ing may be proved betwixt his Highness and his Nobility, and loving Subjects in time coming, under the Pain of Death; certifying them that do in the contrary, they shall be reputed as seditious and wicked Instruments, Enemies to his Highness and the Commonwealth of this Realm: And the said Pain of Death shall be executed upon them with all Rigour, in Example of others.

All for Preservation of his Majesty's Person, Authority and Government, May 1662.

-----And further, It is by his Majesty and Estates of Parliament declared, statuted and enacted, That if any Person or Person shall, by writing, printing, praying, preaching, libelling, remonstrating, or by any malicious or advised speaking, express, publish, or declare any Words or Sentences, to stir up the People to the Hatred or Dislike of his Majesty's Royal Prerogative and Supremacy, in Caules Ecclesiastical, or of the Government of the Church by Archbishops and Bishops, as it is now settled by Law———That every such Person or Persons so offending, and being legally convicted thereof, are hereby declared incapable to enjoy or exercise any Place or Employment, civil, ecclesiastick, or military, within this Church and Kingdom, and shall be liable to such further Pains as are due by the Law in fuch Cases.

Att 130. Par. 8. James VI. May 22, 1584. Anent the Authority of the three Estates of Parliament.

HE King's Majesty considering the Honour and the Authority of his Supreme Court of Parliament, continued past all Memory of Man, unto their Days, as constitute upon the free Votes of the three Estates of this ancient Kingdom, by whom the same, under God, has ever been upholden, rebellious and traiterous Subjects punished, the good and faithful preserved and maintained, and the Laws and Acts of Parliament (by which all Men are governed) made and established. And finding the Power, Dignity, and Authority of the faid Court of Parliament, of late Years called in some Doubt, at least, some curiously travelling to have introduced some Innovation thereanent; his Majesty's firm Will and Mind always being, as it is yet, That the Honour, Authority, and Dignity of his said three Estates shall stand and continue in their own Integrity, according to the ancient and laudable Custom by-gone, without any Alteration or Diminution: Therefore it is statuted and ordained by our said Sovereign Lord, and his said three Estates in this present Parliament, That none of his Leiges or Subjects presume, or take upon hand to impung the Dignity and Authority of the said three Estates, or to seek or procure the Innovation or Diminution of the Power and Authority of the same three Estates, or any of them, in Time coming, under the Pain of Treason.

The Earl of Argyle's first Petition for Advocates, or Council to be allowed him.

To his Royal Highness, his Majesty's High Commissioner, and to the Right Honourable the Lords of his Majesty's Privy-Council.

The humble Petition of Archibald Earl of Argyle,

Sheweth, HAT your Petitioner being criminally in-

Justiciary, at the Instance of his Majesty's Advocate, for Crimes of an high Nature. And whereas in this Case no Advocate will readily plead for the Petitioner, unless they have your Royal Highness, and Lordships Special License and Warrant to that Effect, which is usual in the like Cases.

> It is therefore humbly defired, that your Royal Highness and Lordships would give special Order and Warrant to Sir George Lockhart, his ordinary Advocate, to consult and plead for him in the foresaid criminal Process without incurring any Hazard upon that Account:

> > And your Petitioner shall ever pray.

HONE PROPERTY AND LALL CONFIDENCES HONE

Edenburgh, November 22, 1681.

The Council's Answer to the Earl of Argyle's first Petition, and his having Advocates allowed him.

III IS Royal Highness, his Majesty's High Commissioner, and Lords of Privy-Council do refuse the Desire of the above-written Bill, but allow any Lawyers the Petitioner shall employ, to consult and plead for him in the Process of Treason, and other Crimes, to be pursued against him at the Instance of his Majesty's Advocate.

Extr. By me,

WILL. PATERSON.

The Earl of Argyle's second Petition for Council to be allowed him.

To his Royal Highness, his Majesty's High Commissioner, and to the Right Honourable the Lords of his Majesty Privy-Council.

The humble Petition of Archibald Earl of Argyle,

Sheweth,

THAT your Petitioner having given in a former Petition, humbly representing, That he being criminally indicted before the Lords Commissioners of Justiciary, at the Instance of his Majesty's Advocate, for Crimes of an high Nature: And therefore desiring that your Royal Highness, and Lordships, would give special Warrant to Sir George Lockhart, to confult and plead for him: Whereupon your Royal Highness and Lordships did allow the Petitioner to make Use of such Advocates as he should think fit to call. Accordingly your Petitioner having desired Sir George Lockbart to consult and plead for him, he hath as yet refused your Petitioner. And by the 11th Parliament of King James the VI. Cap. 38. as it is the undeniable Priviledge of all Subjects, accused for any Crimes, to have Liberty to provide themselves of Advocates, to defend their Lives, Honour, and Lands, against whatsoever Acculation; so the same Priviledge is not only by Parliament 11 King James the VI. Cap. 90. farther asserted and confirmed, but allo dicted besore the Lords Commissioners of it is declared, that in case the Advocates resule,

the Judges are to compel them, lest the Party accused should be prejudged: And this being an Affair of great Importance to your Petitioner, and Sir George Lockbart having been not only still his ordinary Advocate, but also by his constant Converse with him is best known to your Petitioner's Principles; and of whose eminent Abilities and Fidelity, your Petitioner (as many others have) hath had special Proof all along in his Concerns, and hath such singular Considence in him, that he is most necessary to your Petitioner at this Occasion.

May it therefore please your Royal Highness and Lardships to interpose your Authority, by giving a special Order and Warrant to the said Sir George Lockhart, to consult and plead for him in the said criminal Process, conform to the Tenor of the said Asts of Parliament, and constant known Prastice in the like Cases, which was never resused to any Subjest of the meanest Quality, even to the greatest Criminals. And your Royal Highness's and Lordships Answer is humbly craved.

Edenburgh, November 24, 1681.

The Council's Answer to the Earl of Argyle's second Petition.

Commissioner, and Lord's of Privy-Council, having considered the foresaid Petition, do adhere to their former Order, allowing Advocates to appear for the Petitioner in the Process aforesaid,

Extr. By me,

WILL. PATERSON.

The Earl of Argyle's Letter of Attorney, constituting Alexander Dunbar his Procurator, for requiring Sir George Lockhart to plead for him.

The Example of Argyle do hereby substitute, constitute and ordain Alexander Dunbar, our Servitor, to be our Procurator, to pass and require Sir George Lockhart, Advocate, to consult and plead for us in the criminal Process intended against us, at the Instance of his Majesty's Advocate; and to compear with us, before the Lords Commissioners of Justiciary, upon the 12th of December next, conform to an Act of Council. dated the 22d of November instant, allowing any Lawyers that we should employ, to consult and: plead for us in the said Process, and to another Act. of Council of the 24th of November instant, relative to the former, and conform to the Acts of Parliament. In Witness whereof we have subscribed these Presents, at Edenburgh-Castle, Nov. 26, 1681. before these Witnesses, Duncan Campbell, Servitor to James Glen, Stationer in Edenburgh, and John Thom, Merchant in the said Burg.

Duncan Campbell, Witnesses. ARGYLE.

An Instrument whereby the Earl of Argyle required Sir George Lockbart to appear and plead for him.

Apud Edenburgum vigesimo sexto die Mensis Novembris, Anno Domino millesimo sexcentesimo octuagesimo primo, & Anno Regni Car. II. Regis trigesimo tertio.

HE which Day, in Presence of me Notary-Publick, and Witnesses under-subscribed, compeared personally Alexander Dunbar, Servitor to a noble Earl, Archibald Earl of Argyle, as Procurator, and in Name of the said Earl, consorm to a Procuration subscribed by the said Earl at the Castle of Edenburgh, upon the twenty first Day of November, 1681. making and constituting the said Alexander Dunbar his Procurator, to the Effect under-written; and passed to the personal Presence of Sir George Lockhart, Advocate, in his own Lodging in Edenburgh, having and holding in his Hands an Act of his Majesty's Privy-Council, of the Date of the 22d of November, 1681, instant, proceeding upon a Petition given in by the faid Earl of Argyle to the said Lords, shewing, that he being criminally indicted before the Lords Commissioners of Justiciary, at the Instance of his Majesty's Advocate, for Crimes of an high Nature; and whereas in that Case no Advocates would readily plead for the said Earl, unless they had his Royal Highness's and their Lordships special License and Warrant to that Effect, which is usual in the like Cases: And by the said Petition humbly supplicated, that his Highness and the Council would give special Order and Command to the faid Sir George Lockbart, the said Earl's ordinary Advocate, to confult and plead for him in the foresaid criminal Procels, without incurring any Hazard upon that Account. His Royal Highness, and Lords of the faid Privy-Council, did refuse the Desire of the faid Petition, but allowed any Lawyers the Petitioner should employ, to consult and pleasi for him in the Process of Treason, and other Crimes to be pursued against him, at the Instance of his Majesty's Advocate. And also the said Alexander Dunbar having and holding in his Hands another Act of the said Lords of Privy-Council, of the 24th of the said Month, relative to, and narrating the foresaid first Act, and proceeding upon another Supplication given in by the said Earl, to the faid Lords, craving, that his Royal Highness and the said Lords would interpose their Authority. by giving a positive and special Order and Warrant to the faid Sir George Lockbart, to consult and plead with him in the aforesaid criminal Process, conform to the Tenor of the Acts of Parliament mentioned and particularized in the said Petition, and frequent and known Practice in the like Cales, which was never refused to any Subjects of the meanest Quality. His Royal Highness, and Lords of Privy-Council, having confidered the forefaid Petition, did, by the said Act, adhere to their former Order, allowing Advocates to appear for the said Earl in the Process foresaid, as the said Acts bear; and produced the faid Acts Procuratory foresaid to the said Sir George Lockhart, who took the same in his Hands, and read them over successive; and after reading thereof, the said Alexander Dunbar Procurator, and in Name and Behalf foresaid, solemnly required the said Sir George Lockbart as the faid noble Earl's ordinary Advocate, and as a Lawyer and Advocate, upon the faid Earl's

Earl's reasonable Expence, to consult and advise the said Earl's said Process at any Time and Place the said Sir George should appoint to meet thereupon, conform to the foresaid two Acts of Council, and Acts of Parliament therein mentioned, appointing Advocates to consult in such Matters: which the said Sir George Lockbart altogether refused: Whereupon the said Alexander Dunbar, as Procurator, and in Name foresaid, asked and took the Instruments, one or more, in the Hands of me Notary-Publick under-subscribed. And these Things were done within the said Sir George Lockbart's Lodging, on the South Side of the Street of Edenburgh, in the Lane Mercat, within the Dining-Room of the said Lodging, betwixt four and five Hours in the Afternoon, Day, Month, Year, Place, and of his Majesty's Reign, respective foresaid, before Robert Dicksone, and John Lesly, Servitors to John Campbell, Writer to his Majesty's Signet, and Dowgal Mac Alester, Messenger in Edenburgh, with divers others, called and required to the Premisses.

Ita esse Ego Johannes Broun, Notarius Publicus, in Premissis requisitus, Attestor Testantibus his meis signo & subscriptione manualibus solitis & consuctis.

Broun.

Robert Dickjone,
Dowgall Mac Alester,
John Lefly,

Witnesses.

### MARKAR PROPERTY OF STREET OF STREET

Wednesday, the 12th of December, the Day of Compearance assigned to the Earl being now come, he was brought by a Guard of Soldiers from the Castle to the Place appointed for the Trial, and the Justice Court being met and senced, the Earl, now Marquis of Queensbury, then Justice-General, the Lords Nairn, Collingtown, Forret, Newtoun and Kirkbouse, the Lords of Justiciary sitting in Judgment, and the other Formalities also performed, the Indictment above set down was read, and the Earl spoke as follows.

The Earl of Argyle's Speech to the Lord Justice General, and the Lords of the Justiciary, after he had been arraigned, and his Indistment read.

My Lord Justice General, &c.

Look upon it as an undeniable Privilege of the meanest Subject to explain his own Words in the most benign Sense: And even when Persons are under an ill Character, the Misconstruction of Words in themselves not ill, can only reach a Presumption or Aggravation but not any more.

But it is strange to alledge, as well as, I hope, impossible, to make any that know me believe, that I could intend any thing but what was honest and honourable, suitable to the Principles of my Religion and Loyalty, though I did not explain myself at all.

My Lord, I pray you be not offended that I take up a little of your Time, to tell you, I have from my Youth made it my Business to serve his Majesty saithfully, and have constantly, to my Power, appeared in his Service; especially in all Times of Difficuly, and have never joined, nor complied with any Interest or Party, contrary to his Majesty's Authority, and have all along served

him in his own way, without a Frown from his Majesty these thirty Years.

As foon as I passed the Schools and Colleges, I went to travel to *France* and *Italy*, and was abroad 1647, 1648, and till the end of 1649.

My first Appearance in the World was to serve his Majesty as Colonel of his Foot-Guards. And though at that Time all the Commissioners were given by the then Parliament, yet I would not serve without a Commission from his Majesty, which I have still the Honour to have by me.

After the Misfortune of Worcester, I continued in Arms for his Majesty's Service; when Scotland was over-run with Usurpers; and was alone with fome of my Friends in Arms in the Year 1652. and did then keep up some Appearance of Opposition to them: And General Major Dean coming to Argyleshire, and planting several Garrisons, he no sooner went away but we fell upon the Garrifons he had left, and in one Day took two of them, and cut off a considerable Part of a third, and carried away in all about three hundred Prisoners: And in the End of that Year, I fent Captain Shaw to his Majesty, with my humble Opinion, how the War might be carried on; who returned to me with Instructions and Orders which I have yet lying by me.

After which, I joined with those his Majesty did commissionate, and stood out till the last, that the Earl of Middleton, his Majesty's Lieutenant-General, gave me Orders to capitulate, which I did without any other Engagements to the Rebels but allowing Persons to give Bail for my living peaceable: And did at my capitulating relieve several Prisoners by Exchange, whereof my Lord Granard, out of the Castle of Eden-

It is notarly known, that I was forefaulted by the Usurpers, who were so jealous of me, that, contrary to their Faith, within eight Months after my Capitulation, upon Pretence I keeped Horses above the Value they seized on me, and keeped me in one Prison after another, till his Majesty's happy Restoration, and this only because I would not engage not to serve his Majesty, though these

was no Oath required. I do with all Gratitude acknowledge his Majefty's Goodness, Bounty and Royal Favours to me, when I was purfued before the Parliament in the Year 1662. His Majesty was graciously pleased not to send me here in any opprobous Way, but upon a bare verbal Paroll. Upon which I came down Post, and presented myself a Fortnight before the Day. Notwithstanding whereof I was immediately clapt up in the Castle, but having satisfied his Majesty at that Time of my entire Loyalty, I did not offer to plead by Advocates. And his Majesty was not only pleased to pardon my Life, and to restore me to a Title and Fortune, but to put me in Trust in his Service, in the most eminent Judicatories of this Kingdom, and to heap Favours upon me, far beyond what ever I did or can deserve: Though I hope his Majesty hath always found me faithful and thankful, and ready to bestow all I have, or can have, for his Service: And I hope never hath had nor ever shall have Ground to repent any Favour he hath, done me. And if I were now really guilty of the Crimes libelled, I should think myself a great Villain,

The next Occasion I had to shew my particular Zeal to his Majesty's Service was in Anno 1666, when

when the Insurrection was made that was represt at Pentland-Hills. At the very first, the Intercourse betwixt this Place and me was stopt, so that I had neither Intelligence nor Orders from the Council, nor from the General; but upon a Letter from the now Archbishop of St. Andrews, telling me there was a Rebellion like to be in the three Kingdoms, and bidding me beware of Ireland and Kintyre, I brought together about two thousand Men: I seized all the Gentlemen in Kintyre that had not taken the Declaration, though I found them peaceable. And I sent a Gentleman to General Dalziel, to receive his Orders, who came to him just as they were going to the Action at Pentland, and was with him in it; and I kept my Men together till his Return. And when I met with considerable Trouble from my Neighbours, rebelliously in Arms, and had Commissions both on publick and private Accounts, have I not carried dutifully to his Majesty, and done what was commanded with a just Moderation, which I can prove under the Hands of my Enemies, and by many infallible Demonstrations?

Pardon me a few Words: Did I not in this prefent Parliament shew my Readiness to serve his Majesty and Royal Family, in afferting vigorously the
lineal legal Succession of the Crown, and had a Care
to have it expressed in the Commissions of the Shires
and Burghs I had Interest in? Was I not for offering proper Supplies to his Majesty and his Successor? And did I not concur to bind the Landlords for their Tenants, although I was mainly concerned? And have I not always kept my Tenants

in Obedience to his Majesty?

I say all this, not to arrogate any thing for doing what was my Honour and Duty to his Majesty; but if aster all this, upon no other Ground but Words that were spoken in absolute Innocence, and without the least Design, except for clearing my own Conscience, and that are not capable of the ill Sense wrested from them by the Libel, I should be further troubled, what Assurance can any of the greatest Quality, Trust, or Innocency have, that they are fecure? especially considering, that so many Scruples have been started, as all know, not only by many of the Orthodox Clergy, but by whole Presbyteries, Synods, and some Bishops, which were thought so considerable, that an eminent Bishop took the Pains to write a Treatise, that was read over in Council, and allowed to be printed, and a Copy given to me, which contains all the Expressions I am charged for, and many more that may be stretched to a worse Sense.

Have I not shewed my Zeal to all the Ends of the Test? How then can it be imagined that I have any sinister Design in any thing that I have faid? If I had done any thing contrary to it all the Course of my Life, which I hope shall not be found, yet one Act might pretend to be excused by a Habit. But nothing being questioned but the Sense of Words misconstrued to the greatest Height, and stretched to imaginary Infiauations, quite contrary to my Scope and Design, and so far contrary, not only to my Sense, but my Principles, Interest, and Duty, that I hope my Lord Advocate will think he hath gone too far on in this Process, and say plainly what he knows to be Truth by his Acquaintance with me, both in publick and private, viz. That I am neither Papist nor Fanatick, but truly loyal in my Principles and Practices.

Vol. III.

The hearing of this Libel would trouble me beyond most of the Sufferings of my Life if my Innocence did not support me, and the Hopes of being vindicated of this and other Calumnies before this publick and noble Auditory.

I leave my Defences to these Gentlemen that plead for me, they know my Innocence, and how

groundless that Libel is.

I shall only say, as my Life hath most of it been spent in serving and suffering for his Majesty; so, whatever be the Event of this Process, I resolve, while I breathe, to be loyal and faithful to his Majesty. And whether I live publickly or in Obscurity, my Flead, my Heart, nor my Hand, shall never be wanting where I can be useful to his Majesty's Service. And while I live, and when I die, I shall pray, that God Almighty would bless his Majesty with a long, happy, and prosperous Reign; and that the lineal legal Successors of the Crown may continue Monarchs of all his Majesty's Dominions, and be Defenders of the true Primitive, Christian, Apostolick, Catholick, Protestant Religion, while Sun and Moon endure.

God fave the King.

FOR! CONTRACTOR ! CONTRACTOR !

The King's own Letter to this Nobleman, when he was Lord Lorn.

Cologne, Dec. 1654.

My Lord Lorn,

· TAM very glad to hear from Middleton, what Affection and Zeal you show to my Service, how constantly you adhere to him in all his · Distresses, and what good Service you have e performed upon the Rebels. I assure you, you shall find me very just, and kind to you in rewarding what you have done and suffered for me; and I hope you will have more Credit and · Power with those of your Kindred, and Dependants upon your Family, to engage them with you for me, than any body else can have to seduce them against me; and I shall look upon all those who shall resule to follow you as unworthy of any Protection hereafter from me, which you will let them know. This honest Bearer, M----, will inform you of my Condition and Purposes, to whom you will give · Credit; and he will tell you, that I am very ' much

. Your affectionate Friend,

.C. R.

General Middleton's Order to the Earl of Argyle, who was then Lord Lorn, for capitulating with the English, wherein he largely expressed his Worth and Loyalty.

John Middleton, Lieutenant-General, next and immediately under his Majesty, and Commander in Chief of all the Forces raised, and to be raised, within the Kingdom of Scotland.

SEEING the Lord Lorn hath given so singular Proofs of clear and perfect Loyalty to the King's Majesty, and of pure and constant Affection to the Good of his Majesty's Affairs, as never M m m hitherto

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hitherto to have any Ways complied with the Enemy, and to have been principally instrumental in the enlivening of this late War, and one of the chief and first Movers in it; and hath readily, chearfully, and gallantly engaged, and resolutely and constantly continued active in it, notwithstanding the many powerful Dissuasions, Discouragements, and Oppolitions he hath met withal from divers Hands, and hath in the carrying on of the Service shewn such signal Fidelity, Integrity, Generosity, Prudence, Courage, and Conduct, and such high Virtue, Industry, and Ability, as are suitable to the Dignity of his noble Family, and the Trust his Majesty reposed in him; and hath not only stood out against all Temptations and Enticements, but hath most nobly crossed and repressed Designs and Attempts of deferting the Service, and perfifted loyally and firmly in it to the very last, through excessive Toil and many Difficulties, misregarding all personal Inconveniencies, and chusing the Loss of Friends, Fortune, and all private Concernments, and to endure the utmost Extremities rather than to fwerve in the least from his Duty, or taint his Reputation with the meanest Shadow of Disloyalty and Dishonour. I do therefore hereby testify and declare, that I am perfectly satisfied with his whole Deportments, in relation to the Enemy, and this late War; and do highly approve them, as being not only above all I can express of their Worth, but almost beyond all Parallel. And I do withal hereby both allow, and most earnestly desire, and wish him, to lose no Time in taking such Course for his Safety and Preservation by Treaty and Agreement, or Capitulation, as he shall judge most fit and expedient for the Good of his Person, Family, and Estate, since inevitable and invincible Necessity hath forced us to lay afide this War. And I can now no other Way express my Respects to him, nor contribute my Endeavour to do him Honour and Service. In Testimony whereof I have signed and fealed these Presents at Dunveagave, the last Day of March, 1655.

John Middleton.

Another Letter from the Earl of Middleton, to the selves to be true Honourers of you, than he who same Purpose.

Paris, April 17, 1655.

My noble Lord,

AM hopeful, that the Bearer of this Letter will be found one who has been a most faithful Servant to your Lordship, and my kind Friend, and a Sharer in my Troubles. Indeed I have been strengthened by him to support and overcome many Difficulties. He will acquaint you with what hath past, which truly was strange to both of us, but your own Re-encounters will lessen them. My Lord, I shall be faithful in giving you that Character which your Worth and Merit may justly challenge. I profess it is, next to the Ruin of the Service, one of my chiefest Regrets that I could not possibly wait upon you before my going from Scotland, that I might have settled a Way of Correspondence with you, and that your Lordship might have understood me better than yet you do; I should have been plain in every thing, and indeed have made your Lordship my Confessor: And I am hopeful the Bearer will say somewhat for me, and I doubt not but your Lordship will trust him. If it an Inquest. For,

shall please God to bring me safe from beyond Sea, your Lordship shall hear from me by a sure Hand Sir Ro. M. will tell you a Way of corresponding. So that I shall say no more at present, but that I am, without Possibility of Change,

> My noble Lord, Your Lordship's most faithful, and most bumble Servant, John Middleton,

A Letter from the Earl of Glencairn, testifying his Effects for this Noble Person, and the Sense he had of his Loyalty to the King, when few had the Courage to own him.

My Lord,

TEST it may be my Misfortune, in all these great Revolutions, to be misrepresented to your Lordship, as a Person unworthy of your favourable Opinion (an Artifice very frequent in these Times) I did take Occasion to call for a Friend and Servant of yours, the Laird of Spanie, on whose Discretion I did adventure to lay forth my Heart's Desire, to obviate in the Bud any of these Misunderstandings. Your Lordship's true Worth and Zeal to your Country's Happiness being so well known to me, and confirmed by our late Suffering-Acquaintance: And now finding how much it may conduce to these great Ends, we all wish that a perfect Unity may be amongst all good and honest-hearted Scotchmen, though there be few more insignificant than my self: Yet my Zeal for those Ends obliges me to say, that it your Lordship's Health and Affairs could have permitted you to have been at Edenburgh in these late Times, you would have seen a great Inclination and Desire, amongst all here, of a perfect Unity, and of a mutual Respect to your Person, as of chief Eminence and Worth. And I here shall set it under my Hand, to witness against all my Informers, that none did with more Passion, nor shall with more continued Zeal, witness themdesires infinitely to be esteemed,

My Lord,

Your most humble Servant,

GLENCAIRN.

What I cannot well write, I hope this discreet Gentleman will tell you, in my Name: And I shall only beg Leave to fay, that I am your most noble Lady's humble Servant.

After the reading of which Order and Letters, which yet the Court refused to record, the Earl's Advocate, or Counsel, Sir George Lockhart said in his Defence as follows.

Sir George Lockhart's Argument and Plea for the Earl of Argyle.

