Sol. Gen. What Message did the Footman bring you?

Hall. He came and knocked at the Door; my Wife opened the Door. He desired to speak with me; she said that I was in Bed. He came up, opened the Curtain, told me he had a Message for me, I must be with his Master at Nine o'Clock on *Monday* Morning at *Lloyd's* Coffee-house in *Lombard-Street*; I said, that I must be with *Mr. Rumsey* at that Time to take Orders for Cloaths; he told me, that I should meet *Rumsey* there. I went to *Lloyd's*, and walked in the Coffee-Room. Whilst I was there, there came up one *Leigh*, who asked me what Business I came about? I said, that I could not tell, but waited for 'Squire *Hales*. I asked him what his Business was? He said, that he had a Letter to meet him there. I drank something there before *Mr. Hales* came, which was the best Part of an Hour. He first mentioned something to *Leigh*; he then asked me to stay one half Hour more. Accordingly I sat down. He talked a-while with *Leigh*. When *Leigh* was dismissed (whither I cannot tell) he took me up. In the Passage he gave me a Note, and desired me to go to *Mr. Brassley's*, and receive 650*l.* upon that Note.

Mr. Sol. Gen. What Note was it?

Hall. About 1200*l.*

Mr. Sol. Gen. What Directions did he give you?

Hall. He told me to go to *Mr. Brassley's* the Banker, at the *Acorn*; he told me to receive 650*l.* on this Note; he told me to mind that there was no Mistake. If (said he) they offer to pay you Silver, give them half a Crown to pay it you in Gold. He told me that six hundred and nineteen Guineas and one Shilling would make just 650*l.* I took these Notes, (*the Bank-Notes he received at Mr. Brassley's*;) He looked them over, and said that it was all very right.

Mr. Sol. Gen. Look on that Paper; Did you ever see that Paper before? Is that the Note that you delivered to *Mr. Brassley*?

Hall. Yes, Sir.

Mr. Sol. Gen. You say, that you had Instructions to receive it in Gold; Did they pay it in Gold?

Hall. No, Sir, three Bank-Notes.

Mr. Sol. Gen. What was the Amount of them?

Hall. Six hundred and fifty Pounds.

Mr. Sol. Gen. What did you do with them?

Hall. I gave them to *Mr. Hales*.

Mr. Sol. Gen. Did they write upon the Note?

Hall. Yes, they discounted this 650*l.*

Mr. Sol. Gen. When sent by *Mr. Hales*, had you Instructions what Name you should go by?

Hall. Yes, *John Roberts*.

Mr. Sol. Gen. Of what Place?

Hall. The *Hay-market*, or any Place where I pleased that Way?

Mr. Sol. Gen. Did you see him while you were in the Shop?

Hall. Yes, I saw him pass by, and turn again.

Mr. Sol. Gen. Where was he when you gave him the Bank-Notes?

Hall. In the Passage in *Lloyd's* Coffee-house.

Mr. Sol. Gen. These Bank-Notes for 650*l.* which you delivered to *Mr. Hales*, did you ever see them again afterwards?

Hall. Yes, Sir.

Mr. Sol. Gen. Upon what Occasion?

Hall. He told me, that if I would take a Walk under the Piazza by the *Royal Exchange*, he would come to me. Accordingly he came to me, and at the Coffee-house (*Janeway's Coffee-house*) gave me them again. He asked me, whether I was ever at the *Bank*? I told him, that I had been within it, but never received any Money there for myself or any body else. He bid me go and receive this in Gold, or if I should be offered Silver, to do as directed before.

Mr. Sol. Gen. What was you to do with it?

Hall. To bring it to him at this Coffee-house, (*Janeway's*.)

Mr. Sol. Gen. Did you go to the *Bank*?

Hall. I went to one there; he bid me go to another Gentleman, and he would sign my Bills. I went to him, he signed them; I then went again to the same Person, who paid me the Money for them.

Mr. Sol. Gen. Were they the same Bills which you had received at *Mr. Brassley's*?

Hall. Yes, Sir.

Mr. Sol. Gen. Did you receive it in Gold or Silver?

Hall. In Gold.

Mr. Sol. Gen. Did you see him when you was at the *Bank*?

Hall. Yes, Sir.

Mr. Sol. Gen. Whereabouts?

Hall. Within one or two of the Tellers whom I received my Money of.

Mr. Sol. Gen. Did he take any Notice of you?

Hall. No, Sir.

Mr. Sol. Gen. Nor you of him?

Hall. No, being busy receiving the Money.

Mr. Sol. Gen. He saw you, did not he?

Hall. Yes, Sir.

Mr. Sol. Gen. What did you do with it?

Hall. I took it at the *Bank*. — As I was going down *Grocers-Alley*, *Mr. William Hales* was standing by the Alley, we turned into a Tavern, (*the Globe and Sceptre Tavern*;) he rang for the Drawer, and called for an half

half Pint of Wine. I gave him the Money, he counted it over, and we had done.

Mr. Sol. Gen. Did he give you any Reason why he came into the Bank?

Hall. No; but said, You was a long Time at the Bank.

Mr. Sol. Gen. Did he offer you any thing for your Pains?

Hall. Yes; but I said, that I would have nothing from a Gentleman that I had served so long. He said, if I would call on him the next Day, he would lend me ten Pounds, and I should work it out.

Mr. Sol. Gen. Why did you go by the Name of Roberts?

Hall. I thought I might do any thing for Mr. Hales.

Mr. Sol. Gen. Did he give you any Reason for it?

Hall. No, Sir.

Mr. Hankey called and sworn.

Mr. Sol. Gen. Mr. Hankey, will you give an Account whether any Bills were brought to you, what they were, and by whom brought?

Mr. Hankey. Mr. Rumsfy (this Gentleman here) came to me on Monday Morning, September the 9th, with two Notes, for which I gave him my Notes, payable to Samuel Palmer or Bearer, one for 1100*l.* the other for 1050*l.* which with 20*l.* amounted to Mr. Hoare's Notes of 2100*l.* and 70*l.*

Mr. Sol. Gen. Did you ask him his Name?

Mr. Hankey. No; but I asked him who Samuel Palmer was, because we had a Gentleman of that Name that had a Drawing Account with us, and I thought that this was to be put to his Account: But he told me, that it was a Gentleman in Mansel-Street in Goodman's-Fields. When he had done his Business, he went out of the Shop. He brought a little Bit of Paper, wherein was written to go to Alderman Hankey's, and get the two Notes figured down 1100*l.* 1050*l.* and 20*l.* in Money.

Mr. Sol. Gen. You have looked on Rumsfy; Is that the very Man?

Mr. Hankey. Yes, Sir; I was with him, when, having been apprehended at the Bank, he was examined.

Mr. Sol. Gen. Do you remember any thing of one Lane's fetching any Money?

Mr. Hankey. If you will favour me with the Notes, I can tell the better. The 1100*l.* Note was hardly dry, when he sent a Porter-like Fellow, who came to a Servant of ours, and desired that he would indorse 550*l.* and give it him in Guineas; he did it; he had it, and went out of the Shop. I believe that it was not an Hour before the same Person came again, and said that Mr. Palmer begged Pardon for giving us such Trouble, he did not know he should so soon have Occasion for it, desired that we would give him the Remainder in Bank. I said, that we had not just the Sum in Bank, but I would give it him in Money; he said, then he must go and fetch a Bag. He went accordingly, and fetched a Bag. We asked his Name; he said, that it was Samuel Lane, and that he lived in Marine-Square. I gave him 523 Guineas and an half, and 6*s.* 6*d.* which compleated that Note.

As to the other Note, it had not been written long, but a Servant to Mr. Hals, or he himself, came and desired that I would give him a Note for 853*l.* 14*s.* 5*d.* payable to him. I indorsed it, and gave him a Note for the Sum that he would have.

Mr. Sol. Gen. There are three Notes that compleat the Sum of 1050*l.* Do you remember any Bank-Bills?

Mr. Hankey. I paid none at all.

Mr. Sol. Gen. Do you know any thing of the Residue being paid? Give an Account what you know of it.

Mr. Hankey. The Remainder was thus paid: 1100*l.* was paid to Samuel Lane; 1050*l.* by Indorsement for Samuel Palmer, for which the Person had a Note payable to Mr. John Hals for the same Sum; for the Remainder of that Note, two Notes were given payable to James Hickman.

Mr. Sol. Gen. Was you present at the Bank, Sir, when Mr. Hales and Mr. Rumsfy were seized?

Mr. Hankey. No; but I was there, Sir, when he was examined.

Mr. Benjamin Cole called and sworn.

Mr. Sol. Gen. Mr. Cole, do you know Mr. Hals?

Mr. Cole. I live with him, Sir.

Mr. Sol. Gen. Are you his Servant, or Partner?

Mr. Cole. His Servant.

Mr. Sol. Gen. Do you know any thing of Mr. Rumsfy?

Mr. Cole. On Saturday September 7th, he came about Seven o'Clock to me, and inquired the Price of South-Sea Bonds. He said, that he should want a large Parcel. I promised to get him them as cheap as I could.

Mr. Sol. Gen. What Name did he use?

Mr. Cole. None till Monday the 9th of September. I then bought ten South-Sea Bonds of 100*l.* each; I asked him what Name they should be entered in? He said, Samuel Palmer in Mansel-Street, in Goodman's-Fields. The Amount was 1058*l.* 14*s.* 4*d.* for which he gave me Mr. Brassey's Note for 1000*l.* and the rest in Money.

Mr. Sol. Gen. Did you observe the Date of that Note?

Mr. Cole. I did not observe the Note.

Mr. Sol. Gen. Were there any other Bonds?

Mr. Cole. He said that he should want more. This happening when there were but few came to Market, I told him I could not procure him so many as he mentioned. Then he desired as many South-Sea Bonds as I could get, and the rest India. I procured four more South-Sea Bonds, and twenty India Bonds. He paid me a Note of Mr. Brassey's for 1000*l.* and another Note of Mr. Brassey's upon which there remained 550*l.* and one Note of Mr. Hankey's for 1050*l.* which made 2600*l.* upon which Mr. Hals paid him 41*l.* 2*s.* 3*d.* which made the Balance.

Mr. Sol. Gen. What Name did he take?

Mr. Cole. He said that his Name was Thomas Fowler, and that he lived with Mr. Palmer.

Mr. Sol. Gen. Was there an Account drawn up?

Mr. Cole. Yes, Sir, this is the Abstract of the Account.

Debtor,

Debtor, Samuel Palmer, Esq;

⌘

Thomas Fowler, Creditor.

Sept. 9th, 1728.

To ten <i>South-Sea</i> Bonds, — — —	£.	1000	0 0
Interest 3 Months, 75 Days		18	4 4
Premium 4l. per Cent. — — —		40	0 0
Commiffion — — —		0	10 0
		1058	14 4

By <i>Brassey's</i> Note — — —	£.	1000	0 0
By Bank-Note N ^o . 123 — — —		25	0 0
By Cash received — — —		33	14 4
		1058	14 4

To twenty <i>India</i> Bonds — — —	2000	0 0
Interest 5 Months, 9 Days	35	6 0
Premium 4l. 19s. per Cent.	99	0 0
Commiffion — — —	1	0 0
	2135	6 0

By <i>Hankey's</i> Note — — —	1050	0 0
By <i>Brassey's</i> Ditto — — —	1000	0 0
By Ditto, Part of 1200l. — — —	550	0 0
	2600	0 0

To four <i>South-Sea</i> Bonds — — —	400	0 0
Interest 3 Months, 75 Days	7	5 9
Premium on 200l. at 4l. per Cent.	8	0 0
Ditto on 200l. at 4l. 1s. per Cent.	8	2 0
Commiffion — — —	0	4 0
	2558	17 9

To Cash paid <i>Thomas Fowler</i> — — —	41	2 3
	2600	0 0

For Mr. John Hals,
Benjamin Cole, jun.

Mr. Sol. Gen. How came you to make it up in this Manner, since he told you that it was for *Samuel Palmer*?

Mr. Cole. Yes, Sir, he did so; but we always mention also the Name of the Person that comes to us. This was the Particular of the Account.

Mr. Sol. Gen. Pray, Mr. Cole, do you remember that any body came to inquire for Mr. *Rumsey*?

Mr. Cole. There was a Person came and asked for him by the Name of *Fowler*; to the best of my Memory, it was the Prisoner at the Bar. He came and asked Mr. *Hals*, if he had any thing to do in *South-Sea* Bonds.

Mr. Sol. Gen. Was this Mr. *Hales* that asked him this Question?

Mr. Cole. Yes, Sir.

Then Mr. *Lightfoot*, a Porter, was called and sworn.

Mr. Sol. Gen. Do you remember, Sir, any Time in *September* last, that you were sent to Mr. *Hals's* Office to inquire for Mr. *Thomas Fowler*?

Lightfoot. Yes, Sir.

Mr. Sol. Gen. When?

Lightfoot. *September* the 9th.

Mr. Sol. Gen. What Day of the Week was it?

Lightfoot. *Monday*.

Mr. Sol. Gen. Who sent you?

Lightfoot. Mr. *William Hales*.

Mr. Sol. Gen. Is that the Gentleman?

Lightfoot. Yes, Sir.

Mr. Sol. Gen. What was the Message that he sent you on?

Lightfoot. He sent me to inquire for Mr. *Thomas Fowler*, and to tell him, that the Gen-

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tleman wanted him as soon as he could dispatch his Business, to come immediately away with me to him.

Mr. Sol. Gen. Did you see any body at *Hals's* that answered the Name? Shew him Mr. *Rumsey*: Was that the Person?

Lightfoot. Yes, Sir.

Mr. Sol. Gen. Did he come with you?

Lightfoot. Yes, Sir, he came with me directly to the Piazza under the *Royal-Exchange*.

Mr. Sol. Gen. Whom did he meet there?

Lightfoot. Mr. *Hales*.

Mr. Sol. Gen. You had known Mr. *Hales* before, had you not?

Lightfoot. Yes, Sir, for twenty Years: I knew him when he was Partner with Sir *Stephen Evance*.

Mr. Sol. Gen. And are you sure that that was the young Man that answered to the Name of *Fowler*?

Lightfoot. Yes, Sir.

Mr. *Humphreys* called and sworn.

Mr. Sol. Gen. Let him see the Note. Mr. *Humphreys*, look upon that Note; have you seen that Note before?

Mr. *Humphreys*. Yes, Sir.

Mr. Sol. Gen. Upon what Occasion?

Mr. *Humphreys*. By Direction from Mr. *Hoare*, I went to receive it *September* the 9th.

Mr. Sol. Gen. Whither did you carry it?

Mr. *Humphreys*. To Mr. *Gibson's* House. His Cashier not being at Home, I left it there, desired that the Money should be left with Mr. *Bromfield*, one of the Tellers at the Bank, to be placed there to Mr. *Hoare's* Account. I went about One o'Clock to see if the Money was left there; finding that it was not, I went to Mr. *Gibson's*. The Cashier was at Dinner. I got

one to go for him, and left word that I should be back in a quarter of an Hour. I went to the *Royal-Exchange*, where Mr. *Hoare* met me. We went to Mr. *Brassey's* afterwards. We stopped the Payment of the two Bank-Notes, which we found there had been delivered out. I had been returned not above ten Minutes, before we had an Account that a Person was stopped with the two Notes.

Mr. *Sol. Gen.* What is your Business?

Mr. *Humphreys.* It is my Business to go with Mr. *Hoare's* Notes into the City.

Mr. *Sol. Gen.* When you came the second Time to Mr. *Gibson's*, what Answer had you?

Mr. *Humphreys.* None, but that the Cashier was gone to Dinner.

Mr. *Sol. Gen.* Who was the Person that you left the Note with?

Mr. *Humphreys.* I do not know the Gentleman's Name; there were three of them there, who were Servants to Mr. *Gibson.* One of them asked, where it should be left? I thereupon named Mr. *Bromfield*, one of the Tellers of the Bank.

Mr. *Cramlington called and sworn.*

Mr. *Sol. Gen.* Do you remember that you ever saw that Note before?

Mr. *Cramlington.* Yes, Sir.

Mr. *Sol. Gen.* When, and upon what Occasion?

Mr. *Cramlington.* This Note was brought to Mr. *Gibson's* Office Sept. 9th by Mr. *Humphreys*, an Agent or Out-teller to Mr. *Hoare.* He desired, that when Mr. *Phillips* (Mr. *Gibson's* Cashier) came in, he would leave a Note or Money for the same with Mr. *Bromfield* at the Bank.

Mr. *Sol. Gen.* What became of it?

Mr. *Cramlington.* I put it into Mr. *Phillips's* Seat between the Banisters, for him to see when he came in.

Mr. *Sol. Gen.* Are you concerned or employed for Mr. *Gibson* about Book-keeping?

Mr. *Cramlington.* No, Sir.

Mr. *Phillips called and sworn.*

Mr. *Sol. Gen.* Look on that Note, Sir: Have you ever seen it before?

Mr. *Phillips.* Yes, Sir, on Monday the 9th of September last. I happened to be at the Bank; and on my Return from thence, which was about Twelve o'Clock, Mr. *Harwood*, one of the Clerks in our Office, told me, that Mr. *Humphreys* (Mr. *Hoare's* Servant) had been there with a Note for 6400*l.* and that I not being at Home, he had left it with Mr. *Cramlington*, desiring that when I returned I would leave a Money-Ticket for it with Mr. *Bromfield*, one of the Tellers at the Bank, for *Humphreys.* I asked him, where was the Note? He said, that it was left with Mr. *Cramlington.* I opened my Seat Door, and saw the Note there. I was very much surprized, it being wrote by a strange Hand, and knowing, by many Years Experience, that Mr. *Gibson* never signed any Promissory Notes without writing the whole Notes. I observed a Difference in the Note, that the last Words, *For myself and Partners,*

were wrote with a nearer Resemblance to his Hand than the other Part of the Note. I observed that this Note was dated the 27th of August, and that he went to the Bath on the 28th: I had the Honour to attend him several Days. He concluded his Business relating to the Office on the 26th: On the 27th he did nothing of that Business, but prepared for his Journey. I endeavoured to recollect, whether he had any Transactions then with any *George Watson*, to whom it was made payable. I could not remember that he had, nor did I remember that I had ever before heard of the Name, nor had I any Directions from any of my Masters, that there was any such Note stood out. I observed also that there was a Difference between the Stile of this Note and Mr. *Gibson's*: He always writeth, in a straight Line, *For myself and Co. Tho. Gibson, never Partners.* And then as to the Value received, he never useth these Words. I carried it to Mr. *Harwood*, whom Mr. *Humphreys* spoke to. I told him, that I did not like it, it being written in a strange Hand; I would not therefore take Notice of it. We observed that there was the *F* and *r*, in *For myself and Partners*, wrote in a different Hand. I thought that there might be some Wickedness at the Bottom; I went therefore myself into Mr. *Booth's* Office; and he and Mr. *Phippes* being there, I desired Mr. *Phippes* to look into the Books, and see whether one Mr. *Watson* had Credit for such a Sum. Not finding any such Thing, I then desired them to look into the Kalendars of the Ledgers. They looked, and saw that there was no such Name there. I said then to Mr. *Booth*, I have a Note for 6400*l.* which I do not like, and will not pay, without inquiring into it, and acquainting Mr. *Jacomb*, (Mr. *Jacomb* was then above Stairs, which I knew not.) I told Mr. *Booth* the Circumstances which made me suspect a Forgery. Foh! (said he) this is a Villainy, a Forgery; this looks like one of *Hales's* Tricks. I waited for Mr. *Jacomb's* coming down; I said to him, Sir, here is a Note for 6400*l.* which I believe to be forged. It is (said Mr. *Jacomb*) very plain; here is a Rasure on a Frank. (Mr. *Booth* having recollected that Mr. *Hales* some time before had two Franks from him, one of which he now suspected to be thus abused, acquainted Mr. *Jacomb* therewith.) He inquired where we had it? We told him, of Mr. *Humphreys*; Mr. *Hoare's* Servant. He hereupon took me out with him. We went to the Bank. I stayed in the outer Office, whilst he went in and acquainted the Directors, that such a Thing had happened. Mr. *Bromfield* was sent for, and examined, what the Reason was of this Direction, that it should be left with him? He said, he could give no Reason, but that Mr. *Hoare's* Man used to transact Affairs with him: Mr. *Jacomb* took the Note to Mr. *Hoare's*, and I went to Dinner.

Mr. *Sol. Gen.* Is it not usual for Mr. *Gibson* to enter Notes in the Book when he makes them out, and give you Notice of them?

Mr. *Phillips.* Yes, Sir.

Mr. *Sol. Gen.* Sir, look on the *F* and *r*, and tell us what you think of them?

Mr.

Mr. *Phillips*. This is certainly Mr. *Gibson's* *F*, the *o* seems thrust in irregularly, two *e's* erased, and then follows *Myself and Partners*.

Mr. *Sol. Gen.* You have seen his Franks; Doth he make such a Distance between the *F* and the *r*? Cast your Eye again on it, and see whether the Distance between the *F* and *r* be such as is usual in his Franking.

Mr. *Phillips*. Much as usual, for I have compared it with some Franks, and they are there at the same Distance: But I observe the *o* is not of the same Letter, but crouded in irregularly: And the *o* is of a blacker Ink.

Mr. *Sol. Gen.* Please, Sir, to look on the Beginning of the *m*: What Observations do you make on that?

Mr. *Phillips*. There is the Stroke before the the first Minim of the *m* that seems of lighter Ink.

Mr. *Sol. Gen.* What do you make of that?

Mr. *Phillips*. It seems to me to be the Tail or Bottom of the *e*.

Mr. Maddox called and sworn.

Mr. *Sol. Gen.* I think, Mr. *Maddox*, you belong to the *Bank*.

Mr. *Maddox*. Yes, Sir.

Mr. *Sol. Gen.* Pray, Sir, will you give us an Account, whether any Notice was given you to stop any Bank-Bills?

Mr. *Maddox*. Mr. *Brassey*, with Mr. *Humphreys*, (Mr. *Hoare's* Man) came to the *Bank* to desire me to stop five Notes, with the Numbers, Dates and Names. I looked and saw that three of them of 350*l.* were already paid. I took the Numbers of those not paid, and gave Directions to all the Tellers, that the Minute any brought any of them, they should give me Notice. In a little Time after I was gone up, I was called down again. *Pewtreffs* (one of them) came to me, and told me that two hundred-pound Notes were brought and demanded. I asked him, who brought them? He told me, that Person, (*Rumsfey*.) I bid him bring a Constable, and not come back again till he had brought one. When he had brought one, I charged him with him. I asked him, Where he had those Notes? He would not tell me where he had them, nor who he was, but was very obstinate. One of the Officers of the *Bank* said, that he knew him, that his Name was *Rumsfey*, that he belonged to the *Eagle Galley*. He asked me to let him write a Letter; I let him, but would myself appoint the Messenger. He wrote a Letter, signed it *Thomas Fowler*, and directed it to Mr.

at *Robin's* Coffee-house. I called some Officers of the *Bank*, and directed them to go there with the Constable, and see what suspicious Person was there. They went into the Coffee-house, and inquired of the Master of the House what Company was there. He said, there was only three Neighbours, and a fourth Person whom he did not know. Whereupon one of the Officers of the *Bank* said, I know that Person, that is Mr. *Hales*. They went and seized him. As they brought him into the *Bank*, *Rumsfey* said, That is the Person that I had the Notes of, and would fain have spoke

with him. I kept them apart, carried the one up Stairs, kept the other below. They searched *Rumsfey*, found about him 60*l.* and 25*l.* in different Bags, and two Notes were stopped below, before they went up to Mr. *Hales*. They found upon him above Stairs thirty-six *South-Sea* and *India* Bonds, a Bill of Parcels for some of them from Mr. *Hals*, five hundred and odd Pounds in Money, a Note of Mr. *Brassey's*, and Mr. *Shales's* Note.

Mr. *Sol. Gen.* What Account did *Rumsfey* give of the Money found upon him?

Mr. *Maddox*. Thirty-five Pounds and odd Money he said was his own Wages. There was about 60*l.* besides, which he said was Mr. *Hales's*.

Mr. *Sol. Gen.* What Notes had Mr. *Hales* about him?

Mr. *Maddox*. He had a Note of Mr. *Brassey's* of 680*l.* the Remainder of the 1100*l.* Note; a Note of Mr. *Shales's* of 120*l.* A Note of Mr. *Thrupp's* he had received, and had procured the Money for it, as he owned when he came upon his Examination.

Mr. *Sol. Gen.* Was his Examination in Writing or not?

Mr. *Maddox*. It was taken before Sir *Edward Bellamy*. I cannot say whether it was in Writing or not.

Mr. *Sol. Gen.* Go on, and give us an Account what Mr. *Hales* said when examined at the *Bank*, upon making up the Account of what was taken from him.

Mr. *Maddox*. It wanted about four or five hundred Pounds of the 6400*l.* Mr. *Hales* having that Day (as he said) redeemed two *East-India* Bonds, which he had pawned with Mr. *Brassey*; and had also taken up a Note of Mr. *Thrupp's* for 400*l.* which he had discounted with Mr. *Shales*. Among the Papers that were found upon Mr. *Hales*, there was an Account of the particular Produce of the Note.

Mr. *Sol. Gen.* What did Mr. *Hales* say?

Mr. *Maddox*. He owned that he employed *Rumsfey*; but said, that he himself was employed by one *Samuel Palmer*, a Person whom he had been acquainted with for some Months, and that this Note was left by him with him to invest in something that would turn to Account.

Mr. *Sol. Gen.* Was there any Notice then taken of *Rumsfey's* going by a sham Name?

Mr. *Maddox*. I remember not that.

Mr. *Sol. Gen.* Was there any one that told Mr. *Hales*, that he was a Man of Figures, and desired him therefore to give a more particular Account?

Mr. *Maddox*. Yes, Mr. *Moses Raper*.

Mr. *Just. Page*. Is it not enough that Mr. *Hales* himself owned that what he had was the Produce of the 6400*l.* Note? Did not *Rumsfey* manage all this? And came he not from him to the *Bank*? Hath he not owned it?

Mr. *Maddox*. That was one of the Notes found upon Mr. *Hales*.

Mr. *Just. Page*. Had you any Discourse with him about the Import of it?

Mr. *Maddox*. No, my Lord. ——— This Paper, one of those found in the Pocket of Mr. *Hales*, contains a particular Account of the

the Produce of the 6400*l.* Note, and a little more.

(*The Paper read.*)

One of Mr. *Henry Hoare's* for 2100*l.* payable to Sir *John Hynde Cotton.*

One of 70*l.* payable to *James Moreton, Esq;*
One of 1000*l.* of Mr. *Nathanael Brassey's.*

Bank-Notes, No. 412, for 1000*l.*

413, for 1000*l.*

414, for 1200*l.*

415, for 25*l.*

23*l.* received in Gold.

Mr. *At. Gen.* In Case of Forgery, every Circumstance is corroborating of the Fact, and therefore this was proper to be laid before the Jury.

Mr. *Just. Page.* Whose Writing is that Paper?

Mr. *Maddox.* I believe it to be his: I knew him when a Goldsmith.

Mr. *Serj. Darnell.* Mr. *Maddox,* I desire to ask you one Question. We have a very good Opinion of you: Pray, do you not know one *Samuel Palmer*? Had you never any Transactions in your Books between Mr. *Hales* and *Samuel Palmer,* with relation to a ten thousand Pound Note payable to one *Dymer*?

Mr. *Maddox.* No, Sir.

Mr. *Serj. Darnell.* Nor have you never heard of him?

Mr. *Maddox.* No, only by the Paper found on Mr. *Hales.*

Mr. *Serj. Darnell.* Did not the Defendant Mr. *Hales* bring you a Draught from Mr. *Jacomb* upon a particular Occasion, payable to *Dymer*?

Mr. *Maddox.* I cannot remember this. We never had any Account, that I know of, with *Palmer.*

Moses Raper, Esq; called and sworn.

Mr. *At. Gen.* Mr. *Raper,* will you look on that Paper? Have you seen it before? Do you know upon what Occasion it was wrote, and by whom?

Mr. *Raper.* I was at the *Bank* the 9th of *September* last. *Alderman Bellamy* was then examining Mr. *William Hales*: He was then giving an Account of the Produce of that Note of 6400*l.* of Mr. *Gibson's.* He was a long Time before he could cast it up. He seemed not much concerned. I said to him, I wonder that you, who are a Man of Figures, should be so much at a Loss: You want about 400*l.* He at length mentioned a Note of one *Thrupp's.* They asked him, where he had that Note? He said, of one *Palmer* of *Mansel-Street.*

Mr. *At. Gen.* Did you see him write that Note?

Mr. *Raper.* I saw him sum up that, as the Produce of the 6400*l.* Note.

Mr. *At. Gen.* Do you remember that the

Question was asked him, why *Rumsey* went by the Name of *Fowler*?

Mr. *Raper.* I know no Reason that he gave. He was asked the Question several Times, but gave no Answer.

Mr. *At. Gen.* The Evidence, my Lord, hath been so extreme long, and every Part so well connected, that I shall not trouble your Lordship with any Observations thereupon. If there be Occasion given by the Reply, your Lordship will then give us Leave.

Mr. *Serj. Darnell.* My Lord, and Gentlemen of the Jury; I am Council in this Case for Mr. *Hales.* And indeed, according to the Misrepresentation that they have laid him under, he is a very unfortunate Person. And really they have given a great deal to lead into a Suspicion of the Truth of what he is charged with; but we think a good deal of it is owing to the Misfortune he lay under. Having been a Bankrupt many Years, and not having obtained a Certificate, it was therefore impossible for him to carry on any thing in his own Name; therefore, in the whole Course of his Traffick for many Years, he hath been forced to use fictitious Names, and thereby conceal all Receipts and Payments. And the Consequence of his doing otherwise is very obvious. Till he hath obtained a Certificate, whatsoever he received in his own Name would be subject to the Commissioners. Therefore (according to my Instructions) Mr. *Hales* hath concealed his Dealings. I am instructed, that he had considerable Dealings with one *Samuel Palmer,* and that he was indebted to Mr. *Hales* in the Sum mentioned; and having had great Transactions for many thousands of Pounds, they came to a Balance of the Account, and Mr. *Palmer* gave him this Note in Payment. It is difficult for us to clear Things in such Affairs as require Privacy: But it appears, that he hath transacted great Affairs. He hath Books, whereby it appeareth that he hath traded for upwards of 300,000*l.* and that he hath traded with this *Samuel Palmer* for upwards of 10,000*l.* To prove that this is not a forged Note, will be extremely difficult; and I think that it matters not any thing to Mr. *Hales,* whether it be so or not. If it be so, if this Note came from Mr. *Palmer* to Mr. *Hales,* the Forgery falls not upon Mr. *Hales.* The only Thing for us to establish, is, that it came from Mr. *Palmer* to Mr. *Hales.* They own, that he said, when the Thing was recent, that he had it from *Palmer.* It happens (I suppose from a Certainty that the Note was a forged Note) that Mr. *Palmer* is gone out of the Kingdom. It is impossible therefore to produce him; and if he was here, he could not be a Witness. And, if my Instructions are true, that *Palmer* is gone, it leaves Mr. *Hales* without the Assistance of *Palmer.* Taking it for granted that he hath forged the Note, we submit it that Mr. *Hales* cannot be guilty of the

the Forgery. — Another Part of the Indictment is, That he hath published this Note, knowing it to be forged. If he received it in Satisfaction of a Debt or Demand that he had upon *Palmer*, that excuseth him. Mr. *Palmer* being gone, it is only possible for us, first, to establish Mr. *Hales's* Character, then shew that he is a great Dealer, and produce his Books, in which these Things are entered. There are several Transactions therein, some many Years ago, some later, that will be verified by Witnesses. If there be such Transactions which we can verify, we leave it to the Court, how far that will avail. Under these Circumstances we beg Leave to submit it to your Lordship.

Mr. Serj. *Baynes*. My Lord, and Gentlemen of the Jury; I am Council on the same Side. The first Thing that lies under Consideration is, Whether this Note was forged by Mr. *Hales*? That it was a Forgery, they have given strong Evidence; but the only Question is, first, Whether Mr. *Hales* did forge it? In the next Place, Whether he published it, knowing it to be forged? These are the two Charges laid against him in the Indictment. We hope that, upon the Evidence that we shall give, you will think him clear of what is charged. It is well known, that he hath dealt for as great Sums as most in *Lombard-Street*: He had the Misfortune afterwards to fail; therefore he was obliged to act in a different Way from others. We shall shew that Mr. *Gibson* himself gave him such Credit, that he trusted him with great Sums of Money, and with receiving Rents in *Kent*. For us to prove a Negative, that he did not forge this Note, cannot be but by Circumstances. In order to charge us, they have gone a great Way with Circumstances; and the Question is, What Validity these Circumstances will have with you? They lay a Stress upon this, that he gave Directions to *Rumsley* to transact these Affairs, to change his Cloaths, his Wig, and to put on another Hat. As to that, that will depend a great deal upon the Credit of *Rumsley's* Evidence which he gives. Mr. *Rumsley* appears to be *Particeps Criminis*: Therefore, though I cannot say but this Evidence is legal, yet it affects his Character and Credit; it is not such as if he was an indifferent Person. As to the Wig, they made a great Noise, as if it was bought with a Design to impose on Persons in that Disguise. We shall shew that it was not, but with another Design. Mr. *Hales* and *Rumsley* had an Intention, before *Monday*, to go into the Country. He himself saith, that he only had the fine light Wig which he had upon his Head. It was very proper, at that Time of the Year, that he should have another Wig to travel in. Therefore it seems probable, that it was bought with that View, and not to impose upon Persons; since that could not

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make an Alteration in his Countenance. As to his acting under a different Name, that seems upon this Account; Mr. *Hales* had the Misfortune to have a Commission of Bankruptcy awarded against him; and after long soliciting for a Certificate, could not get it: Therefore, although he transacted great Affairs, all the Sums which he negotiated were forced to be under feigned and borrowed Names; because, if his Creditors knew that he had such Credit, and negotiated such Affairs, they would be the harder upon him. Therefore there was such a Direction given, that Mr. *Hales* might not be known to be concerned in such an Affair. — It is incumbent upon us, first, to give an Account how we came by that Note: There was one *Samuel Palmer* indebted to Mr. *Hales* between six and seven thousand Pounds; he came to him, offered this Note as a Security, that he might pay himself upon receiving this Money; thereupon Mr. *Hales* very innocently took the Note, not questioning its Goodness. Mr. *Gibson* being a Man very well known, Mr. *Hales* knew that the Signing was his Hand, though the Body of the Note was not written by him; and he might be easily imposed upon, and take this as a good Note. No Wonder that it should be thought so. Though Mr. *Poltock* suspected this Note, because it was not written by Mr. *Gibson's* own Hand; yet it is plain that, at Mr. *Hoare's* Shop, Mr. *Turner* made no Scruple at all to exchange this Note, and give other Notes for it. Therefore, though they saw that this Note was written on a different Piece of Paper from what a Note of such a Value used to be, it is plain that Mr. *Turner* did not think this of so much Weight. No Wonder, therefore, that Mr. *Hales* should be so imposed on. — The next Part of the Consideration is, Whether he published this Note knowing it to be forged? For otherwise it is not criminal. Therefore the Indictment runs, *Knowing it to be forged*. Now, in case that we prove this first Part which is in my Brief, and I hope that the Witnesses will come up to, the other Part will fall to the Ground. If he came fairly by it; he cannot be said, knowing it to be forged, to publish it. We shall call our Witnesses, and submit it to your Lordship.

The Indictment, my Lord, runs, that he *Vi et Armis, viz. Verbis et Figuris sequentibus*, forged this Note. Now, my Lord, it is not pretended that he forged the Name of Mr. *Gibson*; and therefore, though I do not controvert that he that writes over my Name is guilty of forging the whole Note, yet not *Verbis et Figuris sequentibus*; that is, forging the whole Note. Therefore being charged herewith, and they admitting that he did write the Name *Thomas Gibson* —

Mr. Just. *Page*. Is the Name in the Indictment?

Mr. Serj. *Baynes*. Yes, my Lord.

Mr. Just. *Page*. Now *Thomas Gibson* is agreed

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to

to be the Hand of Mr. *Gibson*, but not to that Note.

Mr. Serj. *Baynes*. No, my Lord, I admitted that in stating the Objection. I said, that he that writes over my Name is guilty of forging such a Note, but not *in Verbis et Figuris sequentibus*; he is not guilty of forging the Name of *Thomas Gibson*. They have taken upon them to fix that this Note was *Verbis et Figuris sequentibus*; then after the Body of the Note followeth *Thomas Gibson*. Now, my Lord, we apprehend this is not forged. Though the Substance of the Note is not Mr. *Gibson's* Hand-writing, yet they own, on the other hand, that the Name is the Hand-writing of Mr. *Gibson*. If so, it appears very plainly that we have not forged this Note *Verbis et Figuris sequentibus*.

Mr. Just. *Page*. Brother, do you rely upon this Objection? If you do, I will give you my Opinion of it when the whole is finished.

Mr. Grainger called and sworn.

Mr. Serj. *Darnell*. Sir, are you acquainted with Mr. *William Hales*?

Mr. *Grainger*. I am not personally acquainted with him, though I have known him by Sight many Years. I know nothing at all of his Dealings.

Mr. Serj. *Darnell*. Do you know Mr. *Samuel Palmer*? Do you know his Dealings?

Mr. *Grainger*. Yes, Sir, as to Mr. *Palmer*, I knew him from a Child. I married his Mother. He was brought up at the *East-India* House, was sent by the *East-India* Company into *Persia*, and lived there many Years. Not having the Encouragement that he expected, he returned thence, but stayed in *Turkey*.

Mr. Just. *Page*. Was you there with him? After he came Home, what did you know of him?

Mr. *Grainger*. As he came Home through *Turkey* —

Mr. Just. *Page*. You cannot say that upon Oath, since you was not there with him. Did you know him here at *London* after his Return? What did he deal in?

Mr. *Grainger*. I know not of any Dealings he had in *England*.

Mr. Just. *Page*. Do you know of any Transaction between him and Mr. *Hales*?

Mr. *Grainger*. He told me —

Mr. Just. *Page*. That is nothing. What Substance was he of?

Mr. *Grainger*. He had no Substance at all, for he was an insolvent Man.

Mr. Just. *Page*. How long since he was in *London*?

Mr. *Grainger*. Within a Twelve-month.

Thomas Ayles, Esq; called and sworn.

Mr. Serj. *Baynes*. You are desired, Sir, to give an Account, whether you know the Defendant Mr. *Hales*, how many Years you have

known him, and what is your Opinion of him?

Mr. *Ayles*. I have known him twenty-three Years and upwards, when Partner with Sir *Stephen Evance*, with whom I kept a considerable Cash all that Time: I received a great many Civilities from Mr. *Hales* upon several Occasions, for which I have always had a good Opinion of him.

Mr. Serj. *Baynes*. What Opinion had you of his Character?

Mr. *Ayles*. I took him to be of as good a Character as any.

Mr. Serj. *Baynes*. Do you know of any considerable Sums passing through his Hands, during these Years that you have known him?

Mr. *Ayles*. Not any since his Failure.

Mr. *Lacy*. I beg a Word of the same Side with the other Gentlemen. As to the Exception they have made, it will not be contended (I believe) but that they might have laid it otherwise. They might have made it a Forgery of the Note, though they had set it forth otherwise. Our Objection is, whether *Verbis et Figuris sequentibus* doth not tie it down to the second Part of the Note as well as the rest? Another Thing is this; they have given an Account of the Publication at *London* in Mr. *Hoare's* Shop; whether should not the Forgery be fixed in *London* too?

Mr. Just. *Page*. If a forged Note be published in two Counties, may not the Prosecutors lay it in which they will? And the Indictment too is in *London*, if that were any Objection.

Mr. *Lacy*. Should not the Forgery be local as well as the Publication?

Mr. Just. *Page*. Yes. If that very Act of Forgery had been in *Middlesex*, it ought to have been tried there: But where there is no positive and direct Proof of the Forgery, but the whole arises from Circumstances, some in *London*, and some in *Middlesex*, it may be laid in either; or it would be impossible that any artful Person should be convicted of Forgery; it is but being alone when he commits the Fact, and he is safe. And the Objection will be as strong in one County as another; and then, if your Doctrine be true, he can be tried no where; which sure is not so. You know, a Felony may be tried in any County where the Goods are found on the Prisoner. As to your other Objection, That the Indictment is for forging the whole Note, whereas *Tho. Gibson* is Mr. *Gibson's* own Hand-writing; that is extraordinary. Did Mr. *Gibson* put his Name to that Bill? No. Suppose, in a less Degree, Mr. *Gibson* had given his Note for a less Sum, and Mr. *Hales* had only made it for a greater, would not that have been a Forgery of the whole Bill? You know it is so of a Bond, Bank, or other Bill, in every Day's common Experience.

Mr.

Mr. *At. Gen.* My Lord, this was the same Case with Mr. *Ward's*. There it was adjudged, that Mr. *Ward* forged a Note of the Duke of *Buckingham's* in that Form. There was no Pretence but that it was (as originally) the Duke of *Buckingham's* Note. This Objection was then made, but it was over-ruled, That the altering a material Part was making it entirely another Bill.

Mr. Serj. *Darnell*. My Lord, we have done with our Defence.

Mr. *Sol. Gen.* My Lord, as their Defence hath given us no further Occasion, we shall not take up your Lordship's Time with any Reply.

Mr. *Just. Page*. Gentlemen of the Jury; The Prisoner at the Bar is indicted for forging a Note of Mr. *Gibson's* of 6400*l.* and also for publishing this Note, knowing it to be forged; upon which two Things are proper for your Consideration: First, Gentlemen, by whom this Note was forged, (for it is agreed to be a forged Note,) Whether by the Prisoner, or if he was privy to or concerned in it? And secondly, Whether he is guilty of the Publication of it knowing it to be forged? There have been a great Number of Witnesses examined; and I should have gone over the whole Evidence as it was given, but the Council for the Prisoner have eased me of that Trouble. Forgery is what concerns every *Englishman*: As Paper-Credit is come to that Height it is now in, the utmost Care ought to be taken to preserve that Credit; but still the Innocent must not suffer. As to this Note's being forged, which hath taken up the most Part of the very long Time this Cause hath been trying, the Council for the Prisoner all agree that it is a forged Note; and then it will be to no Purpose to sum up that Part of the Evidence to you. I shall therefore take Notice only of such Parts, as go to prove Mr. *Hales* himself guilty of this Forgery, or of his Publication of it knowing it to be forged.

The two first Witnesses were *Philip* and *Robert Booth*, which may be proper to be taken Notice of by and by.

The third Witness was *Rumsey*, who hath gone through this whole Matter, and whose Credit hath been supported by others of unquestionable Reputation in every material Circumstance. He tells you, he was no Dealer in this Kind of Business, but a perfect Stranger to it, bred up to the Sea: That he hath been acquainted with the Prisoner for about a Year, and from *June*, till the Time this Fact was committed, was very much with him. This Note, which was read and shewn to you, bears Date the 7th of *September* last; and the whole Management was carried on till the 9th. He saith, that on the 7th of *September*, which was *Saturday*, he was at Mr. *Hales's*, not then knowing that he was to dip his Finger for

him in so vile a Thing. He says, Mr. *Hales* only then told him, that he must go into the City with him on some Business; and that his Dress, which was a red Waistcoat and Breeches, were not proper to appear in, in the Affair he had to employ him in; and that he had provided him another, (the same which *Rumsey* has now on.) That he was not thought disguised enough, but was in this new Dress carried to *Holborn*, and there had a black Peruke bought for him, and a Letter-Case with Papers put in, as a Man of Business; from whence, after he was equipped in this Disguise, he and the Prisoner went together to *John's* Coffee-house in *Sheer-Lane*.

You will observe, Gentlemen, Mr. *Hales*, as *Rumsey* swears, did not then discover to him what he was to do; but it was to come out as by Accident, which was thus: Soon after they came to the Coffee-house, a Porter, with a Letter directed to *Rumsey*, came there, which Mr. *Hales* immediately took from the Porter and opened; which then appeared to be a Cover with this Note in it, and nothing writ on the Cover but, *Lady Harriot Elliott* 4300*l.* *Sir John Hynde Cotton* 2100*l.* This, *Rumsey* says, he did not understand; nor did the Prisoner give him Leave to open the Letter, knowing (as *Rumsey* says) he was unacquainted with the Contents of it. But when Mr. *Hales* had opened the Letter, he explained to him what the two Names and Figures meant, and then told him, he would have him go to Mess. *Snow* and *Poltock's* with this Note, and get of them two Bills, one for *Lady Harriot Elliott* for 4300*l.* the other for *Sir John Hynde Cotton* for 2100*l.* and told him, that Mr. *Snow's* Shop was a little without *Temple-Bar*, and did not so much as trust *Rumsey* out of his Sight, but went with him over-against the Door. *Rumsey* goes in, where was Mr. *Poltock*. The first Thing Mr. *Rumsey* does is to produce a Bank-Note of 40*l.* and 10*l.* in Money, and to take his Note for 50*l.* And then produces the Note for 6400*l.* but Mr. *Poltock* being a very careful Man, and being now called, says, he made much the same Observations that I believe you have all made on View of it. He says, it was an odd Sort of a Bill; that he never had any of Mr. *Gibson's* Bills but of his own Hand-writing; and that this was writ on so scanty a Piece of Paper, that he would not meddle with it.

When *Rumsey* came out of the Shop, he says he found Mr. *Hales* over-against the Door, where he left him, and tells him what ill Success he had had, and gives him back the Note: Whereupon the Prisoner and *Rumsey* go back to the Coffee-house, and there the Prisoner said, he must try elsewhere, and named Mr. *Hoare's*. And to give *Rumsey* Credit there, he was first to pay in at *Hoare's* 70*l.* that is, Mr. *Poltock's* Note for 50*l.* and 20*l.* in Money, and to take *Hoare's* Bill for 70*l.* which was done: That it was then scarce light; and every one

one knowing Mr. *Gibson's* very great Credit, Mr. *Turner*, who was then in the Shop, without observing much this Note, takes it, and gives *Rumsey* two others. But Mr. *Hales* had then directed *Rumsey* not to take the 4300*l.* Note to Lady *Harriot Elliott*, but to Sir *Richard Grosvenor* or Bearer, and the 2100*l.* Note to Sir *John Hynde Cotton* or Bearer; and that *Turner* confirms. And *Rumsey* swears, that the Prisoner also shewed him Mr. *Hoare's* Shop, and went with him almost to the Door.

When *Rumsey* had succeeded at Mr. *Hoare's*, he says, he found the Prisoner waiting at a Fruit-stall, a small Distance from the Shop; and there he gave the Prisoner the 70*l.* Note, and the Notes he had received in Exchange for Mr. *Gibson's*. *Rumsey* swears, he was to get nothing, and that the Prisoner had the whole Profit. But this would not do the Prisoner's Business, nor did he rest here. The next Thing therefore is to make the best of these Notes, and to manage Matters so as not to be traced or found out; in which, Gentlemen, it was certainly right that the Notes should be shifted and changed, divided and subdivided, as much as possible, that no Tract of them might be seen: And for this, *Rumsey* says, that he accordingly did go with these Notes, by the Prisoner's Direction, from one Goldsmith to another; first with the 4300*l.* Note to Mr. *Woodward's*, who would not meddle with it; thence to Mr. *Brassley's*, where he changed it for four Bills, which he gave to Mr. *Hales*, who waited for him at a Coffee-house.

The Notes *Rumsey* received at Mr. *Brassley's* the Goldsmith's, in Exchange for Mr. *Hoare's* Note of 4300*l.* were four, viz. one for 1200*l.* one for 1100*l.* and two for 1000*l.* each, all made payable to one *Samuel Palmer*, in whose Name *Rumsey* was instructed by *Hales* to take these Notes, and was himself directed by the Prisoner to go by the Name of *Fowler*, which he did; and the Prisoner was so watchful, that he waited about Mr. *Brassley's* Shop during all the Time *Rumsey* was there.

Rumsey says, that he went and lay at Mr. *Hales's* that and the next Night, and Mr. *Hales* bid him be ready on Monday Morning in that Dress he had then put on: And accordingly on Monday Morning he went with him to *Janeway's* Coffee-house, where it was fixed how he should dispose of these Notes, and was directed by the Prisoner to go to Mr. Alderman *Hankey's* to make other Alterations, and then to the Broker's for the Bonds he had bespoke, who told him he had only got one thousand Pounds worth, which *Rumsey* says he had, and afterwards, on his going again, had more.

Gentlemen, I have laid before you, not for your Consideration whether Mr. *Gibson's* Note was forged, for that is admitted; but how far Mr. *Hales* has been concerned an Actor in this Affair; and to put you in Mind (if *Rumsey* swears true) that he was only the Cat's-Claw, and a meer Tool for *Hales*, and that *Hales* contrived and ordered every thing.

When all this was so successfully carried through, the Prisoner sends *Rumsey* to the Bank for Money, where the Matter comes to be discovered in this Manner.

Mr. *Humphreys* swears, that he being Mr. *Hoare's* out-going Clerk to carry Bills abroad and receive Money, on Monday Morning he went to Mr. *Gibson's* with this Note for 6400*l.* Mr. *Gibson*, he says, was gone to Bath; and it is remarkable that the Note is dated on a Day when he transacted no Business, and it was not published till he was gone to Bath. Mr. *Humphreys* says, that he not meeting with Mr. *Gibson's* Cashier, desired the Money should be paid into the Bank, and left the Note for that Purpose. When Mr. *Gibson's* Cashier, Mr. *Phillips*, came Home, he says he had the Bill, and looking upon it, saw great Reason to suspect it, and thought it not probable Mr. *Gibson* should draw a Bill as that was. He saith, that in all his Time he never knew Mr. *Gibson* sign such a Note, nor any Note for Money, but of his own Hand-writing. The Size of the Paper also, he says, confirmed his Suspicion. And sure, Gentlemen, Paper must be very dear, that a Note for such a Sum should be wrote on so scanty a Piece as you have produced. But the Cashier further says, that looking on the Note, he found there was a manifest Alteration in the Writing; *Thomas Gibson* was Mr. *Gibson's* Hand, but a Rasure appeared above it, and the Letter *o* in the Word *For* to be intruded in it, and wrote with another Ink. You have all seen the Note, and to me it seems very plain, that the Letter *o* was not originally written in that Place. And to give you at least a very probable Account, that this Word was at first *Free* and not *For*, and done by Mr. *Hales* himself, the first Witness (Mr. *Phillips*) you will remember, swears, that the Prisoner some Time ago prevailed on him to get of Mr. *Gibson* two Franks on two Letters of Mr. *Hales*, directed to *Robert Booth, Esq;* at *Bristol*; and says, that the Foldings of those Letters were large enough to tear off the Piece produced. And *Robert Booth, Esq;* of *Bristol*, says, there is no other of that Name there, and that he never received any Letter franked by Mr. *Gibson*. And as Things of this Kind are generally made out by Circumstances, it seems no very hard Thing to erase the two *e's*, and put the *o* between the *F* and *r*, in such a Manner as this has been shewn to you. Gentlemen, Mr. *Humphreys* goes further, and says, that going to the Bank about Noon that Day, he found that Mr. *Gibson's* People had not paid in this Sum; at which he says he was pretty much surprized, knowing Mr. *Gibson's* Credit and the Carefulness of his People; and went again to Mr. *Gibson's*, to know what the Reason was; where he was informed of the Discovery, which came out thus: Mr. *Hoare's* two Notes having been shifted and changed about as you have heard, some Part of the Money was at last in Bank-Bills, and there *Rumsey* that Monday Morning receives 650*l.* on Account of those Bills, before the Fraud was discovered.

But

But from what appeared at Mr. *Gibson's*, and the Bank-Numbers of the Bills delivered being entered, Care was taken to examine the Receipt-Book; to see who came for any more Money on those Bills. And Mr. *Maddox* tells you, that he having Notice given him, ordered the Clerk that paid, when any body came with those Bills, to seem ready to pay the Money, but to delay it till a Constable could be fetched: That soon after *Rumsey* came again, when a Constable was fetched, and charged with *Rumsey*. He at first declined to give any Account of his Name, or where he had the Note; at length he told Mr. *Maddox*, that if they would let him write a Letter, he would send it to the Person he had the Note from; and accordingly writes a Letter to Mr. ——— (with a Blank) at *Robin's* Coffee-house, with which the Constable, with some of the Clerks of the *Bank*, went immediately to see who was there, and found three Persons besides Mr. *Hales*. The three were Neighbours whom the Coffee-Man knew: Mr. *Hales* was a Stranger to him, but known to the Officers of the *Bank*. When he was seized, Mr. *Rumsey* was examined again, and owned that *that* was the very Person who sent him with the Bill. Upon this *Hales* was carried up Stairs, examined and searched; and not only one of those Bills that had been received found upon him, but also an Account under Mr. *Hales's* own Hand, that exactly tallied with the Account *Rumsey* gave. And Mr. *Maddox* says, the Prisoner owned the Account to be his, and the Notes, Bonds, Broker's Account of the Bonds bought, and Effects found upon him, to be the very Produce of the 6400 *l.* So that, Gentlemen, you will now take it into your Consideration, that the Evidence against the Prisoner doth not depend singly on the Credit of *Rumsey*, but that he is supported by the Number of Witnesses you have had, and in particular by Mr. *Maddox*, and (which cannot err) the Account and Produce of the Money taken upon him.

Thus, Gentlemen, the Forgery being admitted, I have laid before you that Part of the Evidence that principally affects Mr. *Hales*, and that goes to prove him either guilty of the Forgery, or of the Publishing of this Note knowing it to be forged. As to the Forgery, Gentlemen, of this Note by Mr. *Hales*, I must leave it to you upon the Strength of this Evidence, which has been very long, and (I doubt not) fully observed by you; and that you will give it its just Weight. But as to his publishing it knowing it to be forged, he hath not given you the least Colour of Evidence to the contrary; and I must tell you, wherever a forged Note, or other Thing of that Nature, is found in any one's Hands, it is in Law a strong Evidence that he is the Forger, unless he can give some Account of it. But here you are only told, that he had it from *Palmer*; but not one Word of Proof. Mr. *Hales's* Council have indeed offered to you in his Defence, first, that he is a Gentleman, and shall not be presumed to be guilty of such an Offence; nor, Gentlemen, shall any other on a bare Presumption. But here, Gentlemen, is great Strength of Evidence that affects him; I do not know that I have met with a stronger Proof of the very Fact; it is not to be expected. They have also told you, that he was a Bankrupt, and could not get a Certificate; that the Commission of Bankruptcy against him

was about twenty Years ago. They say, that upon that Account he was forced to make use of others Names in his Dealings, and sometimes fictitious ones: That he hath traded for upwards of 300,000 *l.* in that Time: That *Palmer* was much employed by him, and entrusted in the carrying on that Trade, and being thereby indebted to Mr. *Hales* in above 7000 *l.* gave him this Note in Part of Payment; which, as to his trading in that Manner, I think, is so far from justifying his Character, that it is of itself a Crime not much less than that with which he stands charged. A Man that is a Bankrupt, if he afterwards becomes able, ought in Honour and Conscience to pay his just Debts. It is not the first Time I have known that done: General *Wood* was a Draper, failed and paid very little; he went into the Army for Bread, and proved so gallant a Man, that he raised himself to be a General. He, like a good Christian, and a Man that did as he would be done by, paid his Debts to the full; which if the Prisoner had done, it would have given him a much better Character. Gentlemen, his Council have told you he carried on a vast Trade for twenty Years; but do they tell you that his Creditors were the better for it, or were ever paid one Penny? No, Gentlemen, they did not; and therefore I must leave it to you, whether this was not one continued Act of Fraud to cheat his Creditors; if so, it will affect the Prisoner quite another Way than his Council intended it. And though two or three Witnesses were called to give Evidence of the Dealings between Mr. *Hales* and Mr. *Palmer*, there was not one Thing proved: So that, Gentlemen, there seems very little for you to consider. You have a Number of concurrent Witnesses, that have given you a full and clear Account of this whole Transaction; that this was contrived, managed, and carried on by the Prisoner in a very extraordinary Manner, and which there was not, nor could be any Reason for, but to avoid being detected of the vile Crime he is now charged with; nor can there be any Doubt but the whole Produce of this Note was for his Benefit, the Account, Bonds, and Bills having been found in his Pocket.

I must leave it to you, Gentlemen: But never was stronger Evidence than here is, that Mr. *Hales* is the Author of this. So that I think, Gentlemen, if you believe the Evidence, the Charge, one Way or other, is fully brought to the Prisoner's Door. If you believe him guilty of the Forgery, you will then find him guilty generally of the whole Indictment: But if you are not satisfied of that, you will only find him guilty of the other Part of the Indictment; or, if you can upon this Evidence, you may acquit him.

The Jury being withdrawn, after a few Minutes Stay, brought the Prisoner in Guilty of forging the Note, and of publishing the same knowing it to be forged.

The Prisoner was a second Time indicted upon the Statute of 33 *H. 8. c. 1.* for obtaining Money by false Tokens. To which Indictment the Defendant pleaded Not Guilty; and the same Evidence, in Substance, being offered as upon the former Indictment, the Jury brought him in Guilty.



N U M B E R X V I.

The KING against JOHN GIBBON,

Upon an Information, in the Nature of a Quo Warranto, by the King's Coroner and Attorney, against the Defendant, to shew by what Authority he claims to be a Freeman of the Town and Port of New-Romney, at the Relation of William Jarvis. Tried at Kent Assizes, held at Maidstone, the 6th of August, 1734, before the Right Hon. the Lord Chief Justice Eyre.

Mr. Smith.

MAY it please your Lordship, and you Gentlemen of the Jury; This is an Information, in the Nature of a *Quo Warranto*, against the Defendant *Gibbon*, to shew by what Authority he claims to be a Freeman of the Town and Port of *New-Romney*, in this County: And the Information sets forth, That the Town and Port of *New-Romney* is an ancient Town and Port; and that the Mayor, Jurats, and Commonalty of the said Town and Port, are, and for ten Years last past, and long before, were, one Body Corporate and Politic, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney* in *Kent*; and that the Office of Freeman of the said Town and Port is a public Office, and an Office of great Trust and Preheminence, within the same Town and Port, concerning the good Rule and Government of the same, and the Administration of public Justice: And that the Defendant *Gibbon*, of the said Town and Port, Innholder, on the 25th of *March*, in the same Year of his present Majesty, and from thence continually, hitherto, at the Town and Port aforesaid, hath used and exercised, without any lawful Warrant, the said Office, and claims to be one of the Freemen of the same Town and Port, and to have all the Privileges, Liberties, and Franchises thereof: Of which Office the said Defendant *Gibbon*, for all the Time aforesaid, upon his Majesty hath usurped, in Contempt of his Majesty, and to the great Damage and Prejudice of his Royal Prerogative, and against his Crown and Dignity: Whereupon he prays Process, &c.

To this the Defendant has pleaded, That the said Town and Port is an ancient Town and Port, and the Office of Freeman thereof a public Office.

And says, That the late Queen *Elizabeth*, by her Letters Patent, dated at *Northaw*, the 4th of *August*, in the fifth Year of her Reign, did will and grant, that the *Barons and Inhabitants* of the said Town and Port (who before that Time had been incorporated, by the Name of Jurats and Commonalty) should for ever after be one Body

Incorporate, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*.

And that they, and their Successors, and all other the Barons and Inhabitants of the said Town and Port, their Heirs and Successors, should for ever after be, in all Matters whatever, as free as the Mayor, Jurats, and Commonalty of the Town and Port of *Sandwich*, or any other Town and Port of her said *Cinque Ports*.

And the Defendant by his Plea further sets forth a Custom in *Sandwich*, one of the said *Cinque Ports*, That if a Man marries the Daughter of any Freeman of that Town, such Daughter being born after the Swearing and Admission of her Father into the Office of Freeman, and being resident and inhabiting within the Town, has a Right to be sworn and admitted a Freeman of *Sandwich*.

And alledges the like Custom in *Dover*, another of the *Cinque Ports*.

And that the sole Right of swearing and admitting Freemen of *New-Romney* is, and at the Time of swearing and admitting of him the said *John Gibbon* was, in the Mayor and Jurats, or in the Mayor and any two Jurats.

That the Defendant *Gibbon*, on the 1st of *May*, 1727, married *Elizabeth Smith*, Daughter of *William Smith*, a Freeman of the said Town and Port; and thereby, and by virtue of the said Letters Patent, became intitled to be sworn and admitted a Freeman of the said Town and Port; and having such Right, and being so intitled, was, on the 25th of *March* last, sworn and admitted by *John Coates*, the then Mayor, and *Humphry Wightwick* and *Edward Batchelor*, then two of the Jurats of the said Town and Port, being there assembled in due Manner for that Purpose; by reason of which, he says, he is a Freeman.

The King replies, That *Gibbon*, by marrying the said *Elizabeth Smith*, did not become intitled to be sworn and admitted a Freeman.

To which there is a Demurrer, for the Opinion of the Court upon the Words of the Charter.

So that, Gentlemen, the first Issue you are to try is, Whether the sole Right of swearing and admitting

admitting Freemen of the Town and Port of *New-Romney* be in the Mayor and Jurats, or in the Mayor and any two Jurats: And if we prove to you, that the Commonalty have always had and exercis'd a concurrent Right with the Mayor and Jurats, you will please, Gentlemen, to find for the King.

Mr. *Marsh*. May it please your Lordship, and you Gentlemen of the Jury; I am Council for the Defendant *Gibbon*. You observe, by the Opening, that this is an Information, in the Nature of a *Quo Warranto*, against him, to shew by what Authority he claims to be a Freeman of *New-Romney*: And the only Points that come before you now to be tried, are, First, Whether the Right of swearing and admitting Freemen of this Corporation be in the Mayor and Jurats, or in the Mayor and two Jurats? And, Secondly, Whether the Defendant *Gibbon* has been duly sworn and admitted a Freeman? There being a Demurrer as to the Right, that is to be determined by the Judges of the Court of *King's-Bench*: And in order to make out this Right, we shall produce to you the Books of the Corporation, as well as living Witnesses; whereby it will appear, that the Right of swearing and admitting Freemen of this Corporation is in the Mayor and Jurats, or in the Mayor and two Jurats; and that every one of the present Members of the Corporation was sworn and admitted by the Mayor and Jurats, or the Mayor and two Jurats: And by an Entry in the same Books it will likewise appear, the Defendant was duly sworn and admitted a Freeman; and when this appears, Gentlemen, you will find a Verdict for the Defendant.

Mr. *Lacy*. Mr. *Wellard*, please to produce the Corporation-Books; (*which were produced accordingly.*)

Mr. Serj. *Darnell*. My Lord, we insist, the sole Right of admitting and swearing Freemen of this Corporation is not in the Mayor and Jurats, but in the Mayor, Jurats, and Commonalty.

C. J. *Eyre*. 'Tis Swearing and Admitting.

Mr. Serj. *Darnell*. *Gibbon* being called on by the Court of *King's-Bench*, to shew by what Authority he claimed to be a Freeman of the Town and Port of *New-Romney*, has demurred, and thereby waived the Foundation of his Claim.

C. J. *Eyre*. What! Is that waiving it? What concerned his Right comes not now in Issue, and was left undetermined by the Court. If he had a Right, the Question is, Whether he be duly admitted? And in order to that, he must be elected: And then the Question is, Whether he be admitted according to the Constitutions of the Town and Port of *New-Romney*?

Mr. Serj. *Darnell*. My Lord, a Right is here claimed by the Defendant; I have a Right by marrying a Freeman's Daughter; and if I have a Right, the Question is, as to the Method of coming to this Right. The Defendant says, the sole Right of swearing is in the Mayor and Jurats: But we say, though they have a Right, the whole Body must admit, though the Swearing be by the Mayor and Jurats.

C. J. *Eyre*. Swearing and Admitting is the same Thing, Brother *Darnell*. Where a Man is chosen Mayor of a Corporation, the Swearing and Admitting him is the same Thing. All Persons are admitted by Swearing, and Taking the Oath is the Admission. A Man admitted is

to be sworn; and there is no Corporation in the Kingdom, but where Swearing and Admitting is the same Thing; and yet you would make them two distinct Acts.

Mr. *Lacy*. We shall prove to your Lordship and the Jury, that the sole Right of Swearing and Admitting is in the Mayor and Jurats: And the first Instance we shall shew is in 1679, *Peter Martin* was admitted and sworn by the Mayor and Jurats.—Read the Entry of the 8th of *March*, 1679.

(*Witness sworn to prove an Assembly-Book.*)

C. J. *Eyre*. I think it proper to be read as a Court-Book.

Associate reads—

“ 8 *March*, 1679. *Romney*. At a Common Assembly of the Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the Common Place held there, 32^o *Car.* 2^d. Present, *John Hunt*, Mayor; *Thomas Durrant*, *John Mascall*, *John Cockman*, *William Green*, and Mr. *Isaac Rottin*, Freemen of the said Town; *Peter Martin*, an Inhabitant of our Member of *Orleston*, in *Old-Romney*, was elected a Freeman; and this Assembly doth appoint him to be sworn a Freeman by the Mayor and any two Jurats of this Corporation.”

C. J. *Eyre*. *Peter Martin* elected and sworn 32 *Car.* 2, 1679.

Mr. *Marsh*. Now read his Admission and Swearing.

Associate reads—

“ At the Court holden before *John Hunt*, the Mayor, and Jurats of same Port, 15 *March*, 1679, *Peter Martin* testified his free Consent for observing the Orders, Charters, and Ordinances, &c. of the *Cinque Ports*, and of this Town in particular; and is hereby declared and admitted a Freeman of this Corporation; and took the Oaths appointed.”

Mr. *Lacy*. Read the Entry, fol. 738, of *Stephen Brett's* Admission.

Associate reads—

“ *New-Romney*. Whereas the Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney* aforesaid, at their Common Assembly, holden in the Common Place of the said Town and Port, did elect and chuse Mr. *Stephen Brett*, being free-born; *Thomas Short*, born at *Smeeth* in the County of *Kent*; *Robert Easton*, born at *Battle* in the County of *Suffex*; and *John Coates*, *Grazier*; all free-born, to be Freemen of the said Town and Port, the 15th Day of *May* last: Now be it remembered, that at a Court of Record holden in the *Guild-hall* of the same Town and Port, this 3d Day of *December*, Anno *Domini* 1694, the said *Stephen Brett*, *Thomas Short*, *Robert Easton*, and *John Coates*, testifying their free Consents for the observing and maintaining the Charters, Franchises, Decrees, Privileges, Customs, and Usages of the *Cinque Ports*, two ancient Towns, and their Members, and particularly of this Town and Port of *New-Romney*, have severally taken the Oaths of Freemen of the same Town and Port, according to the Customal there, and are admitted into the Franchises of the Town and Port aforesaid; and did also, at the same

“ Time,

“ Time, here take the several Oaths appointed
 “ by an Act of Parliament, intituled, *An Act for*
 “ *abrogating the Oaths of Allegiance and Supremacy,*
 “ *and appointing other Oaths; &c.*”

Mr. *Marsh.* Read the Entry, fol. 770.

“ *New-Romney.* At a Court of Record, holden
 “ in the *Guildhall* of the same Town and Port,
 “ the 16th of *May*, 1698. Whereas the Mayor,
 “ Jurats, and Commonalty, at a Common Assem-
 “ bly, holden in the Common Place, on *Thursday*
 “ the 17th of *March*, 1697, did elect *Robert*
 “ *Mascall*, free-born, *Thomas Lancaster*, and
 “ *Thomas Edwards*, free-born; having testified
 “ their free Consents to observe the ancient
 “ Orders, Charters, Ordinances, &c. were then
 “ admitted into the Freedom of the said Town:
 “ Be it remembered, that the said *Robert Mascall*,
 “ *Thomas Lancaster*, and *Thomas Edwards*, having
 “ testified their free Consent to observe the
 “ Orders, &c. aforesaid, have taken the Oath,
 “ according to the Customal, and are admitted
 “ into the Franchises of the Town and Port
 “ aforesaid, and took the several Oaths ap-
 “ pointed.”

C. J. *Eyre.* A Court of Record, and this Court held before the Mayor and Jurats.

Mr. *Marsh.* My Lord, there is not a single Member of the Corporation but is sworn in this Manner.

Mr. Serj. *Darnell.* We admit, my Lord, that no Man can be sworn but by the Mayor and Jurats; but none but Freemen can consent there shall be Freemen among them.

C. J. *Eyre.* If the Precedents are admitted by the other Side, there is no Occasion for proving them.

Mr. *Marsh.* My Lord, if they admit them according to the last Entry, there is no Occasion; but if not, it is necessary to call a living Witness.

C. J. *Eyre.* It is all one to me what you do. It is admitted on all Sides, there are many of these Entries since 1679.

Mr. *Marsh.* Read the Admission of *Isaac Rutton* and others, 7 February, 1708.

Associate reads —

“ *New-Romney.* At a Court of Record holden
 “ in the *Guildhall* of the same Town and Port,
 “ the 7th of *February*, 1708. Whereas the
 “ Mayor and Jurats, at a Common Assembly,
 “ elected the several Persons following: Be it
 “ remembered, the Persons under-written, testi-
 “ fying their Consents to observe the ancient
 “ Orders, &c. have taken the Oaths of Freemen,
 “ and are admitted into the Freedoms.” —

C. J. *Eyre.* Who are the People admitted?

Associate reads —

“ *Isaac Rutton*, *John Bassett*, *John Minnis*,
 “ *John Tooke.*”

Mr. *Lacy.* Now turn to fol. 100. Read the Admission of *Nicholas Durrant* and others.

Associate reads —

“ 13 *June*, 1715. Whereas the Mayor and
 “ Jurats did elect *Nicholas Durrant*, *Isaac Warren*,
 “ *Daniel Warquin*, and *John Cosby*, to be Free-
 “ men: Be it remembered, that they, testifying
 “ their Consent to observe the ancient Orders,
 “ &c. are admitted into the Freedoms of this

“ Town and Port, and took the several Oaths
 “ appointed, and subscribed the Declaration
 “ following —

Mr. *Knowler.* Read the Admission of *John Widcomb*, and *Richard Howard*, fol. 116.

Associate reads —

“ 26 *August*, 1717. Whereas the Mayor and
 “ Jurats, at the last Common Assembly, did
 “ elect the several Persons, whose Names are
 “ hereunto subscribed, to be Freemen: Be it
 “ remembered, this 26th of *August*, 1717; the
 “ Persons under-written, testifying their Consent
 “ to observe the ancient Orders, &c. and taking
 “ the Oaths, are admitted into the Freedoms of
 “ this Town and Port.

“ *John Widcomb*,
 “ *Richard Howard.*”

Mr. *Marsh.* Turn to fol. 125. Read the Admission of *Thomas Wilson*.

Associate reads —

“ 18 *November*, 1727. Whereas the Mayor,
 “ Jurats, and Commonalty elected *Thomas Wilson*,
 “ within this Town, to be a Freeman: Be it
 “ remembered, that he, testifying his Consent
 “ to observe the ancient Orders, &c. and taking
 “ the Oath, is admitted into the Freedoms of
 “ this Town and Port.

“ Born at *Lydd* in *Kent.*”

Mr. *Lacy.* Now read the Admission of *William Gray*, the 7th of *June*, 1731.

“ 7 *June*, 1731. Whereas the Mayor and
 “ Jurats, at the last Election of Mayor, did
 “ admit *William Gray* a Freeman: Be it re-
 “ membered, that he, testifying his Consent to
 “ observe the ancient Orders, &c. has taken the
 “ Oath, and is admitted into the Freedoms of
 “ this Town and Port.”

Mr. *Marsh.* My Lord, we submit our Case here.

Mr. Serj. *Darnell.* The Word *admitted* is used both at the Common Assembly —

C. J. *Eyre.* But only, there, in that Instance.

Mr. Serj. *Darnell.* May it please your Lordship, and you Gentlemen of the Jury; I am for the King against *Gibbon*: And this Issue is only a Part of a Question in relation to the Franchises and Privileges of the Town and Port of *New-Romney*, where of late there have been many illicit Practices in order to overthrow the Constitutions of the Town; and thereupon Application was made to the Court of *King's-Bench*, in two several Causes, against *Gibbon* and *Darby*, who were to shew by what Authority they claimed their Freedoms; and they insisted they had married the Daughters of Freemen, and therefore had a Right to their Freedoms; and also against one *Wightwick*, who was to shew by what Authority he claimed to be Mayor of *New-Romney*.

Gentlemen, the Election of the Mayor depending on the Right of *Gibbon* and *Darby*, the Court, by Rule, directed the Information against *Gibbon* first to be tried; and if he had no Right, *Darby* was to take the Fate of that Trial, and to disclaim.

Gentlemen, as the Election turned upon the Right of *Gibbon* and *Darby*, if this Issue be found for them, then *Wightwick* is the Mayor. But, instead

instead of coming to the Question, Whether a Man has a Right to a Freedom by marrying a Freeman's Daughter? they have demurred: And now the Question is, Who is to admit the Freemen? And I humbly apprehend, my Lord, where a Number of Freemen have the Freedom of a Town, no body can be let in without their Consent; for, if the Mayor and Jurats are to admit solely, they may set up as many Freemen as they please.

My Lord, and Gentlemen of the Jury, the last Instances they have produced out of the Assembly-Books, are, I humbly apprehend, very strong in our Favour; for it appears from those Instances, that when the Body have agreed upon the Choice of a Freeman, the Mayor and Jurats swear him; and I take the Swearing to be a thing of course; but the Admission is in the whole Body, as appears by every Instance they have read. A Freeman is elected by the Mayor, Jurats, and Commonalty, and then he is ordered to be sworn in by the Mayor and Jurats: Sure there can be no Doubt in the Question. Swearing and Admitting I take to be the same thing; they are synonymous: Without Swearing no Man can be admitted; but the Swearing does not admit. Suppose twenty Freemen sworn in by the Mayor and Jurats, the Franchise of the Town is worth nothing—

C. J. Eyre. You take Admitting to be the Election; it is not so: But Admitting to the Exercise of the Right. Admitting is not conferring the Right. The Defendant has a Right by his Marriage: Admitting must be construed the receiving him into the Office, and admitting him to the Exercise of that Right, and therefore is synonymous. You go upon a wrong Issue: Who were the Persons intitled to administer the Oath of Office?

Mr. Serj. Darnell. Admission gives the Right.

C. J. Eyre. I think it would be proper to admit the Issue to be, Who ought to administer the Oath?—I don't understand the Customs of the *Cinque Ports*.

Mr. Serj. Darnell. If sworn, whether duly elected? or it signifies nothing.

C. J. Eyre. Suppose *Gibbon* to have a Right: An Oath administered to a Man that has no Right is of no avail: A Man must have a Right to an Office, and must be admitted into that Office by Swearing; and the Question now is, Who is to administer that Oath?

Mr. Serj. Darnell. We are to support the Right of the whole Body to elect and admit; or the Court of *King's-Bench* will think this Matter not tried.

C. J. Eyre. The Court of *King's-Bench* would think me a trifling Fellow to try the Right of the Election.

Mr. Serj. Darnell. The Rule is, that *Gibbon's* Issue should be tried first, and *Darby* abide the Fate of that; to which they have demurred.

Mr. Serj. Baynes. May it please your Lordship, and you Gentlemen of the Jury; I am also of Council in this Case for the King. The Sense of the Court of *King's-Bench* was, in relation to a Right set up by *Gibbon* and *Darby*; and the Question was, Whether a Person marrying a Freeman's Daughter was intitled to his Freedom? And the Court was of Opinion, That ought principally to be tried; and to make an End of the whole, if *Gibbon* and *Darby* had a

Right, *Wightwick* was to be Mayor; if not, then *Elles* was to be Mayor. But they have evaded this Question; and when an Issue was tendered to try the Right, they demurred; and thereby the sole Reason of granting these Informations is entirely eluded: And now the Question is, Whether the sole Right of admitting Freemen belongs to the Corporation, or to the Mayor and Jurats, or to the Mayor and two Jurats? But, Gentlemen, we contend that the Right of Admission is in the Court of Assembly.

The Gentlemen of the other Side have produced some Instances, to shew the Right to be in the Mayor and Jurats, and that they have accordingly taken upon them to swear in some Persons, and Swearing is a Completion of the Person's Right to be admitted.

My Lord, the Admission of Freemen is to be made on *Lady-Day*: After the Election the Bell tolls; and Persons having a Right come before the General Assembly, and say, they claim to be admitted, for Servitude, or as free-born, &c. And they judge of these Facts, and thereupon admit; though the Freedom is not completed, till the Person be sworn.