CIR George Lockhart for the Earl of Argyle, alledgeth, That the Libel is not relevant, and whereupon he ought to be put to the Knowledge of Ţε

It is alledged in the general, That all criminal Libels, whereupon any Person's Life, Estate and Reputation, can be drawn in Question, should be founded upon clear, positive and express Acts of Parliament, and the Matter of Fact which is libelled, to be the Contravention of those Laws, should be plain, clear, and direct Contraventions of the same, and not argued by Way of Implications and Inferences. Whereas in this Cafe, neither the Acts of Parliament founded upon, and libelled, can be in the least the Foundation of this Libel: Nor is the Explication which is pretended to be made by the Pannel, at the Time of the taking of his Oath (if confidered) any Contravention of those Laws; which being premised, and the Pannel denying the Libel, as to the whole Articles and Points therein contained, it is alledged in fpecial:

That the Libel, in so far as it is sounded upon the 21st Chap. Stat. 1. Robert I. and upon 83d Act, Par. 6. James V. the 43d Act, Par. 2. James I. and upon the 83d Act, Par. 10. James V. and upon 84th Act, Par. 8. James VI. and upon the 10th Act, Par. 10. James VI. and upon the 2d Act, Par. 1. Ses. 2. of his Sacred Majesty; and insering thereupon, that the Pannel, by the pretended Explication given in by him to the Lords of his Majesty's Privy Council, as the Sense of the Oath he had taken, doth commit the Crime of Leasing-making, and depraving his Majesty's Laws: The Inference and Subsumption is most unwarrantable, and the Pannel, though any fuch thing were acknowledged and proved, can never be found guilty of contravening these Acts of Parliament. In respect it is evident, upon perusal and Consideration of these Acts of Parliament, that they only concern the Case of Leasing. making tending to Sedition, and to beget Difcord betwixt his Majesty and his Subjects, and the Dislike of his Majesty's Government, and the Reproach of the same. And the said Laws and Acts of Parliament were never understood or libelled upon, in any other Sense. And all the former Acts of Parliament, which relate to the Crime of Leasing making in general Terms, and under the Qualification foresaid, as tending to beget Discord betwixt his Majesty and his Subjects, are explained and fully declared, as to what is the true Meaning and Import thereof, by the 134th Act, Par. 8. James VI. which relates to the same Crime of Leasing-making, and which is expressy described in these Terms, to be wicked and licentious, publick and private Speeches, and untrue Calumnies to the Disdain and Contempt of his Majesty's Council and Proceedings, and to the Dishonour and Prejudice of his Highness and his Estate, stirring up his Highness's Subjects to Missiking and Sedition, and Unquietness, which being the true Sense and Import of the Acts of Parliament made against Leasing-makers, there is nothing can be inferred from the Pannel's alledged Explication, which can be wrested or construed to be a Contravention of these Laws: In respect,

I. It is known by the whole Tenor of his Life, and graciously acknowledged by his Sacred Majesty, by a Letter under his Royal Hand, that the Pannel did ever most zealously, vigoroully, and faithfully promote and carry on his Majesty's Service and Interest, even in the worst and most difficult Times: Which is also acknowledged by a Pass under the Earl of Middleton's Vol. III.

Hand, who had then a special Commission from his Majesty, for carrying on his Majesty's Service in this Kingdom, as Lieutenant-General under his Majesty; and by a Letter under the Earl's Hand, of the Date, both which do contain high Expressions of the Pannel's Loyalty, and of the great Services he had performed for his Majesty's Interest. And his Majesty, as being conscious thereof, and perfectly knowing the Pannel's Loyalty, and his Zeal and Faithfulness sor his Service, did think fit to entrust the Pannel in Offices and Capacities of the greatest Trust of the Kingdom. And it is a just and rational Prelumption, which all Law makes and infers, that the Words and Expressions of Persons, who by the Tenor and Course of their Lives have expressed their Duty and Loyalty to his Majesty's Interest, are ever to be interpreted, and understood in meliorem partem. And by Way of Implication and Inference, to conclude and infer Crimes from the same, which the Uler of such Words and Expressions never meaned nor designed, is both unreasonable and unjust.

II. As the foresaid Acts of Parliament made against Leasing-makers, and Depravers of his Majesty's Laws, only proceed in the Terms foresaid, where the Words and Speeches are plain, tending to beget Discord between the King and his Subjects, and to the Reproach and Dislike of his Government, and when the same are spoke and vented in a subdolous, pernicious, and fraudulent Manner: So they never were, nor can be understood to proceed in the Case of a Person offering in the Presence of a publick Judicature (whereof he had the Honour to be a Member) his fincere and plain Meaning and Apprehension of what he conceived to be the true Sense of the Act of Parliament impoling and enjoining the Test: There being nothing more opposite to the Act of Parliament made against Leasing-making, and venting and spreading abroad the same upon Seditious Designs, than the foresaid Plain and open Declaration of his Sense and Apprehension, what was the Meaning of the faid Act of Parliament. And it is of no Import to infer any Crime, and much less of any of the Crimes libelled, albeit the Pannel had erred and mistaken in his Apprehension of the A& of Parliament. And it were a strange Extension of the Act of Parliament made against Leasing-makers, requiring the Qualifications foresaid, and the Acts against depraving his Majesty's Laws, to make the Pannel, or any other Person guilty upon the Mistakes and Misapprehensions of the Sense of the Laws, wherein Men may mistake and differ very much, and even eminent Lawyers and Judges. So that the Acts of Parliament against Leasingmaking, and depraving his Majesty's Laws, can only be understood in the express Terms and Qualifications foresaid. Like as it neither is libelled, nor can be proven, that the Pannel, before he was called and required by the Lords of his Majesty's Privy-Council to take the Oath, did ever, by Word or Practice, use any reproachful Speeches of the faid Act of Parliament, or of his Majesty's Government; but being required to take the Oath, he did humbly with all Submission, declare what he apprehended to be the Sense of the Act of Parliament, enjoining the Test, and in what Sense he had Freedom to take the fame.

III. The Act of Parliament enjoining the Test does not enjoin the same to be taken by all Persons whatsoever, but only prescribes it as a Qualification, without which Persons could not assume or continue to act in publick Trust: Which being an Oath to be taken by so solemn an Invocation of the Name of Almighty God, it is not only allowable by the Laws and Customs of all Nations, and the Opinion of all Divines, and Casuists, Popish or Protestant, but also commended, that where a Party has any Scrupulosity, or Unclearness in his Conscience, as to the Matter of the Oath, that he should exhibit and declare the Sense and Meaning in which he is willing and able to take the Oath. And it is not at all material, whether the Scruples of a Man's Conscience, in the Matter of an Oath, be in themselves just or groundless, it being a certain Maxim, both in Law and Divinity, that Conscientia etiam erronea ligat: And therefore though the Pannel had thought fit, for the clearing and Exoneration of his own Conscience, in a Matter of the highest Concern as to his Peace and Repose, to have expressed and declared the express Sense in which he could take the Oath, whether the said Sense was consistent with the Act of Parliament, or not, yet it does not in the least import any Matter of Reproach or Reflection upon the Justice or Prudence of the Parliament in impoling the faid Oath: But alenarly does evince the Weakness and Scrupulosity of a Man's Conscience, who neither did, nor ought to have taken the Oath but with an Explanation that would have faved his Conscience to his Apprehension. Otherwise he had grossly sinned before God, even though it was Conscientia errans. And this is allowed and prescribed by all Protestant Divines, as indispenfably necessary, and was never thought to import any Crime, and is also commended even by Popish Casuists themselves, who though they allow, in some Cales, of Mental Reservations and Equivocations, yet the express Declaration of the Sense of the Party is allowed and commended, as much more ingenuous: And ...tius Remedium Conscientiæ ne illaqueetur, as appears by Bellarmine de Juraupon the same Title de Intermento, and pretatione Juramenti; and Lessius, that famous Casuist, de Justitia & Jure, Dubitatione 8, 9. utrum si quis salvo animo aliquid Juramento promittat obligetur, & quale peccatum hoc sit. And which is the general Opinion of all Casuists, and all Divines, as may appear by Amefius, in his Treatise de Conscientia, Sanderson de Juramento, Prælettione secunda. And such an express Declaration of the Sense and Meaning of any Party when required to take an Oath, for no other End but for the clearing and Exoneration of his own Conscience, was never in the Opinion of any Lawyer, or any Divine, construed to be the Crime of Leasing making, or of defamatory Libels, or depraying of publick Laws, or reproaching or misconstruing of the Government: But on the contrary, by the universal Suffrage of all Protestant Divines, there is expresly required, in Cases of a scrupulous Conscience, an Abhorrence and Detestation of all reserved Senses, and of all Amphibologies and Equivocations, which are in themselves unlawful and reprobate, upon that unanswerable Reason, that Juramentum being the highest Act of Devotion and Religion, in eo requiritur maxima simplicitas; and that a Party is

publickly and openly to clear and declare the fame.

IV. Albeit it is not controve ted, but that a Legislator, imposing an Oath, or any publick Authority, before whom the Oath is taken, may, after hearing of the Sense and Explication which a Person is willing to put upon it, either reject or accept of the same, if it be conceived not to be consistent with the genuine Sense of the Oath: Yet though it were rejected, it was never heard of, or pretended, that the Offering of a Sense does import a Crime, but that notwithstanding thereof, Habetur pro Recusante, and as if he had not taken the Oath, and to be liable to the Certification of Law, as if he had been a Resuler.

V. The Pannel having publickly and openly declared the Sense in which he was free to take the Oath, it is offered to be proved, that he was allowed, and did accordingly proceed to the taking the Oath, and did thereafter take his Place, and sit and vote, during that Sederant of Privy-Council. So as the pretended Sense and Explication, which he did then emit and give, can import no Crime

against him.

VI. It is also offered to be proved, That before the Pannel was required to take the Oath, or did appear before his Royal Highness, and Lords of Privy-Council, to take the same, there were a great many Papers spread abroad from Persons, and Ministers of the Orthodox Clergy; and, as the Pannel is informed, some thereof presented to the Bishops of the Church, in the Name of Synods and Presbyteries, which did, in downright Terms, charge the Test and Oath with alledged Contradictions and Inconsistencies, And for Satisfaction whereof, some of the learned and Reverend Bishops of the Church did write a learned and fatisfying Answer, called, A Vindication of the Test, for clearing the Scruples, Difficulties and Mistakes that were objected against it. And which Vindication and Answer was exhibited, and read before the Lords of his Majesty's Privy-Council, and allowed to be printed: And from which the Pannel argues,

1. That it neither is, nor can be pretended in this Libel, that the alledged Explication, wherein he did take the Oath, does propose the Scruples of his Conscience in these Terms, which were proposed by the Authors of these Objections, which do flatly and politively affert, that the Oath and Test do contain Matters of Inconsistency and Contradiction; whereas all that is pretended in this Libel, with the most absolute Violence that can be put upon the Words, is arguing Implications and Inferences; which neither the Words are capable to bear, nor the Sincerity of the Earl's Intention and Design, nor the Course of his by-past Life can possibly admit of. And yet none of the Persons who were the Authors of fuch Papers, were ever judged or reputed criminal or guilty, and to be prosecuted for the odious and infamous Crimes libelled, of Treason, Leasingmaking, Perjury, and the like.

all Protestant Divines, there is expressly required, in Cases of a scrupulous Conscience, an Abhorrence and Detestation of all reserved Senses, and of all Amphibologies and Equivocations, which are in themselves unlawful and reprobate, upon that unanswerable Reason, that Juramentum being the highest Act of Devotion and Religion, in eo requiritur maxima simplicitas; and that a Party is obliged, who has any Scruples of Conscience,

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Explication wherein he took the Oath, to have done it animo infamandi, and to declaim against the Government: For the Scruples and Objections that were spread abroad by others, were a fair and rational Occasion why the Earl in any Sense or Explication which he offered might have said, that he was confident the Parliament never intended to impose contradictory Oaths; and this is so far from importing the Insinuations and Inference made by the Libel, that thereby the Parliament were so impious as to impose contradictory Oaths, as on the contrary, considering the Circumstances fore-mentioned, that there were Papers spread abroad, insinuating, that there were Inconsistencies and Contradictions contained therein; the faid Expression was an high Vindication of the Honour and Justice of the Parliament, against the Calumnies and Misrepresentations which were cast upon it, and was also a just Rise for the Pannel, for the clearing and Exoneration of his own Conscience, in the various Senses and Apprehensions which he found were going abroad as to the said Test, humbly to offer his Sense, in which he was clear and satisfied to take the Oath.

VII. To the Libel, in so far as it is sounded upon the Act of Parliament, viz. Act. 130. Par. 8. James VI. declaring, That none should presume to impugn the Dignity or Authority of the three Estates of Parliament, or procure any Invasion or Diminution thereof, under the Pain of Treason; as also, in so far as it is pretended in the Libel, That the Pannel, by offering the Sense and Explication libelled, has assumed the Legislative Power, which is incommunicable, and has made a Law, or Part of a Law.

It is answered, The Libel is most groundless and irrelevant, and against which the Act of Parliament is opponed, which is so plain and evident upon the reading thereof, that it neither is nor can be subject to the least Cavillation: And the plain Meaning whereof is nothing else but to impugn the Authority of Parliaments, as if the King and Parliament had not a Legislative Power, or were not the highest Representative of the Kingdom; or that any of the three Estates were not essentially requisite to constitute the Parliament. And besides there is nothing more certain, than that the Occasion of the said Act, it's being made was in Relation to the Bishops and Clergy: And there is nothing in the pretended Explanation, that can be wrested to import the least Contravention of the said Act, or to be an impugning of the three Estates of Parliament, or a seeking any Innovation therein. And it is admired, with what Shadow of Reason it can be pretended, that the Pannel has assumed a Legislative Power, or made a Part of a Law, seeing all that is contained in the alledged Explication libelled, is only a Declaration of the Earl's Sense in which he was satisfied to take the Oath, and so respected none but himself, and for the clearing of his own Conscience, which justly indeed the Word of God calls a Law to himself, without any incroaching upon the Legislative Power. And where was it ever debated, but that a Man in the taking of an Oath, it as to his Apprehensions he thought any Thing in it deserved to be cleared, might declare the same, or that his exhibiting, at the Time of the taking of the Oath, his Sense and Explication wherein he did take it, was ever re-

Nations to allow this Liberty; and which Sense may be either rejected or accepted, as the Legislator shall think fit, importing no more but a Party's private Sense, for the Exoneration of his own Conscience? And as to that Member of the Libel founded upon Att 19. Par. 3. Queen Mary, it contains nothing but a Declaration of the Pain of Perjury, and there is nothing in the Explication libelled, which can in the least be inferred as a Contravention of the said Act, in respect if it should be proved, that the Pannel, at the Time of the taking of the Oath, did take it in the Words of the said Explication, as his Sense of the Oath, it is clear that the Sense being declared at the Time of taking the Oath, and allowed as the Sense wherein it was taken, the Pannel can only be understood to have taken it in that Sense. And although publick Authority may confider whether the Sense given by the Pannel does satisfy the Law or not, yet that can import no more, though it was found not to satisfy, but to hold the Pannel as a Refuser of the Oath: But it is absolutely impossible to infer the Crimes of Perjury upon it, being, as is pretended by the Libel, the Pannel did only take it with the Declaration of the Sense and Explication libelled.

VIII. As the Explication libelled does not at all import all, or any of the Crimes contained in the faid Libel, so by the common Principles of all Law, where a Person does emit Words for the clearing and Exoneration of his own Conscience, although there were any Ambiguity, or Unclearness, or Involvedness in the Tenor or Import of the Expressions or Words, yet they are ever to be interpreted, Interpretatione benigna & favorabili, according to the general Principles of Law and Reafon. And it never was, nor can be refused to any Person to interpret and put a congruous Sense upon his own Words, especially the Pannel being a Person of eminent Quality, and who hath given great Demonstration, and undeniable Evidences of his fixt and unalterable Loyalty to his Majesty's Interest and Service, and, at the Time of emitting the faid Explication, was invested and entrusted in publick Capacities. And it is a just and rational Interpretation and Caution which Sanderson, that judicious and eminent Casuist gives, Prælest. 2. That dista & fasta principum, parentum, rectorum, are ever to be looked upon as benignæ Interpretationis, and that Dubia funt interpretanda in meliorem partem. And there is nothing in the Explication libelled, which, without Detorsion and Violence, and in the true Sense and Defign of the Pannel, is not capable of this benign Interpretation and Construction, especially respect being had to the Circumstances wherein it was emitted and given, after a great many Objections, Scruples, and alledged Inconsistencies, were owned, vented, and spread abroad, which was a rife to the Earl for using the Expressions contained in the pretended Declaration libelled.

Conscience, which justly indeed the Word of God calls a Law to himself, without any increased upon the Legislative Power. And where was it ever debated, but that a Man in the taking of an Oath, it as to his Apprehensions he thought any Thing in it deserved to be cleared, might declare the same, or that his exhibiting, at the Time of the taking of the Oath, his Sense and Explication wherein he did take it, was ever reputed or pretended to be the assuming of a Legislative Power, it being the universal Practice of all

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were enjoined which were so hard that it is not possible to comply with it: And yet such Implications are most irrational and inconsequential, and neither in the Case of a simple and absolute resuling of the Oath, nor in the Case of an Explication of the Party's Sense wherein he is willing to take the Oath, is there any Impeachment of the Justice and Prudence of the Legislator, who imposeth this Oath, but singly a Declaration of the Scrupulosity and Weakness of the Party, why he cannot take the Oath in other Terms: And such Explications have been allowed by the Laws and Customs of all Nations, and are advised by all Divines, of whatsoever Principles, for the Solace and Security of a Man's Conscience.

II. As to that Point of the Explication libelled, That I am confident the Parliament never intended to impose contradictory Oaths; it respects the former Answer, which, considering the plain and downright Objections which were spread abroad, and made against the Oath, as containing Inconsistencies and Contradictions, was an high Vindication of the Justice and Prudence of the Parliament.

III. As to these Words, And therefore I think no Body can explain it but himself. The plain and clear Meaning is nothing else but that the Oath being imposed by Act of Parliament it was of no private Interpretation: And that therefore every Man who was to take it, behoved to take it in that Sense which he apprehended to be the genuine Sense of the Parliament. And it is impossible, without impugning common Sense, that any Man could take it in any other Sense, it being as impossible to see with another Man's Eyes as to see with his private Reason. And a Man's own private Sense and Apprehension of the genuine Sense, was the only proper Way wherein any Man could rationally take the Oath.

And as to these Words, That he takes it as far as it is consistent with itself and the Protestant Religion. The Pannel neither intended nor exprest more, but that he did take it as a true Protestant, and he hopes all Men ' we taken it as such.

And as to that Claute, wherein the Pannel is made to declare, That he does not bind up himself in his Station, in a lawful Way, to wish and endeavour any Alteration he thinks to the Advantage of Church or State, not repugnant to the Protestant Religion and his Loyalty.

It is answered, there is nothing in this Expression that can import the least Crime, or give the least Umbrage for any Mistake. For,

1. It is most certain, it is impossible to elicite any such thing from the Oath, but that it was the Intention of the Parliament, that Persons, notwithstanding of the Oath, might concur in their Stations, and in a lawful Way, in any Law to the Advantage of Church and State. And no rational Man ever did, or can take the Oath in other Terms, that being contrary to his Allegiance and Duty to his sacred Majesty and Prince.

2. There is nothing in the said Expression which does in the least Point at any Alteration in the Fundamentals of Government, either in Church or State; but, on the contrary, by the plain and clear Words and Meaning, rather for it's Perpetuity, Stability and Security. The Expression being cautioned to the utmost Scrupulosity, as that it was to be done in a lawful Manner; that it was to be to the Advantage of Church or State; that it was to be consistent with the Protestant Religion,

and with his Loyalty, which was no other but the Duty and Loyalty of all faithful Subjects; and which he has fignally and eminently expressed upon all Occasions. So that how such an Expression can be drawn to import all or any of the Crimes libelled, passeth all natural Understanding.

And as to the last Words, And this I understand as a Part of my Oath, which is libelled to be a treafonable Invalion, and assuming of the Legislative Power. It is answered, it is most unwarrantable; and a Party's declaring the Sense and Meaning in which he was free to take an Oath, does not at all respect or invade the Legislative Power, of which the Pannel never entertained a Thought, but has an absolute Abhorrence and Detestation of such Practices. But the plain and clear Meaning is, that the Sense and Explication was a Part. of Julia Oath, and not of the Law imposing the Oata, these being as distant as the two Poles: And what Sense was taken off the Earl's Hands, and he accordingly was allowed to take his Place at the Council-Board, and therefore repeats the former general Defences.

And to convince the Lords of Justiciary, that there is nothing in the pretended Explication libelled which can be drawn to import any Crime, even of the lowest Size and Degree, and that there is no Expression therein contained that can be detorted and wrested to import the same, is evident from that learned Vindication published and spread abroad by an eminent Bishop, and which was read in the Face of the Privy-Council, and does contain Expressions of the same Nature, and to the same Import contained in the pretended Explication libelled, as the ground of this Indictment libelled against the Pannel. And it is politively offered to be proven, that these Terms were given in, and read, and allowed to be printed, and (without taking Notice of the whole Tenor of the faid Vindication, which the Lords of Justiciary are humbly defired to peruse, and consider, and compare the same with the Explication libelled) the fame acknowledgeth, that Scruples had been raifed and spread abroad against the Oath; and also acknowledgeth, that there were Expressions therein that were dark and obscure; and likewise takes Notice, that the Consession ratified, Par. 1. James VI. to which the Oath relates, was hastily made, and takes Notice of that Authority that made it, and acknowledges in plain Terms, that the Oath does not hinder any regular Endeavour to regulate or better the established Government; but only prohibits irregular Endeavours and Attempts to invert the Substance or Body of the Government; and does likewise explain the Act of Parliament anent his Majesty's Supremacy, that it does not reach the Alteration of the external Government of the Church. And the Pannel and his Proctors are far from infinuating in the least, that there is any Thing in the faid Vindication but what is confistent with the exemplary Loyalty, Piety, and Learning, of the Writer of the fame. And though others perhaps may differ in their private Opinion, as to this Interpretation of the A& of Parliament anent the King's Supremacy, yet it were most absurd and irrational to pretend, that whether the Mistake were upon the Interpretation of the Writer, or the Sense of others, as to that Point, that such Mistakes or Misapprehensions, upon either Hand, should import or infer against them the Crimes of Lealing-making, or depraying his Majelty's Laws:

Laws: For if such Foundations were laid, Judges and Lawyers had a dangerous Employment, there being nothing more ordinary than to fall into Differences and Mistakes, of the Sense and Meaning of the Laws and Acts of Parliament. But such Crimes cannot be inferred, but with and under the Qualifications abovementioned, of malicious and perverse Designs, joined with licentious, wicked and reproachful Speeches spread abroad, to move Sedition and Dislike of the Government. And the said Laws were never otherwise interpreted, nor extended in any Case. And therefore the Explication libelled, neither as taken complexly, nor in the several Expressions thereof, nor in the Design of the Ingiver of the same, can in Law import against him all or any of the Crimes libelled.

In like Manner the Pannel conjoins with the Grounds abovementioned, the Proclamation issued forth by his Majesty's Privy-Council, which acknowledges and proceeds upon a Narrative, that Scruples and Jealousies were raised and spread abroad against the Act of Parliament enjoining the Test. For clearing and Satisfaction whereof, the said Proclamation was issued forth, and is since approved by his Sacred Majesty.

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The King's Advocate's Argument and Plea against the Earl of Argyle.