Gentlemen, the Evidences the other Side have produced go no higher than 1679: whereas we have Instances, long before that Time, of Admissions by both; and a new Institution, lately practised, we humbly hope, shall not set aside an ancient Custom. Strange! that this Power of admitting should be in a Part of the Body! A Mayor and two Jurats cannot admit, contrary to the General Assembly; when they have approved a Claim, the Right is to be completed by Swearing before the Mayor and Jurats. They are two distinct Rights; and we shall produce to your Lordship and the Jury unquestionable Instances, that this is the constant Use, for the Persons claiming to be Freemen to make out their Right to the Assembly, and afterwards to be sworn by the Mayor and Jurats. A High Constable is named by the Justices in Sessions, and then is sent by them to a Justice of Peace to be sworn; as, in the present Case, a Freeman is elected by the Common Assembly, and then is sent to the Mayor and Jurats to be sworn: And therefore, Gentlemen, we hope you will find a Verdict for the King.

Mr. Wynne. My Lord, the single Question before the Court of *King's-Bench* was, Whether *Gibbon* and *Darby* had a Right to Freedoms by marrying Freemen's Daughters? By the Rules of Practice, it is impossible for any Part of this Question to come before this Court; the subsequent Proceedings in the Crown-Office must shew this; and nothing could be done by the Court of *King's-Bench*, the Pleadings being brought into the Crown-Office after the Term.

My Lord, it is endeavoured by the Gentlemen of the other Side to take away the Distinction between the Admission and Swearing; and it is true, they are by distinct Bodies.

Gentlemen, the Claim is first to be made to the General Assembly on *Lady-Day*, on tolling a Bell: When that has been considered, and allowed, and admitted by the general Body, then, by Delegacy, it has been sent to the Mayor and Jurats to swear the Person, and is merely a ministerial Act; and what they have done has been in Ease of themselves, in Delegacy to them. It will appear from the ancient Entries, (their

highest Entry being 1679) and 'tis at an Assembly of Mayor and Jurats, *Peter Martin* was ordered to be sworn by the Mayor and two Jurats; but not to part with any Right they had, as will fully appear, when our Evidences are compared in Point of Time with the others.

You will please therefore, Gentlemen, to consider, that the Admission is the Act of the General Assembly, but the Swearing the Act of the Mayor and Jurats.

Mr. Serj. *Darnell*. My Lord, we humbly insist, the sole Right is not in the Mayor and Jurats.

C. J. *Eyre*. I am of Opinion, this is an Admission.

Mr. Serj. *Darnell*. In all the Instances, till 1679, they were admitted at the General Assembly; and in 1699 they have read one Instance. We insist, therefore, that our Evidence is equally strong.

Mr. *Knowler*. My Lord, we have a Rule to produce all the Corporation-Books at the Trial, and Mr. *Wellard* refuses us the Books.

Mr. *Wellard*. My Lord, we have brought the Books hither at a great Expence. Mr. *Wightwick* must be paid for them.

Mr. *Knowler*. Mr. *Wellard* has had four Guineas on that Account.

Mr. *Wellard*. The Mayor has been at more than four Guineas Expences already, and there are several other Charges to be paid.

C. J. *Eyre*. You should agree to pay what the Master of the Crown-Office shall think reasonable more than four Guineas, and enter into a Rule for that Purpose. (*Which was done accordingly.*)

Mr. *Lacy*. My Lord, we submit, whether this is proper Evidence on the Issue? The Plea is, that the sole Right of Swearing and Admitting is, and at the Time of Swearing and Admitting *Gibbon* was, in the Mayor and Jurats, or in the Mayor and two Jurats, of the Town and Port of *New-Romney*; and the Issue is taken upon that, *Is, and at the Time was —*

C. J. *Eyre*. I think it proper Evidence, to shew what has been the Usage by the Books. You must prove an ancient Right; for *Gibbon's* Right must be determined by the ancient Usage.

(*Here a great Dispute arose about the Corporation-Books between Mr. Wellard and Mr. Knowler, &c. Mr. Wellard being in Fear he should lose them.*)

C. J. *Eyre*. Give them all in, and call for them one by one. You have them, and make no Use of them.

Mr. Serj. *Darnell*. *Fol. —* Read the Election of Mayor and Jurats.

(*Associate begins to read, but could not go on; when the Chief Justice took the Book out of his Hands.*)

C. J. *Eyre*. Give me the Book; I can read it.

(*Attempts to read, but does it very indistinctly and with great Difficulty; and then throws down the Book, not being able to go on.*)

Mr. *Wellard* reads —

“ The Election of Mayor and Jurats of the Town and Port of *New-Romney*, 1571. According to Patent, appeared *John Stevens* and others, in Number fourteen; by their Consent, *Mercer* and others chosen Jurats.”

C. J. *Eyre*. Admission and Election are synonymous. Let it be shewn, that any Person was sworn at this Assembly from an Entry.

Mr. *Wynne*. Read the Admission and Swearing of *John Amersham*.

Mr. *Wellard* reads —

“ 25 March, 1571. *John Amersham*, natus apud *admissus et juratus ad franchis*’.

C. J. *Eyre*. Shew that he was elected before: This is very material Evidence.

Mr. Serj. *Darnell*. Read the Entry of *Thomas Bastard's* Admission in 1671.

Mr. *Wellard* reads —

“ Election of Mayor and Jurats of the Town and Port of *New-Romney*, 1671. According to Patent, appeared *John Chessman*, and *Laurance Fanc*, *Thomas Wall*, and others; *Thomas Bastard*, natus apud *Talden*, *admissus ad franchis*’, et sol’ feod’.

Mr. Serj. *Baynes*. Read the Admission of *William Southland*, the 9th August, 33 *Elizæ*.

Mr. *Wellard* reads —

“ *Gulielmus Southland*, natus apud 9 August, 33 *Elizæ*, *admissus per Major*’, *Jur*’, et Com’ *ad franchis*’, et sol’ inde feod’, et juratus.”

Mr. *Wynne*. Read the Admission and Swearing of *Thomas Master*, and five others, *Lady-Day*, 1579.

Mr. *Wellard* reads —

“ *Lady-Day*, 1579. Appeared *William Hyett*, *John Chessman*, *Richard Hoppen*, and others, Commoners and Freemen; were elected and chosen, *Thomas Master*, *admissus et jurus et solus feodus*’, *Habbakuk Thomas*, *admissus et jurus*’, *Gul’ Taylor*, *admissus ad franchis*’, et jurus, et solus feodus’, *James Gardner*, *Thomas Wymond*, } *admissus et jurus et solus feodus*’, *Johannes Southern*,

Now turn to the Admission and Swearing of *John Smith*, and others.

“ *New-Romney*. Election of Mayor and Jurats, 25th March, 22d James 1st, 1624. Appeared *Bedell*, Mayor; *Lancaster*, and others, Commoners and Freemen; *John Smith*, *admissus ad franchis*’ et sol’ pro jurus’, *Geo. Labden*, *admissus ad franchis*’, et sol’ 3s. 4d. et jurus’, *Daniel Duke*, *admissus et jurus*’.

Mr. Serj. *Darnell*. Read the Entry of the 25th March, 1627.

“ Election 25 March, 1627. Appeared *Fell*, Mayor; *Lancaster*, and others; *John Plomer*, free-born, *admissus in franchis*’.

N. B. It does not appear he was sworn.

Mr. Serj. *Baynes*. Read on the Entries in 1659, 1660, and 1666.

“ 25 March, 1659. *John Wyvill* admitted and sworn.

“ 15 October, 1660. Four Persons admitted and sworn.

“ 29 May,

“ 29 May, 18 Car. 2d, 1666. Mayor and Jurats, at a Common Place;
 “ *Richard Strode* admitted into the Franchises, “ subscribed the Declaration, and took the “ Oath of a Freeman, according to the “ Customal.”

Mr. *Wynne*. Turn to the Admission and Swearing of *John Gray*, the 2d of *October*, 1699.

Mr. *Wellard* reads —

“ 2d *October*, 11 *Wil.* 3, 1699. Mayor and Jurats, at a Common Place, Commoners and Freemen;
 “ *John Gray*, being free-born, was admitted “ and sworn according to the Customal.”

Mr. *Knowler*. Read on till you come to Mr. *Furnese* and Mr. *Papillon*'s Admission and Swearing.

“ 4 *July*, 1683. Mayor, Jurats, and Commoners, at a Common Place;

“ *John Walker*, free-born, *Thomas Edwards*, “ *Richard Kent*, and *William Pidd*, were “ sworn according to the Customal, and “ admitted according to the Election, at a “ Common Assembly:

“ 4 *November*, 3 *Q. Anne*, 1704. Mayor, Jurats, and Commoners;

“ *Walter Whitfield* admitted and sworn.

“ 10 *October*, 1710: *Robert Coates*, Mayor, Jurats, and Commoners;

“ *Robert Furnese* admitted and sworn according “ to the Customal.

“ 20 *April*, 1713. Mayor, Jurats, and Commoners;

“ *Edward Watson* admitted and sworn.

“ 23 *March*, 1721. Mayor, Jurats, and Commoners;

“ *David Papillon* admitted and sworn according “ ing to the Customal.”

Mr. *Serj. Darnell*. We submit it to your Lordship, whether here is any Colour to say, that here is a Right in the Mayor and Jurats solely.

Mr. *Knowler*. My Lord, on the 28th of *November*, 1727, *John Mascall* being before chosen, the Court made an Order, that he should not be sworn.

C. J. *Eyre*. A very strong Evidence, that the Right is in the Mayor, Jurats, and Commonalty. They have shewn only from 1679: I desire to know, if they can shew any thing before the Restoration.

Mr. *Wellard* reads —

“ 18 *March*, 1668. The Corporation considering the small Number of Freemen, pursuant to a Decree of Brotherhood and Ghuestling, have chosen *John Shoefmith* and others to be Freemen, and ordered them to be summoned to take the Oath according to the Customal.”

Fol. 614. “ They were afterwards declared “ free, and sworn before the Mayor and Jurats.”

C. J. *Eyre*. The Mayor and Jurats have not the sole Power of Swearing and Admitting. Reading ten or twenty Instances will not prove the sole Right of Swearing to be in them.

Mr. *Wellard* reads —

“ 34 *Car.* 2, 1683. Mayor and Jurats; “ *Mascall* Mayor, no Commoner present; “ A Freeman sworn.”

C. J. *Eyre*. One or two Instances will not alter the Case.

Mr. *Marsb.* My Lord; the Issue now before your Lordship and the Jury is, Whether the sole Right of Swearing and Admitting Freemen be in the Mayor and Jurats, or not? And the Gentlemen of the other Side have produced Evidences to shew; that, notwithstanding what we contend for may in some Instances be true, the contrary Custom has likewise been practised, and will destroy our Right. They have begun early with Evidences, (I think as far back as 1571) and carried it down to the Restoration: And the Stile of that Assembly does appear to be; “ At the Election of the Mayor and Jurats,” though it was a general Assembly when the Persons were chosen Freemen. It expresses, that they were admitted and sworn: Admission may signify Election: If they are elected, the Entry goes on and says, they were sworn. But I submit it to your Lordship, Whether, though they, the Commons, joined in Electing, yet when the Swearing comes to be performed, that being a distinct Act, is not solely in the Mayor and Jurats?

My Lord; it is alledged by the Gentlemen of the other Side, that though the Name of the Assembly is often altered, yet the Persons were there who made up the whole Corporation. But the modern Instances given; and some ancient ones, say, the Election was according to the Customal: So that all from 1679 say so. These are ancient Entries; and therefore I submit it to your Lordship, when from these Entries it does appear plainly that they were admitted and sworn in general, whether it be necessary to make that more plain? and also, whether these modern Instances in 1668 and 1683 do not explain what was the Usage before? For, if the Right was in the Freemen with the Mayor and Jurats, they would never part with it; and yet we find, they did order this Swearing to be by the Mayor and Jurats; and they would not have parted with their Right, if they had not been conscious there was no Right in them. As to the Evidence given that refers to the Customal, when Sir *Robert Furnese*, Mr. *Papillon*, and Mr. *Wellard*, were admitted; if the Reference is to the Customal, that Customal we have, and it takes Notice particularly of their being to be sworn before the Mayor and Jurats, and that the Commoners should not be excluded before they had the setting of the Price. Your Lordship was pleased to say, you did not understand the Customs of the *Cinque Ports*; where we find many ancient Entries, that the Freemen should be sworn according to the Decrees of Brotherhood and Ghuestling; which is an Assembly or Parliament of the *Cinque Ports*, when they meet and make Orders and Rules; they extend to other Ports in point of Example, Influence, and Power, if not in point of Authority. We hope, my Lord, to produce and give in Evidence these Acts of Assembly; and if these are so, we doubt not but the Jury will find for us.

Mr.

Mr. Wellard reads —

The Old Customal.

“ *New-Romney, Henry 7.*

“ *Item*, it is used, that, if a Stranger of good
 “ Name and Conversation be dwelling within
 “ the Town, and desireth to be a Freeman of
 “ the Town, the Jurats may grant the Fran-
 “ chises, paying to the Commons as they may
 “ accord; and when they be accorded, he shall
 “ be charged in a Book, for to maintain the
 “ Franchises with his Body and Cattel, and for
 “ to be true in all Points, and for to keep all
 “ the Commons Counsel, and to be obedient
 “ as another Freeman to the Commons, and to
 “ have a proper Place, of the Price of 40s.
 “ within the Town, within the next Year ensuing,
 “ by which he may be distreyned and justified,
 “ upon Pain of Forfeiture of his Franchise:
 “ And when he is thus sworn, the Common
 “ Clerk shall enter his Name in Paper of the
 “ Common, for to witness the said Grant, and
 “ all his Children, freely gotten after the same
 “ Day of Grant, may claim and enjoy the Fran-
 “ chise by the same Grant: But, if he have any
 “ Children before the Day of Grant, or else
 “ that he get any Child otherwise than in Sponsal,
 “ he shall not have the same Franchise by the
 “ same Grant, but if he be of new Grant, and
 “ it is to wit, that the Jurats may not grant the
 “ Franchise to no Stranger-Man, if he be not
 “ resiant within the Franchise.

Mr. Lacy. My Lord, the Jurats shall grant the Franchises, and the Commons are to set the Price.

Mr. Smith. Grant the Franchises must be to put them in Possession, which cannot be till they are sworn; and the Commons are to set the Price.

Mr. Lacy. All the modern Entries mention, according to the Customal.

C. J. Eyre. It is taking the Oath according to the Customal. Is there the Oath of Office of a Freeman, according to the Customal? If there is, let it be read.

Associate reads the Freeman's Oath—

Mr. Marsh. Now read an Act of Ghueftling.

C. J. Eyre. We'll have no Brotherhood and Ghueftling: I know nothing of it. Let Mr. Town-Clerk explain it.

Mr. Wellard reads —

“ At a Brotherhood held at *New-Romney*, the
 “ 8th of *July*, 1603.

“ Whereas there are, in many of the Towns
 “ and Members of the *Cinque Ports*, Men of
 “ Wealth, stayed, and of good Government,
 “ dwelling within the same, who enjoy much
 “ Benefit of their so dwelling, *viz.* free from
 “ Payment of Fifteenths and Tenths, and from
 “ being returned to appear at Affizes or Sessions
 “ in the County where they inhabit; and receive
 “ many other Privileges and Benefits, by reason
 “ of their so inhabiting within the said *Cinque*
 “ *Ports*, ancient Towns, or Members, which
 “ otherwise they could not enjoy; and yet refuse
 “ to be Freemen of the same Town and Port
 “ where they dwell, and enjoy the said Benefit

“ and Privileges; by reason whereof, divers of
 “ the said Towns, Ports, and Members, are
 “ unfurnished and unprovided of sufficient and
 “ able Men to execute and discharge such Offices
 “ and Services, as they are, by the Charters and
 “ Customs of the said *Cinque Ports*, Towns, and
 “ Members, bound to do: It is therefore at this
 “ Assembly fully consented and decreed, That,
 “ if the Mayor, Jurats, and Commonalty, or
 “ the more Part of them, in any of the said
 “ *Cinque Ports*, Towns, and their Members, (or
 “ Bailiff, Jurats, and Commonalty, where no
 “ Mayor is, or the most Part of them) shall
 “ think any Inhabitant or Inhabitants dwelling
 “ amongst them, and in that Port, Town or
 “ Member, which such Mayor and Jurats, or
 “ Bailiff and Jurats, do govern, and shall by the
 “ more Voice of Mayor, Jurats, and Commons,
 “ (or Bailiff, Jurats, and Commons, where no
 “ Mayor is) chuse such their Inhabitant or In-
 “ habitants to be Freeman or Freemen of the
 “ said Town where they so govern, and shall
 “ call the said Inhabitant and Inhabitants, so to
 “ be chosen a Freeman or Freemen of the said
 “ Town, to their Court-Hall, and there, in full
 “ and open Court, acquaint him and them, so
 “ chosen to be Freeman or Freemen, of their
 “ said Choice and Election, and do then and
 “ there require such Person or Persons, so chosen
 “ for a Freeman or Freemen, to take the usual
 “ Oath of a Freeman in that Place, and he or
 “ they, so chosen, shall not then and there,
 “ without further Delay, take the said Oath, and
 “ become a Freeman of the same Place, shall
 “ forfeit, to the Use of the said Town and Cor-
 “ poration where such Default or Neglect shall
 “ happen, a Fine of 10*l.* of lawful Money of
 “ *England*. And so often as the Mayor and
 “ Jurats, (or Bailiff and Jurats, where no Mayor
 “ is) after such Election or Choice of a Freeman
 “ or Freemen, as aforesaid, shall in full Court,
 “ there to be holden, proffer the Oath of a
 “ Freeman there used to such Person or Persons
 “ so chosen as aforesaid, and he or they, to whom
 “ such Oath shall be proffered, do not take the
 “ same Oath, and become a Freeman as other
 “ Freemen of the said Place, shall forfeit for a
 “ Fine, to the Use of the said Corporation where
 “ such Neglect shall be, for every such Neglect,
 “ and not taking of his or their Oath, 10*l.* of
 “ lawful Money of *England*; to be levied upon
 “ such Person and Persons, so neglecting to take
 “ their Oaths, as Fines in the said Place are used
 “ to be levied.”

Mr. Lacy. My Lord, we humbly submit, we are intituled to the sole Right. Instances have been produced, to shew that the Commons have a Right with the Mayor and Jurats; for all the Entries they have produced refer to the Book of Brotherhood and Ghueftling, and all the Choices in that Book are by the Mayor and Jurats, who are to offer the Oath of a Freeman. Read the Act of Ghueftling of the 21st of *July*, 1668.

Mr. Wellard reads —

“ Brotherhood, or Ghueftling, held at the
 “ said Town and Port of *New-Romney*,
 “ 21st *July*, 1668.

“ Whereas by a Decree of Brotherhood, made
 “ in the Year of our Lord 1603, it is consented
 “ to and decreed, That if the Mayor, Jurats,
 “ and

“ and Commonalty, (or Bailiff, Jurats, and
 “ Commonalty, where no Mayor is) shall, by
 “ major Voice of such Mayor, Jurats, and
 “ Commons, (or Bailiff, Jurats, and Commons,
 “ where no Mayor is) elect and chuse any In-
 “ habitant or Inhabitants, in their respective
 “ Corporations, to be Freeman or Freemen of
 “ the said Town, and shall call the said In-
 “ habitant or Inhabitants, so chosen a Freeman
 “ or Freemen of the said Town, to their Court-
 “ Hall, and there, in full and open Court,
 “ acquaint him and them of such Election, and
 “ shall then and there require such Person or
 “ Persons, so chosen, to take the usual Oath of
 “ a Freeman in that Place, and he or they shall
 “ not then and there, without further Delay,
 “ take the said Oath, and become a Freeman
 “ of that Place, shall forfeit, to the Use of
 “ the Corporation where such Default or Neglect
 “ shall happen, for a Fine, the Sum of 10*l.*
 “ And that, so often as any Inhabitant or In-
 “ habitants, so elected Freeman or Freemen in
 “ any of the said Towns, Ports, or Members,
 “ shall refuse or neglect, (the said Oath being
 “ tendered to him or them in Manner aforesaid)
 “ every such Inhabitant shall forfeit the like Sum
 “ of 10*l.* to be levied as in the said Decree is
 “ directed, and as by the said Decree may more
 “ fully appear. Now, for that this Assembly
 “ doth find that the said Decree is not so effectual
 “ to compel such Inhabitants to be made free in
 “ their respective Corporations where they do
 “ inhabit, but that several Persons do evade the
 “ same, and the Penalty therein contained, by
 “ refusing to appear in full and open Court,
 “ where the said Oath is to be required and ten-
 “ dered, as aforesaid, and by divers other subtle
 “ Devices; Wherefore, for preventing such
 “ Evasions and Devices for Time to come,
 “ and for the better upholding of several Cor-
 “ porations of the said Ports, Towns, and
 “ Members, which otherwise may cease and be
 “ annihilated, it is now by this Assembly fully
 “ decreed and ordered, That the said Penalty of
 “ Ten Pounds, mentioned in the said recited
 “ Decree, is, and shall be, by virtue hereof,
 “ imposed and levied upon every Inhabitant of
 “ any of the said Ports, Towns, or Members,
 “ who shall be elected a Freeman of such
 “ respective Corporation wherein he is Inha-
 “ bitant, according to the said ancient Decree;
 “ in case such Inhabitant or Inhabitants, so
 “ elected, shall refuse or neglect to be and appear
 “ at the next Court of Record to be holden in
 “ such Corporation wherein he dwelleth, upon
 “ verbal or other Summons from the Mayor or
 “ Bailiff of such Corporation, to be made by
 “ himself, his Serjeant, or other Officer; or,
 “ upon Appearance at such Court, shall refuse
 “ or neglect to take the Oath of a Freeman in
 “ Manner aforesaid: And that, so often as such
 “ Inhabitant or Inhabitants, so elected free, shall
 “ refuse or neglect to appear at any Court to be
 “ holden in such Town, Port, or Member, where
 “ he or they inhabit, upon like Summons as is
 “ last above-mentioned, or appearing, shall not
 “ take the Oath as aforesaid, they and every of
 “ them shall forfeit, for every such Offence
 “ contrary to the Intent of this Decree, the like
 “ Sum of Ten Pounds; which several Fines
 “ shall be levied by Warrant under the Seal of
 “ Office of Mayoralty or Balliage of each Town
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“ or Member where the same shall be forfeited,
 “ or in such other Manner as Fines in that Place
 “ are usually levied.”

C. J. *Eyre*. If the Mayor and Jurats call the Man, and he refuse, they may set a Fine upon him.

Mr. *Lacy*. My Lord, we humbly insist, the sole Right of Swearing and Admitting is in the Mayor and Jurats, or in the Mayor and two Jurats. Their Evidence is of admitting at a Common Assembly; and the Issue is not confined to the Mayor and Jurats only. The first Evidence we began with, was an Order of the Mayor, Jurats, and Commonalty, for the Mayor and Jurats to swear in a Freeman, and they did swear him in accordingly. The other Evidences given are of Instances, where the Mayor, Jurats, and Commonalty, all swore in. And we submit it to your Lordship, whether the Evidence of swearing in at the Common Assembly is not a concurrent Proof, that the sole Right is in the Mayor and Jurats; because the Mayor and Jurats must be Part of the Common Assembly: And if so, though the Commoners are not gone, yet the Swearing shall be construed to be before the Mayor and Jurats; *Reddendo singulo singulis*. Your Lordship sits Judge of *Nisi prius*, and takes a Fine; it is not as Judge of *Nisi prius*—

C. J. *Eyre*. The Common Assembly, as Mayor, Jurats, and Commonalty, cannot hold a Court of Record. An Assembly can act only, as that Assembly. If a select Number take upon them to do an Act of the Corporation, that will be a void Act.

Mr. *Marsh*. My Lord, the second Issue is, Whether *Gibbon* was sworn and admitted before the Mayor and two Jurats?

C. J. *Eyre*. *Gibbon's* Plea is, That he was intituled, as having married the Daughter of a Freeman; that the Mayor and Jurats had a Right to swear; and that he was sworn in accordingly.

Mr. Serj. *Darnell*. The Defendant was not sworn and admitted as by the Plea is alledged. Read the Plea.

(Associate reads *Gibbon's Plea*, as before opened.)

C. J. *Eyre*. The Question is, Whether this be the due Manner and Form alledged in the Plea?

Mr. *Lacy*. We have a Right, but not a *sole Right*.

Mr. Serj. *Darnell*. You have pleaded, you have a Right by marrying a Freeman's Daughter; and that the Mayor and Jurats have the *sole Right* of swearing and admitting you to that Right; and that you were sworn and admitted in due Form: Therefore you were admitted by the Mayor and Jurats, who had the *sole Right*.

Mr. Serj. *Baynes*. The Question is, Whether they were duly admitted and sworn by *Coates* and two Jurats? And if they were, the Right must be in the Mayor and two Jurats only. Read the Plea.

(Associate reads *Gibbon's Plea*, as before.)

C. J. *Eyre*. That he was admitted in due Manner and Form; so the Plea is.

Mr. Serj. *Darnell*. My Lord, by the Plea, he alleges the *sole Right* to be in the Mayor and Jurats, and that he was admitted in due Manner and Form; which must be by the Mayor and Jurats, who had the *sole Right*.

Mr. *Wynne*. My Lord, The second Issue is, Whether, having a Right, he was admitted in due Manner and Form? The Replication answers, That he was not admitted and sworn in Manner and Form as by the Plea is alledged; which would make this an absurd or immaterial Issue; and therefore, in Construction of Law, it is only one Issue.

Mr. *Marfb.* We submit it to your Lordship, Whether the second Issue involves any Matter of Right? The Matter is before the Jury; and if so, we are not at Liberty to go to the second Issue, and the Fact of Completing remains still; and it is necessary to prove that Issue. It may be thought immaterial by the Gentlemen of the other Side; but, if the first Issue is for us, the other will be absolutely necessary.

Mr. *Lacy*. My Lord, the first Issue is, Whether *Gibbon* was sworn and admitted in due Manner and Form before the Mayor and two Jurats?

C. J. *Eyre*. It was not in due Manner and Form, unless they had a Right.

Mr. *Lacy*. My Lord, we humbly hope we have given a sufficient Evidence, that there is a sufficient Right in the Mayor and two Jurats; and therefore have proved, that *Gibbon* was duly admitted.

Mr. *Smith*. If the first Issue should be found against us, Will it not be true, that there is a Right, if not a *sole Right*, in the Mayor and Jurats? And if so, the Defendant *Gibbon* was sworn in that Manner, and so he insists upon it.

Mr. *Marfb.* My Lord, it is plain there was a Right in the Mayor and two Jurats. The Plea saying it was a *sole Right*, we submit it to your Lordship, Whether that contradictory Evidence could destroy our Issue, which had tied it down? But this surely cannot in any sort affect the second Issue, Whether it was in due Manner and Form? And, if we prove he was sworn in any due Manner, we hope the Jury will find for us.

C. J. *Eyre*. It must be in the due Manner you have set forth by your Plea, which must be according to the Right asserted to be in the Issue. We must not suppose there are two Rights. It must be in the due Manner upon the Construction of the Plea; and I shall leave it upon my own Sense of the Matter; I shall not lump it.

Gentlemen of the Jury, This is an Information against *Gibbon*, in the Nature of a *Quo Warranto*, for exercising of the Office of a Freeman in *New-Romney*, to which he was not intituled; and for usurping the Exercise of that Office.

To this he pleads, he is intituled to hold the same, and to exercise this Office, because he had married the Daughter of a Freeman, and in her, by the Custom, is intituled; and that the Right of admitting and swearing is in the Mayor and two Jurats, and that by them he was duly admitted into this Office. To this Plea there has been a Replication, which ends in a Demurrer; so not brought to be tried.

The King replies, that the sole Right of Swearing and Admitting is not in the Mayor and Jurats; and therefore the Defendant is not duly admitted to the Right of a Freeman.

The Right *Gibbon* has is not now in any Issue; but, supposing he had such a Right, Whether he should be sworn by the Mayor and two Jurats, exclusive of any other People? And the other Issue is about the Defendant's being duly

admitted. If the Mayor and Jurats have a *sole Right* to admit, then *Gibbon* is duly admitted; and if they have not that *sole Right*, then he is not duly admitted, in the Sense of this Plea.

To prove the *sole Right* to be in the Mayor and Jurats, the Defendant has produced several Books; by which it appears, several Freemen have been admitted by the Mayor and Jurats *solely*. He particularly instances,

8 *March*, 1679, at a Common Assembly of the Mayor and Jurats and Commonalty of the Town and Port of *New-Romney*, in the Common Place, *Peter Martin* is elected, and ordered to be sworn in by the Mayor and Jurats.

3 *December*, 1694, another Instance of a Freeman admitted and sworn by the Mayor and Jurats.

16 *May*, 1698, another.

Another the 7th of *February*, 1708.

Another the 13th of *June*, 1715.

6 *August*, 1717, one *Widcomb* and another.

18 *November*, 1727, *Thomas Wilson*.

7 *June*, 1731, *William Gray*.

And there are other Instances, the 18th of *March*, 1668, and the 22d of *July*, 1683.

So here are People sworn and admitted by the Mayor and Jurats, but the Election is at a Common Assembly; and People elected have been chosen at such an Assembly, and must be so elected, unless they have another Right. But the Common Assembly have not a Right to swear these People; but the *sole Right*, *Gibbon* says, (for Swearing and Admitting are synonymous) is in the Mayor and Jurats.

The other Side say, it should be by the Common Assembly, rather than by the Mayor and Jurats only; and to shew you this, they have called for several Books, and shewn more Instances of admitting by the Mayor, Jurats, and Common Assembly, than by the Mayor and Jurats alone; and many Instances of admitting by the Common Assembly.

And this Swearing is a prescriptive Right, no Directions being in the Charter about it.

And the Crown says, that, by ancient Usage, he ought to be admitted by the Common Assembly, and not by the Mayor and Jurats solely; 1679 is the only Admittance.

But they instance, at *Lady-Day* 1571, at a Common Assembly, at the Election of Mayor and Jurats, several People, *John Amersham* and others, were admitted; *admissus et juratus*.

Soon after, 1579, at another Common Assembly, *Thomas Master admissus ad franchis'*, et *juratus*.

In Book N^o. 7, and in Book N^o. 4, is an Election on the 25th *March*, 22 *Jac.* 1. and there certain Men were admitted and sworn, one *Smith*, *Labden*, and one *Duke* paid his 3s. 4d.

Another Instance, in 1627, of a Person admitted and sworn at this Common Assembly.

By their Admittance I understand *elected*.

Another, in 1659, admitted to the Franchise, and sworn.

Another, the 15th of *October*, 1660; four Persons admitted to the Franchise then.

Another, 29 *May*, 1666, *Richard Strode* having taken the Oath of Freedom, according to the Customal.

2 *October*, 1699, *John Gray*, free-born, was admitted, and took the Oath: Though he was not intituled by their Election, but was free-born, yet the Common Assembly swore him.

4 July, 1683, at the Common Assembly, *John Walker*, free-born, and three others; they swore him and the others, and they were admitted.

4 November, 1704, *Whitfield* was admitted, and took the Oath.

10 October, 1710, *Robert Furnese* was admitted.

20 April, 1713, Mr. *Watson* admitted.

23 March, 1721, Mr. *Papillon* was admitted in the same Manner.

Which shews, the *sole Right* was not in the Mayor and Jurats; because the Common Assembly exercised this at the same Time, and did it before the Mayor and Jurats.

In 1679, a Person elected was ordered to be sworn by the Mayor and Jurats: But sure they have not the *sole Right*, there being more Precedents against the *sole Right* than for it.

The ancient Practice has been to swear them by the Common Assembly, and no modern Practice can take away that Right.

If you think the *sole Right* is in the Mayor and Jurats, then you must find for the Defendant.

But, if you think it to be a concurrent Right

with the Common Assembly, then the Issue is against the Defendant; for the Mayor and Jurats have not the *sole Right*.

The second Issue is, Whether the Defendant was sworn by the Mayor and Jurats? But this depends on the former Issue; for, after the Mayor and Jurats Right is set forth to be the *sole Right*, and the Defendant says he was duly admitted, it is, he was admitted according to the Right insisted on by the Plea. And if the Mayor and Jurats have not the *sole Right*, we are not to suppose they have any *other Right*; for the Defendant has confined himself to the *sole Right*. He says, he was duly admitted; which must be by the Right set forth by the Plea, which is the Right of *Swearing solely* by the Mayor and Jurats.

The Question therefore is, Whether the Mayor and Jurats have the *sole Right*?

If you find for the King, or for the Defendant, in the first Issue, you must find the second Issue in the same Manner.

Verdict for the King in both Issues.



N U M B E R X V I I .

The KING against RICHARD ELLES,

Upon an Information, in the Nature of a Quo Warranto, by the King's Coroner and Attorney, against the Defendant, to shew by what Authority he claims to be Mayor of the Town and Port of New-Romney, at the Relation of Benjamin Man. Tried at Kent Assizes, held at Maidstone, the 6th of August, 1734, before the Right Hon. the Lord Chief Justice Eyre.

Mr. *Knowler*.

MAY it please your Lordship, and you Gentlemen of the Jury; This is an Information, in the Nature of a *Quo Warranto*, against the Defendant *Elles*, to shew by what Authority he claims to be Mayor of the Town and Port of *New-Romney*: And the Information sets forth, That the Town and Port of *New-Romney* is an ancient Town and Port, and one of the five ancient Ports of this Kingdom; and that the Barons and Inhabitants of the said Town and Port are, and for ten Years last past, and long before, were, and have been, one Body Corporate and Politic, in Deed and in Name, by the Name of the Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the County of *Kent*; and that the Office of Mayor of the said Town and Port is, and for and during all the Time aforesaid hath been, a public Office, and an Office of great Trust and Preheminence, within the said Town and Port, touching the Rule and Government of the said Town and Port, and the Administration of public Justice within the same Town and Port; and that *Richard Elles*, of the Town and Port of *New-Romney* aforesaid, Yeoman, on the 19th of *April*, in the

seventh Year of his present Majesty, at the Town and Port of *New-Romney* aforesaid, did use and exercise, and from thence continually, to the Time of filing the Information, hath used and exercised, and yet doth there use and exercise, without any legal Warrant, Royal Grant, or Right whatsoever, the Office of Mayor of the said Town and Port, and to have, use, and enjoy all the Liberties, Privileges, and Franchises thereof; which the said *Richard Elles* upon his Majesty hath usurped, in Contempt of his Majesty, and to the great Damage and Prejudice of his Royal Prerogative, and also against his Crown and Dignity: Whereupon he prays Process, &c.

To this the Defendant has pleaded, That the said Town and Port is an ancient Town and Port, and one of the Five ancient Ports of this Kingdom; and that the Barons and Inhabitants of the said Town and Port are, and for the Space of ten Years last past, and long before, were, and have been, one Body Corporate and Politic, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the County of *Kent*; and the Office of Mayor to be a public Office, and an Office of great Trust and Preheminence, as by the Information is supposed.

And

And that the late Queen *Elizabeth*, by her Letters Patent, dated at *Northaw*, the 4th of *August*, in the fifth Year of her Reign, did will and grant, that the *Barons and Inhabitants* of the said Town and Port (who before were incorporated by the Name of Jurats and Commonalty, as she was informed) from thenceforth for ever should and might be one Body in itself Incorporated, in Deed and Name, by the Name of Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, in the County of *Kent*.

And thereby made and ordained *John Chessman*, then one of the said Jurats, Mayor of the said Town and Port, to have and exercise that Office until *Lady-Day* then next ensuing, if he should so long live; and did thereby make, ordain, approve, and confirm *John Percker*, *William Ipse*, *George Holton*, *Laurence Fanc*, and *Jeffery Tomkin*, then Jurats of the said Town and Port; to have and exercise that Office during their respective Lives, in Manner and Form as the Jurats of the said Town before that Time exercised their said Offices.

And thereby willed and granted, that upon *Lady-Day* then next ensuing, in the Parish-Church of *St. Nicholas*, within the said Town and Port, one of the Jurats of the said Town and Port should and might be chosen Mayor, by the Jurats and Commonalty of the said Town and Port, for one whole Year then next ensuing; which said Jurat, so elected to be Mayor, if he should be present, should take his corporal Oath, for the due Execution of his Office, before his Predecessor, in like Manner and Form as the Mayor of the Town and Port of *Sandwich* used to take it; and if such Person, so elected, should not be present, then at the next Court to be holden within the said Town and Port: And so from Year to Year, and from Time to Time, the Mayor shall be chosen for ever.

And that every one of the Jurats, from Time to Time, from thenceforth for ever, should be chosen by the Commonalty, or the greater Part of them there present, out of themselves, in like Manner and Form as before that Time they had been used to be chosen there; yet so that the Jurats at one Time should not be, in the whole, above the Number of Twelve, besides the Mayor.

And the Defendant by his Plea further saith, that upon the 25th of *March* last, and long before, he was, and still is, one of the Jurats of the said Town and Port: And so being a Jurat as aforesaid, and *John Coates*, Esq; then being Mayor, and then one of the Jurats, the then Jurats and Commonalty assembled themselves together in the Parish-Church of *St. Nicholas*, within the said Town and Port, for the Year then next ensuing, according to the Tenor of the said Letters Patent; and being so assembled, then and there, at that Assembly, the major Part of the said Jurats and Commonalty then present there (of which said Jurats the said *John Coates*, the then Mayor, then was one, and present there) chose him the said *Richard Elles*, then being one of the Jurats as aforesaid, to be Mayor of the said Town and Port for the Year then next ensuing, according to the Form and Effect of the said Letters Patent: And the said *Richard Elles* being so chosen into the Place and Office of Mayor of the said Town and Port as aforesaid, after his said Election, to wit, then and there, at the same Assembly in the Parish-Church aforesaid, he the said *Richard Elles* was duly sworn

into his said Office by *Robert Loftie*, then Town-Clerk of the said Town and Port, before the said *John Coates*, being the last Predecessor of the said *Richard Elles* in the Office of Mayor of the said Town and Port; and the said *Richard Elles*, then and there, at the said Assembly, took his corporal Oath, for the due Execution of his said Office of Mayor of the said Town and Port, before the said *John Coates*, his last Predecessor as aforesaid, the said Oath being administered by the said Town-Clerk as aforesaid, (the same being the like Manner and Form, in which the Mayor of the Town and Port of *Sandwich*, in the said Letters Patent named, at the Time of making the said Letters Patent, was, and ever since hath been, and been used and accustomed to be sworn into the said Office of Mayor of the said Town and Port of *Sandwich*) according to the Form and Effect of the Letters Patent aforesaid: And by virtue thereof, the said *Richard Elles*, after his Election and Swearing aforesaid, upon the said 25th of *March* last, and from thence continually afterwards, until the Time of exhibiting the Information, at the Town and Port aforesaid, was, and still is Mayor, and by that Warrant claims to be Mayor, of the said Town and Port; and traverses the Usurpation.

The King replies, That the said *Richard Elles* was not one of the Jurats of the said Town and Port, in Manner and Form as he hath alledged by Pleading; and prayeth that this may be inquired of by the Country; and the said *Elles* prayeth the like.

So that, Gentlemen, the first Issue you are to try is, Whether the said *Richard Elles* was one of the Jurats of the Town and Port of *New-Romney*, in Manner and Form as he hath alledged by his Plea?

And the second Issue is, Whether the major Part of the Jurats and Commonalty of the said Town and Port did chuse the said *Richard Elles* to be Mayor of the said Town and Port for the Year then next ensuing, according to the Form and Effect of the said Letters Patent, in Manner and Form as the said *Elles* hath also alledged by Pleading?

Gentlemen, the third Issue is, Whether the said *Richard Elles* was duly sworn into the Office of Mayor of the said Town and Port, in Manner and Form as he hath alledged by Pleading?

And the fourth Issue is, Whether the said *Richard Elles* did take his corporal Oath, for the due Execution of the said Office of Mayor of the said Town and Port, according to the Form and Effect of the Letters Patent aforesaid, in the Manner and Form as he hath alledged by Pleading?

And, Gentlemen, the fifth Issue you are to try is, Whether the Manner and Form, in which the said *Richard Elles* hath alledged himself in his Plea to have been sworn into the Office of Mayor of the said Town and Port of *New-Romney*, be the like Manner and Form, in which the Mayor of the Town and Port of *Sandwich*, in the said Letters Patent named, at the Time of making the said Letters Patent, was, and ever since hath been, and been used and accustomed to be sworn into the said Office of Mayor of *Sandwich* aforesaid, in Manner and Form as he hath alledged by Pleading?

If therefore, Gentlemen, Evidence is laid before you, to prove that the Defendant *Elles*, being one

one of the Jurats of this Town and Port, was duly elected and sworn into the Office of Mayor, then, Gentlemen, you will find a Verdict for him.

Mr. Serj. Darnell. May it please your Lordship, and you Gentlemen of the Jury; I am Council for the Defendant *Elles*; and you will please to observe, that, by very great Art, these Issues are all turned upon the Defendant to prove. By his Plea he sets forth the Constitutions of the Town and Port of *New-Romney*; that he was duly chosen into the Office of Mayor, and had taken the Oaths. But the other Side turn every thing upon him by Proof: They say, he was not a Jurat; that the major Part of the Jurats and Commonalty did not chuse him; and then, merely to multiply Issues, and for Delay, say, You are not a Jurat; the major Part of the Jurats and Commonalty did not chuse you; you are not duly sworn: That he did not take his Oath of Office according to the Form of the Letters Patent; that the Manner and Form, in which the said *Richard Elles* is alledged by his Plea to be sworn into his Office, is not according to the Customs of *Sandwich*.

My Lord, and Gentlemen of the Jury, there has lately been a very great Contest in the Court of *King's-Bench* about the Officers of this Town; and there were two Candidates for this Office of Mayor, one *Wightwick*, and the Defendant *Elles*; and upon the Poll it appeared, that *Elles* had eleven Votes, and *Wightwick* ten; so that *Elles* was chosen Mayor by the Majority of one Voice: But the presiding Officer said, he had a Man who was appointed to take the Poll; by which Poll it appeared, that *Gibbon* and *Darby*, who had never been allowed to be Freemen, had polled; and then, upon that Poll, there were twelve Votes for *Wightwick*, and eleven for *Elles*: upon which the Oath of Office was administered, and both Candidates were sworn.

Gentlemen, on Application to the Court of *King's-Bench*, *Elles* by Affidavits made it appear, that *Gibbon* and *Darby* had no Right to Freedoms; on which the Court declared, the Point would turn on *Gibbon's* Right; and then the Question was, Whether Persons marrying Freemen's Daughters had a Right to Freedoms? and *Darby's* Right was to abide the Fate of that. But they have declined this, and turn all the Circumstances of proving upon us. We shall therefore, Gentlemen, fully prove every one of these Issues to you by Witnesses; in the Course of which Evidence, you will hear, Gentlemen, of very great Sums of Money offered to engage those Freemen, who were in *Elles's* Interest, to vote for *Wightwick*. We shall prove to you, Gentlemen, that one hundred Pounds was offered for one Vote, and even so large a Sum as one thousand Pounds for another, in order to procure *Wightwick* to be Mayor.

Under these Circumstances, Gentlemen, two *Mandamus's* issued from the Court of *King's-Bench* to admit these two Men; for they all agreed there was no Right by Marrying; and then these two Persons were sworn in by virtue of these *Mandamus's*.

If therefore, Gentlemen, we shew there was a Majority for *Elles* upon the Poll as taken by the Town-Clerk; notwithstanding the Pocket-Poll they have set up; we hope you'll take it upon the Foot of the Town-Clerk's Poll, and find a Verdict for the Defendant accordingly.

Mr. Serj. Baynes. May it please your Lordship, and you Gentlemen of the Jury; I am Council

in this Case with the Defendant: And this is an Information granted by the Court of *King's-Bench*, in order to procure Peace in *Romney*, where there were two acting Mayors at one and the same Time; and the Court granted this Information, to try which of them was duly elected. Upon this five Issues are joined: And the first Issue you are to try, Gentlemen, is, Whether *Elles* was a Jurat? And we shall shew he was first elected a Freeman, and then, in due Manner and Form, a Jurat. The second Issue is, Whether the Mayor, Jurats, and Commonalty of the Town and Port of *New-Romney*, did chuse the Defendant *Elles* Mayor? Gentlemen, in this Town, we see, there are twenty-one Voters: *Wightwick* stood in opposition to *Elles*; the Town-Clerk took the Poll; and on casting it up, there appeared to be for *Elles* eleven Votes, and for *Wightwick* ten; so that *Elles* was duly chosen Mayor. But another Person pretended to take the Poll, and set down such Persons as he thought fit, and amongst them *Gibbon* and *Darby*, as Voters for *Wightwick*; and that cast the Majority of Voters on *Wightwick*: But *Darby* and *Gibbon's* Votes ought not to have been taken, their Right being by marrying Freemen's Daughters; whereas there is no such Custom, nor ever was, nor ever attempted till the Year 1728, when it was set up by this *Gibbon*: And thereupon the Corporation ordered it to be entered in their Books, that he was not to be admitted, for that there was no such Custom; which, we shall call our Witnesses, and fully prove to you.

The third Issue, Gentlemen, is, Whether the Defendant *Elles* was duly sworn into the Office of Mayor, in Manner and Form as by his Plea he hath alledged? And we shall shew you, that he was sworn by the Town-Clerk, before the Mayor.

The fourth Issue is, Whether *Elles* took his corporal Oath, for the due Execution of the Office of Mayor, according to the Form and Effect of the Letters Patent?

The fifth Issue is, Whether the Defendant *Elles* was sworn according to the Manner and Form as the Mayor of *Sandwich* is sworn?

Gentlemen, we shall call our Witnesses, and make it plainly appear, that these Issues are for the Defendant *Elles*; and then we hope you will find a Verdict for him accordingly.

Mr. Marsh. My Lord, in order to be a Jurat, he must be a Freeman.

C. J. Eyre. Was he a Jurat?

Mr. Knowler. He acted as a Jurat.

Mr. Serj. Darnell. His acting as a Jurat is Evidence, *prima facie*, that he was a Freeman.

C. J. Eyre. Will you admit he was a Jurat?

Mr. Marsh. They may go on; I shall make no Bargains.

Mr. Serj. Darnell. Swear Mr. *Loftie*; (*which was done.*)

Mr. Marsh. What do they call him to? We object to him.

Mr. Serj. Darnell. To prove an Assembly-Book. Mr. *Loftie*, is that the Entry of *Elles's* Election to be a Jurat?

Mr. *Loftie*. Yes.

Mr. Serj. Darnell. Read it.

Associate reads—

“*John Took*, Mayor. At a Common Assembly held the 23d December, 1730, Mayor, Jurats, and Commonalty duly elected *Edward Batchelor* and *Richard Elles* to be Jurats.”

Mr. *Lacy*. The Election-Day is the 25th of *March*.

C. J. *Eyre*. This proves an Election the 23d of *December*, 1730. Was he duly sworn?

Mr. Serj. *Baynes*. Yes, my Lord. Read his Swearing.

Associate reads —

“ 4 *January*, 1730, *Batchelor* and *Elles* took the Oath of Jurats.”

C. J. *Eyre*. Go on, Issue by Issue: First, Whether *Elles* was a Jurat? They insist, by Custom, the Jurats must be sworn every Year: Prove it.

Mr. Serj. *Darnell*. My Lord, they have given us Notice, that every Qualification of the Jurats and Freemen would be objected to.

Mr. *Knowler*. A Jurat (*so MS. 2*, Mayor) is said to be an annual Officer. We shall prove, my Lord, that *Elles* was chosen for the Year 1734.

C. J. *Eyre*. Mr. *Wellard*, you must not talk more than necessary.

Mr. *Marsh*. It is necessary to be a Freeman, in order to be a Jurat.

Mr. Serj. *Darnell*. A Man is a Jurat; Is it necessary he be a Freeman, in order to be qualified for a Jurat?

Mr. *Marsh*. If the Entry be sufficient, it is needless to go on.

C. J. *Eyre*. The Qualifications of a Jurat are, A Jurat he must be, to be a Mayor; for a Jurat, he must be a Freeman.

Mr. *Marsh*. These Points are often disputed.

C. J. *Eyre*. Dispute what you will; but he was owned a Freeman by the Corporation, when he was made a Jurat.

Mr. *Marsh*. He was sworn before the Mayor and Jurats only.

C. J. *Eyre*. The Entries are all so. Nothing has been read to shew they might not swear him. If he was sworn by the Mayor and Jurats, that must be proved: We had nothing of that in the last Cause.

Mr. Serj. *Darnell*. The Question is, Whether the major Part of the Mayor, Jurats, and Commonalty, did duly chuse him Mayor, according to the Form and Effect of the Letters Patent? And, in order to prove that he was duly chosen, we are to shew what were the Number of Jurats and Freemen that voted for *Elles*; for which Purpose I shall call Mr. *Loftie*.

Mr. *Marsh*. We object to *Loftie*: He was one of the Persons who voted for *Elles*, and therefore has given his Opinion already.

C. J. *Eyre*. I never knew it denied a Corporation-Man that voted; he is a legal Witness.

Mr. Serj. *Darnell*. Mr. *Loftie*, was you present at the last Election of a Mayor for *Romney*?

Mr. *Loftie*. Yes.

Mr. Serj. *Darnell*. Where was it made?

Mr. *Loftie*. At *St. Nicholas*.

Mr. Serj. *Darnell*. What Number of Freemen were present and voted?

Mr. *Loftie*. Twenty-one.

Mr. *Lacy*. Are you Town-Clerk of *Romney*? Do you keep a Book?

Mr. *Loftie*. Yes.

Mr. *Lacy*. Where is that Book?

Mr. *Loftie*. Mr. *Wellard* took it away.

Mr. *Wellard*. Here it is.

Mr. *Loftie*. Mr. *Wellard* and Mr. *Wightwick* took away the Books, and Mr. *Wightwick* has entered the Proceedings of that Day himself.

C. J. *Eyre*. Are there any Entries made by you of the Proceedings of that Day?

Mr. *Loftie*. I have a Copy of the Poll, my Lord.

C. J. *Eyre*. Why were they not entered?

Mr. *Loftie*. Because *Coates* insisted I should take the Poll according to the Minutes they had taken.

C. J. *Eyre*. And you did not think it right?

Mr. *Loftie*. No, my Lord; because they had taken *Gibbon* and *Darby*'s Votes, who, I thought, had no Right to vote.

Mr. Serj. *Darnell*. You take an Oath; what is that Oath?

Mr. *Loftie*. To enter faithfully and right all the Proceedings of the Corporation.

C. J. *Eyre*. You did not make an Entry of the Poll, because every body did not agree to it; but you took a Copy of the Poll. Read the Oath of the Town-Clerk.

Associate reads —

Mr. *Knowler*. Read the Poll again.

Mr. *Loftie*. *Wightwick* and *Elles* — The Votes for Mayor —

For *Wightwick*:

<i>John Coates</i> , Esq;	<i>Joshua Coates</i> ,
<i>Wightwick</i> ,	<i>Odibam Coates</i> ,
<i>Batchelor</i> ,	<i>Wilson</i> ,
<i>Rutton</i> ,	<i>Haffenden</i> ,
<i>Bassett</i> ,	<i>Dree</i> .

These were all that voted for *Wightwick*, but *Gibbon* and *Darby*, who, I apprehended, had no Right to vote; and therefore I did not insert their Names.

For *Elles*:

Himself,	<i>Weeden</i> ,
<i>Robert Mascall</i> ,	<i>Langdon</i> ,
<i>Norman</i> ,	<i>Loftie</i> ,
<i>Tookey</i> ,	<i>Benjamin Cobb</i> ,
<i>Smith</i> ,	<i>William Gray</i> .
<i>John Mascall</i> ,	

Mr. *Marsh*. *Darby* and *Gibbon* were there, but you did not take their Votes — Was no body else there? Did not Mr. *Papillon* and *Wellard* send, that they might be admitted to come to exercise their Franchise of voting?

Mr. *Lacy*. I desire to see the Poll-Paper, the very Paper you took in the Church, Mr. *Loftie*.

(Mr. *Loftie* produces the Poll-Paper, as before.)

Mr. *Lacy*. Did not you take another List or Poll?

(Mr. *Loftie* produces another.)

Mr. *Lacy*. He took one List, and then, by *Elles*'s Direction, took another. Read it.

Mr. *Loftie* reads another Poll —

For *Wightwick*:

For *Elles*:

<i>John Coates</i> , Esq;	<i>Elles</i> ,
<i>Wightwick</i> ,	<i>Robert Mascall</i> ,
<i>Batchelor</i> ,	<i>Norman</i> ,
<i>Rutton</i> ,	<i>Tookey</i> ,
<i>Bassett</i> ,	<i>Smith</i> ,
<i>Joshua Coates</i> ,	<i>John Mascall</i> ,
<i>Odibam Coates</i> ,	<i>Weeden</i> ,
<i>Wilson</i> ,	<i>Langdon</i> ,
<i>Haffenden</i> ,	<i>Loftie</i> ,
<i>Dree</i> ,	<i>Benjamin Cobb</i> ,
<i>John Darby</i> ,	<i>William Gray</i> .
<i>John Gibbon</i> ,	
<i>Papillon</i> ,	
<i>Wellard</i> .	

Mr. *Marsb.* Where does this Assembly meet?

Mr. *Loftie.* In the South Chancel of *St. Nicholas.*

Mr. Serj. *Darnell.* Is the Door usually kept open, or shut?

Mr. *Loftie.* Shut, to prevent People coming in, who have no Business.

Mr. *Smith.* Which of the two Polls did you minute down first?

Mr. *Loftie.* The last-delivered.

Mr. *Marsb.* My Lord, this is the principal Issue; and we object to the Evidence of this Person who voted for this Mayor. He has given his Opinion already; and therefore I submit it to your Lordship, whether he is a legal Evidence? Or otherwise we insist, the Persons taken down as Pollers, that they are more in Number than he has given an Account of. According to his List, they are but ten; but there must be four Votes more added, two of which are Persons not numbered by him.

My Lord, *Darby's* and *Gibbon's* Rights to vote depend upon their being free of this Corporation; and if we shew they are free, and are admitted, it will be sufficient Reason for putting them on the Poll for *Wightwick*; and then *Elles* can't be Mayor. Besides, there is Mr. *Papillon's* Right, who was not in the Church, because the Door was shut within-side; and Mr. *Wellard* was also a Freeman, and he could not come in, the Door being shut. We shall shew you, Gentlemen, their Qualification, and that they could not get into the Church; that they went to the Door, but there was no Admission to be had; that they sent in a Letter to the Mayor, and demanded Admittance; and if they had been let in, they had voted for Mr. *Wightwick*; and they having a Right, and asserting that Right, these Votes ought to be allowed to them.

In the first of the late King, there was the Case of the Mayor of *Hythe* tried before my Lord *Macclesfield* at this Place. Two Persons offered their Votes at the Poll, and being refused by the presiding Officer, the Court was of Opinion, they were good Votes. And therefore we humbly hope your Lordship will allow these to be good Votes, and, in consequence, that the Jury will find for us.

Mr. *Lacy.* The Issue now before your Lordship is, Whether the major Part of the Jurats and Commonalty did, or did not, chuse the Defendant *Elles* Mayor? By *Loftie's* Poll it appears, there were eleven Votes for *Elles*, and ten for *Wightwick*: So that, if either of the four Votes disallowed by him shall appear to be good, then, Gentlemen of the Jury, they do not prove their Issue. As to Mr. *Papillon*, he is a Freeman, admitted and sworn; and though his Vote was refused, he tendered it, and sent in a Note in Writing, signifying to the Mayor that he voted for *Wightwick*, and is therefore a good Vote. And as to *Darby* and *Gibbon*, we submit, whether, being sworn, they are not in the Exercise of their Office, and ought to be allowed good Votes. We shall call our Witnesses, and shew the Entries of *Gibbon* and *Darby*.— Mr. *Loftie*, look upon the Book; Is it your Hand-writing?

Mr. *Loftie.* Yes. Reads—

“ *J. Coates*, Mayor. Be it remembered, at a Court of Record held the 25th of *March*, 1734, the Corporation having been served with a Writ of *Mandamus*, *Gibbon* and *Darby*,

“ demanding their Freedoms, were admitted and sworn.”

Mr. *Marsb.* Where is Mr. *Papillon* and Mr. *Wellard's* Entry?

C. J. *Eyre.* *Gibbon* and *Darby* were admitted before the Election?

Mr. *Loftie.* Yes, my Lord.

C. J. *Eyre.* How came you, then, to refuse their Votes?

Mr. *Loftie.* Because I thought there was an Order made, that they should not be admitted to vote.

C. J. *Eyre.* Were they elected by the Mayor and Jurats?

Mr. *Loftie.* Never, my Lord.

Mr. *Wellard.* Read my Election, and then read my Swearing.

Associate reads—

“ *Nicholas Durrant*, Mayor. At a Common Assembly of the Town and Port of *New-Romney*, in the Common Place, 20 *October*, 1720, *Nicholas Durrant*, Mayor, &c. elected *Charles Wellard*, an Inhabitant and Town-Clerk, to be a Freeman of this Town and Port; and he was ordered to be sworn, *more solito*, according to Brotherhood and Ghuestling.

“ 19 *December*, 1720, he was sworn and admitted.”

Mr. Serj. *Darnell.* Is that the Assembly-Book?

Mr. *Wellard.* Yes.

Mr. Serj. *Darnell.* My Lord, all the Entries of swearing these People are in the Assembly-Book, and therefore it is but a delegated Power.

Mr. *Lacy.* Read the Mandate for chusing two Barons to send to Parliament.

Associate reads—

“ Whereas a Mandate for chusing two Barons was read, the Mayor and Jurats—

Mr. *Marsb.* Read Mr. *Papillon's* Election and Swearing.

Associate reads—

“ *New-Romney*, ff. Mayor. At a Common Assembly of the said Town and Port of *New-Romney*, held in the Common Place there, the 23d of *March*, 1731, elected *David Papillon* a Freeman of this Town and Port; and he was sworn and admitted, *more solito*, according to Brotherhood and Ghuestling.”

Mr. *Dodd* called and sworn.

Mr. *Marsb.* Were you present at the last Election for Mayor?

Mr. *Dodd.* Yes.

Mr. *Marsb.* Was Mr. *Papillon* there?

Mr. *Dodd.* Yes; but he was not in the Church.

Mr. *Marsb.* And how came he not to get in?

Mr. *Dodd.* Because the Door was locked.

Mr. *Marsb.* Did he try to get in?—

“ Here the Chief Justice was told by a By-stander, that a Person was taking Notes; on which he asked,

“ C. J. *Eyre.* Who is it?— Who employed you? Give me the Paper.

“ On

- “ On which the Notes were delivered to him;
 “ and, after turning them over, he said, with
 “ some Warmth,
 “ C. J. Eyre. I observe my Name in it:
 “ Who was you employed by, to take those
 “ Notes?
 “ Short-hand Writer. My Lord, I was em-
 “ ployed by a Gentleman concerned in the Event
 “ of these Issues.
 “ C. J. Eyre. Who?
 “ Short-hand Writer. Mr. Papillon desired me
 “ to attend and take Notes.
 “ Then the Chief Justice called cross the Court to
 “ Mr. Papillon:
 “ C. J. Eyre. Mr. Papillon, here is a Man
 “ taking Notes, that says you employed him.
 “ Mr. Papillon. Yes, my Lord, I desired him
 “ to attend, and take Notes.
 “ C. J. Eyre. Who is he? I observe my
 “ Name in several Places. I suppose, I shall
 “ next Week have my Name in Print.
 “ Mr. Papillon. My Lord, it is no common
 “ Short-hand Writer; it is Mr. I never
 “ knew it was a Crime to take Notes in a Court
 “ where your Lordship sat.
 “ C. J. Eyre. Well, I hope you are the better
 “ for them.
 “ Mr. Papillon. I think I am, my Lord; and
 “ on some Occasions they have been of great
 “ Use to me.
 “ C. J. Eyre. I am glad to hear that.
 “ Mr. Papillon. Your Lordship presides here;
 “ so do with the Papers what your Lordship
 “ pleases.
 “ C. J. Eyre. No, no. Now I know it is
 “ done by Authority, if I see any thing in Print,
 “ I shall know where to apply.
 “ Mr. Papillon. It is no Reason to suppose
 “ it should come from me, if your Lordship
 “ does; there are great Numbers now taking
 “ Notes, as well as Mr. and it may
 “ sure come as well from any of them. My
 “ Lord, I never was a Libeller, nor ever in my
 “ Life encouraged a Publication of this Sort.
 “ We are all liable to Accusations of this Sort:
 “ I have seen many Falshoods printed, but never
 “ thought them worth my Notice. My Lord,
 “ I am not answerable: Do with the Notes what
 “ you will.
 “ C. J. Eyre. No; since it is your Writer,
 “ let the Man have his Paper, and go on.
 (The Notes being out of the Short-hand Writer's
 Possession, he could not take down what was
 said.)
 “ C. J. Eyre. There, take down that, and print
 “ it too, if you will; I don't care; though I don't
 “ say it is Law, nor will justify it as such.
 “ Mr. Papillon. Here, give me the Notes:
 “ Let my Lord have them, since they give
 “ Offence.
 “ C. J. Eyre. No, I will not have them.
 “ Let the Man have his Paper again, since it is
 “ done by Authority.
 “ Mr. Papillon. My Lord, pray do what you
 “ please with them; cut them to Pieces, or put
 “ them in the Fire.
 “ C. J. Eyre. No, no. Let him go on, since
 “ he is your Writer.
 “ Mr. Papillon. Then pray let him go on,
 “ without Reflections.”
- Mr. Lacy. Pray, Mr. Dodd, where did they
 assemble?
 Mr. Dodd. They went from Mr. Coates's.
 Mr. Serj. Darnell. Did Mr. Papillon and Mr.
 Wellard go with the People to the Church?
 Mr. Dodd. No.
 Mr. Marsh. Was Mr. Papillon there?
 Mr. Dodd. Yes.
 Mr. Serj. Darnell. Why could not he go into
 the Church, as well as Coates and the rest?
 Mr. Dodd. I do not know.
 Mr. Serj. Darnell. Did you see the Mayor go
 from the House?
 Mr. Dodd. Yes.
 Mr. Serj. Darnell. What Time did they go?
 Mr. Dodd. At Two o'Clock.
 Mr. Marsh. Is that the usual Time?
 Mr. Dodd. Yes.
 Mr. Marsh. How long was the Door locked
 before Mr. Papillon and Mr. Wellard came?
 C. J. Eyre. Did the Mayor and Jurats see them
 coming?
 Mr. Dodd. I do not know.
 Mr. Serj. Darnell. Is it not usual to lock the
 Door on such Occasions?
 Mr. Dodd. Yes; and not to open it till the
 Election is over.
 Mr. Serj. Darnell. Did Coates or Wightwick
 give Orders to shut out Mr. Papillon or Wellard?
 Mr. Dodd. I do not know.
 Mr. Serj. Darnell. Was any body shut out
 besides?
 Mr. Dodd. Several.
 Mr. Knowler. How long was Mr. Wellard in
 Town before the Election?
 Mr. Dodd. About five Weeks.
 Mr. Knowler. Whose House was he at during
 that Time?
 Mr. Dodd. At Gibbon's.
 Mr. Knowler. How long was it after the Door
 was shut, that Mr. Papillon and Mr. Wellard came
 to apply to get in?
 Mr. Dodd. A Minute or two.
 Mr. Knowler. Why did they not apply to the
 Door-keeper to be let in?
 Mr. Dodd. I do not know.
 Mr. Marsh. Did you ever know a Freeman
 refused, that came and applied to be let in, a little
 after the Door was shut?
 Mr. Dodd. Yes.
 Mr. Serj. Baynes. Was any particular Message
 sent to the Mayor by Mr. Papillon or Mr. Wellard?
 Mr. Dodd. Not that I know of.
- Mr. Wellard sworn.
- Mr. Marsh. Mr. Wellard, you was with Mr.
 Papillon: Pray, give an Account of his going
 to Church, and his Demand to come in.
 Mr. Wellard. I went with him to the Church,
 where the Election was, in order to vote for
 Wightwick. As we were going, we saw the
 Witness last examined, and desired him to take
 Notice we went for that Purpose. We went up
 to the Doors, and found them fastened within.
 Mr. Marsh. Did you observe any body about
 the Doors?
 Mr. Wellard. Yes, the Mayor's Servant and
 others. I knocked and pushed at the Door, but
 no body came, or gave any Answer.
 Mr. Marsh. And by what Method did you
 acquaint the Assembly that you were there, and
 desired Admission, in order to give your Votes?
 Mr.

Mr. *Wellard*. We sent in Letters to the Mayor, to acquaint him we were at the Door. We gave the Letters to Mr. *Wightwick*, and desired him to deliver them to the Mayor. We expected to be denied, and therefore gave Letters to *Wightwick*, to deliver to the Mayor.

C. J. *Eyre*. Mr. *Wellard*, ——— If you will not hear, I cannot help it. They went to the Church; you came after, and tried to get in. You sent in a Letter to the Mayor by *Wightwick*; How could that be? because he was gone into the Church before.

Mr. *Wellard*. My Lord, I gave Mr. *Wightwick* my Letter to carry in with him, before he went.

C. J. *Eyre*. It was to acquaint him, you were ready to come in, and give your Vote? — Can you tell whether *Wightwick* delivered that Letter, or not?

Mr. *Wellard*. Yes, my Lord; he told me, after the Election was over, he had delivered it.

Mr. *Marsh*. Did you not, on the Day of the Election, dine with *Coates*? Did not the Mayor, and all the Jurats and Freemen, dine there, and go from thence? And if you had had a Mind, could you not have got in with them?

Mr. *Wellard*. No; the Mayor told us, if we had a Mind, we should not come in.

Mr. *Knowler*. Was you not in the Church before the Business was over? Did not you come into the Chancel?

Mr. *Wellard*. Not till after the Mayor was sworn, and had Possession of the Staff.

Mr. *Knowler*. Did you then tender yourself to vote?

Mr. *Wellard*. No; it was all over.

Mr. Serj. *Darnell*. You dined with *Coates*; Did you prognosticate there would be a Shutting of the Door, and a Refusal?

Mr. *Wellard*. Yes; because the Mayor had told us, we should not come in.

Mr. Serj. *Darnell*. Did you write Word Mr. *Papillon* was with you?

Mr. *Wellard*. I sent in the following Letter.

(*Produces and reads it.*)

“ Mr. Mayor,

“ I am at the Church, and demand to be admitted, to give my Vote, as others, for Mayor. “ If I am denied, pray take Notice, that I give “ my Vote for Mr. *Humphry Wightwick* to be “ Mayor for the Year ensuing, I being at this “ Time a Resident in this Town.

“ C. *Wellard*.”

Mr. Serj. *Darnell*. Whose Advice did you write that Letter by?

Mr. *Wellard*. I demur to that Question. In Point of Law I ought not to answer it.

C. J. *Eyre*. I think, Mr. *Wellard*, you should answer the Question, because it is an indifferent Question.

Mr. *Wellard*. Mr. *Papillon* and I concerted it, in order to preserve our Rights.

C. J. *Eyre*. You thought they would not let you in; therefore you wrote this Letter, and sent it?

Mr. *Wellard*. Yes, my Lord.

Mr. *Lacy*. Did Mr. *Papillon* write this Letter?

Mr. *Wellard*. I know his Hand; I saw him write it, and deliver it to *Wightwick*.

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Associate reads —

“ Mr. Mayor,

“ I am at the Church, and demand to be admitted, to give my Vote, as others, for “ Mayor. If I am denied, pray take Notice, “ that I give my Vote for Mr. *Humphry Wightwick* to be Mayor for the Year ensuing, I being “ at this Time a Resident in this Town.

“ D. *Papillon*.”

Mr. *Batchelor* called and sworn.

Mr. *Lacy*. Look upon the two Papers signed *Papillon* and *Wellard*; Were they delivered by Mr. *Wightwick* to the Mayor?

Mr. *Batchelor*. I saw *Wightwick* deliver them to *Coates*, the Mayor.

Mr. *Lacy*. Was it before or after the Choice?

Mr. *Batchelor*. It was before; and the Mayor said, he would admit no Foreigners to come in. The Mayor shewed the Letters about, and gave them to me to read, and said, he would admit no Foreigners in.

Mr. *Lacy*. Had the Freemen given their Votes?

Mr. *Batchelor*. No; they were gone to the Chancel to vote, but had not voted.

Mr. *Lacy*. Did you see the Letters delivered to *Wightwick*?

Mr. *Batchelor*. No.

Mr. *Lacy*. How do you know them to be the same?

Mr. *Batchelor*. Because they were open. I saw *Coates* sign at the Bottom, “ This was “ brought me at the Time of the Election of “ Mayor, and *We refused it.*”

Mr. *Knowler*. Did *Coates* acquaint the Assembly he had received such Letters, and resolved not to admit them?

Mr. *Batchelor*. Yes.

Mr. *Knowler*. Did any other Person demand to be admitted?

Mr. *Batchelor*. No.

Mr. *Knowler*. Did you ever know any Foreigners vote for Mayor?

Mr. *Batchelor*. No.

Mr. *Marsh*. Was there Time for them to have given their Votes, if they had been let in as soon as the Letters were delivered?

Mr. *Batchelor*. Yes; they were just gone out, and hardly got into the Chancel, before *Wightwick* delivered them.

C. J. *Eyre*. Did you ever know any one let in, after the Door was shut?

Mr. *Batchelor*. No, my Lord.

Mr. *Lacy*. After they are let into the Church, and the Door shut, cannot a Freeman be let in?

Mr. *Batchelor*. I never knew or remember it in my Life, after the Church-Door shut?

C. J. *Eyre*. Did you ever know or hear, that *Coates* was to make the Election void, as their Friend, by refusing to let them in? *Coates* voted for *Wightwick*, and knew that on Refusal it would be a void Election. If People that had a Right were excluded, I think it a void Election.

Mr. *Lacy*. My Lord, they all joined to exclude Foreigners.

Mr. *Papillon* called; and, whilst swearing,

Mr. Serj. *Darnell*. So they were to serve, or swear for one another.

[2 L]

Mr.

Mr. *Wellard*. I don't know what you mean by that Insinuation: We regard an Oath as much as you do.

Mr. Serj. *Darnell*. My Lord, Mr. *Wellard* says, I insinuated Mr. *Papillon* would assert a Falsehood. I scorn it; I said no such Thing.

Mr. *Marsh*. Pray, Sir, give an Account what passed on or before the Day of Election.

Mr. *Papillon*. There was an Insinuation, that I designed to vote at the Election for Mayor; on which they applied to the Mayor, to know if he would admit me. He told them, No; and it was refused at the Instance of the Gentlemen of the other Side. I do not know that I thought of voting before; but then I asked the Mayor about it, and he refused me, because I was their Member, and therefore ought not to meddle. I did not chuse to make any Disturbance, and therefore wrote the Letter, and then followed myself, as soon as I could. I delivered the Letter to *Wightwick*, to give it to the Mayor. I desired him to take Notice, I insisted on my Vote. I waited all the Time of the Election at the Church-Door, but could not get in. *Coates* has put me to much Trouble, and was always my Enemy.

Mr. Serj. *Darnell*. Did not *Coates* vote for *Wightwick*?

Mr. *Papillon*. The Poll will tell you.

Mr. Serj. *Darnell*. He voted on your Side. Read the Letter.

Affociate reads --

“ Mr. Mayor, I am at the Church-Door,
“ &c.” *verbatim* as Mr. *Wellard's* Letter.

Mr. Serj. *Baynes*. Did you see the Men go to vote?

Mr. *Papillon*. I cannot be sure; but I thought the properest Time to be refused was when they were assembled. I did not design to make a Disturbance, and therefore delivered a Letter to Mr. *Wightwick*; and afterwards I knocked at the Door, which was shut. The Proclamation was ready to be read; for there was great Reason to think there would be a Disturbance created.

Mr. Serj. *Baynes*. Might you not, upon your Oath, have gone in with the other Gentlemen, if you had thought fit?

Mr. *Papillon*. I believe not, upon my Oath; because *Coates* told me, he would not admit me.

Mr. *Knowler*. Did you not stay in *Coates's* Parlour purposely, when he went out, that the Church-Door might be shut?

Mr. *Papillon*. I cannot tell.

Mr. *Knowler*. Pray, Sir, recollect yourself.

Mr. *Papillon*. Upon my Oath, I cannot recollect whether I was then in the House; I think not.

Mr. *Knowler*. Was there any Disturbance at the Election?

Mr. *Papillon*. No; they knew the Proclamation was ready.

Mr. *Knowler*. Were there not other Gentlemen resiant, as well as you, refused?

Mr. *Papillon*. I believe not.

Mr. *Knowler*. How long had you been a Resiant? Did not you come the Day before the Election?

Mr. *Papillon*. I cannot recollect as to the Day.

Mr. Serj. *Darnell*. You say in your Letter, you were resiant; Pray, Sir, how long had you been so?

Mr. *Papillon*. I cannot recollect. If you allow my Letter is a good Demand, I will explain it.

Mr. *Smith*. Would there not have been a Disturbance, if you had rushed into the Church?

Mr. *Papillon*. Upon my Oath, I believe there would.

Mr. *Lacy*. My Lord, we submit this Issue here.

Mr. Serj. *Darnell*. May it please your Lordship, and you Gentlemen of the Jury; This, my Lord, is the principal Issue; and the Gentlemen of the other Side, in order to prove that a Majority did not chuse the Defendant *Elles* Mayor, say, that this Poll was not a Majority of the whole, and have endeavoured to shew, that other People had a Right to vote, besides the Persons who appear upon the Poll; that *Gibbon* and *Darby* were admitted Freemen, and their Votes not taken; therefore, instead of the one Majority for *Elles*, if they had been admitted, there would have been a Majority of one for *Wightwick*. Now, my Lord, it appears from the Evidence, that *Gibbon* and *Darby* were admitted the very Morning of the Election, not by the Mayor, Jurats, and Commonalty, but by other Persons, at another Place, and upon producing *Mandamus's*. We shall shew you, Gentlemen, that when the *Mandamus's* were brought, though this Matter had been a great while kept private, it was unanimously resolved, at a Common Assembly, That no Freeman's Daughter should by Marrying intitle her Husband; and that they would contest any such Claim at Law. We shall shew you, Gentlemen, that, the Day before the Election came on, one hundred Guineas were offered to one Man, a thousand Guineas to another: But, when neither would do, being both absolutely refused, then the *Mandamus* was produced, and two Men sworn in the very Morning before the Election. I appeal to the common Sense of every Man; Is there any Pretence of Right for this? The Swearing and Admitting can give no Right; the Man must be legally chosen by the Body: But this was not at all the Case; instead of this, an Order was made by the Assembly, and entered in their Books, That the *Mandamus* should be controverted.

After this, they offered Mr. *Papillon* and Mr. *Wellard* as Voters; and their Proceeding in this is as extraordinary as the *Mandamus*. It is true, they were Freemen; but no Man, not resiant, can be admitted to vote; and therefore they were refused by the Body.

But, Gentlemen, they tell you, We have done all we could; we sent in Letters to the Mayor, and came to the Church-Door in order to get in, and were refused; and therefore their Votes ought not to be objected to, as they stand on the Poll.

Please, Gentlemen, to observe how this Affair has been cooked up between Mr. *Papillon* and Mr. *Wellard*. *Wellard* tells you, the Letters were written before Dinner on the Day of the Election; they are Word for Word the same, Letter for Letter. The Subscription is exactly in the same Words. “ We refused it, *John Coates*, “ Mayor.” *Coates* had proposed it to the Body, and they refused it. But *Coates* is in Mr. *Papillon's* Interest, and votes for him: Can he say this, *We refused this*? No; 'tis only to give a handle of Complaint, that Men have been unjustly refused, and that therefore the Election is void: Though I never yet heard, that a Man was to be admitted to vote by Letter, or that a Vote was to be put into a Pocket.

As to the Case of *Hytbe*, the Men were actually there at the Poll, and offered their Votes for the Candidates, and were actually refused by the presiding Officer; and if he refuses, the Person has his Remedy: But I never before heard of a Vote put into a Pocket. If this is to be admitted, there can be no Certainty in any Election. A Corporate Body assembled are not to be broke in upon, after the Doors are locked, and the Keys taken in, (as in the House of Commons) to prevent Confusion; and therefore all Right of Voting is excluded, when this Body is once assembled. Besides, they dined with *Coates*, and might have gone in with him, and the rest of the Freemen, if they would: But, instead of that, for particular Purposes, they say, No; we will not claim it in Person, we will demand it by Letter.