I IS Majesty's Advocate, for the Foundation of his Debate, does represent, that his Majesty, to secure the Government from the rebellious Principles of the last Age, and the unjust Pretexts made use of in this, from Popery, and other Jealousies; as also to secure the Protestant Religion, and the Crown, called a Parliament; and that the great Security resolved on by the Parliament was this excellent Test, in which, that the old jugling Principles of the Covenant might not be renewed, wherein they still swore to serve the King in their own Way, the Parliament did positively ordain, that this Oath should be taken in the plain genuine. Meaning of the Words, without any Evalion whatsoever. Notwithstanding whereof, the Earl of Argyle, by this Paper, does invent a new Way, whereby no Man is at all bound to it. For how can any Person be bound, if every Man will only obey it as far as he can, and as far as he conceives it consistent with the Protestant Religion, and with itself, and reserve to himself notwithstanding thereof, to make any Alteration that he thinks confistent with his Loyalty? And therefore his Majesty's Advocate defires to know, to what the Earl of Argyle, or any Man else, can be bound by this Test? What the Magistrate can expect, or what Way he can punish his Perjury? For if he be bound no farther than he himself can obey, or so far as this Oath is confistent with the Protestant Religion or itlelf, quomodo constat, to whom or what is he bound? And who can determine that? Or against what Alteration is the Government secured, lince he is Judge of his own Alteration? So that that Oath, that was to be taken without any Evation, is evaded in every fingle Word or Letter; and the Government as insecure as before the Act was made, because the Taker is no farther bound than he pleases. From which it cannot be denied, but his Interpretation destroys not only this

Act, but all Government, since it takes away the Security of all Government, and makes every Man's Conscience, under which Name there goes ordinarily in this Age Humour and Interest, to be the Rule of the Taker's Obedience. Nor can it be conceived to what Purpose Laws, but especially Oaths, needed to be made, if this were allowed; or how this cannot fall under the 107th AET, Par. 7. James VI. whereby it is statuted, That no Man interpret the Statutes otherwise than the Maker understood. For what can be more contrary to the taking of them in the Maker's Sense, than that every Man should obey as sar as he can, and be allowed to take them in a general Sense, so far as they are consistent with themselves, and the Protestant Religion, without condescending wherein they do not agree with the Protestant Religion? And that they are not bound not to make any Alteration which they think good for the States? For all these make the Rule of Obedience in the Taker, whereas the politive Law makes it to be in the Maker. Or how could they be punished for Perjury after this Oath? For when he were quarrelled for making Alterations against this Oath, and so to be perjured; he might easily answer, that he took this Oath only in so far as it was consistent with the Protestant Religion, and with a Salvo, that he might make any Alteration that he thought confistent with his Loyalty. And as to these Points, upon which he were to be quarrelled, he might fay, he did not think them to be inconsistent with his Loyalty, think we what we pleased, and so needed not be perjured, except he pleased to decide against himself: For in these Generals he reserves to himself to be still Judge. And this were indeed a fine Security for any Government. And by the same Rule that it loses this Oath, it shews a Way of losing all Oaths and Obedience: And consequently strikes at the Root of all Laws, as well as this: Whereas to shun all this, not only this excellent Statute 107, has secured all the rest, but this is common Reason: And in the Opinion of all Divines, as well as Lawyers in all Nations, Verba juramenti intelliguntur secundum mentem & Intentionem ejus, cui sit juramentum. Which is set down, as the grand Position, by Sanderson, (whom they cite) Page 137, and is founded upon that Mother-Law, Leg. 10. cui interrogatus f. f. de interrogationibus in Jure faciendis; and without which no Man can have Sense of Government in his Head, or practife it in any Nation. Whereas on the other Hand there is no Danger to any tender Conscience, fince there was no Force upon the Earl to take the Oath, but he took it for his own Advantage, and

might have abstained. 1. It is inferred from the above-written Matter of Fact, that the Earl is clearly guilty of Contravention of the 10th AI, Par. 10. James VI. whereby the Leiges are commanded not to write any purpose of Reproach of his Majesty's Government, or misconstrue his Proceedings, whereby any Misliking may be raised betwixt his Highness, his Nobility, or his People. And who can read this Paper, without seeing the King and the Parliament reproached openly in it? For who can hear, that the Oath is only taken as far as it is consistent with itself and the Protestant Religion, but must necessarily conclude, that in several Things it is inconsistent with itself, and the Protestant Religion? For if it were not inconsistent with itself, and the Protestant Religion, why this Clause

at all but it might have been simply taken? For the only Reason of hindering it to be taken simply, was because of the Inconsistency. Ergo there behoved necessarily to be an Inconsistency. And if there be any Inconsistency with the Protestant Religion, or any Contradiction in the Oath itself, can there be any Thing a greater Reproach on the Parliament, or a greater Ground of Mislike to the People? And whereas it is pretended, that all Laws and Subsumptions should be clear, and these are only Inferences; It is answered, that there are fome Things which the Law can only forbid in general: And there are many Inferences which are as strong and natural, and reproach as soon, or sooner, than the plainest Defamations in the World do: For what is openly said of Reproach to the King, does not wound him so much as many seditious Insinuations have done in this Age and the last: So that whatever was the Earl's Design (albeit it is always conceived to be unkind to the Act, against which himself debated in Parliament) yet certainly the Law in fuch Cases is only to consider what Effect this may have amongst the People: And therefore the Acts of Parliament that were to guard against the misconstruing of his Majesty's Government, do not only speak of what was designed, but where a Disliking may be caused; and so judgeth ab effectu: And, consequentially to the same emergent Reason, it makes all Things tending to the raising of Dislike to be punishable by the Att 60. Parl. 6. Queen Mary; and the 9th Att Parl. 20. James VI. So that the Law designed to deter all Men by these indefinite and comprehensive Expressions: And both in this and all the Laws of Leasing-making, the Judges are to confider what falls under these general and comprehensive Words; nor could the Law be more special here, since the Makers of Reproach and Slander are so various that they could not be bound up or exprest in any Law: But as it evidently appears, that no Man can hear the Words exprest, if he believe this Paper, but he must think, the Parliament has made a very ridiculous Oath, inconfistent with itself and he Protestant Religion, the Words allowing no other Sense, and having that natural Tendency; even as if a Man would fay, I love such a Man only in so far as he is an honest Man, he behoved certainly to conclude that the Man was not every Way honest; so if your Lordships will take Measures by other Parliaments, or your Predecessors, ye will clearly see, that they thought less than this a defaming of the Government, and misconstruing his Majesty's Proceedings. For in Balmerino's Case the Justices find an humble Supplication made to the King himself to fall under these Acts now cited. Albeit, as that was a Supplication, so it contained the greatest Expressions of Loyalty, and Offers of Life and Fortune that could be exprest; yet because it insinuates darkly, that the King in the preceding Parliament had not favoured the Protestant Religion, and they were forry he should have taken Notes with his own Hands of what they said, which feems to be most innocent, yet he was found guilty upon those same very Acts. And the Parliament 1661 found his Lordship himself guilty of Leasing-making, though he had only written a Letter to a private Friend, which requires no great Care nor Observation (but this Paper, which was to be a Part of his own Oath, does) because after he had spoken of the Parliament in the first Part of be followed by others, than that he would follow

know their Tricks: Which Words might be much more applicable to the private Persons therein designed, than that the Words now insisted on can be capable of any such Interpretation. And if either Interpretations, upon Pretext of exonering of Conscience, or otherwise, be allowed, a Man may easily defame as much as he pleases: And have we not feen the King most defamed by Covenants entered into upon Pretence to make him great and glorious, by Remonstrances made to take away his Brother and best Friend, upon Pretence of preferving the Protestant Religion, and his sacred Person? And did not all who rebelled against him in the last Age declare, that they thought themselves bound in Duty to obey him, but still as sar as that could confift with their Respect to the Protestant Religion, and the Laws and Liberties, which made all the rest inessectual? And whereas it is pretended, that by these Words, I take the same in as far as it is consistent with itself and the Protestant Religion, nothing more is meant, but that he takes it as a true Proteslant: His Majesty's Advocate appeals to your Lordships, and all the Hearers, if upon hearing this Expression they should take it in this Sense, and not rather think that there is an Inconsistency. For if that were possible to be the sense, what need he say at all, as far as it is consistent with itself? Nor had the other Part, as far as it is consistent with the Protestant Religion, been necessary. For it is either consistent with the Protestant Religion, or otherwife they were Enemies to the Protestant Religion, that made it. Nor are any Lawyers or others in Danger, by pleading or writing: For these are very different from, and may be very eafily pleaded without defaming a Law, and an Oath, when they go to take it. But if any Lawyer should fay, in pleading or writing, that the Test was inconsistent, or, which is all one, that it were not to be taken by any Man, but so far as it was confistent with itself, and the Protestant Religion. no doubt this would be a Crime even in pleading, though pleading has a greater Allowance than deliberate swearing has. And as there is nothing wherein there is not some Inconveniency, so the Inconveniency of defaming the Government is much greater than that of any private Man's Hazard, who needs not err except he please.

Whereas it is pretended, that before the Earl gave in this Explication, there were other Explications spread abroad, and Answers read to them in Council; and that the Council itself gave an Explication. It was answered, that if this Paper be Leasing-making, or misconstruing his Majesty's Proceedings, and treasonable, as is contended, then a thousand of the like Offences cannot excuse it. And when the King accused Noblemen, Minilters, and others, in the Year 1661, for going on in the Rebellions of that Age, first with the Covenanters, and then with the Usurpers, it was found no Defence, that the Nation was overgrown with those Crimes, and that they were thought to be Duties in those Days, yea, this were to invite Men to offend in Multitudes. And albeit sometimes these who follow the Examples of Multitudes may thereby pretend this as an Excule to many, yet this was never a formal Defence against Guilt, nor was ever the chief of the Otfenders savourable on that Head. And it is to be presumed, that the Earl of Argyle would rather this Letter, he thereafter added, that the King would any Example. But his Majesty's Advocate does

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absolutely decline to debate a Point that may defame a constant and standing Act of Parliament, by leaving upon Record a Memory of it's being opposed. Nor were this relevant, except it could be said, the Council had allowed such Explications which reflected upon the King and the Government: For the writing an Answer is no Allowance, but a condemning: Nor can the Council allow any more than they can remit: And though it may justly be denied that the Council heard even the Earl's own Explanation, yet the hearing or allowing him to sit is no relevant Plea, because they might very justly have taken a Time to consider how far it was fit to accuse upon that Head. And it is both just and fit for the Council to take Time; and by express Act of Parliament the Negligence of the King's Officers does not bind them. For if this were allowed, leading Men in the Council might commit what Crimes they pleased in the Council, which certainly the King may quarrel many Years after. And though all the Council had allowed him that Day, any one Officer of State might have quarrelled it the next Day. As to the Opinion of Bellarmine, Sanderson, and others, it is ever contended, that the Principles of the Covenant agree very well with those of the Jesuits, and both do still allow Equivocations and Evasions: But no solid orthodox Divine ever al-Jowed, that a Man who was to swear without any Evasion, should swear so as he is bound to nothing, as it is contended the Earl is not, for the Reasons represented. And as they still recommend, that when Men are not clear they might abstain, as the Earl might have done in this Case, so they still conclude, that Men should tell in clear Terms, what the Sense is by which they are bound to the State: Whereas the Earl here tells only in the general, and in most ambiguous Terms, that he takes it as far as he can obey, and as far as it is consistent with the Protestant Religion, and that he takes it in his own Sense, and that he is not bound by it from making Alterations, but as far as he thinks it for the Advantage of Church or State: Which Sense is a thousand times more doubtful than the Test, and as in Effect nothing but

what the Taker pleases himself. As to the Treason sounded on, his Majesty's Advocate founds it first upon the fundamental and common Laws of this and all Nations, whereby it is Treason for any Man to make any Alteration he shall think for the Advantage of Church or State: Which he hopes is a Principle cannot be denied in the general. And whereas it is pretended, that this cannot be understood of mean Alterations, and of Alterations to be made in a lawful Way: It is answered, that as the Thing itself is Treason, so this Treason is not taken off by any of these Qualifications; because he declares, he will wish and endeavour any Alteration he thinks fit: And any Alteration comprehends all Alterations that he thinks fit: nam propositio indefinita equipollet universali. And the Word any is general in it's own Nature, and is in plain Terms a reserving to himself to make Alterations, both great and small. And the Restriction is not, all Alterations that the King shall think fit, or are consistent with the Laws and Acts of Parliament; but he is still to be Judge of this, and his Loyalty is to be the Standard. Nor did the Covenanters in the last Age, nor do these who are daily executed, decline that they are bound to obey the King, simply, but only that they are bound to Vol. III.

obey him no otherwise than as far as his Commands are consistent with the Law of God, of Nature, and of this Kingdom, and with the Covenant: And their Treason lies in this. And when it is asked them, who shall be Judge in this, they still make themselves Judges. And the Reason of all Treason being, that the Government is not secure, it is desired to be known, what way the Government can be secured after this Paper, since the Earl is still Judge how far he is obliged, and what is his Loyalty. And if this had been sufficient, the Covenant had been a very excellent Paper: For they are there bound to endeavour, in their several Stations, to defend the King's Person: But when the King challenged them, how they came to make War against him? their great Refuge was, that they were themselves still Judges as to that. And for illustrating this Power, the Lords of Justiciary are desired to consider, quid Juris, if the Earl, or any Man else should have reserved to himself in this Oath a Liberty to rise in Arms, or to oppose the lineal Succession, though he had added in a lawful manner: For the Thing being in itself unlawful, this is but sham, and Protestatio contraria fasto. And if these be unlawful, notwithstanding of such Additions, so much more must this general Reservation, of making any Alterations, likewise be unlawful, notwithstanding of these Additions: For he that reserves the general Power of making any Alteration, does, a fortiori, reserve Power to make any Alteration, though never so fundamental. For all Particulars are included in the general; and whatever may be faid against the Particulars, may much more strongly be faid against the General.

2. The 130th Act, Par. 8. James VI. is expresly founded on, because nothing can be a greater Diminution of the Power of the Parliament, than to introduce a Way or Mean whereby all their Acts and Oaths shall be made insignificant and ineffectual, as this Paper does make them, for the Reasons represented. Nor are any of the Estates of Parliament secure at this Rate, but that they who reserved a general Power to make all Alterations, may, under that General, come to alter any of them.

3. What can be a greater impugning of the Dignity and Authority of Parliaments, than to fay, that the Parliament has made Acts for the Security of the Kingdom, which are in themselves ridiculous, inconsistent with themselves and the Protestant Religion?

And as to what is answered against invading the King's Prerogative, and the Legislative Power in Parliaments, in adding a Part to an Oath or Act, is not relevantly inferred, since the Sense of these Words, and this I understand as a Part of my Oath, is not to be understood as if any thing were to be added to the Law, but only to the Oath, and to be an Interpretation of the Oath. It is replied, that after this no Man needs to add a Caution to the Oath in Parliament. But when he comes to take the Oath, do the Parliament what they please, he will add his own Part. Nor can this Part be looked upon as a Sense: For if this were the Sense before this Paper, he needed not understand it as a Part of it, for it wanted not that Part. And in general, as every Man may add his own Part, so the King can be secure of no Part. But your Lordships of Justiciary are defired to consider, how dangerous it would be in this Kingdom, and how ill it would found in any

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other Kingdom, that Men should be allowed to reserve to themselves Liberty to make any Alteration they thought fit in Church or State, as to the Legality of which, they were themselves to be Judges: And how far, from Degree to Degree, this at last may come to absolute Anarchy, and how scandalous a thing, as well as unsecure, this new Way may look in an Age wherein we are too much tracing the Steps of our rebellious Progenitors in the last, whose great Defection and Error was, that they thought themselves, and not the King, the Authors of Reformation in Church and State. And no Man ever was barred by that, that the Way he was upon was not a lawful Way: For if it be allowed to every Man to take his own Way, every Man will think his own Way to be the lawful Way.

As to the Perjury, it is founded on this, first, That Perjury may be committed, not only by breaking an Oath, but even in the swearing of it, viz. to swear it with such Evasions as make the Oath ineffectual: For which Sanderson is cited, Pag. 138. Alterum Perjurii genus est novo aliquo excogitato Commento Juramenti vim declinare, aut eludere, & Jurans tenetur sub pana Perjurii implere Secundum Intentionem deferentis; both which are here. For the Earl being bound by the very Oath, to swear in the genuine Meaning, without any Evafion, he has fworn fo as he has evaded every Word, there being not one Word to which it can be said particularly he is bound, as is said. And it is undeniable, that he has not fworn in the Sense of the Makers of the Law, but in his own Sense, which is Perjury, as is said. And consequentially, whatever Sense may be allowed in ambiguous Cases, yet there can be none where the Paper clearly bears Generals: And where he declares, that he takes it in his own Sense, his Majesty's Advocate declares, he will not burden himfelf, that Copies were disperst, though it is certain, fince the very Paper itself by the giving in is chargeable with all that is above charged upon it.

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Sir John Dalrymple's Defence and Plea for the Earl of Argyle, by Way of Reply upon the King's Advocate.

SIR John Dalrymple replies for the Pannel, That fince the folid Grounds of Law adduced in the Defences have received no particular Answers, in Relation to the common Consent of all Casuists, viz. That a Party who takes an Oath is bound in Conscience to clear and propose the Terms and Sense in which he does understand the Oath: Nor in Relation to the several Grounds adduced concerning the legal and rational Interpretation of dubious Clauses. And since these have received no Answers, the Grounds are not to be repeated: But the Proctors for the Pannel do farther insist on these Defences.

1. 'Tis not alledged, that any Explanation was given in by the Pannel to any Person, or any Copy spread, before the Pannel did take the Test in Council: So that it cannot be pretended, that the many Scruples that have been moved concerning the Test, did arise from the Pannel's Explication: But on the contrary, all the Objections that are answered, and obviated in the Pannel's Explication, were not only privately muttered, or were the Thoughts of single or illiterate Per-

sons, but they were the Difficulties proposed by Synods and Presbyteries, long before the Pannel came from home, or was required to take the Test: So that the general Terms of the Acts of Parliament founded upon in the Libel are not applicable to this Case: For as these Laws, in relation to Leasing-makers, are only relative to atrocious wilful Infinuations, or Misconstructions of his Majesty's Person or Government, or the open depraving of his Laws, so the restrictive Clause, whereby Sedition or Misconstructions may be moved, raised, or engendered betwixt his Majesty and his Leiges, cannot be applied to this Case, where all these Apprehensions and Scruples were on Foot, and agitated long before the Pannel's Explanation.

As it cannot be pretended, that any new Dust was raised by the Pannel's Explanation, so it is politively offered to be proved, that there is not one Word contained in this Explanation, but that either these individual Words, or much worse, had been publickly proposed, and verbatim read in Council, without the least Discouragement, or the least Objection made by any Member of the Council. And where a Writing, ex proposito read in so high a Court, was universally agreed upon, without the Alteration of a Syllable, how can it be pretended, that any Person thereafter using the said individual Terms in any Explanation, and far easier Terms, that they shall incur the high and infamous Crimes libelled? And the Question is not here, whether the Council was a proper Judicature to have proposed, or imposed a Sense, or allowed any Explanation of the Test to be published; but that is impossible that a Sense they allowed, or being publickly read before them, and which the King's Advocate did not controul, that this should import Treason, or any Crime: And though the Pannel's Advocate will not purfue or follow the Reply that has been made to this Point, yet certainly no Man of sober Sense will think that it is fit to infinuate, that so high a Judicature might have authorized or acquiesced in fuch Explanations as the Leiges thereafter should be entrapped to have used.

If the Pannel had officiously or ultroneously offered a Sense or Explanation of his Majesty's Laws, which the Laws themselves could not have born, it might justly have been alledged, that he was extra ordinem, and meddling in a Matter he was not concerned in, but where the Act of Council did enjoin, and he was required and cited to that Effect, it could neither be constructed as Ostentation, or to move or encourage Scruples, or Resistance, but it was absolutely necessary, either for to have refused the Test, or else to have declared what he thought to be the true and genuine Meaning of it. And there being so many Objections publickly moved and known, his Explanation was nothing else but to clear, that he did not look upon these Scruples and Objections, moved by others, as well founded and rational in themselves; and therefore he was able to take the Test in that Sense the Council had heard or allowed. And it is not controverted, that the Sense of the Legislator is the genuine Sense both of Laws and Oaths: And if a Person were only interpreting the Meaning of either a Law or an Oath imposed, he should deprave and misconstruct the Law and Oath, if he rendered it wittingly and willingly in Terms inconsistent with the Meaning of the Imposer: But there is a great Difference be-

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twixt taking of Oaths, and interpreting Oaths; for when a Man comes to take an Oath, except his particular Sense did agree with the genuine Meaning of the Imposer, he cannot take that Oath, though he may very well interpret and declare what is the Sense of the Legislator, which he may know, and yet perhaps not be able to take the Oath.

And therefore when there is any Doubtfulness in an Oath, and a Party is bound to take it, if then he gives in an Explication of the Sense which he in his private Judgment doth apprehend to be the genuine Meaning, if that private Sense be disconform to the Legislator's Sense in the Oath, then the Imposer of the Oath, or he that has Power to offer it to the Party, if he consider the Party's Sense disconform, he ought to reject the Oath, as not fulfilling the Intent of the Law im-

poling it. But it is impossible to state that as a Crime, that a Party should neither believe what is proposed in the Oath, nor be able to take it; and he can run no farther Hazard, but the Penalty imposed upon the Refuser. And therefore in all Oaths there must be a Concourse both of the Sense imposed by Authority, and of the private Sense, Judgment, or Conscience of the Party. And therefore if a Party should take an Oath in the Sense proposed by Authority contrary to his own Sense, he were perjured: Hereby it is evident that the Sense of Authority is not sufficient, without the Acquiescence and Consent of the private Person. And therefore it is very strange, why that Part of the Pannel's Explanation should be challenged, that he takes it in his own Sense, the posterior Words making it as plain as the Light, that that Sense of his own is not what he pleases to make of the Oath, for it bears expresly, that no body can explain it but for himself, and reconcile it as it is genuine, and agrees in it's own Sense: So that there must be a Reconciliation betwixt his own Sense and the genuine Sense, which upon all Hands is acknowledged to be the Sense of Authority. And if the Pannel had been of these lax and debauched Principles, that he might have evaded the Meaning and Energy of the Oath, by imposing upon it what Sense he pleased, certainly he would have contented himself in the general Refuge of Equivocation, or Mental Refervation, and he would never have exposed his Sense to the World, in which he took this Oath, whereby he became absolutely fixed and determined to the Oath, in that particular Sense, and so had no Latitude of shuffling off the Energy or Obligation of the Oath: And it is likewise acknowledged, that the Cases alledged in the Reply are true, viz. That the Person is guilty of Perjury, si aliquo novo Commento he would elude his Oath, or who doth not fulfil the Oath in the Sense of the Impoler. But that does not concern this Case: For in the foresaid Citation, a Person, after he has taken an Oath, finding out some new Conceit to elude it, he is perjured: But in this Case, the Pannel did at and before his taking the Test, declare the Terms in which he understood it; so that this was not novo aliquo Commento to elude it. And the other Case, where a Party takes it in the Sense of Authority, but has some lubterfuge, or concealed Explanation, it is acknowledged to be Perjury. But in this Case there was no concealed Explanation; but it was publickly exprest, and an Explanation given, Vol. III.

which the Pannel designed, and understood as the Meaning of Authority, and had Ground to believe he was not mistaken, since upon that Explanation he was received and allowed to fit and vote in Council.

And as to that Part of the Reply, that explains the Treason, there can be no Treason in the Pannel's Case, because the express Act of Parliament founded upon, doth relate only to the Constitution of the Parliament: And I am sure his Majesty's Advocate cannot subsume in these Terms: And therefore in the Reply he recurs to the general Grounds of the Law, that the usurping of his Majesty's Authority, in making a Part of the Law, and to make Alterations in general, and without the King, are high and treasonable Words or Designs, and such as the Party pleases, and fuch Designs as have been practised in the late Times. And that even the Adjection of fair and safe Words, as in the Covenant, does not secure from treasonable Designs; and that it was so found in Balmerino's Case, though it bear a sair

Narrative of an humble Supplication,

It is replied, that the Usurpation of making of Laws is undoubtedly treasonable, but no such Thing can be pretended or subsumed in this Case: For albeit the Pannel declares his Explanation to be a Part of his Oath, yet he never meaned to impose it as a Part of the Law, or that this Explanation should be a Thing distinct, or a separate Part even of his Oath, for his Explanation being exegetick of the several Parts of the Oath, it is no distinct Thing from the Oath, but declared to be a Part of the Oath de natura rei. And it was never pretended, that he that alledged any thing to be de natura rei, did say, that that was distinct and separate, which were a Contradiction. And therefore the Argument is retorted, the Pannel having declared, this Explanation was, de natura rei, implied in the Oath, he necessarily made this Explanation no Addition or Extention of the Oath. So that for all this Explanation, the Oath is neither broader nor longer than it was.