Upon the whole Circumstances of this Case, we hope, Gentlemen, it has been clearly made out to you, that *Elles* had the Majority; that the *eleven* that voted for him were *legal Votes*, and that but *ten legal Votes* voted for *Wightwick*; and therefore, Gentlemen, that you will find a Verdict for us.

Mr. Serj. *Baynes*. My Lord, the Gentlemen of the other Side have endeavoured to make out, that four legal Voters were excluded; and that, *Gibbon* and *Darby* being sworn in, though they were rejected by the Assembly, they are to be looked on as if they had given their Votes.

The Right of Voting is, to be elected by the Mayor, and Jurats, and Commonalty: But they were never elected, or duly sworn in, by the Mayor and Jurats; it was done by *Mandamus*: And though it was agreed and resolved, at a Common Assembly, to contest it, yet the Mayor and two Jurats swore them in; and therefore it was right to refuse them their Votes; and then there is plainly a Majority for *Elles*.

And, Gentlemen, as to Mr. *Papillon* and *Wellard's* Votes, if there be any Fraud or Collusion in that Matter, their Votes are to be set aside: And they came for their Right, after the Church-Door was shut. It is agreed, that, on the Election of a Mayor, the Keys of the Church are laid down on the Table, and the Doors are shut: This, Gentlemen, is the Constitution of the Town. The Evidences tell you, they were all met at *Coates's*, and went after Dinner to Church, to vote for *Wightwick*; but the Mayor would not admit them. How could this create a Disturbance? But he did not admit them for fear of a Disturbance, and they were kept out; and any Part of the Assembly are to be excluded, if they come too late, as in the House of Commons.

But the Gentlemen of the other Side say, their Offer to vote should be looked on in the same Manner as if they had voted. And this, Gentlemen, we admit, is Law in the House of Commons, but was never determined to be Law in any of the Courts in *Westminster-Hall*: It is the Practice there, but never at Common Law. So that, Gentlemen, there is a plain Majority of those assembled for the Defendant *Elles*; and therefore we hope you will find that he is duly elected.

Mr. *Knowler*. My Lord, there is an Entry upon the Assembly-Book, where *Gibbon's* and *Darby's* Right were taken into Consideration by the whole Body; and it was unanimously resolved,

that they had no Right; and, to make it the more solemn, the Mayor, Jurats, and Commonalty subscribed it; and *Coates*, and the others, who admitted them, have also subscribed it. — Read the Entry of the 1st of *March*, 1728.

C. J. *Eyre*. It signifies nothing, an Act in 1728: They gave their Judgment, what signifies it?

Mr. *Knowler*. Read the Entry.

Affociate reads —

“ *New-Romney*, 1 *March*, 1733. Reciting that
“ *Gibbon* and *Darby* had threatened to bring their
“ *Mandamus*, to be admitted to the Freedom of
“ this Town and Port; It was resolved to return
“ as Council shall advise, and the Suit to be
“ defended at the Charge of this Corporation.”

Mr. *Marsh*. I hope, my Lord, we are proper to reply.

C. J. *Eyre*. You are not regular to reply. You laid down a Rule the Beginning of this Circuit, and now you do not keep to it: But I will hear you, regular or irregular.

Mr. *Marsh*. My Lord, we humbly insist, the last Entry is no Evidence.

C. J. *Eyre*. You are the Master of Order; I submit to you.

Mr. *Marsh*. My Lord, I had not objected, but that four People who voted for *Wightwick*, that had no Disqualification, are left out of their Poll. By their own Evidence it appears, that this was upon a Right, in having married a Freeman's Daughter; and I submit it to your Lordship, that a Resolution to contest that Right surely can never take it away, especially if afterwards it appears to be a Right not contested —

C. J. *Eyre*. It should be a Custom proved as a Foundation for this Right.

Mr. *Marsh*. My Lord, a Point of Law depending on the Demurrer, we submit, whether your Lordship will not save it, in case we lay proper Evidence before your Lordship to support it: For, if the Charter puts them on the same Freedom with *Sandwich*, and the Custom there is, that the Daughter of a Freeman, by Marrying, intitles the Man to a Freedom; then it will be a Point, Whether the Charter warrants that Custom? A Pretence of Right, however, they have; the Entry of *Gibbon* and *Darby* is by their own Officer, and they were sworn in by the Mayor and Jurats.

And, my Lord, it is admitted on all Sides, that Mr. *Papillon* and *Wellard* are Freemen; and if they did all they could to get into the Church and vote, then, my Lord, we humbly insist, they are as much Voters as if they had been at the Poll, and were actually in the Case of the Men of *Hytbe* mentioned before.

Therefore, Gentlemen, if the Mayor told Mr. *Papillon* and Mr. *Wellard*, that, if they came to the Church, they would not be admitted; and said to Mr. *Papillon*, You are our Member, do not insist upon it; and when they offered themselves to vote, refused them; we humbly insist, they are as good Voters, as if they had been at the Poll, and actually voted.

And, as to *Gibbon* and *Darby*, they had this Right by Marrying, and were warranted by the Charter —

C. J. *Eyre*. It is not regular.

Mr. *Lacy*. My Lord, the Gentlemen of the other Side object to the Fact laid by us in Point
of

of Law, that we do not come up to what we contend for by our Plea, as to the *sole Right*: But, if *Darby* and *Gibbon* had a Right, other than by Election, where they are sworn in; I would submit it to your Lordship, Whether, till disqualified, they are not in the complete Exercise of that Franchise? There may be Rights that come not in by Election. Mr. Serjeant *Darnell* says, that the Majority of those present are to chuse the Mayor: But, my Lord, if we did all we could to get in, as has been fully proved to your Lordship and the Jury; we humbly insist, we are intitled to a Vote as much, as if we had been actually present at the Poll, and had given our Votes.

It has been said; that, when the Business is begun, no body is to interfere: But, my Lord, we were present by Letter before; and if they read it not, that was not our Fault.

Mr. *Smith*. My Lord, we admit, that all Persons are to be chosen by a Majority of Freemen present; and we humbly insist, Mr. *Papillon* and Mr. *Wellard* were present in Point of Law; and, in fact, in the House of Commons it never was otherwise.

My Lord, in the Case of *Ashby* and *White*, (Vol. 8.) the Question was, Whether an Action would lie for refusing a Vote? It was resolved that it would, because the common Remedy in the House of Commons would give no Relief. And the Authority of the Men of *Hythe's* Case was fully with us: *Darby* and *Gibbon* being admitted, we apprehend, when they voted, they were in the Exercise of their Franchise, and are therefore good Votes.

C. J. *Eyre*. Gentlemen of the Jury, The Question upon this Issue is, Whether the Defendant *Elles* was duly elected by a Majority of the Jurats and Commonalty of the Town and Port of *New-Romney*? And it appears from the Evidence, that twenty-one Freemen being assembled, *Wightwick* had ten Voices, *Elles* had eleven; and that two People were present, whose Votes were not taken, *Darby* and *Gibbon*. It was on the 25th of *March*; and these two People were admitted by the Mayor and Jurats, on producing a *Mandamus*; which is a Precept from a superior Court; but that confers no Right, nor mends the Thing, if there be no Evidence of a prior Right.

They tell you, on one Side, that *Darby* and *Gibbon* being sworn in by the Mayor and Jurats, they are put in Possession of their Office, and are to be regarded as People that have a Right in the Election of Mayor: But, unless some such Right be proved, such as Birth, Election, or some other Right, the *Mandamus* confers none.

But they tell you, this is a particular Right, supported by a particular Custom: and therefore the Question is, Whether this Admittance can give a Right?

Now, Admittance and Swearing can give no Right, without a previous Right. A *Mandamus* may be brought, when they were never elected; and such Admittance will do nothing of itself.

But no such Custom has been proved, and the Corporation has protested against it; and therefore *Darby* and *Gibbon* had no Right to vote.

But they say, Mr. *Papillon* and *Wellard* had a Right; and if one more Vote be added to the Poll, then *Wightwick* had it.

They were certainly Freemen; but yet they could not send in their Votes by Letter, or vote otherwise than personally; they must be *corporaliter congregati*.

Mr. *Papillon* was told, the Mayor would not admit him—What then? Should he not then have endeavoured to go in with the rest? I think he ought, if he will give his Vote; there can be no reasonable Excuse!

The Mayor having told him, they would not admit a Foreigner; they tell you, they sent in Letters, and did what they could to get in.

But they have not done what they could: For they should have attended the Mayor, and gone to the Church, and got in with him and the rest: But they do not come till after the Church-Door is shut; and the Evidences all say, that, after the Church-Door is shut, no body can be admitted; and that, when they go in, they lock the Door, take up the Keys, and then no body is ever admitted. If they do not come in Time, therefore, they exclude themselves. They must be there, and come at the usual Time; and if they did not, they excluded themselves: And is the Law, or the Method of Elections, to be changed for them?

Mr. *Papillon's* — (I would not insinuate —) sending the Letters is attended with odd Circumstances. The Letters are given to *Wightwick*, and he is to deliver them to *Coates*; then they are refused by the Assembly; and afterwards the Letters are returned into their Hands again, with a Note, “ We have received this Letter, and it “ has been refused.”

Gentlemen, I think the Letter will do nothing: They were wrong in their Judgment; and not coming in Time, they ought not to be let in, any more than any body else. A Man cannot send in his Vote by Letter; he must be present in the Assembly.

And therefore neither of these four Gentlemen had any Right to vote, in my Opinion; and then the Majority is for *Elles*, and he is duly elected.

Verdict for the Defendant.

Mr. Serj. *Darnell*. My Lord, the next Issue is, That he was not duly sworn.—Mr. *Loftie*, Do you know whether Mr. *Elles* was sworn in Mayor of *Romney*?

Mr. *Loftie*. Yes; he was sworn in by me in the Church, in the Manner as other Mayors are sworn.

Mr. *Marsh*. As to the Oath to be taken by the Mayor, you are only Ministerial: Did not the Mayor say to you, *Wightwick* was the Man that was to be sworn in Mayor? Did not *Coates* tell you, “ I administer the Oath to *Wightwick*,” and strike *Elles's* Hand off the Book?

Mr. *Loftie*. No, not that I heard.

Mr. *Lacy*. Did not he order you to swear *Wightwick*?

Mr. *Loftie*. He ordered me to swear the Mayor.

Mr. *Lacy*. Did not he order you not to swear Mr. *Elles*?

Mr. *Loftie*. Not to my Knowledge.

Mr. *Smith*. Did *Coates* say who he thought was Mayor?

Mr. *Loftie*. Yes; he said *Wightwick* had the Majority.

C. J. *Eyre*. Where two People are sworn in, the Right must be in the Man that had the Possession of the Staff.

Mr. *Batchelor* sworn.

Mr. *Marsh*. Was you present in the Church, the Day the Mayor was chosen?

Mr. *Batchelor*. Yes.

Mr. *Marsh*. What Declaration was made by *Coates*, as to the Person chosen Mayor?

Mr. *Batchelor*. He told the Town-Clerk, *Wightwick* was Mayor; and said, "I would have you set down *Darby* and *Gibbon* as Voters for *Wightwick*," and called them over: But *Loftie* would not set them down, because it was against his Inclination. *Coates* gave the Staff to *Wightwick*; and said, "I resign this to you; you shall be the Mayor; you had the most Votes."

Mr. *Marsh*. Who then called for the Oath?

Mr. *Batchelor*. The old Mayor.

Mr. *Marsh*. Did he call on any one to administer the Oath?

Mr. *Batchelor*. Yes; he bid *Loftie* administer the Oath to *Wightwick*; and then *Wightwick* and *Elles* laid their Hands on the Book, and *Coates* said, he would swear *Wightwick* only, and shoved *Elles's* Hand off the Book twice.

C. J. *Eyre*. Read the Clause in the Charter, that relates to the Chusing of a Mayor; the Question being, Whether the Mayor or Town-Clerk should administer the Oath?

Associate reads—

"The said late Queen by Letters Patent granted, that on *Lady-Day*, in the Chancel of *St. Nicholas*, one of the Jurats should be chosen into the Mayoralty for the Year ensuing, and should take his Oath, in Manner as the Mayor of *Sandwich* takes it."

C. J. *Eyre*. The Mayor must administer the Oath.

Mr. Serj. *Darnell*. My Lord, the Oath is always read by the Town-Clerk; and I humbly apprehend, it is taking the Oath, when it is read by him in Presence of the Mayor.

C. J. *Eyre*. The Mayor must consent to the Oath; he is the Judge, whether the proper Person be sworn, or not. The Oath is to be administered by the old Mayor; and it appears, it was against his Consent; he thought another elected, and struck *Elles's* Hand off the Book.

Mr. Serj. *Darnell*. Suppose a Man to take an Oath to qualify him for an Office; Shall a Justice of the Peace refuse it?

C. J. *Eyre*. Can a Man take an Oath that is not administered to him? The Town-Clerk has no more to do with it than you or I. A Man is guilty of Perjury, if a Clerk will administer an Oath, when a Court forbid him. Besides, the Mayor delivered the Ensigns of his Power to *Wightwick*.

Mr. Benjamin *Cobb* sworn.

Mr. *Marsh*. Was you present at the Election of the Mayor?

Mr. *Cobb*. Yes.

Mr. *Marsh*. Did you see the Oath administered?

Mr. *Cobb*. Yes.

Mr. *Knowler*. Was *Elles* sworn?

Mr. *Cobb*. No.

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C. J. *Eyre*. Did not the Mayor deliver his Staff into the Hands of *Wightwick*?

Mr. *Cobb*. Yes, my Lord.

Mr. *Langdon* sworn.

Mr. *Lacy*. Was you present at the Election of the Mayor?

Mr. *Langdon*. Yes.

Mr. *Lacy*. Was the Oath administered to *Wightwick*?

Mr. *Langdon*. Yes.

Mr. *Lacy*. Did *Coates* make any Objection to the swearing *Elles*?

C. J. *Eyre*. Did *Coates* think *Elles* was chosen Mayor?

Mr. *Langdon*. I believe not.

C. J. *Eyre*. Who did *Coates* think was Mayor?

Mr. *Langdon*. My Lord, he said *Wightwick* was Mayor, on account of *Darby* and *Gibbon*.

Mr. *Marsh*. Did *Wightwick* take the Staff, or did *Coates* deliver it to *Elles*?

Mr. *Langdon*. *Wightwick* had the Staff, and went Home with the Staff.

Mr. *Wynne*. Did *Elles* walk as near the Staff as the other?

Mr. *Langdon*. I believe he did.

Mr. *Gray* sworn.

Mr. Serj. *Baynes*. Was you present at the Choice of Mayor? Did *Coates* say any thing, or strike *Elles's* Hand off the Book? Was you near?

Mr. *Gray*. I was present; he never touched his Hand.

Mr. *Lacy*. Did not *Coates* order *Wightwick* to be sworn?

Mr. *Gray*. I do not know he ordered any body to be sworn.

C. J. *Eyre*. Had *Wightwick* the Staff in his Hand, when he was sworn?

Mr. *Gray*. No.

C. J. *Eyre*. Where was it?

Mr. *Gray*. It lay down upon a Tomb-stone.

C. J. *Eyre*. I take it, he ordered the Mayor to be sworn.

Mr. *Gray*. I do not know his Thoughts.

Mr. *Marsh*. Is it usual for the Mayor to have the Staff in his Hand, when sworn?

Mr. *Gray*. I do not know.

Mr. *Marsh*. Whom did he name?

Mr. *Gray*. I heard him mention no body.

Mr. *Lacy*. Who was *Wightwick* declared Mayor by?

Mr. *Gray*. By Mr. *Coates*.

Mr. *Lacy*. When did the Mayor say this?

Mr. *Gray*. At the Time of the Election.

Mr. *Lacy*. Mr. *Loftie*, was you near *Coates*, when the Mayor was sworn? Did he strike *Elles's* Hand off the Book?

Mr. *Loftie*. Not that I saw.

Mr. *Tooke* sworn.

Mr. *Lacy*. Was you present at the Election of the Mayor?

Mr. *Tooke*. Yes; I was very close to Mr. *Coates*. I did not hear him declare *Wightwick* Mayor, or see him strike *Elles's* Hand off the Book. He mentioned *Wightwick*, and said, *Wightwick* should be sworn.

Mr. *Marsh*. Did he order him to be sworn, or deliver to him his Staff?

[2 M]

Mr.

Mr. *Tooke*. He said, he should be sworn; but I did not see him deliver his Staff to him.

Mr. *Halfenden* sworn.

Mr. *Marsh*. Was you present at the swearing Mr. *Wightwick* Mayor?

Mr. *Halfenden*. Yes, I was present, and saw *Coates* shove *Elles's* Hand from the Book. I heard him say, he would not swear *Elles*, and saw him, after Swearing, deliver the Staff to *Wightwick*; and I saw *Elles's* Hand struck off twice.

Mr. *Marsh*. Did *Elles* walk even with the Mayor?

Mr. *Halfenden*. I cannot tell.

Mr. *Gibbon* sworn.

Mr. *Marsh*. Was you present at the swearing in the Mayor by *Coates*?

Mr. *Gibbon*. Yes; he gave Orders to take the Poll, and after it was taken, he asked, Who was Mayor? *Loftie* told him, *Elles*; *Wilson* said, *Wightwick*. Then *Coates* said, that *Wightwick* was chosen Mayor, and should be sworn; and then *Coates* delivered the Staff to *Wightwick*. I saw it delivered, and saw *Coates* shove *Elles's* Hand off the Book, and heard him say, "Mind, " I swear *Wightwick* Mayor."

Mr. *Marsh*. We shall trouble your Lordship no more.

C. J. *Eyre*. Gentlemen of the Jury, The Question on this Issue is, Whether the Defendant *Elles* was sworn Mayor, or not?

It must be done by his Predecessor.

Loftie says, that *Coates* ordered him to swear the Mayor, and that he read the Oath: If this was done by *Coates's* Order, then he was well sworn.

But, if it was done contrary to his Order, and he declared another Man, and shoved *Elles's* Hand off the Book, and said, "Take Notice, " I swear *Wightwick* Mayor," and not the other, and delivered the Staff to him, and did all he could to oppose the swearing *Elles*; then *Elles* was not sworn Mayor.

The Town-Clerk cannot swear the Mayor; and the Evidence is strong, that *Coates* opposed swearing *Elles*. The Man that has the Right, he is the Man that must be sworn; but none but the former Mayor can swear him.

The Question therefore is, Whether he was sworn by a proper Authority?

If you think him sworn by a proper Authority, and that *Coates* meant that *Elles* should be the Mayor, then you must find for him.

But if you think he meant *Wightwick* should be sworn Mayor, then you must find for *Wightwick*.

Verdict for the King.



NUMBER XVIII.

HENRY MOORE, *Plaintiff,*

AGAINST

The Mayor, Jurats, and Commonalty of the Town and Port of Hastings, in the County of Suffex, Defendants.

Tried on Tuesday, July the 20th, at the Sittings after Trinity Term, 1736, before the Right Honourable Philip Lord Hardwicke, Lord Chief Justice of His Majesty's Court of King's-Bench, on a Mandamus for admitting the Plaintiff to be a Freeman of Hastings, in Pursuance of a Custom there; which Custom the Defendants by their Return deny, and thereupon Issue is joined.

PLEAS before our Lord the King at *Westminster*, of *Hilary* Term, in the ninth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain, France, and Ireland* King, Defender of the Faith.

Amongst the Pleas of the King-Roll.

Middlesex. SOME Time ago, that is to say, upon the 28th Day of *November*, in the ninth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great-Britain, France, and Ireland* King, Defender of the Faith, before our said Lord the King at *Westminster*, the same Lord the King commanded, to the Mayor, Jurats, and Com-

monalty of his Town and Port of *Hastings*, in his County of *Suffex*, his Writ closed, in these Words; that is to say, " *George* the Second, by the Grace of God, of *Great-Britain, France, and Ireland* King, Defender of the Faith; To the Mayor, Jurats, and Commonalty of the Town and Port of *Hastings*, in our County of *Suffex*, greeting: Whereas the said Town and Port is an ancient Town and Port, and one of the Five ancient Ports of this Kingdom: And whereas there is, and Time out of Mind hath been, a certain ancient and laudable Custom, used and approved within the said Town and Port, That every Person, being the eldest Son of any Freeman of the said Town and Port, and

" born

“ born within the said Town and Port, after the
 “ Admission and Swearing of his Father into the
 “ Place and Office of one of the Freemen of the
 “ said Town and Port, hath a Right, *in Respect*
 “ thereof, and also upon paying a reasonable Fine,
 “ to be admitted and sworn into the Place and
 “ Office of one of the Freemen of the said Town
 “ and Port, and ought by you to be admitted
 “ and sworn into the Place and Office of one of
 “ the Freemen of the said Town and Port,
 “ according to the Custom of the said Town and
 “ Port: And whereas one *Henry Moore* is the
 “ eldest Son of *Samuel Moore*, one of the Freemen
 “ of the said Town and Port, and was born
 “ within the said Town and Port, after the
 “ Admission and Swearing of his Father into the
 “ Place and Office of one of the Freemen of the
 “ said Town and Port: And whereas the said
 “ *Henry Moore*, by virtue thereof, and upon
 “ paying a reasonable Fine, according to the
 “ said Custom, ought by you so to be admitted
 “ and sworn into the Place and Office of one of
 “ the Freemen of the said Town and Port; yet
 “ you, well knowing the Premises, but not
 “ regarding your Duty in this Behalf, have not
 “ as yet admitted the said *Henry Moore* into the
 “ said Place and Office of one of the Freemen of
 “ the said Town and Port; nor have you ad-
 “ ministered the Oaths to the said *Henry Moore*,
 “ which are in that Case usually administered
 “ and taken, although you have been often
 “ requested so to do by the said *Henry Moore*;
 “ but have refused, and yet do refuse, to admit
 “ and swear the said *Henry Moore* into the said
 “ Place and Office of one of the Freemen of
 “ the said Town and Port, although the said *Henry*
 “ *Moore* has tendered to you a reasonable Fine on
 “ that Behalf; in Contempt of Us, and to the
 “ no small Damage and Grievance of him the
 “ said *Henry Moore*, and to the manifest Injury
 “ of his Estate, as We have been informed from
 “ his Complaint to Us: We therefore, being
 “ willing that due and speedy Justice be done to
 “ the said *Henry Moore* in this Behalf, (as it is
 “ reasonable) do command you, by firmly in-
 “ joining, that, immediately after the Receipt
 “ of this our Writ, you do without Delay, upon
 “ the said *Henry Moore*’s paying a reasonable Fine,
 “ admit, or cause to be admitted, the said *Henry*
 “ *Moore* into the said Place and Office of one of
 “ the Freemen of the said Town and Port,
 “ together with all the Liberties, Privileges,
 “ Franchises, Emoluments, and Commodities,
 “ to a Freeman of the said Town and Port
 “ belonging and appertaining; and that you
 “ administer, or cause to be administered, to
 “ the said *Henry Moore*, the Oaths which are in
 “ that Case usually administered and taken,
 “ according to the said Custom; or shew to Us
 “ Cause to the contrary thereof, that the same
 “ Complaint may not, by your Default, be
 “ repeated to Us. And how you shall have
 “ executed this our Writ, make it appear to
 “ Us at *Westminster*, on *Friday* next after the
 “ Octave of *St. Hilary*, returning then to Us this
 “ our Writ. And this you are not to omit,
 “ upon Peril that may fall thereon. Witness
 “ *Philip Lord Hardwicke*, at *Westminster*, the
 “ 28th Day of *November*, in the ninth Year of
 “ our Reign.”

Upon which said *Friday* next after the Octave
 of *St. Hilary*, before our said Lord the King at

Westminster, the said Mayor, Jurats, and Com-
 monalty of the said Town and Port of *Hastings*,
 in the said County of *Suffex*, returned the said
 Writ as followeth; that is to say, “ The Answer
 “ of the Mayor, Jurats, and Commonalty of
 “ the Town and Port of *Hastings*, within men-
 “ tioned, to this Writ, appears in a certain
 “ Schedule to this Writ annexed: We, the
 “ Mayor, Jurats, and Commonalty of the Town
 “ and Port of *Hastings*, mentioned in the Writ
 “ hereunto annexed, do, according to the Com-
 “ mand of the said Writ, humbly certify to
 “ our Sovereign Lord the King, That there is
 “ not, nor Time out of Mind hath been, any
 “ such ancient and laudable Custom, used and
 “ approved within the said Town and Port,
 “ That every Person, being the eldest Son of
 “ any Freeman of the said Town and Port, and
 “ born within the said Town and Port, after the
 “ Admission and Swearing of his Father into the
 “ Place and Office of one of the Freemen of the
 “ said Town and Port, hath a Right, in Respect
 “ thereof, and also upon paying a reasonable
 “ Fine, to be admitted and sworn into the Place
 “ and Office of one of the Freemen of the said
 “ Town and Port, as in the said Writ is
 “ alledged: And, for this Cause, We, the said
 “ Mayor, Jurats, and Commonalty of the said
 “ Town and Port of *Hastings*, have not admitted,
 “ nor caused to be admitted, neither ought we
 “ to admit, or cause to be admitted, *Henry*
 “ *Moore*, in the said Writ named, into the Place
 “ and Office of one of the Freemen of the said
 “ Town and Port, together with all the Liberties,
 “ Privileges, Franchises, Emoluments, and Com-
 “ modities to a Freeman of the said Town and
 “ Port belonging and appertaining; neither have
 “ we administered, nor caused to be administered,
 “ nor ought we to administer, or cause to be
 “ administered, to the said *Henry Moore*, the Oaths
 “ which are in that Case usually administered
 “ and taken, as by the said Writ we are
 “ commanded to do.”

And hereupon, upon the same *Friday* next
 after the said Octave of *St. Hilary*, before our said
 Lord the King at *Westminster*, came as well the
 said *Henry Moore*, in the said Writ and Return
 named, by *Henry Masterman* his Attorney, as the
 said Mayor, Jurats, and Commonalty of the said
 Town and Port of *Hastings*, in the said County of
Suffex, in the same Writ and Return mentioned,
 by *Henry Walrond* their Attorney. And the said
Henry Moore, having had Oyer of the said Writ
 and Return, saith, That for any thing above
 alledged by them, the said Mayor, Jurats, and
 Commonalty, in their said Return to the said
 Writ of *Mandamus*, he the said *Henry Moore* ought
 not to be barred from having a peremptory Writ
 of *Mandamus*, in order to be admitted and sworn
 into the said Place and Office of one of the
 Freemen of the said Town and Port; because he
 saith, that there is, and Time out of Mind hath
 been, such ancient and laudable Custom, used
 and approved within the said Town and Port,
 That every Person, being the eldest Son of any
 Freeman of the said Town and Port, and born
 within the said Town and Port, after the Ad-
 mission and Swearing of his Father into the Place
 and Office of one of the Freemen of the said
 Town and Port, hath a Right, in Respect thereof,
 and also upon paying a reasonable Fine, to be
 admitted and sworn into the Place and Office of
 one

one of the Freemen of the said Town and Port, in Manner and Form as in the said Writ of *Mandamus* is above alledged. And the said *Henry Moore* prayeth, that this may be inquired into by the Country; and the said Mayor, Jurats, and Commonalty pray the like.

Mr. *Clarke*. May it please your Lordship, and you Gentlemen of the Jury; *Henry Moore* is the Plaintiff; and the Mayor, Jurats, and Commonalty of the Town and Port of *Hastings*, are the Defendants. And, Gentlemen, this is a *Mandamus*, directed to the Defendants, the Mayor and Jurats of that Town and Port, to admit and swear in the Plaintiff *Henry Moore* into the Place and Office of one of the Freemen of this Town.

And, Gentlemen, the *Mandamus* sets forth, That the Town and Port of *Hastings* is an ancient Town and Port, and one of the Five ancient Ports of this Kingdom; and that there is, and for Time out of Mind has been, a certain ancient and laudable Custom, used and approved within that Town and Port, That every Person, being the eldest Son of any Freeman there, and born within the said Town, after the Admission and Swearing of his Father into the Place and Office of one of the Freemen of the said Town and Port, has a Right, in Respect thereof, and also upon paying a reasonable Fine, to be admitted and sworn into the Place and Office of one of the Freemen there, according to the Custom of that Town and Port.

Gentlemen, the *Mandamus* further sets forth, That the Plaintiff *Henry Moore* is the eldest Son of *Samuel Moore*, one of the Freemen of the said Town and Port, and was born within the Town, after the Admission and Swearing of his Father into the Place and Office of Freeman; and that the Plaintiff, by virtue thereof, and upon paying a reasonable Fine, according to the Custom, ought to have been admitted and sworn by the Defendants into the Place and Office of a Freeman; but that the Defendants, contrary to their Duty in this Case, have refused, and still refuse, to admit and swear him, although he has tendered to them a reasonable Fine on that Behalf.

And this, Gentlemen, the Defendants are laid to have done in Contempt of the King, to the great Damage and Grievance of the Plaintiff, and to the manifest Injury of his Estate.

And therefore the Writ proceeds to command the Defendants, immediately, upon the Plaintiff's paying a reasonable Fine, to admit and swear him into the Place of a Freeman, or to shew Cause why they do not.

To this Writ, Gentlemen, the Mayor, Jurats, and Commonalty have returned for Answer, That there neither is, nor for Time out of Mind has been, any such ancient and laudable Custom, used and approved within the Town and Port of *Hastings*, as is alledged in the Writ; and this, they say, is the Reason they have not admitted the Plaintiff.

Gentlemen, upon this Issue is joined; and the only Question you are now to try is, Whether there be such a Custom in the Town and Port of *Hastings*, as the Plaintiff has laid in the *Mandamus*? If therefore, Gentlemen, Evidence is laid before you, that there is, and Time out of Mind has been, such a Custom, you will please, Gentlemen, to find a Verdict for the Plaintiff.

Sir *Thomas Abney*. May it please your Lordship, and you Gentlemen of the Jury; I am also of Council of the same Side with the Plaintiff; and you will please, Gentlemen, to observe, that the single Issue you are to try is, Whether there now is, and Time out of Mind has been, an ancient and laudable Custom in the Town and Port of *Hastings*, in the County of *Suffex*, That every Person, being the eldest Son of a Freeman of the said Town and Port, and born within the said Town and Port, after the Admission and Swearing of his Father into the Place and Office of one of the Freemen of the said Town and Port, hath a Right, in Respect thereof, and also upon paying a reasonable Fine, to be admitted and sworn into the Place and Office of one of the Freemen of the said Town and Port?

This, Gentlemen, is the Issue you are now to try; and it will not, I believe, be necessary to trouble you with an Account of the *Cinque Ports*, and their Privileges and Customs.

But, Gentlemen, the Matters of Proof we shall lay before you will be of three Kinds.

And the first which offers itself to your Consideration, arises from a very ancient Record, called the Customal; which is a very ancient Deed, without any Date; it being an usual Thing for ancient Deeds and Evidences to be without any Date; and this Customal is the Rule and Law of all the *Cinque Ports*.

Gentlemen, this Customal is so old, and goes so far back as the Year 1573; it contains fifty-nine Articles. Our Right arises upon this Customal; and therefore I will beg Leave to read the Title, and some Passages out of it, to you.

“ *Hic sequuntur Consuetudines Quinque Portuum, et eorum Membrorum, à tempore quo non extat memòr hom' usitat' et approbat'.* ”

Gentlemen of the Jury, the Words we ground our Right upon are these:

Art. 34. “ *Possunt Majores et Jurati, Ballivi et Jurati, et Jurati, in quolibet Portu et Membro ubi Major et Ballivus de communi electione non fuerit, in presentia Communitatis, recipere et facere liberes tribus modis:* ”

“ *Uno modo, per Nativitatem infra Libertatem suam, si pater suus, tempore natiuitatis suæ, fuit liber:* ”

“ *Alio modo, per Liberum Tenementum perquisit'.* ”

“ *Tertio, per Emptionem.* ”

“ *Et notand', quod nullus gaudebit libertatem alicujus Portus, sive Membri, quousque sacramentum suum præstitit, quod esse debet, à die illo, usque ad finem vitæ suæ, bonus et fidelis Domino nostro Regi Angliæ, et hæredibus suis; statutaque et libertates Quinque Portuum, et specialiter illius Portus sive Membri ubi commoratur, pro posse suo maintenebit; obediensque Majori et Juratis, Ballivo et Juratis, vel Juratis, semper erit; semper paratus tam ad scottand' et lottand', si quæ taxat' pro communi utilitate fuerint, quam in armis pro defensione inimicorum Domini Regis, cum per Governatores ipsius Portus sive Membri habuerit in mandatis; et quod non audiat aliquod ad deteriorationem libertat' prædict', sive ad reprobationem Majoris, Ballivi, et Juratorum, ubi commoratur, vel eorum alicujus, nisi ipse inde eis dabit notitiam. Sic se adjuvent sancta sanctor', &c.* ”

“ *Possunt Majores et Jurati, Ballivi et Jurati, et Jurati, in quolibet Portu, &c. recipere et facere liberes tribus modis:* ”

“ *Uno* ”

“ *Uno modo, per Nativitatem infra libertatem suam, si pater suus, tempore nativitatis suæ, fuit liber —*

That, Gentlemen, is the Point we ground our Right upon; the first Right. If a Person be the eldest Son of a Freeman, and born within the said Town and Port, after the Admission and Swearing of his Father into the Office of one of the Freemen of the said Town and Port; we say, such eldest Son is intituled.

“ *Alio modo, per Liberum Tenementum perquisit’.*

“ *Tertio, per Emptionem.*”

So that, Gentlemen, by this 34th Article of this Customal you see what the ancient Law and Usage was; That the eldest Son of every Freeman, under these Circumstances, is intituled to his Freedom: And therefore we say, that the Plaintiff *Henry Moore*, as the eldest Son of *Samuel Moore*, has, and he is undoubtedly intituled, under this Right, to his Freedom.

And, Gentlemen, as this Customal mentions three distinct Methods of making free, *viz.* by Birth, by a Freehold Tenement, and by Purchase; so it has made a manifest Distinction between the Freedom acquired by Birth, and by either of the other two Ways.

For, Gentlemen, the Fine that is paid by the Son of a Freeman, upon his being admitted and sworn, is only 6s. 8d. That is the reasonable Fine, that is always paid, when a Man is intituled as the Plaintiff is: But all other Persons, whether they are made free by a Freehold or by Purchase, they always paid 13s. 4d. or, however, always more than the Person who was admitted as the eldest Son of a Freeman.

My Lord, and Gentlemen of the Jury, when you have heard this Customal (which we shall lay before you) read, we shall then read to you some hundreds of Entries out of the Corporation-Books; from whence it will appear, that the eldest Sons of Freemen, under the Circumstances of the present Case, have been always admitted; and from whence there will result so uniform and clear a Testimony in Support of the Plaintiff’s Right, that we defy the Gentlemen of the other Side to produce one Entry, in any of the Corporation-Books, to contradict, or at least to impeach, our Entries.

Gentlemen, these are old Entries, many of them in Queen *Elizabeth’s* Time; and therefore they are not so exact in the Stile as modern Entries usually are. Sometimes the Son is said to be admitted, “ *Quia pater ejus liber erat, et ipse natus fuit infra libertatem.*” Sometimes the Stile is, “ *Quia maximus natu filius.*” And sometimes, “ *Quia filius liberi hominis.*”

And, Gentlemen, by comparing the Times of their Fathers Admissions, and the Births or Baptisms of the Persons admitted, (which we shall prove to you by authentic Copies from the Parish Register-Books in *Hastings*) it will appear to you to be the most clear and strong Case that ever came before a Jury.

Gentlemen of the Jury, another Part of our Evidence will arise from living Witnesses; very ancient Men, who, by their own Knowledge and Observation for fifty or sixty Years together, and by conversing with their Ancestors, many of whom lived to be eighty and ninety Years old, will prove, that this has always been the Custom, That the eldest Son of a Freeman, born within the Liberties, and after his Father was made

free, has always been intituled to his Freedom; till the other Day, when the Rights of the Town were to be played into a narrower Compass, and no Man was to be intituled to his Freedom, but at the Will and Pleasure of the Mayor and Jurats. And these Witnesses, Gentlemen, are not only ancient Men, but Persons free and disinterested; not a few Men disfranchised To-day, to serve a particular Purpose, and be made free again To-morrow: But our Witnesses are Men of great Age and Experience, not interested. We doubt not, therefore, Gentlemen, when you have heard our Evidence, that you will be of Opinion, that the Plaintiff has an undoubted Right, as the eldest Son of a Freeman, and find the Custom for the Plaintiff accordingly.

Mr. *Strange*. May it please your Lordship, and you Gentlemen of the Jury; I am also of Council for the Plaintiff: And, my Lord, this Case has been so fully and clearly opened by the Gentlemen who have gone before me, that I shall not take up any of your Lordship’s Time in stating any of the Circumstances in the Plaintiff’s Case; and I shall beg Leave, Gentlemen, only to observe, that the single Question now to be tried by you is, Whether the Custom in the Town and Port of *Hastings* be, That every Person, being the eldest Son of a Freeman of the said Town and Port, and born there, after the Admission and Swearing of his Father, has a Right, in Respect thereof, and also upon paying a reasonable Fine, to be admitted into the Office of one of the Freemen of the said Town and Port? For, Gentlemen, if this be the Custom there, the Plaintiff *Moore* is within every Part of this Custom.

In this Case, Gentlemen, three Things are to be proved:

First, That the Plaintiff be the Son of a Freeman, that was admitted and sworn into the Franchise of this Town.

Secondly, That he be born within the Liberties of the Town.

Thirdly, That he be born under this Circumstance, after the Time of his Father’s Swearing and Admission into this Freedom.

And we shall apply ourselves to lay before your Lordship and the Jury such an Evidence, as shall fully make out the Custom, That the eldest Son of a Freeman, born within the Borough, is, upon paying 6s. 8d. as a reasonable Fine, to be admitted and sworn into the Freedom of the Town.

My Lord, and Gentlemen of the Jury, the particular Evidence we shall lay before you, has been minutely opened to you; and I would beg Leave only to observe, that, as I humbly apprehend, the Custom now insisted on by the Plaintiff is a Sort of common Right of all the Subjects of *England*, there being no Corporation in the Kingdom, (*I might say, upon the Face of the Earth*) but where the Sons of Freemen, born after their Fathers Freedom, are intituled, according to the several Usages of the respective Boroughs where they claim their Freedom; so I do not know, I own, of one Instance, that I ever yet heard of, to the contrary.

But, my Lord, as we do not rely on that general Custom, but on the particular Evidence which has been opened; we shall begin with an old Record in 1573, as ancient as the old Customal of the *Cinque Ports*. We shall then, Gentlemen, read to you the Entries of Persons

who have been admitted as Sons of Freemen, for near two hundred Years past; and then produce to you several ancient living Witnesfes, who will speak to the Usage and Custom, and will prove to you, that it has been so Time out of Mind: And then, Gentlemen, we hope that, upon hearing these Records, and the Opinion of the old Witnesfes, you will find a Verdict for the Plaintiff.

Mr. *Marfb.* My Lord, we had a Rule for inspecting the Corporation-Books; therefore they are not in our Hands: But we have taken authentic Copies of the old Customal and Entries on Stamps, which we are ready to prove. — Swear Mr. *Cranfton.*

Mr. *Attorney-General*, (Sir *John Willes.*) My Lord, we have the Original in our Hands; and if we produce the Original, they cannot read their Copy. But, my Lord, we say, with great Submission to your Lordship, that the Original itself is no Evidence.

Lord *Hardwicke.* Mr. Attorney, some Light should be given what it is, and then I shall be able to judge.

Mr. *Strange.* If your Lordship pleases, we may as well prove our Copy.

Lord *Hardwicke.* If the Original is here, I cannot read the Copy.

Mr. *Cranfton sworn.*

Mr. *Strange.* Where had you that Book?

Mr. *Cranfton.* From the Town-Clerk of *Hastings.*

Mr. *Marfb.* Where was it kept? among the Corporation-Books and Records?

Mr. *Cranfton.* Yes.

Mr. *Marfb.* Turn to the 34th Article.

Sir *Tho. Abney.* My Lord, it is an ancient Book, kept among the other Records of the Corporation; and I never knew a Trial of this Kind, but the ancient Books of the Corporation were always read.

Mr. *At. Gen.* My Lord, I humbly submit it to your Lordship, that, as they open it, such a Book ought not to be read in Evidence; besides that there are several other Objections to it.

My Lord, they open it as the Customal of all the *Cinque Ports*, but not as the Customal of this Borough in particular: And, my Lord, this *Mandamus* takes no Notice of any Privileges that belong to all the *Cinque Ports*; and therefore the Customal they ought to produce, should be the Customal of that particular Town: But, to shew that this will be Evidence, they should make it appear, that there is one concurring Custom throughout the whole *Cinque Ports*.

And, my Lord, though there are some general Customs, which do affect all the *Cinque Ports*; yet, with great Submission to your Lordship, I must beg Leave to insist, that this particular Customal, in case it could be read, no more affects this Corporation, than the Customs of a County affect every particular Borough or Hundred in that County. In order to make this Evidence, they should prove one concurring Custom throughout all the *Cinque Ports*.

But, my Lord, if that were so, I submit it to your Lordship, that this cannot be read as Evidence.

The Gentlemen of the other Side say, that it is an ancient Record, because it is without a Date; and therefore it is ancient. And this, my

Lord, would have been proper, if they had had the old, ancient Customal itself to produce. And I submit it to your Lordship, that they must either produce that Customal, or shew that it cannot be come at, before this can be read. This is only an Entry in the Corporation-Books, in the Year 1573, of an ancient Customal.

This, my Lord, is what they would offer to your Lordship and the Jury, as Evidence: It is only a Copy; and if it be only a Copy, I humbly insist, they ought to produce the Original, or shew that they cannot come at it. But I believe they will be at a Loss to shew, it was ever entered at all by the Corporation's Order: For there is an Entry just before this, in the Year 1573, of a Mortgage; there are Abundance of Scraps put together, which nothing at all can be made of; some in 1609, some in 1592; a hundred Things got together, and entered at different Times, by no body knows who. *Non constat*, but this pretended Customal may be sewed into the Book; for there is nothing entered in this Book, that can be given in Evidence. If it was the Corporation-Book, there would have been other Entries, of the Manner of electing Freemen, Officers of the Corporation, and Members to serve in Parliament, and other Corporation-Affairs: But, because it is found among the Corporation-Papers, therefore it is to be given in Evidence; though found amongst a Medley of a hundred Sorts of trifling Things, in no wise relating to the Corporation, and that belong to God knows who. In the Book there are Copies of Mortgages, not one of them from Persons who stood indebted to the Corporation in one Farthing; an Account of a Rental of a Noble Lord's Estate; the Resolution of the Judges upon the Statute relating to the Poor; a hundred miscellaneous Things got together, no body knows how, or why: My Lord, I say, when it appears in this Light before your Lordship, I submit, that, as it does not at all appear what this Medley of a hundred Things are; because it is found amongst some Papers in the Custody of the Town-Clerk, and there is one Thing which relates to the Custom of all the *Cinque Ports*, and a hundred other Things not relating either to them or to this Borough, whether it be any Evidence at all. I submit it therefore to your Lordship, in the first Place, that as, upon the Face of it, it appears to be only a Copy of a Thing; and as it appears that Thing does not relate to this Borough in particular; and as it does not appear what Book this is, nor how it came amongst the Books of the Corporation; and as it is only a Collection of useless, miscellaneous Papers; I think it ought not to be read.

Lord *Hardwicke.* If I could get off from reading this Book lawfully, yet, from the Nature of this Cause, I must look upon the Book. In Cases of this Nature, I think it, *prima facie*, proper to be read in Evidence. There may be Objections to the reading it of different Kinds; some, from the Nature of the Custody in which it has been kept; some intrinsical, from the Book itself. Those from the Nature of the Custody, when, where, and how long it has been kept, are proper against reading it at all: But, when they arise from the Book itself, it is impossible to say it should not be read; because the Court cannot judge whether it be proper or no, till they have heard

heard it. I think, therefore, it must be read. If, upon reading, there appear to be any material Objections to the Book, I will hint them to the Jury, when I come to sum up.

Mr. *At. Gen.* My Lord, we submit it to your Lordship, that it is torn and defaced, and in many Places not legible.

Mr. *Strange.* Why did not you keep it better? This Book has not been in our Custody. If you do not take proper Care of your Corporation-Books, are we to be prejudiced by your Neglect?

Mr. *Marsh.* Mr. *Salkeld,* please to read the Title: If they have put *Chevy-Chase* in it, what is that to our Customal?

Associate reads —

“ The Customal of the Town of *Hastings,*
“ translated out of *Latin* into *English* —

Mr. *At. Gen.* Don't impose upon the Court, by reading a Translation of an old, miscellaneous, usefess Paper, without any Date.

Sir *T. Abney.* We shall read what Part we think fit.

Lord *Hardwicke.* What is the Title of that Part you are now going to read—the *Latin* Title?

Sir *T. Abney.* Read the *Latin* Title.

Associate reads —

“ *Hic sequuntur Consuetudines Quinque Portuum,*
“ *et eorum Membrorum, à tempore quo non extat*
“ *memor' hom' usitat' et approbat'.*

Lord *Hardwicke.* Mr. Attorney, it is suggested in the *Mandamus,* that *Hastings* is one of the *Five Ports.*

Mr. *At. Gen.* But, my Lord, this is not the Customal of *Hastings:* Here is Page 1. in the Middle of the Book.

Associate reads —

“ *Hic sequuntur Consuetudines, &c.*”

Mr. *Strange.* Turn to *Article 34.*

Sir *T. Abney.* Begin at *Possunt Majores et Ballivi.*

Associate reads —

“ *Possunt Majores et Jurati, Ballivi et Jurati, et*
“ *Jurati, in quolibet Portu et Membro ubi Major*
“ *et Ballivus de communi electione non fuerit, in*
“ *præsentia Communitatis, recipere et facere liberes*
“ *tribus modis: Uno modo, per Nativitatem infra*
“ *libertatem suam, si pater suus, tempore nati-*
“ *vitatis suæ, fuit liber: alio modo, per Liberum*
“ *Tenementum perquisit': tertio, per Emptionem. Et*
“ *notand', quod nullus gaudebit libertatem alicujus*
“ *Portus sive Membri, quousque sacramentum suum*
“ *præstitit, quod esse debet, à die illo, usque ad finem*
“ *vite suæ, bonus et fidelis Domino nostro Regi Angliæ,*
“ *et hæredibus suis; statutaque et libertates Quinque*
“ *Portuum, et specialiter illius Portus sive Membri*
“ *ubi commoratur, pro posse suo maintenebit; obediens-*
“ *que Majori et Juratis, Ballivo et Juratis, vel*
“ *Juratis, semper erit; semper paratus tam ad*
“ *scottand' et lottand', si quæ-taxat' pro communi*
“ *utilitate fuerint, quam in armis pro defensione*
“ *inimicorum Domini Regis, cum per Governatores*
“ *ipsius Portus sive Membri habuerit in mandatis;*
“ *et quod non audiat aliquod ad deteriorationem*
“ *libertat' prædictæ, sive ad reprobationem Majoris,*
“ *Ballivi, et Juratorum, ubi commoratur, vel eorum*
“ *alicujus, nisi ipse inde eis dabit notitiam. Sic se*
“ *adjuvent sancta sanctor', &c.*”

Mr. *Strange.* Read on the 35th, 36th, 37th, 38th, and 39th Articles.

Associate reads. —

Art. 35. “ *Et quilibet gaudere intendens libertatem*
“ *Quinque Portuum per Emptionem, inveniet quatuor*
“ *manu captos resident' de omnibus et singulis præ-*
“ *miss' perimplend'.*

36. “ *Et si fuerit extraneus, in partibus trans-*
“ *marinis oriundus, et in aliquo Portu sive Membro*
“ *bonæ famæ et conditionis permansit, et postmodum*
“ *in eodem Portu sive Membro maritat' fuerit, ac*
“ *libertatem gaudere desiderans, fiat ipse liber per*
“ *Emptionem, ut prædict' est, per totam libertatem*
“ *Quinque Portuum; salvo, quod non ad electionem*
“ *Majoris, Ballivi, Jurat', sive alior' officiar', nec*
“ *de consilio sive negotiis Communitatis fiend', quo-*
“ *usque habuerit literas Domini Regis, pro indigenat'*
“ *cognosci potest.*

37. “ *Et potest Dominus Custos Quinque Portuum,*
“ *sive ejus Locum-tenens, semel dum in officio fuerit,*
“ *mandare et facere unum extraneum, ultra mare*
“ *natum, liberum in quolibet Portu et Membro, in*
“ *forma liberis per Emptionem, absque aliquo fine*
“ *communitati ubi ipse extraneus commoratur pro*
“ *eodem persolvend', except' officiar' feod' ad hoc*
“ *usque consuet'.*

38. “ *Et ipsi, qui sunt in omnibus et singulis*
“ *formis prædictis facti liberi in aliquo Portu sive*
“ *Membro, habeant libertatem consuet' in omnibus*
“ *aliis Portubus.*”

Sir *T. Abney.* Now read the next, *Nullus fiat liber per Emptionem.*

Associate reads —

39. “ *Et nullus fiat liber per Emptionem, quousque*
“ *in Portu vel Membro, ubi libertatem desiderat,*
“ *per unum annum et unam diem permansit, et si*
“ *bene et honeste habuerit, &c.*”

Mr. *Strange.* My Lord, we shall read no more.

Lord *Hardwicke.* Are there any other Parts, Mr. Attorney, you would have read?

Mr. *At. Gen.* Let me see the Book. (*Turns it over.*) My Lord, here is an Entry in 1606, before the Entry of 1573. Here are Counter-parts of Leaves. We must, I believe, trouble your Lordship with reading one of them. — Read that Leaf.

Associate reads —

“ This Indenture made the 10th Day of *August,*
“ in the fifteenth Year of the Reign of our Sove-
“ reign Lady *Elizabeth,* &c. between *Theophilus*
“ *Johnson,* of *Lamberhurst* in the County of *Kent,*
“ Gent. of the one Part, and *James Woodgate,*
“ *Yeoman,* of the other Part —

Mr. *At. Gen.* Read the Judges Opinion about the Statute of *Queen Elizabeth.*

Mr. *Strange.* They would insinuate, that, because a few miscellaneous Papers are bound up with our Customal, therefore it is not authentic.

Lord *Hardwicke.* There is no Weight in that at all: The Town-Clerk may bind up what he pleases with the Corporation-Books. The Question is, Whether the general Declarations of the *Cinque Ports* are binding in the particular Ports, or no?

Mr. *At. Gen.* My Lord, I submit it to your Lordship, that the Things bound up with it, appearing to be miscellaneous, usefess Papers, take off from the Authority of it.

Lord

Lord *Hardwicke*. There are Copies of Leafes bound up with it, Mr. Attorney; Will that take off from its Authority?

Mr. *At. Gen.* If you will admit what I state, we will read it:

Mr. *Strange*. You may state what you will, and read what you will out of it; it is your own Book.

Mr. *At. Gen.* Then here is the Rental of a certain Noble Lord's Estate.

Mr. *Strange*. That looks as if the Corporation were in hopes he would leave it them.

Mr. *Marsh*. Not at that Time of Day. There are some Addressees, that may be a Proof of their Loyalty.

Lord *Hardwicke*. Let me see the Book; (*which was delivered.*) There is an Entry of some Leafes, with a Rental of an Estate.

Mr. *At. Gen.* Let me see the Book.

Sir *T. Abney*. My Lord, we beg Leave first to read the Entries of eldest Sons, born within the Liberties, after their Fathers were admitted, and that were admitted on paying their Fines of 6s. 8d. — Read *Jeremiah Brybam*. He was admitted into the Freedom the 27th of April, 12 James 1, anno 1614, and paid his Fine of 6s. 8d. He was baptized, my Lord, the 9th of November, 1587, and admitted as the eldest Son of *James Brybam*, Jurat. (*Produce the Copy on Stamps.*)

Lord *Hardwicke*. What is that? Where had you it from? Is it a true Copy?

Mr. *Cranston*. My Lord, it is a true Copy. I had it from the Corporation-Books; I examined it with the Entry in the Book.

Associate reads —

“ *Memorandum. 27^o Aprilis, 12^o Jacobi 1^{mi}, anno 1614. Hastings, ff. At the Court of our Sovereign Lord the King, came Jeremiah Brybam, and prayed to be admitted to the Freedom and Liberty of this Town; and by Mr. Mayor and his Brethren was admitted and sworn, and kissed the right Cheek of Mr. Mayor, more solito, pro fine 6s. 8d. duntaxat, quia filius sen' est liberi hominis et Jurat' hujus villæ, &c. viz. filius Jacobi Brybam, Jurat' defunct', &c.* ”

Mr. *Strange*. That, my Lord, is the Custom: He kissed the Mayor's Cheek, “ *more solito, pro fine 6s. 8d. duntaxat, quia filius sen' est liberi hominis et Jurat' hujus villæ, &c. viz. filius Jacobi Brybam, Jurat' defunct', &c.* ”

Sir *T. Abney*. My Lord, we beg Leave now to shew, when he was born, and when his Father was admitted. He was born or baptized the 9th of November, 1587. — Read the Certificate. Did you compare it with the Parish Register-Book of *Hastings*? Is it a true Copy.

Mr. *Cranston*. Yes; it is a true Copy; I examined it with the Register.

Associate reads —

“ 1587, November 9th, — ”

Sir *T. Abney*. This is the Birth or Baptism of this *Jeremiah Brybam*.

“ Christened, *Jeremiah*, the Son of *James Brybam*. ”

Sir *T. Abney*. My Lord, to shew that his Father was a Freeman, we shall read to your Lordship and the Jury an Entry, whereby it will

appear, that his Father acted as a Freeman January 4, 18 Eliz. 1576.

Lord *Hardwicke*. He is mentioned to be a Jurat in this Entry; therefore that is needless.

Mr. *Strange*. My Lord, the next Entry is the 20th of December, 1620, *James*, the Son of *James Lasber*. — Where is that? Did you examine that with the Entry in the Corporation-Book? Is it a true Copy?

Mr. *Cranston*. Yes; I examined it; it is a true Copy.

Associate reads —

“ *Hastings, ff. Assembly holden the 20th December, anno regni Regis Jac. 18^o, 1620, secundum consuetudinem, &c. At which Court appeared Richard Waller, Mayor; James Lasber, Martin Lise, William Bysbop, Richard Withers, Jeremiah Brybam, Richard Boys, John Brett, Nathaniel Lasber, Thomas Bryan, John Barley, William Barker, Jurats; Robert Mills —* ”

Mr. *Strange*. Pass over the Names:

“ At this Assembly, *Samuel Moore* and — are elected Barons of this Town: — ”

Sir *T. Abney*. My Lord, this *Samuel Moore* was the Plaintiff's Grandfather.

“ — And at this Court it is decreed, that *James Lasber* instantly requiring the same, was admitted to the Liberty and Freedom of this Town, by Consent of all; *et fecit sacramentum, et osculatus est malam dextram Majoris, more solito, et solvit pro fine 6s. 8d. quia primogenitus filius Jacobi Lasber, Jurat'.* ”

Sir *T. Abney*. Because he was the eldest Son of his Father. Now, my Lord, we shall shew he was born within the Borough, and after the Time of his Father's being admitted a Freeman. — Look out the Certificate of *James Lasber's* Baptism, the 27th April, 1579. Is that a true Copy, Sir? Did you examine it with the Register?

Mr. *Cranston*. It is; I examined it.

Associate reads —

“ 27 April, 1579. Christened, *James*, the Son of *James Lasber*, Jurat. ”

Mr. *Strange*. The Father is said to be a Jurat at the Time of registering the Son's Baptism.

Mr. *Marsh*. My Lord, the next Instance we go upon is *Thomas Lovell*, (Look out that) the eldest Son of *William Lovell*. The Father was admitted the 6th of September, 1636. *Thomas* the Son was born the 10th of February, 1640; he was admitted a Freeman on the 20th of April, 1667. — Read the Son's Admission. Did you examine it?

Lord *Hardwicke*. Is that a true Copy?

Mr. *Cranston*. It is, my Lord; I examined it.

Associate reads —

“ *Hastings, ff. 20 April, 1667. In public Court came Thomas Lovell, jun. eldest Son of William Lovell, late Jurat, deceased, and prayed the Franchise of this Town; to which, for his Fine of 6s. 8d. he is admitted; took his Oath, and kissed the Mayor's right Cheek, more solito.* ”

Mr. *Marsh*. To prove that his Father was a Freeman, shew the Entry of the 6th of September, 1636. Is it examined?

Mr.

Mr. Cranston. Yes.

Associate reads —

“ *Hastings*, ff. *Memorand*, quod 6th September, 1636, came *William Lovell*, and prayed to be admitted into the Freedoms of this Town and Port, and took the Oaths, *more solito*, and was admitted accordingly.”

Mr. *Strange*. My Lord, his Father had been four Years a Jurat, when the Son was baptized. — Read the Certificate of the 10th of *February*, 1640. Is it a true Copy? Did you examine it?

Mr. *Cranston*. I did.

Associate reads —

“ 1640, *February* 10th. Baptized, *Thomas*, the Son of *William Lovell*, Jurat.”

Mr. *Filmer*. My Lord, the next Instance is *William Batchelor*, eldest Son of *James Batchelor*. He was admitted the 2d of *May*, 1669. — Read that. Is it a true Copy? Did you examine it?

Mr. *Cranston*. It is; I examined it.

Associate reads —

“ *Hastings*, ff. 2 *Maii*, 22 *Car.* 2^{di}, 1669. At this Election and Assembly, *William Batchelor*, eldest Son of *James Batchelor* eldest, Freeman above-named, at his humble Request, is also made a Freeman, and admitted into the Franchise of this Township, for his Fine of a Demi-Mark, and thereunto sworn, and kissed the Mayor’s Cheek, *more solito*, &c.”

Mr. *Filmer*. My Lord, he was baptized the 17th of *July*, 1636. — Read that Certificate. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ 17 *July*, 1636. Baptized, *William*, the Son of *James Batchelor*.”

Mr. *Filmer*. My Lord, his Father was admitted nineteen Years before, 17th *September*, 15 *Jac.* 1, 1617. — Read his Admission. Is it a true Copy? Did you examine it?

Mr. *Cranston*. I did; it is a true Copy.

Associate reads —

“ 15^o *Regis Jacobi* 1ⁿⁱ, *Jacobus Batchelor* admissus est ad libertatem hujus villæ, et osculavit malam dextram Majoris, *more solito*, pro fine suo 13 s. 4 d.”

This *James* was the Father, and he paid a Fine of 13 s. 4 d. because he was not admitted as the Son of a Freeman. He was admitted by a Freehold or by Purchase.

Mr. *Clarke*. My Lord, the next Instance we shall trouble your Lordship with, is *William Parker*, jun. He was admitted the 9th of *May*, 1670, for a Fine of 6 s. 8 d. — Read his Admission. Is that a true Copy? Did you examine it?

Mr. *Cranston*. Yes; I examined it.

“ *Hastings*, ff. 9^o die *Maii*, 22 *Car.* 2, 1670. “ *Assemblat* tent’ ibidem coram Majore villæ et portus *Hastings* prædiæ.”

“ *William Parker*, jun. eldest Son of *William Parker*, Jurat, came here in Court, praying his Freedom, &c. which is granted him for a Demi-Mark; took his Oath, and kissed the Mayor’s Cheek, *more solito*, &c.”

VOL. X.

Mr. *Clarke*. My Lord, we have a Certificate of the Son’s Baptism, the 14th of *August*, 1644. — Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ 14 *August*, 1644. Baptized, *William*, the Son of *William Parker*.”

Mr. *Clarke*. We shall now shew your Lordship, that his Father acted as a Freeman six Years before the Birth of the Son, and as a Jurat two Years after. — Is that a true Copy? Did you examine it?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. *Elect* Majoris villæ et portus de *Hastings* prædiæ, tent’ ibidem 15^o die *Aprilis*, anno regni Regis nostri *Car*’ *Angl*’, &c. 14^o, 1638. Ad hanc diem *Johannes Barley electus* est in offic’ Majoris hujus villæ pro hoc anno sequent’ — Lord *Hardwicke*. Who was present?

“ — per voces horum liberorum hominum villæ prædiæ, videlicet, *Nic. Staplus*, *Ric. Staplus*, *Wil. Goldham*, *Wil. Chapman*, *Johannis Sargent*, *sen. Wil. Turpine*, *Ric. Wheeler*, *Johannis Harys*, *Wil. Dighton*, *Tho. Rainolds*, *Sam. Gawen*, *Geo. Fletcher*, *Ric. Wynter*, *Hen. Lasber*, *Humf. Blinkerne*, *Jo. Hitbe*, *Mich. Lasber*, *Phil. Girdler*, *Wil. Lunsford*, *Geo. Easton*, *Ric. Sargent*, *Sack. Franke*, *Jo. Sargent, jun.* *W. Parker*, *Jo. Wynter*, *Ro. Marshall*, *Tho. Stevenson, jun.* *Jo. Hollybone*, *Ro. Phillip*, *Dr. Ellis*, *Marci Pontes*, *Wil. Lovell*, jun. et *Jac. Batchelor*: Qui quidem Major sic elect’ sacramentum suum præstitit corporale ad offic’ illud exercend’ prout decet, *more solito*, &c.”

Sir *T. Abney*. The next Person we shall trouble your Lordship with, is —

Mr. *Serj. Eyre*. Was any body else admitted at that Time?

Sir *T. Abney*. There were nine made free. — My Lord, the next is *John Fantley*. He was admitted the 5th of *December*, 1674. — Is it a true Copy? Did you examine it?

Mr. *Cranston*. I examined it; it is a true Copy.

Associate reads —

“ *Hastings*, ff. 5 *Decembris*, 1674, 26 *Car.* 2^{di}. “ *Assemblat* tent’ ibidem coram Majore, &c. villæ et portus *Hastings* prædiæ, in plena curia venit *Johannes Salmon*, et petit libertatem hujus villæ; *Johannes Fantley, jun. et Willielmus Genner, jun. et admittuntur, scilicet, prædiæ* Salmon pro 13 s. 4 d. et prædiæ *Fantley* 6 s. 8 d. et prædiæ *Genner* 6 s. 8 d. quia filii sen’ patr’ eor’ liber’; qui omnes fecerunt inde sacramentam, et malam dextram Majoris osculaverunt, *more solito*, &c.”

Sir *T. Abney*. My Lord, the Father of *Fantley* was admitted a Freeman the 8th of *July*, 1626. *Fantley* the Son was baptized the 13th of *December*, 1640; just thirty-four Years before he was admitted a Freeman, which was the 5th of *December*, 1674. — Read the Certificate of his Baptism. Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. 13 *December*, 1640. Baptized, *John Fantley*, the Son of *John* and *Margaret Fantley*.”

Sir T. Abney. We shall now shew your Lordship, that his Father was admitted to his Freedom the 8th of July, 1626, thirteen Years before the Birth of his Son. — Read the Father's Admission. Is it a true Copy? Did you examine it?

Mr. Cranston. I did.

Associate reads —

“Hastings, ff. 8 Julii, 1626. Johannes Fantley
“admissus est ad libertatem hujus ville, pro fine
“13 s. 4 d.”

Mr. Serj. Eyre. There the Fine is 13 s. 4 d.

Sir T. Abney. This is the Father.

Mr. Serj. Eyre. That is a very material Difference. The Son's Fine is 6 s. 8 d. but every body that is admitted by any other Right, pays for his Fine 13 s. 4 d.

Mr. Strange. The Fine of 6 s. 8 d. is a particular Indulgence to the Sons of Freemen, and all others paid 13 s. 4 d. or more. — My Lord, the next Instance is Philip Bayley, the eldest Son of John Bayley. He was admitted the 10th of April, 1691; he was born the 14th of May, 1669. — Read his Admission. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“10 April, 1691, 3 W. and Mar. Hastings, ff.
“This Day, being Good-Friday, Philip Bayley,
“eldest Son of John Bayley, deceased, formerly
“Mayor of Hastings, for his Fine of 6 s. 8 d.
“was admitted to the Freedom of this Town
“and Port, by Thomas Lovell, Mayor, Edward
“Milward, Richard Watts, and John Medhurst,
“Jurats; who took his Oath, and kissed the
“Mayor's right Cheek, *more solito*, and also took
“the Oaths of Allegiance and Supremacy.”

Mr. Strange. We shall now produce the Copy of the Registry of his Baptism, which was the 14th of May, 1669.

Mr. Cranston. It was the 19th of May, 1667.

Mr. Strange. Read the Certificate of the 19th of May, 1667, of Philip Bayley's Baptism. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“1667, May 19. Baptized, Philip, the Son
“of John Bayley and Anne his Wife.”

Mr. Strange. My Lord, we shall now read the Copy of the Entry of the 28th of April, 1656; whereby it will appear, John Bayley his Father was then a Freeman. — Is it a true Copy? Did you examine it?

Mr. Cranston. I examined it; it is a true Copy.

Associate reads —

“Hastings, ff. The Election of the Mayor of
“the Town and Port of Hastings, the 28th
“Day of April, 1656, in the Court-Hall
“of the same Town, according to the Use
“and Custom thereof, Time out of Mind
“used, &c.

“At this Day was chosen Thomas Delves into
“the Office of Mayoralty of the same Town,
“for the Year ensuing, by the Voices of these
“Freemen of the said Town following: —

Mr. Strange. Who was present?

“ — That is to say, of Richard Wheeler,
“William Dighton, Richard Sargent, sen. Philip

Girdler, John Lasber, William Barker, Mark
Pontes, James Batchelor, Daniel Downe, James
Lasber, Gent. Drew Richardson, Thomas Jarret,
John Spey, Samuel Smershall, John Fyffenden,
Richard Stevenson, James Redames, William
Geerey, Robert Bursley, Thomas Hyder, Daniel
Stevens, John Brunnel, John Bayley, jun. Thomas
Penbuckle, Edward Hildring, Simon Waters,
James Chowe, Ralph Barnicle, John Shoefsmith,
John Fantley, Peter Stanbynooth.”

Mr. Marsh. My Lord, the next Instance is Jeremiab Redames. He was admitted the 11th of January, 1691. — Look out that. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“Hastings, ff. Memorandum, The 11th Day
“of January, 1691, before Mr. Mayor, assisted
“by Philip Lovell, John Stevens, and Dr. Peter
“Fiat, Jurats, came Jeremiab Redames and Philip
“Girdler, and craved to be admitted into the
“Freedom of this Town and Port; and they
“were accordingly admitted into the Freedom,
“and took the Oath of a Freeman, and also the
“other Oaths, and kissed the Mayor's right
“Cheek, *more solito*; and for a Fine paid, viz.
“Philip Girdler, a Mark; and Jeremiab Redames,
“being the eldest Son of a Freeman, half a
“Mark; which was *extr*' to the Chamberlain.”

Mr. Marsh. My Lord, the Time of his Baptism was the 2d of January, 1655. — Read that Certificate. Have you examined it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“Hastings, ff. 2 January, 1655, Jeremiab, the
“Son of James Redames, was baptized.”

Mr. Marsh. My Lord, James Redames was a Freeman in April 1649.

Mr. Clarke. My Lord, the next Instance is Thomas Boyce. He was admitted as an eldest Son.

Lord Hardwicke. You must shew Jeremiab Redames was born after the Father's Admission, if you would apply this Instance.

Mr. Clarke. My Lord, we will shew that James Redames the Father acted as a Freeman the 28th of April, 1649, six Years before the Son was born. — Look out that Entry. Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“Hastings, ff. The Election of the Mayor of
“the Town and Port of Hastings, the 28th
“Day of April, 1656, in the Court-Hall
“of the same Town, according to the Use
“and Custom there Time out of Mind
“used.

“This Day was chosen Thomas Delves into
“the Office of Mayoralty of the same Town,
“for the Year ensuing, by the Voices of these
“Freemen of the said Town; that is to say, of
“Richard Wheeler, &c. James Redames, &c.”
ut supra.

Mr. Serj. Eyre. Read it again.

Lord Hardwicke. It is only mentioned as a Fact.

Mr. Clarke. My Lord, the next Instance is Thomas Boyce, admitted as an eldest Son the 26th of December, 1691. He was baptized the 3d

of August, 1671. — Read his Admission. Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“ *Hastings*, ff. *Memorandum*, That the 26th Day of *December*, 1691, before Mr. Mayor, assisted by *Thomas Lovell*, *Philip Lovell*, *John Stevens*, and Dr. *Peter Fiat*, Jurats, came *Thomas Boyce*, jun. *Richard Broadbridge*, *Benjamin Meadow*, and *Thomas Wheeler*, and craved to be admitted into the Freedom of this Town and Port; and they were accordingly admitted into the Freedom, and took the Oaths of Freemen, and also the Oaths of Allegiance to their Majesties King *William* and Queen *Mary*, and kissed the Mayor’s right Cheek, *more solito*; and for a Fine paid, *viz. Thomas Boyce*, jun. and *Richard Broadbridge*, being Freemen’s eldest Sons, paid each 6s. 8d. and *Benjamin Meadow* and *Thomas Wheeler*, 13s. 4d. each; which was *extraet* to the Chamberlain. And forasmuch as the said *Thomas Boyce*, jun. *Richard Broadbridge*, and *Benjamin Meadow*, are not yet House-keepers, their Friends have undertaken and promised for them, that they shall pay what Scot and Lot shall be assessed upon them, also Watch, Ward, and Search, and do all Duties incumbent upon Freemen, *viz. Thomas Boyce*, for his Son *Thomas Boyce*, jun. and *John Stevens*, Son of *Henry*, for *Richard Broadbridge* and *Benjamin Meadow*.”

Mr. Clarke. My Lord, he was baptized the 3d of August, 1671. — Read the Certificate of his Baptism. Is it examined?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings*, ff. 1671, August 3d, Baptized, *Thomas*, the Son of *Thomas Boyce*.”

Mr. Strange. Now read the Admission of *Thomas Boyce* the Father. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

“ *Hastings*, ff. *Assemblat’ tent’ ibidem 20^o die Novembris, anno regni Regis nostri Caroli secundi, Angliæ, &c. 15^o, 1663.*

“ *Hastings*, ff. *Memorand’*, quod 5^o die Decembris, hoc anno prædiēt’, venerunt *Thomas Boyce* et *Willielmus Genner* coram Majore et Juratis in plena curia, et per seipfos ad libertatem hujus villæ admitti; et admittuntur, et osculati sunt malam dextram Majoris, et sacramentum suum tunc ibidem præstiterunt, *more solito*, pro fine utriusque eorum 13s. 4d.”

Mr. Clarke. My Lord, the next Instance is *Stephen Peregoe*. He was admitted the 11th of August, 1716; baptized the 29th of January, 1690; and his Father was admitted the 12th of May, 1683. — Read the Son’s Admission. Is it a true Copy? Have you examined it?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings*, ff. *Cur’ tent’ ibidem undecimo die Augusti, anno regni Regis nostri Georgii 2^{di}, Magnæ Britanniæ, &c. tertio, anno 1716.*

“ *Memorandum*. The 11th of August, *Stephen Peregoe*, jun. was sworn a Freeman of this Town, *more solito*, &c. at the Bell Inn in *Hastings*, before the Mayor and Jurats, and paid 6s. 8d.

“ Fine, as being the eldest Son of a Freeman; and the Reason of his being now sworn out of Court was, because it had been before unanimously agreed to, in full and open Court, by the Mayor and Jurats.”

Mr. Serj. Eyre. Who is that?

Sir T. Sibney. *Stephen Peregoe*.

Lord Hardwicke. What, is the Fine 6s. 8d.?

Mr. Clarke. Yes, my Lord; he paid 6s. 8d. as being the eldest Son of a Freeman. — Now read the Certificate of his Baptism. Is that a true Copy? Did you examine it?

Mr. Cranston. I did.

Associate reads —

“ *January 29, 1690. Baptized, Stephen*, the Son of *Stephen* and *Margaret Peregoe*.”

Mr. Clarke. The Time of his Father’s Admission was the 12th of May, 1683. — Read that. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“ *Hastings*, ff. 12 May, 1683. Before the Mayor and Jurats, came *Stephen Peregoe*, and prayed to be admitted into the Freedom of this Town and Port; whereupon he is admitted for his Fine.”

Mr. Filmer. My Lord, *Benjamin Meadow*, admitted the 6th of May, 1721, is the next. — Read his Admission. Did you examine that? Is it a true Copy?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings*, ff. At the Court of Record held the 6th of May, 1721, *Benjamin Meadow*, jun. was, with the unanimous Consent and Approbation of the Mayor and Jurats, made a Freeman of this Town and Port, for his Fine of 6s. 8d. as the eldest Son of a Freeman.”

Mr. Serj. Eyre. By the unanimous Consent of the Mayor and Jurats, he was made free.

Mr. Filmer. My Lord, he was baptized the 25th of August, 1697. — Read the Certificate. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“ *Hastings*, ff. 25 August, 1697. Baptized, *Benjamin*, Son of *Benjamin* and *Meadow*.”

Mr. Filmer. My Lord, his Father’s Admission was the 26th of December, 1691, six Years before the Birth of the Son. — Read that. Did you examine it? Is it a true Copy?

Mr. Cranston. I did.

Associate reads —

“ *Hastings*, ff. *Memorandum*, 26 December, 1691, before Mr. Mayor, assisted by *Thomas Lovell*, *Philip Lovell*, *John Stevens*, and Dr. *Peter Fiat*, came *Thomas Boyce*, jun. *Richard Broadbridge*, *Benjamin Meadow*, and *Thomas Wheeler*, and craved to be admitted into the Freedoms of this Town and Port; and took the Oaths, and were admitted accordingly,” prout supra.

Lord Hardwicke. What do you read that for?

Mr. Strange. My Lord, to shew that *Benjamin Meadow* was a Freeman so many Years before the

the Birth of *Benjamin Meadow*, the eldest Son: He came, and prayed to be admitted, and took the Oaths.—My Lord, our next Instance is *John Barley*. He is not mentioned in the Entry as the eldest Son, but as the Son of such a Man, who was free; and from thence we infer, that the Man had no other Sons.

Lord *Hardwicke*. Who is that?

Mr. *Strange*. *John Barley*, my Lord. He was admitted in *May*, 1608. We chuse to put them together, though we are now gone a hundred Years back.—Read his Admission. Did you examine it? Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 6^o *Jacobi* 1^{mi}, 1608. *Memorandum*, That on the 7th of *May*, hoc anno, *John Barley* and *Richard Kempfall* were admitted to the Freedom and Liberty of this Town, and were sworn, and kissed Mr. Mayor’s right Cheek, more solito; whose Fines appear upon their Heads.”

Mr. *Strange*. See the Fine of 6s. 8d. paid by *Barley*.

Associate reads —

“ *John Barley*, *Hastings*, quia pater suus liber homo, ideo, secundum consuetudinem, finis ejus est 6s. 8d.

“ *Kempfall*, 13s. 4d.”

Mr. *Strange*. “ *Quia pater suus liber homo, ideo, secundum consuetudinem, finis ejus est 6s. 8d.*”

Lord *Hardwicke*. What was *Kempfall*’s Fine?

Mr. *Strange*. 13s. 4d. my Lord.—Now read his Certificate. Have you examined it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. 19 *May*, 1588. Baptized, *John*, the Son of *John Barley*.”

Mr. *Serj. Eyre*. Mr. *Cranston*, you say you have examined the Register; Did not you find an elder Brother of this *John Barley*?

Mr. *Cranston*. No.

Mr. *Strange*. My Lord, we shall now shew, that his Father acted as a Freeman anno 1561.—Read the Entry. Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*. Election’ *Ballivi* tent’ ibidem die *Aprilis*, viz. die *Dominica* prox’ post *Hock-day*, anno tertio *Elizæ*, nunc *Reginæ Angl’*, A. D. 1561. Ad quem diem electus est ad officium *Ballivi* villæ præd’ pro hoc anno *Tho. Wyks*, per voces et nominationem *Edw. Aywood*, *Shipwright*, *Hen. Taught*, *Wil. James*, *Johannis Hemlyng*, *Ed. Smyth*, *Hen. Smyth*, *Johannis Barley*, *Tho. Lake*, *Johannis Hollands*, *Wil. Cressey*, *Rob. Payne*, *Ric. White*, *Cooper*, *Johannis Stanbynooth*, *Tho. Palmer*, *Steph. Dallery*, *Hen. Bossam*, *Johannis Smyth*, *Tho. Lasher*, *Ric. Down*, *Al. Bocher*, *Johannis Austen*, *Tho. Matchyn*, *Johannis Horsey*, *Wil. Stevens*, *Johannis Jeffery*, *Rob. Taught*, *Wil. Church*, *Johannis Bossam*, sen. *Johannis Stryde*, *Alani Morris*, *Tho. Chatfield*, *Alani Partridge*, *Rob. Grave*, *Tho. Harrison*, *Wil. Lockett*, *Thomæ Mott*, *Johannis Sargent*, et *Johannis Derle*.”