And as to these Words, 1 do not mean to bind up myself in my Station, and in a lawful Way, to wish and endeavour any Alteration I think to the Advantage of Church or State, not repugnant to the Protestant Religion, and my Loyalty. It is a strange thing how this Clause can be drawn in Question, as treasonable, when it may with better Reason be alledged, that there is no good Subject but is bound to say it. And albeit the Words to endeavour in my Station, be Words contained in the Covenant, yet that is no Reason why two Words in the Covenant may not be made use of in another very good and loyal Sense. And there is no Man that shall have the Honour either to be entrusted by his Majesty in his Council, or any other Judicature, or to be a Member of Parliament, but he is bound by his Loyalty to fay the fame thing. And there was never a Clause more cautiously exprest; for the Words run, to endeavour any Alteration I shall think to the Advantage of Church and State. And though that was sufficient, yet the Clause is so cautiously conceived, that it contains another Restriction, not repugnant to Religion and his Loyalty. So that except it could be alledged, that a Man by lawful Means, to the Advantage of Church and State, consistent with his Religion and Loyalty, could make treasonable Alterations, and Invafions upon the Government and Monarchy, which are the highest Contradic-

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tions imaginable, there can be nothing against the Pannel. And albeit the Clause, any Alterations, might, without the Restrictions and Qualifications foresaid, be generally extended, yet the preceding Words of lawful Way, and the rational Interpretation of the Emission of Words, especially before a solemn Judicatory, leaves no Place or Shadow to doubt, that these Alterations were no fundamental or treasonable Alterations, but such as the Frailty of human Affairs and Constitutions, and Viciffitude of Things and Circumstances, do constantly require in the most exact Constitutions under Heaven. And the Clause does not so much as import, that there is a present Necessity of Alteration, but it was a necessary and rational Prospect, that albeit at present all things under Heaven had been done to secure the Religion and Government, yet there might occur Cases that would require new Helps, Alterations, and Remedies. And it is not pretended in this Case for the Pannel, that he desires to alleviate, or take off Words truly treasonable, or having an ill Design, by the mixing of fair and safe, dutiful and submissive Expressions, which indeed are Protestations contrariæ fasto. For there is nothing in his Explanation, that either in his Design, or in the Words themselves, being rationally and naturally interpreted, can infer the Crimes libelled, or any of them. And the Pannel's known Principles and known Practices, do not only clear that Loyalty that he has profest before the Lords of Justiciary, and instructed by unquestionable Documents, but they put him far from the Suspicion of these damnable Principles related in the Reply, of which the whole Tract of his Life hath been an entire Evidence of his Abhorrency and Detestation. And in the last Place, it is thought strange, why that should be represented as an Affront or Disgrace to the Government, that the Parliament imposed a Test which the Pannel is not able to take fimply. And it is not pretended, that he hath defamed, written or spoken against the Test itself, or for the Inconvenience of it; but only that he hath not been able to bee the good Ground upon which it may be simply taken. And this were to condemn him for want of Sight or Sense, when the Law hath punished no Man for not taking the Test, but only turned him out of the Government. And it is as strange an Inserence, that because the Pannel declares, he believes the Parliament meaned no Contradiction and would take the Test, in as far as it is consistent, that therefore he faid, the Parliament imposed Contradictions: Which is so far from a rational Induction, that the Contradiction of these Subsumptions, in all Congruity of Language and Sense, is necessarily true. And therefore the last Part of that Clause, in so far as it is consistent, is a Consequence inferred upon the former, viz. I believe the Parliament designed to impose no Contradictions: Ergo, I take the Test as confistent, and in so far as it must be consistent, if the Parliament did not impose Contradictions, as certainly they have not; and to convince the World, that in this Sense this Explanation is receivable, it was proposed in Council, and allowed, and therefore without the highest Reslection it cannot now be quarrelled.

Sir George Lockhart's second Plea for the Earl of Argyle, by way of Reply upon the King's Advocate.

CIR George Lockhart duplies, That the Defender

which are no ways elided, nor fatisfied by the Reply made by his Majesty's Advocate. And although it be easy for the King's Advocate, out of his Zeal, to pretend and argue Crimes of the highest Nature upon Inferences and Consequences, neither consistent with the Pannel's Design, nor with his Words and Expressions; yet there cannot be a more dangerous Foundation laid, for the Security and Interest of the Government, and the Security and Protection of the Subjects, than that Crimes should be inferred but from clear, evident, and express Laws, and plain, palpable Contravention of these Laws: It being both against the Laws of God and Man, that a Man should be made an Ossender for a Word, and especially for Expressions which, according to Sense and Reason, and considering the Time and Place where they were spoken by the Pannel, viz. as a Member of his Majesty's Privy-Council, and in Presence of his Royal Highness and the Members of Council, and when required to take the Test, were safe and innocent: And it were against all Law and Reason, to suppose that the Pannel either did, or designed to do any thing which may, or did import the Crimes libelled against him. And whereas it is pretended, that the Oath required and imposed by Act of Parliament was for the Security of the Government; and that the Pannel, by his Explication, does evade the Oath, by taking it only so far as it is consistent with the Protestant Religion, and his own Loyalty, whereof he was Judge. It is answered, that the Pretence is most unwarrantable, and the Security of his Majesty's Government is not at all endangered (as God forbid it should) though the Pannel, and a thousand more had fimply refused the Test, or had taken it in a Sense which does not fatisfy the Law; it being competent to publick Authority to consider, whether the Pannel's Oath, in the Terms of the Explication wherein he did take it, does fatisfy the Act of Parliament or not; and if not, there can be no rational Consequence inferred thereupon, but that he is holden as a Refuser of the Oath, and liable to the Certification of the Act of Parliament, of not affuming and continuing in any publick Trust: And no more was intended or designed by the Act of Parliament itself, than strictly to make the Oath in the true and genuine Sense and Meaning of the Parliament, an indispensable Qualification of Persons admitted to publick Trust: So that it is not at all material to dispute, whether the Pannel's Explication can be looked upon as a full Satisfaction of the Act, which whether it should or not, it can import no Crime against him, it not being consistent with Sense and Reason, that a Person who absolutely refuseth the Test, upon the Scrupulosity of his Conscience, albeit he be not capable of publick Trust, should be, notwithstanding, looked upon as guilty of no Crime: And yet another who was willing to go a greater Length, albeit he did demur and scruple as to the full Length, that he should be reputed criminal and guilty of a Crime.

II. The Pannel repeats and conjoins with this the Grounds above-mentioned, contained in his Defences, viz. That neither the Crimes libelled, nor any other Crime, were ever pretended or made use of against any others, who did spread abroad Objections of an high Nature, which yet were so favourably looked upon, as to be conrepeats and oppones his former Defences, strued only to proceed from Scrupulosity of Con-

science,

science, as also the Satisfaction endeavoured, is in fuch Terms, and by fuch Condescensions, as do take in and justify the whole Terms of the Ex-

plication libelled. It is of great Moment, and whereof the Lords of Justiciary are desired to take special Notice, both for clearing the absolute Innocence of the Pannel's Meaning and Intention, and to take off all possible Misconstruction that can be wrested or detorted from the Tenor and Exprssioens of the libelled Explication, that the Pannel was put to, and required to take the Oath, before the Lords of his Majesty's Privy-Council did pass and publish their Proclamation explaining the Oath, and declaring the genuine Sense and Meaning thereof, namely, that it did not tie to the whole Articles of the Confession of Faith, ratified by Act of Parliament, James VI. and which, as to several Articles thereof, had occasioned the Scruples and Difficulties, and alledged Inconfistency and Contradiction betwixt the last Part of the Oath and the said Confession, and betwixt some of these Articles, and the Current of the Protestant Doctrine, received and contained in the Syntagma of the Protestant Confessions. And therefore if the Pannel at that Time did think fit, for the clearing and Exoneration of his own Conscience, to use the Expressions in the Explication libelled, and yet with so much Duty and Considence of the Parliament's Justice, as to their Meaning and Intention, that the Parliament never intended to impose contradictory Oaths; and that he did take it so far as it was confistent with itself, and the Protestant Religion, not knowing then, whether the whole Confession was to be reputed a Part of the Oath, and doubting there anent; and which the Lords of his Majesty's Privy-Council and his sacred Majesty by his Approbation since, have thought a Difficulty of so great Moment, as it was fit to clear the same by a publick Proclamation; how now is it possible, that any Judicatory under Heaven, which proceeds upon the solid Grounds of Law and Reason, and who (it cannot be doubted) will have a just Regard to the intrinfick Principles of Justice, and to all Men's Security, that they can now believe all, or any of the Crimes libelled, should be in the least inferred from all, or any of the Expressions contained in the faid Explication? But that on the contrary it was a warrantable Allowance, and Christian Practice, condemned by the Law and Custom of no Nation, that having Scruples in the Matter of an Oath which should be taken in Truth, Judgment, and Righteousness, and upon full Deliberation, and with a full Assurance and Sincerity of Mind, that he did plainly, openly, and clearly declare the Sense in which he was willing to take it; and if Authority did allow it as the genuine Sense of the Oath, the Pannel to be holden as a Taker of the Oath: And if upon farther Consideration, Authority think not, that habetur pro Recusante, and a Refuser of the Oath, but no Ways to be looked upon as a Criminal or guilty Person.

And the Pannel repeats and conjoins with this Point of the Reply, that Point in his Defence whereby he politively offers to prove, 1. That his Explication, and the Sense wherein he took the Oath, was heard, and publickly given and received in Council, and the Pannel thereafter allowed to take his Place, and fit and vote in that

Sederunt.

2. The Pannel also offers positively to prove,

That the Tenor and Terms of his Sense and Explication wherein he did take the Oath, is contained in that folid, learned, and pious Vindication, written by the Bishop of Edenburgh, in answer to the Objections and alledged Inconsistencies and Contradictions in the Oath, and which Vindication was publickly read in Council, and so far approved, that it was allowed to be printed and published, and was accordingly dispersed and spread abroad. And it is not of the least Import, that the Proclamation of the Lords of Privy-Council, although it does only allow the same to be taken by the Clergy, yet at the same Time they expresly declare the genuine Sense and Meaning of the Parliament not to comprehend the whole Articles of the Confession, which was not cleared before the Pannel's taking his Oath.

And whereas it is pretended, That the Acts of Parliament libelled upon, against Leasing-makers, Depravers of his Majesty's Laws, do obtain and take place, where-ever there are any Words or Expressions that have a Tendency in themselves, or by a natural Consequence, and rational Inferences, to reflect upon the Government, or misconstrue his Majesty's Proceedings; and that the Explication libelled is fuch, and that it was found for in the Case of Balmerino, albeit it was drawn up by way of humble Petition and Address to his Majesty, and with great Protestations and Expressions of Loyalty. It is answered, the Acts of Parliament libelled upon are opponed, and the 43d Ast, Par. 8. James VI. and the other Acts, making the depraving of his Majesty's Laws to be Crimes, do expressly require, that Speeches so judged be perverse and licentious Speeches, ex natura sua probrosa and reproachful, and spoke animo defamandi, and which could not receive any other rational Construction, which cannot in the least be applied to, or subsumed upon the Words, or Explication given in by the Pannel. And Law and Reason never infers or presumes a Crime, where the Thing is capable of a fair and rational Construction, and where it was done palam and publickly, and in Presence of his Majesty's High Commissioner, and Lords of his Majesty's Privy-Council, whereof the Pannel had the Honour to be a Member, Persons committing and designing to commit Crimes making use of Times and Places, and Companies of another Nature, on whom their Suggestions and Insinuations may prevail. But it is a Violence to the common Reason of Mankind, to pretend, that a Person of the Pannel's Quality, having the Honour to serve his Majesty in most eminent Capacities, and devoted to his Majesty's Interest and Service, beyond the strictest Ties of Duty and Allegiance, by the transcendent Favours he had received, that the Pannel in those Circumstances, and in Presence of his Royal Highness and Lords of Privy-Council, should design to declaim, and de facto, declaim against and desame his Majesty's Government: To suppose this is absolutely contradictory to the common Principles and Practices of Law, and common Topicks of Reason.

And as to Balmerino's Case, it is answered, that the Lords of Justiciary are humbly desired to call for and peruse the said Petition and Books of Adjournal, which was certainly a defamatory Libel of his Majesty's Father, of blessed Memory, and of the States of Parliament in the highest Degree, bearing expressly, that there was nothing designed but an Innovation of the Protestant Religion,

Liberties and Privileges of the Parliament, and the Constitutions of the Articles, and other Things of that Kind, which made certainly of itself a most villainous and execrable Libel, containing the highest Crimes of Treason and Perduellion, and was not capable of any good Sense or Interpretation, but was absolutely pernicious and destructive: So that it is in vain to pretend, that the said Libel did contain Presaces and Protestations of Loyalty, which no Law regards, even in simplici injuria & maledisto, though committed by a private Person, cum presatione salvo honore, or the like, and which were certainly ridiculous to sustain in a Libel concerning Crimes of Treason.

And whereas it is pretended, that though others were guilty of these Crimes, it does not excuse the Earl: And that the Lords of Privy-Council cannot remit Crimes; and the Negligence of the King's Officers cannot prejudge his Interest. It is answered, The Pannel is very confident, that neither the Lords of his Majesty's Privy-Council, confishing of Persons of eminent Loyalty and Judgment, nor his Majesty's Officers, were capable of any such Escape as is pretended: And if the Tenor of the Pannel's Explication did in the least import the high and infamous Crimes libelled, as beyond all peradventure it does not, it were strange, how the same being contained in the foresaid Vindication, and the whole Clauses thereof justified, that this should have been looked on as no Crime, and allowed to be published. And the Pannel neither does, nor needs to make farther Use thereof, but to convince all disinterested Persons, that his Explication can import no Crime.

And whereas it is pretended, That the Crime of Treason is inserred from the fundamental Laws of the Kingdom, and from that Clause of the Pannel's Explication, whereby he declares, he is not bound up by any Thing in this Oath not to endeavour any Alteration in a lawful Way: Which being an indefinite Proposition, is equipollent to an universal, and is upon t' Matter coincident with a Clause which was rebellious in it's Consequences, contained in the solemn League and Covenant. It is answered, that it is strange, how such a plain and innocent Clause, whereby, beyond all Question, he does express no more than was naturally imported in the Oath itself, whether exprest or not, should be made a Foundation to import the Crime of Treason, which no Lawyer ever allowed, except where it was founded upon express Law & Luce Meridiana Clarior: And indeed if such Stretches and Inferences can make Men guilty of Treason, no Man can be secure. And the Words in the Pannel's Declaration are plain and clear (yet non funt cavillanda) and import no more, but that, in his Station, and in a lawful Way, and confistent with the Protestant Religion and his Loyalty, he might endeavour any Alteration to the Advantage of Church and State. And was there ever any loyal or rational Subject, that does, or can doubt, that this is the natural Import of the Oath? And indeed it were a strange Oath, if it were capable of another Sense, and being designed for the Security of the Government, should bind up Men's Hands to concur for its Advantage. And how was it poffible, that the *Pannel*, or any other in the Capacity of a Privy Councillor, or a Member of the Parliament, would have fatisfied his Duty and

Allegiance in other Terms? And whereas it is pretended, That there was the like Cafe in the pretended League and Covenant, it is answered, The Assertion is evidently a Mistake; and though it were, the Argument is altogether inconfequenttial: For that League and Covenant was treasonable in itlelf, as being a Combination entered into without his Majesiy's Authority, and was treasonable in the Glosses that were put upon it, and was imposed by absolute Violence on the Subjects of this Kingdom, and how can the Paranel be in the leaft supposed to have had any Respect to the said League and Covenant, when he had so often taken the Declaration, dislowning and renouncing it, as an unlawful and finful Oatle, and concurred in the many excellent Laws and Acts of Parliament made by his Majesty, condemning the fame as feditious and treasonable? And whereas it is pretended, that the Pannel is guilty of Perjury, having taken the Oath in another Senfe than was confiftent with the genuine Sense of the Parliament, and that by the Authority cited, he doth commento eludere Juramentum, which ought always to be taken in the Sense of him that imposeth the Oath: It is anfwered, the Pretence is most groundless, and Perjury never was, nor can be inferred, but by the Commission, or Omission of something directly contrary to the Oath. And although it is true, that where an Oath is taken, without any Declaration of the express Sense of the Persons who take it, it obliges fub fana Perjurii, in the Sense, not of the Taker, but of the Imposer of the Oath, because expressing no Sense, Law and Reason presumes there is a full Acquiescence in the Sense and Meaning of the Imposer of the Oath: And then if an Oath be not so taken, he that takes it is guilty of Perjury. Yet there was never Lawyer nor Divine, Popish or Protestant, but agree in this, that whatever be the Tenor of the Oath, if before the taking thereof, the Party in express Terms does publickly and openly declare the Sente in which he takes it, it is impossible it can infer the Crime of Perjury against him in any other Sense, this not being Commentum excegitatum, after the taking of the Oath. And if this were not so, how is it possible, in Sense and Reafon, that ever any Explication or Sense could solve the Scruples of a Man's Conscience? For it might be always pretended, that notwithstanding of the express Sense wherein he took it, he should be guilty of Perjury from another Sense. And that this is the irrefragable Opinion of all Divines, of whatever Persuasion, is not only clear from the Authority above-mentioned, even those who allow of referved Senses, but more especially by the universal Suffrage of all Protestant Divines, who though they do abominate all Thoughts of Subterfuges or Evalions, after taking of the Oath, yet they do always allow and advise, for the Safety and Security of a doubting and scrupulous Conscience, that they should express and declare, before the taking of the Oath, the true Sense and Meaning wherein they have Freedom to take it 5 and for which Sanderson de Juramento is cited. Prelett. 6. Sett. 10. Page 75. where his Words are, sane ut inter Jurandum omnia reste fiant, expedit ut de verborum sensu inter omnes partes quarum interest liquido constet, quod veteribus distum, liquido Jurare. And an Oath being one of the highest Acts of Devotion, containing Cultam Latriæ, there is nothing more consonant to the Nature

ture of all Oaths, and to that Candour, Ingenuity, and Christian Simplicity, which all Law and Religion requires in such Cases.

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The King's Advocate's third Plea against the Earl of Argyle.

IS Majesty's Advocate conceives he has nothing to answer, as to Depraying, Leasingmaking, and Misinterpreting, &c. save that this Oath was only defigned to exclude Recufants; and consequently the Pannel may thereby be debarred from his Offices, but not made guilty of a Crime. To which he triplies, 1. If ever the Earl had simply refused, that had been true; but that did not at all excuse from desaming the Law, for a Defamer is not punished for refusing, but for defaming.

2. If he had simply refused, the Government had been in no more Hazard; but if Men will both retain their Places, and yet take the fame in such Words as secure not the Government, it were strange to think, that the Design of the Law being to secure against Men's possessing who will not obey, that yet it should allow them Pofsession who do not obey. Nor is the Resuser here in a better Case than the Earl, and others, who offered to obey, because it is the defaming the Law, as ridiculous and inconsistent with that Protestant Religion, and Leasing-making betwixt the King, the Nobility, and the People, the misconstruing, and misrepresenting, as hath been formerly urged, that puts the Earl in a worse Condition. And all those Arguments might be as well urged for any who had uncontrovertedly contravened these Acts, as for the Pannel.

Whereas it is pretended, That the King emitted a Proclamation to satisfy Dissenters; it is anfwered, That the Proclamation was deligned for none who had been Members of Parliament, and so should have known the Sense; but it was defigned for meer Ignorants, not for such as had defamed the Law, which is still here charged upon the *Pannel*.

As to the Article of Treason, it is conceived, That it is unanswerably founded upon the Common-Law, discharging all Men to make Alteration of the Government. As to which there needs no express Statute, that being the very Essence of Government, and needing no Laws. Like as it falls positively under all the Laws that discharge the assuming the Royal or Legislative Power; for to alter the Government is inseparably united to the Crown. Like as the Subsumption is as clear, the express Words not bearing, That the Earl reserves to himself a Power to propole to his Majesty any Alterations, or to concur to serve his Majesty in making Alterations; but owning in most general and arbitrary Terms, to wish and endeavour any Alteration he should think fit for the Advantage of Church or State, and not determining any Thing that could bind him otherwise than according to his own Pleasure: For the Word [lawful] is still subjected to himself, and has subjoined to it, as be should think jii, which governs the whole Propolition; and in that Sense, and as the Words are here set down, the greatest Rebel in Scotland will subscribe that Explanation: For there is no Man but will restrict himself to a lawful Obedience, providing est inter Jurandum detorquere verba; and which

he be Judge of the Lawfulness. And seeing all Oaths proposed for the Security of Government require a certain depending upon the Legislator, and not upon the Taker, it is impossible that that End could be attained by any Qualification, how special soever, which is made to depend abiolutely upon the Taker, and not upon the Legislator. And we have often seen, how little Security there is in those specious Words, the very Covenant itself having not only the very Words above-repeated, but attesting all the World to be Witnesses to their Loyalty and Sincerity. And as to the former Instances, viz. rising in Arms, or opposing the lawful Successor, there is no Covenanter in Scotland, but will fay, he will do neither, but in a lawful Way, and in his Station, and in a Way consistent with his Loyalty, for a Man were mad to fay otherwise: But yet when they come to explain this, they will only do it as they think fit, and will be Judges themselves; and then will tell us, that defensive Arms are lawful, and that no Popish Successor should succeed, nor no Successor, unless he subscribe the Covenant. And whereas it is pretended, that no Clause in the Test does exclude a Man from making Alterations; it is answered, that the Alterations which the Test allows are none at all but in Subordination to Authority. And as to the two Points above-mentioned, it excludes all Alterations as to these Points. And as to the making fundamental Alterations, this Referention allows to make any Alteration, and consequently fundamental Alterations; to preclude which Libertinism, this excellent Law was invented.

Whereas it is pretended, that the *Pannel* deligns not to add any Thing as a Part of the Law, but as a Part of his Oath, it is duplied, since the Oath is a Part of the Law, whoever adds to the Oath, adds to the Law.

Whereas it is pretended, that the Crime of Perjury cannot be inferred here, because all Divines allow, that the Taker of an Oath is still allowed to declare in what Sense he takes the Oath ; and that this is clear from Sanderson, Page 175. It is triplied, that where there are two dubious Senses, Lawyers and Divines allow, that the Taker should clear himself, which of the two he should take; which is very just, because to which sorver of the two he determines himself, the Legislator in that Case is sure of him. But here it is not pretended, that there are two Senses; nor does the Pannel declare in which of the two he takes it, or in what clear Sense at all he takes it, which is indeed liquido Jurare. But here the Pannel neither condescends, what particular Clause of the Test is unclear; nor after he has condescended upon the Articles, does he condescend upon the Sense, but in general mysterious Words, where he can neither be followed nor found out, he only takes it in so far as it is consistent with itself and the Protestant Religion, reserving the squaring all by his own Loyalty, as he did in the beginning declare, that he took it in his own Sense; by which general Sense, neither is the Government secure of any Thing it does enjoin, nor could he be punished if he transgressed. Nor can it be doubted, but Perjury may be inferred by any equivocal or evading Sense, inter Jurandum, as well as by breaking an Oath afterwards: Which is very clear from Sanderson, Pag. 138. The Words whereof are, alterum Perjurii genus

from the Principles of Reason, and the Necessity of Commerce and Government: For if Men may adhibit such Glosses, even whilst they swear, as may make the Oath useless, what Way will either Government or Commerce be maintained? And he deceives as much that deceives in swearing salvis verbis, as he who after he has sworn, does break the Oath, nay and more too, because the Breaking may come from Forgetfulness, or other Accidents: But the evading by general Clauses, which bind no Man, does from the first Instance originally make all Oaths useless and dangerous, and that this Interpretation eludes the Oath absolutely is very clear from what hath been formerly debated. For it may be argued, that the Earl broke the Oath in so far as the first Day he swears the Oath, which bears to be without any Evalion (and must be so, notwithstanding of whatever he could say;) and the next Day he gives in this Evasion, which is a downright Violation of that Oath, and inconsistent with it. Nor was this Oath forced, but voluntarily emitted, to keep his own Places. And it was the greater Crime that it was done in the Council, because that was to make it the more publick, and consequently the more to misrepresent the Government.

After this Debate, which, according to the Custom of the Court, was verbatim dictat by the Advocates of either Side, and written by the Clerk, and so took up much Time, and the Court having fat at least twelve Hours without Intermission, it adjourned till the next Day, being Tuesday the 13th of December, at two of the Clock in the Afternoon: And then the Earl being again brought to the Bar, the following Interloquatour (that is Judgment and Sentence) of the Lords of Justiciary, on the foregoing Debate, was read, and pronounced in open Court.

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Edenburgh, December 12. 1681.

The Interloquutour of the Lords of Justiciary.

HE Lords, Justice-General, and Commissioners of the Justiciary, having considered the Libel and Debate, they sustain the Desence proponed for the Earl of Argyle, the Pannel, in relation to the Perjury libelled, viz. That he emitted this Explanation at, or before his taking the Test, first before his Royal Highness, his Majesty's High Commissioner, and the Lords of his Majesty's Privy-Council, relevant, to elude that Article of the Libel.

The Lords sustain the Libel, as being sounded upon the Common Law, and Explication libelled, and upon Ast 130. Parl. 8. James VI. to inserthe Pain of Treason.

They likewise sustain the Libel, as sounded upon the 10th Ast, Parl. 10. James VI. to inser the Pain of Death, and likewise sustain that Part of the Libel anent Leasing-making, and Leasing-telling, to inser the particular Pains mentioned in the several Asts libelled.

And repel the whole other Defences, Duplies, and Quadruplies, and remits the Libel, with the Defences anent the Perjury, to the Knowledge of an Assize.

is farther clear by the 28th Page; but above all, Thereafter the Assize, that is the Jury, being confrom the Principles of Reason, and the Necessity stitute and sworn, viz.

#### List of the Assizers.

Marquis Montrose,
E. of Middleton,
E. of Airlie,
E. of Perth, P. C.
E. of Dulhouste,
E. Roxburgh, P. C.
E. Dumfries,
E. Linlithgow, P. C.

Lord of Lindoors,
Lord Sinclare,
Lord Bruntisland,
Laird of Gossoord,
Laird of Clowerhouste,
Laird of Balnamoon,
Laird of Park Gordon,

I IS Majesty's Advocate adduced sour Witnesses to prove the Points of the Indictment, remitted to the Knowledge of the Assize, viz. John Drummond of Lundie, then Governor of the Castle of Edenburgh, now Treasurer-depute, Sir William Paterson, and Mr. Patrick Menzies, Clerks of the Privy-Council, and H. Stevenson, their Under Clerk; who deponed, That on the 4th of November, the Earl did give in an unsubscribed Explanation of the Test, which he resused to sign; one of the Witnesses also adding, that he heard him make the same Explanation the Day before in Council, and that it was there accepted.

Then his Majesty's Advocate asked, if the Earl would make Use of his Exculpation for eliding the Perjury libelled, to wit, that he had emitted the same Explanation, before taking the Test, in Presence of his Royal Highness and the Council. To which the Earl answered, that, seeing they had sustained the Libel, as to the alledged Treason, he would not trouble them about the Perjury: Especially the Matter of Fact, referred by the Interloquatour to his Probation, being of itself so clear and notour.

Upon this Silence, the Advocate, taking Instruments, Protests, for an Assize of Error, in Case the Assizers should assoil or acquit. Whereupon the Assize removing was inclosed: And, after some Time, returned their Verdist, which was read in open Court of this Tenour.

#### The Verdict of the Assize.

HE Assize having elected and chosen the Marquis of Montrose to be their Chancellor, they all in one Voice find the Earl of Argyle Guilty, and culpable of the Crimes of Treason, Leasingmaking, and Leasing-telling, and find, by Plurality of Votes, the said Earl Innocent and not Guilty of Perjury.

And then the Court again adjourned: And the Privy-Council wrote the following Letter to his Majesty.

Halyrudhouse, December 14, 1681.

The Council's Letter to the King, desiring Leave to pronounce Sentence against the Earl of Argyle.

May it please your Sacred Majesty,

IN Obedience to your Majesty's Letter, dated the 15th of November last, we ordered your Majesty's Advocate to insist in that Process, raised at your Instance, against the Earl of Argyle: And having allowed him a long Time for his Appearance, and any Advocates he pleased to employ, and Letters of Exculpation, for his Desence: He, after full Debate,

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and clear Probation, was found guilty of Treason, Leasing-making betweist your Majesty, your Parliament, and your People, and the reproaching of your Laws and AEIs of Parliament. But because of your Majesty's Letter, ordaining us to send your Majesty a particular Account of what he should be found guilty of, before the pronouncing of any Sentence against him, we thought it our Duty to send your Majesty this Account of our and your Justices Proceedings therein; and to signify to your Majesty, with all Submission, that it is usual and most fit for your Majesty's Service and the Advantage of the Crown, that a Sentence be pronounced, upon the Verdiet of the Affize, without which the Process will be still impersect. After which, your Majesty may, as you in your Royal Prudence and Clemeny shall think fit, ordain all farther Execution to be sisted, during your Majesty's Pleasure: Which shall be dutifully obey'd by

> Your Majesty's most humble, most faithful, and most obedient, Subjects and Servants,

Sic Subscribitur,

Alex. St. And. | Roxburgh, Dalziell, Geo. Gordon, Athol,Dumfries, Douglas, Strathmore, Ch. Maitland, Montroje, Airlie, G. Mekenzic, Glencairn, Ancram, Ge. Mekenzie, Wintown, Livingstoun, Ramsay, Linlithgow, Jo. Edinburgens. J. Drummond. Perth, Elphingstoun,

The King's Answer to the Council's Letter.

C.R. 18 Decemb. 1681.

MOST dearly, &c. having this Day received your Letter of the 14th Instant, giving an Account that our Advocate having been ordered by you to insist in that Process raised at our Instance against the Earl of Argyle, he was, after full Debate and clear Probation, found guilty of Treason, and Leafing-making, betwixt us, our Parliament, and our People, and the reproaching our Laws and Acts of Parliament: We have now thought fit, notwithstanding of what was ordered by us in our Letter to you of the 15th of November last, hereby to authorize you to grant a Warrand to our Justice General, and the remanent Judges of our Justice Court, for proceeding to pronounce a Sentence, upon the Verdict of the Jury, against the said Earl; nevertheless it is our express Pleasure, and we do hereby require you, to take Care, that all Execution of the Sentence be Stopped, until we shall think fit to declare our further Pleasure in this Affair: For doing whereof, &c.

Which Answer being read in Council on the Thursday, and the Court of Justiciary, according to it's Jast Adjournment, being to meet upon the Friday, after a little Hesitation in Council, whether the Court of Justiciary could proceed to the Sentence of Forfaulture against the Earl he being absent, it was resolved in the Affirmative; and what were the Grounds urged, either of Hesitation or Resolution, I cannot precisely say, there being nothing on Record that I can learn. But that you may have a full and satisfying Account, I shall briefly tell you what was ordinarily discoursed, a Part whereof I also find in a Petition given in by the

Countess of Argyle to the Lords of Justiciary, before pronouncing Sentence, but without any Answer or Effect. It was commonly said, that by the Old Law, and Custom, the Court of Justiciary could no more in the Case of Treason than of any other Crime proceed further against a Person not compearing, and absent, than to declare him Out-Law and Fugitive: And that, albeit it be singular, in the Case of Treason, that the Trial may go on, even to a final Sentence, though the Party be absent, yet such Trials were only proper, to and always reserved for Parliaments: And that so it had been constantly observed until after the Rebellion in the Year 1666: but there being several Persons notourly engaged in that Rebellion, who had escaped, and thereby withdrawn themselves from Justice, it was thought, that the Want of a Parliament, for the Time, ought not to afford them any Immunity; and therefore it was resolved by the Council, with Advice of the Lords of Session, that the Court of Justiciary should furmond, and proceed to Trial, and Sentence, against these Absents, whether they compeared or not, and so it was done: Only because the Thing was new and indeed an Innovation of the old Custom, to make all sure, in the first Parliament held thereaster, in the Year 1669, it was thought sit to confirm these Proceedings of the Justiciary, in that Point, and also to make a perpetual Statute, that, in Case of open Rebellion, and rising in Arms against the King and Government, the Treason, in all Time coming, might, by an Order from his Majesty's Council, be tried, and the Actors proceeded against by the Lords of Justiciary, even to final Sentence, whether the Traitors compeared or not. This being then the present Law and Custom, it is apparent in the first Place, that the Earl's Case, not being that of an open Rebellion, and rising in Arms, is not at all comprehended in the Act of Parliament, so that it is without Question that, if in the Beginning he had not entered himself Prisoner, but absented himself, the Loras of Justiciary could not have gone further, than, upon a Citation, to have declared him fugitive. But others said, that the Earl having both entered himself Prisoner, and compeared, and after Debate having been found guilty, before he made his Escape, the Case was much altered. And whether the Court could, notwithstanding of the Earl's intervening Escape, yet go on to Sentence was Itill debatable; for it was alledged for the Affirmative, that seeing the Earl had twice compeared, and that, after Debate, the Court had given Judgment, and the Assize returned their Verdiet, so that nothing remained but the pronouncing of Sentence, it was absurd to think that it should be in the Power of the Party, thus accused, and found guilty, by his Escape to frustrate Justice, and withdraw himself from the Punishment he deserved. But on the other Hand it was pleaded for the Earl; that first, it was a fundamental Rule, that until once the Cause were concluded, no Sentence could be pronounced: Next that it was a fure Maxim in Law, that in criminal Actions there neither is nor can be any other Conclusion of the Cause than the Party's Presence and Silence; so that, after all that had past, the Earl had still Freedom to add what he thought fit, in his own Defence, before pronouncing Sentence, and therefore the Lords of Justiciary could no more proceed to Sentence against him being escaped, than if he had been absent from eof I also find in a Petition given in by the the Beginning, the Cause being in both Cases equals Vol. III.

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ly not concluded, and the Principle of Law uniformly the same, viz. that in Criminals (except in Cases excepted) no final Sentence can be given in Absence: for, as the Law, in Case of Ab-Jence from the Beginning, doth hold that just Temper as neither to suffer the contumacious to go altogether unpunished, nor, on the other Hand, finally to condemn a Party unbeard. And therefore doth only declare him fugitive, and there stops: So in the Case of an Escape, before Sentence, where it cannot be said the Party was fully heard, and the Cause concluded, the Law doth not distinguish, nor can the Parity of Reason be refused. Admitting then that the Cause was so far advanced, against the Earl, that he was found Guilty; yet, 1. This is but a declaring of what the Law doth as plainly presume against the Party absent from the Beginning, and consequently, of itself, can operate no further. 2dly, The finding of a Party Guilty is no Conclusion of the Cause. And, 3dly, As it was never seen nor heard that a Party was condemned in Absence (except in excepted Cases) whereof the Earl's is none, so he having escaped and the Cause remaining thereby unconcluded, the general Rule did still hold, and no Sentence could be given against him.

It was also remembered, that the *Diets* and *Days* of the Justice Court are peremptour; and that in that Cafe, even in Civil far more in Criminal Courts and Causes, a Citation to hear Sentence is constantly required: Which induced some to think, that at least the Earl should have been lawfully cited to hear Sentence, before it could be pronounced. But it is like this Course, as confessing a Difficulty, and occasioning too long a Delay, was therefore not made use of. However, upon the whole, it was the general Opinion, that seeing the denouncing the Earl Fugitive would have wrought much more in Law than all that was commonly faid, at first, to be designed against him: And that bis Case did appear every way so savourable, that impartial Men still wondered how it came to be at all questioned, it had been better to have sisted the Process, with his Escape, and taken the ordinary Course of Law, without making any more Stretches.

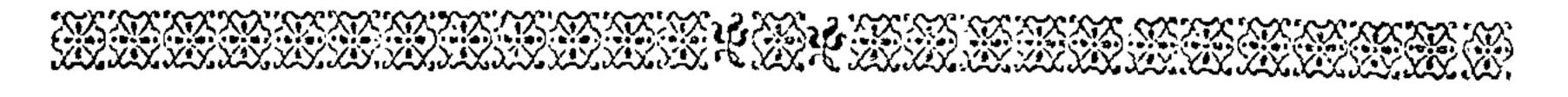
But, as I have told you, when the Friday came, the Lords of Justiciary, without any Respect, or Answer given to the Petition above-mentioned,

given in by the Countess of Argyle to the Court for a Stop, pronounced Sentence, first in the Court, and then caused publish the same, with all Solemnity, at the Mercat Cross of Edenburgh.

TOR as much as it is found by an Affize that Archibald Earl of Argyle is guilty and culpable of the Crimes of Treason, Leasing-making, and Leasing-telling, for which he was detained within the Castle of Edenburgh, out of which he has now since the said Verdict made his Escape: Therefore the Lords Commissioners of Justiciary discern and adjudge the said Archibald Earl of Argyle to be execute to the Death, demained as a Traitor, and to underlye the Pains of Treason, and other Punishments appointed by the Laws of this Kingdom, when he shall the apprehended, at such a Time and Place, and in such Manner as his Majesty in his Royal Pleasure shall think fit to declare and appoint: And his Name, Memory, and Honours, to be extinst: And bis Arms to be riven forth, and delete out of the Books of Arms, swa that his Posterity may never have Place nor be able bereafter to bruick or joyse any Honour, Offices, Titles, or Dignities, within this Realm in Time coming and to have forfaulted, amitted, and tint, all and fundry his Lands, Tenements, Annual-Rents, Offices, Titles, Dignities, Tacks, Steedings, Rownes, Possessions, Goods, and Geere what sumever pertaining to him, to our Sovereign Lord, to remain perpetually with his Highness in Property. Which was pronounced for Doom-23 December 1681.

After the reading and publishing whereof, the Earl's Coat of Arms, by Order of the Court, was also torn and ranversed, both in the Court and at the Mercat Cross: Albeit some thought that this was rather a Part of the Execution, which his Majesty's Letter discharges, than a necessary Solemnity, in the Publication; and the Advocate himself says, p. 61. of his printed Criminals, that it should only be practised in the Crime of Perduellion but not in other Treasons.

He was afterwards retaken upon his Invalion of Scotland, 1 Jac. II. and without any farther Trial was executed by virtue of the above-mentioned Sentence.



CX. The Trial of George Borosky alias Boratzi, Christopher Vratz, and John Stern, and Charles-John Count Coningsmark, at the Old-Baily, for the Murder of Thomas Thynn, Esq; February 28, 1681. 34 Car. II.

HERE having been an Indictment found at Hicks's Hall by the Grand-Jury for the County of Middlesex against Charles-George Borosky, Christopher Vratz, and John Stern, for murdering Thomas Thynn, Esq; and against Charles John Count Coningsmark, as accessary before the Fact, the said Persons being in Newgate, were brought

to the Bar to be arraigned and tried: And they being Foreigners, an Interpreter was sworn to acquaint them, in a Language they understood, what they were accused of.

Clerk of the Crown. Charles Borosky, hold up thy Hand. (Which he did.) Christopher Vratz, hold

up thy Hand. (Which he did.) John Stern, hold up thy Hand. (Which he did.) Charles-John Coningsmark, hold up thy Hand. (Which he did.)

You stand indisted in the County of Middlesex by the Names of Charles-George Borosky, late of the Parish of St. Martin's in the Fields, in the County of Middlelex, Labourer; otherwise called George Boratzi, of the same Parish and County, Labourer; Christopher Vratz of the same Parish and County, Gentleman; John Stern of the same Parish and County, Gentleman; and Charles-John Coningsmark, of the same Parish and County, Esq; otherwise called John Coningsmark, of the same Parish and County, Esquire: For that you the faid Charles-George Borosky alias Boratzi, Christopher Vratz, and John Stern, not having God before your Eyes, but being moved and seduced by the Instigation of the Devil, upon the twelfth Day of February, in the thirty fourth Year of the Reign of our Sovereign Lord King Charles the Second, with Force and Arms in the Parish of St. Martin's in the Fields in the County of Middlesex aforesaid, in and upon Thomas Thynn, Esquire; in the Peace of God, and our said Sovereign Lord the King, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Affault. And that thou the said George Borosky alias Boratzi, a certain Blunderbuss of the Value of five Shillings, the said Blunderbuss being then charged with Gunpowder, and four Leaden Bullets; which faid Blunderbuss thou the said George Borosky alias Boratzi in both thy Hands so as aforefaid, loaden to and against the said Thomas Thynn then and there hadst and heldest, And that thou the aforesaid George Borosky alias Boratzi, knowing the Blunderbus aforesaid, to be so as aforesaid, charged with Gunpowder and Leaden Bullets, to and against the said Thomas Thynn then and there, with Force of Arms, feloniously, wilfully, and of thy Malice aforethought, didit discharge and shoot off. And that thou the faid George Borosky alias Boratzi, with the said Leaden Bullets shot and sent out of the Blunderbuss aforesaid, by the Violence and Force of the Gunpowder aforefaid: And by thee the said George Borosky alias Boratzi so as asoresaid discharged and shot off, the said Thomas Thynn in and upon the right-fide of the Body of the faid Thomas Thynn, near the short Ribs of the right-side of the Body of the said Thomas Thynn, then and there feloniously, wilfully, and of thy Malice aforethought didst strike and wound; giving unto him the said Thomas Thynn then and there with the Leaden Bullets aforesaid, so as aforesaid shot and sent out of the Blunderbuss aforesaid by Force and Violence of the Gunpowder aforefaid, by thee the faid George Borosky alias Boratzi, so as asoresaid discharged and fent out, in and upon the right fide of the Body of bim the faid Thomas Thynn, near the foort Ribs, on the right-fide of him the faid Thomas Thynn four mortal Wounds, every one of them of the Breadth of one Inch, and of the Depth of fix Inches; of which said mortal Wounds, he the said Thomas Thynn from the said twelfth Day of February in the thirty fourth Year aforefaid, unto the thirteenth Day of the same Month of February, at the Parish of St. Martin's in the Fields aforesaid, did languish and lived languishing: On which said thirteenth Day of February, in the thirty fourth Year aforesaid, he the faid Thomas Thynn at the Parish of St. Martin's in the Fields aforesaid, of the mortal Wounds so as aforesaid given, died. And that you the said Christopher Vratz and John Stern, then, that is to Vol. III.

say at the Time of the Felouy and Murder asoresaids by the said George Borosky alias Boratzi; so as aforesaid feloniously, wilfully, and of Malice aforethought, done and committed, then and there felonioully, wilfully, and of your Malice aforethought, by Force and Arms were present, aiding, comforting; abetting, assisting and maintaining the said George Bososky alias Boratzi, the Felony and Murder aforefaid feloniously, wilfully, and of his Malice aforethought, to do and commit. And so you the said George Borosky alias Boratzi, Christopher Vratz and John Stern, the said Thomas Thynn in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought didst kill and murder; against the Peace of our Sovereign Lord the King, his Crown and Dignity. And that thou the said Charles-John Coningsmark before the Felony and Murder aforesaid, by the said George Borosky alias Boratzi, Christopher Vratz and John Stern in Manner and Form aforefaid, seloniously, wilfully, and of their Malice aforethought, done and committed, to wit, the said twelsth Day of February, in the thirty fourth Year asoresaid, at the Parish of St. Martin's in the Fields aforesaid, them the said George Borosky alias Boratzi, Christopher Vratz and John Stern the Felony and Murder aforesaid, in Manner and Form aforesaid seloniously, to do and commit, feloniously, wilfully, and of thy Malice aforethought, didst stir up, counsel, persuade and procure, against the Peace of our Sovereign Lord the King, bis Crown and Dignity.

L. C. J. Why you must read this to Sir Francis Pemberton. them now in their Language, or elfe they can't understand it.

L. C. J. North. You that are the Interprerer, tell them that you are going to interpret the Indictment to them by Degrees.

Mr. Vandore. Yes, my Lord, I will.

L. C. J. Don't read all the Circumstantials, but only the Substance of the Indictment.

Then the Clerk of the Crown went near the Bar, and distated to the Interpreter deliberately, who interpreted it to the Prisoners.

L. C. J. Well, you have told them the Substance of it, that they are indicted for killing Mr. Thynn. Mr. Vandore, Yes.

L. C. J. Well, what fays the first Man?

Cl. of Cr. I asked him if he be Guilty of the Murder whereof he stands indicted, and he says he is Not Guilty.

 $L.C.\mathcal{F}$ . Does he fay so?

Mr. Vandore. Yes, he says he is Not Guilty.

 $L. C. \mathcal{I}$ . Why now tell him the Formality, that he must put himself upon the Jury here.

[Then Sir Nathanael Johnson was sworn Interpreter.]

L. C. J. Ask him this Question. Tell him he is accused of the Murder of Mr. Thomas Thynn; ask him if he be Guilty or Not Guilty.

Mr. Vandore. He fays he is Not Guilty, my

Lord. I asked him just now.

L. C. J. Then Sir Nathanael Johnson, if you can make him to understand it, tell him, that our Manner of Trial here is by Twelve Men, and that is by putting himself upon the Country, and therefore ask him, how he will be tried. Tell him that the Method is by faying, By God and the Country.

Sir O002

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Sir N. Johnson. My Lord, he is a very dull kind of Man, he knows not how to answer, nor what to fay; nor won't fay any thing; that is the Truth of it.

L. C. J. Ask him if he be willing to be tried

after the Manner of the English.

Sir N. Johnson. Yes, he says he is willing to be tried according to the Fashion of the English.

L. C. J. North. He hath pleaded Not Guilty,

and the other follows of course.

L. C. J. Ask the other, the Captain, the same thing.

Sir N. Johnson. He desires a French Interpreter,

for he speaks French.

L. C. J. Surely here are enough People that understand French, but ask him if he does not understand English.

Sir N. Johnson. He can understand some, he says.

L. C. J. Then ask him, whether he be Guilty, or Not.

Sir N. Johnson. He says he is Not Guilty, my Lord.

L. C. J. Now ask Mr. Stern, but first, ask the

Captain how he will be tried.

Sir N. Johnson. He says he will be tried by God, and half his own Country, and half English.

L. C. J. He shall have his Request.

Sir N. Johnson. He desires one thing further.

L.C.J. Look you, Sir Nathanael Johnson, you must tell him this; he shall be tried by half Foreigners and half English; that is it, I suppose, he desires.

Sir N. Johnson. My Lord, he desires that there may be none of the Jury that are any thing a Kindred or Relation to Mr. Thomas Thynn, nor any particular Friend of his, and he is satisfied.

L. C. J. No, there shall not, we will take Care of that. Now ask Mr. Stern then the like Question.

Sir N. Johnson. My Lord, he says he is Not Guilty.

L. C. J. Ask him too, how he will be tried;

whether by a Jury?

Sir N. Johnson. He says, he's content to be tried as the others are, by half Strangers and half English.

L. C. J. Now then ask my Lord Coningsmark what he fays.

Mr. Thynn. He speaks English, my Lord.

L. C. J. But not well enough, may be, to understand the whole.

L. C. J. North. Sir Nathanael, what does he

fay?

Sir N. Johnson. My Lord, he says it is a Concern of his Lite, and therefore he desires he may have not only one Interpreter, but others: He desires he may have two or three, that they may make no Mistake.

 $L. C. \mathcal{I}$ . Very well.

Sir N. Johnson. He says that I understand the Dutch Language; but his Life and Honour are concerned, and therefore he would have three or four.

L. C. J. Who would be have?

Sir N. Johnson. Sir Thomas Thynn said they had one that was brought by them.

Mr. Thynn. That is Vandore, who is sworn al-

ready.

L. C. J. Look you, Sir Nathanael, tell my Lord, if he pleases, he shall have a French Interpreter; for I know he speaks that Language very well.

Sir N. Jobinson. My Lord, he says, that High-Dutch is his natural Language, and he can express

himself best in that.

Then one Vanbaring was called for by the Count, but did not appear.

L. Ch. Bar. Sir N. Johnson, you must ask the Count whether he be Guilty of Wm. Montague, Efq; the Indictment, as accessory before the Fact.

Sir N. Johnson, I have asked, my Lord, and Not Guilty he answers,

Cl. of the Cr. How will you be tried?

Sir N. Johnson. He says, he will be tried by God and half his own Country, or half Foreigners and half English; and he defires they may be Persons of some Quality, as they use to treat Perfons of his Quality, and Strangers.

L. C. J. There shall be such Strangers, tell him. You have Merchants of good Account, I suppose,

upon this Pannel?

Under-Sheriff. Yes, my Lord, they are all such. Sir N. Johnson. He desires he may be tried diflinctly from the others.

 $L. C. \mathcal{J}$ . That cannot be: But look you, Sir, Pray tell my Lord this, that though the Evidence must be given, and the Jury must be charged all together, yet in this Case we will distinguish his Case to the Jury, if there be Occasion.

L. C. Bar. And his Evidence will come distinct. Mr. Vandore. My Lord, he asks this Question of your Lordship and this Honourable Court, if it be agreeable, and according to the Justice of this Nation, that my Lord may be allowed two or three Days Delay, because he is to prepare himfelf and Witnesses for his Trial.

Sir N. Johnson. My Lord, he fays this; his Witnesses are not prepared, and he not having had Time to recollect himself, so as to fit himself for his Defence, therefore he begs the Favour of the Court, that he may have a Day or two's Time to recollect himself. He says he is to answer Circumstances with Circumstances, my Lord; he says he has fome Witnesses as to Circumstances that are very material to answer such Circumstances as are brought against him; he does not understand the Law, my Lord, nor has had no Time to have any Counsel to inform himself.

L. C. J. You must tell him this, that which he is charged with is Matter of Fact, that none can instruct him in but himself; Counsel can do him

no good in fuch a Cafe as this.

Sir N. Johnson. My Lord, he says, the Matters that are objected against him are only Circumstances, my Lord, and they require an Answer, which he can do by other Circumstances, and he desires Time to recollect himself, two or three Days Respit; he desires, if it were but a little Time, a Day or two.

Mr. Thynn. My Lord, our Witnesses are all ready, and the Counfel instructed, and wait here

to go on.

L. C. J. North. Look you; pray will you tell him, when the Trial is once begun, the Jury can neither eat nor drink till they have given their Verdict; that is the Law, and we can't change the Law, therefore we cannot allow him the Time he desires. He knows what he is accused of, and has known it a good while, and has had Time to recollect himself and prepare himself.

Sir N. Johnson. My Lord, he says, the Jury are not yet together, nor charged with him, and therefore till the Jury are charged, he thinks he may have Time, if your Lordship please to al-

low it.

L. C.J. Look you, you must tell him, that he is to understand that here is but one Indictment against the Principals and himself; and we cannot try this by Piece-Meals; we cannot try the Principals now, and my Lord Coninsgmark another Time \*.

Sir N. Johnson. If it must be so, he says, he must throw himself upon your Lordship; he hopes he shall have nothing but what is just and fair, and he hopes your Lordship will be of Counted to him, as the Fashion of this Country is; if any Thing arises of Matter of Law, he desires he may have the Advantage of it: And if he can't have a Day or two, he says the Innocency of his Case will protect him. Count Coninsgmark knowing how Innocent he is, won't stick for a Day or two, but he will be ready to be tried as your Lordship shall think sit; he has Innocence on his Side, and that will protect him.

L. C.J. Let my Lord know, that we will be careful in examining all Things that concern him.

Sir N. Jobnson. He says he does not fear it, my Lord, having to do with such honourable Persons, nor doubt it at all.

L.C.J. Then swear a Jury. But look you my Lord Coningsmark, consider this; as the Gentlemen of the Jury come to be sworn, if you do dislike any of them, you may except against them.