Mr. *Marsh*. My Lord, the next Instance is *William Goldbam*. He was admitted the 7th of *May*, 1609.

Sir *T. Abney*. His Great Grandson is just by.

Mr. *Marsh*. Read the Entry. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ 7 *Maii*, 7^o *Jac.* 1^{mi}, 1609. *Hastings*, ff. *Septimo die Maii*, hoc anno *septimo Jacobi Regis*, *Willielmus Goldbam* admissus est ad libertatem hujus villæ, et sacramentum præstitit corporale, et osculatus est malam dextram Majoris more solito; et finis ejus pro admissione sua assessatur ad 6s. 8d. quia filius liberi hominis, &c.”

Mr. *Marsh*. Now look out the Certificate of his Baptism. Have you examined it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ 29 *November*, 1584. Baptized, *William*, the Son of *John Goldbam*.”

Mr. *Marsh*. My Lord, he was admitted a Freeman the 15th of *April*, 1575, nine Years before the Birth of his Son.—Read the Father’s Admission. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. *Memorandum*, quod 15^o *Aprilis*, 1575, *Richardus Frenche*, *Willielmus Coombes*, *Richardus Edborough*, *Johannes Goldbam*, et *Wil. Mychell*, jun. admissi sunt ad libertatem villæ prædictæ, et facti sunt liberi homines secundum usum et consuetudinem villæ prædictæ, et sol’ feod’, et et oscul’ *Ball*, &c.”

Mr. *Serj. Eyre*. Does it appear what the Fine was?

Mr. *Filmer*. No.—My Lord, the next Instance is *John Sargent*. He was admitted the 14th of *July*, 1610.—Read the Entry of his Admission. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ 1610. *Hastings*, ff. 14 die *Julii*, hoc anno octavo regni *Regis Jacobi*, *Johannes Sargent* admissus est ad libertatem hujus villæ, et sacramentum præstitit corporale, et osculatus est malam dextram Majoris, more solito; et finis ejus pro admissione sua est 6s. 8d. quia pater ejus liber erat.”

Mr. *Filmer*. My Lord, he was baptized the 21st of *November*, 1568. Read the Certificate. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 21 *November*, 1568. Baptized, *John*, the Son of *John Sargent*.”

Mr. *Filmer*. My Lord, *April* 3d, 1561, his Father acted as a Freeman; that was seven Years before.—Read the Entry. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*. Elect’ *Ballivi* tent’ ibidem die *Aprilis*, viz. die *Dominica* prox’ post *Hock-day*, anno tertio *Dominæ Elizæ*, nunc *Reginæ Angliæ*, &c. A. D. 1561. Ad quem diem electus est ad officium *Ballivi*

“ *Ballivi villæ prædictæ pro hoc anno Tho. Wyks, per voces et nominationem Edw. Aywood, Shipwright, et (inter alios) Johannis Sargent,*” ut supra.

Mr. Clarke. My Lord, the next Instance is *Thomas Rainolds*. He was admitted the 27th *May*, 1622. — Read his Admission. Have you examined it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“ *Hastings, ff. Cur' tent' die 27 Maii, 1622, coram Roberto Lloyd, secundum consuetud'. Memorandum, quod ad hanc cur' Thomas Rainolds, filius Melchioris Rainolds, liberi hominis hujus villæ, venit et petit se ad libertatem hujus villæ admitti; et admittitur, et sacramentum suum more solito præstitit, et malam dextram Majoris secundum usum osculatus est, pro sine suo inde, &c.*”

Mr. Serj. Eyre. Is there any thing mentioned what the Fine was?

Mr. Clarke. No.

Lord Hardwicke. It is *pro sine suo*.

Mr. Clarke. My Lord, he was baptized the 15th of *December*, 1601. — Read the Certificate. Is it examined?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings, ff. 1601, December 15th, Baptized, Thomas, the Son of Melchior Rainolds.*”

Mr. Clarke. We shall now shew, that his Father acted as a Freeman the 17th of *April*, 1597. — Read that Entry. Did you examine it? Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“ *Hastings, ff. Eleet' Majoris villæ prædictæ tent' ibidem die Dominica prox' post Hock-day, viz. 17^o die Aprilis, anno regni nostræ Dominæ Elizæ, Dei gratia, Angliæ, Franciæ, et Hiberniæ Reginæ, fidei Defensor, &c. tricesimo nono, 1597. Ad hanc electionem Ric. Lyfe, Major; Tho. Lake, Ric. Calverley, Rog. Ferrys, Ric. Frank, Ric. Frenche, Martinus Lyfe, Jurat'; liberi homines, Johannes Cooney, Marcus Sargent, Tho. Stevenson, Willielmus Byshop, Willielmus Coombes, Ric. Hackwood, Johannes Durant, Johannes Horsey, Tho. Young, Rob. Jenkin, Ric. Field, Tho. Colgat, Tho. Mannington, Rob. Mills, Johannes Brett, Ric. Porter, Johannes Knight, Steph. Porter, Ric. Burckam, Johannes Fiffenden, Martinus Harrison, Melchior Rainolds, Michael Stunt, Nic. Staplus, Bernardus Borne, Petrus Hurry, Johannes Bailey, Rob. Parks.*”

N. B. At this Day *Richard Lyfe* was chosen Mayor, and *Melchior Rainolds* Town-Clerk.

Sir T. Abney. My Lord, we shall next lay before your Lordship and the Jury other Instances of Persons admitted as eldest Sons of Freeman, and born within the Borough. The first of them was admitted in 1610.

Lord Hardwicke. That comes under the first Head.

Sir T. Abney. My Lord, we shall shew that they were the eldest Sons of Freeman. We begin with *Thomas Streat*.

Mr. Strange. And born within the Borough.

Sir T. Abney. *Thomas Streat*, my Lord, was admitted the 29th of *April*, 1610. He was born

within the Borough the 31st of *March*, 1580. So that he was thirty Years of Age, when he was admitted. — Read the Entry of his Admission. Did you examine it? Is it a true Copy?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings, ff. 29 Aprilis, 1610, 8^o Jac. 1ⁿⁱ. Quinto die Maii, hoc anno 8^o Jacobi Regis, venit Thomas Streat, maximus natu filius Thomæ Streat defuncti, nuper unius liberorum hominum hujus villæ, et petit se admitti ad libertatem hujus villæ; et per Major' et Jurat' antedictos admittus est, et sacramentum præstitit corporale, et osculatus est malam dextram Majoris, more solito; et finis ejus pro admissione sua est 6s. 8d. quia pater, suus liber erat, secundum consuetudinem, &c.*”

Sir T. Abney. Now read the Certificate of his Baptism, the 31st of *March*, 1580, to shew that he was born within the Borough. Is it a true Copy?

Mr. Cranston. It is.

Associate reads —

“ *Hastings, ff. 31 March, 1580. The same Day baptized, Thomas, the Son of Thomas Streat.*”

Lord Hardwicke. What Register is that a Copy of, now it comes to be more necessary to ask?

Mr. Cranston. My Lord, it is a true Copy of the Parish-Register of *Hastings*.

Mr. Strange. My Lord, the next is *William Lovell*. His Father was not only a Freeman, but a Jurat. He was admitted the 6th of *September*, 1636.

Mr. At. Gen. You go backwards and forwards in a very irregular Manner.

Mr. Strange. We'll go regularly on; you will not be able to follow us. — Read the Entry of the 6th of *September*, 1636, of the Admission of *William Lovell, jun.*

Mr. At. Gen. You must prove *William Lovell* the Father was a Freeman; you read him before as Father.

Lord Hardwicke. What is the Time of *William Lovell's* Admission?

Mr. Strange. My Lord, the 6th of *September*, 1636.

Sir T. Abney. My Lord, we read it before, to shew that he was born before *Thomas Lovell*. He is the third Instance we spoke to under the first Head.

Lord Hardwicke. The 20th of *April*, 1667, *Thomas*, the Son of *William Lovell*, was admitted.

Sir T. Abney. And now, my Lord, we read his Father's Admittance, the 6th of *September*, 1636.

Lord Hardwicke. You did not read it before?

Sir T. Abney. My Lord, we read him before, as a Jurat.

Mr. Strange. My Lord, it has been read, to shew that the Father was a Freeman at the Time of the Son's Birth. — Read it again. Did you examine it? Is it a true Copy?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings, ff. 6 September, 1636, William Lovell, jun. eldest Son of his Father, Jurat, who is now made free of this Corporation for 6s. 8d. Fine, took his Oath, and kissed the Mayor's right Cheek, more solito, &c.*”

[2 P]

Mr.

Mr. *Strange*. Now produce the Register of the 31st December, 1639. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 31 December, 1639. Baptized, “ *William*, Son of *William Lovell*.”

Mr. *Marsb*. My Lord, the next Instance, under this Head, is *Thomas Frank*. He was admitted the 26th February, 1662. — Read his Admission. Did you examine it? Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. *Assemblat’ in Aula Curial’*, 26^o “ *Februarii*, 15^o Car. 2^{di}, 1662. At this Assembly “ also, *Thomas Gawen* and *Thomas Frank*, upon “ their Prayer in that Behalf, are admitted to “ the several Freedoms of this Town and Port, “ for their several Fines, viz. *Thomas Gawen*, “ 13 s. 4 d. and *Thomas Frank*, 6 s. 8 d. he being “ the eldest Son of a Freeman here; who also “ took their several Oaths, and kissed the Mayor’s “ right Cheek, *more solito*, &c.”

Mr. *Marsb*. The 6th of May, 1632, he was baptized, my Lord. — Read the Certificate. Did you examine it? Is it a true Copy?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. 6 May, 1632. Baptized, *Thomas*, “ the Son of *Frank*.”

Mr. *Clarke*. My Lord, the next Instance is *Robert Sargent*. He was admitted the 12th of May, 1663. — Read the Admission. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ 12 May, 1663. 16^o Car. 2^{di}. By Mr. Mayor “ and his Brethren, in full Court, *Robert Sargent*, “ of this Town, Seaman, upon his humble “ Suit, is made free of the Franchisement of “ this Town, and took his Oath, and kissed “ the Mayor’s right Cheek, *more solito*, &c. His “ Fine paid is 6 s. 8 d. He was eldest Son of “ *John Sargent*, his Father, late Freeman of “ this Town, deceased, &c.”

Mr. *Filmer*. My Lord, he was baptized the 3^d of November, 1604. — Read the Certificate of his Baptism. Is that a true Copy? Did you examine it?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. 3 November, 1604. Baptized, “ *Robert Sargent*, Son of *John Sargent*.”

Mr. *Serj. Eyre*. He was fifty Years old, and upwards, when he was admitted. If he had a Right as an eldest Son, how came he not to claim it before?

Mr. *Strange*. The Entry tells you he was a Seaman; till he left the Sea, it was not worth his while to take up his Freedom.

Mr. *Clarke*. My Lord, the next Instance is *Thomas Stevenson*. He was admitted the 25th April, 1667. — Read his Admission. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 25 April, 1667. Before *William “ Parker*, Esq; Mayor; *Philip Girdler*, *Samuel “ Smershall*, *William Lunsford*, and *John Hyde*, “ Jurats; came *James Skingleton* and *Thomas “ Stevenson*, and prayed to be admitted to the “ Liberty and Franchises of this Town; and by “ the said Mayor and Jurats then present are “ thereunto admitted; who thereupon took the “ Oath accustomed, kissed the Mayor’s right “ Cheek, *more solito*; and either of them are to “ pay, viz. the said *James* a Mark, and the said “ *Thomas* half a Mark, he being the eldest Son “ of his Father *Richard Stevenson*, a late Freeman “ of this Town, deceased, to the present Cham- “ berlain of this Town, for such their Ad- “ mittance.”

Mr. *Clarke*. Now look out the Certificate of his Baptism. Read that. Did you examine it? Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 1642, November 6. Baptized, “ *Thomas*, Son of *Richard Stevenson*.”

Sir *T. Abney*. My Lord, the next is *Richard Walter*. He was admitted the 8th of January, 1669. — Read his Admission. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 8 January, 1669. In full Court “ then also holden before Mr. Mayor and his “ Brethren, came *Richard Walter*, and prayed “ the Infranchisement of this Town; who being “ the eldest Son of his Father *Simon Walter*, a “ Freeman, is thereunto admitted, for his Fine “ of a Demi-Mark; and in like Manner *Robert “ Boykett* and *Robert Philip*, for their several “ Fines of a Mark a-piece; who all took the “ Oath accustomed, and kissed the Mayor’s “ Cheek, *more solito*.”

Sir *T. Abney*. My Lord, he was baptized the 5th of December, 1641. — Is that examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 5 December, 1641. Baptized, “ *Richard Walter*, Son of *Simon Walter*.”

Lord *Hardwicke*. Let me see it; it is *Waltbers*. — Who do you call next, Mr. *Strange*?

Mr. *Strange*. My Lord, *William Genner*. In 1674 he was admitted. He was born the 6th of June, 1647.

Mr. *At. Gen*. Why do not you keep your own Order? We never know where we are. You read that before.

Mr. *Strange*. He is in the same Paper with *John Fantley*, who was read before. — Read the Admission again, the 5th of December, 1674.

Associate reads —

“ *Hastings*, ff. 5 Decembris, 1674, 26 Car. 2^{di}. “ *Coram Major’ et Jurat’ in plena curia venit “ Johannes Salmon*, et petit libertatem hujus villæ; “ *Johannes Fantley*, jun. et *Willielmus Genner*, jun. “ et admittuntur, scilicet, prædiēt’ *Salmon* pro 13 s. “ 4 d. et prædiēt’ *Fantley* 6 s. 8 d. et prædiēt’ *Genner* “ 6 s. 8 d. quia filii sen’ patr’ eor’ liber’; qui omnes “ fecerunt

“ fecerunt inde sacramentum, et malam dextram
“ Majoris osculaverunt, more solito, &c.”

Mr. *Strange*. My Lord, he was baptized the 6th of *June*, 1647. — Read the *Hastings* Register; there are two Parishes. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ 6 *June*, 1647. *Hastings*, ff. Baptized, *William*,
“ the Son of *William Genner*, a Jurat.”

Mr. *Strange*. This falls within the first Head.

Mr. *Marsh*. My Lord, the next Instance is *Richard Sargent*. He was admitted the 12th of *March*, 1676. — Is that examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 12 *March*, 1676, 29 *Car.* 2^{di}.
“ Before Mr. Mayor, Mr. *Hyde*, and Mr. *Thomas*
“ *Lovell*, Jurats, in the Court-Hall, came *Richard*
“ *Sargent*, eldest Son of *Richard*, and prayed his
“ Freedom; which was granted him by the said
“ Mayor and Jurats, for his Fine of 6s. 8d. and
“ then and there took his Oath, and kissed the
“ Mayor’s Cheek, *more solito*.”

Mr. *Marsh*. My Lord, he was born the 26th of *December*, 1624.

Lord *Hardwicke*. His Father is not said there to be a Freeman.

Mr. *Strange*. My Lord, it is only said, “ *Richard Sargent*, eldest Son of *Richard*.”

Mr. *Marsh*. My Lord, he was born the 26th of *December*, 1624.

Lord *Hardwicke*. Can you shew his Father to be a Freeman?

Mr. *Marsh*. It is only, “ eldest Son of *Richard* ;” if he be a Stranger, they mention the Father to be so; and the Fine is 6s. 8d.

Lord *Hardwicke*. If the Father be a Freeman, you should shew it.

Mr. *Strange*. Now and then a Town-Clerk stiches a few Things together —

Mr. *Filmer*. My Lord, the next Instance is *Thomas Gawen*, admitted the 21st of *December*, 1677. — Read it. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 21 *December*, 1677. By and
“ before *Thomas Carlton*, Mayor; *Thomas Lovell*,
“ and *Thomas Dyne*, Jurats, in the Court-Hall
“ being present at the Seat; *James Batchelor*,
“ jun. *Thomas Gawen*, eldest Son of *Thomas* a
“ Freeman, *Mark Philips*, and *James Moore*,
“ upon their instant Suits, are admitted to the
“ Freedom of this Town and Port, for their
“ several Fines, as upon their Heads appeared;
“ who thereupon took the Oath, and kissed the
“ Mayor’s right Cheek, *more solito*. *Gawen* 6s. 8d.
“ *Batchelor* and *Philips* 13s. 4d. each.”

Mr. *Filmer*. My Lord, he was born in *Hastings*, the 27th of *August*, 1653. — Read the Certificate. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. *August* 27, 1653. Baptized,
“ *Thomas*, the Son of *Thomas Gawen*.”

Mr. *Clarke*. My Lord, the next is *Thomas Bayliffe*, admitted the 21st of *November*, 1678. — Read his Admission. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. At a Court held the 21st of
“ *November*, 1678, 30 *Car.* 2^{di}, appeared *Thomas*
“ *Bayliffe*, Seaman, eldest Son of *Thomas* a Free-
“ man, for his Fine of 6s. 8d. and *Andrew*
“ *Skeeth*, Seaman, for his Fine of 13s. 4d. upon
“ their earnest Prayer and Request, are admitted,
“ at this Assembly, to the Freedom and Franchise
“ of this Town; who both took the Oath ac-
“ customed, and kissed the Mayor’s right Cheek,
“ *more solito*, &c.”

Mr. *Clarke*. My Lord, he was born in *Hastings*, *January* 14, 1637. — Read the Certificate. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. *January* 14, 1637. Baptized,
“ *Thomas*, the Son of *Thomas Bayliffe*.”

Sir *T. Abney*. My Lord, the next Instance is *Henry Coombes*. He was admitted the 17th of *December*, 1679. — Read his Admission. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 13 *December*, 1679, 30 *Car.* 2^{di}.
“ In open Court then and there holden, *Henry*
“ *Coombes* is made free and sworn, being eldest
“ Son to his Father, a Freeman, deceased, for
“ 6s. 8d. *more solito*.”

Sir *T. Abney*. The Certificate of his Birth or Baptism is the 18th *September*, 1642. — Is that examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 18 *September*, 1642. Baptized,
“ *Henry*, the Son of *George Coombes*.”

Mr. *Strange*. My Lord, the next is *Mark Bayley*, admitted the 28th of *November*, 1691. — Read his Admission. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Memorandum*, That the 28th Day of *No-*
“ *vember*, 1691, before *Robert Phipps*, Mayor;
“ *Thomas Lovell*, *Philip Lovell*, *John Stevens*, Dr.
“ *Peter Fiat*, and *John Medburst*, Jurats; came
“ *Richard Adams*, *Nicholas Danyel*, *Mark Bayley*,
“ and *Richard Hart*, all Inhabitants of this
“ Town, and separately craved to be admitted
“ to the Franchise of this Town and Port;
“ and they were accordingly admitted into the
“ Freedom, and took the Oaths of Freeman,
“ and at the same time took the Oaths of Fidelity
“ to their Majesties King *William* and Queen
“ *Mary*, and kissed the Mayor’s right Cheek,
“ *more solito*; and for a Fine paid, viz. *Richard*
“ *Adams*, *Nicholas Danyel*, and *Richard Hart*,
“ each 13s. 4d. and *Mark Bayley*, being the
“ eldest Son of a Freeman, 6s. 8d. extr’ to the
“ Chamberlains.”

Mr. *Strange*. Now read the Certificate of his Baptism. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 22 *May*, 1664. Baptized, *Mark*
“ *Bayley*, the Son of *Mark*.”

Mr.

Mr. *Marsh*. My Lord; the next Instance is *Richard Broadbridge*. His Name has been mentioned before; but your Lordship, I believe, has not taken him as an eldest Son. He was admitted the 26th of *December*, 1691.

Lord *Hardwicke*. I have it; he was admitted for 6s. 8d.

Mr. *Filmer*. My Lord, the next is *Robert Bartholomew*. He was admitted the 26th of *November*, 1692. — Read the Entry. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. *Memorandum*, That the 26th Day of *November*, 1692, before *Peter Fiat*, Esq; Mayor; *Thomas Lovell*, *John Stevens*, *Edward Milward*, and *John Medburst*, Jurats; came *Robert Bartholomew*, and craved to be admitted into the Freedom of this Town and Port; and he was accordingly admitted into the Freedom, and took the Oath of a Freeman, and also the other Oaths, and kissed the Mayor's right Cheek, *more solito*; and for his Fine paid 6s. 8d. being the eldest Son of a Freeman, *extr' Camerar'*.”

Mr. *Filmer*. He was baptized the 10th of *January*, 1654. — Read the Certificate of his Baptism. Is it examined?

Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. 10 *January*, 1654. This Day baptized, *Robert*, Son of *Bartholomew*.”

Mr. *Clarke*. My Lord, the next is *Thomas Hide*, admitted the 11th of *March*, 1692. — Read that. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Memorandum*, The 11th of *March*, 1692, before *Peter Fiat*, Esq; Mayor; *John Hide*, *Thomas Lovell*, and *Philip Lovell*, *John Stevens*, *Edward Milward*, *Robert Phipps*, and *John Medburst*, Jurats; came *Thomas Hide*, of this Town, eldest Son of a Freeman, and craved to be admitted into the Freedom of the said Town; and he was accordingly admitted into the Freedom of the same Town, and took the Oath of a Freeman, and also the other Oaths, and kissed the Mayor's Cheek, *more solito*, and for his Fine paid 6s. 8d. *extr' Camerar'*.”

Mr. *Clarke*. He was born the 10th of *March*, 1667. — Read the Certificate of his Baptism. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 10 *March*, 1667. This Day *Thomas Hide*, Son of *Thomas Hide*, was baptized.”

Sir *T. Abney*. My Lord, the next is *John Sparrow*. He was admitted the 3d of *February*, 1693. He was born the 5th of *April*, 1668. — Read his Admission. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ *Memorandum*, That the 3d of *February*, anno Domini 1693, before *John Medburst*, Esq; Mayor; *Thomas Lovell*, *Robert Phipps*, and Dr.

“ *Peter Fiat*, Jurats; came *John Sparrow*, jun. and *John Fellows*, jun. and craved to be admitted into the Freedom of this Town and Port; which was accordingly granted to them; and they took the Oaths thereby required, and kissed the Mayor's Cheek, *more solito*, and for their Fines paid as follows; the said *John Sparrow*, being the eldest Son of a Freeman, the Sum of 6s. 8d. and the said *John Fellows*; 13s. 4d. *extr' Camerar'*, *more solito*.”

Sir *T. Abney*. He was baptized the 5th of *April*, 1668. — Read the Certificate. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 5 *April*, 1668. Baptized, *John*, the Son of *Sparrow*.”

Mr. *Strange*. My Lord, the next Instance is *Michael Penbuckle*. He was admitted the 8th of *February*, 1693. — Read that Admission. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate reads —

“ 8 *February*, 1693. At this Court came *Michael Penbuckle*, and craved to be admitted into the Franchise of this Town and Port; which was granted him, and he accordingly took the Oaths thereby required, and kissed the Mayor's Cheek, *more solito*; and for his Fine, being the eldest Son of a Freeman, paid 6s. 8d. *extr' Camerar'*.”

Mr. *Strange*. My Lord, he was born the 21st of *September*, 1668, and was twenty-five Years old when he was made free. — Read the Certificate of his Baptism. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 21 *September*, 1668. Baptized, *Michael*, the Son of *Penbuckle*.”

Mr. *Marsh*. My Lord, the next Instance we speak to (and we shall read but seven more) is *Robert Fellows*, admitted the 17th of *February*, 1693. — Read his Admission. Did you examine it?

Mr. *Cranston*. Yes.

Associate reads —

“ *Memorandum*, That the 17th of *February*, 1693, before *John Medburst*, Esq; Mayor; *John Hide*, *Thomas Lovell*, *Philip Lovell*, *John Stevens*, *Edward Milward*, and Dr. *Peter Fiat*, Jurats; in open Court, came *Robert Fellows*, sen. *Mark Meadow*, and *Austin Lacket*, and craved to be admitted into the Franchise of this Town and Port; which was granted them, and they accordingly took the Oaths thereby required, and kissed the Mayor's Cheek, *more solito*; and for their Fines did severally pay as followeth; the said *Robert Fellows*, being the eldest Son of a Freeman, paid 6s. 8d. and the said *Mark Meadow* and *Austin Lacket* paid 13s. 4d. each, *extr' Camerar'*.”

Mr. *Marsh*. He was baptized the 1st of *July*, 1656. — Read the Copy of the Register. Is it a true Copy?

Mr. *Cranston*. Yes.

Associate

Associate reads —

“ *Hastings*, ff. July 1656. First Day of this Month *Robert Fellows* was baptized, the Son of *George*.”

Mr. *Filmer*. My Lord, the next is *John Hussey*. — Read his Admission. Is it examined?
Mr. *Cranston*. Yes.

Associate reads —

“ *Memorandum*, The 5th Day of *January*, 1694, before Mr. Mayor, and three Jurats, there came *Jeffery Glyde*, *John Hussey*, jun. and *Henry Barry*, and craved to be admitted into the Freedom of this Town and Port of *Hastings*; and they were accordingly admitted into the Freedom, and took the Oaths of Freemen, and also the other Oaths, and kissed the Mayor’s right Cheek, *more solito*, and for their Fines paid severally as follows, *viz.* the said *Jeffery Glyde* 13 s. 4 d. the said *John Hussey*, being the eldest Son of a Freeman, 6 s. 8 d. and the said *Henry Barry* 13 s. 4 d. *extr’ Camerar’*.”

Mr. *Filmer*. My Lord, he was baptized in April 1680. — Read the Register. Is it examined?
Mr. *Cranston*. It is.

Associate reads —

“ *Hastings*, ff. April, 1680. Baptized, *John*, the Son of *Matthew Hussey*, and his Wife.”

Mr. *Clarke*. The next, my Lord, is *John Geery*. He was admitted the 25th of *October*, 1707. — Read his Admission. Is it examined?
Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 25 *October*, 1707. At the same Court *Richard Hudson*, *John Geery fil’ Johannis*, *et Thomas Gyles*, were sworn Freemen of this Town and Port, for their several Fines following, *viz.* *Richard Hudson* 13 s. 4 d. *John Geery*, as eldest Son of a Freeman, 6 s. 8 d. and *Thomas Gyles* 13 s. 4 d. *more solito*.”

Mr. *Clarke*. He was baptized the 9th of *April*, 1682. — Read the Certificate. Is it examined?
Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. April 9, 1682. *John*, the Son of *John Geery* and *Elizabeth* his Wife, was baptized.”

Sir *T. Abney*. My Lord, the next Instance is *William Shorter* and *Jacob Fantley*, admitted the 11th of *August*, 1722. — Read the Admission. Is it a true Copy?
Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 11 *August*, 1722. Mr. *John Mead*, *William Shorter*, *John Harman*, and *Jacob Fantley*, were admitted and sworn Freemen and Combarons, by the Mayor and several of the Jurats, according to the ancient Custom and Use, for their several Fines following; *William Shorter*, as eldest Son of a Freeman, 6 s. 8 d. *John Mead* 13 s. 4 d. *John Harman* 6 s. 8 d. and *Jacob Fantley*, as eldest Son of a Freeman, 6 s. 8 d.”

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Sir *T. Abney*. My Lord, *William Shorter* was baptized the 29th of *June*, 1689. — Read his Certificate. Is it examined?

Mr. *Cranston*. Yes.

Associate reads —

“ *Hastings*, ff. 29 *June*, 1689. Baptized, *William*, Son of *William Shorter*.”

Sir *T. Abney*. My Lord, we have many more Entries, not distinguishing between Sons and eldest Sons: But we shall not trouble your Lordship with them, but go to our living Witnesses. — Call *Robert Evernden*.

Robert Evernden sworn.

Sir *T. Abney*. How old are you?

Evernden. Sixty-five Years old.

Mr. *Lacy*. Was your Father a Freeman of *Hastings*?

Evernden. No.

Sir *T. Abney*. Where was you born?

Evernden. At *Robert’sbridge*, fifteen Miles from *Hastings*; but I have lived fifty Years in *Hastings*.

Sir *T. Abney*. What do you know of the Custom in *Hastings*, as to what Right the eldest Sons of Freemen have to their Freedoms?

Evernden. I have heard Gentlemen say — I know no otherwise —

Sir *T. Abney*. Who have you heard say?

Evernden. I have heard Mr. *Thomas Moore* and *John Moore*, who were both Justices of Peace, and Jurats.

Mr. Serj. *Eyre*. My Lord, here is a Man prompts this Witness.

Lord *Hardwicke*. Let him go on the other Side.

Mr. *At. Gen.* My Lord, I apprehend this is not Evidence.

Mr. *Strange*. You say, you lived fifty Years in *Hastings*, and knew *Thomas Moore* and *John Moore*, Justices of the Peace, and Jurats; Give my Lord and the Jury an Account, what you have heard them say in relation to the Right of eldest Sons of Freemen to be free.

Evernden. I heard them say, that the eldest Son of a Freeman had a Right.

Mr. *Strange*. Where must they be born?

Evernden. Born in Town, to be sure.

Mr. *Strange*. Whether must they be born before their Fathers were made free, or after?

Evernden. They must be born in their Fathers Freedom.

Mr. *Strange*. What Fine do they usually pay?

Evernden. Six and eight Pence.

Mr. *Strange*. Did you ever know an eldest Son of a Freeman, during the fifty Years you have lived in *Hastings*, refused?

Evernden. Some did not require it.

Mr. *Strange*. Was any body denied, that ever demanded it?

Lord *Hardwicke*. He only tells you what he heard the *Moore’s* say. — You say, you had this Conversation with *John Moore*, and he was a Justice; What did he tell you?

Evernden. He told me, that the eldest Son of a Freeman had a Right.

Lord *Hardwicke*. Was *John Moore* a Jurat?

Evernden. Yes, my Lord.

Lord *Hardwicke*. And these two Men told you this?

Evernden. Yes, my Lord,

Mr. *Strange*. How long ago is it that they told you this?

Evernden. I cannot tell.

Mr. *Strange*. But, according to your Memory, how long do you think it may be?

Evernden. It was, I believe, in the last King's Reign, or Queen *Anne's*, that they spoke it; I cannot tell to a Year.

Mr. *Strange*. Have you seen them lately?

Evernden. No.

Mr. *Strange*. Within twenty or thirty Years?

Evernden. Yes.

Mr. *Strange*. Did both, or one of them, mention this? and how long is it since, according to the best of your Remembrance?

Evernden. About ten or a dozen Years ago.

Mr. *Strange*. Had you any Conversation with any other Freeman about this Right?

Evernden. Yes, with *Robert Bartholomew*.

Mr. *Strange*. Was he a Freeman?

Evernden. Yes; he had been Mayor.

Mr. *Strange*. What have you heard him say about this Right?

Evernden. I have heard him say, the eldest Son of a Freeman had a Right.

Mr. *Marsh*. Do you know Dr. *Fiat*? During so many Years as you lived in *Hastings*, do you remember him to say any thing about the Right of eldest Sons?

Evernden. He has been dead some Time.

Mr. *Marsh*. What was he?

Evernden. He was a Doctor, and Mayor of the Town.

Mr. *Marsh*. Did he ever say any thing to you about this Right?

Evernden. No, not that I remember.

Mr. *Strange*. During the fifty Years you lived in *Hastings*, what was the general Report there concerning the Right of eldest Sons, that what they informed you about it was true?

Evernden. I never heard any body say but that they had such a Right.

Mr. *Clarke*. How old were *Robert Bartholomew* and the two *Moore's*, when you heard them say this?

Evernden. They were very ancient Men.

Mr. *At. Gen.* You know nothing of your own Knowledge; it is only by Hear-say.

Evernden. No.

Mr. *At. Gen.* What did you hear them say, it was only in general?

Evernden. That the eldest Son of a Freeman had a Right.

Mr. *At. Gen.* Was it to the eldest Son of a Freeman generally, without confining it to being born within the Borough, or to any particular Case?

Evernden. They said, that the eldest Son of a Freeman had a Right.

Mr. *At. Gen.* Are you sure they confined it to the eldest Son of a Freeman? Did they say nothing, that all the Sons had a Right?

Mr. *Strange*. If all the Sons have a Right, then an eldest Son has.

Lord *Hardwicke*. Mr. *Evernden*, you said, they must be born in the Town during the Fathers Freedom; Did *Thomas Moore* or *John Moore* say whether they must be born in *Hastings*, or after their Fathers Freedom?

Mr. *Evernden*. No, my Lord.

Lord *Hardwicke*. Then why did you say that?

Evernden. They said, that the eldest Son of a Freeman had a Right, if any body had.

Several Council. Ay, if any body had.

Lord *Hardwicke*. What is the Right of Freedom?

Evernden. None at all, but by the Election of the Mayor and Jurats.

Sir *T. Abney*. They are glorious Fellows.

Mr. *Lacy*. Did *Moore* say any thing of Residence?

Evernden. No.

John *Couzens* sworn.

Mr. *Strange*. How old are you, Mr. *Couzens*?

Couzens. About sixty.

Mr. *Strange*. Where was you born?

Couzens. In *Hastings*, and have lived all my Time there.

Mr. *At. Gen.* Was your Father a Freeman?

Couzens. No.

Mr. *Strange*. During all that Time you have lived in *Hastings*, what have you heard any ancient People say concerning the Right of eldest Sons to be free?

Couzens. I have heard several ancient People say, the eldest Son of a Freeman had a Right by his Father's Charter.

Sir *T. Abney*. Did you hear them say any thing, where he was to be born?

Couzens. I cannot tell; but they said he had a Right by his Father's Charter.

Sir *T. Abney*. What is a Charter?

Couzens. I take it, his Father was to be free first.

Sir *T. Abney*. Can you recollect the Names of any ancient Inhabitants you have heard say this?

Couzens. Yes; I lived with Dr. *Fiat* when he was Mayor, and was to and fro with him; and I heard him say, the eldest Son of a Freeman had a Right by his Father's Charter.

Sir *T. Abney*. Did you hear any others say so?

Couzens. Yes; several others, both *Thomas* and *John Moore*, Jurats.

Sir *T. Abney*. Have you heard any others say so?

Couzens. I have heard it from several others; but I cannot recollect their Names.

Sir *T. Abney*. Did you ever know the eldest Son of a Freeman refused?

Couzens. No, not till I heard of the Plaintiff *Moore's* being refused.

Sir *T. Abney*. Not till you heard of the Plaintiff *Moore*: They are an ancient Family in *Hastings*, I think?

Couzens. Yes.

Mr. *Marsh*. My Lord, this Dr. *Fiat* was Mayor; he was Town-Clerk and Doctor, and had the Records of the Town in his Custody when Mayor, and must know the Custom. He was a Jurat in 1691.

Mr. *Serj. Eyre*. Mr. *Evernden*, suppose a Freeman has several Sons, are all these Sons intituled as well as the eldest?

Evernden. I cannot say.

Mr. *Serj. Eyre*. Did you ever know a younger Son refused?

Drew *Shengleton* sworn.

Lord *Hardwicke*. How old are you, Mr. *Shengleton*?

Shengleton. Sixty-nine Years of Age.

Mr. *Strange*. How long have you lived in *Hastings*?

Shengleton.

Shengleton. I have lived sixty Years in *Hastings*, in the Town.

Mr. Strange. What is the Usage and Right there of Freeman's eldest Sons?

Shengleton. I was not born there, though I was a Child when I went to live at *Hastings*.

Mr. Strange. Do not you know what the Custom and Usage is there?

Shengleton. I have heard say, the eldest Sons had a Right.

Mr. Strange. Who has told you?

Shengleton. I cannot nominate them, they were so many; but I can tell it is a Discourse among a great many People.

Mr. Strange. Was it the common Report, when you went to live in *Hastings*, and since, that the eldest Sons of Freeman had a Right?

Shengleton. So far as I have heard, it was.

Mr. Strange. Did you ever know an eldest Son refused?

Shengleton. I know nothing about it.

Mr. Strange. Have you heard any ancient People, that are dead, talk about it?

Shengleton. I cannot remember.

Mr. Strange. Have not you heard them say, that the eldest Son of a Freeman had a Right? Have not you heard your Mother say so?

Shengleton. She told me, my Father was a Freeman.

Mr. Strange. When was that?

Shengleton. When I was a Child.

Mr. Strange. What did she tell you else?

Shengleton. I have heard my Mother say, that the eldest Son of a Freeman was to be free, and that my elder Brother had a Right.

Mr. Strange. Was your elder Brother a Freeman?

Shengleton. No.

Mr. Strange. Why had he it not?

Shengleton. My Mother said, she had lost my Father's Franche or Charter, and that was the Reason; and she said, her Son should go into the Hall, and demand it.

Mr. Strange. How came she to say so?

Lord Hardwicke. How long is it since you heard this Discourse, that Freeman's eldest Sons had a Right?

Shengleton. It is many Years; I cannot tell exactly how many.

Lord Hardwicke. How many do you think? Is it ten, or twelve, or twenty Years back?

Shengleton. Yes, it is full twenty Years back.

Mr. Clarke. Did you never hear the Report, when you was a young Man, that the eldest Sons of Freeman had a Right?

Shengleton. Yes; but I cannot nominate them.

Mr. Clarke. You cannot name one Person that ever said so?

Shengleton. No.

John Boykett sworn.

Mr. Marsh. *Mr. Boykett*, how old are you?

Boykett. Turned of sixty.

Mr. Marsh. How long have you known *Hastings*?

Boykett. I was born there, and have lived almost all my Time in *Hastings*.

Mr. Marsh. I would ask you, Within your Time, what have you known to be the Custom with regard to the admitting of Freeman? Whether an eldest Son is intituled?

Boykett. I have heard it among the Freeman.

Lord Hardwicke. Who have you heard say so, do you remember?

Boykett. My Lord, I cannot speak positively to particular Persons.

Mr. Marsh. Did you know *Dr. Fiat*, the two *Mr. Moore's*, and *Mr. Bartholomew*?

Boykett. Yes.

Mr. Marsh. Did you ever speak with them about it?

Boykett. I asked to be made free myself, in Court.

Mr. Marsh. How came you to ask it?

Boykett. I asked it as a Favour, but it was not granted.

Mr. Marsh. When was it, and who did you ask it of?

Boykett. I asked it of *Thomas Lowell*, about forty Years ago: He was a Freeman, and Mayor.

Mr. Marsh. Did you go into the Court-Hall to ask it?

Boykett. Yes.

Mr. Marsh. Was any thing said to you in relation to your being admitted? — How long ago was it?

Boykett. Forty Years.

Mr. Marsh. What did they say to you, upon your asking to be admitted?

Boykett. I asked to be admitted to the Freedom, as a Favour; and that they would be so good as to admit me. Some were for my being made free, particularly *Mr. Clifts*, a Justice.

Mr. Marsh. Was your Father a Freeman?

Boykett. No. But the Mayor said, I should not be admitted, because I was a Dissenter: And then *Waller*, the Town-Clerk, asked the Mayor, whether I was the Son of a Freeman? and the Mayor answered, I was not: And then *Waller* said to the Mayor, Then do as you please; and the Mayor said, he would not admit a Dissenter for 40*l.*

Lord Hardwicke. What did *Waller* say upon that?

Boykett. My Lord, the Mayor said, they would not make a Dissenter free for 40*l.* And then the Town-Clerk asked the Mayor, whether he was the Son of a Freeman? To which the Mayor said, he was not; and then *Waller*, the Town-Clerk, said, Then, Mr. Mayor, you may do as you please.

Lord Hardwicke. What did you understand by those Words?

Boykett. I understood by them Words, that if my Father had been free, I should have had a Freedom.

Mr. At. Gen. How many Children had your Father?

Boykett. Several.

Mr. At. Gen. Was you the eldest?

Boykett. Yes, and served my Time in *Hastings*.

Mr. At. Gen. Did you know *John Medhurst*, any thing of his having a Son?

Boykett. Yes, he had a Son born in his Mayoralty.

Mr. At. Gen. Was it his first Son?

Boykett. Yes.

Mr. At. Gen. Did he desire to be made free?

Boykett. Yes; he asked for his Freedom in Court, when I was present.

Mr. At. Gen. Was he made free?

Boykett. Not at that Time; I heard them disputing about it.

Lord Hardwicke. How long ago was that?

Boykett.

Boykett. I cannot tell, my Lord.
Lord Hardwicke. Was it ten Years ago?
Boykett. I cannot say certainly; but I believe thereabouts.

Mr. Strange. You have set up this Exclusion for ten Years; Was it twenty Years ago, that his Father was made free?

Boykett. I cannot say.

Mr. Strange. How long has he been dead?

Boykett. About eight Years.

Mr. Strange. How many Years before he was dead was it, that the Son asked to be made free? Was it seven or eight Years?

Boykett. I cannot say.

Mr. Strange. Is the Son a Freeman now?

Boykett. He has not his Freedom.

Mr. Serj. Eyre. How long was it before *Medburst's* Death, according to your best Recollection, that he applied to have his Freedom? Was it four or five Years?

Boykett. *Medburst* the Father died about eight Years ago; I cannot say how long since the Son demanded his Freedom.

Lord Hardwicke. Can you recollect about what Time, according to the best of your Remembrance?

Boykett. Not a great while, my Lord, before the Father's Death.

Lord Hardwicke. Was it two, or three, or five Years?

Boykett. Not five Years, my Lord.

Mr. Clarke. You say, *Mr. Boykett*, *Medburst* was refused his Freedom; What was the Reason? Was he born within the Liberties, and after his Father was made free?

Boykett. Yes, during the Time he was Mayor.

Mr. Clarke. Was he his eldest Son?

Boykett. He was his only Son.

Mr. Clarke. Who was Mayor when he was refused?

Boykett. I cannot say.

Lord Hardwicke. He does not remember.

Joan White sworn.

Mr. Clarke. Do you know *Hastings*?

White. Yes.

Mr. Clarke. How long have you known it?

White. All my Years.

Mr. Clarke. What Age are you?

White. I am sixty-two Years old.

Mr. Clarke. Do you know what is the Custom of making free in *Hastings*, whether the eldest Son has a Right?

White. I heard my Father say, that the eldest Son had a Right.

Mr. Clarke. Was he a Freeman?

White. Yes.

Lord Hardwicke. Speak out; speak to that Gentleman.

Mr. Clarke. Is your Father living or dead?

White. Dead.

Mr. Clarke. Tell the Court what you have heard him say about the Right of Freeman's eldest Sons.

White. I heard him say, they had a Right.

Sir T. Abney. What, that Freeman's eldest Sons had a Right?

White. Yes.

Sir T. Abney. Have you ever heard any body else say any thing about it?

White. No.

Sir T. Abney. Did you never hear your Mother say any thing about it?

White. No.

Anne Sargent sworn.

Mr. Clarke. Do you know the Town of *Hastings*?

Sargent. Yes.

Mr. Clarke. How old are you?

Sargent. I am sixty-three Years old.

Mr. Clarke. How long have you lived in *Hastings*?

Sargent. I have lived there always, and was born there.

Mr. Clarke. Have you heard any Discourse concerning the Right of Freedom in that Town?

Sargent. I have heard *Mr. John Stevens*, who was several Times Mayor of *Hastings*, say —

Mr. Clarke. Is he living or dead?

Sargent. He is dead.

Mr. Clarke. What did he say concerning the Right of Freedom?

Sargent. That it belonged to the eldest Sons to be Freeman.

Mr. Clarke. Have you heard any body else say so?

Sargent. No.

Mr. Clarke. Have not you been married?

Sargent. Yes.

Mr. Clarke. Have not you heard your Husband say, that it belonged to the eldest Sons to be made free?

Sargent. Yes, he has said the same.

Mr. Clarke. Was the common Repute during your Time, that the eldest Sons had a Right?

Sargent. Yes.

Mr. Clarke. Was it ever disputed, that they had that Right?

Sargent. No.

Mr. Clarke. And you heard *Stevens* the Mayor say, that the eldest Sons had a Right, several times?

Sargent. Yes.

Sufannah Medhurst sworn.

Mr. Filmer. How old are you, *Mrs. Medhurst*?

Medhurst. I am fifty-six Years of Age.

Mr. Filmer. Have not you been *Mrs. Mayorefs*?

Medhurst. Yes.

Sir T. Abney. Who have the Right in *Hastings* to be Freeman?

Medhurst. All the Sons of Freeman.

Sir T. Abney. Has not the eldest Son a Right?

Medhurst. Yes; I have heard my Husband say, they could not deny him.

Sir T. Abney. Have you heard him say so more than once?

Medhurst. Yes; I have heard him say so often.

Sir T. Abney. Pray, *Mrs. Medhurst*, during your Time, was it the common Reputation, that the eldest Son of a Freeman had a Right?

Medhurst. Yes.

Sir T. Abney. Where were they to be born?

Medhurst. In the Town; it was not so much denied then; if it was required, they would do it.

Sir T. Abney. Have you ever known an eldest Son denied?

Medhurst. Yes.

Sir T. Abney. When? Was it within twenty Years?

Medhurst.

Medburst. I cannot say when.

Mr. At. Gen. How many Years is it since the first eldest Son was denied, that you know of? Was it twenty Years ago?

Medburst. I do not know.

Mr. At. Gen. Mention the Name of an eldest Son that you know has been denied.

Medburst. The eldest Son of Mr. *Medburst*.

Mr. At. Gen. How long ago is that?

Medburst. I cannot tell.

Lord Hardwicke. Is your Husband living, Mrs. *Medburst*?

Medburst. No, my Lord; my Husband has been dead a great many Years.

Lord Hardwicke. Did you ever know any body denied before? Was it in your Husband's Mayoralty, that this Person was denied?

Medburst. No.

Lord Hardwicke. Was it before or after your Husband's Death, that Mr. *Medburst* was denied?

Medburst. It was since my Husband's Death, my Lord.

Mr. Serj. Skinner. You have a Husband now, have you not?

Medburst. I hope so, and a good one too.

Mr. Serj. Skinner. You will be Lady Mayorefs again then.

Mr. Serj. Eyre. Mrs. *Medburst*, I would ask you, whether, when you first knew *Hastings*, they did not admit every body on Payment of a Fine of 6s 8d.?

Medburst. I do not know.

Mr. Strange. My Lord, we shall trouble your Lordship with but one Witness more. Call *Thomas Colebrand*.

Thomas Colebrand sworn.

Mr. Strange. You are not a Freeman of *Hastings*, are you?

Colebrand. No.

Mr. Strange. Have not you been Apprentice there? How old are you?

Colebrand. I am about eighty Years old, and was Apprentice there about sixty Years ago.

Mr. Strange. Have you been acquainted there ever since?

Colebrand. Yes; I live about sixteen Miles from *Hastings*, and go to and fro frequently there.

Mr. Strange. Do you know what is the Usage or Custom, as to the admitting of Freeman?

Colebrand. Yes; that Freeman's eldest Sons were intitled to Freedoms.

Mr. Strange. Were they to be born within the Town?

Colebrand. I never knew nor heard, that being born within the Town, or at a Distance, made any Difference.

Mr. Strange. Had you any Discourse with any ancient People about this Matter?

Colebrand. Yes.

Mr. Strange. What Account did you receive from them?

Colebrand. That the eldest Sons of Freeman, only, had a Right to Freedoms.

Lord Hardwicke. Who have you heard say so?

Colebrand. Old *Waller*, the Town-Clerk.

Lord Hardwicke. Who have you heard say so besides?

Colebrand. One *Thomas Lovell*, and *Thomas Rainolds*; he was a Mayor; and I have heard the Mayor and Jurats say so several Times. — I am not able to stand.

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Mr. Strange. My Lord will give you the Liberty to repose yourself upon that Stool.

Colebrand. I remember one *Medburst* demanded his Freedom.

Lord Hardwicke. How long ago was that?

Colebrand. About sixty Years.

Lord Hardwicke. What passed upon that?

Mr. Strange. Was he the Son of a Freeman?

Colebrand. Yes. I cannot recollect what the Dispute was; but they put him by at first.

Mr. Strange. What was the Reason given?

Colebrand. I do not know; I was not in Court. *Mr. Clarke.* You say, he demanded his Freedom; Do you know upon what Right he demanded it?

Lord Hardwicke. How came you to know that *Medburst* demanded his Freedom?

Colebrand. My Uncle *Lovell* was then Mayor, and he told me so.

Mr. At. Gen. My Lord, the Witness speaks to a particular Custom only; I submit it to your Lordship, whether this Evidence of a particular Fact —

Lord Hardwicke. I think it is Evidence to a general Right, and not to any particular Custom. — What did your Uncle *Lovell* say?

Colebrand. That it was an ancient Right, that Freeman's eldest Sons should be made free.

Lord Hardwicke. How came there to be a Dispute about this Matter? Did your Uncle *Lovell* tell you any thing about it?

Colebrand. He said, that *Medburst* came and demanded his Freedom.

Lord Hardwicke. How did you know afterwards that *Medburst* was made free?

Colebrand. Because I afterwards saw him among the Freeman, at the Election of one *Muntz* to be a Member of Parliament. He voted in the Election.

Mr. Strange. This *Rainolds* was old *Rainolds* the Town-Clerk, who was admitted the 27th of May, 1622. He is the 15th Man we spoke to.

Sir T. Abney. My Lord, the 13th of March, 1674, this *John Medburst* was admitted. — Read the Entry of his Admission. Is it a true Copy?

Mr. Cranston. Yes.

Associate reads —

“ *Hastings*, ff. 13 March, 22^o Car. 2^{di}, 1674.
“ In full Court then and there holden, before the
“ said Mayor and Jurats, came *John Medburst*,
“ eldest Son of *Nicholas Medburst*, late a Free-
“ man of *Hastings* aforesaid, and prayed to be
“ made free of the Liberties of this Town;
“ whereunto he is admitted, took his Oath,
“ and kissed the Mayor's Cheek, *more solito*,
“ and paid 6s. 8d. to the Chamberlain for his
“ Fine.”

Sir T. Abney. My Lord, we shall not trouble your Lordship to give any further Evidence.

Mr. Attorney-General. May it please your Lordship, and you Gentlemen of the Jury; I am Council in this Case with the Defendants: And, notwithstanding the long Evidence you have heard, we doubt not but the Defendants will make it appear, to your entire Satisfaction, that they have no other View in defending this Suit, but as by their Oaths they are obliged to support the ancient Rights of the Corporation, and prevent Innovations there; of which this pretended

pretended Right of the Plaintiff will appear to be one. And, Gentlemen, the single Question you are now to try is, Whether there be such a Right in the Town and Port of *Hastings*, as the Plaintiff has set forth in the *Mandamus*, as the Foundation of his Claim to be free of this Town and Port, which he insists belongs to him? And, Gentlemen, as the whole depends upon this, Whether he has proved the Right in the Manner he has laid it in the *Mandamus*; it will be proper to state the Custom to you, and then to observe, how far the Evidence that has been given by the Plaintiff has supported his Right, as it is laid in the *Mandamus*.

And, Gentlemen, as the Plaintiff has laid it, four Things are necessary to give a Man a Right to a Freedom in *Hastings*:

1st, He must be an eldest Son. It is; *every Person, being the eldest Son of a Freeman* —

2dly, He must be born in the Town. *And born within the said Town and Port.*

3dly, It must be after the Admission and Swearing of his Father. For it is said in the *Mandamus*, that the Plaintiff *has a Right in Respect thereof; and also,*

4thly, *Upon paying a reasonable Fine, to be admitted and sworn into the Place and Office of one of the Freemen of the said Town and Port.*

So that, Gentlemen, these four Things are set forth in the *Mandamus*, and, as they alledge, must concur, and are necessary to give a Man a Right to a Freedom in *Hastings*: For it is, *in Respect thereof, and also upon paying a reasonable Fine*, that he is to be admitted and sworn into the Place and Office of one of the Freemen of the said Town and Port.

If therefore, Gentlemen, any of these four Things, which they have laid as necessary, or if one of these Things laid as necessary, they have failed in the Proof of; for the Right they lay is *in Respect thereof*; my Lord, I say, if every one of these Things are necessary — They are,

1st, That he be the eldest Son of a Freeman.

2dly, That he be born after his Father's Freedom.

3dly, That he be born within this Town.

And the next Qualification is, upon paying a reasonable Fine.

These, Gentlemen, are the four Things they have thought proper to lay as necessary, in order to be admitted a Freeman of this Town and Port.

And, my Lord, I humbly apprehend, they have given no Proof at all of three of them; of one of them they have given but a very slight Proof; and of one of the Facts every Evidence they have produced has given a direct Proof to the contrary.

And, my Lord, there is one Thing more, which is absolutely necessary in order to be free of this Borough, that they have not taken in at all; and that is, that he must be resident within this Town; and as they have not made *that* Part of their Custom, they must undoubtedly fail. I said before, that they had not made Residence a Part of their Custom; and we shall fully prove Residence and Inhabiting within the Town to be absolutely necessary, and shew, that they have laid a Foundation, by their own Evidence, that this is necessary.

My Lord, I would beg leave now to consider their Evidence which has been brought to support this Right of the Plaintiff.

And the first Thing they have offered to your Lordship and the Jury, is a Writing, which they are pleased to call the Customal; of which I admit it may be a Copy, as they have set it out. And, my Lord, your Lordship hinted, that Books of this Nature should be read in Evidence, because the Court could not see whether it was proper to be read or no, till they had heard it; which supposes (as I humbly apprehend) that we are at liberty to object to it.

And, my Lord, I would submit it to your Lordship, that, considering how it comes before the Court, and the Part they rely on; what bad Company it keeps, and what it is said to be, only an Entry of a Customal; that it is no Evidence at all, or, if it be any, not of the Thing they bring it to prove. They open it as only an Entry of some old Customal; and the ancients it is, the better, provided it had been the old Customal; but this is not the Thing itself, but only an Entry in the Books they produce; and it is very improper to have a Customal of the *Cinque Ports* entered amongst other Things. It would have had great Weight and Honour, had it been kept in some proper Place. It does not appear, but this may have been sewed in, by the Fraud of an Officer of the Corporation. It is not the ancient Instrument, but only a Copy; and it does not appear how it might come there. I would therefore submit it to your Lordship, whether, without they give an Account that they have made Search for the Original, this is any Evidence at all of what they bring it to prove.

But, Gentlemen, if it be Evidence at all, I submit it to your Consideration, that as it is but an Entry, and considering what Company it is found in, that it can have no Weight. If it had been found in an ancient Corporation-Book, amongst old Entries and authentic Records of the Corporation, it would have come before the Court and you with some Authority: But, as it is found amongst a hundred miscellaneous Things no way relating to the Corporation, Copies of Leafes, the Resolution of the Judges upon the Statute of *Queen Elizabeth* relating to the Poor, amongst many miscellaneous Things; and very probably this might be sewed in the Middle of the Book, for it begins in the 200th Page; I say, considering the Company it keeps, and the trifling Things it is found amongst, it can have no Weight; I submit, it is a Book that can have no Authority at all.

But, Gentlemen, if it be any Evidence at all; I submit it to you, that it can be no Evidence of the Matters in Dispute. It is not said to be the Customal of *Hastings*: That, Gentlemen, we shall read to you: And though there may be some concurring Customs which relate to all the *Cinque Ports* in general, yet, unless they can shew the same Custom to be in all the Ports, a Custom that relates to the Right of all can have no Weight in this particular Borough. To have made this Evidence, they should have proved by ancient Charters and Records, that there is a concurring Right in all the *Cinque Ports* to the Election of Freemen.

But, Gentlemen, we shall lay Evidence before you quite to the contrary. We shall shew you a Custom relating to eldest Sons in other Ports, quite different from this; whereby it will appear, there are distinct Rights in all the Ports, and that

it was never pretended there was one uniform Right amongst them; though if this Customal be Evidence, there must be a general Right of all the *Cinque Ports*. But, Gentlemen, taking it as Evidence of the Matters in Dispute, even then it is far from proving most of the Things they have laid, and but a very slight Proof of what they rely on.

First, Here is a Negative implied: "*Possunt Majores et Ballivi, &c.*" After having set forth the particular Persons having a Right, it goes on and says, the eldest Son of a Freeman may be admitted, and that there are three Ways of admitting him:

"*Possunt Majores et Jurati, Ballivi et Jurati, &c. recipere et facere liberos tribus modis: Uno modo, per Nativitatem.*"

They are Qualifications rather than Rights: *Possunt, &c.* They may admit, and there is no Distinction made between the eldest Son and the other Sons.

"*Alio modo, per Liberum Tenementum perquisit: Tertio, per Emptionem.*"

Such a Man has no Right; and yet the same Words are used to those who come in by a Freehold, or by Purchase, as to those who are to be made free as eldest Sons; and therefore it is no Evidence of the Right of an eldest Son. Does it say, the eldest Sons of Freemen, born after their Fathers Freedom, or within this Liberty, that they shall be free? —

Lord Hardwicke. "*Uno modo, per Nativitatem infra libertatem suam, si pater suus, tempore nati- vitatis sue, fuit liber.*"

Mr. *At. Gen.* My Lord, I ask Pardon; it turns the other Way; but I submit that it is no Evidence of the eldest Son. It does not say, *per Nativitatem* of the eldest Son; if he had any Son born after his being admitted into the Freedom, he had a like Right with the eldest Son.

Lord Hardwicke. "*Per Nativitatem infra libertatem suam.*"

Mr. *Strange.* Within his Franchise.

Lord Hardwicke. I was thinking, whether it related to the Freedom of the Father.

Mr. *At. Gen.* My Lord, it is the *Libertatem* of the Five Towns, and not of this particular Town. Talking of the general Privileges of the *Cinque Ports* is an uncertain Evidence of what they contend for. My Lord, it goes on, and, so far as it is an Authority established in all the Ports, it says, He is to take an Oath to maintain the Liberties of the Five Ports, and especially of that Port *ubi commoratur*. It lays down, as the Foundation of being free, that Residence is absolutely necessary: He cannot be admitted, unless he be commorant. This, my Lord, is the Foundation we go upon, and I humbly apprehend we shall establish it by a very strong Evidence.

My Lord, I reckon that the 35th Article they have read entirely destroys the Credit of this Book. The Words are, "*Et quilibet gaudere intendens libertatem Quinque Portuum per Emptionem, inveniet quatuor manucaptos resident' de omnibus et singulis præmiss' perimplend'.*" They have not shewn that this Article has ever been complied with: They have never produced a Time that such *Manucaptos* have been given, or that they were ever required of any Person: And therefore it appears, that this pretended Customal has been always considered as a Ballad, as I would consider it; for they would have

observed it, if it had been the ancient Law: And as they begin with this Point, I submit it to your Lordship, that it should not be left out of the Case; besides, it is necessary that they be resident within the Borough.

My Lord, and Gentlemen of the Jury, as to the Evidence that has been given from the Entries read; in considering this Corporation, one general Observation may be made, That they are a very weak Argument, if any, of what they are brought to prove.

My Lord, the *Mandamus* admits a Prescription; and in making out a Custom in the Case of a Borough, they should give in Evidence more ancient Entries than any of these that have been read. They have gone no further back than 1608, although in the Books there are much older Entries. It may be said by the Gentlemen of the other Side, that going back a hundred Years is a great Way back; and if there are no Entries before, it is sufficient: But it happens unfortunately for them, that in this Corporation there are regular Entries, from the Year 1389, down to this Time where they have thought proper to begin; and there is no Instance or Footstep of one claiming, or any Entry taking Notice of the Right of an eldest Son; and we shall read Entries back for two hundred Years before they begin; which, I humbly apprehend, will be a strong Objection to every Entry they have read. A Proof from 1608 is but a slight Evidence of an ancient Custom: And as they have proved another different Custom, and there has been an Intermission for so many Years, this Application of the Plaintiff's can proceed from nothing else but the same litigious Spirit that now prevails in the Corporation. From 1691 to 1716, they have produced no Footsteps of this Right, for twenty-five Years together. Can it be believed there was any Right, when for twenty-five Years no eldest Son ever claimed a Right; I say, when it appears no body ever claimed it during that Time, or, if they did, that they were refused? And, my Lord, if they were refused, it is a stronger Evidence.

Mr. *Strange.* You are mistaken, Mr. Attorney; there was *John Geery* admitted the 25th of *October*, 1707, and *John Hussy* the 5th of *January*, 1694; and we have several others.

Mr. *At. Gen.* My Lord, they have divided their Evidence into three Parts. In the first Clause they have given no Evidence —

Lord Hardwicke. That this, Time out of Mind, has been the Custom.

Mr. *At. Gen.* My Lord, I would consider, how far their Evidence supports the Right the Plaintiff has laid in the *Mandamus*, and what they have proved.

And, with great Submission to your Lordship, I must insist, that they have proved no more, than that eldest Sons of Freemen have been admitted for a Fine of 6s. 8d. for the Entries all are, on their praying to be admitted. And, my Lord, it is no Wonder; for we shall shew your Lordship several hundred Instances of Persons who were admitted during the Time these Freemen were admitted, who were younger Sons, for their Fines of 6s. 8d. and they have produced but fourteen Instances of eldest Sons; they have shewn they were admitted, and proved the Fine paid by them to be 6s. 8d. We have other Instances of Sons who paid 13s. 4d. And therefore

fore they might as well say, since there is Proof, that every body paying 13 s. 4 d. has as good a Right to be admitted as the eldest Son of a Freeman; for it is upon paying 13 s. 4 d. and the eldest Son's Admission is upon paying 6 s. 8 d. and if it be an Argument of a Right, it is a Right by paying 6 s. 8 d. and every body, from their own Account of the Matter, has the same Right for 13 s. 4 d.

My Lord, in any of the Entries, there is no Distinction made in the Admission between the Sons and others; they all come and pray to be admitted; sometimes it is upon making it their humble Request, sometimes upon their earnestly beseeching, that they are to be made free. They all ask in the same Manner, whether they are Sons or no, and are made free; and therefore, on their own Entries, it appears to be a Favour granted to eldest Sons as well as others, upon their asking that they might have it; and therefore they are indulged with a lesser Fine. They rely much on the Fine of 6 s. 8 d. but, if it proves any thing, it is (as I humbly apprehend) an Argument against them.

My Lord, in the next Place, they have laid the Custom to be, That this eldest Son be born within the Town, after the Admission and Swearing of his Father; then it is that the Son is to be admitted. But I do not remember that any one of their Witnesses has confined it to this, (I ask Pardon if I have forgot); but they said, some of them expressly, that the being born after the Father's Admission, or within the Town of *Hastings*, or out, made no Difference. But they have endeavoured to supply this from their Entries, by saying, that they are mentioned in the Entries as eldest Sons, and therefore they were admitted for 6 s. 8 d. But this infers nothing.

Gentlemen, we shall shew you, both by Entries and living Witnesses, that there has been no Distinction made between the eldest Sons and other Sons. It was no Indulgence therefore to them; but the same to the other Sons of Freeman as well as the eldest.

And, my Lord, we have many Entries in the Books, where only the Sons of Freeman are mentioned, without taking any Notice of the eldest; which fully proves, that, if the Point rested upon their being eldest Sons, and born within the Borough, after the Admission and Swearing of the Fathers, they would have been particularly entered so in the Books, and is a strong presumptive Evidence against this pretended Right of the Plaintiff.

My Lord, we have some Instances where they are called the youngest Sons, and were admitted for their Fines of 6 s. 8 d. upon their coming and humbly praying that they might be admitted into the Franchise of this Town. That therefore being added, strongly shews, that they had no Regard at all to what the Gentlemen of the other Side principally contend for, the Right of eldest Sons.

Besides this, Gentlemen, we shall produce to you many living Witnesses, very old ones, who will prove to you, that the Mayor and Jurats (the Charter being silent in this Matter) have Time out of Mind admitted Persons at their Pleasure, and this has been the ancient Custom.

And, Gentlemen, as their Entries go no further back than 1608, so their living Witnesses do not make it a jot the better. They do not

say there is a Right in this Borough, in one Instance, of their own Knowledge; they do not say a Word of any Distinction, whether they are born after the Admission and Swearing of the Father, or within the Borough; and one of them expressly contradicts it. The Evidence they have given is nothing but a tittle-tattle Discourse of what they have heard, that the eldest Sons of Freeman had a Right.

Therefore, Gentlemen, as to the Point in Question, as they have entirely failed in their Entries, and as the living Witnesses they have brought to support it say little or nothing to the Purpose — One of them says, when he desired his Freedom himself, the Town-Clerk answered the Mayor, *Sir, you may do as you please*. He did not ask him, whether he was born within the Town, or after his Father became free, and mentions a Fact strong to the contrary. And, as some of their Evidence comes down so low as 1722, one of them tells you, that when one was made a Justice of Peace, the eldest Son of a Freeman came to the Court, and demanded his Freedom, and was absolutely refused; and that he did it nine Years ago, some of them say about twelve. So that, Gentlemen, their living Witnesses give but a slight Evidence of one Part of their Custom; and as to the other Part, they have given no Evidence at all. But we have many old Witnesses, who will give your Lordship and the Jury no wrong Views of the Manner of admitting Freeman.

My Lord, we shall begin with the Customal, which is said in the Title to be the Customal of this Town; where the fullest Directions are given as to the Manner of electing Freeman, and yet there is not a Word said of the Right of the eldest Son.

We shall then, by reading many Entries out of the Corporation-Books, shew, that no Notice at all has been taken of eldest Sons, in Distinction to other Sons; but that they have all been admitted promiscuously.

And then I shall trouble your Lordship to say no more; but call our living Witnesses, who will fully prove to your Lordship and the Jury, that the Mayor and Jurats have Time out of Mind admitted Freeman at their Pleasure; and that, besides being the eldest Son of a Freeman, and born within the Town after the Admission and Swearing of the Father, he has a Right in Respect thereof, but it must be on another Condition, as necessary as any of the former, upon paying a certain Fine. The *Mandamus* goes on and says, *And also upon paying a reasonable Fine*; and the Writ commands the Mayor and Jurats to admit him upon paying a reasonable Fine. So that, my Lord, I take it, by the Writ, that Fine is made to be as necessary in order to the Person's being admitted, as any of the other Qualifications mentioned in the *Mandamus*: And, my Lord, I humbly apprehend, they have proved it a certain Fine, instead of a reasonable Fine.

My Lord, a Copyholder lays a Custom, to be admitted to Copyhold Lands upon paying a reasonable Fine: If, upon the Proof, it comes out to be a certain Fine, he must undoubtedly fail; for in Copyholds there is a known Distinction between a reasonable Fine and a Fine certain.

And, my Lord, I humbly apprehend, that, in point of Law, Cases of Copyholders are parallel with the present.

There is as much a Distinction between a Fine certain and a reasonable Fine in the present Case, as in the Case of a Copyhold.

My Lord, they have fully proved 6*s.* 8*d.* to be constantly paid, which is a certain Fine, upon every Admission of an eldest Son. The Mayor cannot contend; if they offer that Fine, they have a Right to be admitted. They therefore have failed in this Point; it is not a reasonable, but a certain Fine.

My Lord, in the next Place, we shall call Evidence to prove, that, without Residence within the Borough, no one can ever be admitted a Freeman of this Town and Port: And I take this, my Lord, to be a general Rule in most Corporations; it being unreasonable that any Man, who does not reside in the Borough of which he is free, should have a Share in conducting the Affairs of that Borough. And although the Charter is silent in this Affair, yet, my Lord, besides the general Reason of the Thing, we shall shew your Lordship and the Jury a By-Law made above two hundred Years ago, by which it is declared, That, if any one who was a Freeman removed out of the Borough, and should dwell out of the Town, such Freeman lost all his Right. And we shall prove by several ancient living Witnesses, that Residence within the Borough was always necessary, and that this has been the constant Usage.

My Lord, upon the whole Circumstances of this Case, we beg Leave to insist, that they have not proved three Parts of the Custom, as they have laid it in the *Mandamus*; and that, as to the fourth Part, they have proved directly the contrary: And therefore, Gentlemen, we hope you will find a Verdict for the Defendants.

Mr. Serj. *Skinner*. May it please your Lordship, and you Gentlemen of the Jury; I am also of Council with the Defendants: And Mr. Attorney-General has been so very particular in answering the Evidence which has been offered to you by the Gentlemen of the other Side, as well as in stating the Evidence we are to lay before you, that I need say little. —

Lord *Hardwicke*. You are not going to stay, Mr. *Strange*, I hope: We are now coming to a material Part.

Mr. Serj. *Skinner*. My Lord, the Right the Plaintiff has laid in the *Mandamus* is, That every Person, being the eldest Son of a Freeman, born within the Town, after the Admission and Swearing of his Father into the Office of Freeman, has a Right, in Respect thereof, and also upon paying a reasonable Fine, to be made free: And they have endeavoured to prove this Right, First, by producing an old Book, called the Customal, as an Evidence of this Right: But it is a suspicious Authority; it has no Date; and that, they say, is an Evidence of its Antiquity, but without any Foundation from the Book: There are several Entries entered prior to it; it is not paged regularly; it is in the Middle of the Book, and yet it is marked *fol.* 1: And if we look into the Thing itself, it tells us there are three Ways of making free, *viz.* by Birth, if born within the Town, and after the Swearing and Admission of the Father; by the Purchase of a Freehold; and by Redemption.

My Lord, they have shewn some Instances of the first; but as to the second, they have shewn no Purchaser of a Freehold that ever was made

free; and we shall prove many Persons living in the Town, that have Freeholds, that never were made free.

The next Evidence they have given is from the Entries of Sons, who have been made free as Sons of Freeman; and this they would have us take as a Proof of the Custom, of a Right in the eldest Son, born after the Freedom of the Father, to be made free: For they say, it is in Respect thereof; that he must be the Son of a Freeman, and born after his Father was made free. And all the Instances they have produced of this, amount to no more, than that such a one was admitted, being the eldest Son of a Freeman, not because he was an eldest Son, and born after his Father was made free.

My Lord, they have produced Copies taken out of the Register-Books in *Hastings*, by which it appears, when these Sons were baptized: But it is not given as a Reason in any of these Entries, that he was admitted into the Freedom, because he was born there; though, in Fact, it might be so, and that is the Right they contend for.

My Lord, I submit it to your Lordship, that, as to the Fine, nothing conclusive can be drawn from thence, that there is any Right in the eldest Son of a Freeman. The Fine paid by him is 6*s.* 8*d.* *quia pater suus liber est*; that is the Reason. No; he is not admitted into the Freedom because his Father was a Freeman; but he is admitted for 6*s.* 8*d.* not because his Father was a Freeman. This therefore does not shew that he had a better Right than any body else: And none but the second Instance they read, *James Lasher*, among all the Entries, was admitted upon any other Terms than his humble Petition and Prayer to be made free. He, indeed, instantly required the Freedom, and by the Consent of all he was admitted. In all the other Instances it is said, At his humble Request and Desire he is admitted: No body insisted on, or demanded this Right.

My Lord, as they have laid the Right, there is a further Qualification necessary, *viz.* on Payment of a reasonable Fine: And I submit it to your Lordship, that they have proved it a Fine certain; and that therefore nothing is left to the Mayor and Jurats in this Affair, but to admit the Person upon paying 6*s.* 8*d.* and claiming his Freedom.

But, my Lord, we say, a further Qualification is absolutely necessary, and that is Residence: And this appears from an Entry in this very Customal they have produced. And, my Lord, no body is ever admitted, but on taking an Oath to observe the Statutes, Orders, and By-Laws of the Borough *ubi commoratur*; and therefore the Person admitted into the Freedom must be commorant in the Place of which he is free. And, my Lord, by a By-Law of the 12th of *April*, the 15th of *Queen Elizabeth*, they were not only to be commorant, but to continue to live there; and if any one admitted went and lived out of the Town a Year and a Day, he was to be excluded from any Privilege or Freedom within that Borough: And this By-Law has been constantly observed; and yet, my Lord, the Plaintiff *Moore*, they do not so much as pretend that he is resident within this Borough. We contend not, whether the Sons of Freeman are intitled to Freedoms; but we say, that Freeman's Sons and Foreigners are in the same Right; they pray alike, if it seems fit, and so pleases the Mayor

and Jurats: And the Mayor and Jurats have rejected the Sons of Freemen: And it is only a Compliment to the Sons of Freemen to pay 6s. 8d. and 13s. 4d. is paid if a Foreigner is admitted.

Gentlemen of the Jury, we shall lay our Evidence before you; and then we doubt not but you will be convinced, that the Right is the same to a Foreigner as to the Son of a Freeman, and therefore that you will find for the Defendants.

Lord *Hardwicke*. I own there are Difficulties upon the Point of a reasonable Fine, and that of Commorancy. I have taken Residence in all the Ports to be essential.

Sir *T. Abney*. My Lord, we apprehend 6s. 8d. to be a reasonable Fine, from the Reasonableness of the Sum.

Lord *Hardwicke*. The Notion of Law is, Sir *Thomas Abney*, that there is an essential Difference between a Fine certain and a reasonable Fine.

Sir *T. Abney*. My Lord, we can prove that different Sums have been paid upon the Admission of Sons.

Mr. *Strange*. We have one Instance of a Son who paid twenty Shillings for a Fine.

Lord *Hardwicke*. Then as to the Point of Commorancy.

Mr. *Marsb.* My Lord, the Ports in general preclude no Member for Non-residence. I have known them vote for Mayor, that have not been resident.

Lord *Hardwicke*. In some of the Ports a Distinction is made between voting for Mayor and Members of Parliament.

Mr. Serj. *Eyre*. My Lord, they cannot shew, within ten Years, an Instance of one Son's paying more than 6s. 8d.

Lord *Hardwicke*. Go first to that Point of the Fine.

Mr. *At. Gen.* We shall begin with our By-Law, where the Words *ubi commoratur* are.

Lord *Hardwicke*. One By-Law has been mentioned, that a Freeman of one of the Ports shall have a Right to be admitted in another; that is never used.

Henry Carlton *sworn*.

Sir *T. Abney*. Was not you a Freeman? Are you not disfranchised?

Carlton. Yes.

Sir *T. Abney*. Are you not promised to be restored?

Mr. *At. Gen.* What Book is that?

Carlton. One of the Corporation-Books of *Hastings*.

Mr. *At. Gen.* Where had you it?

Carlton. It came from the Town-Clerk's Office.

Mr. *At. Gen.* Read the By-Law of the 15th of Queen *Elizabeth*.

Associate reads—

“ *Hastings*, ff. *Electio Ballivi* tent' die *Dominica*
“ *prox' post*, &c. 12^o die *mensis Aprilis*, anno
“ *regni Reginae Elizæ* 15^o, *Elect' Major' pro*
“ *hoc anno*.

“ It is decreed, That, if any Freeman, now or
“ at any Time hereafter an Inhabitant of this
“ Town, shall depart or dwell out of the Town
“ by one Year and one Day, he or they, so
“ dwelling out of the Town, shall lose his or
“ their Freedom.”

Mr. *At. Gen.* How old are you, Mr. *Carlton*?

Carlton. I am eighty Years old.

Mr. *At. Gen.* Where have you lived? Where was you born?

Carlton. I was born within a Mile of *Hastings*. My Father came to live at *Hastings* when I was about fifteen Years old; and since I have lived greatest Part of my Time in *Hastings*.

Mr. *At. Gen.* Do you know what the Custom is in *Hastings*, as to the Admission of Freemen?

Carlton. Yes; I was a Freeman myself, and have been at several Meetings of the Mayor and Jurats.

Mr. *At. Gen.* Pray now, during your whole Time, did you ever know any one made free that was not resident?

Carlton. No, never, except Honorary Freemen.

Mr. *At. Gen.* Have they any Right to vote in your Borough at Elections?

Carlton. No.

Mr. *At. Gen.* But as to those that are really free, did you ever know any, that were not Inhabitants, vote at Elections?

Carlton. No.

Mr. *At. Gen.* Did you ever know any, that were not Inhabitants, demand it?

Carlton. No, nor I never knew it demanded.

Mr. *At. Gen.* Is it not necessary, in order to be free, that they should inhabit within the Town?

Carlton. I always thought so.

Mr. *At. Gen.* Did you ever hear any thing to the contrary?

Carlton. No.

Mr. Serj. *Skinner*. You know no Instance, in your Time, of any Persons made free, who were not resident?

Carlton. No, none but Honorary Freemen, such as Members of Parliament and Captains of Ships.

Mr. *At. Gen.* Did they own that the eldest Sons had a Right?

Lord *Hardwicke*. Whether they had a Right to demand a Freedom, although they were not resident?

Mr. *At. Gen.* Have they a Right to demand it?