Sir N. Johnson. My Lord, he says, being altogether a Stranger here in England, and not knowing any of the Persons, he begs the Favour of the Bench that he may have the Names of those that are returned of the Jury, and a little Time to consider of it.

L. C. J. That we cannot do: All we can do for you is, we will take as much Care as we can, that you may have indifferent Persons, and Persons of Quality.

L. C. J. North. Pray tell him, the Law gives him the Privilege of a peremptory Challenge.

Sir N. Johnson. He says, my Lord, he does not know who they are, but they may be Persons that are touched, and may have something of Evil-Will or Spleen against him. His Father served against the King of Denmark, and against the Poles and the Papists, and his Father was a Protestant, and served the Protestant Cause.

L. C. J. What Countrymen are they, Mr. Sherisf?

Under-Sheriff. They are French and Dutch most of them, I do not believe there is ever a Dane amongst them.

L. C. J. We will call all Frenchmen, if he had rather have them than Dutch.

Sir N. Johnson. He would very gladly have them all High Dutch; if not, that he may have some.

L. C. J. I thought he had excepted against the Dutch.

Sir N. Johnson. No, against the Danes; for his Father in the Wars burnt their Towns.

L. C. J. Examine them, as they come to the Book, if there be any of the Roman Catholick Religion, and don't let any such be sworn.

Mr. Sheriff *Pilkington*. There is none such among them, I dare say.

L. C. J. Sir N. Johnson, tell my Lord, he shall have no Roman Catholicks at all.

Sir N. Johnson. He thanks your Lordship. He

desires he may have the:Pannel to look upon, and he hopes that is an easy Favour.

L. C. J. Let him have the Pannel, if it will do him any good. He is a Stranger, latisfy him in what we can.

[Which was delivered to him, and he looked it over.]

L. C. J. Tell him, as the Jury is called, he shall have every one of the Outlandishmen and Englishmen brought before him.

Sir N. Johnson. My Lord, he thanks you for this Favour.

L. C. B. Sir N. Johnson, tell the Count, they call first an Englishman, then a Foreigner, and they shall be brought to view.

L. C. J. Pray, have you told the other Persons, that their Time to Challenge is before the Jury is sworn?

Sir N. Johnson. The Polander says he can challenge none, because he knows none.

L. C. J. What say the rest?

Mr. Vandere. They say they know no Body, and can except against no Body.

Cl. of Cr. Call Sir Will, Roberts.

[Who appearing, stood up.]
L. C. J. My Lord Coninfymark, there is the

Foreman.
Sir N. Johnson. He has nothing to say against him.

L. C. J. Then hold him a Book, and swear him.

[Which was done.]

Cl. of Cr. Call Mr. Dozoning.

Interpreter. He says he is no Foreigner.

L. C. J. Then he must not be sworn.

Cl. of Cr. Moses Charas. [Who appeared.] Interpret. He has nothing to say against him. But he himself says, he does not speak English, but he desires to speak French.

Cl. of Cr. Then tell him in French, he must lay his Hand on the Book and be sworn, and hearken to his Oath.

Sir Fr. Winnington. We challenge him for the King.

L. C. J. For what Cause?

Sir Fr. Winnington. My Lord, we take it that we need not shew any Cause, unless there be any Want of the Number in the Pannel.

L. C. J. Then we must do him right, and tell him what Advantage the Law gives him. Tell my Lord, you that understand English, that this Gentleman is challenged for the King; and if the King shew any good Cause for it, he must not be sworn, else he must. And the Way for him to cause the King's Counsel to shew their Cause, (if he desire it) is to challenge all the rest.

Mr. Williams. We wave our Challenge; for the Reason why we challenged him was, because he did not understand English, which will be no Reason at all.

[Then he was swirn.]

Cl. of Cr. Sir Henry Ingoldsby.

Sir N. Johnson. He challenges him, my Lord. Cl. of Cr. Sir William Gulston.

Sir N. Johnson. He excepts against him, my Lord.

L. C. J. Does he challenge him in respect of what I said to him about the Outlandish Gentlemen, that the King is to shew Cause? Or how does he challenge him?

<sup>\*</sup> Most certainly they might, and it is frequently done, although there be but one Indictment, as in the Case of the Regicides and many other Cases; but it was more for the Interest of the Count to try him then, though he was not aware of it himself.

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Interpret. My Lord, he says he hears he is a Friend to Mr. Thynn.

L. C. J. Well, let him be passed by then.

Cl. of Cr. Sir John Musters, [Who did not appear.] Sir. N. Johnson. He says, my Lord, he only desires indifferent Persons.

Cl. of Cr. Henry Herbert, Esq;

Sir N. Johnson. He challenges him.

Cl. of Cr. Richard Paget, Esq;

Sir N. Johnson. He desires to see him.

 $L. C. \mathcal{I}$ . Let him be brought into the Middle, that he may look upon the Prisoners.

Interpret. He has nothing to say against him.

[Then he was sworn.]

Cl. of Cr. James Bucgone.

Interpret. He accepts against him.

Cl. of Cr. Claudius Derolee,

Interpret. He excepts against him too.

Cl. of Cr. Charles Beelow.

Interpret. He says he looks like a Man, and he does not except against him. [And he was fworn.]

Cl. of Cr. Ralph Bucknall, Eig; Interpret. He challenges him. Cl. of Cr. Thomas Earfby, Elq; Interpret. He challenges him too.

L. C. J. Look you, Sir Nath. Johnson, pray

tell him he can challenge but twenty.

Sir N. Johnson. He says very well; he will not do any more. He desires the Favour, that those that he challenges may not come near those that are fworn.

L. C. J. Well, it shall be so; we will take Care of it.

Cl. of Cr. Richard Gowre, Esq;

Sir N. Johnson. He excepts against him.

Cl. of Cr. George Hocknall, Eiq;

Interpret. He challenges him. [But then the Count looking in his Paper, retrasted the Challenge, and he was sworn.]

Cl. of Cr. Peter Fundenbagen.

Interpret. He fays nothing to him.

Then be was sworn,

Cl. of Cr. Walt: Moyle, Esq;

Interpret. He does not challenge him.

Cl. of Cr. Christopher Rickey.

Interpret. He does not challenge him.

[He was sworn.]

Thomas Henflow, Esq;

He does not except against him. Interpret. [Then he was sworn.]

Cl. of Cr. Lewis Doncarr.

Interpret. He challenges him.

Cl. of Cr. Peter Lecane. [He did not appear.] Davia Collivaux.

Interpret. He challenges him, because he knew Mr. Thynn, they fay.

Cl. of Cr. Andrew Lodderley.

Interpret. He challenges him.

Cl. of Cr. James Burk.

Interpret. He challenges him,

Cl. of Cr. Daniel Griggion.

Interpret. He does not challenge him.

[So he was sworn.]

Cl. of Cr. Robert Jordan, Esq; Interpret. He challenges him.

Cl. of Cr. Lucy Knightley, Esq; Interpret. He callenges him.

Cl. of Cr. John Haynes, Esq;

Interpret. He does not except against him.

[He was sworn.]

Cl. of Cr. Lewis le Count.

Interpret. He callenges him.

Cl. of Cr. John Belliew.

Interpret. He challenges him. Cl. of Cr. James Frontein,

Mr. Williams. We challenge him for the King.

Cl. of Cr. John Massey.

Interpret. He challenges him.

Cl. of Cr. Andrew Primow.

Interpret. He challenges him.

Cl. of Cr. Nicholas Benfor.

Interpret. He challenges him. He says they are all Walloons, and therefore he challenges them.

L. C. J. Why does he except against Wallooms? Interpret. Because they have always served against the Swedes.

Cl. of Cr. John Lebarr.

Interpret. He does not except against him.

[And so be was sween.]

Cl. of Cr. Cryer, reckon there, &c.

Sir Will. Roberts, Bart. Moses Charas, Gent. Richard Pagett, Eiq; Charles Beelow, Gent. Geo. Hocknoll, Elq; Pet. Vandenbagen, Gent.

Walter Moyles, Efq; Chr. Ripkey, Gent. Tho. Henflow, Efq; Dan. Griggion, Gent. John Haynes, Efg; and John Lebarr, Gent.

Then Proclamation for Information and Profecution was made: And a Chair was set for the Count, at his Request.

Cl. of Cr. Entlemen, Look upon the Prisoners, you that are fworn, and hearken to their Caule; they stand indicted front in the Indictment, mutatis mutandis ----- against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indicament they have been arraigned, and thereunto have feverally pleaded, Not Guilty: And for their Trial, have put themselves upon God and their Country; which Country you are. Your Charge is to enquire, whether they, or any of them are Guilty of the Offences whereof they fland indicted, or Not Guilty. And if you find them, or any of [He was fworn.] them Guilty, you are to find what Goods or Chattels, Lands or Tenements they had at the Time of the Felony and Murder committed, or at any Time fince. If you find them or any of them Guilty, you are to enquire, whether they or any of them Red for it: If you find that they, or any of them fled for it, you are to enquire of their Goods and Chattels, as if you had found them Guilty; if you find them or any of them Not Guilty, nor that they did fly for it, you are to fay so, and no more, and hear your Evidence. But if you acquit any one of the Principals -----

 $L, C, \mathcal{I}$ . That is a Millake, it must be all the Principals.

Cl. of Cr. If you acquit the Principals, you are not to enquire of Charles-John Coningsmark as Ac-

cellary before. Mr. Keene. May it please your Lordship, and you Gentlemen that are fworn of this Jury, George Borosky alias Boratzi, Christopher Vratz, and John Stern, the Prisoners at the Bur. stand here indicted; for that they not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, the 12th Day of February, in the 34th Year of the Reign of this King, teloniously and voluntarily, and of their Malice afore-

thought, did make an Assault upon Thomas Thynn, Ēiq,

Esq; at the Parish of St. Martin's in the Fields in this County; and that the faid George Borosky having in his Hands a Blunderbuss, which he knew to be charged with four Leaden Bullets, did difcharge it at Mr. Thynn, and gave him four mortal Wounds, of which Wounds he languished till the 13th Day of February, and then died: And that they the said Christopher Vratz and John Stern were there present, aiding, assisting and abetting him to commit the said Felony and Murder; and so that they the said Geerge Borosky, Christopher Vratz, and John Stern, did of their Malice aforethought, in Manner aforesaid, murder the said Thomas Thynn. And Charles-John Coning [mark, the other Prisoner at the Bar, stands indicted, for that he before the Felony and Murder aforesaid, so done and committed, to wit, the 12th Day of February aforesaid, did of his Malice aforethought, move, incite, counsel, persuade, and procure the said Borosky, Vratz, and Stern, to do that Murder, against the Peace of the King, his Crown and Dignity. To this Indictment they have severally pleaded Not Guilty; and you are to enquire, whether they are Guilty, as they are charged, or no.

Sir Francis Withens. My Lord and Gentlemen, I am of Counsel in this Case for the King, against the Prisoners at the Bar. There are three of them indicted as Principals in this Murder, the fourth as Accessary before. In this Case that is now before you, Gentlemen, I cannot choose but take Notice unto you, that a Murder of this nature has never been heard of to be perpetrated upon English Ground, both in respect of the Person murdered, and in respect of the Circumstances of the Fact. For the Person murdered, was a Gentleman of that Quality and Estate, that he hath left but few Equals behind him. That this Man being in his Coach, should be way layed, furprized, and murdered, and this Murder committed in the midst of our Streets, is that which works Amazement in all English Hearts. And our only Comfort upon this fad Occasion is, that there is not one Native of this Country found amongst all those that are accused to be Instruments in this barbarous Fact.

I did observe to you, Gentlemen, before, that there are three named to be Principals; Boroky, whom for Distinction sake, I shall call by the Name of the *Polander*, *Vratz*, who is called the Captain, and Stern, who is called the Lieutenant. Borosky the Polander, we say, was the Man that discharged this Blunderbuss against this worthy Gentleman that was flain; but though he was the only Man that discharged it, yet if we can fatisfy you that Vratz and Stern were with him at the same Time, aiding and assisting him when he gave the Blow, they are as much Principals as he that shot off the Gun. It will be natural to open to you what is said against this Captain Vratz; he is a Swede by Birth, and did formerly belong to Count Ceningmark; he was a Retainer to him. Afterwards, I think in the War he was made a Captain. This Gentleman had been formerly in England, but at the last Time he came, which was three Weeks, or thereabouts, before the Murder was committed, his Lodging was in King-Street at Westminster. This Captain Vratz, we shall prove, did often discourse that he had a Quarrel with Mr. Thynn, that several Times before this Murder was actually done, he ordered his Servant to way-lay his Coach; day Night, as I said, the Night before the Murder

and upon that very fatal Day, the 12th of February, when this unhappy Accident fell out, having Information that Mr. Thynn was gone out in his Coach, immediately he puts on his Boots, gives Order to his Servant to bring his Clothes to him at fuch a Place, because he should remove his Lodging, he said, that Night, that he should bring his Clothes to the Black-Bull Inn in Holborn, and bring his Horse thither too. When he went from his Lodging, the Polander went along with him, and they came to the Black-Bull in Holborn, where they met with Stern. We shall shew you, that these three Gentlemen being thus armed, one with a Blunderbuss, the second with Pistols, and the other very well provided, rid out about six of the Clock, the Murder being committed about feven or eight. At their going out, they enquired which was their Way to Temple-Bar; they were feen to ride through the Strand to St. James's. the Fact was done in the Pall-Mall, and we shall shew you the Way of it was thus; Mr. Thynn passing through the Street to go home in his Coach, three Persons came riding up to the Coach Side, and while the one stopped the Horses, immediately the Blunderbuss was discharged into the Coach against Mr. Thynn, and gave him those Wounds, of which the next Morning he died. Presently these three Men ran away, but one of them let fall a Pistol upon the Place, which I shall observe as a material Circumstance against these Persons, because we shall prove whose the Blunderbuss was. These Things being done, this Murder committed, and they gone away, it began to work in People's Thoughts, and Circumstances began to come out, that this Blunderbuss flould be ordered to be brought by Captain Vratz, who had discoursed with many Persons about the Quarrel he had with Mr. Thynn, and given Order to his Servant to way-lay his Coach; and these Persons being rid out at that Time, there was a great Suspicion that they did it. Great Care there was taken, and great Means used, as no doubt there would be, to apprehend the Malefactors; and by great Providence it was found out at last, that this Captain Vratz, according to his Word, had altered his Lodging, and was got to a Doctor's House, that lived, I think, in Leicester-Fields. Being there furprized, and coming upon his Examination, he did not deny but he was there one of the three that was at the Place when and where Mr. Thynn was murdered, but he pretended, he did intend to fight him in a Duel, and kill him fairly, as he called it. But, Gentlemen, I must observe this to you, in my small Time of Experience of the World, I never knew a Man go to fight a Duel, and carry out with him a Second with a Blunderbuss. 'Tis not possible he should go with fuch a Delign as he would infinuate, but rather with an Intention of Murder. For the Polander, he came into England but the Friday before, and so we shall prove to you that which will stick hard upon the Count. Upon Friday, he being landed, he enquires for the young Count's Tutor, which was at an Academy of one Monfieur Faubert's; and there he enquires for the Count's Secretary; he lay there, I think, that Night, and upon Saturday he was conveyed to the Count's Lodgings. There also he was lodged for one Night. The Count was pleased to bespeak him a very good Sword, and a Coat for him, that he might be well armed, and there he lay on Satur-

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was committed. Upon Sunday, Gentlemen, there being a Message sent to this Doctor, where Vratz lay, the Night following that the Count would speak with the Doctor, the Doctor came, and the Doctor and the *Polander* went away to Captain Vratz's Lodging, and from thence to Holborn, to the Black-Bull, and the Captain was carried in as much Secrecy as he could, for he was carried in a Sedan; and I think we shall be able to prove, by the Persons that carried him, that this was the Man. For the other Gentleman, Stern, the Lieutenant, as they call him, he was an ancient Acquaintance of Captain Vratz's, had known him long ago in England, and complained to him, that Lodgings might be very dear; but the Captain told him, he had a Design; and if he would affist him as a brave Fellow, would maintain him, and he should not want Money to bear all his Charges. But we shall prove that this was the third Person that rid out with the Polander, and the Captain in this Garb that I told you of, this Night that the Fact was done. And indeed, Gentlemen, upon their Examination, they have every one confessed the Fact; even the Polander confessed that he did shoot off the Blunderbuss; and Vratz confessed that he was there, and the Lieutenant Stern; so that if there had been no more Evidence, it would have been sufficient to maintain the Issue, and in our Circumstances, it is more perhaps than could be expected. This, Gentlemen, is the principal Sum of the Evidence that will be given against the three Principals. the fourth, Gentlemen, Count Coninfgmark, he is a Person of great Quality, and I am extraordinary forry to find the Evidence fo strong against him, as my Brief imports; I wish his Innocence were greater, and our Evidence less; for he is a Person of too great Quality, one would hope, to be concerned in a Thing of this Nature; but that he was the main Abettor and Procurer of this barbarous Business, we shall prove upon these Grounds: First, That he had a Design upon Mr. Thynn's Life; for, Gentlemen, coming into England about three Wicks before this Matter was transacted, first he lies in Disguise, and lives private, and removes his Lodging from Place to Place frequently; that he sent a Person to enquire of the Swedish Resident, whether, or no, if he should kill Mr. Thynn in a Duel, he could by the Laws of England afterwards marry the Lady Ogle? So that Mr. Thynn's Death was in Prospect from the beginning. Gentlemen, we shall prove to you, as I did in some Measure open before, that the Count himself was pleased to give express Order, that the Polander should have a good Sword bought him; that before he came into England, he was very much troubled, by reason of the stormy Weather, for fear he should be cast away; that he lodged him in his own Lodging the Night before this Act was perpetrated; and that Captain Vratz was the Morning before, and immediately after, with the Count. Another thing, Gentlemen, that I had almost forgot: The Count was willing to be instructed in the Laws of England, and enquired, Whether a Man might lawfully ride out upon a Sunday? And being told, That after Sermon he might; he was very well satisfied; and the Day he enquired of it, was the Day that the Murder was committed. After the Thing was done, Count Coninfgmark, the next Morning, pretended he was to go to Windsor, and leaves his Lodging; but instead of going to Which is William Cole? Set him up.

Windsor, (being still in his Disguise) he goes to Rotherbith, by the Water-side, and there, I think, he continues two or three Days in a black Peruke. (and that is Disguise enough for such a Gentleman) and afterwards he goes to Gravesend; but, I think, he was upon the Water some Time, before he thought it convenient to land; and there he was surprized in this Disguise. And when he was surprized and taken, he shewed him. self to be in great Disorder; but being charged with the Fact, acknowledged nothing of the Matter. But how it should come to pass, that he should lie so long disguised, upon no Pretence that can be known, and afterwards to pretend that he had a Business to effect, and then he was to go into France, that will lie upon him to answer. But these are the inducing Evidences that we give to you; his keeping the Polander in his House, his disguising of himself, and his enquiring, Whether if he killed Mr. Thynn, he might not marry my Lady Ogle? His flight the next Day, and pretending to go to Windsor, when he went quite the other Way, and all in a Disguise; and these Persons not having any Appearance, or any Reason whatsoever, for any particular Quarrel to Mr. Thynn, but the Count having some Disgust to him, upon the Terms that the Witnesses will tell you of by and by, and being related to the Count, we must leave it to you to judge, when ther these Gentlemen did it singly and purely upon their own Heads, or whether they were not set upon it by the Count.

Sir Fra. Winn. My Lord, I shall not trouble you with repeating of our Evidence, but we will begin and call our Witnesses, directly to prove the Murder done by these Gentlemen; we will prove the Fact downright upon them, and then we shall afterwards come to the Count.

Mr. Williams. My Lord, first we will direct Evidence to the Principals, and then to the Accessary. Call William Cole and William Ellers.

L. C. J. Swear some Person to interpret the Evidence that shall be given: I do it for the sake of the Aliens that are of the Jury; for some of them understand no English, and they will not know what to make of the Evidence, if they do not repeat it to them in their own Language.

Then Vandore and Wright were sworn for the King.

Sir N. Johnson. My Lord desires that the Doctor and the Taylor that are in Prison may be sent for, to be here, for they are Witnesses for him.

Sir Fra. Winn. We desire they may be here too, for they are Witnesses for the King, and I believe they are here, my Lord.

Sir N. Johnson. Mr. Vandore does not speak French.

Sir Will. Roberts. Mr. Craven speaks Dutch and French very well.

Mr. Craven was sworn.

Sir N, Johnson. The Count desires the Favour of Pen and Ink.

L. C. J. Let the Count have Pen and Ink. Mr. Williams. Call William Cole and William Ellers.

(Who appeared, and were sworn.)

my Lord and the Jury how Mr. Thynn was affaulted, and the Manner of it?

Cole. My Lord, my Master was coming up St. James's-street from the Countess of Northumberland's.

Sir Fran. Winn. Name your Master. Mr. Williams. Who was your Master?

Cole. Mr. Thynn. And I had a Flambeau in my Hand, and was going before the Coach, and coming along, at the lower End of St. Albans-street, I heard the Blunderbuss go off; so upon that I turned my Face back, and faw a great Smoke, and heard my Master cry out he was murdered: And I see three Horsemen riding away on the right-side of the Coach, and I pursued after them, and cried out, Murder: I ran to the upper End of the Hay-market, till I was quite spent, and was able to go no further; and turning back again, my Master was got into the House, and I understood he was wounded: That is all I know.

Mr Williams. You say you heard a Blunderbuss go off, and turning back, you faw three Men

riding away from the Coach.

Cole. Yes.

Mr. Williams. Look upon the Prisoners at the Bar: Can you say all of them, or any of them were the Men?

Cole. No, I cannot; I did not see their Faces, but I saw the Horse of one of them was a little Bay Horse.

Mr. Williams. But do you take any of them Men to be one of the three?

Cole. I did not see any of their Faces.

Sir Fr. Winn. What Time of Night was it?

Cole. A Quarter after Eight,

Sir. Fr. Winn. Pray what Day of the Week? Cole. Sunday.

Sir Fr. Winn. What Day of the Month? Cole. The 11th or 12th of February.

Sir Fr. Winn. Then, where is William Ellers? Prav do you tell the Court and Jury how Mr. Thyun was wounded, and by whom, and what you know of it.

Eliers. My Lord, I came with my Malter from St. James's-street from my Lady Northumberland's, and as I came at St. Albans-street, there came three Men riding by the right-fide of the Coach, and as they ri., one of them turned about, and bid me stop, you Dog; and just as I looked about, the Fire was let into the Coach upon my Master, and the Men ran away as fast as they could.

Sir Fr. Winn. How many were there of them? Ellers. There were three.

Sir Fr. Winn. Were those Men at the Bar, or any of them the Persons?

Ellers. I cannot tell.

Sir Fr. Winn. What were the Words they faid when the Coach was stopped? Hold, hold, or Itop, you Dog?

Mr. Williams. What Condition was your Master in then? Was he shot then?

Ellers. Yes.

Mr. Williams. We will give you some Evidence now out of their Examinations.

L. C. J. You had best give some Evidence of his Wounds.

the Surgeon,

L. C. J. Look you, Mr. Craven, you hear Flesh. what these Witnesses say, tell it to the Gentlemen L. C. J. Well, these were the sour Bullets that of the Jury that are Outlandish Men, That these

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Witnesses swear, there were three Men did do this Thing; the one of them stopped the Coach, and the other shot into it, but it was at that Time of Night, they could not know their Faces, and they all rid away.

Mr. Craven. My Lord, if you please, the Witnesses may speak by Degrees, and between every Witness I will give the Jury an Account.

L. C. J. Well, it shall be so; but they say no more than what I tell you, That three Men did do this.

#### Then he interpreted it to the Jury.

L. C. J. What fays that Gentleman to you? Mr. Craven. He fays, he hears that three Men did do it, but he says, he does not hear that they knew any of them.

### Then Mr. Hobbs was sworn.

Mr. Williams. Had you the searching of Mr. Thynn's Body after it was hurt?

Mr. Hobbs. Yes.

Mr. Williams. How did you find him?

Mr. Hobbs. I was with him, Sir, that Night he was wounded, and I found him shot with four Bullets, which entered into his Body and tore his Guts, and wounded his Liver, and his Stomach, and his Gall, and wounded his great Guts, and his small Guts, and broke one of the Ribs, and wounded the great Bone below.

Sir Fr. Winn. What Time came you to him? Mr. Hobbs. About nine or ten of the Clock. Sir Fr. Winn. Did he die of those Wounds? Mr. Hobbs. Yes, he did die of those Wounds.

Mr. Williams. Did you apprehend them all mortal, or any, or which of them?

Mr. Hobbs. I believe there was never a Wound but it might prove mortal.

Sir Fr. IVinn. Now tell us what Day of the Week, and what Day of the Month it was.

Mr. Hobbs. It was Sunday Night, the 12th of February, I think.

L. C. J. What did you observe of the Bullets, was there any Thing done to them more than ordinary?

Mr. Hobbs. I could not see any Thing, I have them here, my Lord.