Carlton. No, no body that don't live there.

Mr. *Lacy*. Is there not a Roll of the Freemen, by which they call over their Names upon Elections?

Carlton. Yes.

Mr. *Lacy*. Are the Honorary Freemen called over with the others upon such Occasions?

Carlton. No.

Mr. *Lacy*. Does not a Freeman by Non-residence lose his Freedom?

Carlton. Yes.

Mr. *Lacy*. Do you know any Instance?

Carlton. Yes, *Jonathan Stevens*.

Mr. *Lacy*. Was he a Freeman?

Carlton. Yes.

Mr. *Lacy*. Was he out of the Freedom a Year and a Day?

Carlton. Yes, and lost his Freedom.

Mr. *Lacy*. Did you know one *Milward*?

Carlton. Yes, he was a Jurat.

Sir *T. Abney*. I would ask you, Sir, as to the eldest Son of a Freeman; has not he a Right?

Carlton. No, no Right, without the Favour of the Mayor and Jurats.

Lord *Hardwicke*. Examine him to the Point we are upon.

Mr. *At. Gen.* Can the Mayor and Jurats elect an eldest Son, if he is not resident?

Carlton. No.

Lord *Hardwicke*. You said, Mr. *Carlton*, you had known Persons not resident admitted.

Carlton. Yes, my Lord, Honorary Freemen.

Lord *Hardwicke*. Could not they as well admit the Son of a Freeman not resident?

Carlton. No, I never knew it in my Life.

Mr. *At. Gen.* Could not a Son of a Freeman be made free, though not resident, as well as another?

Lord *Hardwicke*. Mr. Attorney, to support the Qualification of Residence, some Right must be set up.

Mr. *At. Gen.* Honorary Freemen have no Right in point of Law. The Universities give Degrees to Persons who are not Members; it is a Compliment, and they do not vote.

Mr. *Strange*. It is not worth their while to come down to vote.

Lord *Hardwicke*. Honorary Freemen vote at Elections.

Mr. Serj. *Eyre*. I submit it to your Lordship, that we are upon the Right, and therefore ought to examine to that.—I would ask you, Mr. *Carlton*, has any body non-resident a Right to be elected a Freeman?

Carlton. No body has any Right.

Mr. *Strange*. Did you ever know the eldest Son of a Freeman refused, because he was not resident?

Carlton. I never knew it asked.

Mr. Serj. *Eyre*. A Man who is free forfeits his Freedom by being out of the Borough; and yet you would have it, that Persons non-resident have a Right.

Mr. *Strange*. That, Mr. Serjeant, is by your By-Law, not by a Custom.

Mr. *Clarke*. Do you know no Person, though non-resident, that voted?

Carlton. No.

Mr. *Clarke*. Do you know one *Thomas Hatcher*? Do not you remember his coming to vote, though he lived out of the Corporation?

Carlton. No.

Lord *Hardwicke*. That By-Law, will it take away a Right?

Mr. Serj. *Eyre*. We do not rely upon that, my Lord.

Robert Bartholomew sworn.

Mr. Serj. *Skinner*. How old are you, Mr. *Bartholomew*?

Bartholomew. I am eighty-two Years old.

Mr. Serj. *Skinner*. Where have you lived?

Bartholomew. In *Hastings*, almost all my Time.

Mr. Serj. *Skinner*. Have you been there at their Meetings?

Bartholomew. Yes.

Mr. Serj. *Skinner*. Did you ever know one admitted, not living in the Borough?

Bartholomew. No.

Mr. Serj. *Skinner*. Has any Person a Right to be admitted a Freeman, that does not live there?

Bartholomew. He that lives there, to be sure, has a Right.

Lord *Hardwicke*. Examine him to the Fact, what he has known.

Mr. Serj. *Skinner*. What Right has any body to be made free?

Bartholomew. They are made free by the Mayor and Jurats.

Mr. Serj. *Skinner*. Did they live in the Town, when they were made free?

Bartholomew. I never knew any body made free, that lived out of the Town, in my Life; except Honorary Freemen, and them we used to call *Ablocates*.

Mr. Serj. *Skinner*. Have you known no Persons non-resident, made free, to vote, or do a Corporate Act?

Bartholomew. No, none.

Sir *T. Abney*. Who has a Right to be made free of your Town?

Bartholomew. Any body the Mayor and Jurats please.

Mr. *Strange*. Have not you sometimes taken it into your Head to fancy the eldest Son of a Freeman has a Right?

Bartholomew. No, I never had such Thoughts.

Mr. *Strange*. Did not you say so?

Bartholomew. No.

Mr. *Strange*. Have not you said so to *Robert Evernden*?

Bartholomew. No.

Mr. *Strange*. Nor to Mr. *Broadway*?

Bartholomew. No.

Mr. *Strange*. Did you never say so in their hearing?

Bartholomew. No.

Mr. *Strange*. Nor to Mr. *Dodson*?

Bartholomew. No.

Mr. *Strange*. They are in Town.

Bartholomew. I know they are; I see them.

Mr. *Strange*. Have not you declared to them, that the eldest Son of a Freeman has a Right?

Bartholomew. Never since I was born.—I have heard my Father say, a Man could not be made free, that would not swear himself worth 100*l*.

Mr. *Strange*. Why do you take more Money of other People than of Freemen's Sons?

Lord *Hardwicke*. It is inconsistent to say there is no such thing as a Right, and yet Commorancy is necessary, and Honorary Freemen are admitted, though no Person of Right can demand his Freedom: But to say they are all at the Pleasure of the Mayor and Jurats, and yet Residence is necessary, is a Contradiction.

Mr. *At. Gen.* My Lord, they cannot be admitted if they have a Right, if they have not that of Residence.

Lord *Hardwicke*. If you put it in that Way, you must go into the Custom. Go on your own Way.

Mr. Serj. *Eyre*. The Gentlemen of the other Side, my Lord, are not able to shew a Freeman's eldest Son admitted for any other Fine than 6*s*. 8*d*.

Sir *T. Abney*. Yes, we can produce the Book; it will shew its Antiquity; it is scarce able to be read.—Read the Entry of *John Hall*, admitted for a Fine of twenty Shillings.

Lord *Hardwicke*. Don't go into the Reply, before they are gone through the Defence.

Mr. *At. Gen.* What Book is that?

Mr. *Cranston*. One of the Corporation-Books.

Mr. *At. Gen.* You had it from the Town-Clerk, from among the Records of the Town?

Mr. *Cranston*. Yes.

Mr. *Marsh*. What Book is that, Mr. Attorney?

Mr. *At. Gen.* It is the Customal of *Hastings*; that is a Translation.

Mr.

Mr. *Marsh*. What Language is it in?

Mr. *At. Gen.* It is in old French.

Mr. *Strange*. That bound up with ours is a Translation, and that you say is the Original.

Mr. *At. Gen.* I believe so.

Mr. *Strange*. (*Looks upon it.*) This Customal is false.

Mr. *At. Gen.* It is a Translation, and may be wrong translated.

Mr. *Strange*. We'll see that.

Mr. *At. Gen.* Read it.

Mr. *Holmes* reads— (*The Copy in old French.*)

“ The Usage of *Hastings* Time out of Mind —

“ *Die Maii, anno 30^o Elizæ —*

Mr. *At. Gen.* Read that relating to the making of a Freeman.

Mr. *Holmes* reads —

“ If a Foreigner resides in *Hastings* for a Year and a Day, he may come before the Bailiff and Jurats, and be admitted to the Freedom upon taking an Oath.”

Mr. *At. Gen.* In order to be admitted a Freeman, he is to stay a Year and a Day.

Mr. *Serj. Eyre*. Have you looked over that Book, Mr. *Holmes*?

Mr. *Holmes*. Yes.

Mr. *Serj. Eyre*. In order to be a Freeman, he is to come and reside a Year and a Day; and if he be of a good Conversation, then he is to be admitted.

Mr. *Serj. Eyre*. Is there any other Custom in that Book relating to making of Freeman?

Mr. *Holmes*. No.

Mr. *Serj. Eyre*. Read the Entry of the 36th *Edw.* 3.

Associate reads —

“ Memorandum, quod in pleno hundredo tent' apud *Hastings*, viz. die *Dominica prox' ante festum Annunt' beatæ Mariæ, anno regni Regis Edwardi 3^o à Conq' 36^o, coram Ball' et tot' Communitat', Willielmus de Bourn, et Johannes fil' ejus, recepi' sunt ad libertat' de *Hastings*, et dederunt communitat' unam pipam vini, de quo satisfec'.*

Lord *Hardwicke*. That is the Admission of particular Persons. Is there any Fine in that Admission?

Mr. *Serj. Eyre*. A Pipe of Wine, my Lord.

Mr. *At. Gen.* We shall shew, my Lord, a concurrent Proof of 6s. 8d. paid as a Fine certain.

Lord *Hardwicke*. Can you shew any Admissions of Persons who were eldest Sons, without paying any Fine at all?

Mr. *At. Gen.* My Lord, it is improper to call such an one an eldest Son, if the Father had no other Son.

Lord *Hardwicke*. There two Persons were admitted; but in that Entry neither is mentioned to be the Son of a Freeman.

Mr. *At. Gen.* It is for a Pipe of Wine; that, my Lord, is one of the Rights they admit upon. — Read the Admission of *Wilham Cobden*, fol. 147. He was admitted the 7th of *May*, the 7th of *James* the First.

Associate reads —

“ *Hastings*, ff. *Ad assemblat' tent' ibidem 7^o die Maii, 7^o Jacobi Regis primi, Gulielmus Cobden* admittus est ad libertatem hujus villæ, et sacramentum suum more solito præstitit, et osculatus est

“ *malam dextram Majoris secundum usum, pro fine suo; quia filius liberi hominis.*”

Lord *Hardwicke*. The Customal of the Five Ports does not fix what the Fine shall be.

Mr. *Strange*. My Lord, proving that all the Sons are admitted; is proving that the eldest Son is admitted.

Lord *Hardwicke*. You have laid it in *Respect thereof*, which you need not have done. I cannot imagine why it was laid so, in *Respect thereof*.

Mr. *Serj. Eyre*. Turn to fol. 147. Read the Admission of *John Sand*, the 14th of *July*, the 8th of *James* the First.

Associate reads —

“ *Hastings*, ff. 14^o *Julii, 8^o Jac. 1^{mi}, in plena curia venit Johannes Sand, et petit libertatem hujus villæ, et admittus est ad libertatem, quia pater suus liber erat, et sol' 6s. 8d. et fecit inde sacramentum, et osculavit malam dextram Majoris more solito.*”

Mr. *Strange*. We may admit many of these Entries, Mr. Attorney, if you will tell us for what Purpose you read your Entries over again.

Mr. *At. Gen.* These were admitted as Sons of Freeman. We read them, to shew a different Custom from what you have laid. — Read *Nathaniel Lasher* the Son. He was admitted, *quia filius liberi hominis*. Turn to fol. 175.

Associate reads —

“ *Hastings*, ff. 1613, 11^o *Jac. 1^{mi}, 26 Martii, hoc anno, came Nathaniel Lasher, Son of James Lasher, Jurat, before Mr. Mayor and his Brethren, and prayed to be admitted to the Liberty and Freedom of this Town; and was admitted, sworn, kissed the right Cheek of Mr. Mayor, more solito, pro fine 6s. 8d. quia filius liberi hominis, &c.*”

Mr. *At. Gen.* Turn to fol. 179. Read *John Isted*.

Associate reads —

“ *Hastings*, ff. 1614. *Decimo quarto die hoc anno, came John Isted, and craved to be admitted to the Liberty and Freedom of this Town; and by Mr. Mayor and his Brethren was admitted, and sworn, and kissed the right Cheek of Mr. Mayor, more solito, pro fine 6s. 8d. duntaxat; quia filius est liberi hominis hujus villæ.*”

Lord *Hardwicke*. What Men do you admit there?

Mr. *At. Gen.* My Lord, we admit Men as the Sons of Freeman, and that pay 6s. 8d. — Now read the Entry of the 31st of *March*, 1638, of the Admission of *James Batcher*, jun.

Mr. *Serj. Eyre*. *James Batcher*, jun. Son of his Father.

Mr. *Strange*. That is just the same as you read before.

Mr. *Serj. Skinner*. Read *William Lovell*.

Sir *T. Abney*. We read that.

Associate reads —

“ *Hastings*, ff. 31 *March, 1638, 14 Car. 1^{mi}. At this Court, James Batcher, jun. Son of his Father, a Freeman, is now made also free, for his Fine of 6s. 8d. took his Oath, and kissed the Mayor's right Cheek, more solito, &c.*”

Mr. *Serj. Skinner*. I believe we must trouble the Doctor once more.

Mr. At. Gen. Mr. Carlton, you told me you had lived all your Time in *Hastings*, except about fourteen Years; you say you have been at their Elections; Pray, who has the Right to be elected a Freeman of this Borough during your Time?

Carlton. Those whom the Mayor and Jurats please.

Mr. At. Gen. Has not the eldest Son of a Freeman a Right to be admitted?

Carlton. No; if there had been such a Custom, it would never have been denied.

Mr. At. Gen. Did you ever know any body, that was an eldest Son, insist on this Right?

Carlton. Yes; one *Evernden* insisted on it, and was refused.

Mr. At. Gen. How long is that ago?

Carlton. It was before I was a Freeman, about thirty-five Years ago.

Mr. At. Gen. So you say, *Evernden* demanded his Freedom, and was denied; Do you know this of your own Knowledge?

Carlton. I have heard it, but do not know it.

Mr. At. Gen. Who have you heard it spoke by? Are the Persons dead or living?

Carlton. I have heard it by some Persons living.

Mr. At. Gen. Was it the general Reputation in the Town, that this *Evernden* had no Right?

Carlton. Yes; he was looked on as an impudent Fellow, for coming and demanding it.

Mr. At. Gen. Did you ever know any body admitted upon this Right?

Carlton. No.

Mr. At. Gen. How long have you been a Jurat?

Carlton. Ever since the Year 1701.

Mr. At. Gen. That is thirty-five Years ago. Did ever any body before this *Evernden* come and demand to be admitted as an eldest Son?

Carlton. I do not know any one.

Mr. Serj. Parker. Suppose the eldest Son of a Freeman apply to the Mayor and Jurats to be admitted, and they think fit to admit him; How do the Corporation proceed on that Occasion?

Carlton. They apply to the Mayor and Jurats separately at their Houses, and ask that Favour of them; and if they consent, then they come to the Court-Hall, and ask it of them again.

Mr. Serj. Parker. What follows upon that?

Carlton. Then the Mayor asks the Gentlemen, if they consent, and are satisfied, and whether they are willing the Person should be made free; and then they put it to the Vote.

Mr. Serj. Parker. Do they make any Distinction between the eldest and youngest Sons?

Carlton. No; the Majority determines whether the Man shall be made free or no.

Mr. Serj. Eyre. If any other Person applies to be made free who is not a Son, what Steps do they take then?

Carlton. Just the same.

Mr. Serj. Eyre. You are the eldest Son of a Freeman, are you?

Carlton. Yes; but not born within the Town.

Sir T. Abney. Mr. Carlton, did you know *John Geery*?

Carlton. Yes.

Sir T. Abney. Was not he admitted to the Freedom in your Time?

Carlton. Yes.

Sir T. Abney. Was not he the eldest Son of a Freeman?

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Carlton. Yes.

Sir T. Abney. Did you know *John Oliver*, *John Chambers*, *Benjamin Stevens*, *Philip Stevenson*, *William Shorter*, and *Jacob Fantley*?

Carlton. Yes.

Sir T. Abney. Have not all these Persons been admitted in your Time, as eldest Sons?

Carlton. Not because they were eldest Sons, but because the Mayor and Jurats thought fit to admit them.

Sir T. Abney. You said, you did not know, but you believed *Evernden* was refused; Pray, do you believe or fancy any other Person, who was an eldest Son; was ever refused?

Mr. Strange. Do you remember *Boykett* the Dissenter, that applied to be admitted to his Freedom?

Carlton. No.

Mr. Strange. Do you know no Inquiry made by the Town-Clerk, whether he was the Son of a Freeman, or not?

Carlton. No.

Mr. Strange. And upon admitting Freemen, you say, that is the only Question put by the Mayor, *Gentlemen*, are you satisfied? and if any objects, he puts it to the Vote.

Carlton. Yes.

Mr. Marsh. Do you remember *Thomas Lovell*?

Carlton. Yes; he was Mayor several Times.

Mr. Marsh. Do you remember Mr. *Waller*, the Town-Clerk?

Carlton. Yes.

Mr. Marsh. How long is it since he was Town-Clerk?

Carlton. Since I was upon the Bench.

Mr. Clarke. Do you remember nothing of *Boykett*?

Carlton. No.

Mr. Clarke. Nothing of his being refused?

Carlton. No.

Mr. Clarke. Call *Robert Bartholomew* again. — (He not appearing,)

Mark Bayley sworn.

Mr. Marsh. Are you a Freeman?

Bayley. I was one, and am disfranchised.

Mr. Serj. Skinner. How long have you known *Hastings*?

Bayley. Ever since I was born.

Mr. Serj. Parker. How old are you?

Bayley. I am seventy-six Years old.

Mr. At. Gen. How long have you lived there?

Bayley. I have lived there all my Time.

Mr. Serj. Skinner. You have been a Jurat there, have not you?

Bayley. Yes, six or seven Years.

Mr. At. Gen. How do you make Freemen?

Bayley. You must apply to the Mayor and Jurats, and desire that they would please to let you be made free.

Mr. Serj. Skinner. Suppose I was the eldest Son of a Freeman, might I come and demand to be free?

Bayley. No; there is no such Thing as demanding it without the Consent of the Mayor and Jurats.

Mr. Serj. Parker. When you come before the Mayor and Jurats, does the Mayor put the Question, whether the Person shall be admitted or no?

Bayley. He says, that such a Man desires to be made free, if you think fit of it.

[2 T]

Mr.

Mr. Serj. *Parker*. The eldest Son can demand it if he thinks fit, cannot he?

Bayley. No, no; we have nothing at all of an eldest Son.

Sir *T. Abney*. Are not you the eldest Son of a Freeman?

Bayley. No.

Sir *T. Abney*. How long have you been a Jurat?

Bayley. Six or seven Years.

Sir *T. Abney*. How long have you been a Freeman?

Bayley. Forty-eight Years clear.

Sir *T. Abney*. What Profession are you of?

Bayley. I am a Seaman.

Sir *T. Abney*. Pray, Mr. *Bayley*, was you always resident in the Borough? Did you live there all your Life?

Bayley. Yes.

Sir *T. Abney*. What, when you was at Sea?

Bayley. No, but at all Times when I was not at Sea.

Thomas Caswell *sworn*.

Mr. Serj. *Eyre*. How long have you known *Hastings*?

Caswell. I was born there, and have lived there almost all my Time.

Mr. Serj. *Eyre*. Have not you been a Freeman and a Jurat?

Caswell. Yes.

Mr. Serj. *Eyre*. Are not you disfranchised?

Caswell. Yes, I am now disfranchised.

Mr. Serj. *Eyre*. When was you made a Freeman?

Caswell. In 1717.

Mr. Serj. *Eyre*. When a Jurat?

Caswell. In 1726.

Mr. Serj. *Eyre*. Pray, Mr. *Caswell*, how do they make free?

Caswell. When I was made free, I asked the Mayor and Jurats, although I was the eldest Son of a Freeman.

Mr. Serj. *Eyre*. Acquaint my Lord and the Jury, what happened on your applying to be made free.

Caswell. I applied in 1717 to the Mayor and Jurats for their Good-will to make me free.

Mr. Serj. *Eyre*. Is there any Difference between an eldest Son and another in making free?

Caswell. No Difference at all, but that one pays half the Fine, and the other the whole; but the Consent of the Mayor and Jurats is the same.

Mr. Serj. *Eyre*. As to Non-residence, do they ever make any Persons free, who are not resident within the Borough?

Caswell. They never make any free, but such as are resident.

Mr. Serj. *Eyre*. Has any Person a Right to be made free, or is it in the Pleasure of the Corporation?

Caswell. It is entirely in the Pleasure of the Mayor and Jurats.

Mr. Serj. *Eyre*. A Man, by purchasing a Freehold, has he any Right?

Caswell. No.

Mr. *At. Gen.* Is he free of the other four *Cinque Ports*?

Caswell. No.

Mr. *Strange*. Where was you born?

Caswell. At *Hastings*. My Father was a Freeman when I was born, and many Years before. That is my Father's Copy. (*Producing it.*)

Mr. *Strange*. Did you take up your Freedom by that Copy?

Caswell. I wish I could; I should have had it sooner.

Mr. *Strange*. How old was you when you was made free?

Caswell. I was twenty-six Years old.

Mr. *Strange*. Did you ever know an eldest Son of a Freeman denied?

Caswell. No; but it is in the Breasts of the Mayor and Jurats, whether he shall be free or no.

Mr. *Strange*. Was your Father the Son of a Freeman?

Caswell. I cannot tell.

Mr. *Strange*. How comes it upon your Father's Admission to be marked the Day he was born?

Caswell. It is the Time I was born.

Mr. *Strange*. How came it there?

Caswell. I wrote it from a Bible, where my Father had entered it.

Mr. *Strange*. For what Purpose?

Caswell. I wrote it down now, upon this Summons, to shew how old I was.

Mr. *Clarke*. What is the Difference between the Fine paid by Freeman's Sons, when you was admitted, and now?

Caswell. When I was admitted, it was 6s. 8d. and now it is 20s.

Mr. *Clarke*. How long has it been 20s.?

Caswell. Twelve or fourteen Years.

Mr. *Strange*. If the Mayor insists upon 10s. you pay it?

Caswell. The Usage is 6s. 8d.

Mr. *Strange*. But he might refuse it now?

Caswell. I do not know.

Mr. *Strange*. Suppose he had asked ten Guineas?

Caswell. You ask foolish Questions.

Mr. *Strange*. It is not your Business to tell me so.

Caswell. You do it to aggravate your Cause.

Mr. *Strange*. I ask you, Is it not a Custom for the eldest Son to be admitted, upon paying such reasonable Fine as the Mayor shall think fit?

Caswell. No; all the Custom is, that 6s. 8d. is paid by Sons, and 13s. 4d. by others; and now the Distinction is 20s.

Mr. *Strange*. Do you know any Instance of Persons admitted for a Fine of 20s.

Caswell. I know but of one Instance.

Mr. *Strange*. So you take it, no Person has a Right to be made free?

Caswell. Not without the Consent of the Mayor and Jurats.

William Bourne *sworn*.

Mr. Serj. *Parker*. Do you know *Hastings*?

Bourne. Yes.

Mr. Serj. *Parker*. How long have you known it?

Bourne. Fifty-eight Years.

Mr. Serj. *Parker*. What Method must a Man take to be admitted a Freeman of *Hastings*?

Bourne. The Way is to get the Good-will and Liberty of the Mayor and Jurats.

Mr. Serj. *Parker*. Supposing an eldest Son applies to be made free, does he apply to the Mayor and Jurats in the same Manner as another?

Bourne.

Bourne. Yes, he must make the same Application.

Mr. At. Gen. Has he any Right, without the Leave of the Mayor and Jurats?

Bourne. None that I know of.

Mr. At. Gen. Was you the eldest Son of a Freeman?

Bourne. Yes, I was.

Mr. At. Gen. Did you demand it as a Right?

Bourne. I demanded it as a Favour.

Mr. At. Gen. Had you any Right, in case the Mayor and Jurats had refused you?

Bourne. No.

Mr. Serj. Eyre. Are the Freeholders within the Borough made free?

Bourne. No.

Lord Hardwicke. Suppose a Man has an Estate, and lives in the Town.

Bourne. It is all one, my Lord.

Lord Hardwicke. Did you ever know one of them admitted?

Bourne. No.

Mr. At. Gen. Did they admit you immediately on your Application? or was there any Dispute, whether you should be admitted or no?

Bourne. Yes; it was two or three Court-Days before they admitted me; I believe, in all about six Weeks.

Lord Hardwicke. When was you admitted?

Bourne. In 1701, my Lord.

Mr. Serj. Skinner. So it was six Weeks you was asking this Favour?

Bourne. Thereabouts.

Mr. Serj. Skinner. You went to their Houses, to ask leave that you might be free?

Bourne. Yes.

Mr. Serj. Skinner. Is it the Custom for any Persons that are non-resident to be made free?

Bourne. No.

Mr. Serj. Skinner. Did you ever know the eldest Son of a Freeman refused?

Bourne. No.

Mr. Serj. Skinner. Nor any others?

Bourne. Yes, some.

Mr. Serj. Skinner. Did you ever know any demand it as eldest Sons?

Bourne. I cannot say.

Mr. Strange. Do not you expect to be made free again?

Mr. At. Gen. He expects to be a Freeman before your Client.

Lord Hardwicke. Was you ever a Jurat?

Bourne. No.

Lord Hardwicke. Or a Common-Council-Man?

Bourne. No.

Mr. At. Gen. My Lord, we rest it here.

Sir T. Abney. My Lord, I beg Leave to trouble your Lordship with a Word by way of Reply: And, notwithstanding what has been offered by the Gentlemen of the other Side, I agree, that, upon the *Mandamus*, we have laid down four Things as necessary Qualifications for claiming a Freedom in this Borough:

- 1st, That he must be an eldest Son.
- 2dly, That he be born within the Borough.
- 3dly, It must be after the Admission and Swearing of his Father. And,
- 4thly, It must be upon paying a reasonable Fine.

And, my Lord, I humbly apprehend, that if they have proved that any other of the Sons, or

that all the Sons, are intituled as well as an eldest Son, it will not at all affect our Custom: Or, if we prove our Custom larger than we have laid it, that it will not at all impeach our Custom or Claim as an eldest Son.

My Lord, a Man lays a Custom, that he has a Right of Common for Sheep, and proves the Right to be for Horses, Cows, and Sheep too; this shall not impeach his Custom.

And therefore, if any Evidence has been given to your Lordship and the Jury, that all the Sons of a Freeman are intituled to their Freedoms, then, my Lord, *à fortiori*, the eldest Son is intituled.

Lord Hardwicke. It is laid in *Respect thereof*, *Sir Thomas Abney*.

Sir T. Abney. My Lord, I humbly apprehend, those Words relate to the Act of the Father. It is, "Every Person, being the eldest Son of a Freeman, and born within the said Town and Port, after the Admission and Swearing of his Father into the Place and Office of one of the Freemen of the said Town and Port, has a Right, in *Respect thereof*."

My Lord, that, in common Understanding, cannot be in *Respect* of his being born an eldest Son, but in *Respect* of his Father's being sworn and admitted a Freeman at the Time of his Birth.

Lord Hardwicke. Has a Right in *Respect* of his being born after his Father's Admission and Swearing.

Sir T. Abney. And, my Lord, the Customal, to make out that Fact, says, "*Uno modo, per Nativitatem infra libertatem suam, si pater suus, tempore natiuitatis sue, fuit liber:*" If the Father was a Freeman at the Time of the Son's Birth, then he is to be made free.

My Lord, we have supported this Custom in the strongest Manner, by forty Entries, by a great Number of living Witnesses, and by their own Witnesses, Customal, and Entries too; in-somuch that one *Robert Evernden* is the only Person they have been able to shew that was ever refused.

My Lord, we have gone so far back as the Year 1588 with our Entries, which, we humbly apprehend, is a very strong Proof of an ancient Custom; we have brought it down to within twenty Years of the present Time; and, in all that Space, they have not been able to shew one Instance of an eldest Son that was ever refused; and the Entries are equally full, and have shewn in the clearest Manner, that the eldest Son of a Freeman, born within the Borough, and after the Swearing and Admission of his Father, was always admitted.

My Lord, as to what Mr. Attorney says, that the Rules laid down in the Customal as to the making of Freemen, that these are Qualifications rather than Rights, and that we have not stated our Custom properly, and are gone on account of the Commorancy; my Lord, I do admit, that if the Witnesses had come up to that Point of Commorancy, we must have given it up.

But, my Lord, I must beg Leave to insist, that, although Mr. Attorney has bestowed so much Learning and Time upon the Words *ubi commoratur*, to shew that Residence arises from the Customal, and from this Article, which we have laid down as the Foundation of our Right; and that the Person admitted is to take an Oath

to be true and faithful to the Borough where he dwells; yet, my Lord, the Words *Possunt Majores et Jurati, &c.* not only imply a Right, but they bespeak a Qualification: And, my Lord, we have fully shewn them to be Rights that were never contested.

My Lord, another Objection that has been made by the Gentlemen of the other Side, is, that, as we have laid it, it is necessary a reasonable Fine should be paid upon the Admission of every eldest Son; and that we have given Evidence only of a Fine of 6s. 8d. and that we should have given Evidence of different Fines paid, in order to take in the Custom as we have laid it. But, my Lord, I submit it to your Lordship and the Jury, whether the Sum required is unreasonable or no? Is this so? Can it be thought so? If on a Special Verdict it were to be found, that every Man had a Right upon paying 6s. 8d. I humbly apprehend, the Quantity of the Sum must shew that it is a reasonable Fine.

My Lord, as to the By-Law they have read, That, if any Freeman depart out of the Town for a Year and a Day, he loses his Freedom; with great Submission to your Lordship, I apprehend it is not at all applicable to the present Case. It does not say one Word of what is necessary in order to a Man's being elected a Freeman. We say, that in order to be admitted a Freeman, a Man must be an eldest Son, born within the Borough, after his Father's Freedom: But they do not read one Word out of this By-Law, that no Man shall be elected a Freeman, unless he be resident; but it says, that, if any Freeman go and dwell out of the Town for a Year and a Day, he shall for ever lose his Freedom.

And as to their living Witnesses, they, I humbly apprehend, will have little Weight with your Lordship and the Jury. They are not so free as ours; they are Men disfranchised to serve a particular Purpose. It is true, they are legal Witnesses; but it will go to their Credit, and the Jury will think they are under a Bias, and that they are to be made free again, and therefore are prejudiced, and are determined to keep the Borough in the same narrow Hands they now have it. They have all said, that none but the Mayor and Jurats can give a Right; and that, if I was to be let into the Freedom To-morrow, (as Mr. Attorney told you) there is no Right but at the Will and Pleasure of the Mayor and Jurats only. With respect to one of the Jurats, and his own Right, *Robert Bartholomew*, it will have Weight with the Jury, that he is disfranchised; but much greater, to prove him perjured, which we shall do by three Witnesses of undoubted Credit, whom we shall call to contradict all this Talk that he tells you, that there is no such Thing as a Right but at the Will and Pleasure of the Mayor and Jurats.

Gentlemen, we have no other Evidence to trouble you with, but to contradict *Bartholomew*; and then, Gentlemen, we shall leave it upon the Strength of the Case; and we make no Doubt, but you will be of Opinion, that the Plaintiff has an undoubted Right, and therefore will find a Verdict for him.

Mr. Broadway sworn.

Mr. Strange. Pray, *Mr. Broadway*, do you know *Robert Bartholomew*?

Mr. Broadway. Yes.

Mr. Strange. Had you any Discourse with him about the Right of Freeman's eldest Sons?

Mr. Broadway. Yes; I was in Company with him about two Years ago, at the Sign of the *Blue Anchor* in *Hastings*; he then told me, that the eldest Sons of Freeman had a Right to be admitted to their Freedoms.

Mr. Strange. Did he say any thing, that they must come cap-in-hand to the Mayor and Jurats, and beg the Favour that they would please to admit them?

Mr. Broadway. No, nothing at all of that.

Mr. Strange. Did he say any thing further about the Right of eldest Sons?

Mr. Broadway. He said, he could remember the Time particularly well, when they were admitted without any Dispute.

Mr. Serj. Parker. *Mr. Bartholomew*, is that true? Was you at the *Blue Anchor* in *Hastings* with *Mr. Broadway*?

Bartholomew. No, there is no such Sign in *Hastings*.

Sir T. Abney. You must call *John Sargent*.

Mr. At. Gen. *Mr. Broadway* says, you told him, that you remembered the Time particularly well, when the eldest Sons were admitted without any Dispute.

Bartholomew. I never told him so.

(Here a Person who was upon the Pannel whispered to one of the Jurymen.)

Mr. Serj. Skinner. You must not talk to the Jury: Are you a *Hastings* Man?

——— No.

Juryman. He is upon the Pannel.

Mr. Serj. Skinner. Did he say any thing to you about this Cause?

Juryman. No.

Mr. At. Gen. *Mr. Bartholomew*, do you remember that you said so, or no?

Bartholomew. Last Summer I was there with *Dodson*; but I never heard any such Thing mentioned.

Mr. Marsh. How came you to tell them, they wanted to pry into the Corporation-Secrets?

Sir T. Abney. Did not you tell him you was admitted upon that Right?

Bartholomew. No.

Sir T. Abney. Who is that Person?

Bartholomew. The Minister of the Parish.

Mr. Serj. Skinner. So he came to pump you?

Mr. Marsh. He knows he told them so.

Henry Dodson sworn.

Mr. Marsh. *Mr. Dodson*, was you at *Sargent's* with *Robert Bartholomew*?

Dodson. Yes, about two Years since.

Mr. Marsh. Was *Mr. Broadway*, the Minister of the Parish, there?

Dodson. Yes, he was in Company with *Bartholomew* and me.

Mr. Marsh. Pray, what was the Conversation in relation to the Right of Freeman?

Dodson. I met with *Mr. Bartholomew* and *Mr. Broadway* at *Sargent's*. I told him, the Reason of our Meeting was to inquire of him what was the Right of Freeman's Sons. He said, that the eldest Sons of Freeman had an undoubted Right to claim their Freedoms; and he said, that formerly he had been requested to take up his Freedom, but that he had refused it, because

because in War-Time the Freemen were burthened with Taxes, watching and working Night and Day; but that afterwards he had thought proper to accept of it, and was admitted for a Bottle of Wine. He said, he applied to the Mayor and Jurats, and was admitted.

Mr. *Marsh.* Did you say any thing more to him?

Dodson. He told me this; but I said nothing to him, but took a Memorandum in Writing of it.

Mr. *Marsh.* Did he tell you any thing more of the Right?

Dodson. He said, he looked upon the Sons of Freemen to have a Right.

Lord *Hardwicke.* Was this at the Time *Broadway* was with you?

Dodson. Yes.

Mr. *Marsh.* Was *Bartholomew* sober?

Dodson. Yes; it was in the Morning; he had drank nothing but one Glass of Wine.

Mr. *Serj. Skinner.* Did the Parson go with you to find out Evidence? You was the Attorney; Did the Parson go as another Agent to find out more Evidence?

Mark Whales *sworn.*

Mr. *Strange.* Mr. *Whales*, do you know that old Gentleman?

Whales. Yes.

Mr. *Strange.* Have you heard him make any Declaration concerning the Right of an eldest Son to be free?

Whales. About nineteen Years ago he said that the Sons of Freemen had a Right.

Mr. *Strange.* Did you never hear him talk about an eldest Son?

Whales. I do not remember.

Lord *Hardwicke.* That Variance of the Fine, I wish you would apply yourself to that Point, Mr. *Strange.* The Admission seems to have been upon a certain Fine, 6s. 8d.

Mr. *Strange.* May it please your Lordship, and you Gentlemen of the Jury; you have heard a very long Evidence; and as the Gentlemen of the other Side have been pretty minute in their Objections, it will be proper for me as shortly as I can to reply to them.

And, my Lord, the chief Thing the Defendants contend for is, that there is no such Thing as a Right to a Freedom in this Borough; and that, though the electing Members to represent them in Parliament be one of the principal Privileges of every Freeman, yet that there is no Person whatsoever has a Right to come and claim the *Consuetudo Regni*; but the Mayor and Jurats may at their Pleasure chuse Members to represent this Borough in Parliament, and confine the Election in their own Hands, and may chuse them when, and in what Manner, and what Persons they please.

But, my Lord, to support this Right, they should have laid their Finger upon something that would have intituled them to this Right; and yet they have shewn no Circumstance upon the Face of the Earth that can possibly intitle them to it.

My Lord, there is no Corporation in *England*, but where if a Man serves an Apprenticeship, he has, by that Apprenticeship, a Right to his Freedom, and the Sons of Freemen have a Right to come and demand their Freedom. But here,

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my Lord, according to their Account of the Matter, in no Shape or Sort you can ever acquire a Right: A most extraordinary Privilege indeed! And, my Lord, I would beg leave to make this Observation, that, as they began with attacking what Sir *Thomas Abney* set out with, the ancient Customal; so it appears, they have treated it in a ludicrous Manner, and with no Regard at all. They tell us, it is bound up with a great many miscellaneous Papers of no Use, and therefore it can have no Authority. And, my Lord, this Observation would have been material, if it had come out of our Custody; for then we should have shewn why it kept no better Company. But, as it comes out of their own Custody, can we oblige them to keep their own Book better than they have thought fit to keep it? Besides, my Lord, it goes equally to their own Book which they have produced; it is made up in the same miscellaneous Manner as ours is; and therefore this Objection is as strong against the Authority of their Book as ours.

But, my Lord, I submit it to your Lordship, that there is no Foundation at all to quarrel upon this Account.

Suppose it had been found loose, in no Company at all, and without any Cover; Is it the worse, if it had been loose, for being stitched? It rather argues it to be a Book of great Authority, and that this was done to preserve it; because, whilst it lay about loose, it was liable to Decay; and in order to preserve it, it was thought proper to bind it up.

My Lord, they say further, it would have been material, if it had been bound up with ancient Charters and Records of the Corporation: My Lord, I looked at it, and saw that the very Charters themselves are bound up with it.

My Lord, they tell us, this Customal, produced by them, has not at all left it clear, that the eldest Sons of Freemen have a Right; and they say, that whatever our Customal may prove, that our Entries, which have been read, are no Proof of any Right; they pray to be admitted, and therefore they have no Right.

But, my Lord, I beg leave to observe, that it is not a Phrase that runs through all the Entries: In some of them, they are admitted upon their instantly requiring it; in others, it is *secundum Consuetudinem*.

But, my Lord, suppose it was so in all the Entries, it is the common Form of them, and of the Admission of all the Copyholders in *England*—

Lord *Hardwicke.* You need not labour that, Mr. *Strange.*

Mr. *Strange.* My Lord, they say, there is a Circumstance of our Proof, which we have entirely failed in, and which they would prove for us, or that they shall help it out; and that is, that the Party is to be commorant within the Borough: And to prove this, they have read a By-Law, that says not one Word that he is to be commorant; but that, if a Man goes out of the Town for a Year and a Day, he shall lose his Freedom.

But, my Lord, I humbly apprehend, that a new By-Law, that appears before your Lordship and the Jury to have been made but a Year and half, and contradicts an old Custom, is the strongest Evidence in the World, that it was the Custom till the By-Law was made.

To what Purpose else was the By-Law made? They had better have rested it upon the general

[25]

Consent,

Consent, than have introduced a new By-Law, which, upon the Face of it, appears to contradict an old Custom.

My Lord, Mr. Attorney, I think, was pleased to admit, that there must be a Custom; and that, taking this for Evidence of the Matters in Dispute, and so far as it is an Authority, it says, that the Comers in *per Emptionem* must have been commorant within the Borough a Year and a Day; and he says, the Reason of this is, that they should have some Knowledge of the Affairs of the Borough before they are made free of it.

But, my Lord, this Commorancy is not confined to the Comers in *per Emptionem*. The Words of the 39th Article are, "*Et nullus fiat liber per Emptionem, quousque in Portu vel Membro, ubi libertatem desiderat, per unum annum et unam diem permanfit, et si bene et honeste habuerit, &c.*" To what End should it be put, that a Man who comes into the Freedom *per Emptionem* should be resident a Year and a Day? —

Lord *Hardwicke*. It infers nothing one Way or other.

Mr. *Strange*. But one born out of the Town, and bred out of the Borough, it is not necessary for him to be resident, if the Mayor and Jurats please to admit him; and yet every one born in the Town, though he be the Son of a Freeman, must undergo the same Experiment by being resident.

My Lord, the 34th Article, as to the Words *ubi commoratur*, it is only a Part of the Oath every Freeman is to take upon his Admission, "That he will be good and faithful to the King of England and his Heirs, and that he will observe the Statutes of the Five Ports, and especially of that Port where he resides." And it is not to be inferred from thence, that at the Time of his Admission he must be commorant, but that he will observe the Statutes of the Borough, and consult the Good of it.

My Lord, I do not apprehend, that, by the 38th Article, a Man, by being free of one Port, is intituled to his Freedom in all the other Ports. The Words are, "*Et ipsi qui sunt in omnibus et singulis fermis prædiis facti liberi in aliquo Portu sive Membro, habeant libertatem consuetam in omnibus aliis Portibus:*" *i. e.* As a Member of one of the Ports, he shall have the general Liberty belonging to them, but not that he shall be a Member of all the Five Ports.

My Lord, as to the Words *in Respect thereof*, they insist, that as we have laid it, they exclude all Persons from being intituled to any Freedom, but the eldest Sons of Freeman.

But I submit it to your Lordship, that as in the *Mandamus* other Circumstances are afterwards mentioned, that those Words, *in Respect thereof*, are to be referred to the last antecedent Words, to the Freeman's being born within the Liberty, and after the Admission and Swearing of his Father: And unless something be brought to make it improper to refer it to them, I submit it to your Lordship, whether it would in a Right have the Consequence they contend for.

My Lord, the *Mandamus* says, that the eldest Son is intituled; but this is not an Exclusion of the other Sons: For, if all my Sons are intituled to their Freedoms, then my eldest Son most certainly is.

If it had been a Question, whether all the Sons of a Freeman were intituled? and upon the Face

of the Thing, the Man sets out only that he was the eldest Son, he would not enlarge the Custom; because it would have required more Proof: But; if he had been the youngest Son, he must have said that all the Sons are intituled, and there must have been an Averment, to make it square with our Case. They have not read above one Entry of the youngest Sons of Freeman. If we had laid it more confined, we might have failed upon the Proof: But as the Proof has come out; it would have been enough to have said he was *filius* of a Freeman.

My Lord, I have but one Thing more to trouble your Lordship with: The Gentlemen of the other Side insist, that a previous Application to the Mayor and Jurats is necessary in order to a Man's being made free; and they infer from thence, that it is not Right, but mere Favour in the Mayor and Jurats. Even where a Man has the most indisputable Right in the World, by Servitude, he must produce and prove his Indentures, and his Master certifies that he has served an Apprenticeship faithfully; yet even in this Case, according to them, the Mayor says to the Jurats, *Gentlemen, are you satisfied?* and if they are, they admit him.

But, my Lord, it does not at all follow, that, because their Opinion is to be taken as to the Admission, that therefore they have a Right to refuse an Apprentice, who has by Servitude acquired a Right to his Freedom; but only whether they shall admit him as he states his Case.

My Lord, having troubled your Lordship so long, I will beg leave only to say one Word more as to the Fine of *6s. 8d.*

They object to us, that we have laid it as Part of the Custom, that the eldest Son is to be admitted on paying a reasonable Fine, and that it comes out to be a Fine certain. But I submit it to your Lordship, that *6s. 8d.* is a reasonable Fine; the Sum is reasonable; and that the constant Payment of it upon every Admission is an Evidence what is a reasonable Fine: And I rely on those Instances we have read, that *that* is the reasonable Fine; and they are brought only to warrant that there is a reasonable Fine to be taken; and that therefore we are not wrong in saying we have a Right upon paying a reasonable Fine. If we had laid it to have been upon a Fine certain, they would have objected it to us, and they would have shewn, that at one Time a Pipe of Wine was the Fine; and at another Time *20s.* was the Fine; and therefore it would have been dangerous to have laid *6s. 8d.* to be a certain Fine.

Lord *Hardwicke*. You have shewed no Evidence, Mr. *Strange*, that it has ever been varied.

Mr. *Strange*. They have taken *6s. 8d.* always upon the Admission of Sons.

Lord *Hardwicke*. [One of the Witnessess says, now the Fine as a Freeman's Son is *20s.*

Mr. *Strange*. That, my Lord, is a reasonable Fine, and no certain Sum. That in a Church-Lease was a reasonable Fine at one Time, which is not so now; and the Corporation think that *20s.* now, is not more than *6s. 8d.* was formerly.

My Lord, we therefore submit it to your Lordship, upon the Circumstances of this Case, that we have fully proved our Issue; especially as they have not shewn who is intituled to a Freedom within this Borough.

Lord *Hardwicke*. It will be proper to consider, how much of this ought to be left to the Jury. Thus much is Fact, and that they must inquire of:

First, Whether it appears from the Evidence, that there is any Custom within the Borough, that the eldest Son of a Freeman, born after the Admission and Swearing of his Father, has a Right? I think the Words *in Respect thereof* are answered; the confining it *in Respect thereof* must refer to the two Qualifications, that of being born within the Borough, and after the Father's Freedom. I think it is no Objection, that they have proved the Right for all the Sons: For, as Sir *Thomas Abney* insisted, if a Man has a Right of Common, and lays it for Sheep, and proves he has a Right for Sheep, Cows, and Horses too, he shall prevail; and that I think the same with the present Case; for the Custom's extending to other Persons does not prove this bad, because laid more confined. The Jury therefore must determine, whether there be any Custom within the Borough for an eldest Son to be free.

Secondly, Then they must inquire, whether being born within the Town, after his Father was made free, be necessary Qualifications of the Custom, or not? For you have laid the Right to rise from thence. That was not necessary, but that you have laid it so.

Thirdly, It will be necessary for the Jury next to consider, if they believe Resiance to be another necessary Qualification?

If the Jury be of Opinion, that either of these two Qualifications, of being born within the Town, or after the Father was made free, are necessary; or that that Point *Commerancy* is not necessary; then they must find a Verdict for the Plaintiff.

But, if they should be of Opinion that the two former are not essential Qualifications, and the last is necessary; then they must find for the Defendants; and in that Case that Point must be saved.

The Point of laying a reasonable Fine must be saved, if the Jury find a Verdict for the Plaintiff.

I own, I am not satisfied: What Mr. Attorney-General said, that there is great Difference between a reasonable Fine and a Fine certain, has Weight in it.

A reasonable Fine is such as the Law will judge to be so; the general Usage of the Kingdom is, that it shall not exceed two Years and a half's Rent. But what a reasonable Fine is, and who shall be the Judge of it, the Law has established no Rule: And if so, the Question will be, Whether the Jury should find that the Reasonableness is to be judged of by the Proportion of the Sum? And that Point to be reserved for the Determination of the Court, Whether there be a Variance from the Fine laid in the Issue?

If the Jury find for the Plaintiff, there must be a Rule for the *Postea* to stay; and that Point to be saved, for the Opinion of the Court.

Mr. *Marsh*. In laying the Evidence before the Court, my Lord, their own Witnesses said, that fourteen Years ago there was a Fine of 20*s.* paid.

Mr. *At. Gen.* There is but one Instance, and that was in 1730.

Mr. *Strange*. We take it, Mr. Attorney, upon your own Witnesses Evidence.

Lord *Hardwicke*. He did not say how many Instances.

Mr. *At. Gen.* My Lord, he said one Instance, and no more.

Lord *Hardwicke*. The Books ought to be looked over for this Purpose. I apprehended you would have shewn Instances where there had been a Variance of the Fine. Call that Witness again: It was *Thomas Caswell*. — Mr. *Caswell*, you mentioned the Fine now taken to be 20*s.*

Caswell. Yes, my Lord.

Lord *Hardwicke*. How many Instances do you know of 20*s.* taken for the Fine?

Caswell. But one, my Lord; it is Mr. *Hall*.

Mr. *Strange*. Why did you say, that for about fourteen Years 20*s.* had been taken?

Caswell. I said, for about nine or ten Years 20*s.* had been taken; but it was always 6*s.* 8*d.* besides.

Mr. *Strange*. You are disfranchised, are you not?

Caswell. Yes.

Mr. *Strange*. Was you not a little while ago?

Caswell. Yes.

Lord *Hardwicke*. I will not have another Examination of the Witnesses.

Mr. *Strange*. My Lord, I only asked him, what they asked me.

Mr. *At. Gen.* What was that?

Mr. *Strange*. Nothing at all.

Mr. *Marsh*. What do you know of the others who were admitted? What did they pay?

Lord *Hardwicke*. Gentlemen of the Jury, This is a Writ of *Mandamus*, brought by the Plaintiff *Henry Moore*, to require the Defendants, the Mayor, Jurats and Commonalty of the Town and Port of *Hastings*, to admit him into the Place and Office of one of the Freemen of that Town: And the Writ sets forth, that the Plaintiff is the eldest Son of a Freeman, born within the Town, after the Admission and Swearing of his Father; and has a Right, in Respect thereof, and also upon paying a reasonable Fine, to be admitted a Freeman of the Town.

And, Gentlemen, the Matter comes to this Issue, Whether Time out of Mind there has been a Custom, that every Person, being the eldest Son of a Freeman, born within the Town, after the Admission and Swearing of his Father into the Place and Office of one of the Freemen of the said Town and Port, has a Right, in Respect thereof, and also upon paying a reasonable Fine, to be admitted into the Place and Office of one of the Freemen of the said Town and Port?

That, Gentlemen, is the Issue you are to try; and you have, no Doubt, observed on what Points this Question turns.

It appears, that *Hastings* is one of the *Cinque Ports*, and it is besides a Corporation.

Gentlemen, the Point insisted on by the Plaintiff's Council, and the first Thing produced to be considered by you, is a Book consisting of various Parts: One of the Parts is a Customal of the Town of *Hastings*, translated out of *Latin* into *English*, — in an old Hand, — of what Authority is not certain.

At last it comes to this, that in the Book appears to be an ancient Entry of the Customal of the Five Ports and their Members, the Time whereof the Memory of Man is not to the contrary.

From what Authority it comes, is not certain; but it is an ancient Book of the Town, and kept among the Records of the Corporation; and the Entry is in this Book. There are several other

Papers bound up with it; Leafes, the Rental of an Estate, a Copy of a Mortgage, and some other Things.

But that does not take off from the Credit of it, if it has any Credit in itself; for the Town-Clerk might bind up what he thought fit with it.

Gentlemen, the Entry relied on for the Plaintiff is this:

“ Concerning the making of Freemen in the Cinque Ports and their Members.

“ The Mayor and Jurats, the Bailiffs and Jurats, in every Town and Port where there is a Mayor and a Bailiff, may receive and make Freemen three Ways:

1st, “ *Per Nativitatem infra libertatem suam, si pater suus, tempore natiuitatis sue, fuit liber.*”

By Birth within their Liberty, if his Father, at the Time of his Birth, was a Freeman.

Another Way is by a Freehold Purchase.

And the third Way is by Buying a Freedom.

And it goes on and says, “ And it is to be observed, no Man shall enjoy the Freedom of any of the Ports, unless he take an Oath to be good and faithful, to the End of his Life, to the King of *England* and his Heirs; and to maintain the Liberties of the *Cinque Ports*, and especially of that Port where he is commorant; that he will be obedient to the Mayor and Jurats; that he will pay Scot and Lot, &c. that he will not do any thing to the Reproach of the Mayor, Bailiff, and Jurats where he is commorant, but give Notice to them.”

And there were other Clauses read; and one of them is, “ That they who are made free in this Form in one of the Ports, shall enjoy the accustomed Freedom in all the other Ports.”

And there is another Clause, “ That no Man to be made free by Redemption, shall be admitted into the Freedom, till he has dwelt in the Borough by the Space of one Year and a Day.”

These, Gentlemen, are the Entries relied on by the Plaintiff. After reading these Entries, the Council for the Defendants objected, that this was not a particular Customal of *Hastings*, and therefore not so conclusive. But *Hastings* in the *Mandamus* is suggested to be one of the Five Ports.

Gentlemen, they have given Evidence of three different Species of Persons admitted under this Right.

The first is, where Persons were admitted as eldest Sons of Freemen, born within the Borough, and after the Swearing and Admission of the Father.

The next is, where the Admission has been of eldest Sons, born within the Borough, but it does not appear whether before or after the Admission of the Father. And,

The third Species, of Persons who were admitted as the Sons of Freemen in general; but they have not shewn that they were born in the Town, or after the Father's Freedom.

As to the first Species of Persons, who were admitted as eldest Sons of Freemen, born within the Town, after the Admission and Swearing of the Father; I think they read in Number eleven Instances: I need not repeat them. The first is *Jeremiah Bryham*, admitted the 12th of *James* the

First, anno 1614; the last was *Benjamin Medhurst*, the 6th of *May*, 1721.

The next Species is of eldest Sons admitted, and Mention is made in the Entries that they are eldest Sons: But it is not clear, whether they were born before or after the Father's Freedom; but it appears they were born in the Town. They are in Number fourteen. They begin the 7th of *May*, 1608; and the last Instance of them is the 21st of *November*, 1678.

The third Species is of Admissions of Persons, mentioning them generally as the Sons of Freemen, without distinguishing between the eldest and other Sons; but it does not appear, whether they were born in the Town, or after their Fathers became free. They are in Number twenty. So that the Entries they have read are in all forty-five, under the several Species I have mentioned to you.

Gentlemen, after reading these Entries, to shew that such Persons have been admitted, mentioning them as eldest Sons, or Sons, the Fine that has been taken upon their Admissions appears to be 6s. 8d. in all they have read; and at the same Time other Persons were admitted with them, but in the Entries Notice is not taken of them as Sons of Freemen; and as to them, the Fine is 13s. 4d.

Gentlemen, besides these Entries, they have called several living Witnesses.

The first is *Robert Evernden*. He says, he is sixty-six Years old, and has lived in *Hastings* fifty Years. He says, he has heard *Thomas Moore*, an old Jurat, say, that the eldest Sons of Freemen had a Right, and that the usual Fine paid upon the Admission of an eldest Son is 6s. 8d. and that he has also heard *John Moore*, another Jurat, say the same Thing. He says, they are both dead, and that *John* has been dead about ten or twelve Years. He says nothing about the Qualification of Residence, or being born in the Town after the Freedom of the Father.

The next Witness they called is *John Couzens*. He says, he is sixty Years old, and that he always understood, and has heard several ancient People say, that the eldest Son of a Freeman had a Right by his Father's Charter; and takes it, that the Father must be free before the Birth of the Son. He says, he heard both *Thomas* and *John Moore* say the eldest Son had a Right, and never heard of an eldest Son's being refused till the Plaintiff *Moore*; and says, he heard *Dr. Fiat* say the eldest Son had a Right by his Father's Charter.

Their next Witness is *Drew Shengleton*. He says, he is sixty-nine Years old, has lived fifty Years in *Hastings*, and speaks to the same Purpose with the two former Witnesses; and says, it has been the Discourse twenty Years back, that Freemen's eldest Sons had a Right.

John Boykett is the next: And he says, he is above sixty Years old; that he was born in *Hastings*, and has lived almost all his Time there; that about forty Years ago he went into the Court-Hall, and asked to be made free as a Favour; but the Mayor was against it; and then the Town-Clerk asked if his Father was a Freeman; the Mayor said, No; and *Waller* replied, *Then you may do as you think fit*; to which the Mayor answers, *I will not give my Consent to make a Dissenter free for 40l.* He says, one *Medhurst*, the only Son of a Freeman, demanded his Freedom about fifteen Years ago, and was refused.

Joan White says, she is sixty-two Years old; has heard her Father say, the eldest Son of a Freeman had a Right.

Anne Sargent says; she is sixty-three Years old; that she has heard *John Stevens*, who was several Times Mayor of *Hastings*, say, that it belonged to the eldest Sons of Freemen to be free.

Susannah Medhurst is the next Witness. She says, she is sixty-six Years old; that her former Husband was Mayor of *Hastings*, and is dead; and that she has heard him often say, the eldest Son had a Right, and that they could not deny him; and says, that at that Time it was generally granted to eldest Sons.

Gentlemen, the last Witness for the Plaintiff is *Thomas Colebrand*. He says, he is eighty Years old; that when he lived there sixty Years ago, it was the Usage; that eldest Sons of Freemen had a Right; that old *Waller* the Town-Clerk, *Thomas Lovell*, and *Thomas Rainolds*, told him so; and that he has heard the Mayor and Jurats say so several Times. He says, that about sixty Years ago, one *Medhurst*, who was the eldest Son of a Freeman, came and demanded his Freedom; and *Lovell* the Mayor told him, it was an ancient Right, that the eldest Son of a Freeman should be made free; and that afterwards he saw *Medhurst* among the Freemen at an Election, and vote for Members of Parliament. Gentlemen, it appears upon the Admission of this *Medhurst*, which they have also read to you, that he paid a Fine of 6*s.* 8*d.* And this, Gentlemen, is the whole of the Plaintiff's Evidence.

For the Defendants, the Gentlemen of the other Side insist, there is no Right at all to Freedoms in this Borough; but that all Admissions depend upon the Will and Pleasure of the Mayor and Jurats; that they may admit or refuse a Stranger or a Son, just as they please: And they insist, that, if there be such a Right, that it is restrained by these two Qualifications, of being born in the Town, and after the Swearing and Admission of the Father.

And another Qualification insisted on by the Defendants is, That he should be resiant within the Borough.

Gentlemen, the Matter of Law which will arise, if you are of Opinion that there is such a Custom, will be, Whether the Fine be a reasonable Fine, as the Plaintiff has laid it, or whether this is a certain Fine of 6*s.* 8*d.*

Gentlemen, the first Evidence that has been produced for the Defendants is an old Book, in which there are Entries of an old Customal, and a By-Law dated the 12th of *April*, the 15th of *Queen Elizabeth*; by which it is decreed, "That, if any Freeman, now or at any Time hereafter an Inhabitant of this Town, shall depart or dwell out of the Town by the Space of a Year and a Day, he or they, so dwelling out of the Town, shall lose his or their Freedom for ever."

I own, I do not know so extraordinary a Custom any where: For a Man to have a Right to be admitted a Freeman, who was not resident; and yet the Corporation could disfranchise a Man for Non-residence.

But this By-Law will not be of much Weight one Way or other. It only shews the Act of the Corporation to disfranchise any Person that goes out of the Borough.

They have also produced for the Defendants another Book, in which, they say, is contained

the Usage of *Hastings* Time out of Mind; and they have read out of it an Entry in old *French*, the Purport of which is, "That if a Foreigner resides in *Hastings* for a Year and a Day, he may come before the Bailiff and Jurats, and be admitted to the Freedom upon taking an Oath."

The Witness, who read this, swore there was no other Evidence in the Book relating to the making of Freemen.

They read this, to shew that there is no Right of Freedom at all in this Borough, if a Stranger, who has lived in the Town a Year and a Day, may come before the Bailiff and Jurats, and they may admit him upon taking an Oath.

Gentlemen, the next Evidence the Defendants have produced is from Entries of the Admission of Sons of Freemen, without mentioning that they were either eldest or younger Sons; and the Plaintiff admits many of these Entries; and they only shew, that the Fact is, that other Sons, as well as eldest Sons, have been admitted for a Fine of 6*s.* 8*d.*

The next Evidence is from living Witnesses: And the first Witness they have called is *Henry Carlton*. He says, he is eighty Years of Age, was born within a Mile of *Hastings*, and from fifteen Years old has lived there. He has been at several Meetings of the Mayor and Jurats, and has known several Honorary Freemen made, (Members of Parliament, and Captains of Ships) who did not reside; and yet he says, he never heard of any who do not live there, that had a Right to demand their Freedoms; and Persons who have lived there, and been Sons of Freemen, have been refused, and has known Instances. He says, he never looked upon it that any Person had a Right, unless according to the Pleasure of the Mayor and Jurats. He says, one *Evernden*, who was an eldest Son, applied to the Mayor and Jurats to be made free, and was refused; and that this was about thirty-five Years ago. He says, he has been a Jurat from 1701; and tells you, that the common Way of making free is, for a Man, if he be an eldest Son, to apply to the Mayor and Jurats, and ask the Favour of them to be made free; and if they consent, he comes to the Court, and asks it again; and if any Difference arises, they put it to the Vote; and this, he says, is the Method of proceeding in the Case of admitting Freemen's eldest Sons. He says, he was the eldest Son of a Freeman, not born in the Town; that he was admitted, and paid but 6*s.* 8*d.* Therefore this is not to be applied only to the Right of eldest Sons born within the Borough. He says, that several such have been admitted, but not upon the Foot of Right.

Their next Witness is *Robert Bartholomew*, aged eighty-two. He says, he was made free by the Favour of the Mayor and Jurats; and that, in his Opinion, no body but those whom the Mayor and Jurats please have a Right. He was asked, whether he did not tell *Mr. Broadway* and *Mr. Dodson*, that he remembered the Time particularly well, when the eldest Sons of Freemen were admitted without any Dispute? And he says, he never told them so.

Mark Bayley is the next. He is seventy-six Years of Age, and has lived all his Time in *Hastings*, and has been a Jurat six or seven Years. He says, there is no such Thing as demanding a

Freedom by Right, and that the eldest Son of a Freeman has no more Right than any body else.

Their next Witness is *Thomas Caswell*. He says, he has been a Freeman ever since the Year 1716; that he is the eldest Son of a Freeman, and applied to the Mayor and Jurats for their Good-will to make him free; and knows no Difference between the Admission of an eldest Son and another, but paying half the Fine. He says, he never knew any Persons made free but who were resident in Town, nor upon a Freehold; and that it is entirely in the Pleasure of the Mayor and Jurats to make free. He says, when he was admitted, the Fine was 6s. 8d. but since they have taken 20s. But being called on to name Instances, he says, he knows but of one Instance.

William Bourne is the next: And he says, he has been a Freeman, but never a Jurat; that he has known the Town fifty-eight Years; and that the Way to be admitted is to get the Good-will of the Mayor and Jurats. He says, he is the eldest Son of a Freeman, but knows of no Right, and that he requested it as a Favour; and before they admitted him, they considered of it two or three Court-Days: And he says, that no Non-residents can be admitted.

This, Gentlemen, is the whole of the Defendants Evidence.

By way of Reply, the Plaintiff has called two Witnesses to contradict what *Robert Bartholomew* has sworn.

Mr. Broadway is the first: And he says, that he was in Company with *Bartholomew* about two Years ago, at the *Blue Anchor* in *Hastings*; when he told him, that the eldest Sons of Freeman had an undoubted Right, and that he was admitted upon that Right, though he had before declined it, by reason of the Taxes.

Mr. Dodson was also present, and he says the same.

Upon this *Bartholomew* was confronted with *Dodson* and *Broadway*: And he said, that he was not with them at such a Place, and that there is no such Sign as the *Blue Anchor* at *Hastings*. He denied he said the eldest Son had a Right; but owns he said he thought they came to pry into the Secrets of the Corporation.

Upon this Evidence, Gentlemen, it will be proper for you to consider,

First, Whether you believe there is any positive Right in this Borough for an eldest Son to be free? As to the Right that has been set up for the Defendants, That all is at the Will and Pleasure of the Mayor and Jurats, and that there is no Right at all to be free; it is such an extraordinary Custom as I hardly ever heard of, and know no such Instance any where. Some Right there must be, although the Magistrates may have taken it into their own Hands. Therefore the Question will be, Whether you believe there is a Right in the eldest Sons to be free?

Gentlemen, you have heard the ancient Customal read. This, to be sure, is some Evidence, but not conclusive; and it is the Customal of the Five Ports in general, and there are separate Customs in each Port.

And here is one Method laid down of an Admission of Freeman in Right of a Purchase, and that, they shew you, has never been complied with.

But they have read many Instances of Persons who were admitted upon the first Right; thirty-five they have read who were admitted as eldest Sons; or Sons: Of the first Species, they read eleven in Number; and you must take it together with what the living Witnesses tell you, who all say; that they have taken the Custom to be so, that the eldest Son has a Right.

What *Boykett* swore is very material, that, when he applied to be admitted, *Waller* the Town-Clerk asked, if his Father was a Freeman? the Mayor said, No; to which *Waller* replied, *Then do what you please*.

Gentlemen, for the Defendants, the Witnesses have sworn, that they know of no Right to Freedom in this Borough, but at the Pleasure of the Mayor and Jurats; and that during their Time, and though particular Mention is made in the Entries that they are Sons, in Respect of the Difference of the Fine, and that they are admitted for paying 6s. 8d. they tell you it is not at all material being the Son of a Freeman.

Gentlemen, in the next Place you will consider, if you believe there is any Right for the eldest Sons of Freeman, then whether it be necessary that he be born in the Town, and after his Father was made free? because the Plaintiff has made it necessary for him to prove that he be born there after the Admission of his Father, by laying it in Respect thereof. And as to that, the ancient Customal says, "*Uno modo, per Nativitatem infra libertatem suam, si pater suus, tempore natiuitatis sue, fuit liber:*" That every body has a Right by Birth within their Liberty, if his Father at the Time of his Birth was a Freeman. This the ancient Customal mentions; but this is not conclusive. Therefore, Gentlemen, you will consider it with the Evidence of the living Witnesses, and none of them have made that a necessary Qualification. One of them said, that the Father must be free before the Birth of his Son; and another said, it made no Difference, whether born before or after: But none of them said positively, that he must be born within the Liberty, after the Admission and Swearing of his Father. Therefore you will consider, whether these two Qualifications are proved essential to the Right to be made free.

In the next Place, it will be proper to consider, that the Customal supposes that no Man has a Right, unless he be resident; and it tends to enlarge the Freedom of the Borough, to let in Persons not resident: But very little positive Evidence has been given of that.

The Defendants Witnesses have sworn positively, that the Mayor and Jurats can admit none but Residents; and yet, that they may admit Honorary Freeman who are non-resident: Though the ancient Customal has an express Clause in it, which supposes, that, in order to be free, a Man must be resident. They swear to pay Scot and Lot, and to maintain the Liberties of the Five Ports, and particularly of the Port where they are commorant. Which implies, that every Freeman should be commorant. And the Council for the Defendants have mentioned, that every Freeman is to take an Oath to maintain the Rights of the Five Ports, and especially of that Port where he is commorant.

You will consider therefore, Gentlemen, whether this imports as a necessary Qualification, that in order to be free, a Man must be resident?

The

The Council for the Plaintiff did not ask the Witnesses as to this Point of Residence.

The Witnesses for the Defendants all swore, they took it to be so; but yet that Honorary Freemen, who were not resident, might be made free.

It will be proper for you therefore, Gentlemen, to consider,

First, If you believe, on this Evidence, that there is no Right in the Son of any Freeman to demand his Freedom of the Mayor and Jurats, but that all depends on their Pleasure:

But, if you believe that there is a Right in the Son of a Freeman, and that the Mayor and Jurats cannot deny him his Freedom: Then

You will consider, whether the two Qualifications, of being born in the Borough, after the Freedom of the Father, are necessary, or no?

If you believe they are not necessary; but that whether he be born in or out of the Borough, or before or after he was made free, makes no Difference; in that Case you must find for the Defendants.

But if you believe a Right in the Sons of Freemen; and that being born in the Borough, and after the Father's Freedom, are essential:

Then you will consider the Matter of Resiance:

And if you believe Resiance not necessary, then you must find a Verdict for the Plaintiff.

But, on the other hand, if you believe being born in the Borough, and after the Father's Freedom, are not necessary; or, if necessary, that it is equally necessary that the Persons should be resident; then you must find a Verdict for the Defendants.

Verdict for the Plaintiff.

Foreman. We find, that the eldest Son of a Freeman, born within the Borough, after his Father's Freedom, has a Right.

Lord Hardwicke. What do you find as to the Commorancy?

Foreman. My Lord, we find Residence not necessary; and that the eldest Son, born within the Borough, after his Father's Freedom, has a Right upon paying a customary Fine.

Lord Hardwicke. What do you find the Fine?

Foreman. We find the Fine to be 6s. 8d. and that *that* is reasonable.

Lord Hardwicke. That Point of the reasonable Fine must be saved for the Opinion of the Court; and let the *Postea* stay.

N. B. The Special Verdict was afterwards solemnly argued, and determined by the Court in Favour of the Plaintiff Moore.



N U M B E R X I X.

An Account of the Behaviour of the late Earl of Kilmarnock, after his Sentence, and on the Day of his Execution, August 18, 1746. By James Foster.

MR. Foster says, his first Access to Lord Kilmarnock was on *Thursday, August 7*, in the Evening; and after some serious Discourse with his Lordship on Religion, he proceeds thus:

“ He desired me to administer the Sacrament of the Lord's Supper to him, which at first I declined, without absolutely refusing it. And my Reason was this, that I chose not to do it till I had Authority from General *Williamson* to tell him, *that there remained no Hope of his Life*. Then I thought I should have clearer Evidence, if he still continued in the same *ingenuous* Temper, that his Confessions and Repentance were *sincere*; and I consented at last only upon this Condition, that he would allow Mr. *Fowler*, the Gentleman-Gaoler of the *Tower*, to be present, and renew his Acknowledgments before him. To this he made no Objection; and the Questions which I proposed to him, together with his Answers, were in Substance as follows.

“ Do you acknowledge, with deep Penitence and Contrition, the *Guilt* of the late unprovoked, unnatural and wicked *Rebellion* in which you engaged; the *Share* you had, by being involved in it, in the Oppressions and Murders

“ of your Fellow-Subjects, and the Desolation and Spoil of your native Country; your great Guilt in rebelling against your *just* and *lawful* King, and against a *mild* and *gracious* Government? *I do*.

“ Are you ready to declare, that it is your stedfast Resolution to *persist* in this humble Confession to the last, and to pray for the Prosperity of King *George*, the Establishment of his Royal House, and the Welfare and Peace of your Country, with your dying Breath? *I readily declare this to be my steady Purpose*.

“ Do you also, with Shame and Humiliation before God, acknowledge the Irregularities and Excesses of your *private* Life; and will you endeavour to form your Mind to a deeper and deeper Repentance for both your public and more personal Crimes? *This is my Resolution, which I will adhere to by the Help of God*.

“ Be pleased to declare, that you expect *no* Benefit at all from receiving the Sacrament, if your Remorse and Penitence be not *sincere*. *I do not think, that it will be of any Service to me*.

“ I desire, in the last Place, that you will also declare, what of your own Accord you
“ have

“ have mentioned to me before — That you
 “ consider yourself, in this Act of receiving the
 “ Sacrament under your present critical and
 “ melancholy Circumstances, as making an im-
 “ plicit *Appeal* to God, that you expect no
 “ *Mercy* from him, if your Confessions are feigned
 “ and hypocritical; and that you look upon the
 “ Death of Christ (which you are now solemnly
 “ to commemorate as a Ratification of God’s
 “ Covenant of Mercy to unfeigned humble
 “ Penitents, and to them alone) as both a strong
 “ Encouragement and Motive to you, to en-
 “ deavour to *strengthen* and *perfect* your Repent-
 “ ance. *I consider the whole of this in the Light,*
 “ *in which it has now been represented.*

“ I shall only add under this Head, that *all* the
 “ Confessions of this unfortunate Lord appeared
 “ to me to be free and ingenuous: He never
 “ scrupled the Questions that were asked him,
 “ nor took the least Time to meditate and
 “ prepare an Answer. His Confessions, likewise,
 “ were perfectly consistent and uniform, and
 “ never varied as to the general Substance; and
 “ in no other Circumstance than this, which will
 “ be thought perhaps to redound to his Honour,
 “ that he continued to the last recollecting and
 “ searching himself, and declaring particular In-
 “ cidents as they occurred to him, which tended,
 “ upon the whole, not to the *Extenuation*, but
 “ to the *Heightening* of his Crime. And a few
 “ Days before his Death he said, That he thought
 “ he should rather prefer the speedy Execution
 “ of the Sentence, which was justly passed upon
 “ him, than a longer Continuance in Life, if
 “ he was sure that he should be again entangled by
 “ the Snares and Temptations to which he had
 “ formerly yielded: What would really be the
 “ *Event*, if he was let loose among the Gaieties
 “ and Pleasures of Life, he did not certainly
 “ know, and somewhat dreaded; but in the
 “ *Declaration* he had made, he thought he found
 “ himself clear.

“ Heavy Charges of *Inhumanity* and *Cruelty*, I
 “ told him, were spread among the People con-
 “ cerning him; and by many believed. I desired
 “ him therefore to be honest and free in clearing
 “ his Conscience of such a Load of most unnatural
 “ Guilt, by answering to the following Interro-
 “ gations, which included in them the Substance
 “ of these Charges. And I here subjoin, for the
 “ Perusal of the Publick, the Questions as I
 “ proposed, and have now transcribed them from
 “ a Paper written before I went to the *Tower*,
 “ and his distinct Reply to each.

“ Was your Lordship present in the Pretender’s
 “ Council at *Inverness*, or any other Place, before
 “ the Battle of *Culloden*, where it was proposed
 “ to destroy the *Prisoners* taken by the Rebels?

“ *I can most sincerely and freely answer, No.*

“ Was you ever present in Council where this
 “ was proposed? *No.*

“ Did you ever *move* for such an Order? *No.*

“ Did you ever *sign* such an Order? *No.*

“ Did you ever *carry* an Order of this Kind to
 “ the *French* General *Stapleton*? Did you ever,
 “ in his Presence, *approve* of such an Order?
 “ Did you at any Time, hearing it had been
 “ communicated to him, encourage and excite
 “ him to the *Execution* of it? To all which he
 “ answered in the same Manner, *No.*

“ Did you ever know, or hear, that such a
 “ Thing, or an Order to give no Quarter, was

“ debated, or agreed to, or signed in the Rebel
 “ Army, till you was taken by the King’s Forces,
 “ and a Prisoner at *Inverness*? Or do you know
 “ yourself guilty of any Cruelties, by you au-
 “ thorized or committed, against the King’s
 “ Soldiers or Subjects taken *Prisoners* by the
 “ Rebels? The Answer to both these Questions
 “ was the same as before.

“ As to what passed in the Church of *St.*
 “ *Ninians*, he told me, that he knew nothing at all
 “ of it, till, upon the Retreat of the Rebel Army,
 “ he was at some Distance from *Stirling*, where
 “ he had been confined to his Bed by a Fever;
 “ that the first Notice he had of it, was the Noise
 “ of blowing up the Church, of which he could
 “ never get any but an indistinct and confused
 “ Account; that it was represented by the Rebels
 “ as *accidental*; but concerning this he could
 “ certainly say nothing; only *as to himself* he
 “ solemnly declared, that he had no *Knowledge*
 “ before-hand of, nor any *Concurrence* in a design’d
 “ Act of Cruelty. I told him however, that he
 “ was charged with an Instance of Barbarity to
 “ the Prisoners confined in the Church at *Inver-*
 “ *ness*. And the Account which he gave of the
 “ Fact, is as follows — That there were Orders
 “ issued by the Pretender’s Son, to strip them
 “ of their Cloathing, for the Use of some of
 “ the Highland Rebels; that the Warrant for
 “ executing this Order was sent to him; that he
 “ did not enter the Church in Person, but
 “ committed the Execution of it to an inferior
 “ Officer; that the Prisoners, at first, refused to
 “ submit, upon which there was a second Order,
 “ and their Cloaths were taken from them; but
 “ that in the mean Time, the Person, stiled the
 “ *French* Ambassador, represented to him, that
 “ this was an Outrage, which he thought scarce
 “ justifiable by the Law of Nations, and the
 “ Rules of War; he therefore, while the Cloaths
 “ lay in Heaps, with proper Centinels over them,
 “ in the Streets of *Inverness*, went up to the
 “ Pretender’s Son, and represented the Matter
 “ in the Light in which the *French* Ambassador
 “ had stated it, and according to what were his
 “ own Sentiments likewise; upon which, as it was
 “ feared that such Usage might make an ill
 “ Impression upon the Minds of the People, the
 “ Cloaths were again restored; and this, he
 “ averred to me, was the whole of the Truth,
 “ as far as it ever fell under his Knowledge.

“ For myself, I must do this unhappy Criminal
 “ the Justice to own, that he *never* appeared,
 “ during the Course of my Attendance upon
 “ him, to be of any other than a soft bene-
 “ volent Disposition. His Behaviour was always
 “ remarkably mild and temperate. I could
 “ discern no Resentment, no Disturbance or
 “ Agitation in him. This indeed I feared, (as
 “ Persons in his melancholy Circumstances are
 “ generally apt to think, that they ought to
 “ have the *Preference* in Cases of Reprieve or
 “ Pardon) when I was first informed of Lord
 “ *Cromartie*’s Reprieve; and therefore in the
 “ Morning before I waited on him, I prepared
 “ myself to quiet and mollify his Mind. But one
 “ of the first Things he said to me was, that he
 “ was extremely glad that the King’s Mercy
 “ had been shewn to Lord *Cromartie*. *My Lord,*
 “ says I, *I hope you do not think you have any*
 “ *Injustice* done to you? His Answer was, *Not*
 “ *the least: I have pleaded guilty, I entirely ac-*
 “ quiesce

“ quiesce in the Justice of my Sentence, and if Mercy
 “ be extended to another, I can have no Reason to
 “ complain, when nothing but Justice is done to me.
 “ I do not believe, that my not being reprieved is
 “ owing to any Defect of Clemency in the King,
 “ who, by all the Accounts I ever received, is a very
 “ merciful Prince; nor that it springs from any
 “ particular Resentment or Prejudice against me,
 “ either in his Majesty, or in the Duke; but from
 “ some Distinction that they thought there was in
 “ the Circumstances of Lord Cromartie’s Guilt and
 “ mine, or else from the public Demand for Justice,
 “ which made it unfit that two out of three should
 “ be reprieved. From this Way of thinking and
 “ discoursing, he never, to my Knowledge,
 “ varied to the last.