L. Chief Baron. Were they Iron or Lead? Then Mr. Hobbs delivered them into Court.

Mr. Hobbs. Two of them, the littles one, may be Iron; for one of them went through a thick Bone, and yet there was no Impression on it.

L. C. J. And this that has the Impression, you think might be done against the Bones.

Mr. Hobbs. Yes.

 $L. C. \mathcal{F}$ . Was this left ragged on purpose to do the more Mischief?

Mr. Hobbs. Which, my Lord?

L. C. J. This that is left at the End here. Would this be more mortal than another Bullet, or harder to heal?

Mr. Hobbs. No, but as they take up a greater Space in flying.

L. C. J. Would not the Raggedness hinder the Healing?

· Mr. Hobbs. No, only bruise the Flesh, which Mr. Williams. Yes, we will. Call Mr. Hobbs bruised Flesh must come away before it can be healed. All Bullets wound by bruifing of the

were found in Mr, Thynn's Body?

Ppp Mr. Hobbs.

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Mr. Hobbs. I verily believe they are. Dr. Lower had them out of my Hands for a Day or two, but I believe them to be the same.

 $\hat{L}$ : C. J. Was there any lodged in the Stomach? Mr. Hobbs. Yes, one of the little ones.

L. C. J. Had they broke the great Bone? Mr. Hobbs. Yes, the great Bone in the Bottom of the Belly.

L.C.J. Two of them?

Mr. Hobbs. A great one and a little one; two of them passed through that Bone, and lodged in the Back-bone.

L. C. J. Was any of them gone through the Body?

Mr. Hobbs. One of them lay between the Ribs and the Skin.

L. C.J. None were got quite through then? Mr. Hobbs. None.

Sir Fr. Winn. Call the Coroner, Mr. White.

L. C. J. Tell the Jury, Mr. Craven, what this Witness has said.

[Then be interpreted it.]

L. C. J. What fays that Gentleman?

Mr. Craven. He says 'tis very well, he under-stands part of it.

L. C. J. Do the rest of them understand it?

Sir N. Johnson. He told it in French to the others. L. C. J. Let Mr. Hobbs have the Bullets again when the Jury have seen them.

Then Mr. White was sworn.

Sir Fr. Winn. Now we will ask the Coroner a Question or two. Pray will you acquaint my Lord, what you know of this Murder of Mr. Thynn.

Mr. IVbite. On the thirteenth of February, in the Afternoon, I sat upon the Body of Thomas Thynn, Esq; and I sound he had sour Holes on his right-side, behind his short-ribs, and they seemed to be like Holes made with Bullets. And I gave Order to open the Body.

L. C. J. And there the Bullets were found? Mr. White. There the Surgeon found them.

 $L.C.\mathcal{F}$ . Were you by?

Mr. White. I was a the taking them out.

L. C. J. 'Tis fit that the *Polander* should have one to interpret what is said against him.

Mr. Williams. Captain Vratz, you hear what is faid, and understand it.

Interpreter. He says he does understand it.

Mr. Williams. Pray tell the Polander what is faid. That is, the two first Witnesses say, Three Perfons assaulted the Coach, and one shot into the Coach, and by that Means Mr. Thynn was killed, by the Shot out of the Blunderbuss: And the Surgeon does say, that these sour Bullets were sound in his Body.

[Then it was interpreted to the Polander.]

Interpreter. He says, my Lord, he cannot tell how many Bullets were in, he did not charge it himself, but he fired it, he says.

Sir Fr. Winn. He confesses he fired then.

Sir W. Roberts. My Lord, the Jury desire to know if the Pole can tell who did charge it?

L. C. J. North. Ask him who charged it. Interpreter. He can tell, my Lord, he says.

L. C. J. It will not be very material that, for his Evidence can charge no Body but himself.

Sir. Fr. Winn. Now, my Lord, if you please,

we will call those Persons, the Justices of the Peace that examined these Men upon their Apprehension, for the Murder of Mr. Thynn. Call Mr. Bridgman and Sir John Reresby.

[Who were sworn standing upon the Bench.]
Interpreter. My Lord, he says the Blunderbuss

was given him by the Captain.

Sir Fr. Winn. Mr. Bridgman, were you by at the taking of the Examination of these Persons?

Mr. Bridgeman. Yes, I was. And these were the Examinations that were taken.

Sir Fr. Winn. Were you by all the while?

Mr. Bridgman. Sir John Reresby and I did take these Examinations\*. And I will read them if you please.

L. C. J. As to that, let it alone, if you please. Mr. Bridgman, when the Polander was examined concerning this Murder, what did he say?

Mr. Bridgman. He owned it, to the best of my Remembrance; but I refer to the Examination if I mistake.

L. C. J: Look upon it to refresh your Memory, Sir, and then tell us.

Mr. Williams. Look first what the Polander said, and then we will go on to the others.

Sir Fr. Wun. Now, Sir, will you please to acquaint my Lord and the Jury what he or any of them confessed of the Fact.

L. C. J. What the Polander confessed first,

Mr. Bridgman. The Polander, upon his Examination before Sir John Reresby and me, did own that he came into England at the Desire of Count Coning/mark.

L. C. J. Speak only as to himself; for it is Evi-

dence only against himself.

Sir Fr. Winn. My Lord, his Confession is entire, and we can't separate it.

L.C. J. But we must direct what is just and sitting. His Evidence can charge no body but himself; and that is the Reason I would not have his Examination read; for it cannot be read but only against himself.

Mr. Bridgman. Upon his Examination he confessed, that he was present when the Captain stopped the Coach; that he fired the Musquetoon by the Captain's Order; and that before he did it, the Captain bid him, as soon as ever he had stopped the Coach, to fire.

Sir Fr. Winn. Did he confess he did fire?

Mr. Bridgman. Yes, he did.

L. C. J. North. As he does now.

L. C. J. Look you, now do you tell the Polander, that the Evidence against him is, That he did fire this Musquetoon, or Blunderbuss, or what you will call it.

Interpreter. He does confess it.

L. C. J. Tell him what I say, that this Evidence is given against him: That he did formerly acknowledge he discharged the Blunderbuss into the Coach, when Captain *Vratz* stopped the Coach.

Interpreter. Yes, my Lord, he says 'tis true, he fired according to his Order.

Sir Fr. Winn. Pray, Sir, consider what was confessed by the Captain.

Mr. Bridgman. He confessed he had a Design to fight with Mr. Thynn, and Mr. Thynn having several times refused to fight with him, he resolved to oblige him to fight by Force, and therefore he

These Examinations are inserted at the End of this Trial, the Chief Justice, out of Favour to Count Coningsmank, not permitting them to be read in Court, as he ought to have done; for the Examinations are indeed no Evidence against any but the Examinant, yet are they not to be suppressed because naming others, but ought nevertheless to be read, though with the aforesaid Caution to be given to the Jury, otherwise the most material Evidence might be quite neglected, since all Confessions must be taken entire, or not at all.

had

had taken these Persons along with him; that if he should fail in his Revenge, or after the thing done he should be pursued, he might make his Escape. He consessed he was there, and stopped the Coach, but the Polonian fired by Mistake; for he did not bid him fire, but only in case he should be hindered from Fighting or making his Escape.

L. C. J. He confessed he came to fight Mr.

Thynn.

Mr. Bridgman. Yes, he did so.

L.C.J. And that he stopped the Coach?

Mr. Bridgman. Yes.

Sir Fr. Winn. You said after the thing was

done, what was that thing?

Mr. Bridgman. After he had fought, in case he should be stopped in his Escape, he bid the Polander fire.

Sir Fra. Winn. Did he confess any thing of the Delivery of the Gun to him?

Mr. Bridgman. He confessed the Polander had the Gun, but he said nothing from whom he had saw him at the Play-house?

L. C. J. Now Captain Vratz, you hear what is faid against you by this Gentleman; that you owned you came thither with a Design to fight Mr. Thynn, and force him to fight if he should not be willing; and you brought these Men with you to carry you off, in case you should kill him; that you did stop the Coach, and you said you did not give him Order to fire, unless he refused to fight you.

Mr. Bridgman. No, unless he could not make

his Escape.

L. C. J. Now what fay you to this?

Sir N. Johnson. He desires to understand it.

L.C. J. Why then speak it to him, you that are the Interpreter.

[Then Mr. Craven interpreted it to him in French.] L. C. J. Now speak aloud, and tell us what he

fays.

Mr. Craven. He says 'tis very true, that he was there, and had that Gentleman and the Polander along with him as his Servants, Mr. Thynn being a Gentleman that had always a great many Servants about him. And he fays, my Lord, that he had received an Affront from Mr. Thynn; upon that, he challenged him, and fent Letters out of Holland to desire him to give Satisfaction by Fighting, but could have no Satisfaction; and therefore because in England Duels were forbid, he thought to make a Rencounter of it, and took these Gentlemen along with him, that if so be Mr. Thynn's Servants should assault him, or knock him on the Head, or hinder him from escaping, that they might get him off.

Sir Fr. Winn. I beg one Favour of you, Sir, that you would ask him one Question, and that is, What the Affront was that Mr. Thynn gave

him?

L. C. J. That he apprehends he gave him? [The Interpreter asked him.]

Mr. Craven. My Lord, he says, That at Richmond he heard he spoke and gave out very ill Language of Count Coning smark, who was his Friend, and a Man he had many Obligations to, and so of himself too, and he would never acquaint Count Coning mark with it, but would have Satisfaction, and take the Quarrel upon himself, being a Gentleman; he says, that he heard that he called him Hector, and gave fuch ill Language as was never to be suffered.

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Sir N. Johnson. And the Fashion in Germany is, if they won't fight, to shoot them.

Sir Fran. Winn. How can you tell that, Sir? the Interpreter that asked the Question says no such thing.

L. C. J. Pray will you ask him this, Whether ever he saw Mr. Thynn, and how many Times?

Mr. Craven. He says he has seen him several Times in the Playhouse, and riding in his Coach; he did not fee him at Richmond, for if he had, he would not have put it up so long.

Mr. Williams. I believe he never spoke to him

in his Life.

L.C.J. Ask him that Question, whether he ever spoke to him?

Mr. Craven. He says he had no Friend to send to Mr. Thynn, and he could not speak with Mr. Thynn himself; for Mr. Thynn might think that he was not a Gentleman good enough to fight with him.

L. C. J. Ask him this, about what Time he

Mr. Craven. He says he does not remember exactly the Time when he did see him at the Playhoule.

L. C. J. Ask him whether this Assront that he pretends, was given him since he last came over, or when he was in England before?

Mr. Craven. He says 'tis eight Months ago since he received the Affront.

L. C. J. That was before he went out of England.

Mr. Craven. Yes, it was before.

Sir Fran. Winn. He says he writ to Mr. Thynn out of Holland; we defire to know by whom he ient his Challenge?

L.C.J. Ask him if he sent a Challenge to Mr. Thynn, and by whom?

Mr. Craven. He fays he could fend no less than a Gentleman; and he had never a Gentleman to fend by, and so he sent his Letter by the Post.

Mr. Williams. Mr. Bridgman, now we would ask you concerning Mr. Stern, the third Man.

Mr. Bridgman. Let me have the Examination, and I will look upon it and tell you.

Mr. Williams. Pray do, Sir, tell us what he said.

Mr. Bridgman. Upon his Examination he confessed, that the Captain told him, he had a Quarrel with a Gentleman, and that if he would affift him in it, he would make his Fortune. And that the Captain gave him Money to buy the Blunderbuss.

Sir Fr. Winn. Stern did confess that, did he? Mr. Bridgman. Yes.

 $L: C. \mathcal{F}$ . Did he confess he was at the Fact?

Mr. Bridgman. Yes, he confessed he was at the Fact; and he faid, when he came beyond Charingcross, he was about ten Yards before, and he heard the Captain fay, stop, to the Coach, upon which he turned about, and presently saw the Shot made, and he saw the other Persons ride away, and he made away after them: And the Captain further told him, that he would give two or three, or four hundred Crowns, to find a Man that would kill Mr. Thynn.

Sir Fr. Winn. What did he speak about stabbing, or about an *Italian?* 

Mr. Bridgman. He said that the Captain desired him to get an Italian that would stab a Man, and that he would get two Poniards for that Purpose; and that it was before the Polonian came over.

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L. C. J. This is no Evidence against the Captain; but pray will you tell Stern the Lieutenant what it is that Mr. Bridgman does testify against him; that he acknowledged thus and thus before him. And pray speak it again, Mr. Bridgman.

Mr. Bridgman. The Captain told that Gentleman, that he had a Quarrel with a Gentleman, with whom he was resolved to fight; that he wanted a good Servant, and if he would affift him, he would make his Fortune; that he gave him Money to buy the Musquetoon, and owned he was there; that he went out with the Captain and Polander on Horseback, about five or fix o'Clock on Sunday; that they went towards Charing-cross and when they were gone beyond Charing-cross into the Pall-Mall, he heard the Captain fay to the Coachman, Stop; and turning immediately, he saw the Shot go off; and that they riding away, he followed them: And that before the *Polander* came over, the Captain defired him to get an *Italian* to Itab a Man.

[Then that was interpreted to Stern.]

Mr. Craven. My Lord, he denies that he spoke any thing of four hundred Pounds, or about the Italian.

L. C. J. Tell him it is testified, that he confessed he was at the Shooting of this Gentleman.

Mr. Craven. He says he was there, and being about ten Yards off, he heard one say, Hold to the Coach, but he cannot say it was the Captain.

Sir Fr. Winn. But was he there?

Mr. Craven. Yes, he says he was.

Sir Fr. Winn. Who caused him to be there?

 $L. C. \mathcal{I}$ . Ask him upon what Occasion he was there?

Mr. Craven. He says the Captain intreated him to be there to be his Second, to sight with a Gentleman, and that was the Reason.

L. C. J. Pray tell him 'tis testified here, that he bought the Musquetoon and charged it.

Mr. Craven. He says he did affist at the Loading

of it, he was by.

Sir Fr. Winn. Pray, my Lord, let us know who it was affifted him?

L. C. J. Why, that is no Evidence against any body.

Sir. Fr. Winn. But, my Lord, it was delivered to the *Polander* charged, and we defire to know who loaded it?

L. C. J. North. That is no Evidence; but yet the Question may be asked, and the Jury may be told its no Evidence.

L. C.J. But we must not let the Jury be possessed by that which is not Evidence.

L. C. J. North. Pray will you ask him, Mr. Craven, who helped him to load the Gun.

Mr. Craven. The Captain was by, he says, and the Captain and he did it together.

Sir Fr. Winn. Now we will ask Sir John Reresby the same Questions: You were by, Sir, at the Examinations of these three Men, pray what did the Polander say upon his Examination?

Sir John Reresby. My Lord, I cannot charge my Memory with the Particulars; but if your Lordship pleases, I will read it.

L. C. J. No, refresh your Memory with it, and then tell us the Substance of it.

Sir John Reresby. In general, he did confess to me, that he was the Person that did discharge the Blunderbuss into Mr. Thynn's Coach, and that he was commanded so to do by Captain Vratz.

L. C.J. That is the Substance of all.

Sir Fr. Winn. That is as to him; but what did Captain Vratz say?

L. C. J. He said that he did go out with an Intention to sight with Mr. Thynn, and did take these Persons with him; that he did not order the Polander to discharge, but he mistook him when he bid the Coachman stand, the other apprehended he bid him shoot, and he did so.

Mr. Williams. What said Stern?

Sir John Reresby. Stern did say this, that the Captain told him he had a Quarrel with an English Gentleman, and desired him to go along with him and assist him in it, and be his Second; but, said he, I was chiefly carried out to keep off the People, in case there should be a Croud about them when they were fighting; this is the chief Part of what they did confess.

L. C. J. We would not trouble you with more than is material. Did he acknowledge he was there at the Time when he was shot?

Sir John Reresby. Yes, he did, about nine or ten Yards off, I think.

L. C. J. All three confessed they were there? Sir John Reresley. Yes, they did so.

L. C. J. North. They had a Design of killing, which was unlawful.

Sir John Reresby. They said they came on Pur-

pose to fight.

Sir Fr. Winn. Call Michael Fenderoston. My Lord, we would willingly spare your Time, and offer only what is proper in this Case, and now we shall produce our Evidence against the Count, and if any thing sall out in that Evidence that touches these three Men (which we think will be but the killing of dead Men) your Lordship will take Notice of it. Now we shall not go to open the Heads of our Evidence against the Count, Sir Francis Withens has given an Account of the general, and our Witnesses will best declare it.

Mr. Williams. We will begin with Frederick Hanson.

[Who was sworn and stood up.]

Mr. Hanson. How long have you known Count Coning smark?

Mr. Hanson. A matter of four Years.

Mr. Williams. Pray do you remember his last coming into England?

Mr. Hanson. Yes, my Lord, I do remember it. Mr. Williams. Then let us know the Time.

Mr. Hanson. I think 'tis above a Month since. Mr. Williams. Where was his Lodging sirst?

Mr. Hanson. The first Time I saw him was in the Post-House.

Mr. Williams. Did he come privately or publickly?

Mr. Hanson. Privately, to my best Knowledge. Mr. Williams. Which was his first Lodging?

Mr. Hanson. In the Hay-market.

Mr. Williams. Where there?

Mr. Hanson. At the Corner House.

Mr. Williams. How long did he continue there? Mr. Hanson. A matter of a Week,

Mr. Williams. Pray in all that Time did he keep privately at home, or did he go abroad sometimes?

Mr. Hanson. I believe he kept his Chamber all the Time.

Mr. Williams. Were you with him at any Time there?

Mr. Hanson. Yes, I was.

Mr. Williams. What Company did use to be with him to your Knowledge?

Mr.

Mr. Hanson. To my Knowledge I have seen Dr. Frederick in his Company.

Mr. Williams. One Dr. Frederick, you say,

who else?

Mr. Hanson. When I came from Whitehall on a Sunday in the Evening, when my Lord was going to Bed, I called, if I could be admitted to see him, so I went in to him, and a little after the Doctor came.

Sir Fr. Winn. Pray, Sir, at that Time that he was in that Lodging, did he wear his own Hair,

or was he in a Disguise?

Mr. Hanson. That Sunday Night he was in his Night-Cap and Night-Gown, ready to go to Bed.

Mr. Williams. When you first came to him to the Post-house, did you go of your own Accord, or were you fent for?

Mr. Hanson. Count Coningsmark sent for me. Mr Williams. Was it sent in his own Name, or the Name of another?

Cufk.

Mr. Williams. Have you the Note by you?

Mr. Hanson. No.

Mr. Williams. In whose Character was it writ? Mr. Hanson. In the Count's own Character.

Sir Fr. Winn. What was his Name in his first Lodging? What Title was he called by, Captain, or what?

Mr. Hanson. I know of no other Name but only the Stranger.

Sir Fr. Winn. Was it known to any Person in the Family?

Mr. Hanson. No.

Mr. Williams. When did he remove from thence?

Mr. Hanson. I know not.

Sir Fra. Wynn. You say the first Place of his Lodging was in the *Hay-market*, where did you tee him the second Time?

Mr. Hanson. At a Corner-House, I know not the Name of the Street.

Sir Fran. Withens. Did he direct you to come to him?

Mr. Williams. Had you any Discourse with him, what his Business was here in England?

Mr. Hanson. I asked him, if we should have his Company here some Time? He told me he was come over about some Business, and was afterwards to go into France.

Mr. Williams. Then he never told you what that Business was?

Mr. Hanson. No.

Mr. Williams. Where was his fecond Lodging, do you fay ?

Mr. Hanson. It was at a Corner-House, not above two Streets off from the former.

Mr. Williams. How long did he continue in his lecond Lodging?

Mr. Hanson. A few Days, because the Chimney did to smoke, that he could have no Fire made in it.

Sir Fra. Winn. Then I ask you in his second Lodging, was he there publickly or privately?

Mr. Hanson. He was there after the same Manner that he was in his first Lodging.

Mr. Williams. Whither went he afterwards? Mr. Hanson. To St. Martin's-Lane, I think it is called.

Mr. Williams. How long did he continue there? Mr. Hanson. There I saw him the last Time before he went away.

Mr. Williams. When was that?

Mr. Hanson. It was Sunday Evening, after I came from Whitehall.

Mr. Williams. Was it near the Time of killing Mr. Thynn?

Mr. Hanson. It was about two or three Hours afterwards.

Mr. Williams. Was he as private there as he was in his other Lodgings?

Mr. Hanson. Yes.

Mr. Williams. What Company came to him thither?

Mr. Hanson. The same that came to him in the other.

Sir Fr. Winn. Who were they?

Mr. Hanson. The Doctor was in his Company.

Sir Fra. Winn. And who else?

Mr. Hanson. I saw one Captain Vratz there,

Sir Fr. Winn. Sir, I ask you upon your Oath, you are a Man of Understanding, Did you fre-Mr. Hanson. It was in a strange Name, Carlo quently see Captain Vratz in his Company? How often do you'remember you saw him at his Lodging?

Mr. Hanson. I do not remember that I saw Captain Vratz at that Lodging above one single Time.

Mr. Williams. Pray, Sir, thus: Did Captain Vratz come with the Count into England this last Time?

Mr. Hanson. To my best Remembrance he did. Mr. Williams. You say Captain Vratz came with the Count to England.

Mr. Hanson. I believe he was before the Count, but not long before: I can't exactly tell.

Mr. Williams. How long before the Count? Mr. Hanson. Truly I can't tell, but I believe not long.

Mr. Williams. What makes you think he came into England with him?

Mr. Hanson. Because I saw him in Company with the Count, as foon as I faw the Count.

Mr. Williams. Were they in Company at the Post-House?

Mr. Hanson, Yes.

Sir Fra. Winn. And you saw him once at his first Lodging?

Mr. Hanson, Yes.

Mr. Williams. Pray, Sir, have you carried any Message from the Count to the Swedish Resident?

Mr. Hanson. My Lord, I can say this upon my Oath, to my best Remembrance, Count Coningsmark never charged me, or gave me any politive Order to go to the Swedish Envoy, but he did name the Swedish Envoy to me, as if he were willing to know his Advice; and so I, being obliged to pay my Respects to the Swedish Envoy, who had treated the young Count and myfelf very civilly before; and so paying my Respects to the said Envoy, I did remember the Conversation I had with the Count, and spoke with the said Envoy about this Business, and that is all that I can fay.

Sir Fr. Winn. What was that Message?

Mr. Hanson. I say there was no direct Message: But I say this was the Business: Count Coningsmark told me in private familiar Discourse, that he had heard that Esquire Thynn had spoken some abufive Language of him, and he would fain know what the Consequence of this would be, if he should call him to Account about this Business: And he named the Swedish Envoy to me: And

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I saw his Desirè was to know his Opinion about the Business, what the Consequence of it would be. So I spoke to the Swedish Envoy, and he gave me this Answer, That if the Count should any way meddle with Esquire Thynn, he would have but a bad Living in England; but what the Law would say in that particular Case he could not answer, but he would enquire, and afterwards would give me an Account; but I never spake with him after.

Sir Fra. Winn. I ask you, because you have been formerly examined in another Place, about this Matter; Do you remember any Thing that ever you heard the Count speaking of fighting with Mr. Thyun?

Mr. Hanson. Count Coningsmark spoke to me in the German Language; I spoke to the Swedish Agent in French; and when I was before the King and Council I spoke in English; therefore I desire no evil Construction may be made of it. I cannot remember the Count spake of killing or duelling. On the contrary I can swear for Count Coninssmark this, That I am consident he never told me that he had resolved or would fight with Mr. Thynn, or would call him to Account, but if he should call him to Account, what would be the Consequence of it.

Sir Fra. Winn. Call him to Account, about what?

Mr. Hanson. The Count in familiar Discourse with me did tell me, that he had heard Esquire Thynn had spoke abusively of him.

Sir Fr. Winn. How had he spoken abusively of him?

Mr. Hanson. He reflected upon his Person and upon his Horse.

Mr. Williams. Was there any Thing in that Message about marrying my Lady Ogle?

Mr. Hanson. That was the last Part of the Question, That if he should meddle with Esquire Thynn, what the Consequence might be, if the Laws of England would be contrary to him in the Hopes or Pretensions he might have to my Lady Ogle.

Mr. Williams. You mince your Words mightily; pray remember yourself; Did he speak of killing Mr. Thynn, or that Mr. Thynn should be destroyed?

Mr. Hanson. No, his Phrase was, if he should have an Advantage of him, when he should meddle with him, or call him to an Account, what the Consequence might be; I can say this upon my Conscience.

Sir Fr. Winn. Sir, you are in a Place where you are fworn to speak the Truth, the whole Truth, and nothing but the Truth: What Relation have you to Count Coning smark's Family?

Mr. Hanson. I have no Relation to the Family at all.

Sir Fr. Winn. Are not you Governor to the young Count?

Mr. Hanson. The Countess has given me her younger Son, for me to be his Companion in his Travels.

Sir Fr. Winn. Sir, I ask you a plain Question, let it lie at your own Door, if you won't tell the Truth; had you any Conversation with Count Coningsmark, wherein he did desire you to ask Advice of the Swedish Envoy or Resident here, about duelling Mr. Thynn, or in Case he should kill Mr. Thynn, or upon any such Account?