“ I must add here another, and I think, a great
 “ and unquestionable Instance of Lord *Kilmarnock*’s
 “ Ingenuity. He had been charged, and
 “ he imagined without a just Foundation, with
 “ having uttered a Falshood, when he said in his
 “ Speech at the Bar of the House of Lords, that
 “ it was very easy for him to have escaped. This
 “ he still thought was true upon the Rebel Army’s
 “ first giving Way, as the greatest Part of that
 “ Body actually did escape, with whom he was
 “ joined. But after he had separated himself
 “ from them, and was advanced any considerable
 “ Way towards the King’s Troops, he believed
 “ that his Escape was not practicable. But tho’
 “ he hoped that this would clear him from the
 “ Imputation of having wilfully prevaricated in
 “ the Instance already mentioned; yet he owned,
 “ that in another, induced by the Love and strong
 “ Desire of Life, he had grossly falsified. The
 “ Case, as he represented it to me, was thus—
 “ He had asserted in his Speech, That tho’ he
 “ could have escaped, he did not chuse it, because
 “ the Consequences, in an Instant, appeared to
 “ him more terrible, more shocking, than the
 “ most painful or ignominious Death: And
 “ therefore he chose to surrender and commit
 “ himself to the King’s Mercy, rather than to
 “ throw himself into the Hands of a foreign
 “ Power, the natural Enemy to his Country;
 “ with whom to have Merit, he must persist in
 “ continued Acts of Violence to his Principles,
 “ and of Treason and Rebellion against his King
 “ and Country: But the real Truth was, That
 “ he had no Intention at all to surrender, and that
 “ his only View was to facilitate his Escape; for
 “ that he thought the Body towards which he
 “ advanced, were not the King’s, but *Fitz-James*’s
 “ Horse; and that if he could reach them, by
 “ mounting behind one of the *Dragoons*, his
 “ Escape would have been more certain, than,
 “ as he was then on Foot, it appeared to him in
 “ his present Situation to be; tho’ he did not
 “ find his Strength or Spirits in any considerable
 “ Degree impaired. This, he thought, as it
 “ related to his inward Intention only, could not
 “ be discovered but by his own Confession, nor
 “ known to any but God and his own Conscience.
 “ But he was willing to unburden his Soul, and
 “ purge it of its most secret Guilt; and therefore
 “ pressed it upon me in a particular Manner,
 “ and especially on the very Day before he was
 “ executed, Not to forget to publish to the
 “ World this Circumstance; because, as he had
 “ solemnly uttered, before so august an Assembly
 “ as the House of Lords, a direct and known

“ Untruth, he thought, if he should die without
 “ a Retraction of it, and a public Acknowledg-
 “ ment of his Offence, he must be considered
 “ as one, who presumed to appear before the
 “ Tribunal of God with a Lye in his Mouth.
 “ And here I cannot help thinking myself bound,
 “ in Justice to Lady *Kilmarnock*, to declare (and
 “ it is most proper to do it in this Place, because
 “ it will probably find more Credit, after such a
 “ striking Instance of the late Lord *Kilmarnock*’s
 “ conscientious Regard to Truth) that he said to
 “ me, tho’ she was bred in different Sentiments,
 “ that he thought her now more inclined to
 “ Whiggish than Jacobite Principles. And the
 “ Reverend and Honourable Mr. *Home*, and Mr.
 “ *Ross* his Lordship’s Solicitor, desired me to
 “ inform the World of another Thing, which
 “ he had expressly mentioned to them, viz. that
 “ instead of exciting him to, she had dissuaded
 “ him from entering into the late wicked and
 “ horrid Rebellion.

“ As the Public will, in all Probability, be
 “ curious to know what were Lord *Kilmarnock*’s
 “ Sentiments concerning *Death*, and the particular
 “ Kind of *Death*, which he expected, in Pursuance
 “ of his Sentence, would be inflicted on him; I
 “ shall relate the Substances of the Discourses, that
 “ passed between us, upon these great, and, to
 “ the Generality of the World, most terrifying
 “ Subjects.

“ On Monday August 11th, General *Williamson*
 “ desired me, in the gentlest Terms I could
 “ use, to let him know that he had received the
 “ Order for his and Lord *Balmerino*’s Execution.
 “ I at first declined this ungrateful Office, and
 “ told him, that I was so shocked at it, that I
 “ could not think of delivering the Message myself,
 “ but would endeavour to prepare the unfortunate
 “ Lord, by divesting him as far as I could of all
 “ Hope of Life, for his informing him of it when
 “ he came to discharge me from my Attendance.
 “ And indeed to suppress all Glimmerings of
 “ such Hope was the main Drift and Bent of
 “ my Discourse; and I intended to go no further:
 “ but finding him in a resigned and calm Temper,
 “ I told him, as the General was coming up,
 “ That he would see the vast Importance, nay
 “ the absolute Necessity, of attending seriously
 “ to what I had been saying about his diligent
 “ and constant Preparation for *Death*, by what,
 “ as I apprehended, he would soon hear. He
 “ immediately asked me, Whether the Warrant
 “ for his Execution was come down? I told him
 “ it was, and that the Day fixed was the *Monday*
 “ following. And as, upon this, the General
 “ immediately entered the Room, I acquainted
 “ him, that Lord *Kilmarnock* knew already what
 “ he intended to inform him of; that he was
 “ therefore at present under no Necessity of
 “ saying any Thing further about it; because
 “ the once relating such a melancholy Circum-
 “ stance was fully sufficient.

“ Lord *Kilmarnock* received this News with
 “ the outward Behaviour of a Man, that knew
 “ and felt the Importance of the Scene of *Death*,
 “ but without any Marks of Disorder, without
 “ any unbecoming Anxiousness or Terror. And
 “ to establish and support him in his present
 “ Quietude of Mind, I told him; That all
 “ Mankind were really under Sentence of *Death*,
 “ tho’ they knew not the Manner or precise Time,

“ when it would be executed ; it might be to any
 “ one, as soon or sooner than his own ; that they
 “ not expecting it, nor having such timely and
 “ certain Notice of it, might die wholly un-
 “ guarded and unprepared ; while he had *Warning*,
 “ and the most *awakening Motives* to fit himself,
 “ in the best Manner possible, for this grand
 “ and decisive Event. He said, That he had
 “ never been a Libertine in *Principle*, during all
 “ the Time that he was most inconsiderate and
 “ licentious in his Conduct ; that he had always
 “ firmly believed the great Truths of God’s Being,
 “ and Providence, and a future State of Rewards
 “ and Punishments for Virtue and Vice ; and
 “ that he had not been involved in the fashion-
 “ able Scepticism of the Times with respect to
 “ Christianity ; that he was therefore naturally
 “ concerned, and chiefly concerned, about the
 “ Consequences of Death, in Comparison of
 “ which he thought the Thing itself a Trifle ;
 “ that as to the particular Manner of his Death,
 “ he thought he had no great Reason to be
 “ terrified, for that the Stroke appeared to be
 “ scarce so much as the Pain of drawing a Tooth,
 “ or the first Shock of the cold Bath upon a
 “ weak and fearful Temper. And when General
 “ *Williamson*, upon the *Saturday* preceding his
 “ Execution, gave him a minute Detail of all the
 “ Circumstances of Solemnity and outward Ter-
 “ ror that would accompany it, he *heard* it with
 “ as much Shew of Composure, as a Man of a
 “ tender compassionate Spirit would *read* the
 “ Account of it, in an Instance where he was
 “ not personally concerned. He was told, That
 “ on *Monday*, about Ten in the Morning, the
 “ Sheriffs would come to demand the Prisoners,
 “ who would be delivered them at the Gate of
 “ the *Tower* ; that from thence, if their Lord-
 “ ships thought proper, they should walk on
 “ Foot to the House appointed on *Tower-Hill*
 “ for their Reception, where the Rooms would
 “ be hung with black, to make the more decent
 “ and solemn Appearance, and that the Scaffold
 “ also would be covered with black Cloth ; that
 “ his Lordship might repose and prepare himself,
 “ in the Room fitted up for him, as long as he
 “ thought it convenient, remembering only, that
 “ the Warrant for the Execution was limited to,
 “ and consequently expired at One o’Clock ; that
 “ because of a Complaint made by the Lord
 “ *Kenmure*, that the Block was too low, it was
 “ ordered to be raised to the Heighth of two
 “ Foot ; that it might be the more firmly fixed,
 “ Props would be placed directly under it, that
 “ the Certainty or Decency of the Execution
 “ might not be obstructed by any Concussion, or
 “ sudden Jerk of the Body. All this Lord
 “ *Kilmarnock*, without the least visible Emotion,
 “ expressed his Satisfaction in : But when the
 “ General told him, that two mourning Hearses
 “ would be provided, and placed close by the
 “ Scaffold, that when the Head was struck off,
 “ the Coffins might soon be taken out to receive
 “ the Bodies ; he said, that he thought it would
 “ be better for the Coffin to be upon the Scaffold,
 “ for by that Means the Bodies would be still
 “ sooner removed out of Sight. And being
 “ further informed, that an Executioner was
 “ provided that would perform his Work dexte-
 “ rously, and that he was a very good Sort of Man ;
 “ my Lord answered, *General, this is one of the*

“ *worst Circumstances that you could have mentioned ;*
 “ *I can’t thoroughly like, for such Business, your good*
 “ *Sort of Men : For one of that Character, I appre-*
 “ *hend, must be a tender-hearted and compassionate*
 “ *Man, and a rougher and less sensible Temper might*
 “ *perhaps be fitter to be employed.* After this, Lord
 “ *Kilmarnock* desired, That four Persons might be
 “ appointed to receive the Head, when it was
 “ severed from the Body, in a red Cloth, that
 “ it might not, as he had been informed was the
 “ Case in some former Executions, roll about the
 “ Scaffold, and be thereby mangled and dis-
 “ figured : For that though this was, in com-
 “ parison, but a small Circumstance, he was not
 “ willing that his Body should appear with any
 “ unnecessary Indecency, after the just Sentence
 “ of the Law was satisfied. I could not perceive,
 “ but that he talked of all these Particulars with
 “ Ease and Freedom, though the Relation of
 “ them, I remember, made me tremble ; chiefly
 “ because I feared that they would produce in him
 “ some Perturbation and Distress of Mind. It is
 “ proper for me to add, that when he was told
 “ his Head would be held up to the Multitude,
 “ and public Proclamation made that this was the
 “ Head of a Traitor ; he replied, that this he knew
 “ to be usual on all such Occasions, and spake
 “ of it as a Thing that was of no Significancy
 “ in the Affair at all, and did not in the least
 “ affect him : And I never heard, either before
 “ or after he was delivered into the Custody of
 “ the Sheriffs, that he intimated the least Concern
 “ to have this Part of the dismal Ceremony
 “ dispensed with. All Lord *Kilmarnock’s* Friends,
 “ who attended him in his last Moments, are
 “ ready to concur with me in making the same
 “ Declaration, that we never expected it would
 “ have been, and wondered it was, omitted. —
 “ After the Conversation above-mentioned be-
 “ tween Lord *Kilmarnock* and General *Williamson*,
 “ I thought it proper to advise him, to think
 “ frequently on the outward *Apparatus* and *For-*
 “ *malities* that would attend his Death ; that
 “ these Circumstances, striking to Sense, might
 “ impress his Mind with Horror, and disarm
 “ him of Part of his Resolution, if he was not by
 “ Reflection thoroughly prepared for the Scene ;
 “ but that if they were habituated to the Mind,
 “ they would in a great Measure lose their Influe-
 “ ence, and be considered as no more than the
 “ *Appendages* of a Subject vastly more great, and
 “ worthy his Contemplation. And he declared,
 “ on the Morning of his Execution, That he
 “ had taken this Method with himself, and
 “ hoped that these Things would discompose him
 “ but little, nor create any Weakness or Indecency
 “ in his Behaviour. He allowed, with me, That
 “ they were nothing so terrible in themselves, as
 “ the dying after a dispiriting and lingering
 “ Distemper, in a silent, melancholy, darkened
 “ Room, with languid and exhausted Spirits,
 “ and his Friends standing round him, with
 “ lively Marks of Sorrow and Anguish in their
 “ Countenances, expecting and deploring his
 “ Fate.

“ I now come to the Conclusion of this dismal
 “ Scene, his Behaviour on the Day of his Execu-
 “ tion. I attended him in the Morning about
 “ Eight o’Clock, and found him in a most calm
 “ and happy Temper, without any Disturbance
 “ or Confusion in his Mind, and with apparent

“ Marks of Ease and Serenity in his Aspect.
 “ And that the World may the better judge of
 “ the *Propriety* of his Behaviour from that Time
 “ to the Time of his Death, I shall first declare,
 “ what his professed Sentiments were concerning
 “ himself, and the Manner in which he chose to
 “ die; and then briefly point out what, in my
 “ Opinion, was the utmost Decency of Conduct
 “ in one in his Circumstances, under the Im-
 “ pression of such Sentiments and Principles. I
 “ had observed to him, that to affect to brave
 “ Death, when he justly suffered for his Crimes,
 “ could have no Shew of a true Decorum in it;
 “ and that to manifest no Concern at all, where
 “ the Consequencē was so awful, and the Stake
 “ infinite, was, in some Degree, unbecoming
 “ even in the best of Men; that not to fear at
 “ all, where there was great Reason to fear, was
 “ altogether as absurd, as to be extremely deject-
 “ ed and pusillanimous where there was Ground
 “ of Hope; and that true Penitence was always
 “ humble and cautious, and not bold and arro-
 “ gant. He assented to all this, and told me
 “ further, That for a Man who had led a dissolute
 “ Life, and yet believed the Consequences of
 “ Death, to put on such an Air of Daringness
 “ and absolute Intrepidity, must argue him either
 “ to be very stupid or very impious. He also
 “ told me, That, though he intirely acquiesced
 “ in the Justice of his Sentence, and thought it
 “ his Duty wholly to resign himself to the wise
 “ and equal Disposals of Providence, he had still
 “ this Clog upon his Mind, that he could not
 “ be sure his Repentance was sincere, because it
 “ had never been tried. I answered him, That,
 “ if he aimed at *Certainty* in this grand Point,
 “ he might unnecessarily perplex and distress
 “ his Mind; because, for the very Reason which
 “ he had assigned, *i. e.* for Want of proper Op-
 “ portunities to try and prove the Truth of their
 “ Repentance, such a Certainty was not attainable
 “ by any Persons in his Condition: I advised him
 “ therefore to search seriously and strictly into
 “ himself, not suffering himself to be amused and
 “ imposed upon in an Affair of such infinite
 “ Importance; and if he found, after making
 “ this Inquiry, that he had more Ground to *hope*
 “ that his Repentance was sincere, than he had
 “ to *fear* that it was insincere, the Consequence
 “ would be, that he must, upon the whole, have
 “ more Reason to hope than fear: And this, in
 “ my Opinion, was the highest Pitch, to which I
 “ could attempt to raise him. Let us see now,
 “ what Kind of Behaviour was most just and
 “ decent in a Person, who, upon this Foundation,
 “ professed himself to have a Preponderance of
 “ Hope, but mixed with Diffidence and Fear.
 “ It must surely be resigned, but awful; free
 “ from an Extreme of Dejectedness, but not eager
 “ and rapid to meet Death. Such a considerate
 “ calm Humility, and Tenderness of Spirit,
 “ would be the only fit Behaviour, after having
 “ made the Professions above-mentioned, in one
 “ that was but personating a feigned Character:
 “ The contrary would be condemned in a mere
 “ fictitious Representation, and therefore cannot
 “ be approved in the real Scene, of Death.

“ And this, which I have shewn was the only
 “ *decent*, was, in Fact, the true Department of
 “ Lord *Kilmarnock*. He continued all the Mor-
 “ ning of his Execution in the same uniform

“ Temper, unruffled, and without any sudden
 “ Vicissitudes and Starts of Passion. This re-
 “ markably appeared, when soon after I had, at
 “ his own Desire, made a short Prayer with him,
 “ General *Williamson* came to inform him, that
 “ the Sheriffs waited for the Prisoners: For, at
 “ receiving this awful Summons to go to Death,
 “ he was not in the least startled, but said,
 “ (calmly and gracefully) *General, I am ready;*
 “ *I'll follow you.* At the Foot of the first Stairs
 “ he met and embraced Lord *Balmerino*, who
 “ greatly said to him, *My Lord, I am heartily*
 “ *sorry to have your Company in this Expedition* *.
 “ From thence he walked, with the usual For-
 “ malities, to the *Tower-Gate*, and, after being
 “ delivered into the Custody of the Sheriffs, to
 “ the House provided on *Tower-Hill*, with a
 “ Serenity, Mildness, and Dignity, that greatly
 “ surprised and affected the Spectators. And as
 “ one of the Things that passed there, most
 “ worthy the public Notice, was the short
 “ Interview he had with Lord *Balmerino*; I shall
 “ relate the *whole* Substance of their Conver-
 “ sation, to the best of my Remembrance,
 “ without Addition or Diminution; and, as far
 “ as I can possibly recollect, in the very Words
 “ themselves.

“ *B.* My Lord, I beg Leave to ask your
 “ Lordship one Question.

“ *K.* To any Question, my Lord, that you
 “ shall now think it proper to ask, I believe
 “ I shall see no Reason to decline giving an
 “ Answer.

“ *B.* Why then, my Lord, did you ever
 “ see or know of any Order, signed by the Prince,
 “ [*meaning the Pretender's Son*] to give no Quarter
 “ at the Battle of *Culloden*?

“ *K.* No, my Lord.

“ *B.* Nor I neither: And therefore it seems
 “ to be an Invention to justify their own Murder,
 “ or murderous Scheme, (one of the two Ex-
 “ pressions, I am certain, was made use of.)

“ *K.* No, my Lord, I do not think that this
 “ Inference can be drawn from it; because,
 “ while I was a Prisoner at *Inverness*, I was
 “ informed by several Officers, that there was
 “ such an Order, signed *George Murray*; and that
 “ it was in the *Duke's* Custody.

“ Lord *George Murray*! replied Lord *Balme-*
 “ *rino*, why then, they should not charge it upon
 “ the Prince.— After this he took his Leave,
 “ embracing Lord *Kilmarnock* with the same Kind
 “ of noble and generous Compliment as he had
 “ used before, but in Words somewhat different:
 “ *My dear Lord Kilmarnock, I am only sorry,*
 “ *that I cannot pay all this Reckoning alone; once*
 “ *more, farewell for ever.* I have consulted Mr.
 “ *Home*, Mr. *Ross*, and Mr. *Jameson*, who were
 “ all present at this Conference; and are ready
 “ to attest, if required, that this is a true Account
 “ of it.

“ I then desired Lord *Kilmarnock*, that he would
 “ allow me to declare in his Name to the Sheriffs,
 “ and all Persons there present, the Substance of
 “ the Professions and Acknowledgments which he
 “ had so often repeated to me; and which were
 “ more largely contained in a Paper, that he had
 “ left to be published after his Death: And my
 “ Declaration was in Words to this Effect:
 “ Lord *Kilmarnock* acknowledges King *George* to
 “ be the only rightful and lawful King of these

* “ These particular Words I myself did not hear, but was informed of them by Mr. *Jameson*.”

“ Realms; that he engaged in the late wicked
 “ and unnatural *Rebellion* against his Conscience;
 “ he confesses the great Guilt of it with deep
 “ Shame and Contrition, and asks Pardon, for
 “ his Offence, of God, his King, and Country;
 “ and declares it to be his sincere Resolution to
 “ pray for the Prosperity of King *George*, the
 “ Establishment of his Royal House, and the
 “ Peace and Welfare of his Country, with his
 “ dying Breath. To this the unfortunate Lord
 “ gave his Assent, and signified to the Sheriffs,
 “ that the only genuine Paper, that he had left
 “ behind him, was lodged with me, and com-
 “ mitted to my Care. The Time being now
 “ pretty far advanced (as I hinted to his Lordship
 “ by the Sheriffs Desire) I told him, that after
 “ having taken a few Minutes to compose him-
 “ self, I thought it would be proper to allow me
 “ to pray with him, and then proceed to the
 “ Scaffold. After this I addressed myself to the
 “ Spectators of this mournful Scene, to join
 “ with me fervently in this last solemn Office,
 “ and in recommending the Soul of an unhappy
 “ Person, who gave so many lively Marks of his
 “ sincere Penitence for the Crime of his *Rebellion*,
 “ to the Mercy of God; with which Request
 “ they all readily complied. I need add nothing
 “ more, but that as Lord *Kilmarnock* had often
 “ protested, that he would, in his *last Moments*,
 “ pray for his King and Country, towards the
 “ Conclusion of my Prayer for him, I offered
 “ up the following Petitions to that Purpose;
 “ which he had before, in the *Tower*, expressed
 “ his intire Satisfaction in. — *And we now, from
 “ our Hearts, and at the particular Desire of thy
 “ Servant, upon whose Account especially we presume
 “ at this Time to address thy Throne, and offer up
 “ our united fervent Prayers, that thou wouldst
 “ preserve, bless, and honour our only rightful Sove-
 “ reign Lord King George; that thou wouldst
 “ crown him with Glory and Renown; that in his
 “ Reign there may be Abundance of Peace; that his
 “ Royal Progeny may long sit, with Lustre and
 “ Dignity, upon the Throne of these Kingdoms, un-
 “ disturbed by Rebellions, and the Tumults of seditious
 “ and violent Men; and that our holy Religion, and
 “ inestimable British Liberties, may be transmitted
 “ down secure and sacred to our Posterity, even to
 “ the latest Generations.* After Prayer was ended,
 “ Lord *Kilmarnock* took his last Farewel of the
 “ Gentlemen who attended him, in a very affec-
 “ tionate Manner; and went out of the Room,
 “ preceded by the Sheriffs, and accompanied by
 “ his Friends. And I am informed of the
 “ following Particular by Mr. *Home*, that as he
 “ was stepping into the Scaffold, notwithstanding
 “ the great Pains he had taken to *familiarise* the
 “ outward *Apparatus* of Death to his Mind,
 “ Nature still recurred upon him: So that being
 “ struck with such a Variety of dreadful Objects
 “ at once, the Multitude, the Block, his Coffin,
 “ the Executioner, the Instrument of Death, he
 “ turned about, and said, *Home, this is terrible.*
 “ This Expression, so suitable to the awful Oc-
 “ casion, must, to all who know the human
 “ Heart, appear to be nothing else than the
 “ Language of Nature, and was far from being a
 “ Mark of *unmanly* Fear; being pronounced with
 “ a steady Countenance, and Firmness of Voice,
 “ Indications of a Mind unbroken and not dis-
 “ concerted. His whole Behaviour was so hum-
 “ ble and resigned, that not only his Friends,

“ but every Spectator was deeply moved; even
 “ the Executioner burst into Tears, and was
 “ obliged to use artificial Spirits to support and
 “ strengthen him. After having talked with his
 “ Lordship a considerable Time, to support him
 “ in his Penitence and Resignation, I embraced,
 “ and left him in the same calm Disposition,
 “ having quitted the Scaffold some Minutes
 “ before his Execution. And as to his Behaviour
 “ afterwards, I refer to the following Account,
 “ in which, I think, I may thoroughly confide,
 “ which was communicated to me by Mr. *Jame-
 “ son*, who attended him to the last.

“ Spectators at a Distance, not knowing the
 “ true Cause why the Stroke was retarded for
 “ some Minutes longer than they expected,
 “ ascribed it to Pusillanimity: But, in Reality,
 “ that Delay was owing to a few trivial Circum-
 “ stances which might have been omitted, had
 “ it not been necessary to mention them; in order
 “ to vindicate the Behaviour of that Noble
 “ Penitent, which was uniformly conducted by
 “ the Rules of just Decorum, from all Imputa-
 “ tion of unmanly Fear in the critical Moment.
 “ — My Lord’s Hair having been dressed in a
 “ Bag, it took some Time to undo it, and put it
 “ up in his Cap. The tucking his Shirt under the
 “ Waistcoat, that it might not obstruct the Blow,
 “ was the Occasion of some further small Delay.
 “ But as soon as these Preliminaries were adjust-
 “ ed, his Lordship gave the Executioner Notice
 “ what should be the Signal, took out a Paper
 “ containing the Heads of his Devotion, went
 “ forward to his last Stage, and decently kneeled
 “ down at the Block. Whether it was to support
 “ himself, or as a more convenient Posture for
 “ Devotion, he happened to lay his Hands with
 “ his Head upon the Block; which the Execu-
 “ tioner observing, prayed his Lordship to let
 “ his Hands fall down, lest they should be man-
 “ gled, or break the Blow. Then he was told,
 “ that the Neck of his Waistcoat was in the
 “ Way; upon which he rose up, and with the
 “ Help of one of his Friends, (Mr. *Walkinshaw*
 “ of *Scotston*) had it taken off. This done, and
 “ the Neck made bare to the Shoulder, he again
 “ kneeled down as before. And what sufficiently
 “ shews that he enjoyed full Presence of Mind
 “ to the last, Mr. *Home*’s Servant, who held the
 “ Cloth to receive the Head, heard him direct
 “ the Executioner, that in two Minutes he would
 “ give the Signal. That dreadful Interval, to
 “ his Friends, who were then upon the Rack,
 “ appeared much longer, but those who measured
 “ found it just about two Minutes. This Time
 “ he spent in most fervent Devotion, as appeared
 “ by the Motion of his Hands, and now and
 “ then of his Head; having then fixed his Neck
 “ on the Block, he gave the Signal, his Body
 “ remained without the least Motion, except
 “ what was given it by the Stroke of Death,
 “ which he received full, and was thereby hap-
 “ pily eased at once of all his Pain.

“ Thus deservedly fell, though humble and
 “ relenting, the late Lord *Kilmarnock*, a Sacrifice
 “ to the Justice of his Country. —

JAMES FOSTER.

“ P. S. I think myself obliged, in Justice to
 “ General *Williamson*, and at his Desire, to
 “ declare, that Lord *Kilmarnock* often testified
 “ to me, that he had behaved towards him in a
 “ very

“ very civil and obliging Manner; that upon
 “ the General’s having desired, two Days before
 “ his Death, that when he took his Leave of
 “ him on *Monday*, he would do it in such a
 “ Manner, as would be an Evidence to all
 “ present, that he was satisfied with his Be-
 “ haviour; his Lordship answered, *That I will,*
 “ *General, you may depend upon it, and in such a*
 “ *Way too, as is becoming a Gentleman, and a Man*
 “ *of Honour*; and that Mr. *Williamson* had, from
 “ the first, spoke of Lord *Kilmarnock* to me with
 “ great Esteem and Humanity.”

To the KING’s Most Sacred Majesty.

The humble Petition of William late Earl of
 Kilmarnock,

Sheweth,

“ THE Petitioner having met with the
 “ Condemnation justly due to his Crime,
 “ presumes, throwing himself at your Majesty’s
 “ Feet, to implore your Majesty’s Royal Cle-
 “ mency, and, though very sensible that nothing
 “ can excuse or mitigate his Crime, hopes he
 “ may be considered, in your Majesty’s Eye, as
 “ an Object of Compassion and Pity.

“ His Family’s constant Attachment to the
 “ Revolution Interest and that of your illustrious
 “ House, his Father’s Zeal and Activity in
 “ Support of both, when attacked by your late
 “ Royal Father’s Enemies in 1715, his own
 “ appearing in Arms (though then but young)
 “ under his Father, the whole Tenor of his
 “ Conduct since that Time, and the Sentiments
 “ of Duty and Loyalty in which he has educated
 “ his eldest Son, who now has the Honour of
 “ bearing your Majesty’s Commission, though
 “ no Diminution of his Guilt, may yet let in a
 “ Presumption, that he has offended more from
 “ Rashness and the Designs of wicked and ill-
 “ disposed Persons, than from any Principle of
 “ Disaffection to your Majesty.

“ The Petitioner humbly begs Leave to
 “ acquaint your Majesty, that he influenced
 “ neither Tenant nor Follower of his to assist
 “ or abet the Rebellion; but, on the contrary,
 “ that between the Time of the Battle of *Preston*,
 “ and his unhappy Junction with the Rebels,
 “ he went to the Town of *Kilmarnock*, influenced
 “ its Inhabitants, as far as he could, and by
 “ their Means their neighbouring Boroughs, to
 “ rise in Arms for your Majesty’s Service; which
 “ had so good an Effect, that two hundred Men
 “ of *Kilmarnock* appeared very soon in Arms,
 “ and remained so all the Winter at *Glasgow*, or
 “ other Places as they were ordered. And even
 “ in the Midst of his greatest Delusion, when
 “ in Arms against your Sacred Majesty and your
 “ Authority, it was the Petitioner’s constant
 “ Care (as far as in his Power) to protect your
 “ faithful Subjects from Injury in their Persons
 “ or Estates. He extended his Care to such of
 “ your Majesty’s Troops as had the Misfortune
 “ of falling into the Hands of the Rebels, both
 “ Officers and private Men finding better Usage,
 “ and their Condition being rendered more
 “ supportable through his Means, than it would
 “ otherwise have been; as many of them can,
 “ and the Petitioner believes will, testify when
 “ called upon.

“ The Petitioner was not taken, but surren-
 “ dered himself at the Battle of *Culloden*, having

“ left those he was joined with, when they were
 “ got so far, that most (if not all) of them
 “ escaped, except himself, who from thence
 “ turned down to the Ground where the
 “ Dragoons were drawn up at a considerable
 “ Distance, and this at a Time when he might
 “ easily have made his Escape, being near no
 “ body, nor any in Pursuit of him. He chose
 “ Submission as far preferable to Obstinacy in
 “ Rebellion. His first Principles revived in his
 “ Breast. He determined rather to run the
 “ Risque of an ignominious Death, as the
 “ Atonement of his Treason, than to recur to,
 “ and become dependent upon a foreign Power,
 “ that Power especially being the natural Enemy
 “ of his Country, and your Majesty the Father
 “ of it.

“ Under these Circumstances, SIR, it is,
 “ that the unhappy Petitioner (more so from
 “ Remorse of having violated his Allegiance
 “ to your Majesty, than from the Sentence he
 “ lies under) dares to approach your Throne,
 “ and implore your Royal Mercy, and which he
 “ hopes for, as he cannot reproach himself with
 “ any Guilt precedent to this fatal Breach of his
 “ Duty.”

Petitions to the like Effect were presented to
 the Prince of *Wales* and the Duke of *Cumberland*.

Extract of the late Earl of *Kilmarnock*’s Letter to
 his Son Lord *Boyd*.

Dated, *Tower* 17th Aug. 1746.

“ Dear BOYD,

“ ——— I must take this Way to bid you
 “ farewell, and I pray God may for ever bless
 “ you and guide you in this World, and bring
 “ you to a happy Immortality in the World to
 “ come. I must likewise give you my last
 “ Advice. Seek God in your Youth, and when
 “ you are old he will not depart from you.
 “ Be at Pains to acquire good Habits now, that
 “ they may grow up and become strong in you.
 “ Love Mankind, and do Justice to all Men.
 “ Do Good to as many as you can, and neither
 “ shut your Ears nor your Purse to those in
 “ Distress whom it is in your Power to relieve.
 “ Believe me, you will find more Joy in one
 “ beneficent Action, and in your cool Mornings
 “ you will be more happy with the Reflection
 “ of having made any one Person so, who with-
 “ out your Assistance would have been miserable,
 “ than in the Enjoyments of all the Pleasures of
 “ Sense (which pall in the using), and of all the
 “ Poms and gaudy Show of the World. Live
 “ within your Circumstances, by which Means
 “ you will have it in your Power to do Good to
 “ others. Above all Things, continue in your
 “ Loyalty to his present Majesty, and the Suc-
 “ cession to the Crown as by Law established.
 “ Look on that as the Basis of the civil and
 “ religious Liberty and Property of every Indi-
 “ vidual in the Nation. Prefer the public
 “ Interest to your own, wherever they interfere.
 “ Love your Family and your Children, when
 “ you have any; but never let your Regard for
 “ them drive you on the Rock I split upon,
 “ when on that Account I departed from my
 “ Principles, and brought the Guilt of Rebellion
 “ and civil and particular Desolation on my
 “ Head, for which I am now under the Sentence

“ justly due to my Crime. Use all your Interest
 “ to get your Brother pardoned and brought
 “ Home as soon as possible, that his Circum-
 “ stances, and bad Influence of those he is
 “ among, may not induce him to accept of
 “ foreign Service, and lose him both to his
 “ Country and his Family. If Money can be
 “ found to support him, I wish you would ad-
 “ vise him to go to *Geneva*, where his Principles
 “ of Religion and Liberty will be confirmed,
 “ and where he may stay till you see if a Pardon
 “ can be procured him. As soon as Commodore
 “ *Barnet* comes Home, inquire for your Brother
 “ *Billie*, and take care of him on my Account.
 “ I must again recommend your unhappy Mother
 “ to you. Comfort her, and take all the Care
 “ you can of your Brothers: And may God of
 “ his infinite Mercy preserve, guide, and conduct
 “ you and them through all the Vicissitudes of
 “ this Life, and after it bring you to the Habi-
 “ tations of the Just, and make you happy in
 “ the Enjoyment of himself to all Eternity.”

*Paper delivered by the late Earl of Kilmarnock to
 Mr. Foster, Sunday 17th August, 1746.*

“ **A**S it would be a vain Attempt in me to
 “ speak distinctly to that great Concourse
 “ of People, who will probably be present at
 “ my Execution, I chuse to leave this behind
 “ me, as my last solemn Declaration, appealing,
 “ for my Integrity, to God, who knows my
 “ Heart.

“ I bless God, I have little Fear of temporal
 “ Death, though attended with many outward
 “ Circumstances of Terror: The greatest Sting
 “ I feel in Death is, that I have deserved it.

“ Lord *Balmerino*, my Fellow-Sufferer, to do
 “ him Justice, dies in a professed Adherence to
 “ the mistaken Principles he had imbibed from
 “ his Cradle. But I engaged in the Rebellion
 “ in Opposition to my own Principles, and to
 “ those of my Family; in Contradiction to the
 “ whole Tenor of my Conduct, till within these
 “ few Months that I was wickedly induced to
 “ renounce my Allegiance, which ever before I
 “ had preserved and held inviolable. I am in
 “ little Pain for the Reflections which the incon-
 “ siderate or prejudiced Part of my Countrymen
 “ (if there are any such, whom my suffering the
 “ just Sentence of the Law has not mollified)
 “ may cast upon me for this Confession. The
 “ wiser or more ingenuous will, I hope, approve

“ my Conduct, and allow with me, That, next
 “ to doing right, is, to have the Courage and
 “ Integrity to own, that I have done wrong.

“ Groundless Accusations of Cruelty have
 “ been raised and propagated concerning me,
 “ and Charges spread among the People, of
 “ my having solicited for, nay actually signed
 “ Orders of general savage Destruction, seldom
 “ issued among the most barbarous Nations, and
 “ which my Soul abhors. And, that the general
 “ Temper of my Mind was ever averse from;
 “ and shocked at gross Instances of Inhumanity;
 “ I appeal to all my Friends and Acquaintance
 “ who have known me most intimately, and
 “ even to those Prisoners of the King's Troops
 “ to whom I had Access, and whom I ever had
 “ it in my Power to relieve; I appeal in
 “ particular, for my Justification as to this justly
 “ detested and horrid Crime of Cruelty, to
 “ Captain Master of *Rifs*, Captain Lieutenant
 “ *Rexon*, and Lieutenant *George Cuming* of
 “ *Alter*.

“ These Gentlemen will, I am persuaded, as
 “ far as relates to themselves, and as far as has
 “ fallen within their Knowledge or credible
 “ Information, do me Justice; and then surely,
 “ my Countrymen will not load a Person,
 “ already too guilty and unfortunate, with un-
 “ deserved Infamy, which may not only fix
 “ itself on his own Character, but reflect Dis-
 “ honour on his Family.

“ I have no more to say, but that I am per-
 “ suaded, if Reasons of State, and the Demands
 “ of public Justice, had permitted his Majesty to
 “ follow the Dictates of his own Royal Heart,
 “ my Sentence might have been mitigated.
 “ Had it pleased God to prolong my Life, the
 “ Remainder of it should have been faithfully
 “ employed in the Service of my justly offended
 “ Sovereign, and in constant Endeavours to
 “ wipe away the very Remembrance of my
 “ Crime.

“ I now with my dying Breath beseech Al-
 “ mighty God, to bless my only rightful So-
 “ vereign King *George*, and preserve him from
 “ the Attempts of public and private Enemies.
 “ May his Majesty, and his illustrious De-
 “ scendants, be so guided by the Divine Pro-
 “ vidence, as ever to govern with that Wisdom
 “ and that Care for the public Good, as will
 “ preserve to them the Love of their Subjects,
 “ and secure their Right to reign over a free
 “ and happy People to the latest Posterity.”





N U M B E R XX.

An Account of the Behaviour of William late Earl of Kilmarnock, and Arthur late Lord Balmerino, from the Time of their being delivered into the Custody of the Sheriffs of London, to the Time of their Execution. With every remarkable Incident that happened during that Time, and particularly the Conference between those two Lords. As taken down by a Gentleman then present. By Authority of the Sheriffs.*

Monday, August 18, 1746.

THE Sheriffs of London and Middlesex having received the usual *Writs* for the Execution of the Lords Kilmarnock and Balmerino this Day, between the Hours of Nine and One; they, accompanied with the two Under-Sheriffs, and attended by the other proper Officers, at Ten o'Clock went in Procession to the outward Gate of the Tower; and having there received of the Deputy-Lieutenant of the Tower the Bodies of those Lords, they then proceeded with them on Foot to the late Transport-Office near the Scaffold, Mr. Foster and the Rev. Mr. Hume accompanying my Lord Kilmarnock, and the Chaplain of the Tower, and another Minister accompanying my Lord Balmerino: Where, upon their Arrival, the two Lords were conducted into separate Apartments, and their Friends admitted to see them.

My Lord Kilmarnock spent his Retirement here in a Manner suitable to his unhappy Circumstances, Mr. Foster frequently comforting his Lordship with seasonable Exhortations; his Lordship seemed truly sensible of his Guilt, shewed the utmost Signs of a sincere Repentance, and all that were present admired the Composure of his Lordship's Mind. His Lordship, in particular, recommended it to the Sheriffs Observation, *that he declared himself a Protestant, and thoroughly satisfied with the Legality of his Majesty King GEORGE's Title to the Throne of these Realms; that he himself was educated in these Principles, and had constantly adhered to them, till after the breaking out of the Rebellion, which he heartily repented he ever engaged in; and that he prayed for the Good of his Country, and for the Continuance of the Crown in his Majesty and his Descendants till the latest Posterity.*

His Lordship then spent a few Moments in conversing with his Friends, and having refreshed himself with a Bit of Bread and a Glass of Wine, he declared to the Sheriffs, *that he had within this Week taken the Sacrament twice in Evidence of the Truth of his Repentance.*

His Lordship moreover recommended it to the Sheriffs Notice, *that what Papers he intended should be communicated to the Public, he had left in the Hands of Mr. Foster only.*

About Eleven o'Clock my Lord received a Message from my Lord Balmerino, desiring an Interview with his Lordship; which being consented to, my Lord Balmerino was introduced into my Lord Kilmarnock's Apartments; where my Lord Balmerino, after addressing himself to his Lordship, and thanking him for the Favour of this Conference, asked his Lordship, *if he knew of any Order being made before the Battle of Culloden, for giving no Quarter to the Duke's Army; at the same Time declaring, that he himself knew nothing of any such Order.* To which my Lord Kilmarnock replied, *that he knew nothing of any such Order, but that since the Battle of Culloden he had been informed that there was some Order to that Effect, signed George Murray, and that it fell into the Hands of the Duke immediately after the Battle.* My Lords Kilmarnock and Balmerino having then saluted each other, my Lord Balmerino bid my Lord Kilmarnock an eternal happy Adieu, and with a chearful Countenance added, *My dear Lord, I wish I could alone pay the Reckoning, and suffer for us both;* to which my Lord Kilmarnock replied, *It was exceedingly kind and generous in his Lordship.*

About Half an Hour after Eleven, my Lord Kilmarnock with the whole Company kneeled down to Prayers, Mr. Foster performing the Office;

* To the PUBLIC. As I officiated for one of the Under-Sheriffs the Day of the Execution of the Lords Kilmarnock and Balmerino, I had an Opportunity of *minuting* down every thing that passed, worthy of Observation, upon that melancholy Occasion. — This I did at that Time for my own Curiosity only, and the following is a faithful Relation as taken from those Minutes; and which, at the Importunities of many Gentlemen, I have consented to the Publication of, in order to silence the many erroneous Accounts that have been published, and to take off several cruel Aspersions that have been thrown out touching the Behaviour of those unhappy Lords. — I have made little or no Observations in the Narration, much less shall I do it here; being satisfied that those whom the one will not, the other cannot convince.

Office; after which my Lord having again sat down a few Moments to refresh himself with a Bit of Bread and a Glas of Wine, he about *Twelve o'Clock* rose, saluted his Friends, and proceeded to the *Scaffold*, his Friends still accompanying him there.

As soon as his Lordship ascended the *Scaffold*, it was easily to be observed what Impression his graceful Deportment made upon the Minds of the Spectators, to whom his Lordship made no Speech, but much better employed his Time with Mr. *Foster* in his Devotions; upon the Conclusion of which Mr. *Foster* told his Lordship, *He wished he had a Voice loud enough to inform this large Assembly with what Sentiments his Lordship left the World.*

My Lord then, with a Countenance perfectly serene and composed, *embraced his Friends*, and took his *final Leave* of them.

After that, the *Executioner* was introduced to his Lordship for his Forgiveness for the painful Office allotted to him; which his Lordship readily granted, and gave him a Purse of Gold, desired him to have Courage, and acquainted him that *the Signal for the Stroke should be the dropping of a Handkerchief.*

His Lordship then prepared himself for the Block, and having with the Assistance of his Servant taken off his Coat, and the Bag from his Hair, his Lordship then put his Cap on, and under it tucked up his Hair; but his Lordship afterwards perceiving the Cap was too large to bind up his Hair, and fearing lest by that Means the Blow might be intercepted, he requested a Gentleman, who was near him, to pin it closer; during which, that Gentleman having wished his Lordship the Continuance of his Resolution till he should meet with eternal Happiness, his Lordship thanked him, and with great Tranquillity added, *that he found himself perfectly easy and resigned.*

His Lordship then *kneeled down* at the Block, and having with great Fervency prayed for about six Minutes, submitted himself, and *dropping the Signal, the Executioner at one Blow severed his Head from his Body*; the Head was received into a Piece of scarlet Baize, and with the Body deposited in a Coffin, and delivered to his Lordship's Friends; on which Coffin was the following Inscription, *Willielmus Dominus de Kilmarnock decollatus 18 die Augusti, 1746. Ætatis suæ 42.*

After the Execution was over, it was remarked by several Persons, that the *Head was not held up and exposed* by the Executioner; it was my Lord's particular Request it might not be so, and the Law does not require it. — The only Reason that can be assigned for exposing the Head (as has been frequently but not always the Case) is to satisfy the People that the Execution has been done; but in order to give them a greater Satisfaction, the Sheriffs directed that every body upon the Scaffold should kneel down, that they might see the Execution itself performed, — a Ceremony never practised before.

During this Time the Scaffold was put in Order for the Execution of the Lord *Balmerino*. The Under-Sheriff that attended during the first Execution went to my Lord *Balmerino's* Apartments, as a Notice to his Lordship that his Time was come; upon whose Entrance his Lordship said, *I suppose my Lord Kilmarnock is no more*; and having asked how the Executioner had per-

formed his Duty, his Lordship upon receiving the Account said, *Then it was well done; and now, Gentlemen, (said his Lordship) I will detain you no longer, for I desire not to protract my Life*: His Lordship then saluted the Company in a Manner so chearful, as drew Tears from every Eye but his own, and *hastened* to the Scaffold.

But before we view his Lordship upon the Scaffold, it is but just to the Memory of that great, but unhappy Man, to acquaint the Public what was his Deportment in his Retirement here: It was graceful without Affectation, chearful but not presumptuous; he conversed freely with his Friends, twice refreshed himself with a Bit of Bread and a Glas of Wine, and desired the Company to drink to him *ain degrae ta haiwen*; but, above all, he called frequently upon God, and seemed both willing and prepared to die.

When his Lordship mounted the Scaffold, he did it with so undaunted a Step as surprized every Spectator that was unacquainted with the Greatness of his Soul: His Lordship appeared there in the very *same Regimentals* he wore at the *Battle of Culloden*, and so far was he from having the least Concern himself at the Fear of Death, that he frequently reproved his Friends that were about him for shewing any: His Lordship walked round the Scaffold, bowed to the People, read the following Inscription upon his Coffin; *Arthurus Dominus de Balmerino decollatus 18 die Augusti, 1746, Ætatis suæ 58*; said it was right, and with seeming Pleasure looked at the Block, which he called his *Pillow of Rest*.

His Lordship then took a Paper out of his Pocket, which he read to the few about him, and delivered to the Sheriff to do with it as he should think proper.

Whatever may be offered in Excuse for his Lordship's making that Speech in his last Moments, nothing but the *highest Authority* can justify the publishing it.

His Lordship to the last professed his entire Ignorance as to the Order for giving no Quarter to the *Duke's Army*; and added, *that he would not (knowingly) have acted under such Order, because he looked upon it as unmilitary, and beneath the Character of a Soldier.*

Nor is it to be here omitted, that though his Lordship, from his unhappy political Principles, disowned any Allegiance to his Majesty; yet he, from his moral ones, acknowledged *him to be a Prince of the greatest Magnanimity and Mercy.*

His Lordship then called for the Executioner, who being introduced to him, was about to ask his Lordship's Forgiveness; but my Lord stopped him, and said, *Friend, you need not ask me Forgiveness, the Execution of your Duty is commendable.* His Lordship then presenting the Executioner with three Guineas, said, *Friend, I never had much Money, this is all I have, I wish it was more for your Sake, and am sorry I can add nothing else to it, but my Coat and Waistcoat*; which his Lordship instantly took off, and placed on his Coffin for the Executioner.

His Lordship then prepared himself for the Block by putting on a *Flannel Waistcoat* that had been made for the Occasion, and a *Plaid Cap* upon his Head; after which his Lordship went to the Block, in order to shew the Executioner the *Signal for the Blow*, which was the *dropping down of his Arms.*

His Lordship then returning to his Friends, took his last Farewel of them; and having once more taken a View of the great Number of Spectators, his Lordship said, *I am afraid there are some who may think my Behaviour bold*; and speaking to a Gentleman near him, added, *Remember, Sir, what I tell you, it arises from a Confidence in God, and a clear Conscience.*

His Lordship then observing the Executioner with the *Axe* in his Hand, *took it from him*, and having *felt the Edge*, returned it him again, at the same Time *showing* him where to strike the Blow, and *animating* him to do it with Resolution, *For in that, Friend,* (said his Lordship) *will consist your Mercy.*

His Lordship then, with the same surprizing Countenance, *kneeled down at the Block*, and having with his Arms extended said this short Prayer, *O Lord, reward my Friends, forgive my Enemies, ***** and receive my Soul*, submitted, and gave the Signal to the Executioner; and I wish I could conclude, that his Head had been taken off at one Blow: But the Executioner was so terrified at his Lordship's Intrepidity, and the Suddenness of the Signal, that notwithstanding he struck his Lordship in the Part directed, yet the Force of the Blow was not sufficient to sever the Head from the Body, though (happily) sufficient to deprive him of all Sensation. — After the first Blow, his Lordship's Head fell back upon his Shoulders, but being afterwards severed at two more gentle Blows, was then received into a Piece of red Baize, and with his Body deposited in his Coffin, and delivered to his Friends.

There were several Pamphlets published at this Time, relating to the different Behaviour of these two Lords, and some Advertisements against Mr. Ford's Account; but as there was no Name put to them, they did not gain much Credit. — But one of these Pamphlets, intituled, *Seasonable Reflections on the dying Words and Deportment of that great but unhappy Man, Arthur Lord Balmerino, in a Letter to Mr. Ford*, concludes thus in an Appendix: "There is a Gentleman of undoubted Veracity, who attended the Execution of Lord Balmerino, positively affirms, and is ready to corroborate his Affirmation by the most solemn Proof, that when his Lordship kneeled down at the Block, and submitted to the Stroke of Justice, he made no Prayer whatever; but this will be better expressed in the Gentleman's own Words in Writing, to the Original whereof (now in the Hands of the Publisher) his Name is subscribed, viz.

"I attended the Execution of the late Lord Balmerino, and was one of those who held the Cloth to receive Lord Balmerino's Head, and am ready to make Oath, if required, that I heard No Prayer made by Lord Balmerino, as is inserted in Mr. Ford's Account; and that if there had been any Prayer, I must have heard it, as well as any other Person present, &c.

"It is to be observed, this Gentleman avers that he himself kneeled down so near the Block, when he held the Cloth; that if any thing had been spoken by his Lordship, it

was impossible but he must have heard it; that it was he who, after the second Blow, took the Lord by the Arm, and drew up his Body, to set the Head in a Position for the Executioner's completing his Work. He adds further, (in manifest Contradiction to Mr. Ford) that his Lordship came upon the Scaffold, in a Flannel Waistcoat and Skirt, and did not put either on after he was there; but pulled off the Waistcoat, and had only the Skirt on, when he laid his Head on the Block."

On these Publications, Mr. Ford advertised in the Public Papers, as followeth:

To the P U B L I C.

THE Account I published of the Behaviour of the Rebel Lords at their Execution, was for your Satisfaction only, beyond which I neither had or expected any Advantage; yet from that bare Relation with Truth and Impartiality, several nameless Pamphleteers and Advertisers have, through Faction, or worse Motives, presumed to draw several unwarrantable Inferences as to my political Principles.

The Authors being concealed, are unworthy of other Notice, since nothing is easier to an ingenuous and unprejudiced Mind, than to distinguish between the Subject and the Man: My Lord Kilmarnock was happily educated in RIGHT Principles, which he deviated from and repented; whereas the great, though unhappy, Lord Balmerino, was UNFORTUNATE in HIS; — but as he lived, — he died.

Aldermanbury.

T. F O R D.

Copy of the Paper which was read by Arthur Lord Balmerino, upon the Scaffold at Tower-Hill, and delivered by him to the Sheriffs of London, just before his Execution, on Monday, Aug. 18, 1746.*

I Was brought up in True, Loyal, and Anti-Revolution Principles, and I hope the World is convinced that they stick to me.

I must acknowledge I did a very inconsiderate Thing, for which I am heartily sorry, in accepting of a Company of Foot from the Princess Anne, who I know had no more Right to the Crown than her Predecessor, the Prince of Orange *****

To make Amends for what I had done, I joined the ***** (Pretender) when he was in Scotland in 1715; and when all was over, I made my Escape, and lived abroad till the Year 1734.

In the Beginning of that Year, I got a Letter from my Father, which very much surprized me. It was to let me know, he had a Promise of a Remission for me: I did not know what to do; I was then (I think) in the Canton of Berne, and had no body to advise with: But next Morning I wrote a Letter to the ***** (Pretender) who was then at Rome, to acquaint the ***** (Pretender) that this was done without my Asking or Knowledge, and that I would not accept of it without his Consent.

I had, in Answer to mine, a Letter written with ***** (the Pretender's) own

* We insert this Speech, without the treasonable Part; as there are some Anecdotes in it, not taken Notice of in Mr. Ford's Account, and which the Public (probably) are Strangers to.

Hand, allowing me to go Home; and he told me his Banker would give me Money for my travelling Charges, when I came to Paris, which accordingly I got.

When ***** (*the Pretender's Son*) came to *Edinburgh*, I joined him, though I might easily have excused myself from taking Arms on Account of my Age; but I never could have had Peace of Conscience if I had stayed at Home, *****

I am at a Loss when I come to speak of the ***** (*Pretender's Son*.) I am not a fit Hand to draw his Character, I shall leave that to others. ——— (*Here he gives a fulsome Character of the Pretender's Son*.)

Pardon me, if I say, wherever I had the Command, I never suffered any Disorders to be committed, as will appear by the Duke of *Buccleugh's* Servants at *East-Park*; by the Earl of *Findlater's* Minister *Mr. Lato*, and my Lord's Servants at *Cullen*; by *Mr. Rose*, Minister at *Nairn*, (who was pleased to favour me with a Visit when I was Prisoner at *Inverness*;) by *Mr. Stewart*, principal Servant to the Lord President, at the House of *Culloden*, and by several other People. All this gives me great Pleasure now that I am looking upon the Block, on which I am ready to lay down my Head: And though it had not been my own natural Inclination to protect every body, it would have been my Interest to have done it; for ***** (*the Pretender's Son*) abhorred all those who were capable of doing Injustice to any *****

I have heard, since I came to this Place, that there has been a most wicked Report, spread and mentioned in several of the News-Papers, that

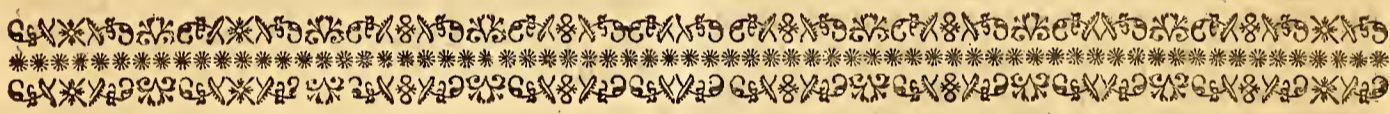
***** (*the Pretender's Son*;) before the Battle of *Culloden*, had given out Orders that no Quarter should be given to the Enemy. This is such an unchristian Thing, and so unlike ***** (*the Pretender's Son*;) that no body (*the Jacobites*) that knows him, will believe it. It is very strange, if there had been any such Orders, that neither the Earl of *Kilmarnock*, who was Colonel of the Regiment of Foot-Guards, nor I, who was Colonel of the second Troop of Life-Guards, should ever have heard any thing of it; especially, since we were both at the Head Quarters the Morning before the Battle. I am convinced, that it is a malicious Report industriously spread to *****

Ever since my Confinement in the Tower, when Major *White* or *Mr. Fowler* did me the Honour of a Visit, their Behaviour was always so kind and obliging to me, that I cannot find Words to express it; but I am sorry I cannot say the same Thing of General *Williamson*: He has treated me barbarously, but not quite so ill as he did the Bishop of *Rocheſter*; and had it not been for a worthy Clergyman's Advice, I should have prayed for him in the Words of *David*, *Pſalm* cix. from the 6th to the 15th Verse.

I forgive him, and all my Enemies.

I hope you will have the Charity to believe I die in Peace with all Men; for Yesterday I received the Holy Eucharist from the Hands of a Clergyman of the Church of *England*, in whose Communion I die, as in Union with the Episcopal Church of *Scotland*.

I shall conclude with a short Prayer. ——— (*Here a Prayer is mentioned, much the same as in Mr. Ford's Account*.)



N U M B E R XXI.

The Case of George Earl of Cromertie, as printed in 1746, and said to be presented to His Majesty.

THE Earl, from his Infancy, was educated and brought up in the Principles of the established Church of *Scotland*, to which he always adhered till his late Misfortune; infomuch that he has, upon several Occasions, received the Thanks of the General Assembly of that Church, for the substantial Proofs he gave, from Time to Time, of his sincere Attachment to their Interest.

The Earl intermarried in a Family, whose Zeal and Affection to the present Royal Family was warm and remarkable upon all Occasions; and particularly, during the Rebellion in the Year 1715, many of them used their utmost Efforts in Support of this happy Constitution; none of them were neutral, or joined in that Rebellion; and they acted the same Part in the present Rebellion, to the utmost of their Power.

The Earl has Issue of his Marriage nine Children, and his Wife is now with Child; and these have been brought up strictly in the same

Principles: And as to his eldest Son, he imbibed those Principles from his Parents, and from three successive Preceptors, who are all now Ministers of the Church of *Scotland*, under the Eye of *Mr. Dundas* his Uncle, who had the Honour to serve his late Majesty as his Advocate for *Scotland*, and was appointed by his present Majesty one of the Judges of the supreme Court there.

Soon after the breaking out of this Rebellion, when his Majesty's Troops, under the Command of *Sir John Cope*, arrived at *Inverness*, in the End of *August* last, the Earl immediately waited upon him, and, agreeable to his Principles and Inclinations, as well as his Duty, made a Tender of all his Power and Influence in suppressing this Rebellion; but, to his great Misfortune at this Day, such Assistance was not then judged necessary.

After the Action at *Preſton-Pans*, when Commissions were issued for raising Independent Companies,

Companies, under the Direction of Mr. *Forbes*, Prefident of the Court of Session in *Scotland*, Application was made for a Company for his Son the Lord *M'Leod*; and as he had Reason to hope for Success, he directed the Gentlemen, whom he intended to be Subalterns in the Company, to levy the Men; and the Levies went on accordingly; and the Earl's Zeal for the present Government continued unshaken until this Period: And for this he appeals to Sir *John Cope*, Mr. *Forbes*, and to the Attestations of eight *Presbyterian* Ministers, in the Hands of his Grace the Duke of *Newcastle*.

But when it was known that the Subalterns in Lord *M'Leod's* Company were to be named by the Lord *Fortrose*, and the Subalterns that the Earl had in View were disappointed, he was immediately beset by designing Men, and they used all their Art and Cunning upon the Earl, to seduce him from his Duty; but no Reason whatsoever could have had this Effect, if he had not been intoxicated with Liquor; and he no sooner recovered his Understanding, but he reflected with Horror upon what he had done; and for this he appeals to Mr. *Brodie*, Lord *Lyon's* Declaration, in the Hands of the Duke of *Newcastle*, and to the Knowledge of the other Members of both Houses of Parliament in the Earl's Neighbourhood.

This unhappy Lord, soon after engaging in this Rebellion, went to *Perth*, and continued there a Month, intirely in a private Capacity; for he assisted at none of the Reviews of the Rebels, mounted none of their Guards, bore no Arms, issued no Orders, but employed his Time chiefly in the Company of his Majesty's Officers, who were Prisoners there, and laboured Night and Day to procure them all Manner of Indulgences; and the only Use he made of his Credit in the Rebel Army, was to make their Captivity easy, in which he was fortunate enough to succeed in most Cases; and he appeals to those Gentlemen in this Respect.

He did, indeed, afterwards, accept of a Command to levy the Cess, Excise, and other Contributions in the Shires of *Fife* and *Kinross*, to the Amount of 13000*l.* but he preserved such Discipline among the Soldiers under his Command, that though he intimated his Orders, upon Pain of Military Execution, agreeable to the Terms in which they were delivered to him, yet he avoided all Methods of enforcing them, and returned without levying one Shilling, which, in a great Measure, saved his Majesty's faithful Subjects from those Exactions; and during his Stay in those Countries, the Inhabitants were uninjured in their Persons, and protected in their Properties; and he gave up that Command, that he might not be an Actor in, or a Witness to the Severities which he then thought

to be unavoidable; and for this he appeals to Certificates from Peers and Commoners of *Fife* and *Kinross*, in the Duke of *Newcastle's* Hands.

Upon his Return from this Command, he went, attended only by his own Domestics, to a Gentleman's House, where he resided for some Time in a private Way, without Command or Commission, and without taking upon him any Concern, but the Continuance of all the good Offices he could exert for the Ease and Protection of his Majesty's Subjects.

The Action of *Falkirk* gave him a fresh, but melancholy Opportunity, of doing all the Acts of Humanity in his Power to his Majesty's Troops, that were either taken or wounded in that Conflict; and he extended his Cares even to many of the unfortunate Persons who lost their Lives in his Majesty's Service.

When the Name of his Royal Highness the Duke obliged the Rebel Army to march North, he continued without any Command.

When he arrived at *Inverness*, a Command was again imposed upon him, to repair to the Counties of *Ross* and *Sutherland*, and there to raise all the Men in that Country in Arms, levy large Sums of Money by Contribution, and large Quantities of Meal; and with strict Orders, that in case those Demands were not complied with, to use all Manner of Military Execution, by burning Houses, destroying Cattle, and other Severities: But so averse was he to these Methods of Violence, that he levied no Men in those Parts, and even his own Tenants in that Neighbourhood continued peaceable at Home; and he also granted Protections to all who asked them, and he supported his Protections by Parties, and he preserved the House of Sir *Robert Munro*, and of his Brother *Cullcairn*, which were particularly doomed for Destruction by the Rebels; nor would he trust this Protection to others, but went himself, and took the proper Measures for their Preservation; and he used the same Tenderness and Care towards the House and Family of the Earl of *Sutherland*, for which he appeals to that Noble Lord. And upon the whole of this Article, though the unfortunate Earl notified the Orders he had from the Pretender, with all the severe Injunctions they contained, yet he executed none of those Severities; and his Delays were in some Measure salutary, as they prevented the full Execution of them, by those who were sent in his Place.

At the same Time his House was a Sanctuary to the Effects of his Majesty's loyal Subjects, and particularly of those employed in his Majesty's Service under Lord *Loudoun*.

He received His Majesty's most gracious Pardon.



N U M B E R XXII.

Relating to Lord Lovat.

IN Lord *Lovat's* Trial, p. 71. after the Confession of the Attorney-General, read thus:

“ Mr. *Murray* being brought to the Bar of the Court of *King's-Bench*, by *Habeas Corpus* directed to the Lieutenant of the *Tower*, the foregoing Record (p. 66, &c.) was read to him by the Secondary on the Crown Side: And the Attorney-General prayed that Execution might be awarded. The Secondary then demanded of him, what he had to say why Execution should not be awarded?

“ The Prisoner *Ore tenus* pleaded, that he did surrender himself to the Lord Justice Clerk of *Scotland* (who is a Justice of the Peace) at *Edinburgh*, the 28th Day of *June* last; whereupon the Attorney-General declared, that he had Authority from his Majesty to confess the Truth of the Prisoner's Plea, and did accordingly confess it. And the Court ordered the Prisoner's Plea, and the Attorney-General's Confession, to be recorded; and that the Attorney take nothing by his Motion, and that the Prisoner be remanded.” *Foster's Reports*, p. 50.

And *Page 84.* in that Trial, after Mr. *Murray's* saying, “ I did not intend at that particular Time to surrender myself; and I presume it is not necessary for me to say now, whether I ever did intend it, or not: But at the Time that the Party of Dragoons came to the House where I then was, the Doors were shut, and I was in such a Position, as that I could have killed two of them myself; but I rather chose to submit myself, and throw down my Arms,” read as followeth:

The *London Gazette*, published by Authority, *July 5, 1746*, relates it thus:

“ *Edinburgh*, *June 29.* Upon Information that *John Murray*, of *Broughton*, late Secretary to the Pretender's Son, had on *Friday Night* dined at *Kilbucco*, and had that Night gone to the House of Mr. *Hunter* of *Polmood*, who married Mr. *Murray's* Sister; *John Smith*, Serjeant in *St. George's* Dragoons, with seven private Men then under his Command at *Broughton*, was ordered thither with a Guide; and Yesterday, at Three o'Clock in the Morning, he seized Mr. *Murray* at the House of *Polmood*, and the same Day he was brought before the Lord Justice Clerk, and was committed close Prisoner to the Castle of *Edinburgh*. Upon his Examination he declared, That the Pretender's Son, with *Sullivan* and *O'Neal*, both *Irish*, and no other Person in Company, did, about four Days after the Battle of *Culloden*, go off from *Moidart* in an open Boat, in order to get on board a Ship: But that he (*Murray*) being at that Time indisposed, was not able to go with him. The said *Murray* had been mostly with *Lochiel*, and

“ his Uncle Major *Kennedy*, and his Brother, in a starving Way, lying on the Sides of Hills all Day, and travelling or wandering all Night, with Scouts at a Mile or half a Mile's Distance, never daring to stay two Nights in a Place. *Lochiel* was very ill, wounded in the Heel, and obliged to use a Horse; and he (*Murray*) unable to bear Fatigue and Want any longer, crossed the Hill without a Servant, and came by *Monteith* to the Place where he was taken.”

Mr. Justice *Foster*, in his *Crown Cases*, p. 50. makes this Observation: “ *Note*, This Gentleman was made use of as an Evidence against Lord *Lovat* on his Impeachment. And it was suggested on that Occasion, that the Attorney-General's confessing the Truth of the Plea by Warrant from his Majesty, was a Strain of Prerogative, calculated to elude the Force of the Act of Attainder, and to serve the Turn of making Mr. *Murray* an Evidence. But whoever considereth that he was actually brought before the Lord Justice Clerk on the 28th Day of *June*, (fourteen Days before the Time limited by the Act for his surrendering was expired) and was the same Day by him committed to the Castle of *Edinburgh*, where he was kept close Prisoner till he was removed to the *Tower*; whoever considereth this, must admit, that, with whatever View he might be brought up at this Time, he had merely that Justice done him now by his Majesty's Order, which at one Time or other, whenever he should have been brought up, on the Foot of the Act of Attainder, could not be denied him.

“ The Intent of the Act was answered by his being made *amesnable* to Justice before the Time limited for his Surrender. And he being kept close Prisoner till the Day for Surrendering was past, it was put out of his Power to comply strictly with the Letter of it; and therefore his Non-compliance ought not to be fatal to him.” — See *Roger Johnson's Case*, *Foster*, p. 46. *Strange*, Vol. 2. p. 824.

The Judge says further, (in a Note) “ I have been informed that Mr. *Murray* was now brought up, to obviate an Objection that might have been made to his Evidence upon the Authority of Lord *Duffus's* Case, reported in *Com.* 440. but that Case differeth from this. Lord *Duffus* was *not amesnable* to Justice before the Expiration of the Time given by the Act; nor, *merely through his own Default*, could be: But I doubt Lord *Duffus's* Case favoured too much of the *Summum Jus*.

In *Page 110.* of Lord *Lovat's* Trial, Mention is made of the Lord President's Letter to Lord *Lovat*, and his Answer to it; we here insert the Letter, as it is an excellent one, and a Persuasive against his Lordship's ruining himself and Family by

by running into the Rebellion, with Lord *Lovat's* Answer to it, from the *Memoirs of the Life of Lord Lovat*, p. 101.

Lord President's Letter to Lord Lovat, dated at Inverness, the 28th October, 1745.

“ My Lord,

“ AS I have now the Honour of being
 “ charged with the public Affairs in this
 “ Part of the Kingdom, I can no longer remain
 “ a Spectator of your Lordship's Conduct, and
 “ see the double Game you have played for some
 “ Time past, without betraying the Trust reposed
 “ in me, and at once risquing my Reputation,
 “ and the Fidelity that I owe to his Majesty as a
 “ good Subject. Your Lordship's Actions now
 “ discover evidently your Inclinations; and leave
 “ us no further in the Dark about what Side you
 “ are to choose in the present unhappy Insur-
 “ rection: You have now so far pulled off the
 “ Mask, that we can see the Mark you aim at,
 “ though, on former Occasions, you have had
 “ the Skill and Address to disguise your In-
 “ tentions in Matters of far less Importance.
 “ And indeed, methinks, a little more of your
 “ Lordship's wonted Artifice would not have
 “ been amiss, whatever had been your private
 “ Sentiments with respect to this unnatural Re-
 “ bellion. You should, my Lord, have duly
 “ considered and estimated the Advantages that
 “ would arise to your Lordship from its Success,
 “ and balanced them with the Risques you run
 “ if it should happen to miscarry; and above
 “ all Things you ought to have considered your
 “ own Safety, and allowed *that* the chief Place
 “ in your System of Politics; which, I persuade
 “ myself, would have induced your Lordship
 “ to have played the Game after a quite differ-
 “ ent Manner, and with a much greater Degree
 “ of Caution and Policy. But so far has your
 “ Lordship been from acting with your ordinary
 “ *Finesse* and Circumspection on this Occasion,
 “ that you sent away your Son and the best Part
 “ of your *Clan* to join the Pretender, with as
 “ little Concern as if no Danger had attended
 “ such a Step: I say, sent them away; for we
 “ are not to imagine they went of themselves, or
 “ would have ventured to take Arms without
 “ your Lordship's Concurrence and Approbation:
 “ This, however, you are pretty sure cannot be
 “ easily proved, which I believe indeed may be
 “ true: But I cannot think it will be a difficult
 “ Matter to make it appear, that the whole
 “ Strain of your Lordship's Conversation in
 “ every Company where you have appeared,
 “ since the Pretender's Arrival, has tended to
 “ pervert the Minds of his Majesty's Subjects,
 “ and seduce them from their Allegiance: And
 “ give me Leave to tell you, my Lord, even
 “ this falls under the *Construction of Treason*, and
 “ is no less liable to Punishment than open
 “ Rebellion; as I am afraid your Lordship will
 “ find when once this Insurrection is crushed,
 “ and the Government at Leisure to examine into
 “ the Affair. And I am sorry to tell you, my
 “ Lord, that I could sooner undertake to plead
 “ the Cause of any of those unhappy Gentlemen,
 “ who are just now actually in Arms against his
 “ Majesty, and I could say more in Defence of
 “ their Conduct, than I can in Defence of your
 “ Lordship's. The Duke of *Pertb* and Lord

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“ *Ogilvy* never qualified, nor did they ever receive
 “ the smallest Favour from the present Govern-
 “ ment; but, on the contrary, were both stripped
 “ of their Titles and Honours, and from Men
 “ of the first Quality, reduced to the State of
 “ private Gentlemen, since the Revolution, and
 “ may both be supposed to act from a Principle
 “ of Resentment, and only take up Arms to
 “ recover what they thought themselves unjustly
 “ deprived of. Lord *George Murray* never had
 “ any Place or Pension from the Public, and
 “ was, no Doubt, drawn in by the Influence of
 “ the Marquis of *Tullibardin*, perhaps, touched
 “ with Pity and Commiseration for his eldest
 “ Brother, who has spent the best Part of his
 “ Life in Exile, and undoubtedly upon an
 “ Allowance much inferior to his Dignity.
 “ These and such-like Apologies may be offered
 “ in Defence of most of the leading Men in the
 “ present Rebellion: But what shall I say in
 “ Favour of you, my Lord? You, who have
 “ flourished under the present happy Establish-
 “ ment; you, who, in the Beginning of your
 “ Days, forfeited both your Life and Fortune,
 “ and yet, by the Benignity of the Government,
 “ was not only indulged in the Liberty of living
 “ at Home, but even restored to all you could
 “ lay Claim to! Nay, his Majesty's Goodness
 “ went so far as to employ your Lordship in his
 “ Service, and was pleased to honour you with
 “ the Command of one of the Independent
 “ Companies that were raised some Years ago in
 “ the Highlands, which you enjoyed for a very
 “ long Time: So that both Duty and Gratitude
 “ ought to have influenced your Lordship's
 “ Conduct at this critical Juncture, and disposed
 “ you to have acted a Part quite different from
 “ what you have done. But there are some
 “ Men whom no Duty can bind, nor no Favour
 “ can oblige; and, I am afraid, if a timely
 “ Repentance do not prevent it, your Lordship
 “ will, not unjustly, be ranked among that
 “ Number. You now see, my Lord, how
 “ unanimous the People of *England* are against
 “ the Pretender; and what Forces they are
 “ mustering up to oppose him. The King has
 “ ordered Home his Troops; several Noblemen
 “ have raised Regiments at their own Expences;
 “ and every County and Corporation throughout
 “ the Kingdom are entering into Associations in
 “ Defence of the present Establishment: So that
 “ these few unhappy Gentlemen, who are engaged
 “ in this Rebellion, will have Armies after
 “ Armies to encounter, and if your Lordship
 “ entertains any Hopes of their Success, you
 “ will find your Mistake, when it is too late to
 “ amend it. What I would therefore propose to
 “ your Lordship, as the only Expedient left to
 “ rescue you from the Hazard of a rigorous
 “ Prosecution, is, to recall your Son and his
 “ Men immediately. This Step, I am persuaded,
 “ would produce several good Consequences;
 “ for, on the one Hand, it would prevent
 “ Numbers from joining the Rebels, who now
 “ hang in Suspence; and, on the other, occasion
 “ a great many of those already engaged to desert
 “ and retire to their respective Habitations, and,
 “ perhaps, may be the Means of crushing the
 “ Rebellion, without further Bloodshed; which
 “ would do your Lordship a great deal of
 “ Honour, and such a remarkable Piece of
 “ Service would be amply rewarded by the
 “ Government.

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Government. If you shall judge it proper, my Lord, to follow this Advice, it will give me a great deal of Pleasure, as it will contribute to stop the Progress of an unhappy Civil War, that threatens us with endless Calamities; but if your Lordship continues obstinate, and will not order your Men to disband and return Home, I shall be obliged to take you into Custody, be the Event what it will: And then your Lordship will run the Risque of having your Family extirpate as well as others of the Highland Chiefs. Now, my Lord, I have told your Lordship my Sentiments pretty freely, and no less out of Friendship to your Lordship than Duty to the Public. I might have advanced many other Arguments, to induce your Lordship to follow my Advice; but, methinks, what I have already said is sufficient; and so, I shall only further add, that I am,

“ Yours, &c.”

Lord Lovat's Letter in Answer to the above, dated at Beaufort, 29th October, 1745.

“ My dear Lord,

“ I Received the Honour of your Lordship's Letter late last Night, of Yesterday's Date; and I own I never received one like it since I was born; and I give your Lordship ten thousand Thanks for the kind Freedom you make with me in it: For I see by it, that for my Misfortune, in having an obstinate stubborn Son, and an ungrateful Kindred, my Family must go to Destruction, and I must lose my Life in my old Age. Such Usage looks rather like a *Turkish* or *Persian* Government, than like a *British*. Am I, my Lord, the first Father that has had an undutiful and unnatural Son? Or am I the first Man that has made a good Estate, and saw it destroyed in his own Time, by the mad foolish Actions of an unnatural Son, who prefers his own extravagant Fancies to the solid Advice of an affectionate old Father? I have seen Instances of this in my own Time, but never heard till now, that the Foolishness of a Son would take away the Life and Liberty of a Father that lived peaceably, and was an honest Man, and well inclined to the rest of Mankind. But I find, the longer a Man lives, the more Wonders and extraordinary Things he sees. Now, my dear Lord, I beg Leave to tell you my Mind freely in my Turn. I thank God, I was born with very little Fear in the greatest Difficulties and Dangers by Sea and Land, and, by God's Assistance, I have often saved my Life by the Firmness and Steadiness of my Resolutions; and though I have now but a little Remains of a Life that is clogged with Infirmities and Pain, yet, by God's Assistance, I am resolved to preserve it as long as I can. And though my Son should give way with the young People of his Clan, yet I will have six hundred brave *Frasers* at Home, many of them about my own Age, that will lose the last Drop of their Blood to preserve my Person; and I do assure your Lordship, if I am attacked, that I will sell my Life as dear as I can. For since I am as peaceable a Subject as any in the Kingdom, and as ready to pay the King's Taxes, and to do every thing

“ that a faithful Subject ought to do, I know no Law or Reason that my Person should not be in Safety. I did use, and will use, the strongest Arguments that my Reason can suggest to me, by my Cousin *Gortulegge*, that he may repeat them to my Son; and if they should not prevail, is it any ways just or equitable that I should be punished for the Faults of my Son? Now, my dear Lord, as to the uncivil War that occasions my Misfortunes, and in which almost the whole Kingdom is involved, on one Side or the other, I humbly think, that Men should be moderate on both Sides, since it is morally impossible to know the Event; for thousands, ten thousands, on both Sides, are positive that their own Party will carry. And suppose that this venturous Prince should be utterly defeat, and that the Government should carry all in Triumph, no Man can think that any King upon the Throne would destroy so many ancient good Families, for engaging in a Cause that was always their Principle, and what they thought their Duty to support. King *William* was as great a King, as to his Knowledge of Government and Politics, as late for many hundred Years upon the Throne of *England*; and when his General, who was one of the best in *Europe*, was defeat, and forced to run to save his Life, and all his Army routed at *Killicranky* by a handful of Highlanders, not full two thousand in Number, King *William* was so far from desiring to extirpate them, that he sent the Earl of *Breadalbane* with twenty-five thousand Pounds Sterling, and sought no other Conditions from them, than that they should live peaceably at Home. So, my Lord, we cannot imagine, that though the Highlanders should be defeated at this Time, and most of them killed, and the Government full Masters of the Kingdom, that any Administration would be so cruel, as to endeavour to extirpate the whole Remains of the Highlanders. Besides, it would be a dangerous Enterprize, which we nor our Children would see at an End.

“ I pray God we may never see such a Scene in our Country, as Subjects killing and destroying their Fellow-Subjects. For my Part, my Lord, I am resolved to live a peaceable Subject in my own House, and do nothing against the King or Government. And if I am attacked by the King's Guards, and his Captain-General at their Head, I will defend myself as long as I have Breath in me: And if I am killed here, it is not far to my Burial-place; and I will have, after I am dead, what I always wished, the Coronach of all the Women in my Country, to convey my Body to my Grave; and that was my Ambition, when I was in my happiest Situation in the World.

I am, my Lord,

“ Your Lordship's, &c.”

An Account of the Behaviour of Simon Lord Lovat, from the Time his Death-Warrant was delivered, to the Day of his Execution. By a Gentleman who attended his Lordship in his last Moments.

THOUGH I was an Eye-witness of the extraordinary Behaviour of this Nobleman during his Trial, I little thought to find that uncommon

uncommon Gaiety accompany him in his last Moments. I was indeed too well acquainted with his Lordship to imagine he would shudder much at the Sight of *Death*; but yet I expected, that it would abate somewhat of his natural Vivacity, and reduce him to a more serious Turn of Mind; however, neither the Apprehension of Pain and Agony, or the Thoughts of his speedy Dissolution, seemed to give him any Uneasiness.

On *Friday* the 3d of *April*, when the Warrant came down for his Execution, and the Gentleman told him he was sorry to be the Messenger of such bad News; his Lordship replied very cheerfully, *God's Will be done*, and then taking him by the Hand, drank his Health, thanked him kindly for the Favour, (as he called it) and assured him he was so well satisfied with his Doom, that he would not change Stations with any Prince in *Europe*. His Lordship then sat down with the Gentleman, drank Part of a Bottle of * Wine with Water, and seemed very composed.

In the Evening he smoked his Pipe, mentioned some Circumstances relating to his Trial, and was very cheerful. About Ten o'Clock he called for the *Warders* of the *Tower* to undress him, and while they were taking off his Shoes, told them, he should not give them that Trouble much longer, for that he was to take his Leave of this World the next *Thursday*.

The next Morning, his Lordship being informed of the Report that was raised, of an Engine to be erected to take off his Head, said, *It was a fine Contrivance; for, as his Neck was very short, the Executioner would be puzzled to find it out with his Axe; and if such a Machine was made, they might call it Lord Lovat's Maiden.*

He was very cheerful all this Day, talked a good deal of his own Affairs, and, among other Things, said, *That he was concerned in all the Schemes that had been formed for restoring the Royal Family, since he was fifteen Years old; but that he never betrayed a private Man or a public Cause in his Life: That he never shed a Drop of Blood with his own Hand, nor ever struck a Man, except one young Nobleman, whom he caned publicly for his Impertinence and Impiety.*

Sunday. This Morning he rose pretty early, and behaved as usual; talked for some Time about his Family, and shewed us the Copy of a Letter he had sent to his Son, which I shall here insert, because it contains his Lordship's Sentiments of Religion and a future State; and the Person who wrote it for him, assures me, it is an exact Copy of the Original.

A Copy of Lord Lovat's Letter to his Son Simon, now Prisoner in Edinburgh Castle.

“ My dear Simon,

“ **N**otwithstanding my great Distress and
“ Affliction, you are always present with
“ me, and I offer my Prayers to Heaven for
“ you. — You see now by Experience, that this
“ World is but Vanity of Vanities, and that

“ there is no Trust to be put in the Arm of
“ Flesh; you see that God's Providence rules
“ the World, and that no Man or Family but
“ must yield to it, whether he will or not.
“ Happy is the Man, that, in all the cross
“ Accidents of this Life, submits himself to the
“ Will and Providence of God, with sincere
“ Humility and Patience. It is the blessed
“ Trinity, Father, Son, and Holy Spirit, that
“ can deliver you and me from our present
“ melancholy Situation: We have provoked
“ God by our Sins, which most certainly have
“ brought these Troubles upon us: I do sincerely
“ thank God for these Troubles, because they
“ have brought me from the Way of Sin that I
“ lived many Years in, to a Way of Repentance
“ and Humiliation, and instructed me to follow
“ my dear Saviour the Lord Jesus Christ as I
“ ought to do. I therefore, my dear Child,
“ earnestly beg of you, with the sincere Heart
“ of a tender and affectionate Father, to repent
“ of all your Sins and Transgressions, and to
“ throw yourself at the Foot of the Cross of
“ Christ, begging for his Sufferings Sake, which
“ you know were great, to give you true Re-
“ pentance, to forgive your Sins, and be recon-
“ ciled to you for the Sake of his Blood, that he
“ shed upon the Cross for Sinners, and beg of
“ him to preserve you from the Snares of the
“ Devil, the World, and the Flesh; which will
“ be too many for you without his divine Assist-
“ ance; and if you have a true Contrition for
“ your Sins, and are reconciled with Zeal and
“ Affection to your Saviour, you will find Com-
“ forts that cannot be expressed. If you put
“ your sole Confidence in Jesus Christ, he will
“ certainly bring you out of all your Troubles,
“ and make you the happiest *Lord Lovat* that
“ ever was. So, my dear Child, I beg of you
“ for God's Sake, for your own Sake, for my
“ Sake, and for the Sake of your Brothers and
“ Sisters, to throw yourself upon God's Mercies,
“ which have been ever of old; repent of your
“ Sins, and live a sincere, Christian, and righ-
“ teous Life, and you will certainly bring God's
“ Blessing upon yourself, your Family, and
“ Kindred; and if you neglect this my paternal
“ Advice, which by the Laws of God and
“ Nature I am obliged to give you, you may
“ assure yourself of being miserable in this World,
“ and eternally miserable in the next. I know
“ not yet what my Fate may be, but bless God,
“ I am prepared to go to the Scaffold and Block
“ To-morrow, if God in his divine Will and
“ Providence hath ordered it so. So, my dear
“ Child, do not be in the least concerned for me;
“ for I bless God I have strong Reasons to hope,
“ that when it is God's Will to call me out of
“ this World, it will be by his Mercy, and the
“ Suffering of my Saviour Jesus Christ, to enjoy
“ everlasting Happiness in the other World. I
“ wish this may be yours, and am,

“ My dear Child,

“ Your affectionate Father, &c.”

* As his Lordship has been often branded with the Name of a Drunkard in the public Papers, I must do so much Justice to his Memory, as to assure the Public, that he never drank more than two Pints of Wine a Day during his whole Confinement, and never any without Water; and I have often heard his Lordship say, he was never drunk in his Life. 'Tis true a considerable Quantity of Brandy and Rum was used every Night and Morning to bathe his Legs, which might probably give Birth to this Report; for he never drank a Dram himself, unless he was indisposed, and then he generally took a little burnt Brandy with Bitters.

Monday. His Lordship arose about Seven, and, according to his usual Custom, called for a Glass of Wine and Water: Upon which the *Warder* asked his Lordship, what Wine he would please to have? *Not white Wine*, says he, *unless you would have me go with the Skitter to the Block.* For it seems white Wine generally gave him the Flux. Some Time after this, the *Major* came to see him, and asked how he did. *Do!* says his Lordship; *why, I am about doing very well, for I am preparing myself, Sir, for a Place, where hardly any Majors, and very few Lieutenant-Generals go.*

A certain Nobleman came to see his Lordship this Day, and asked him some Questions concerning his Religion. To whom he answered, *That he was a Roman Catholick, and would die in that Faith: That he adhered to the Rock upon which Christ built his Church; to Saint Peter, and the Succession of Pastors from him down to the present Time; and that he rejected and renounced all Sects and Communities, that were rejected by the Church.* The Declaration of his being a *Jansenist* was occasioned by the same Nobleman's asking him, *Of what particular Sort of Catholicks? Are you a Jesuit?* *A Jesuit! No, no, my Lord,* answered he, *I am a Jansenist.* (The *Jansenists* are great Enemies to the *Jesuits*.) And then owned that he was acquainted with several in *France* that were *Jansenists*, and was more intimate with them, than any other learned and religious Men in that Kingdom; and upon this Occasion assured his Lordship, that, in his Sense of a *Roman Catholick*, he was as far from being one as his Lordship, or any other Lord in the House.

Having Occasion this Afternoon to speak of the late King *George I.* he gave his Majesty a great Character, and added, *He was my Friend, and I dearly loved him.* — But we do not think proper to insert the whole Conversation.

Tuesday. This Morning he rose as usual about Seven, and after drinking a Glass of Wine and Water, desired one of the *Warders* to lay a Pillow at the Feet of the Bed, that he might try whether he could kneel down properly, and fix his Head low enough for the Block; which being done, he made the Essay, and told the *Warder*, *He believed, by this short Practice, he should be able to act his Part in the Tragedy well enough.* He then asked the said *Warder*, if he thought the Executioner would be able to take off his Head without hacking him? *For*, says he, *I have reserved ten Guineas in a Purse, which he shall have if he does his Business well.*

My Lord, said a Gentleman that came to wait upon him, *I am sorry you should have Occasion for him at all.* To this his Lordship replied, *So I believe are many of those who were the Cause of my coming hither, and for aught I know, all of them will by and by.* *The taking off my Head, I believe, will do them no Service; but if it will, God bless them with it; though I cannot but think myself hardly dealt by: In the first Place, I was stripped of every thing, and might have wanted even the common Necessaries of Life, had not my Cousin, Mr. William Frazer, advanced a considerable Sum of Money to General Williamson, and promised on certain Conditions to pay for my farther Subsistence. And then, to be convicted by my own Servants, by the Men that had been nurtured in my own Bosom, and I had been so kind to, is shocking to human Nature; but I believe each of them has a Sting of Conscience on this*

Account, that will bear him Company to the Grave; though I am very far from wishing either of them any Evil. 'Tis a sad Thing, Sir, for a Man's own Servants to take off the Head of their Master and Chief. His Lordship then asked the Gentleman, how he liked the Letter he had sent to his Son? He answered, *I like it very well, it is a very good Letter.* *I think*, says his Lordship, *it is a Christian Letter.*

After this the Gentleman informed his Lordship, that one *Mr. Painter*, of *St. John's College, Oxon*, had sent three Letters, *viz.* one to the King, one to the Earl of *Chesterfield*, and the other to *Mr. Pelham*, desiring that he might suffer in his Lordship's Stead: And that *that* to his Majesty concluded in the following Manner; *In one Word, let Lovat live! Punish the vile Traitor with his Life, but let me die; let me bow down my Head to the Block, and receive, without Fear, that friendly Blow, which, I verily believe, will only separate the Soul from its Body and Miseries together.* At which his Lordship expressed his Surprise. *This*, says he, *is an extraordinary Man indeed! I should be glad to know what Countryman he is, and whether the Thing is Fact. Perhaps it may only be a Finesse in Politics, to cast an Odium on some particular Place or Person: But if there be such a Person, he is a Miracle in the present Age, and will be in the future, for he even exceeds that Text of Scripture, which says, Greater Love than this hath no Man, that a Man lay down his Life for his Friend. However, this Man offers to suffer for a Stranger, nay, for one that he stigmatizes with the Name of a vile Traitor. In short, Sir, I am afraid the poor Gentleman is weary of living in this wicked World, and, if that be the Case, the Obligation is altered, because a Part of the Benefit is intended for himself.*

Wednesday. This Morning, about Two o'Clock, his Lordship prayed very devoutly for a considerable Time, and called upon the Lord for Mercy, which he often did before, with great Fervency. After this he fell asleep, and we heard no more of him till *Six*, about which Time he called for the *Warder* to dress him, and seemed as gay as usual. About Ten o'Clock he sang Part of a Song, at which the *Warder* expressed his Surprise, and asked his Lordship, How he could be so merry, when he was to die Tomorrow? To which my Lord replied, that *he was as fit for an Entertainment as ever he was in his Life.* He then sent for *Mr. P——*, the Barber, whose Father, they tell me, is a *Muggletonian*: While his Lordship was shaving, he talked a good deal about his Father's Principles; and when he was shaved, *Well*, says he, *pray give my Service to your Father, and tell him I shall go to Heaven before him; for I find he does not expect to go till the Day of Resurrection, but I hope to be there in a few Hours.*

After this, he talked to a Gentleman who came to see him about some private Affairs, and then calling for a Basin of Water to wash himself, *Now, Gentlemen, I will shew you a Wonder*, says he, *you shall see a Man drown himself who was sentenced to be beheaded, and by that Means change the Law; and, Sir, I heartily wish it was in my Power to change all Things; if it was, I would make a thorough Change indeed.*

About this Time another of his Lordship's Friends came to wait upon him, with whom he had some Talk concerning the Bill depending

in Parliament with relation to the *Scotch Affairs*. His Lordship seemed very uneasy about it, and wished all those Gentlemen who voted for it had the S——r.

He then told them he would have his Body carried to *Scotland*, to be interred in his own Tomb in the Church of * *Kirk-Hill*; and said, that he had once made a Codicil to his Will, where all the Pipers from *Johnie Great's House* to *Edinburgh* were invited to play before his Corpse, for which they were to have a handsome Allowance; and though that might not be thought proper now, yet he was sure some of the good old Women in his Country would sing a *CORONACH* (a Ceremony used at Funerals, much like the *Irish Howl*) before him. *And then, says he, there will be old crying and clapping of Hands, for I am one of the greatest Chiefs in the Highlands.*

About this Time Sir *H. M.* and Sir *L. G.* came to take their Leaves of my Lord; he saluted them on their first coming in, but soon after told them, *If he had his broad Sword by him, he should not scruple to chop off their Heads, if he thought they were in the least concerned in bringing in or voting for the Bill now depending, for destroying the ancient Jurisdiction and Privileges of the Highland Chiefs.* And then added, *For my Part, I die a Martyr for my Country.*

After eating a hearty Dinner, he called one of the *Warders* to him: *Now, Willy, says he, give me a Pipe of Tobacco, and that will be the last I shall ever smook, unless People smook Tobacco in the other World.*

Soon after this, the Governor of the *Tower* came to pay him a Visit, when his Lordship arose, and offered him his easy Chair; which the Governor refusing, and saying he was sorry his Lordship should give himself the Trouble to rise out of his Seat on his Account, he answered, *What, Sir, I hope you would not have me be unmannerly the last Day of my Life.*

Upon the Governor's coming in, his Lordship deferred smoking his Pipe some Time longer, and talked about indifferent Matters. Mr. *William Fraser*, his Lordship's Agent, and Mr. *James Fraser*, came to wait on him at the same Time, with whom he talked a good while concerning his Family Affairs, and the Management of his Funeral.

After this he called again for his Pipe, and, while he was smoking, asked one of the *Warders*, if his Message was carried to my Lord *Traquair*, and what Answer he brought? *His Lordship,*

replied the *Warder, bids you an eternal Adieu, wishes you happy, and is offering up his Prayers for you. 'Tis very kind of him, says my Lord, and I thank him for it. Come, Mr. Southbey, says he to the Warder, give me some Water, and put a little Wine upon it. And then taking up his Tobacco-stopper, My Pipe is almost out, says he, as well as my Glais. He then asked about General Williamson's Family, spoke very kindly of the General; and being informed; that Miss Williamson was so affected that she could not take her Leave of his Lordship, God bless the dear Child, says he, and make her eternally happy, for she is a kind-hearted good Lass. After this, his Lordship sent a Message to the Cook, desiring her to roast a Piece of Veal, that it might be ready to mince for his Breakfast in the Morning. He then desired the *Warders* to sit down and smook with him, which they did, and drank a Glass of Wine, and wished his Lordship a good Journey. Amen, quoth my Lord; and then knocking the Ashes out of his Pipe, *Now, Gentlemen, says he, the End of all human Grandeur is like this Snuff of Tobacco.* His Lordship seemed to have a great Regard for his two *Warders*. After his Pipe was out, he thanked them kindly for taking so much Care of him; *And now, Gentlemen, says he, I have but one Favour more to ask of you; and that is, to go upon the Scaffold with me, and not leave me till you see this Head cut off this Body.* They both promised his Lordship; and afterwards one of them told him, that if ever he lived to see his Son the *Master of Lovat*, he would let him know with what Tenderness his Lordship parted with him. *Do, says my Lord, and he will take Notice of you: If he don't, he won't do well. But pray, says he, have you got any Wine for me in the Morning, and some Bitters, if I should want to carry any to the Scaffold?* Upon Inquiry, there was no Bitters left in the Bottle, and therefore his Lordship gave the *Warder* a Shilling to send for a Bottle of *Stoughton's Elixir*. When the Man was gone, the *Warder* recollected that there was some burnt Brandy and Bitters left in a Bottle, which his Lordship had with him to *Westminster-Hall*, when on his Trial, and informed him of it. *'Tis very well, very well, Sir, says he, pray take it in your Pocket, and give me a Sup if I should want it.* After this, a Circumstance happened which surprized me prodigiously. His Lordship, who was eighty Years of Age, took up a Book with a small Print, (I think it was the Size that the *Printers* call *Long-Primer*) and read by Candle-*

* In the Year 1736, Lord *Lovat* erected a stately Monument in the Church of *Kirk-Hill*, within a few Miles of *Castle-Downey*, with a pompous Inscription; the brave Sir *Robert Munro*, (who was killed at the Battle of *Falkirk*) being on a Visit to Lord *Lovat*, they went together to view the Monument. Sir *Robert*, upon reading the Inscription, in a free Manner, said, *Simon, how the Devil came you to have the Assurance to put up such a boasting romantic Inscription?* To which his Lordship answered, *The Monument and Inscription are chiefly calculated for the Frasers, who must believe whatever I their Chief require of them, and their Posterity will think it as true as the Gospel.* The Inscription is as followeth:

To the MEMORY of THOMAS Lord FRASER of LOVAT,

Who chose rather to undergo the greatest Hardships of Fortune; than to part with the ancient Honours of his House, and bore these Hardships with undaunted Fortitude of Mind:

This MONUMENT was erected by

SIMON Lord FRASER of LOVAT, his Son,

Who likewise having undergone many and great Vicissitudes of good and bad Fortune, through the Malice of his Enemies; He, in the End, at the Head of his Clan, forced his Way to his paternal Inheritance, with his Sword in his Hand, and relieved his Kindred and Followers from Oppression and Slavery:

And both at Home and in Foreign Countries, by his eminent Actions, in the War and the State, He has acquired great Honours, and Reputation.

*Hic tegit essa lapis SIMONIS fortis in armis,
Restituit pressum nam genus ille suum;
Hoc marmor posuit cari Genitoris honori,
In genus afflictum par erat ejus amor.*

light near two Hours without Spectacles. Upon Inquiry, I was informed that his Lordship never used any. I knew he did not in the Day-time, but I thought he could not be able to see without their Assistance by Candle-light. This, I suppose, might be owing to his Lordship's Manner of Living, as also was that Circumstance of his never having the Head-ach. I have observed already, that his Lordship was never drunk in his Life; and he has often declared, that he thought eating of Suppers was doing Violence to Nature, and committing a Sin against the Body. He seldom took any Breakfast; always made a very hearty Dinner, but never eat a Morsel for Supper. As his Lordship had a great Share of Learning, and spoke the *Latin, French, and English* fluently, and some other modern Languages indifferently, we asked his Lordship concerning his Education. He said, he studied some Years at *Aberdeen*, and disputed his Philosophy in *Greek*. From this Topic he went to Religion again, and assured us, that he was bred a Protestant; but going abroad, and having some Disputes with Father ***** , he found himself very much staggered in his Principles, and prayed to God to direct him in the right Way: That after this, he studied *Divinity* and *Controversy* three Years, and then turned *Roman Catholick*. *This is my Faith, says he, but I have Charity for all Mankind, and I believe every sincere honest Man bids fair for Heaven, let his Persuasion be what it will; for the Mercies of the Almighty are great, and his Ways past finding out.*

After this, he pulled out a Silver *Crucifix*, and either kissed it, or rubbed his Mouth with it, I do not know which. Then handing it about, *Here's a Crucifix, says he, did you ever see a better? Observe how strong the Expression is, and how finely the Passions are delineated. We keep Pictures of our best Friends, of our Fathers, Mothers, &c. and pray why should not we keep a Picture of him who has done more than all the World for us?*

His Lordship then asked some Question about Mr. *Secretary Murray*, which I cannot recollect, for indeed I did not very well understand it, and then said, *We had a better Secretary when the Association was signed.* After this, he mentioned Mr. *Sollicitor Murray*, and said, he was a great Man, and he believed would meet with some Promotion, if he was not too far North.

About Nine o'Clock he desired the *Warders* to undress him; and his Breeches, Shoes, and Stockings being pulled off, he stood before the Fire to warm him as usual. The *Warder* asked his Lordship, if he would please to go to Bed? *Not yet, says he, I will warm my Feet a little more first.* I think we have a very bad Fire, says the *Warder*.

That's not my Fault, quoth his Lordship, joking; you may e'en make a better an you like it. Which he did, and then standing up by his Lordship, told him, He was sorry that the Morrow was to be such a bad Day with him. *Bad! for what, says my Lord, do you think I am afraid of an Axe? 'Tis a Debt we all owe, and what we must all pay; and do not you think it better to go off in this Manner, than to linger with a Consumption, Gout, Dropsy, Fever, &c. though I must needs own, my Constitution is so good, that I could have lived twenty Years longer I believe, if I had not been called hither.* Here my Lord offered to put off his Coat and Waistcoat, and as it was his Custom to pull them off by the Bed-side, the

Warder reminded him of it. *Good now, says my Lord, I had forgot that I was so far from the Bed; but perhaps you might have forgot too, had your Head been to be cut off To-morrow.*

Thursday. On this fatal Day his Lordship awaked about Three o'Clock in the Morning, and prayed most devoutly. At Five he got up, called for a Glass of Wine and Water, according to his usual Custom, and seemed still as chearful as ever; then, being placed in his Chair, sat and read till Seven, when he called for another Glass of Wine and Water. About Eight o'Clock he desired Mr. *Sherrington*, one of the *Warders*, to send his Wig, that the Barber might have Time to comb it out. He then called for a Purse to put his Money in for the Executioner, and desired it might be a good one, *lest the Gentleman should refuse it.* Mr. *Southbey*, one of his Lordship's *Warders*, I remember, brought him two Purfes, the one a green Silk knit, and the other a yellow Canvas, but which his Lordship made choice of I really forget; *However, it was a Purse, as he observed, that no Man would dislike with Ten Guineas in it.*

As his Lordship was now within a few Hours of Death, and had behaved with such surprizing Intrepidity during his whole Confinement, I was the more particular in observing every little Incident that happened. But though he had a great Share of Memory and Understanding, and an awful Idea of Religion and a future State, I could never observe, in his Gesture or Speech, the least Shadow of Fear, or indeed any Symptoms of Uneasiness. His Behaviour was all of a Piece, and he was the same facetious Companion now, as he was before Sentence was passed against him. About half an Hour after Eight the Barber brought his Lordship's Wig, which not being powdered so much as usual, on account of its being a rainy Day, he seemed angry, and said, *That he went to the Block with Pleasure, and if he had a Suit of Velvet embroidered, he would wear it on that Occasion.* After this, he spoke to the Barber again about his Principles, and told him his Notions were extremely singular: *For the Soul, said he, is a spiritual Substance, and can no more be dissolved for a Time, or buried with the Body, than it can be annihilated entirely;* and at the same Time smiled. *My Lord, said the Barber, you will see that.* Yes, answered his Lordship, *I hope to be in Heaven by One o'Clock, or I should not be so merry now.* His Lordship then saluted the Barber, and bid him Farewel; and the Barber returned the Compliment, and wished my Lord a good Passage, for these were his Words.

At half an Hour after Nine his Lordship called for a Plate of minced Veal, eat very heartily, and desired the other Gentlemen that were with him to drink some Coffee or Chocolate, or both, which were brought for them; he then called for some Wine and Water, and drank the Healths of several of his Friends.

At Ten a terrible Accident happened upon the Hill, by the Fall of a Scaffold, which put all the People in great Confusion; several Persons were killed, and Numbers maimed and bruised. At Eleven the Sheriffs of *London* sent a Message to demand his Body, which being communicated to his Lordship, he desired the Curtains might be drawn, and that the Gentlemen would retire for a few Minutes while he said a Prayer, which Request was immediately complied

plied with; but in a little Time he called for them again, saying, *I am ready.*

When his Lordship had come down the first Pair of Stairs, General *Williamson* invited him into his Room to rest himself. On his first Entrance he paid his Respects to the Ladies with great Politeness, then to the Gentlemen, and talked very freely. He asked the General in the French Language, *Whether he might have the Honour to see his Lady, to return her his last Thanks for the Favours and Civilities he had received?* To which the General answered in the same Tongue, *My Spouse is so greatly affected with your Lordship's Misfortunes, that she cannot bear the Shock of seeing you at this Time, and begs to be excused.* He then made his Addresses to all the Company, and set out; but going down Stairs, he complained of them, (the Stairs) and said, they were very troublesome to him. When he came to the Door, he bowed to the People, and was then put into the Governor's Coach, and carried to the outer Gate, where he was taken out of the Governor's Coach, and delivered to the Sheriffs of the City of London and County of *Middlesex*, who conducted him in another Coach to a House near the Scaffold which had been lined with black Cloth for his Lordship's Reception: Here he was taken into their immediate Custody, and all his Friends and Relations denied Entrance; upon which his Lordship instantly applied to the Sheriffs for the Time being, and desired that his Friends and Relations, who accompanied him from the Tower, might be permitted to see him. Mr. Alderman *Alsop* came to the Bottom of the Steps himself, and desired his Lordship's Friends to walk up. After we entered, my Lord thanked the Sheriffs for this Favour, and said, *It was a considerable Consolation to him, that his Body fell into the Hands of Gentlemen of so much Honour;* and added, *I will give you, Gentlemen, and the Government no farther Trouble, for I shall make no Speech; though I have a Paper to leave, with which you may do as you think proper.* Here my Lord put his Hand in his Pocket, and delivered a Paper to one of the Sheriffs, and then told them, they might give the Word of Command when they pleased, and added, that he was accustomed to obey Command, *for he had been an Officer in the Army many Years.* After this a Gentleman present began to read a Prayer to his Lordship while he was sitting; but my Lord called one of the Warders who attended him to help him up, that he might kneel. He then said a Prayer by himself, which no body could hear; and turning about, was again set down in his Chair, and seemed very chearful. Mr. Sheriff then asked his Lordship, *If he would refresh himself with a Glass of Wine?* My Lord thanked him, but said, *He could not drink any without warm Water with it;* and that not being to be had in that Place, his Lordship took a little burnt Brandy and Bitters, which, as I observed before, he had ordered one of the Warders to take in his Pocket; and, turning to Mr. Sheriff, told him, *he was ready to go whenever he pleased.* My Lord, replied the Sheriff, *I would not hurry your Lordship;* and taking out his Watch, said, *There is half an Hour good, if your Lordship don't tarry too long upon the Scaffold.* My Lord then desired that his Cloaths might be delivered to his Friends with his Corpse, and not given to the Executioner, and said, *For that Reason he should give him (the Executioner) ten Guineas.*

He then asked, if he might have the *Axe* brought him to feel if it was sharp, and desired that his Head, when taken off, might be received in a Cloth, and put into the Coffin. At this Mr. Sheriff stepped aside, and observed to some Gentlemen present, *That he had received a Warrant in the usual Form for the Execution of his Lordship, and as it had not been customary of late Years to expose the Head at the four Corners of the Scaffold, he really thought he might indulge his Lordship with a Promise as to that Point, for he did not think he could expose the Head (though it was desired, and indeed ordered by a Message) without being liable to Censure;* adding withal, *That he was truly sensible of the Duty he owed his Majesty, and should always pay a great Regard to the Orders he received from his Grace the Duke of Newcastle, or any of the Ministry.* And then turning to his Lordship, told him, *That what he had desired should be punctually observed.* My Lord thanked Mr. Sheriff very kindly, and then saluted his Friends, and told them, *He hoped his Blood would be the last spilled on that Occasion.*

When his Lordship came into the Passage leading to the Scaffold, he called to a Gentleman, and asked his Name, who replied, it was *North.* Well, says he, *let it be North and Grey.* And added, with a Smile, *Come, my Lord North and Grey, conduct me to the Block.* When his Lordship was going up the Steps to the Scaffold, he looked round, and seeing so many People, *God save us,* says he, *why should there be such a Bustle about taking off an old grey Head, that cannot get up three Steps without two Men to support it?*

Here turning about, and observing one of his Friends very much dejected, his Lordship clapped him upon the Shoulder, and said, *Cheer up thy Heart, Man; I am not afraid, why should you?*

The first Person he fought when he came upon the Scaffold was the Executioner, who was immediately presented to him; and after he had made his Obeisance, my Lord put his Hand into his Pocket, and pulled out a Purse with ten Guineas, saying, *Here, Sir, is ten Guineas for you, pray do your Work well; for if you should cut and hack my Shoulders, and I should be able to rise again, I shall be very angry with you.* After this, he desired the Executioner to shew him the Axe, which he refused to do without Leave from the Sheriff; but upon Application, this Request was immediately granted; and when it was brought to him, he took hold of it, and feeling upon the Edge, said, *he believed it would do.* Then he rose from the Chair which was placed upon the Scaffold for him, and looked at his Coffin, on which was wrote, *Simon Dominus Fraser de Lovat, decollat. April 9, 1747, Ætat. suæ 80.*

He then sat down again, and repeated the following Line out of *Horace*:

Dulce et decorum est pro Patriâ mori.

In English,

'Tis a glorious and pleasant Thing to die for our Country.

And after that a Line out of *Ovid*:

*Nam genus et proceros, et quæ non fecimus ipsi,
Vix ea nostra voco.*

In English,

For those Things which were done either by our Fathers, or Ancestors, and in which we ourselves had no Share, I can scarcely call our own.

He then desired all the People to withdraw from him, except his two *Warders*, who supported his Lordship, while he said a Prayer. After this he called for Mr. *William Frazer*, his Lordship's Solicitor and Agent in *Scotland*; and holding up his Gold-headed Cane, said, *I deliver you this Cane in token of my Sense of your faithful Services, and of my committing to you all the Power I have upon Earth.* And then again embraced him. His Lordship now called for Mr. *James Frazer*, and embracing him also, said, *My dear James, I am going to Heaven, but you must continue to crawl a little longer in this evil World.* And taking his Leave of both, he delivered his Hat to Mr. *William Frazer*, and desired him to take care that the Executioner did not touch any of his Cloaths. He then took off his Wig, ordered his Cap to be put on, and putting off his Cloaths, delivered them with his Wig to Mr. *Frazer*; and having unloosed his Cravat and the Neck of his Shirt, he kneeled down to the Block, took hold of the Cloth which was placed to receive his Head, and pulled it close to him: But being placed too near the Block, the Executioner desired his Lordship would remove a little farther back, which he did; and having placed his Neck in a proper Manner, he told the Executioner he would say a short Prayer, and then drop his Handkerchief as a Signal. In this Posture he remained about half a Minute, and then threw his Hand-

kerchief upon the Floor, when the Executioner at one Blow sever'd his Head from the Body, which being received in a scarlet Cloth, was wrapped up, and, together with his Body, put into the Coffin, and carried in a Hearse back to the *Tower*, where it remained till Four o'Clock, and was then taken away by an Undertaker.

A Copy of the Paper delivered to the Sheriffs by Lord Lovat.

AS it may be reasonably expected I should say something of myself in this Place, I declare that I die a true, but unworthy Member of the Holy, Catholick, Apostolick Church.

As to my Death, I cannot but look upon it as glorious, * * * * *

I sincerely pardon all my Enemies, Persecutors, and Slanderers, from the highest to the lowest; whom God forgive, as I heartily do, and die in perfect Charity with all Mankind.

I sincerely repent of all my Sins, and firmly hope to obtain Pardon and Forgiveness for them, through the Merits and Passion of my blessed Lord and Redeemer Jesus Christ, into whose Hands I recommend my Soul. *Amen.*

*In the Tower;
April 9, 1747.*

L O V A T.



N U M B E R XXIII.

The Trial of William Owen, Bookseller, for Printing and Publishing a Libel, intituled, The Case of Alexander Murray, Esq; on an Information tried at Guildhall, London, Monday, July 6, 1752, before the Right Honourable the Lord Chief Justice Lee.

THE House of Commons, on *Wednesday, November 20, 1751,*

Resolved, That the Honourable *Alexander Murray*, Esquire, who on the 6th Day of *February*, in the last Session of Parliament, was, for dangerous and seditious Practices, in Violation and Contempt of the Authority and Privileges of this House, and of the Freedom of Elections, ordered by this House, to be committed close Prisoner to his Majesty's Gaol of *Newgate*, and was also at the same Time ordered by this House, to be brought to the Bar thereof, to receive his said Sentence there upon his Knees, and before the said Sentence was received by him, did, by a high and most dangerous Contempt in him of the Authority and Privilege of this House, and by persisting in the same, avoid the Execution of the said Sentence, during the Remainder of the said Session of Parliament, be now committed close Prisoner to his Majesty's Gaol of *Newgate*, for the said dangerous and seditious Practices, in Violation and Contempt of the Authority and

Privileges of this House, and of the Freedom of Elections.

Ordered, That Mr. *Speaker* do issue his Warrants accordingly.

Resolved, That the said *Alexander Murray* do receive the said Sentence, for his now being committed close Prisoner to his Majesty's Gaol of *Newgate*, at the Bar of this House, upon his Knees.

Ordered, That the Serjeant at Arms attending this House, do take the said *Alexander Murray* into his Custody, in order to his being brought to the Bar of this House, to receive the said Sentence.

A Complaint being made to the House, of a printed Pamphlet, intituled, "The Case of the Hon. *Alex. Murray*, Esq; in an Appeal to the People of *Great-Britain*; more particularly the Inhabitants of the City and Liberty of *Westminster*;"

The said Pamphlet was brought up to the Table, and read.

Resolved,

Resolved, nemine contradicente, That the said Pamphlet is an impudent, malicious, scandalous, and seditious Libel, falsely and most injuriously reflecting upon, and aspersing, the Proceedings of this House, and tending to create Misapprehensions of the same in the Minds of the People, to the Dishonour of this House, and in Violation of the Privilege thereof.

Resolved, nemine contradicente, That an humble Address be presented to his Majesty, humbly to desire his Majesty, that he will be graciously pleased to give Directions to his *Attorney-General* to prosecute the Authors or Author, the Printers or Printer, and the Publishers or Publisher, of the said scandalous Libel, in order that they may be brought to condign Punishment for the same.

Ordered, That the said Address be presented to his Majesty, by such Members of this House, as are of his Majesty's most Honourable Privy Council.

The Day following, Mr. Comptroller reported to the House, that their Address of Yesterday had been presented to his Majesty, and that his Majesty had commanded him to acquaint the House, that he had given Directions accordingly.

Accordingly he was tried on the following Information, July 6, 1752.

Of Michaelmas Term in the twenty-fifth Year of King George the Second.

London. **B**E it remembered, that Sir *Dudley Ryder*, Knight, *Attorney-General* of our present Sovereign Lord the King, who for our said present Sovereign Lord the King in this Behalf prosecuteth, in his proper Person cometh here into the Court of our said present Sovereign Lord the King, before the King himself at *Westminster*, on *Wednesday* next after three Weeks from the Feast-Day of *Saint Michael* in this same Term, and for our said present Sovereign Lord the King, giveth the Court here to understand and be informed, that *John Owen**, late of *London*, Bookseller, being a wicked, seditious, and ill-disposed Person, and having no Regard for the Laws of this Realm, nor for the public Peace and Tranquillity of this Kingdom, and well knowing that one *Alexander Murray*, late of the Parish of *St. George Hanover-Square*, in the County of *Middlesex*, Esquire, had been most justly and deservedly committed to his Majesty's Gaol of *Newgate*, in the City of *London*, by virtue of an Order of the Honourable House of Commons of this Kingdom then assembled in Parliament, for a most gross and flagrant Misbehaviour and Contempt committed by him the said *Alexander Murray*, against the said House, in refusing to submit to the Rules and Orders of the said House, and for acting in open Defiance of the Authority of the said House; but most unlawfully, wickedly, and maliciously, devising, contriving, and intending to asperse, scandalize and vilify the whole Body of the Commons of this Kingdom in Parliament assembled, and most wickedly and audaciously to represent their Proceedings in Parliament as cruel, arbitrary, and oppressive; and to make it be believed and thought, as if the Com-

mons in Parliament assembled, were a most wicked, base, and degenerate Set of Persons, and had acted in their legislative Capacity in open Violation of the Constitution of this Kingdom, and had most daringly prostituted their Power, and acted in Defiance of those Laws which had been made and provided for the Security and Welfare of the Subjects of this Kingdom; and also most unlawfully, wickedly, and audaciously to represent the said House of Commons as a Court of Inquisition; and most impudently to insinuate as if the Commitment of the said *Alexander Murray* to his Majesty's said Gaol of *Newgate* was founded in Violence and Oppression, and by that Means to arraign the public Justice and Proceedings of the said House, and to bring all the Commons of this Kingdom in Parliament assembled into an ill and bad Opinion, and into the utmost Hatred and Contempt, with all the Subjects of this Kingdom; and to raise, excite, and create most groundless and unreasonable Fears and Apprehensions in the Minds of all the said Subjects, as if the Rights and Liberties of all the Subjects of this Kingdom, and the very Constitution of the Kingdom itself, were in the utmost Peril and Danger of being totally subverted and overturned from an excessive and wanton Exercise of Power claimed by the said Commons; and thereby to move, incite, and stir up all the Subjects of this Kingdom in a most unwarrantable Manner to vindicate, maintain, and assert their said Rights and Liberties, without the least Reason, Colour, or Pretence for the same; and also by that Means to molest and disturb the happy State and the public Peace and Tranquillity of this Kingdom, at present so firmly and well established under the mild and gentle Government and Administration of our said present Sovereign Lord the King; upon the 29th Day of *June*, in the twenty-fifth Year of the Reign of our said present Sovereign Lord *George the Second*, by the Grace of God, of *Great-Britain, France and Ireland*, King, Defender of the Faith, and so forth, with Force and Arms at *London* aforesaid, (that is to say) at the Parish of *St. Dunstan in the West*, within the Ward of *Farringdon Without*, in *London* aforesaid, a certain wicked, false, scandalous, seditious, and malicious Libel, intituled, "The Case of the Hon. *Alex. Murray, Esq;* (meaning the said *Alexander Murray, Esq;* herein above mentioned,) in an Appeal to the People of *Great-Britain*; more particularly, the Inhabitants of the City and Liberty of *Westminster*," did most unlawfully, wickedly, seditiously, and maliciously, print and publish, and did cause and procure to be printed and published: In which said Libel, of and concerning the House of Commons of this Kingdom in Parliament assembled, and also of and concerning the said *Alexander Murray*, are contained (amongst other Things) divers wicked, false, feigned, scandalous, seditious, and malicious Matters, (that is to say) in one Part thereof according to the Tenor following, (to wit,) "Whatever Air of Importance a Person may appear to assume by thinking his particular Hardships a proper Object of the public Attention; yet there are Instances, wherein the public and private

* *Memorandum.* He is called all the Way in the Information *John Owen*, whereas his Name is *William Owen*. His Council at the Trial took no Notice of the Misnomer, intending if he had been found guilty (as I am informed) to have moved this Misnomer in Arrest of Judgment.

“ Interests are so intimately connected, that to
 “ let the latter pass unnoticed, would imply a
 “ tacit Resignation of the former. Upon this
 “ Principle, the Case of Mr. Murray (*meaning*
 “ *the said Alexander Murray*) may, without any
 “ Imputation of Vanity, be deemed worthy the
 “ Consideration of his Fellow-Subjects, (*meaning*
 “ *the Subjects of this Kingdom*): For though he
 “ alone may, hitherto, have felt the Weight of
 “ the Punishment, it is not known how soon
 “ they may experience the fatal Effects of the
 “ Precedent, — A Precedent founded on the
 “ most open Violation of the Constitution, the
 “ most daring Prostitution of Power, and in
 “ Defiance of those Laws provided for the Secu-
 “ rity and Welfare of a free People, (*again*
 “ *meaning the Subjects of this Kingdom*). But what
 “ renders this Appeal, from a Sentence of the
 “ Representatives, (*meaning the said Order * of this*
 “ *Kingdom so assembled in Parliament as aforesaid,*
 “ *by virtue of which he the said Alexander Murray*
 “ *was so committed to his Majesty's said Gaol of*
 “ *Newgate as aforesaid, for the Reasons aforesaid*)
 “ to the candid Judgment of their Constituents,
 “ (*meaning the Subjects of this Kingdom having a*
 “ *Right to vote in the Election of Members to serve*
 “ *in the Parliament of this Kingdom*) still more
 “ necessary, is, the peculiar Industry that has
 “ been practised, to impose upon the Public a
 “ false Representation of the Offence, (*meaning*
 “ *the said Misbehaviour and Contempt for which he*
 “ *the said Alexander Murray was so committed as*
 “ *aforesaid*) in order, if possible, to justify the
 “ unexampled Barbarity of the Prosecution:
 “ For whatever may have been the Pretence of
 “ vindicating the Honour and Dignity of a
 “ particular House, (*meaning the House of Commons*
 “ *of this Kingdom so assembled in Parliament as*
 “ *aforesaid*) it will too plainly appear, that greater
 “ Regard has been had to support the private
 “ Pique and personal Resentment of a certain
 “ turbulent Statesman; whose Ambition im-
 “ patient of Controul, and whose Avarice ab-
 “ horrent of Expence, determined him to offer
 “ up some exemplary Sacrifice to his devoted
 “ Thousands, and an impious Opposition to his
 “ all-sovereign Command.” And in another
 “ Part thereof, according to the Tenor following,
 “ (to wit,) “ The Inhabitants of Westminster,
 “ alarmed at the unconstitutional Proceedings
 “ carried on during the late Election, (*meaning*
 “ *the late Election of a Member to serve in the*
 “ *present Parliament of this Kingdom for the City*
 “ *and Liberty of Westminster, in the said County*
 “ *of Middlesex*) and exasperated to find a Repre-
 “ sentative imposed on them by the dictatorial
 “ Authority of one Man in Opposition to a
 “ scrutinized Majority, had Recourse to the
 “ House of Commons, (*meaning the House of*
 “ *Commons of this Kingdom then assembled in Par-*
 “ *liament*) flattering themselves that august As-
 “ sembly would vindicate their invaded Rights
 “ and Liberties, nor suffer the Invaders to escape
 “ with Impunity; accordingly a Petition (*meaning*
 “ *a Petition of the Burgesses and Inhabitants of the*
 “ *said City and Liberty*) was presented, complain-
 “ ing of a false Return, (*meaning the Return of*
 “ *the Member at the said Election to serve in the*
 “ *present Parliament of this Kingdom for the said*
 “ *City and Liberty*). — The d—l Faction, con-
 “ scious of their illegal Practices, and appre-

“ hending a Detection of them would inevitably
 “ be the Consequence of a free Inquiry into the
 “ Merits of the Election, (*again meaning the*
 “ *said Election of a Member to serve in the present*
 “ *Parliament of this Kingdom for the said City and*
 “ *Liberty*) determined at all Events to put a
 “ Stop to the Prosecution of it, (*meaning the said*
 “ *Petition*;) and, in order to strike the Peti-
 “ tioners with Terror, prevailed on their trusty
 “ Friend the High-Bailiff (*meaning one Peter*
 “ *Leigh, Esquire, the then High-Bailiff of the said*
 “ *City and Liberty, who was the proper Returning*
 “ *Officer at the said Election*) to assume the laud-
 “ able Character of Informer, and complain of
 “ some high Crimes and Misdemeanors com-
 “ mitted against his sacred Person; but the more
 “ effectually to answer the Purpose, took especial
 “ Care that the Objects of this Complaint should
 “ be some principal Witnesses in Support of the
 “ Petition, (*again meaning the said Petition of the*
 “ *said Burgesses and Inhabitants of the City and*
 “ *Liberty aforesaid, against the said Return so made as*
 “ *aforesaid*). However, as the Accusation against
 “ the High-Bailiff (*again meaning the said Peter*
 “ *Leigh, then High-Bailiff of the said City and*
 “ *Liberty*) was antecedent to his Complaint, it
 “ was thought, in Point of Regularity and
 “ Justice, that the Consideration of the latter
 “ should be postponed till the Determination of
 “ the former; more particularly as the Offences
 “ alledged to have been committed against this
 “ Magistrate (*again meaning the said Peter Leigh*)
 “ must necessarily appear upon hearing the Me-
 “ rits of the Petition. This having produced a
 “ Debate, and the S—r (*meaning Speaker,*
 “ *that is to say, meaning the Right Honourable*
 “ *Arthur Onslow, Esq; then Speaker of the House*
 “ *of Commons of this Kingdom*) being called upon
 “ to give his Opinion in Point of Form and
 “ Order, he (*again meaning the said Speaker*)
 “ declared, That, To begin by Inquiry into the
 “ Complaint of the High-Bailiff (*again meaning*
 “ *the said Peter Leigh, then High-Bailiff of*
 “ *the said City and Liberty as aforesaid*) was
 “ not only contrary to the Order and Method of
 “ Proceeding in that House, (*again meaning the*
 “ *said House of Commons*) but of every other
 “ Court of Justice, and inconsistent with Justice
 “ itself. Though these Reasons might have
 “ some Prevalence with Part of the House,
 “ (*again meaning the said House of Commons so*
 “ *assembled in Parliament as aforesaid*) neverthe-
 “ less a Majority determined, that the High-
 “ Bailiff's Complaint (*again meaning the said*
 “ *Complaint of the said Peter Leigh, then High-*
 “ *Bailiff of the said City and Liberty as aforesaid*)
 “ should be first heard, which if not sufficient to
 “ terrify the Petitioners (*again meaning the said*
 “ *Burgesses and Inhabitants of the said City and*
 “ *Liberty*) from their Pursuit of Justice, would
 “ at least produce the convenient Effect (to speak
 “ in the Phrase of an inferior Court) of sinking
 “ some material Evidence. Thus, by a Kind of
 “ Parliamentary Legerdemain, the Accused be-
 “ came the Accuser, and the Witness had the
 “ Mortification to find himself conjured into
 “ the Place of the Culprit. This equitable
 “ Determination brought Mr. Murray (*again*
 “ *meaning the said Alexander Murray*) to the
 “ Bar, (*meaning the Bar of the said House of*
 “ *Commons then assembled in Parliament as afore-*

* Whether it should not be “ *the said Order of the House of Commons of this Kingdom, &c.*”

“ said;) where, in Support of the grievous Charge
 “ exhibited against him by the High-Bailiff,
 “ (again meaning the said Peter Leigh, then High-
 “ Bailiff of the said City and Liberty) the follow-
 “ ing Witnesses were produced; and first, Mr.
 “ Baldwin (Deputy-Bailiff) and his Son appeared,
 “ who declared, *That Mr. Murray* (again mean-
 “ ing the said *Alexander Murray*) *came to their*
 “ *House, and said, that he was resolved that the*
 “ *High-Bailiff should not smuggle an Election; and*
 “ *that he and a thousand more had sworn, he* (again
 “ meaning the said *Peter Leigh*, then High-Bailiff
 “ as aforesaid) *should make the Declaration in*
 “ *the middle of Covent-Garden,* (meaning *Covent-*
 “ *Garden in the Parish of St. Paul Covent-Garden,*
 “ *in the said County of Middlesex, and within*
 “ *the City and Liberty aforesaid).* The Truth
 “ of the former Part of this Accusation Mr.
 “ *Murray* (again meaning the said *Alexander*
 “ *Murray*) was ingenuous enough to confess;
 “ —and indeed, if this Species of Parliamentary
 “ Smuggling was found necessary to be en-
 “ couraged for any private Reasons of State,
 “ no Wonder an actual Attempt to prevent it
 “ should be deemed culpable by those at the
 “ Helm: — But as in our Days this cannot even
 “ be supposed, surely the mere saying a Man
 “ should not do what he ought not to do, is
 “ a Crime of such a Nature, to which no Le-
 “ gislators have even yet thought proper of
 “ annexing a Penalty. With respect to the
 “ other Part, Mr. *Gascoigne*, and Mr. *Carne* the
 “ High-Constable, Gentlemen entirely disin-
 “ terested, testified, that they were present, and
 “ heard the former Words, yet they never heard
 “ the latter Expression; and what afforded the
 “ strongest presumptive Evidence against such a
 “ Declaration, was, that it evidently appeared
 “ no such Purpose was ever intended to be
 “ executed; or how easy would it have been
 “ for Mr. *Murray* (again meaning the said
 “ *Alexander Murray*) with his thousand Volun-
 “ teers, to have secured the Person of this
 “ Magistrate, (again meaning the said *Peter Leigh*,
 “ then High-Bailiff as aforesaid) when he met
 “ him (again meaning the said *Peter Leigh*)
 “ going to the Hustings unsupported by a single
 “ Peace-Officer or any other Attendant? But in
 “ order to turn the Scale entirely in Favour of
 “ Mr. *Murray*’s Innocence, the High-Bailiff
 “ himself was candid enough to acknowledge at
 “ the Bar, (again meaning the Bar of the said
 “ House of Commons so assembled in Parliament
 “ as aforesaid) that meeting Mr. *Murray* (again
 “ meaning the said *Alexander Murray*) in his
 “ Way from *Baldwin*’s to the Hustings, upon
 “ being asked the Question, he (again meaning
 “ the said *Peter Leigh*) did then declare, *That*
 “ *no Man could behave with more good Manners*
 “ *towards him* (again meaning the said *Peter*
 “ *Leigh*) *than Mr. Murray,* (again meaning the
 “ said *Alexander Murray*). Behold the next
 “ Witness coming forth in the Character of a
 “ Journeyman Button-trimmer, and declaring,
 “ *That he saw Mr. Murray* (again meaning the
 “ said *Alexander Murray*) *at the Head of a great*
 “ *Mob, who meeting a Chimney-Sweeper, asked him,*
 “ *Who he was for? — The Chimney-Sweeper an-*
 “ *swering, For Sir George,* (meaning *Sir George*
 “ *Vandeput*, Baronet, then a Candidate at the said
 “ Election of a Member to serve in the present
 “ Parliament for the said City and Liberty)—

“ Mr. *Murray* (again meaning the said *Alexander*
 “ *Murray*) replied, *Then you are an honest Fellow,*
 “ *but Lord Trentham* (meaning the Honourable
 “ *Granville Leveson Gower*, Esquire, commonly
 “ called Lord Viscount *Trentham*, the other
 “ Candidate at the said Election) *and the High-*
 “ *Bailiff* (again meaning the said *Peter Leigh*,
 “ then High-Bailiff of the said City and Liberty
 “ as aforesaid) *are two great Villains, or two great*
 “ *damn’d Villains and Rascals.* What delectable
 “ Dialogue! — Evidence how suited to the So-
 “ lemnity of a Senatorial Inquiry! — Must not
 “ the People (meaning the People of this Kingdom)
 “ entertain the highest Opinion of their legislative
 “ Deputies, (meaning the Commons of this Kingdom
 “ in this present Parliament assembled) when they
 “ see them seriously attending, *Auribus erectis*, to
 “ such important Discoveries? — But unluckily,
 “ had this heinous Article of Accusation the
 “ Sanction of Truth to enforce it, what Matter
 “ does it afford for the Cognizance of this Judi-
 “ cature? (meaning the said House of Commons so
 “ assembled in Parliament as aforesaid.) Especially,
 “ as it is allowed to have passed long after the
 “ Declaration (meaning the Declaration of the said
 “ *Peter Leigh*, the said High-Bailiff, by which
 “ the said *Granville Leveson Gower*, Esquire,
 “ commonly called Lord Viscount *Trentham*, was
 “ declared duly elected a Member to serve in the
 “ present Parliament for the said City and Liberty)
 “ was made? Persuaded I am, had the Noble
 “ Lord himself (again meaning the said *Granville*
 “ *Leveson Gower*, Esquire, commonly called Lord
 “ Viscount *Trentham*) given the least Credit to
 “ it, his punctilious Delicacy in Point of Honour
 “ would have expected a personal Explication
 “ from the Author of so scandalous an Indignity;
 “ nor is it to be imagined, a Person (again
 “ meaning the said *Granville Leveson Gower*,
 “ Esquire, commonly called Lord Viscount *Trentham*)
 “ who so valiantly manifested his Heroism in a
 “ late *French* Affair, would meanly buckle on
 “ the Armour of Privilege, and adopt a public
 “ Persecution in the Place of a private Resent-
 “ ment. The next Authority produced was that
 “ of a Tripe-man, who passing along *Henrietta-*
 “ *Street, at the same Time the High-Bailiff was*
 “ *going to the Cross-Keys, heard somebody behind*
 “ *him say, Is there no body will knock the Dog’s*
 “ (meaning the said *Peter Leigh*, then High-
 “ Bailiff as aforesaid, his) *Brains out; when*
 “ *clapping the High-Bailiff’s Footman on the Shoul-*
 “ *der, he told him, That is he who uttered those*
 “ *terrible Words, and then the Footman informed*
 “ *him that Person’s Name was Murray,* (meaning
 “ the said *Alexander Murray*). What a Janus-
 “ headed Witness is here! who from hearing
 “ Words uttered behind him in a Crowd, could
 “ identify the Person who spoke them? Did his
 “ Ears-furnish him with the Knowledge of the
 “ personal Figure of Mr. *Murray*, whom he does
 “ not pretend to know before the Footman’s
 “ Information? Or what kind of Inspiration
 “ enabled him to discover, that the particular
 “ Dog’s Brains meant by this Exclamation be-
 “ longed to the High-Bailiff? But were it
 “ possible to pay any Regard to such incon-
 “ sistent Evidence, still the Commission of this
 “ horrid Offence must have been at least two
 “ Hours after all Business relating to the *Sanctum*
 “ *Sanctorum* of *St. Stephen’s* Chapel was finished;
 “ consequently subject to the Notice of some
 “ less

“ less sacred Tribunal: — However ridiculous
 “ the Matter contained in these two last Articles
 “ of Impeachment may appear, it cannot be
 “ denied, but that it must have received a very
 “ notable Weight of Authority from the eminent
 “ Characters of the Witnesses, who, from their
 “ Situation in Life, must be concluded to have
 “ Understandings not to be imposed upon, and
 “ Principles of Honour not to be violated.
 “ What then will it avail the Cause of Mr.
 “ Murray with the Public, any more than with
 “ the Senate, (*again meaning the said House of
 “ Commons so assembled in Parliament as aforesaid*)
 “ to oppose the unquestionable Testimony of
 “ our Button-trimmer and Tripe-man with that
 “ of a Noble Lord, an Honourable Baronet,
 “ and a worthy Barrister? Nevertheless, as the
 “ same convincing Motives of Condemnation
 “ may not possibly influence the Verdict without
 “ Doors, I shall take the Liberty to produce the
 “ Authority of Lord Carpenter, who was pleased
 “ to declare at the Bar, (*again meaning the said
 “ Bar of the said House of Commons so assembled in
 “ Parliament as aforesaid*) that his Lordship and
 “ Mr. Murray (*again meaning the said Alexander
 “ Murray*) were together from the Time the
 “ Declaration (*again meaning the said Declaration
 “ of the said Peter Leigh, the said High-Bailiff,
 “ by which the said Granville Leveson Gower,
 “ Esquire, commonly called Lord Viscount Trentham,
 “ was declared duly elected as aforesaid*) was made
 “ till Dinner; that they were in Bedford-Street,
 “ where this great Mob was by the Button-
 “ trimmer said to be assembled, but never heard
 “ Mr. Murray (*again meaning the said Alexander
 “ Murray*) say any thing scurrilous of Lord
 “ Trentham (*again meaning the said Granville
 “ Leveson Gower, Esquire, commonly called Lord
 “ Viscount Trentham*) to a Chimney-sweeper or
 “ any other Person whatever. His Lordship
 “ farther said, that he was Arm-in-Arm with
 “ Mr. Murray (*again meaning the said Alexander
 “ Murray*) when the High-Bailiff passed close
 “ by them through the Church-Yard to the
 “ Cross-Keys, (*meaning the said Tavern, commonly
 “ called or known by the Name of the Cross-Keys
 “ Tavern*) which was near two Hours after the
 “ Declaration, (*again meaning the said Declaration
 “ so made by the said Peter Leigh, the said High-
 “ Bailiff as aforesaid*) but that he never heard
 “ Mr. Murray utter the Exclamation laid to his
 “ Charge by the Tripe-man; and that if he had
 “ made use of any such Expressions, apprehended
 “ they could not have passed unnoticed by him;
 “ that so far from inciting the People to knock
 “ the High-Bailiff’s (*again meaning the said Peter
 “ Leigh, then High-Bailiff of the said City and
 “ Liberty as aforesaid, his*) Brains out, his Lord-
 “ ship declared, Mr. Murray (*again meaning the
 “ said Alexander Murray*) advised them, *To
 “ leave him* (*again meaning the said Peter Leigh*)
 “ *to the Remorse of his own Conscience; assuring
 “ them, that would be a more severe Punishment than
 “ any they could inflict.* Sir John Tyrrell and Mr.
 “ Gascoigne, who were likewise close by Lord
 “ Carpenter and Mr. Murray (*again meaning the
 “ said Alexander Murray*) when the High-Bailiff
 “ passed from the Church to the Tavern, were
 “ called to corroborate this Evidence; which, in
 “ an Assembly where most of its Members were
 “ so well acquainted with his Lordship’s Veracity
 “ and Honour, may seem an Act of Super-

“ rogation. In the Course of this Examination,
 “ Lord Carpenter having said, that he and Mr.
 “ Murray were together all the Time, from the
 “ Declaration till Dinner, and Sir John Tyrrell
 “ being asked, if his Lordship was with Mr.
 “ Murray when he first saw him, and answering
 “ he believed not, one of the Members (*meaning
 “ one of the Members of the said House of Commons
 “ so assembled in Parliament as aforesaid*) (remark-
 “ able for his insuperable Modesty) exulted on
 “ his Sagacity, in having, as he imagined, a
 “ notorious Contradiction in the Evidence; but
 “ when it is considered, that Sir John Tyrrell
 “ never saw Lord Carpenter till that Day, it will
 “ require no great Stretch of Credulity, to believe
 “ that Sir John might talk a Minute or two with
 “ Mr. Murray in a Crowd, without particularly
 “ remarking a Person who was with him, and
 “ who at that Time was an absolute Stranger to
 “ him. Lo! from this Mountain of Contra-
 “ diction, *ridiculus mus nascitur*; which however
 “ was scandalously urged as sufficient to in-
 “ validate the Testimony of two such Honourable
 “ Persons! To what pitiful Shifts must this
 “ Faction be reduced, when obliged to have
 “ Recourse to a Quibble, the most contemptible
 “ legal Pettyfogger would blush to be guilty of?
 “ The Reason of Lord Carpenter’s and Mr.
 “ Murray’s staying so long was, to use their
 “ Endeavours to prevent any Insult being offered
 “ to the High-Bailiff; not perhaps out of any
 “ Regard to the extraordinary Merits of that
 “ worthy Gentleman, but being sensible that
 “ they should be made the Victims to expiate
 “ any unlucky Accident that might happen; and
 “ that this Apprehension was not ill grounded,
 “ evidently appears from the Fate of Mr. Murray,
 “ even when no Accident happened at all. Now
 “ appears the celebrated Mr. Pond, who is to
 “ give the *Coup de Grace*. — Hear him then alarm
 “ the House (*again meaning the said House of
 “ Commons so assembled in Parliament as aforesaid*)
 “ by declaring, *That he heard Mr. Murray say
 “ in the Mount Coffee-house some Days after the
 “ Declaration* (*again meaning the said Declaration
 “ so made by the said Peter Leigh, the said High-
 “ Bailiff as aforesaid*) *was made, that if his
 “ Advice had been taken, and the Rails of the Portico
 “ cut down, the High-Bailiff* (*again meaning the
 “ said Peter Leigh, then High-Bailiff of the said
 “ City and Liberty as aforesaid*) *durst not have
 “ returned Lord Trentham. Heavy Charge!*
 “ Nor can the Truth of it admit of any Dispute,
 “ when authenticated by the Declaration of so
 “ worthy a Person, honoured with the Confidence
 “ of the highest-born Gamblers, and constantly
 “ employed by them in the commendable Qua-
 “ lity of Bet-Broker; nay, who during the Time
 “ of the Election (*meaning the said late Election
 “ of a Member to serve in the present Parliament
 “ of this Kingdom for the said City and Liberty*)
 “ is said to have very industriously exercised his
 “ Profession, by laying considerable Sums for
 “ the Noble Candidate himself on the Event of
 “ his Return, (*meaning his Return as a Member to
 “ serve in the present Parliament of this Kingdom*).
 “ But how atrocious the Matter contained in this
 “ Accusation, to suppose (so long after) *that* to
 “ have happened which did not happen, certainly
 “ justifies the Extremity of Punishment, as the
 “ Supposition of a Fact is doubtless more crimi-
 “ nal than the Execution of it. Had the Iron
 “ Rails

“ Rails been cut down, what ought to have been
 “ the Consequence? Mr. Murray ought to have
 “ been punished. But the Iron Rails were not
 “ cut down; — what is the Consequence? Mr.
 “ Murray (*again meaning the said Alexander*
 “ Murray) is punished. Excellent Reasoning!
 “ righteous Determination! Could the bare In-
 “ timation that he was the Adviser of such a
 “ curious Stratagem be sufficient to condemn
 “ him, (*again meaning the said Alexander Murray*)
 “ when it does not appear that he ever actually
 “ gave this Advice to any Person whatever, or
 “ that the least Attempt was made in conse-
 “ quence of it? Who knows not that an Overt-
 “ Act is required to the Conviction of a Person
 “ for High Treason against the King himself?
 “ yet behold! no such legal Nicety is thought
 “ necessary to constitute a *lesa Majestas* against
 “ the Honourable House, (*again meaning the said*
 “ *House of Commons so assembled in Parliament as*
 “ *asore said*). It is observable throughout the
 “ whole Course of the Evidence, that not so
 “ much as any one Act whatever is pretended to
 “ have been committed by Mr. Murray, not even
 “ any oral Offence, (except that at Baldwin’s,
 “ with which the High-Bailiff (*again meaning the*
 “ *said Peter Leigh, then High-Bailiff of the said*
 “ *City and Liberty as asore said*) was not, till long
 “ after, acquainted) which was not subsequent
 “ to the Declaration. How then could the
 “ Returning Officer (*again meaning the said Peter*
 “ Leigh) produce it in Support of a Charge,
 “ founded on delaying the Election, (*again*
 “ *meaning the said Election of a Member to serve*
 “ *in the present Parliament of this Kingdom for the*
 “ *said City and Liberty*) by obstructing him in
 “ the Execution of his Office? (*meaning the*
 “ *Office of the said Peter Leigh as High-Bailiff*
 “ *of the said City and Liberty*). Did he (*again*
 “ *meaning the said Peter Leigh*) cunningly dis-
 “ cover Obstructions after the Completion of his
 “ Duty, which he was not sensible of, during
 “ the Exercise of it? Or by what Kind of Logic
 “ does it follow, that the treasonable Words
 “ against the Noble Lord’s Honour, the terrify-
 “ ing Exclamation against the High-Bailiff’s
 “ Brains, or the Coffee-house Supposition con-
 “ cerning the Rails, could occasion this criminal
 “ Delay in the Election, (*again meaning the said*
 “ *Election of a Member to serve in the present*
 “ *Parliament of this Kingdom for the said City and*
 “ *Liberty*) when all must have happened long
 “ after the arbitrary Fiat had passed the hallowed
 “ Lips of one Member-making Magistrate?
 “ Such is the Charge, and such is the Proof
 “ of it, that induced the Protectors of British
 “ Liberty (*again meaning the said House of Commons*
 “ *so assembled in Parliament as asore said*) to con-
 “ demn a British Subject (*again meaning the said*
 “ Alexander Murray) to close Confinement in a
 “ loathsome Prison, appropriated for the Re-
 “ ception of Thieves and Murderers, with every
 “ other Species of the meanest and most profligate
 “ Offenders. But even this severe Exertion of
 “ Power was deemed too favourable, and must
 “ be embittered by the additional Cruelty of
 “ some still more mortifying Circumstances.
 “ Mr. Murray (*again meaning the said Alexander*
 “ Murray) must receive this hard Sentence
 “ (*meaning the Order of the said House of Commons*
 “ *so assembled in Parliament as asore said, by virtue*
 “ *of which he the said Alexander Murray was so*

“ committed and sent to his Majesty’s said Gaol of
 “ Newgate as asore said) upon his Knees. Though
 “ his Resolution might enable him to support
 “ the former Part of the Judgment, (*again mean-*
 “ *ing the Order asore said*) his Spirit would by no
 “ means suffer him to pay a slavish Submission
 “ to the latter; for had this reverential Token
 “ of Submission been made the Price of his
 “ Acquittal, he should have thought the Penalty
 “ at least equalled the Degree of his Guilt;
 “ much less could he think of making so humble
 “ an Acknowledgment of so extraordinary a
 “ Condemnation. However, this Refusal being
 “ held a high Insult on the Dignity of the House,
 “ (*again meaning the said House of Commons so*
 “ *assembled in Parliament as asore said*) a fresh
 “ Article of Pains and Penalties was invented,
 “ and the Use of Pen, Ink, and Paper prohi-
 “ bited; which, though in Cases of Conspiracy
 “ and Treason, had been practised by way of
 “ Precaution, was seldom known to have been
 “ inflicted by way of Punishment. The d——l
 “ Faction, finding the Vengeance they had pro-
 “ cured far from being justified by the Sense of
 “ the Public, industriously endeavoured to pro-
 “ pagate an erroneous Belief, that the Severity
 “ proceeded merely from Mr. Murray’s Ob-
 “ stinacy, when on the Face of the Proceedings
 “ it appears, that every Part of this tremendous
 “ Sentence (*again meaning the Order asore said*)
 “ (except what relates to Pen, Ink, and Paper)
 “ was resolved two Hours before it could possibly
 “ be known, that Mr. Murray (*again meaning the*
 “ *said Alexander Murray*) would be guilty of so
 “ sacrilegious a Contumacy, as to refuse Knee-
 “ worship to the assumed Divinity of his Judges,
 “ (*again meaning the Commons of this Kingdom so*
 “ *assembled in Parliament as asore said*). While
 “ Mr. Murray (*again meaning the said Alexander*
 “ Murray) (in Custody of a Messenger) waited
 “ the Determination of the House, (*again meaning*
 “ *the said House of Commons so assembled in Parlia-*
 “ *ment as asore said*) some Friends came to him,
 “ and, with a generous Concern, acquainted
 “ him with the former Part of his Judgment
 “ (*again meaning the Order asore said*): And though
 “ he (*again meaning the said Alexander Murray*)
 “ might possibly entertain some Reliance on the
 “ Equity of those, (*again meaning the Commons of*
 “ *this Kingdom so assembled in Parliament as asore-*
 “ *said*) who were chosen by the People (*meaning*
 “ *the People of this Kingdom, having a Right to*
 “ *vote in the Election of Members to serve in the*
 “ *Parliament of this Kingdom*) to defend their
 “ Liberties and Properties; yet he was the less
 “ surprized, having been informed, that his
 “ Fate was determined some Weeks before at
 “ White’s; where very large Sums had been laid
 “ upon his Commitment, (*meaning his the said*
 “ Alexander Murray’s Commitment to his Majesty’s
 “ said Gaol of Newgate as asore said) and was
 “ advised to fly his Country, in order to evade
 “ the Fury of these sporting Legislators, who it
 “ was apprehended might not pay the most
 “ conscientious Regard to their public Trust,
 “ when placed in Competition with their private
 “ Advantage. With what Indignation must this
 “ Sentence inspire every Reader, who has im-
 “ bibed the least Spark of public Spirit! And
 “ how much more will he be alarmed when
 “ acquainted with the rancorous Execution of it?
 “ Let us then attend this injured Gentleman

“ (again meaning the said Alexander Murray) to
 “ his Dungeon; at which arriving at about Four
 “ o’Clock in the Morning, the sixth Day of
 “ February, notwithstanding he had been ill for
 “ several Days before, he was conducted into a
 “ Room (meaning a Room in his said Majesty’s
 “ Gaol of Newgate) the Windows of which were
 “ shattered, and the Walls plentifully bedewed
 “ with Moisture, proceeding from the unwhole-
 “ some Situation of the Place, and not having
 “ had an unhappy Tenant in it during some
 “ Years. These unsalutary Circumstances soon
 “ encreased his Indisposition, and the third Day
 “ brought on a violent Fever. Mr. Murray
 “ (again meaning the said Alexander Murray) sent
 “ the Person who looks after the Convicts (and
 “ was likewise the only Attendant allowed) to
 “ procure him (again meaning the said Alexander
 “ Murray) the Assistance of an Apothecary or
 “ Surgeon; but this Benefit, which was never
 “ refused the most flagitious Offender, was not
 “ to be indulged him. Mr. Akerman (meaning
 “ one Richard Akerman, Keeper of his Majesty’s
 “ said Gaol of Newgate) pleaded the peremptory
 “ Orders he had received from the House (again
 “ meaning the said House of Commons so assembled in
 “ Parliament as aforesaid) in Excuse of his Re-
 “ fusal.” And in another Part thereof according
 “ to the Tenor following, (to wit,) “ Ten Weeks
 “ did Mr. Murray (again meaning the said
 “ Alexander Murray) support this rigorous
 “ Treatment, debarred the Sight of any Face he
 “ had ever seen before, except that of his
 “ Doctor’s, while (though in this Condition)
 “ treble Doors were thought necessary to secure
 “ him, the numerous Locks and Bolts of which
 “ furnished a Sound, not much less entertaining
 “ than would have seemed that of his Passing-
 “ Bell. About the middle of April, Mr. Murray
 “ (again meaning the said Alexander Murray) was
 “ again seized in such a Manner that his Attend-
 “ ant, or rather Guardian, who had been tried
 “ for his Life, and whose Employment consisted
 “ in locking up the Convicts in their Cells,
 “ (meaning the Cells in his Majesty’s said Gaol of
 “ Newgate); an Occupation not very apt to
 “ inspire the tenderest Sentiments: Yet, I say,
 “ even this very Fellow was so melted with Pity
 “ and Compassion, to behold Mr. Murray’s
 “ (meaning the said Alexander Murray his)
 “ Agonies, occasioned by an Inflammation in his
 “ Bowels, that he would not stir from him that
 “ Night. Lord Elibank calling next Morning
 “ to inquire after his Brother’s (meaning the said
 “ Alexander Murray his) Health, our Prefs-
 “ Yard Valet expressed his Apprehensions that
 “ he (again meaning the said Alexander Murray)
 “ could not live; but being informed the Doctor
 “ (meaning one Dr. Lamont, Physician to the said
 “ Alexander Murray) had been there as soon as
 “ the Prison Gates were opened, his Lordship
 “ immediately went to him, and requested he
 “ would acquaint the House (again meaning the
 “ said House of Commons so assembled in Parliament
 “ as aforesaid) with his Brother’s (meaning the
 “ said Alexander Murray his) imminent Danger.
 “ Upon Dr. Lamont’s Representation, Mr. Palmer,
 “ Deputy-Serjeant, attended by a Messenger,
 “ came to Newgate (meaning his Majesty’s said
 “ Gaol of Newgate) in the Evening, with an
 “ Order to move Mr. Murray (again meaning the
 “ said Alexander Murray) directly. At their

“ Entrance they found him (again meaning the
 “ said Alexander Murray) upon the Bed, and
 “ the Sheets, which had been soaked through,
 “ reeking at the Fire. Mr. Murray (again
 “ meaning the said Alexander Murray) inquired
 “ of Mr. Palmer the Reason of so sudden a
 “ Resolution? who replied, it was owing to the
 “ Physician’s Information of his Danger, and
 “ that the House, (again meaning the said House of
 “ Commons so assembled in Parliament as aforesaid)
 “ from its wonted Humanity, had ordered him
 “ (again meaning the said Alexander Murray) to
 “ be carried to a Messenger’s. And surely,
 “ removing a Person from Newgate to Westminster,
 “ with an Inflammation in his Bowels, and in a
 “ high Fever, must be allowed a very extraordi-
 “ nary Act of Humanity! However, the Force
 “ of Mr. Palmer’s Rhetoric was not sufficient to
 “ prevail on Mr. Murray (again meaning the said
 “ Alexander Murray) to be of that Opinion;
 “ who absolutely refused to accept of this un-
 “ merciful Mercy; though there is Reason to
 “ believe his Refusal would have availed him
 “ little, had not his Physician, (again meaning the
 “ said Dr. Lamont) who chanced to be present,
 “ declared his Opinion, that a Removal would
 “ be attended with certain Death. This Au-
 “ thority justified Mr. Palmer for not putting his
 “ Warrant in Execution; and upon Mr. Murray’s
 “ (meaning the said Alexander Murray his) asking
 “ him what the House (again meaning the said
 “ House of Commons so assembled in Parliament as
 “ aforesaid) intended to do with him (again
 “ meaning the said Alexander Murray) at the
 “ Messenger’s, he answered, To confine him
 “ (again meaning the said Alexander Murray) there
 “ till his Recovery; but that no body was to be
 “ admitted to him, (again meaning the said
 “ Alexander Murray); and if he (again meaning
 “ the said Alexander Murray) did not then make
 “ his Submission upon his Knees, he (again
 “ meaning the said Alexander Murray) would
 “ be remanded back to Newgate, (again meaning
 “ his Majesty’s said Gaol of Newgate). As the
 “ ten Weeks severe Sufferings had not been able
 “ to convince Mr. Murray (again meaning the
 “ said Alexander Murray) of the Heinousness of
 “ his Offence, he replied, that he would not
 “ consent to it upon such Terms, and that he
 “ would rather die ten thousand Deaths than
 “ violate his Conscience by a Confession of
 “ Guilt; and, by a scandalous Submission, give
 “ a Sanction to Proceedings (meaning the said
 “ Proceedings of the said House of Commons against
 “ the said Alexander Murray) so manifestly
 “ founded in Oppression and Injustice.” And
 “ in another Part thereof according to the Tenor
 “ following, (to wit,) “ Let us next behold this
 “ Gentleman (again meaning the said Alexander
 “ Murray) appealing from the Violence of
 “ Power (meaning from the Order aforesaid) to
 “ the Protection of Law, and claiming the
 “ Benefit of that sacred Act, (meaning the Act of
 “ Parliament made in the thirty-first Year of the
 “ Reign of his late Majesty King Charles the Second,
 “ intituled, An Act for the better securing the
 “ Liberty of the Subject, and for Prevention of
 “ Imprisonment beyond the Seas,) which, how-
 “ ever it may sometimes have been suspended for
 “ the public Safety, has scarce ever been violated
 “ on private Occasions. Mr. Murray (again
 “ meaning the said Alexander Murray) having
 “ determined

“ determined to apply for his *Habeas Corpus*,
 “ Council was first to be procured; but who
 “ would imagine, that amongst the Swarm of
 “ Legal Orators, not one of any Eminence was
 “ to be found, who had Resolution enough to
 “ engage in the Cause of so obnoxious a Client?
 “ The *British In—n* (meaning *Inquisition*, that
 “ is to say, meaning the said House of Commons so
 “ assembled in Parliament as aforesaid) had struck
 “ such a Panic throughout the Regions of Law
 “ and Justice, that even the all-powerful Fee
 “ was unable to subdue the Timidity of the
 “ mercenary Professors; but at the Request of
 “ Lord *Elibank*, an honourable Gentleman*, who
 “ had long abandoned the Business of the Bar,
 “ stood forth, and gloriously despising any
 “ Penalty he might incur for vindicating the
 “ invaded Laws and Constitution of his Country,
 “ moved the Court of *King’s-Bench*, that Mr.
 “ *Murray* (again meaning the said Alexander
 “ *Murray*) might be brought up and admitted
 “ to Bail.” And in another Part thereof ac-
 “ cording to the Tenor following, (to wit,)
 “ Though by this Application Mr. *Murray*
 “ (again meaning the said Alexander *Murray*)
 “ was rescued for a few Hours from his Con-
 “ finement, it was only to hear the pious Judges
 “ of that Court pronounce the mortifying Sen-
 “ tence of his Return to his Dungeon; founded
 “ upon this Principle of Law, That the House of
 “ Commons (meaning the House of Commons of
 “ this Kingdom in Parliament assembled) was a
 “ superior Court of Judicature to the *King’s-*
 “ *Bench*. Had the Constitution (meaning the
 “ Constitution of this Kingdom) complimented that
 “ House (again meaning the House of Commons of
 “ this Kingdom in Parliament assembled) with such
 “ executive Authority, it would certainly have
 “ been empowered to examine upon Oath; a
 “ Circumstance absolutely necessary in the Ad-
 “ ministration of Justice. What then is become
 “ of this boasted Barrier of *British Liberty*, the
 “ *Habeas Corpus Act*? (again meaning the *Act* of
 “ *Parliament* herein above-mentioned). What shall
 “ distinguish *Britons* from those who groan under
 “ the most arbitrary Governments, if subject to
 “ the like tyrannical Acts of Oppression? And
 “ what shall defend a free People (meaning the
 “ *People* of Great-Britain) from these, whenever
 “ their Representatives (again meaning the *Com-*
 “ *mons* of this Kingdom in Parliament assembled)
 “ shall think fit to constitute themselves their
 “ Judges, and wantonly inflict the severest Pains
 “ and Penalties by virtue of their mere Will and
 “ Pleasure? More especially, as from this awful
 “ Tribunal (again meaning the said House of *Com-*
 “ *mons* so assembled in Parliament as aforesaid) no
 “ Appeal is to be permitted, except to that only
 “ superior one of Heaven; and indeed who
 “ knows but even this might be tortured into a
 “ high Breach of Privilege, as arraigning the
 “ Omnipotence of their terrestrial Jurisdiction?
 “ (meaning the Jurisdiction of the said House of
 “ *Commons* so assembled in Parliament as aforesaid).”
 And in another Part thereof according to the
 Tenor following, (to wit,) “ If there lives
 “ any one so abandoned to a Love of Slavery,
 “ as to remain unmoved by this Narrative, I
 “ shall leave him in Possession of his Chains,
 “ and think them the most suitable Ornaments
 “ for so degenerate a Member of a free Country,
 “ (meaning Great-Britain). But satisfied I am,
 “ every uncorrupted *Briton* will be roused at a
 “ Scene much more becoming the Meridian of
 “ an Oriental Tyranny than the Region of *British*
 “ Liberty; and though the Injury done a private
 “ Subject of the Community (again meaning the
 “ said Alexander *Murray*) should make little
 “ Impression; yet, surely the Wound which the
 “ Constitution itself (again meaning the Constitution
 “ of this Kingdom) has received through him
 “ (again meaning the said Alexander *Murray*)
 “ must awake the most alarming Apprehensions.
 “ What has been the Fate of one (again meaning
 “ the said Alexander *Murray*) may prove that of
 “ Thousands; especially when it is considered,
 “ that the Statesman is no less apt to quote the
 “ Authority of Precedent than the Lawyer:
 “ Who then, at any future Election, (meaning an
 “ Election of a Member to serve in the Parliament
 “ of this Kingdom) shall be hardy enough to
 “ exercise the Rights of a free Elector, (meaning
 “ a Subject of this Kingdom having a Right to
 “ vote in the Election of a Member to serve in
 “ the Parliament of this Kingdom) when even an
 “ Approach to the Hustings, without a minist-
 “ terial Passport, has been deemed so criminal?
 “ Who, hereafter, but must tamely acquiesce in
 “ the authoritative Decision of a Returning
 “ Officer, (meaning an Officer having a Right to
 “ return Members to serve in the Parliament of this
 “ Kingdom) when a regular Impeachment of it is
 “ held to be such a Parliamentary Profanation?
 “ These Essentials in their Creation once removed,
 “ must not a House of Commons (again meaning
 “ the House of Commons of this Kingdom in Parlia-
 “ ment assembled) become rather a *Turkish Divan*
 “ than a *British Representative*? And when this
 “ Constitutional Battery, (again meaning the House
 “ of Commons so assembled in Parliament as aforesaid)
 “ raised to defend the People (meaning the People
 “ of Great-Britain) from the Attacks of arbitrary
 “ Power, shall, by the Intrigues of a State-
 “ Engineer, be once turned upon them, (again
 “ meaning the People of this Kingdom) what remains
 “ but to surrender at Discretion? — When one
 “ Part of the Legislature (again meaning the said
 “ House of Commons so assembled in Parliament as
 “ aforesaid) assumes a Privilege peculiar to an-
 “ other, or wrests the Cognizance of Causes
 “ from those Courts erected for the Deter-
 “ mination of them, what Confusion will not
 “ arise in the System of Government? And in-
 “ deed what Security the People (again meaning
 “ the People of Great-Britain) are to expect in
 “ such an Anarchy of Administration, the Case
 “ of Mr. *Murray* (again meaning the said Alex-
 “ ander *Murray*) too fatally evinces. Though
 “ the Law of the Land has provided, that every
 “ Subject shall be tried by his Jury, have we
 “ not seen a particular Power (again meaning the
 “ said House of Commons so assembled in Parliament
 “ as aforesaid) uniting the three inconsistent
 “ Capacities of Judge, Jury, and Prosecutor?
 “ And though an express Provision has been
 “ made against excessive Pains and Penalties,
 “ have not the most severe been inflicted (mean-
 “ ing inflicted upon the said Alexander *Murray*)
 “ even for no Offence? But to conclude in the
 “ Words of a Noble Author: “ *This could not*
 “ *happen if there was the least Spirit among us,*
 “ (again meaning the People of Great-Britain);
 “ *but there is none. The Moderation we* (again
 “ meaning the People of Great-Britain) *have seen*
 “ *practised,*

* Sir John *Phillips*, Bart.

“ *practised, is Pusillanimity: Hence it comes that Corruption has spread and prevails. Consider then you (again meaning the People of Great-Britain) owe to your Country, (again meaning Great-Britain) to your Honour, to your Security, to the present and future Ages, that no Endeavours of yours be wanting to repair the Breach that is made, and is encreasing daily, in the Constitution, (again meaning the Constitution of this Kingdom) and to shut up, with all the Bars and Bolts of Laws, the principal Entries through which these Torrents of Corruption (and Oppression) have been let in upon us,*” (again meaning the People of Great-Britain). To the great Scandal and Dishonour of all the Commons of this Kingdom in Parliament assembled, and in high Contempt of their Authority, to the great Disturbance of the public Peace and Tranquillity of this Kingdom, in Contempt of our said present Sovereign Lord the King and his Laws, to the evil and pernicious Example of all others in the like Case offending, and also against the Peace of our said present Sovereign Lord the King, his Crown, and Dignity. Whereupon the said Attorney-General of our said present Sovereign Lord the King, for our said present Sovereign Lord the King, prayeth the Consideration of the Court here in the Premises, and that due Process of Law may be awarded against him the said *John Owen* in this Behalf, to make him answer to our said present Sovereign Lord the King, touching and concerning the Premises aforesaid.

The Council for the King were,

Sir *Dudley Rider*, Attorney-General, } who spoke.
Mr. *Murray*, Sollicitor-General, }
Sir *Richard Lloyd*, King's Council.
Mr. *Yorke*, who opened.

Council for the Defendant, *William Owen* :

Mr. *Ford*, } who spoke.
Mr. *Pratt*, }
Mr. *Williams*,
Mr. *Davy*,
Mr. *Norton*,
Mr. *Gascoigne*.

Special Jury.

Richard Barwell, of *Bread-Street*, Merchant,
Foreman.
John Horton, *Old Fish-Street*, Sugar-Baker.
Thomas Smith, *Walling-Street*, Linen-Draper.
Godfrey Lowe, *Friday-Street*, Draper.
Edward Berwick, Ditto.
Richard Bristow, *Bread-Street*, Grocer.
William Woolley, *Cheapside*, Hosier.
Richard Bridgeman, *Aldgate High-Street*, Grocer.
Philip Grafton, Ditto, Oilman.
Samuel Lloyd, *Devonshire-Square*, Merchant.
Henry Hall, *St. Helens*, Merchant.
John Tuff, *Bishopsgate-Street*, Grocer.

After Mr. *Yorke* had opened, the Attorney-General began with a Detail of the *Westminster* Election, between Lord *Trentbam* and Sir *George Vandeput*, with the ill Usage of the High-Bailiff in the Return. He then mentioned the House of Commons calling the Rioters to Account, of whom Mr. *Murray* he said was the principal; the Sentence on Mr. *Murray* to be given at the Bar of the House; how merciful for so atrocious a

Crime; his Commitment to *Newgate*; his impudent Refusal to ask Pardon, which was to be Part of his Sentence; his bad State of Health in *Newgate*, which the House being informed of by his Friends, ordered him into the Custody of a Messenger, which was more than he deserved; his Refusal to be removed till the End of the Session, when the Law discharges him. “ Then appeared the most scandalous and astonishing Libel that ever appeared in the World. *The Case of the Honourable Alexander Murray, Esq; in an Appeal to the People of Great-Britain; more particularly the Inhabitants of the City and Liberty of Westminster.* The Accused now becomes the Accuser. In it is stated and contained Accusations of Partiality, Injustice, Corruption, and Barbarity, of the House of Commons. It accuses the House of committing a great Breach in our Laws; that House which is the Guardian of our Liberties, and the Protector of our Properties. It accuses also the *King's-Bench*, with overturning that Bulwark of our Liberties, the *Habeas Corpus* Act. Every one must be shocked that reads this wicked, diabolically wicked, Pamphlet. The Parliament meet again, and vote the Pamphlet a Libel: They vote it to be a false, malicious, infamous, scandalous, and seditious Libel, tending to create Confusion and Rebellion; at least, to sow the Seeds of Rebellion. And to me it is astonishing, how it could enter into the Mind or Heart of Man to write such a Libel. Now, Gentlemen, I shall shew to you the Nature of this Libel, and begin in this Order. 1. The Title. 2. The Introduction. 3. The State of the Case, and the Evidence laid before the House of Commons. 4. How considered, and in what Light he has put the Sentence of the Commons. 5. How wickedly and maliciously he has insinuated the Thing. And, 6. His Treatment of the Court of *King's-Bench*. “ First. What! — shall a Person appeal from the Judgment of that Court, who are the only Judges of Things belonging to them, the House of Commons, I mean. An Appeal! To whom? to a Mob? Must Justice be appealed from? To whom? to Injustice? Appeal to the good People of *England*, particularly the Inhabitants of *Westminster*! The House of Commons are the good People of *England*, being the Representatives of the People. The rest are — what? — nothing — unless it be a Mob. And what can be in a Mob but Confusion? But the clear Meaning of this Libel was an Appeal to Violence, in Fact; and to stigmatize the House; but he durst not speak plain. Then the Pamphlet tells you, that his Case is worthy the Consideration of his Fellow-Subjects; here he shews his Virulence. He says his Commitment is a Precedent founded on unparalleled Barbarity, striking at our Laws in a most shocking Manner. Then he charges the House with sinking material Evidence; which in Fact is accusing the House of Injustice. This is a Charge the most shocking, the most severe, and the most unjust and virulent, against the good, the tender House of Commons; that Safeguard of our Liberty, and Guardian of our Welfare. The next Accusation the Libeller brings against the House,

“ is, on their granting Mr. Murray’s Removal,
 “ on the Application of his Physicians, — in
 “ saying — they had a mind to kill Mr. Murray,
 “ by removing him in the midst of a raging
 “ Fever; and on Mr. Murray’s refusing to go
 “ in that Condition, the House, when his Phy-
 “ sician had mastered the Distemper, ordered
 “ that none should see him. Next accusing
 “ another Court that never injured any one; a
 “ Court the most dignified by the Worthiness of
 “ the Members; the Court of *King’s-Bench*.
 “ Gentlemen, this Libel, to whosoever reads
 “ it, will be found the most pungent Invective
 “ that the Skill of Man could invent: I will not
 “ say the Skill, but the Wit, Art, and false
 “ Contrivance of Man, instigated by Satan: An
 “ indirect Pamphlet — though not said plain,
 “ yet understood; as being understood, is a
 “ Libel: And to say that this is not a Libel,
 “ is to say that there is no Justice, Equity, or
 “ Right in the World. There can be no Court
 “ of Justice, if the House of Commons is not;
 “ and if the House of Commons is not to be
 “ defended, and have Protection and Relief at
 “ Common Law, yourselves, your Houses, can-
 “ not have the Protection of the Law. *The*
 “ *Thing you, Gentlemen of the Jury, are to go on,*
 “ *is, whether the Case doth not mean the House of*
 “ *Commons; for we shall prove to you the Publi-*
 “ *cation: Then you must find the House is charged by*
 “ *this Pamphlet to have been guilty of the most*
 “ *daring Prostitution of Power. Can there be a*
 “ *greater Charge?”*

Witnesses called.

Peter Beck swore he bought the Pamphlet of *William Owen*, the 28th of June, 1751, at *Homer’s Head*, near *Temple-Bar*. Sent by *Ibbot* to buy it, gave 1s. 6d. for two. — *John Ibbot*, Messenger to the Press, sent *Peter Beck* the 28th of June, to buy the Pamphlet; and on the 29th he took *Owen* into Custody, and seized several Pamphlets in his Shop. — *Mealin*, the 27th of June, 1751, went to *Owen’s*, by Order of his Master *Cook*, to buy them: But *Owen* said he had none by him, but he should have them when ready; and in the Afternoon, *William Owen* let him have twelve. — *Cook*, Bookseller, on the 27th of June, the first Time he saw the Pamphlet advertised, sent his Servant to buy them. — *Langford* and *Shorter* also proved *Owen’s* selling the Pamphlet. — *Frewin* called to prove the Writ for the Election at *Westminster*. — *Stanhope* proved that there was an Election. — *Barwell*, Clerk of the House of Commons, proved the Proceedings of the House in this Affair. — *The Pamphlet read in Court*. — Then the Attorney-General asked Mr. *Ford* and Mr. *Pratt*, if he need trouble the Court with proving more and other Things; and should be glad to know what they intended for their Plea and Defence, in order to give the Court as little Trouble as possible. Mr. *Ford* answered, that in Justice to his Client, he could not tell him what they intended for their Defence; but would be so far candid with him, as to say, he would take Advantage of his Want of Proof, and therefore desired him to prove all he could.

Mr. Solicitor then got up and made a short Speech to the following Purport: * “ The

“ Question is, *Whether the Jury are satisfied that*
 “ *the Defendant Owen published the Pamphlet? the*
 “ *rest follows of Course. If the FACT is proved,*
 “ *the LIBEL proves itself, Sedition, Disturbance, &c.*
 “ Therefore the Printer must be affected with
 “ every thing in the Pamphlet, *if the Publication*
 “ *is proved, and that is what lies for your [the*
 “ *Jury’s] Determination; you being Judges of the*
 “ *FACT, the Judge determines the LAW. But*
 “ *suppose you Judges of the Law, your own*
 “ *Breasts may tell you this is a Libel: It accuses*
 “ *the House of Commons of Injustice; compares*
 “ *them to the Turkish Divan, meant by the*
 “ *Letters D—n; and the Inquisition, meant by*
 “ *the Letters In——n; and calls them a*
 “ *bribed Assembly. Suppose a Pamphlet were*
 “ *published after this Trial, that you [the Jury]*
 “ *were perjured and bribed, and this spread over*
 “ *the Kingdom, would it not gall you? — These*
 “ *Sort of Libels can tend to nothing but Se-*
 “ *dition; for how can the Mob or the People*
 “ *redress but by Tumult and Rebellion, and*
 “ *thereby subvert the Constitution? For this is*
 “ *a Part of the legislative Power; and if a third*
 “ *Part of the Legislature is destroyed or exposed,*
 “ *how can that be without rising in the Face of*
 “ *the Constitution? There have been several*
 “ *Papers, and Paragraphs in the Papers, printed*
 “ *on Purpose to poison the Minds of the People,*
 “ *and seemed calculated to influence the Minds*
 “ *of any Jury that should be on this Occasion:*
 “ *But I dare say you, Gentlemen, who are upon*
 “ *your Oaths here to try the Fact, and Case,*
 “ *wholly as it is, will have no Regard to such*
 “ *artful and false Insinuations †. And I know*
 “ *very well the Council on the other Side design*
 “ *to take no Advantage or Notice of these false*
 “ *and malicious Hints. But as you are upon*
 “ *your Oaths, you judge of the FACTS we have*
 “ *laid before you, now in Court, and ONLY them;*
 “ *and like honest Men bring in your Verdict*
 “ *accordingly.”*

The next who spoke was Mr. *Ford*, for the Defendant, as follows: “ The Doctrine laid down by the Gentlemen for the King, that what a Court of Justice does, whether legal or not, is not to be called in Question, nor any Remonstrance to be made against it, is a Doctrine that may be full of the most fatal Consequences to all Sorts of Men; since every inferior Court may do the same with equal Justice; for there can be no Court but what is legally so: Therefore, if legal Courts do wrong, must our Mouths be shut, and not complain or petition for Redress? God forbid! — May you, Gentlemen, nor I, ever be sensible of such Injustice! — I say, if the Case can be so. — And here the Gentlemen for the King seem to endeavour to confine the Council for the Defendant, in their Argument, by saying such and such Arguments will not be used; which is, in Fact, hinting that they should not. Why? If they have Liberty to make use of any Argument, Thought, or Fact, for the King, surely the Defendant’s Council ought to have the same Liberty for their Client. I understand not the shutting of Men’s Mouths. Let every Man clap his

* From a Word Mr. *Ford* dropped in asking one of the Witnesses a Question, Mr. Solicitor guessed what would be the Scope of his Argument; and thereupon endeavoured to anticipate him; of which Mr. *Ford* afterwards seems to take Notice.

† This has Reference to a Letter in the *London Evening-Post* of Saturday, May 30, 1752.

“ Hand upon his Heart, and examine how he
 “ would like it, was it his own Case. Shall a
 “ Man be injured, — or suppose he fancies him-
 “ self injured, which is the same, — shall his
 “ Mouth be eternally closed, and no Redress for
 “ the Injury ever be given; nor no Satisfaction
 “ to his own Mind, for a right understanding,
 “ and clearing up of what he looked upon even
 “ as an Injury? If Things should come to this
 “ Pass, which Heaven forbid! what would be
 “ the Case of us all? We may be scourged,
 “ afflicted, and wronged, and all for the Want
 “ of Liberty to complain, and put forth our
 “ Case: The very Hand that hurts us may still
 “ continue that Pressure, not knowing of the
 “ Grievances done to those who lie under it;
 “ and who, were this Doctrine to be allowed,
 “ must suffer without Hope of Redress; for,
 “ unless our Mouths are open to Complaints,
 “ there can be no Redress for poor suffering
 “ Mortals: For how can that be redressed which
 “ is not known? or that known, which is not
 “ allowed to be mentioned? — May never you,
 “ Gentlemen, nor I, be sensible of such a Maxim
 “ carried into Practice! Nay, the very Gentle-
 “ men who put it, cannot from their Hearts
 “ consent to it. — We in this Case lie under
 “ Disadvantages enough; our Adversaries have
 “ great Power; nay, their Power is unknown,
 “ even to themselves, at all Times; few of them
 “ know the Limits of it: It may be almost what
 “ they have a mind. Though great, though
 “ wise this House may be, yet they are but a
 “ Body of Men, and therefore fallible; for it is
 “ not in Men, or Bodies of Men, to be in-
 “ fallible. — By this great Power of the House
 “ of Commons, we, for our Client, are debarred
 “ from making use of all the Means of Defence
 “ we could against other People. Much might
 “ be said, but much we dare not say; I own I
 “ dare not. But let me suppose, only for Ar-
 “ gument's Sake, that a House of Commons
 “ may do wrong, it is not impossible for them
 “ to err; I do not say that they do in this Case:
 “ Former Houses of Commons certainly have
 “ erred, and those Errors have been redressed by
 “ a future House of Commons, and that on a
 “ Knowledge of the Case by *Complaint*: And if
 “ the House of Commons ever has erred, by the
 “ same Rule it may err again. Therefore allow
 “ me to suppose, only for Supposition and Ar-
 “ gument's Sake, that the House have done
 “ wrong in their Votes on this Affair, (not that
 “ I say they have); they have voted this Pam-
 “ phlet a Libel, and have turned it over to
 “ the Common Law, for the Defendant thereby
 “ to be tried for it; then they have left the
 “ Common Law to be Judge of it. If so,
 “ should the Defendant's Council be debarred
 “ (if it was necessary, but which in my Opinion
 “ is not) from contradicting, and proving this
 “ to be no Libel; which would, in Fact, be
 “ contradicting and opposing the Opinion and
 “ Vote of the House of Commons? I only put
 “ this by way of Supposition; to shew, if these
 “ Arguments were necessary to be gone upon,
 “ the Disadvantage we lie under. Much might
 “ be said, even on this; but much I dare not
 “ say. I know not scarce what I dare say; but
 “ I shall not go on this Point, as I think it is
 “ not necessary to our present Purpose; and I
 “ hope we can and shall be able to succeed with-

“ out it. I only mentioned it, because the Gen-
 “ tlemen on the other Side seemed desirous still
 “ further to shut the Mouths of the Defendant's
 “ Council, who are under Difficulties enough
 “ already. The House of Commons have voted
 “ this Pamphlet a Libel: Great is the Power of
 “ a Vote of that House; and where is the Man
 “ who dares find Fault with, or contradict, the
 “ Opinion of the House, especially when voted
 “ so? I dare not, and bold must be the Man
 “ who dares; he knows not the Risque he runs,
 “ by justifying or maintaining a Book not to be
 “ a Libel, when the House of Commons have
 “ voted it so. That Man may perhaps have a
 “ Vote against himself; for what cannot a House
 “ do, whose Power is so great? What therefore
 “ I shall insist upon is this:

“ The FACT charged in the Information is,
 “ That the Defendant, *Owen*, published this
 “ Pamphlet, *maliciously, seditiously, scandalously,*
 “ *and falsely*, to the Calumny of the House of
 “ Commons of *Great-Britain*, and in order to
 “ disturb the Peace of the Nation; and this he
 “ has done *wittingly, wilfully, maliciously, scanda-*
 “ *lously, &c.* This is the FACT laid to his
 “ Charge; which the Gentlemen have been very
 “ far from PROVING. Only proving the *Sale* of
 “ the Book, does not prove all those *opprobrious*
 “ and hard Terms laid in the Charge against
 “ him. If his selling and publishing this Book
 “ *maliciously*, with a *seditious Intent, scandalously*
 “ *and falsely*, with a *Design* to calumniate the
 “ House of Commons, and in order to disturb
 “ the Peace of the Nation, is not proved, then
 “ this great *Charge* in the Information fails.
 “ Let the Gentlemen prove those Words (the
 “ *Intention*) if they mean any thing by them; if
 “ they do not prove these Terms, this bad
 “ Intent, for in that lies the Crime, then it is
 “ no more than selling printed Paper, in which
 “ surely there can be no Fault. Then what are
 “ these Words? If the Gentlemen mean any
 “ thing by them, prove them; if they mean
 “ nothing, but Words of Course and Form,
 “ let the Gentlemen scratch them out, they are
 “ needless; which if they do, their Information
 “ will be very defective. But they will not
 “ consent to scratch them out, I am sure; why
 “ then they must mean something by them,
 “ which if they do, consequently they must
 “ prove them. These Words constitute the
 “ Charge, which if they do not make out,
 “ will you, Gentlemen, clap your Hands upon
 “ your Hearts, and say this Man is *guilty*?
 “ *Guilty* of what? Nothing; for nothing is
 “ proved, unless selling Paper is a Crime.
 “ Surely, Gentlemen, your own Breasts, your
 “ own Consciences, must tell you, when you
 “ consider of it, — and pray consider it as your
 “ own Case, fancy each of yourselves here under
 “ a rigorous Prosecution, like this poor Man, —
 “ there is no Crime proved, no malicious In-
 “ tent, no seditious Design; therefore not proved
 “ guilty of the Crime laid against him. If a
 “ Man be even a bad Man, and you all know it,
 “ and is accused of a Crime he is innocent of,
 “ surely none will find him guilty of a Crime,
 “ when that Crime is not proved, because you
 “ know him to be guilty of other Faults. These
 “ Things are plain, even to a Demonstration,
 “ to every Man. But this Defendant, whose
 “ Cause you are now Judges of, will appear
 “ to

“ to be a Man of very fair Character; well
 “ affected to the Government and Constitution
 “ in his Principles; always was, and is a good
 “ Subject; a Member of the Church of *England*,
 “ and as well affected to both Church and State
 “ as any Man in *England*. Therefore can any
 “ Man believe, when we shall have made this
 “ appear by several Witnesses, Men of Worth,
 “ Substance, Honour and Credit, both Clergy
 “ and Laity, that he could be guilty of these
 “ Things; that he *intended* this Hurt laid to his
 “ Charge? We shall prove that he published
 “ more Papers for the Government, in the late
 “ Rebellion, in 1745, and containing the most
 “ Steadiness for Government, and the most home
 “ and inveterate Things against its Enemies,
 “ than any Printer of his Time; so that I believe,
 “ if the Rebels had gained the Day, his Zeal
 “ might have caused his Punishment. Will it
 “ then appear likely that he is guilty of these
 “ Charges laid against him?

“ I must observe one Thing, which is, the
 “ Danger of your finding a Verdict *SPECIALLY*.
 “ Suppose you find him guilty of *publishing* and
 “ selling this Book; Guilty includes Guilt, then
 “ guilty of what? Selling Paper. — Where is the
 “ Guilt? — Take care, Gentlemen, of being
 “ *deceived*, by finding him guilty any way; by
 “ bringing in your Verdict any way against him,
 “ you render him liable to the *Consequences of the*
 “ *whole*; that is, to the same Penalties that he
 “ would have been liable to, if he had committed
 “ the *whole Crime* laid to his Charge, and that
 “ Charge *fully proved* against him. After you
 “ have brought in your Verdict, it will be in
 “ vain for you to say, you did not intend he
 “ should be punished; you only found that he
 “ had *published*, but not committed the Crime;
 “ it will be in vain for you to petition for Mercy,
 “ Mercy will then be in other Hands; it will be
 “ out of your Reach; and he will be at the
 “ Mercy of others, who may not look with the
 “ same Eyes as you: When you have found him
 “ guilty, it will be in other Breasts to punish;
 “ it will then be too late for you to interfere.
 “ By finding him guilty, you do all that you
 “ can against him, and then it will be out of
 “ your Power to serve him. You must therefore
 “ consider him *guilty* of this *great Crime*, and
 “ consequently deserving of great Punishment,
 “ or *not*. But if you think he is not guilty, and
 “ not deserving of great Punishment, then he
 “ has not committed this *great Crime*; then
 “ consequently they have failed in their Infor-
 “ mation, and he is innocent of it; if innocent,
 “ consequently not guilty. Mr. Attorney tells
 “ you, this Pamphlet means, and is writ with
 “ the *Intent* that is laid in the Information; he
 “ says, because the Pamphlet compares the Par-
 “ liament to *In—n*, it must certainly mean
 “ *Inquisition*; and in my Opinion it may, and
 “ does as likely, mean *Information*; and I assure
 “ you, Gentlemen, I have very little Love for
 “ *Information*, as well as Mr. Attorney for
 “ *In—n*; it is certain that these Things,
 “ which will bear several Interpretations, must,
 “ nor can, have no Weight with you; who
 “ should either put a good Construction upon
 “ them, or none at all. You must consider too,
 “ that there is a great Difference between the
 “ Author and the Printer; the Author knew
 “ well what he intended, and the whole Sense

“ of the Pamphlet; therefore liable to have the
 “ Sense of the Pamphlet interpreted against him;
 “ but a Bookseller may sell a Book, and not
 “ have any Intent but Profit; and be quite ig-
 “ norant of the Contents, at least the Spirit of
 “ them; therefore it is well worth considering
 “ how Intent makes a Crime, and how far not;
 “ every Man may err, and if unintentionally, he
 “ cannot be guilty of a Crime before God; and
 “ if so, it would be Presumption in Man, to
 “ make any Comparison of his own Justice;
 “ what is not criminal with God, cannot be
 “ with Man. *The Gentlemen on the other Side*
 “ *have not proved the Intention.*”

The Reverend Mr. *Warner*, Mr. *Gosling*, Mr. *Hawkins*, and several others were called, who proved Mr. *Owen* to be a good Subject, a true Man to the Church of *England*, zealous for the Establishment; that he had printed several Papers for the Government, and would not have published the Pamphlet, had he known or thought the Contents bad or any Hurt in them, and the farthest Man in *England* from doing such a Thing.

Mr. *Pratt* next rose up for the Defendant, and having for some Time gone upon different Parts of Mr. *Ford's* Argument, (which it cannot be necessary to repeat, as Mr. *Ford's* Speech has just been given at length, and as nearly *verbatim* as possible) he said, “ Then, Gentlemen, to shew
 “ you how necessary it is to prove the Intention;
 “ if there is an Indictment preferred against a
 “ Man for an Assault, with an Intention to
 “ ravish; the Intention must be proved, or else
 “ the Jury cannot find him guilty. The same
 “ of an Assault with an Intention to kill, if the
 “ Intention is not proved, he must be acquitted.
 “ If he kills, and the Intention is not proved,
 “ that is, if it is not proved that he killed pre-
 “ meditatedly and of Forethought, it is but
 “ Manslaughter. Therefore in the Case before
 “ us, if that Part of the Information is not
 “ proved, that he published *maliciously*, &c. you
 “ must acquit him. — The Privileges of Parlia-
 “ ment are not known to the Common Law;
 “ perhaps they may judge and punish: I know
 “ not their Privileges, nor perhaps are they to
 “ be known; nay, not known to themselves
 “ wholly: They may be just what they please.
 “ But they have not punished this Man; they
 “ have turned him over to the Common Law,
 “ therefore he must be tried by the Common
 “ Law. Yet, as hath been justly observed, they
 “ may take the Thing again into Consideration,
 “ and punish him in the House; and if so, he
 “ may be punished twice for the same Fault, by
 “ two different Sentences; which by the Common
 “ Law a Man cannot. Mr. Attorney will not
 “ answer for the House of Commons, that it
 “ will not be so. Then, Gentlemen, consider
 “ what Injustice it would be to punish a Man
 “ here, who is at the same Time liable to be
 “ punished there, if the House thinks fit. —
 “ Much might be said, more than we dare say
 “ for our Client in this Case: Our Mouths are
 “ already half shut, and *the Tenets the Gentlemen*
 “ *on the other Side lay down, are to shut them*
 “ *QUITE*; but may you, this Nation, nor I, ever
 “ *feel the Effects of such Tenets, or see them put in*
 “ *Practice*. It is a Rule in Law, and a Principle
 “ in Equity, to hear both Sides; therefore we
 “ may

“ may justly complain in this Case. It is a
 “ common Proverb, (and a very wise Chancellor
 “ affirmed that Proverbs were the Wisdom of a
 “ People) *Losers must have Leave to speak.* In
 “ the Scripture *Job* complains of the Dispen-
 “ sations of Providence, the Causes and Con-
 “ sequences of which he did not comprehend ;
 “ one would imagine therefore, that as Com-
 “ plaints are so natural to Sufferers, they may
 “ merit some Excuse where the *Affliction exceeds*
 “ *proper Bounds.* It may be said indeed, they
 “ are capable of raising a dangerous Compassion.
 “ But to prevent this, will it be right to tell a
 “ free People, happen what will, *you shall never*
 “ *complain?* Before this is said, it should be well
 “ *considered.*” [Mr. Pratt then went again upon
 different Parts of Mr. Ford’s excellent Speech,
 which he enforced in a very strong and fine
 Manner, and with which he concluded.]

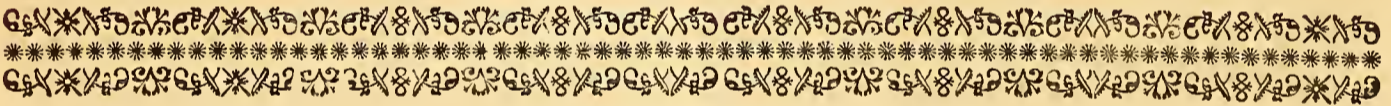
The Attorney-General got up again and made
 a Reply, the principal Matter in which was,
 “ That in an Indictment for Murder were always
 “ these Words, which are Words of Course, and
 “ of mere Form, *viz. not having the Fear of God*
 “ *before his Eyes, and being instigated by the Devil.*
 “ Now according to the Rule laid down by the
 “ Gentlemen, this must be proved, which is
 “ impossible ; for the Man would say, *he was not*
 “ *so instigated, and had the Fear of God before his*
 “ *Eyes; and who could prove that it was other-*
 “ *wife? Now this evidently shews all those*
 “ Things to be merely Matter of Form.”

The Chief Justice next summed up the Evi-
 dence; and delivered it *as his Opinion,* that the
 Jury OUGHT to find the Defendant *guilty;* for he
 thought the FACT of *Publication* was fully proved;

and if so, they could not avoid bringing in the
 Defendant *guilty.*

The Jury went out and stayed about two
 Hours; when they came into the Court, the
 Foreman answered for the rest, and when the
 Question was put, he said, *Guilty; NOT-GUILTY,*
 NOT GUILTY, MY LORD. The first Word
guilty being said by Mistake; upon which there
 was a loud Huzza; and the Jury went away.
 But, at the Desire of the Attorney-General, they
 were called into Court again, and asked this
 leading Question, *viz.* “ Gentlemen of the Jury,
 “ do you think the Evidence laid before you, of
 “ *Owen’s publishing the Book by selling it, is not*
 “ *sufficient to convince you that the said Owen*
 “ *did sell this Book?*” At which the Foreman
 appeared a good deal fluttered; and the Judge
 repeated the Question; upon which the Foreman,
 without answering the Question, said, “ NOT
 “ GUILTY, NOT GUILTY;” and several of the
 Jurymen said, “ That is our Verdict, my Lord,
 “ and we abide by it.” Upon which the Court
 broke up; and there was a prodigious Shout in
 the Hall. The Attorney-General desired more
 Questions might be asked, but the Judge would
 not, neither would the Noise permit it.

Note, The Jury could not say, to the Question,
 that the Evidence of publishing was not clear,
 without Perjury; and if the Jury had answered
Yes, and not found the Defendant guilty, one does
 not know what might have been done to the
 Jury, or before whom called. But they found
Owen not guilty on the whole of the Case, taking
 in that which included Guilt or not, and judged
 as to *Facts, Law, and Justice, of the whole;* and
 therefore did not answer that leading Question,
 which was so *artfully* put to them.



N U M B E R XXIV.

In the Case of Earl Ferrers, April 17, 1760.*

THE House of Peers unanimously found
 Earl Ferrers Guilty of the Felony and
 Murder whereof he stood indicted; and the Earl
 being brought to the Bar, the High Steward
 acquainted him therewith; and the House im-
 mediately adjourned to the Chamber of Parlia-
 ment. And having put the following Questions
 to the Judges, adjourned to the next Day.

First, “ Whether a Peer indicted of Felony
 “ and Murder, and tried and convicted thereof
 “ before the Lords in Parliament, ought to
 “ receive Judgment for the same, according to
 “ the Provisions of the Act of Parliament of the
 “ 25th Year of his Majesty’s Reign, intituled,
 “ *An Act for better preventing the horrid Crime of*
 “ *Murder?*”

Second, “ Supposing a Peer so indicted and
 “ convicted ought by Law to receive such Judg-

“ ment as aforesaid, and the Day appointed by
 “ the Judgment for Execution should lapse before
 “ such Execution done, whether a new Time
 “ may be appointed for the Execution, and by
 “ whom?”

On the 18th, the House then sitting in the
 Chamber of Parliament, the Lord Chief Baron,
 in the Absence of the Chief Justice of the
 Common Pleas, delivered in Writing the Opinion
 of the Judges, which they had agreed on, and
 reduced into Form that Morning.

His Lordship added many weighty Reasons in
 Support of the Opinion, which he urged with
 great Strength and Propriety, and delivered with
 a becoming Dignity.

To the first Question.

“ We are all of Opinion, that a Peer indicted
 “ of Felony and Murder, and tried and convicted

* From Judge Foster’s Reports, p. 138, &c.

“ thereof

“ thereof before the Lords in Parliament, ought
 “ to receive Judgment for the same, according
 “ to the Provisions of the Act of Parliament
 “ of the 25th Year of his Majesty’s Reign, inti-
 “ tuled, *An Act for better preventing the horrid*
 “ *Crime of Murder.*”

To the second Question.

“ Supposing the Day appointed by the Judg-
 “ ment for Execution should lapse before such
 “ Execution done, (which however the Law will
 “ not presume); We are all of Opinion, that a
 “ new Time may be appointed for the Execution,
 “ either by the High Court of Parliament before
 “ which such Peer shall have been attainted, or by
 “ the Court of King’s-Bench, the Parliament not
 “ then sitting; the Record of the Attainder being
 “ properly removed into that Court.”

The Reasons the Judges went upon, in their Answer to the first Question, are, I presume, too obvious to be mentioned at large. And the House resolved and ordered, that Judgment shall be pronounced in *Westminster-Hall*, pursuant to the late Act.

The Reasons upon which the Judges founded their Answer to the second, relating to the further Proceedings of the House after the High Steward’s Commission dissolved, which is usually done upon pronouncing Judgment, may possibly require some further Discussion. I will therefore, before I conclude, mention those which weighed with me, and I believe with many others of the Judges.

The House, before they adjourned to the Court-Room in *Westminster-Hall* for pronouncing Judgment, resolved and ordered, that Execution be respited to the 5th Day of *May* following. Upon which Day Execution was done at *Tyburn* pursuant to the Judgment, and the Body delivered at *Surgeons-Hall* to be dissected and anatomized.

[*The Writ to the Sheriffs for Execution, see in the Account of his Execution.*]

Reasons, &c.

Every Proceeding in the House of Peers, acting in its judicial Capacity, whether upon Writ of Error, Impeachment, or Indictment removed thither by *Certiorari*, is in Judgment of Law a Proceeding before the King in Parliament. And therefore the House, in all those Cases, may not improperly be stiled, The Court of our Lord the King in Parliament.

This Court is founded upon immemorial Usage, upon the Law and Custom of Parliament, and is Part of the original System of our Constitution.

It is open for all the Purposes of Judicature during the Continuance of the Parliament: It openeth at the Beginning, and shutteth at the End of every Session; just as the Court of *King’s-Bench*, which is likewise in Judgment of Law held before the King himself, openeth and shutteth with the Term.

The Authority of this Court, or, if I may use the Expression, its constant Activity for the Ends of public Justice, independent of any Special Powers derived from the Crown, is not doubted in the Case of Writs of Error from

those Courts of Law whence Error lieth in Parliament, and of Impeachments for Misdemeanors.

It was formerly doubted, whether in the Case of an Impeachment for Treason, and in the Case of an Indictment against a Peer for any Capital Crime removed into Parliament by *Certiorari*, whether in these Cases the Court can proceed to Trial and Judgment without an High Steward appointed by special Commission from the Crown.

This Doubt seemeth to have arisen from the not distinguishing between a Proceeding in the Court of the High Steward, and that before the King in Parliament. The Name, Stile, and Title of Office, is the same in both Cases; but the Office, the Powers and Preheminences annexed to it, differ very widely; and so doth the Constitution of the Courts where the Offices are executed. The Identity of the Name may have confounded our Ideas, as equivocal Words often do if the Nature of Things is not attended to; but the Nature of the Offices properly stated will, I hope, remove every Doubt on these Points.

In the Court of the High Steward, he alone is Judge in all Points of Law and Practice; the Peers Triers are merely Judges of Fact, and are summoned by virtue of a Precept from the High Steward to appear before him on the Day appointed by him for the Trial, *Ut rei veritas melius sciri poterit.*

The High Steward’s Commission, after reciting that an Indictment hath been found against the Peer by the Grand Jury of the proper County, empowereth him to send for the Indictment, to convene the Prisoner before him at such Day and Place as he shall appoint; then and there to hear and determine the Matter of such Indictment; to cause the Peers Triers, *tot et tales per quos rei veritas melius sciri poterit*, at the same Day and Place to appear before him: *Veritateque inde compertâ*, to proceed to Judgment according to the Law and Custom of *England*, and thereupon to award Execution*.

By this it is plain, that the sole Right of Judicature is, in Cases of this Kind, vested in the High Steward; that it resideth solely in his Person; and consequently without this Commission, which is but in Nature of a Commission of *Oyer and Terminer*, no one Step can be taken in order to a Trial. And that when his Commission is dissolved, which he declareth by breaking his Staff, the Court no longer existeth.

But in a Trial of a Peer in full Parliament, or, to speak with Legal Precision, before the King in Parliament, for a Capital Offence, whether upon Impeachment or Indictment, the Case is quite otherwise. Every Peer present at the Trial, and every Temporal Peer hath a Right to be present in every Part of the Proceeding, voteth upon every Question of Law and Fact; and the Question is carried by the major Vote; the High Steward himself voting merely as a Peer and Member of that Court in common with the rest of the Peers, and in no other Right.

It hath indeed been usual, and very expedient it is in point of Order and Regularity and for the Solemnity of the Proceeding, to appoint an Officer for Presiding during the Time of the

* See Lord Clarendon’s Commission as High Steward, and the Writs and Precepts preparatory to the Trial in Lord Morley’s Case. 7 *State Trials.*

Trial and until Judgment, and to give him the Stile and Title of Steward of *England*. But this maketh no Sort of Alteration in the Constitution of the Court. It is the same Court founded in immemorial Usage, in the Law and Custom of Parliament, whether such Appointment be made or not.

It acteth in its judicial Capacity in every Order made touching the Time and Place of the Trial, the postponing the Trial from Time to Time upon Petition, according to the Nature and Circumstances of the Case, the Allowance or Non-allowance of Council to the Prisoner, and other Matters relative to the * Trial; and all this before an High Steward hath been appointed. And so little was it apprehended, in some Cases which I shall mention presently, that the Existence of the Court depended on the Appointment of an High Steward, that the Court itself directed in *what Manner and by what Form of Words he should be appointed*. It hath likewise received and recorded the Prisoner's Confession which amounteth to a Conviction, before the Appointment of an High Steward, and hath allowed to Prisoners the Benefit of Acts of General Pardon where they appeared intitled to it, as well without the Appointment of an High Steward, as after his Commission dissolved.

And when, in the Case of Impeachments, the Commons have sometimes, at Conferences between the Houses, attempted to interpose in Matters preparatory to the Trial, the general Answer hath been, "This is a Point of *Judicature* upon which the Lords will not confer, "they impose Silence upon themselves," or to that Effect. I need not here cite Instances; every Man who hath consulted the Journals of either House hath met with many of them.

I will now cite a few Cases applicable, in my Opinion, to the present Question. And I shall confine myself to such as have happened since the Restoration. Because in Questions of this Kind, modern Cases, settled with Deliberation and upon a View of former Precedents, give more Light and Satisfaction, than the deepest Search into Antiquity can afford. And also because the Prerogatives of the Crown, the Privileges of Parliament, and the Rights of the Subjects in general, appear to me to have been more studied and better understood at, and for some Years before that Period, than in former Ages.

In the Case of the Earl of *Danby* and the Popish Lords then under Impeachments, (*Lords Journal*) the Lords on the 6th of *May*, 1679, appointed Time and Place for hearing the Earl of *Danby* by his Council upon the Validity of his Plea of Pardon, and for the Trials of the other Lords; and voted an Address to his Majesty, praying that he would be pleased to appoint an High Steward for those Purposes.

These Votes were, on the next Day, communicated to the Commons by Message in the usual Manner.

On the 8th, at a Conference between the Houses upon the Subject-matter of that Message, the Commons expressed themselves to the following Effect, "They cannot apprehend what "should induce your Lordships to address his "Majesty for an High Steward for determining "the Validity of the Pardon which hath been "pleaded by the Earl of *Danby*, as also for the "Trial of the other five Lords, because they "conceive the constituting an High Steward is "not necessary, but that Judgment may be given "in Parliament upon Impeachment without an "High Steward." And concluded with a Proposition, that for avoiding any Interruption or Delay a Committee of both Houses might be nominated to consider of the most proper Ways and Methods of Proceeding.

This Proposition the House of Peers, after a long Debate, rejected.

Dissentientibus, *Finch* † Chancellor, and many other Lords.

However, on the 11th the Commons Proposition of the 8th was upon a second Debate agreed to, and the Lord Chancellor, Lord President, and ten other Lords were named of the Committee, to meet and confer with a Committee of the Commons.

The next Day the Lord President reported, that the Committees of both Houses met that Morning, and made an Entrance into the Business referred to them. That the Commons desired to see the Commissions that are prepared for an High Steward at these Trials, and also the Commissions in the Lord *Pembroke's*, and the Lord *Morley's* Cases.

That to this the Lords Committees said, "The High Steward is but Speaker *pro Tempore*, "and giveth his Vote as well as the other Lords. "This changeth not the Nature of the Court. "And the Lords declared they have Power "enough to proceed to Trial, though the King "should not name an High Steward ‡."

"That this seemed to be a Satisfaction to the "Commons, provided it was entered in the "*Lords Journal*, which are Records."

Accordingly on the same Day, "It is declared "and ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Office "of an High Steward upon Trials of Peers upon "Impeachments is not necessary to the House of "Peers; but that the Lords may proceed in "such Trials if an High Steward be not appointed according to their humble Desire §."

On the 13th the Lord President reported, that the Committees of both Houses had met that Morning, and discoursed in the first Place on the Matter of a Lord High Steward, and had perused former Commissions for the Office of High Steward. And then putting the House in mind of the Order and Resolution of the preceding Day, proposed from the Committees, that a new Commission might issue so as the Words in the Commission may be thus changed, *viz.* instead of, *Ac pro eo quòd officium Seneschalli Angliæ*

* See the Orders previous to the Trial in the Cases of Lord *Kilmarnock*, Lord *Loval*, and many other modern Cases.

† Afterwards Earl of *Nottingham*.

‡ In the *Commons Journal* of the 15th of *May* it standeth thus, Their Lordships further declared to the Committee, that a Lord High Steward was made *hac Vice* only. That notwithstanding the making of a Lord High Steward the Court remained the same and was not thereby altered, but still remained the Court of Peers in Parliament. That the Lord High Steward was but as a Speaker or Chairman, for the more orderly Proceeding at the Trials.

§ This Resolution my Lord Chief Baron referred to and cited in his Argument upon the second Question proposed to the Judges, which is before stated.

(*cujus presentia in hac parte requiritur*) ut accepimus jam vacat, may be inserted, *Ac pro eo quod Proceres et Magnates in Parlamento nostro assembleti nobis humiliter supplicaverunt ut Seneschallum Angliæ pro hac vice constituere dignaremur*; to which the House agreed*.

It must be admitted, that Precedents drawn from Times of Ferment and Jealousy, as these were, lose much of their Weight; since Passion and Party-Prejudice generally mingle in the Contest. Yet let it be remembered, that these are Resolutions in which both Houses concurred, and in which the Rights of both were thought to be very nearly concerned; the Commons Right of Impeaching with Effect, and the whole Judicature of the Lords in Capital Cases. For if the Appointment of an High Steward was admitted to be of absolute Necessity, (however necessary it may be for the Regularity and Solemnity of the Proceeding during the Trial and until Judgment, which I do not dispute) every Impeachment may, for a Reason too obvious to be mentioned, be rendered ineffectual. And the Judicature of the Lords in all Capital Cases, nugatory.

It was from a Jealousy of this Kind, not at that Juncture altogether groundless, and to guard against every Thing from whence the Necessity of an High Steward in the Case of an Impeachment might be inferred, that the Commons proposed and the Lords readily agreed to the Amendment in the Steward's Commission, which I have already stated. And it hath, I confess, great Weight with me, that this Amendment, which was at the same Time directed in the Cases of the five Popish Lords when Commissions should pass for their Trials, hath taken Place in every Commission upon Impeachments for Treason since that Time†. And I cannot help remarking, that in the Case of Lord Lovat, when neither the Heat of the Times, nor the Jealousy of Parties had any Share in the Proceeding, the House ordered, "That the Commission for appointing a Lord High Steward shall be in the like Form as that for the Trial of the Lord Viscount Stafford, as entered in the Journal of this House on the 30th of November, 1680, except that the same shall be in the English Language‡."

I will make a short Observation on this Matter.

The Order on the 13th of May, 1679, for varying the Form of the Commission, was, as appeareth by the Journal, plainly made in consequence of the Resolution of the 12th, and was founded on it; and consequently the constant unvarying Practice with regard to the new Form, goeth in my Opinion a great way towards shewing that in the Sense of all succeeding Times that Resolution was not the Result of Faction or a blameable Jealousy, but was founded in sound Reason and true Policy.

It may be objected, that the Resolution of the 12th of May, 1679, goeth no further than to a Proceeding upon Impeachment.

The Letter of the Resolution, it is admitted, goeth no further, but this is easily accounted for. A Proceeding by Impeachment was the Subject-

matter of the Conference, and the Commons had no Pretence to interpose in any other. But what say the Lords? *The High Steward is but as a Speaker or Chairman pro Tempore, for the more orderly Proceeding at the Trials; the Appointment of him doth not alter the Nature of the Court, which still remaineth the Court of the Peers in Parliament.* From these Premises they draw the Conclusion I have mentioned. Are not these Premises equally true in the Case of a Proceeding upon Indictment? They undoubtedly are.

It must likewise be admitted, that in the Proceeding upon Indictment, the High Steward's Commission hath never varied from the antient Form in such Cases; the Words objected to by the Commons, *Ac pro eo quod officium Seneschalli Angliæ (cujus presentia in hac parte requiritur) ut accepimus jam vacat*, are still retained. But this proveth no more than that the Great Seal having no Authority to vary in Point of Form, hath from Time to Time very prudently followed antient Precedents.

I have already stated the Substance of the Commission in a Proceeding in the Court of the High Steward. I will now state the Substance of that in a Proceeding in the Court of the Peers in Parliament. And shall make use of that in the Case of the Earl of *Kilmarnock* and others, as being the latest, and in point of Form agreeing with the former Precedents.

The Commission, after reciting that *William Earl of Kilmarnock, &c.* stand indicted before Commissioners of Gaol-Delivery in the County of *Surry*, for High Treason, in levying War against the King; and that the King intendeth, that the said *William Earl of Kilmarnock, &c.* shall be heard, examined, sentenced, and adjudged before *Himself in this present Parliament* touching the said Treason; and for that the Office of Steward of *Great-Britain (whose Presence is required upon this Occasion)* is now vacant as We are informed, appointeth the then Lord Chancellor Steward of *Great-Britain*, to bear, execute, and exercise (for this Time) the said Office, with all Things due and belonging to the same Office *in that Behalf.*

What therefore are the Things due and belonging to the Office *in a Case of this Kind*? Not, as in the Court of the High Steward, a Right of Judicature. For the Commission itself supposeth that Right to reside in a Court then subsisting before the King in Parliament. The Parties are to be *there* heard, sentenced, and adjudged. What Share in the Proceeding doth the High Steward then take? By the Practice and Usage of the Court of the Peers in Parliament, he giveth his Vote as a Member thereof with the rest of the Peers; but for the sake of Regularity and Order he presideth during the Trial and until Judgment as Chairman, or Speaker *pro Tempore.* In that respect therefore it may be properly enough said that his Presence is required during the Trial and until Judgment, *and in no other.* Herein I see no Difference between the Case of an Impeachment and of an Indictment.

I say during the Time of the Trial and until

* This Amendment arose from an Exception taken to the Commission by the Committee for the Commons, which as it then stood did in their Opinion imply that the constituting a Lord High Steward was necessary. Whereupon it was agreed by the whole Committee of Lords and Commons, that the Commission should be recalled, and a new Commission according to the said Amendment issue, to bear Date after the Order and Resolution of the 12th. *Commons Journal* of the 15th of May.

† See in the *State-Trials* the Commissions in the Cases of the Earl of *Oxford*, Earl of *Derwentwater* and others, Lord *Winton*, (Vol. 6.) and Lord *Lovat*.

‡ See the Proceedings printed by Order of the House of Lords. (4^o Feb. 1746.)

Judgment, because the Court hath, as I observed before, from Time to Time done various Acts plainly judicial before the Appointment of an High Steward, and where no High Steward hath ever been appointed, and even after the Commission dissolved.

I will to this Purpose cite a few Cases.

I begin with the latest, because they are the latest, and were ruled with great Deliberation, and for the most Part upon a View of former Precedents.

In the Case of the Earl of Kilmarnock and others, the Lords, on the 24th of June, 1746, ordered that a Writ or Writs of *Certiorari* be issued for removing the Indictments before the House. And on the 26th the Writ, which is made returnable before the King in Parliament, with the Return and Indictments, was received and read. On the next Day upon the Report of the Lords Committees, that they had been attended by the two Chief Justices and Chief Baron, and had heard them touching the Construction of the Act of the 7th and 8th of King William, "for regulating Trials in Cases of High Treason and Misprision of Treason," the House, upon reading the Report, came to several Resolutions founded for the most Part on the Construction of that Act. What that Construction was, appeareth from the Lord High Steward's Address to the Prisoners just before their Arraignment. Having mentioned that Act as one happy Consequence of the Revolution, he addeth, "How ever injuriously that Revolution hath been traduced, whatever Attempts have been made to subvert this happy Establishment founded on it, your Lordships will now have the Benefit of that Law in its full Extent."

I need not after this mention any other judicial Acts done by the House in this Case before the Appointment of the High Steward, many there are. For the putting a Construction upon an Act relative to the Conduct of the Court, and the Right of the Subject at the Trial and in the Proceedings preparatory to it; and this in a Case entirely new, and upon a Point, to say no more in this Place, not extremely clear, was undoubtedly an Exercise of Authority proper only for a Court having full Cognizance of the Cause.

I will not minutely enumerate the several Orders made preparatory to the Trial of Lord Lovat, and in the several Cases I shall have Occasion to mention, touching the Time and Place of the Trial, the Allowance or Non-allowance of Council, and other Matters of the like Kind, all plainly judicial, because the like Orders occur in all the Cases where a Journal of the preparatory Steps hath been published by Order of the Peers. With regard to Lord Lovat's Case, I think the Order directing the Form of the High Steward's Commission, which I have already taken Notice of, is not very consistent with the Idea of a Court whose Powers can be supposed to depend at any Point of Time upon the Existence or Dissolution of that Commission.

In the Case of the Earl of Derwentwater and the other Lords impeached at the same Time, the House received and recorded the Confession of those of them who pleaded Guilty long before the Teste of the High Steward's Commission; which issued merely for the Solemnity of giving Judgment against them upon their Conviction.

This appeareth by the Commission itself, (See the Proceedings in Vol. 6.) It reciteth that the Earl of Derwentwater and others *coram nobis in presenti parlamento* had been impeached by the Commons for High Treason, and had *coram nobis in presenti parlamento* pleaded Guilty to that Impeachment; and that the King, intending that the said Earl of Derwentwater and others *de et pro Proditione unde ipsi ut praesertur impetit accusat' et convicti' existunt coram nobis in presenti parlamento secundum legem et consuetudinem hujus regni nostri Magnae Britanniae, audientur, sententientur, et adjudicentur*, constituteth the then Lord Chancellor High Steward (*hac vice*) to do and execute all Things which to the Office of High Steward in that Behalf do belong.

The receiving and recording the Confession of the Prisoners, which amounted to a Conviction, so that nothing remained but proceeding to Judgment, was certainly an Exercise of judicial Authority, which no Assembly how great soever, not having full Cognizance of the Cause, could exercise.

In the Case of Lord Salisbury, who had been impeached by the Commons for High Treason, the Lords upon his Petition allowed him the Benefit of the Act of General Pardon passed in the second Year of William and Mary, so far as to discharge him from his Imprisonment, upon a Construction they put upon that Act, *no High Steward ever having been appointed in that Case*.

On the 2d of October, 1690, upon reading the Earl's Petition, setting forth that he had been a Prisoner for a Year and nine Months in the Tower notwithstanding the late Act of Free and General Pardon, and praying to be discharged; the Lords ordered the Judges to attend on the Monday following to give their Opinions, whether the said Earl be pardoned by the Act. On the 6th the Judges delivered their Opinions, That if his Offence was committed before the 13th of February, 1688, and not in Ireland or beyond the Seas, he is pardoned. Whereupon it was ordered that he be admitted to Bail; and the next Day he and his Sureties entered into a Recognizance of Bail, himself in 10,000*l.* and two Sureties in 5000*l.* each; and on the 30th he and his Sureties were, after a long Debate, discharged from their Recognizance.

It will not be material to inquire, whether the House did right in discharging the Earl without giving the Commons an Opportunity of being heard. Since in Fact, they claimed and exercised a Right of Judicature without an High Steward, which is the only Use I make of this Case.

They did the same in the Case of the Earl of Carnwarth, the Lords Widdrington and Nairn, long after the High Steward's Commission dissolved.

These Lords had Judgment passed on them at the same Time that Judgment was given against the Lords Derwentwater, Nithsdale, and Kenmure, (*State-Trials*, Vol. 6.) and Judgment being given, the High Steward immediately broke his Staff, and declared the Commission dissolved. They continued Prisoners in the Tower under Reprieves till the passing the Act of General Pardon in the 3d of King George the First.

On the 21st of November, 1717, the House being informed that these Lords had severally entered into Recognizances before one of the Judges of the Court of King's-Bench for their Appearance

Appearance in the House in this Session of Parliament, and that the Lords *Carnwarth* and *Widdrington* were attending accordingly, and that the Lord *Nairn* was ill at *Bath* and could not then attend, the Lords *Carnwarth* and *Widdrington* were called in; and severally at the Bar prayed that their Appearance might be recorded, and likewise prayed the Benefit of the Act (3 *Geo.* 1. c. 19.) for his Majesty's General and Free Pardon.

Whereupon the House ordered that their Appearance be recorded; and that they attend again To-morrow in order to plead the Pardon. And the Recognizance of the Lord *Nairn* was respited till that Day Fortnight.

On the Morrow the Lords *Carnwarth* and *Widdrington* then attending were called in; and the Lord Chancellor acquainted them severally that it appeared by the Records of the House, that they severally stood attainted of High Treason, and asked them severally what they had to say why they should not be remanded to the *Tower of London*.

Thereupon they severally upon their Knees prayed the Benefit of the Act, and that they might have their Lives and Liberty pursuant thereunto.

And the Attorney-General, who then attended for that Purpose, declaring that he had no Objection on his Majesty's Behalf to what was prayed, conceiving that those Lords not having made any Escape since their Conviction were intitled to the Benefit of the Act, (*see Sect.* 45. of the 3d *Geo.* 1.) the House, after reading the Clause in the Act relating to that Matter, agreed that they should be allowed the Benefit of the Pardon as to their Lives and Liberties, and discharged their Recognizances; and gave them Leave to depart without further Day given for their Appearance.

On the 6th of *December* following the like Proceedings were had, and the like Orders made in the Case of Lord *Nairn*.

I observe that the Lord Chancellor did not ask these Lords, what they had to say, *why Execution should not be awarded*. There was it is probable some little Delicacy as to that Point. But since the Allowance of the Benefit of the Act as to Life and Liberty, which was all that was prayed, was an effectual Bar to any future Imprisonment on that Account, and also to Execution, and might have been pleaded as such in any Court whatsoever; the whole Proceeding must be admitted to have been in a Court having compleat Jurisdiction in the Case, notwithstanding the High Steward's Commission had been long dissolved. Which is all the Use I intended to make of this Case.

I will not recapitulate; The Cases I have cited, and the Conclusions drawn from them, are brought into a very narrow Compass. I will only add, that it would sound extremely harsh to say, that a Court of Criminal Jurisdiction founded in immemorial Usage, and held in Judgment of Law before the King himself, can in any Event whatever be under an utter Incapacity of proceeding to Trial and Judgment either of Condemnation or Acquittal, the ultimate Objects of every Criminal Proceeding, without certain supplemental Powers derived from the Crown.

These Cases, with the Observations I have made on them, I hope, sufficiently warrant the

Opinion of the Judges upon that Part of the second Question in the Case of the late Earl *Ferrers* which I have already mentioned. And also what was advanced by the Lord Chief Baron in his Argument on that Question, "That though the Office of High Steward should happen to determine before Execution done according to the Judgment, yet the Court of the Peers in Parliament, where that Judgment was given, would subsist for all the Purposes of Justice during the Sitting of the Parliament." And consequently that in the Case supposed by the Question, that Court might appoint a new Day for the Execution.

An Account of the Execution of the late Laurence Earl Ferrers, Viscount Tamworth, and of his Lordship's Behaviour, from the Time of his being delivered into the Custody of the Sheriffs of London and Middlesex, until the Time of his Execution. By the Authority of the Sheriffs.

ON Friday the second Day of May, 1760, the Sheriffs of *London* and *Middlesex* received the following Writ under the Great Seal of Great-Britain, for the Execution of Laurence Earl *Ferrers*, Viscount *Tamworth*, on the Monday following.

"George the Second, by the Grace of God of Great-Britain, France and Ireland, King, Defender of the Faith, and so forth, To the Sheriffs of *London* and Sheriff of *Middlesex*, greeting. Whereas Laurence Earl *Ferrers*, Viscount *Tamworth*, hath been indicted of Felony and Murder by him done and committed; which said Indictment hath been certified before us in our present Parliament, and the said Laurence Earl *Ferrers*, Viscount *Tamworth*, hath been thereupon arraigned, and upon such Arraignment hath pleaded Not Guilty: And the said Laurence Earl *Ferrers*, Viscount *Tamworth*, hath before us in our said Parliament been tried, and in due Form of Law convicted thereof: And whereas Judgment hath been given in our said Parliament, That the said Laurence Earl *Ferrers*, Viscount *Tamworth*, shall be hanged by the Neck till he is dead, and that his Body be dissected and anatomized, the Execution of which Judgment yet remains to be done: We require, and by these Presents strictly command you, that upon Monday the fifth Day of May Instant, between the Hours of Nine in the Morning and One in the Afternoon of the same Day, him the said Laurence Earl *Ferrers*, Viscount *Tamworth*, without the Gate of our *Tower of London*, (to you then and there to be delivered, as by another Writ to the Lieutenant of our *Tower of London*, or to his Deputy directed, we have commanded) into your Custody you then and there receive; and him in your Custody so being, you forthwith convey to the accustomed Place of Execution at *Tyburn*, and that you do cause Execution be done upon the said Laurence Earl *Ferrers*, Viscount *Tamworth*, in your Custody so being, in all Things according to the said Judgment. And this you are by no Means to omit at your Peril. Witness ourself at *Westminster* the second Day of May, in the thirty-third Year of our Reign.

"YORKE and YORKE."

Upon the Receipt of this Writ, the Sheriffs immediately issued their Orders for making all the necessary Preparations for the Execution, and for the Performance of it in a Manner suitable to his Lordship's Rank.

When the foregoing Precept was delivered to the Sheriffs, they had Notice of the following Writ being sent to the Lieutenant of the *Tower of London* his Deputy, for the Delivery of his Lordship into their Custody.

“ *George the Second, by the Grace of God of Great-Britain, France and Ireland, King, Defender of the Faith, and so forth, To the Lieutenant of our Tower of London or his Deputy, greeting. Whereas Laurence Earl Ferrers, Viscount Tamworth, hath been indicted of Felony and Murder by him done and committed, which said Indictment hath been certified before us in our present Parliament; and the said Laurence Earl Ferrers, Viscount Tamworth, hath been thereupon arraigned, and upon such Arraignment hath pleaded Not Guilty; and thereupon the said Laurence Earl Ferrers, Viscount Tamworth, hath before us in our said Parliament been tried, and in due Form of Law convicted thereof, and for the same is adjudged to suffer Death, the Execution of which Judgment yet remains to be done; We require, and by these Presents strictly command you, That upon Monday the fifth Day of May Instant, between the Hours of Nine in the Morning and One in the Afternoon of the same Day, him the said Laurence Earl Ferrers, Viscount Tamworth, unto the usual Place without the Gate of the said Tower you bring, and him to the Sheriffs of London and Middlesex then and there deliver; which said Sheriffs, by another Writ to them directed, we have commanded then and there to receive the said Laurence Earl Ferrers, Viscount Tamworth, that Execution of the aforesaid Judgment may be done in Manner and Form as to the said Sheriffs of London and Middlesex we by our said other Writ have commanded; and this you are by no Means to omit at your Peril. Witness ourself at Westminster the second Day of May, in the thirty-third Year of our Reign.* ”

“ YORKE and YORKE.”

In Obedience to these Commands, the Sheriffs, on Monday the 5th Day of May, being attended by their Under-Sheriffs, and other proper Officers, went to the *Outward Gate* of the *Tower of London*, and at *Nine o'Clock in the Morning* sent Notice to the Lieutenant, that they were there, ready to receive the Body of *Laurence Earl Ferrers, Viscount Tamworth*, pursuant to the King's Writ in that Behalf.

His Lordship being informed of it, sent a Message to the Sheriffs, requesting their Permission that he might go in his own Landau, which was waiting for him within the *Tower*, instead of the Mourning-Coach which had been provided by his Friends; which Request being granted, his Lordship, attended by the Reverend *Mr. Humphries*, the Chaplain of the *Tower*, entered into his Landau, drawn by six Horses, and was conducted in it, by the Officers of the *Tower*, to the *Outward Gate*, and there delivered into the Custody of the Sheriffs, upon their giving the following Receipt:

Tower-Hill, 5th May, 1760.

“ Received then of *Charles Rainsford, Esq;* Deputy-Lieutenant of the *Tower of London*, the Body of the within-named *Laurence Earl Ferrers, Viscount Tamworth*, delivered to us in Obedience of the King's Writ, of which the within is a true Copy.

GEO. ERRINGTON, } Sheriffs of London, and
PAUL VAILLANT, } Sheriff of Middlesex.

Mr. Sheriff Vaillant accompanied his Lordship in the Landau from the *Tower-Gate* to the Place of Execution; and, upon his Entrance into it, addressing himself to his Lordship, he told him, *That it gave him the highest Concern to wait upon him upon so melancholy an Occasion, but that he would do every Thing in his Power to render his Situation as easy as possible; and hoped that, whatever he did, his Lordship would impute to the necessary Discharge of his Duty.* — To which his Lordship answered, *Sir, I am very much obliged to you, — I take it very kindly that you are pleased to accompany me.* — His Lordship being dressed in a Suit of light Cloaths, embroidered with Silver, said, *You may perhaps, Sir, think it strange to see me in this Dress, but I have my particular Reasons for it.*

The Civil and Military Powers attended the Sheriffs from thence to the Place of Execution, and the Procession was as follows: —

First, a very large Body of the Constables for the County of *Middlesex* (the greatest probably that had ever been assembled together upon any Occasion), preceded by one of the High-Constables.

Then a Party of Horse-Grenadiers, and a Party of Foot;

Then *Mr. Sheriff Errington* in his Chariot, accompanied therein by his Under-Sheriff *Mr. Jackson*;

Then followed the Landau, escorted by two other Parties of Horse-Grenadiers and Foot;

Then *Mr. Sheriff Vaillant's* Chariot, in which was his Under-Sheriff *Mr. Nicols*;

Then a Mourning-Coach and Six;

And, lastly, a Hearse and Six, which was provided for the Conveyance of his Lordship's Corpse from the Place of Execution to *Surgeons-Hall*.

The Procession was conducted with the utmost Solemnity; but moved so very slow, that it did not reach the Place of Execution till a Quarter before Twelve, so that his Lordship was Two Hours and Three Quarters in the Landau; during the whole of which Time he appeared to be perfectly easy and composed, and his decent Deportment seemed greatly to affect the Minds of all that beheld him; insomuch that although his Lordship thus passed through many hundred thousand Spectators, yet so respectful was the Behaviour of all towards him, that not the least Affront or Indignity was offered to him by any one; but, on the contrary, many Persons saluted him with their Prayers for his Salvation.

His Lordship asked the Sheriff, *If he had ever seen so great a Concourse of People before?* and upon his answering that he had not; *I suppose*, said his Lordship, *it is, because they never saw a Lord hanged before.* He said, *that he had wrote to the King, to beg that he might suffer where his Ancestor the Earl of Essex had suffered; and that he was in the greater Hopes of obtaining that Favour, as he*

had

had the Honour of quartering Part of the same Arms, and of being allied to his Majesty; — and that he thought it was hard that he must die at the Place appointed for the Execution of common Felons. — But whatever his Lordship's Thoughts were upon that Account, those Considerations will for ever throw an additional Lustre on his Majesty's Impartiality and Justice.

Mr. *Humphries* the Chaplain, who, it seems, had not attended his Lordship till this Morning, took Occasion to observe, that the World would naturally be very inquisitive concerning the Religion his Lordship professed; and asked him, *If he chose to say any thing upon that Subject?* To which his Lordship answered, *That he did not think himself at all accountable to the World for his Sentiments on Religion; but that he had always believed in and adored One God, the Maker of all Things; — that whatever his Notions were, he had never propagated them, or endeavoured to gain any Persons over to his Persuasion; — that all Countries and Nations had a Form of Religion by which the People were governed, and that whoever disturbed them in it, he looked upon him as an Enemy to Society; — but that, if he himself was wrong in his way of thinking, he was very sorry for it. — That he very much blamed my Lord Bolingbroke, for permitting his Sentiments on Religion to be published to the World. — That the many Sects and Disputes which happen about Religion, have almost turned Morality out of Doors. — That he could never believe what some Sectaries teach, that Faith alone will save Mankind; so that if a Man, just before he dies, should say only, I believe, that that alone will save him; — “Shew me thy Faith.” — Here his Lordship stopped; — but by which Quotation he plainly meant, according to the Holy Writer, (St. James, chap. ii. ver. 18.) whose Words they are, that Faith without Works is a dead Faith.*

Concerning the unfortunate and much to be lamented Mr. *Johnson*, whose Death occasioned the Trouble of this Day, his Lordship declared, *That he was under particular Circumstances; that he had met with so many Crosses and Vexations he scarce knew what he did; and most solemnly protested, that he had not the least Malice towards him.*

The Slowness of the Procession made this Journey appear so very tedious to his Lordship, that he often expressed his Desire of being got to the End of it, saying, *that the Apparatus of Death, and the passing through such Crowds of People, were ten times worse than Death itself;* but upon the Sheriff's taking Notice to his Lordship, that he was glad to see that he supported himself so well, his Lordship replied, *I thank you, Sir, I hope I shall continue so to the last.*

When his Lordship had got to that Part of *Holborn* which is near *Drury-Lane*, he said, *he was thirsty, and should be glad of a Glass of Wine and Water;* — but upon the Sheriff's remonstrating to him, that a Stop for that Purpose would necessarily draw a greater Crowd about him, which might possibly disturb and incommode him, yet if his Lordship still desired it, it should be done; he most readily answered, — *That's true, I say no more, let us by no means stop.*

When they approached near the Place of Execution, his Lordship told the Sheriff, *That there was a Person waiting in a Coach near there, for whom he had a very sincere Regard, and of whom he should be glad to take his Leave before he died;* to which the Sheriff answered, *that if his Lordship*

insisted upon it, it should be so; but that he wished his Lordship, for his own Sake, would decline it, lest the Sight of a Person, for whom he had such a Regard, should unman him, and disarm him of the Fortitude he possessed. — To which his Lordship, without the least Hesitation, replied, Sir, if you think I am wrong, I submit; and upon the Sheriff's telling his Lordship, that if he had any thing to deliver to that Person, or any one else, he would faithfully do it; his Lordship thereupon delivered to the Sheriff a Pocket-Book, in which was a Bank-Note, and a Ring, and a Purse with some Guineas, in order to be delivered to that Person, and which was done accordingly.

The Landau being now advanced to the Place of Execution, his Lordship alighted from it, and ascended upon the Scaffold, which was covered with black Baize, with the same Composure and Fortitude of Mind he had enjoyed from the Time he left the Tower; where, after a short Stay, Mr. *Humphries* asked his Lordship, if he chose to say Prayers? which he declined; but upon his asking him, *If he did not choose to join with him in the Lord's Prayer?* he readily answered, *he would, for he always thought it a very fine Prayer;* upon which they knelt down together upon two Cushions, covered with black Baize, and his Lordship with an audible Voice very devoutly repeated the Lord's Prayer, and afterwards, with great Energy, the following Ejaculation, *O God, forgive me all my Errors, — pardon all my Sins.*

His Lordship then rising, took his Leave of the Sheriffs and the Chaplain; and after thanking them for their many Civilities, he presented his Watch to Mr. Sheriff *Vaillant*, which he desired his Acceptance of; and signified his Desire, *that his Body might be buried at Breden or Stanton, in Leicestershire.*

His Lordship then called for the Executioner, who immediately came to him, and asked him Forgiveness; upon which his Lordship said, *I freely forgive you, as I do all Mankind, and hope myself to be forgiven. — He then intended to give the Executioner five Guineas, but, by Mistake, giving it into the Hands of the Executioner's Assistant, an unseasonable Dispute ensued between those unthinking Wretches, which Mr. Sheriff *Vaillant* instantly silenced.*

The Executioner then proceeded to do his Duty, to which his Lordship, with great Resignation, submitted. — His Neckcloth being taken off, a white Cap, which his Lordship had brought in his Pocket, being put upon his Head, his Arms secured by a black Sash from incommoding himself, and the Cord put round his Neck, he advanced by three Steps upon an Elevation in the middle of the Scaffold, where Part of the Floor had been raised about eighteen Inches higher than the rest; and standing under the Cross-Beam which went over it, covered with black Baize, he asked the Executioner, *Am I right?* — Then the Cap was drawn over his Face: — and, then! — upon a Signal given by the Sheriff (for his Lordship, upon being before asked, declined to give one himself) that Part, upon which he stood, instantly sunk down from beneath his Feet, and left him entirely suspended; but not having sunk down so low as was designed, it was immediately pressed down, and levelled with the rest of the Floor.

For a few Seconds his Lordship made some Struggles against the Attacks of Death, but was soon

soon eased of all Pain by the Pressure of the Executioner.

From the Time of his Lordship's ascending upon the Scaffold, until his Execution, was about *eight Minutes*; during which his Countenance did not change, nor his Tongue falter: — The Prospect of Death did not at all shake the Composure of his Mind.

Whatever were his Lordship's Failings, his Behaviour in these his last Moments, which created a most awful and respectful Silence amidst the numberless Spectators, cannot but make a sensible Impression upon every humane Breast.

The accustomed Time of one Hour being past, the Coffin was raised up, with the greater Decency to receive the Body, and being deposited in the Hearse, was conveyed by the Sheriffs, with the same Procession, to *Surgeons-Hall**, to undergo the Remainder of the Sentence, (*viz.* Dissection.) — Which being done, the Body was on *Thursday* Evening, the 8th of *May*, delivered to his Friends for Interment.

He was privately interred at *St. Pancras* near *London*, in a Grave dug twelve or fourteen Feet deep, under the Belfry.

* The Statute made in the 25th Year of his late Majesty's Reign for preventing the Crime of Murder, enacts, " That the Body of every Person convicted of Murder shall, if such Conviction and Execution shall be in the County of *Middlesex*, or within the City of *London*, or the Liberties thereof, be immediately conveyed by the Sheriff or Sheriffs, his or their Deputy or Deputies, and his or their Officers, to the Hall of the Surgeons Company, or such other Place as the said Company shall appoint for this Purpose, and be delivered to such Person as the said Company shall depute or appoint, who shall give to the Sheriff or Sheriffs, his or their Deputy or Deputies, a Receipt for the same; and the Body so delivered to the said Company of Surgeons, shall be dissected and anatomized by the said Surgeons, or such Persons as they shall appoint for that Purpose; and that in no Case the Body shall be suffered to be buried, unless after such Body shall have been dissected and anatomized."





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E R R A T A.

Page 51. col. 2. last Line but 9. for is read it.

Page 138. last Line, after executed according to his Sentence. *add*, And the Morning before he went to Execution, he declared to the Sheriff his Innocence of the Fact for which he was convicted; and did the same at the Gallows, with many Protestations of his Innocence, calling God to witness the Truth of what he declared.

Page 209. col. 1. line 20. from the Bottom, after in *add* the.

Page 214. col. 2. line 2. for 7th read 1st.

Page 411. in the first Note, line 1. omit the Word second.

A P P E N D I X.

Page 41. col. 2. line 10. for spelt read printed.

Page 118. col. 1. line 30. for same Year read seventh Year.

Page 218. col. 1. line 18. from the Bottom, dele of.