Mr. Hanson. My Lord, I say this was spoken in several Languages, by the Count in Dutch, by myself to the Envoy in French; and I do know I swore before the King and Council, but I cannot lay this to Count Coningsmark's Charge, for then I must for swear myself.

Sir Fr. Winn. Sir, you can answer me all my Questions in English, if you please, what the Discourse was.

L. C. J. Pray, Sir, thus: What was the Difcourse, as near as you can remember it, between Count Coningsmark and you, relating to Mr. Thynn.

L. C. J. North. Tell the whole, Sir, for you are bound to tell the whole indifferently.

Sir Fr. Winn. And pray remember what you fwore in another Place.

Mr. Hanson. The Count sent to me a Note, that he had a Mind to speak with me, and he entertained me with a familiar Discourse about his Travelling, and about the settling of his Business, and thereupon he sell upon other Discourse about Mr. Thynn, and, not to mistake, having had Time in my own Chamber, I have put it down in Writing, to satisfy my Lord and all this honourable Court, what I can say about this Matter.

[Mr. Hanson reads——'Tis very hard to give a true Account.]

L. C. J. Read it to yourself, if you will, and tell us the Substance.

Mr. Hanson. If my Words may not turn to the Prejudice of my Lord Count Coningsmark; but this is the Substance of the Thing. My Lord Count Coningsmark did tell me in a samiliar Discourse, that Esquire Thynn had spoken some reflecting Words upon him; he did desire to know if he did call him to Account, whether in this Case the Laws of England might not go contrary to his Delign, in his Pretentions that he might have upon my Lady Ogle. And in that familiar Discourse, he seemed to think that Monsieur Lienburgh could give him Advice. In a little while afterwards, I was paying my Respects to the Envoy, and reflecting upon the Count's Converfation, I spoke to him about this Business, and his answer was this; he told me, that if he should meddle with Mr. Thynn, he would have no good Living in England: But as to the particular Question, what the Consequence of the Law might be, he did not know, but would enquire and tell me; but I never asked him any Question about it afterwards. And if my Conversation with this Count, or with Monsieur Lienburgh, should turn to the Count's Prejudice, I should be answerable for it to God and my own Conscience, all the Days of my Life. I desire Mr. Thynn's Blood might be revenged, but I defire also that innocent Blood may be spared.

Sir Fr. Winn. Pray, Sir, will you look upon that Paper; you signed it.

L. C. J. North. Only to recollect your Memory.

[Then he was shewed his Examination before the Council.]

L. C. J. Now you have read it over; that there is under your own Hand? Do you now again deliver the Substance of your Discourse you had with Count Coningsmark, as you will stand by it.

Mr. Hanson. I see that there are Expressions in this Paper.

L. C.J. Speak not what is in that Paper, but what Discourse (as near as you can) you had with

Count Coninfgmark.

Mr. Hanson. My Discourse with Count Coningsmark was this: In a familiar Discourse amongst other Things, he spoke, that he heard Esquire Thynn had affronted him, I don't know upon what Subject, but I believe it was Words reflecting upon him and his Horse; he did not tell me that he desired me to go, nor did he give me any positive Charge to go to the Swedish Envoy, but by the Discourse I had with him, I did understand that he was desirous to have his Advice; I thought his Inclinations were, that I should go and ask his Advice; I did not go on purpose to do the Message, nor did I receive any Order that can be called a Message, in my Life, to my Remembrance; but when I came to pay n:y Respects in a samiliar Discourse, I did propose this to the Envoy; what might be the Consequence, if the Count should call Mr. Thynn to Account; and he told me the same Answer that I have already told you. Now this I defire only to consider, that it was spoken in divers Languages; and if a Man should write down my Expressions now, as they came from me, they would upon reading, perhaps, appear not fo well; so if these Expressions of mine should turn to Count Coningsmark's Prejudice, as that I should Iwear that this Phrase of killing or duelling was used, or that ever Count Coninsgmark told me that he resolved to call, or that he would call him to an Account, I might do him Wrong perhaps; but if he flould call him to Account, what might be the Consequence of it.

Sir Fr. Winn. I would not entangle you, but only I would feek after the Truth. I do not ask you positively, whether he did bid you go to ask Advice of the Swedish Envoy, that he did resolve so and so; but did he discourse it thus, if he

should duel him, or fight him?

Mr. Hanson. As I am before God Almighty, I cannot fay I heard fuch Expressions.

Mr. Williams. Pray, Sir, you confess you acquainted the Envoy with it?

Mr. Hanson. Yes.

Mr. Williams. Did you bring the Envoy's Anfwer to the Gentleman, or no?

Mr. Hanson. If I should be upon the Gospel, I am fure I cannot exactly tell what was the Expreffion.

L. C. Baron. What was it that you differned he doubted, if he did call Mr. Thynn to Account?

Sir Fr. Winn. He spoke in Relation to a Marriage, pray what was it?

Mr. Williams. What did that if relate to?

Mr. Hanson. If he should ask him Satisfaction about it, having heard that he had spoken abufive Words of him.

Sir Fr. Winn. What then was to follow?

Mr. Hanson. If he should call him to Account then how the Laws of England might do in this Point.

Mr. Williams. To whom? Mr. Hanson. To the Count.

Mr. Williams. What should befal him?

Mr. Hanson. Whether the Law should be con- did he? trary to him in the Design and Proposals he might have concerning the young Countels of lander would be drowned. Ogle.

Mr. Williams. Well, I see you will give no rea- clear his Quarters?

sonable Answer to that; but now when came the Polander over into England?

Mr. Hanson. I cannot say positively I can tell when he came.

Mr. Williams. But when did you see him first? Mr. Hanson. Upon the Friday he came and asked me for the Count at Monsieur Faubert's Academy. Now the young Count Coningmark's Chamber and mine joins together, next to one another, and there came a Man with him, I do not know his Name, but if I see the Man I know him.

Mr. Williams. You say the Polander came over on Friday.

Mr. Hanson. He came to me on Friday.

Mr. Williams. And he came to you to the French Academy, to enquire for Count Coningsmark?

Mr. Hanson. Yes, he did so.

Mr. Williams. Had he any Letters? Mr. Hanson. Yes, he had two Letters.

Mr. Williams. From whom, and to whom?

Mr. Hanson. I asked him if he had any Letter for Count Coningsmark, and he said no; but he told me had two Letters, and the one was to the Count's Secretary, and the other was to the Count's Steward in London. So I gave him back his Letters, and asked him whence he came? He told me he was just come into England. I asked him whether he had been a great while at Sea? And he told me yes; and that it was stormy, and he had like to have been cast away; said I, I hear you are expected, therefore have you paid your Lodging? No, said he; then said I, go and pay your Lodging, and come to me in the Morning early.

Sir Fr. Winn. You say you heard he was ex-

pected, pray who expected him?

Mr. Hanson. The Count; for he had spoken formerly twice of the *Polander*, and in the great Storm thought he had been drowned. To the best of my Remembrance, I have heard the Count speak twice of this *Polander*.

Sir Fr. Winn. Of this Man?

Mr. *Hanson*. I suppose it is the same.

Sir Fr. Winn. You say you saw him on Friday. Mr. Hanson. Yes, I did.

Mr. Williams. When did he speak of the stormy Weather, and that he was afraid the Polander might miscarry?

Mr. Hanson. About twelve or thirteen Days before.

Mr. Williams. Now fay as near as you can what the Count faid.

Mr. Hanson. He said the Polander was a mighty able Man, and understood Horses, and the Count had a Mind to buy English Horses, and intended to have had this Polander as a Groom, to dress them after the German Way, and no Man was abler than the *Polander* to do it; and when he spoke of it, I went once to the 'Change, and enquired whether the Ship was loft.

Sir Fr. Winn. By whose Direction did you go

to enquire whether the Ship was loft? Mr. Hanson. I had no Direction, but only Count Coning [mark's speaking about it.

Sir Fr. Winn. He seemed to be concerned at it,

Mr. Hanson. Yes, he was afraid that the Po-

Mr. Williams. You say you directed him to

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Mr. Hanson. Yes, I did so.

Mr. Williams. Did you see him again the next Day?

Mr. Hanson. Yes, he came the next Day.

Mr. Williams. Was he the next Day in Company with the Count or no?

Mr. Hanson. I brought him to the Count.

Sir Fr. Winn. Where?

Mr. Hanson. It was a little before Noon; because I went the Back-way, and left him at the Count's Lodging.

Mr. Williams. Did you leave him with the Count?

Mr. Hanson, Yes, I did.

Mr. Williams. Pray, as long as you were there, what passed between the Count and the Polander?

Mr. Hanson. I remember very well what passed between the Count and him, for I have thought of it. He spoke to him, and called him Thou, as to his Servant, and asked him where he had been all the while? And he answered, he had been at Sea, and tossed up and down.

Sir Fr. Withens. Pray what Directions had you

given about a Sword for that Polander?

Mr. Hansen. I went to the Count's Lodgings, and being defired by him to stay, I defired he would excuse me, for I could not stay, because I was to go about another Business; he told me the Fellow was all naked, and he had no Man to fend to buy him a Riding-Coat; I told him I would very willingly and heartily do it. And after I had dined, I went to an House near the Hay-Market, and bought a Riding-Coat, and brought the Riding-Coat to the Count's Lodgings. I delivered it to the Count. Then the Count told me his Man had never a Sword, and I asked him how much his Lordship would please to bestow on a Sword, he told me a matter of 10s. or thereabouts; I told him I did not know where I should get such a Sword, nor how to send for it, because I was to meet his Brother; but I withal faid, it is no Matter for that, I will take Care you shall ....ve it this Evening; I went into St. Martin's-Lane, but could not find ever a fword worth a Groat. Then I went as far as Charing-Cross to a Cutler whom I knew, so I told him, Sir, said I, I have a Commission to bestow ten Shillings upon a Sword for a Servant, therefore, said I, I leave it to your Discretion, use my Friend well, and use yourself favourably too. I asked him when I should have the Sword, he told me in the Evening; I told him I would call for it when I came from the Play, where I was to be with the Count's Brother. When I came back with the young Count Coning/mark from the Play, I called for the Sword, but he told me it was not ready. I seemed to be a little angry, and told him that it was strange, a Gentleman could not get a little Sword ready for him in an whole Afternoon. Well, Sir, said he, pray do not be impitient, I will send you the Sword, and afterwards he sent it to the Academy, and I afterwards fent the Sword to Count Coning/mark's Lodgings.

Mr. Williams. Pray had you this Direction for the Sword after you had brought the Polander to

the Count, or before?

Mr. Hanson. Count Coningsmark did never give me any Direction or Charge to buy a Sword for him, but I did offer my Service, if he pleased, because he said he had no Body to send.

Mr. Williams. Sir, you do not know the Question, or you won't apprehend it; pray when had you this Direction from the Count to buy this Sword?

Mr. Hanson. On Saturday in the Asternoon. Mr. Williams. When was it you brought the Polander to the Count?

Mr. Hanson. In the Morning.

Sir Fr. Winn. Pray let me ask you another Question. When was it you first heard Mr. Thynn was killed?

Mr. Hanson. I heard it, I believe, about eight o'Clock in the Evening on Sunday.

Sir Fr. Winn. Had you any Discourse with the Count about the Murder?

Mr. Hanson. Yes, I had.

Sir Fr. Winn. Pray tell what that Discourse was? Mr. Hanson. I was at Whitehall till ten of the Clock, and then I went to the Count; but I delire this may not be taken as an extraordinary Visit, because I used to go to him on Sundays in the Evenings, and those three Sundays before he was taken, I used to come to him in the Evening, after I had been at Whitehall. When I came into his Lodgings, I found him in his Night-Cap, and his Night-Gown; he asked me what News, I told him I could tell him great News, and that was of the killing of Esquire Thynn, who was shot in his Coach: The Embassador of Savoy had told me all that he had heard about it, and I told it him. After I had spoken of this Business, he asked me where his Brother was; I told him, his Brother was at the Duke of Richmond's. And after some Discourse I went away.

Sir Fr. Winn. When you told him of the Murder of Mr. Thynn, did he make no Answer, nor

fay any Thing about it?

Mr. Hanson. He did not make me any Answer, by which I could conclude that Count Coningsmark was any Way concerned in the Business.

Sir Francis Withens. Pray, Sir, I ask you upon your Oath, the Count is a Man of great Quality himself; when you told him of such an horrid Murder, what, did he say nothing about it?

Mr. Hanson. He asked me several Questions, what the People did say, but I would not make

any Mistake.

Sir. Fr. Winn. Tell all he said, Sir, about it. Mr. Hanson. I told him the greatest News I heard was, the killing of Mr. Thynn; and I told him who brought the News; and I told him the Court was heartily angry at it, that such an Accident should happen; and I said it was an Italian Trick, not used in England.

Sir Fr. IVinn. What faid he then?

Mr. Williams. Pray do you remember what he said?

Mr. Hanson. What I have answered now. He made me such Questions upon this Story as I have told you.

L. C. J. Let him explain himself: Pray, as near as you can, relate what Discourse you had with Count Coningsmark that Sunday Night, after you came to him and told him of the Murder.

Sir Fr. Winn. What did he say to you?

Mr. Hanson. I will tell you, my Lord; the Count was surprized, as every Man would be, to hear of so sad an Accident, and so the Count asked me what the People said, so I told him what I heard at Whitehall, I cannot call to my Memory all the Particulars; but I said the King was heartily sorry, and all the Court, for so sad an Acci-

dent,

dent, and I must wrong myself, or Count Coningsmark, if I should undertake to relate exactly what passed, for I cannot remember it.

Mr. Williams. But you said just now, that you told the Count it looked like an Italian Trick, not

used in England.

Mr. Hanson. Yes, I did so.

Mr. Williams. What did he reply to that?

Mr. Hanson. Not a Word.

Mr. Williams. Did he mention any thing of For-

tifications to you then?

Mr. Hanson. Yes, he gave me a Plan, or a Draught of a Fortification done with his own Hand, and that was all the Discourse.

Mr Williams. So then he diverted the Discourse

to the Business of Fortification.

L. C. J. The Evidence is heard; what it is that he ended all the Discourse with, shewing him a Paper of Fortifications.

Sir Fr. Winn. But this he does say, he asked him

what the People did say of it?

Mr. Hanson. For my Life, I dare not say I

remember any more than I have told.

L.C.J. Look you, Sir, now will you in French deliver this for the Benefit of those Jurymen that don't understand English.

Mr. Williams. We pray, my Lord, that our

Interpreter may do it.

L.C.J. When a Man can speak both Languages, he needs no Interpreter, he is his own best

Interpreter.

Mr. Williams. My Lord, I will tell you why I ask it; there is a great deal of Difference, I find, where you examine a Man with the Hair, and where you examine him against the Hair: Where you find it difficult to make a Man answer, you will pump him with Questions, and cross-interrogate him, to sift out the Truth; now if you leave this Man to the Interpretation of what he hath said himself, he will make a fine Story of it, and we shall be never the wifer.

L. C.J. You may examine him in French, if

you will.

Mr. Williams. And I understand none but Ped-

lar's French.

Sir Fr. Winn. The Truth of it is, what your Lordship says cannot be opposed regularly; but I do appeal to your Lordship, and all the Judges, and all the Court, whether this Man does answer like an ingenuous Man; you see he shifts.

L. C. J. I do not see it, nor do I believe any see he Shifts in any thing you ask of him; either he tells you what the Question is, or the Reason of it; how far that is a Reason, is left to the Jury

to confider.

Sir. Fr. Winn. Certainly it can do no Hurt to

have an Interpreter.

L.C. J. North. My Lord, if there be two Ways to take, 'tis best to take that which will give Satisfaction to all Persons; let him be asked by the Interpreter, what Questions the Counsel would have answered, and then let him tell his Answer in French.

L. C.J. If that be liked better, let it be so. Mr. Craven, can you tell the Substance of the Evidence that this Gentleman hath given?

Mr. Craven. No, I cannot, his Evidence has been so long, and so many cross Questions have been asked.

Sir Fr. Winn. I would spare your Time—— L. C. J. But this is the way to spend our Time. Vor. III.

value Time in such a Case as this, but you would have the Truth found out.

L. C. J. You must repeat first the Discourse you

had with Count Coning smark.

Sir Fran. Winn. My Lord, we will reduce it to two or three Questions. Mr. Craven, will you please to ask him what Discourse he had with Count Coning smark?

Mr. Craven. He says, the Discourse he had with Count Coningsmark about the Polander, was, that he came over as a Groom to serve him to look after his Horses; that he had Occasion for several English Horses, and English Servants to look after them as Grooms; and among the rest of his Grooms, he intended the *Polander* should be one, to dress his Horses after the German Way.

Sir Fr. Winn. So far he goes as to that, That the *Polander* came over to ferve the Count.

L. C. J. Look you, Sir, does not he tell you, the Count had a Purpose to buy Horses here?

Mr. Craven. He says there was a Discourse about Bills of Exchange of 7000 Pistoles to buy Horles.

Sir Fr. Winn. Pray then will you ask him, what Discourse he had with Count Coningsmark about the Death of Mr. Thynn, and what the Consequen-

ces in Law might be?

Mr. Craven. My Lord, he says, that the Discourse with Count Coningsmark, concerning the Swedish Agent, was, That in Case he should ask Satisfaction of Mr. Thynn, for the Affronts that he had given him, not understanding the Customs of the Nation, if he should call him to Account, what Prejudice it might be to him; for he did not hear, he fays, that Count Coning Imark designed any thing, or resolved upon killing him, or any thing of that Nature; but whether if he should call him to Account, what the Laws of England might be.

Mr. Williams. Call John Wright.

Sir N. Johnson. My Lord, the Count defires to know if he may be permitted to make his Defence against these Witnesses?

L. C. J. No, he is not to make his Defence now. But pray tell him, if my Lord have a Desire to ask any Questions of this Witness, he may ask what he pleases.

L. C. J. North. Let the Question be put to the Interpreter, that we may know what the Question is before the Witness gives an Answer.

Mr. Craven. He asks him if he has not seen him oftner in his Lodging undressed than dressed, and whether he was not to take Physick from his

Physician?

Mr. Hanson. I do not remember, that in all the Time I saw Count Coningsmark, I saw him dresfed four times in his Coat, I cannot fay I remember three times in all. The first time when he came, he was in a Campaign Coat; but all the time he was in his Lodging, as I remember, he was in his Night-Gown and Cap. As to the other Part of his Question, whether I heard that he took Physick? I say this, When I saw Count Coning/mark first at his Lodging, when I came to him, on the Sunday Evening, I was told the Count was in Bed: It was late, but I ventured to go into his Room, and sat a Quarter of an Hour there; and afterwards the Doctor came in, Dr. Frederick, I saw him oftentimes at his Lodging; and at the fame Time the young Count was fick of an Ague: And when he came one Evening to see the young Sir Fr. Winn. I know your Lordship does not Count, I asked him what was the Distemper the Qqq Count

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Count had? the Doctor answered me, that he had not told any body that the Count was fick, or what he was sick of, but he hoped in God, in a short time, he would be recovered.

Mr. Craven. He asks him if he gave any positive Order, that he should go of any Message to

the Swedish Envoy?

Mr. Hanson. This I have answered before, and I say now, if this Discourse that I had with the Swedish Envoy, turn to the Lord Count Coningsmark's Prejudice, it would grate upon my Conscience all my Life: Count Coningsmark never gave me any positive Order to carry any Message; but I did gather, by his Discourse, that the Count might be desirous to know the Envoy's Opinion about this Question; and therefore I thought, the Count desiring it, I would do it to please him, rather than by Order. But I do not know that ever the Count had a Mind to give me such an Order, but I did it voluntarily.

L. C. J. In plain English, Did he ever direct

you to go to the Swedish Envoy?

Mr. Hanson. No, my Lord, he never did direct me.

L. C. Baron. How came you to choose a Foreigner to know what the Laws of England are?

Mr. Hanson. I thought it would please the Count to know his Opinion.

L. C. Baron. But how came you to choose a Foreigner, I ask?

Mr. Hanson. He has been 19 Years here in

England, and fure he should know.

Mr. Craven. My Lord, he asks him if ever he told him that he had a Design to fight Mr. Thynn, or do him any Prejudice, or send him a Chal-

lenge?

Mr. Hanson. My Lord, I am upon my Oath, and this I say, I speak it before God and the Court, Count Coningsmark did never tell me that he had any Mind, or did resolve to call Esquire Thyun any ways to Account.

Mr. Williams. Call John Wright.

[Who stood up and was sworn.]

Sir Fr. Winn. We hall ask him but a Question or two, my Lord.

Mr. Williams. Pray tell me the Time when this Polander came into England; that Man at the Bar?

Mr. Wright. He came the Tenth Day of this Month.

Mr. Williams. Pray what Ship did he come in? Where did you first meet with him?

Mr. Wright. Here in Town.

Mr. Williams. Where was it?

Mr. Wright. At the Cross-Keys in Throgmortonstreet.

Mr. Williams. Pray, when you first saw him,

what did he ask you?

Mr. Wright. He asked me where Count Coningsmark's Lodgings were? I told him I thought he was at Oxford, I meant the young Gentleman, for I did not know the other was in Town; but I went and enquired, and they told me it was at Faubert's Academy.

Mr. Williams. Whither went you with the Po-

lander then?

Mr. Wright. I went to my Lord's Lodgings. · Mr. Williams. What Lord?

Mr. Wright. The young Count's Lodgings.

Mr. Williams. Well, and what then?

Mr. Wright. And I came to Mr. Hanson, and

he did deliver a Letter to Mr. Hanson, and I staid there about Half an Hour, or thereabouts.

Mr. Williams. When was this?

Mr. Wright. Upon Friday the tenth Day of this Month.

Mr. Williams: How long was Mr. Hanson and the *Polander* together?

Mr. Wright. About Half an Hour.

Mr. Williams. What said Hanson to him in your Presence?

Mr. Wright. Mr. Hanson said nothing.

Mr. Williams. Was there any thing said about going back and paying his Lodging, and coming back?

Mr. Wright. Mr. Hanson came down to me, and told me he was glad to see me, and bid me take the Polander back with me, and bring him to him to morrow betimes, for he must dispatch him about his Business.

Sir Fr. Winn. Then he said nothing to the Polander?

Mr. Wright. No, but to me.

Sir Fr. Winn. Well, what did you do the next Morning?

Mr. Wright. I came to him the next Morning, to this Polander, and he took his Things with him, which was a Sea-bed that he had, and a Gun with a Wheel-Lock, and some other Things.

Sir Fran. Winn. And whither did you bring him?

Mr. Wright. I brought him to the Upper-End of the Hay market, Monsieur Faubert's School.

Mr. Williams. To what Place did you come in

the Morning, fay you?

Mr. Wright. Sir, if it please you, I brought him within a Door or two of Mr. Faubert's the Horse-master, that teaches to ride the great Horse; for he did desire that we might go to an House hard by, because he would not carry his Carriage to my Lord, he had a Sea-bed, a Portmantle, a Gun, and other Things; and so I brought him to an House, and there I called for a Pot of Ale; and he put down his Things and went out, I thought he had gone to make Water, but within a little while after returns again, and Mr. Hanson comes in with him: He asked me why I did not come sooner; I told him I had some other Business, I was with some French Merchants to look upon some Goods. So he bid the Pole pay me for my Trouble, and take up his Things, and go along with him; and he did do so, and I never faw the Pole afterwards.

L. C. J. You that are the Interpreters, repeat what he hath faid to the Jury.

[Which was done.]

Sir Fr. Winn. We have done with this Man, the Use we make of him is to follow this Polander, and we shall bring him to the Count by and by. Call Dr. Frederick Harder.

[Who was sworn.]

L.C.J. The Doctor understands English, don't he? Sir Fran. Winn. Yes, we are told he does.

Mr. Williams. How long have you known the Count that stands there at the Bar?

Dr. Harder. I have known him a good while, it may be this four or five Years. I have known him four or five Years.

Mr. Williams. How long have you known Capt.

Vratz?

Dr. Harder. About a Year and a half, or two Years,

Mr.

Mr. Williams. Was my Lord and Capt. Vratz

Dr. Harder. Yes.

Mr. Williams. Was he in Employment under my Lord? Was he in the Count's Service?

Dr. Harder. He was with the Count, but whether he was his Companion I cannot tell.

Mr. Williams. Did he live with the Count?

Dr. Harder. Yes.

Mr. Williams. Did Captain Vratz, when the Count came last over into England, come over with him?

Dr. Harder. Yes, by my Knowledge. L. C. J. Do you know it or not?

Dr. Harder. Captain Vratz came to me, and told me, my Lord desired to speak with me, and I went with him to my Lord.

Sir Fr. Winn. Was that the first Message you received from the Count?

Dr. Harder. Yes, it was.

Mr. Williams. How long was that ago?

Dr. Harder. The fame Day the Morocco Embaffador did exercise in Hyde-Park.

Sir Fr. Winn. How long is that ago? Dr. Harder. About a Month ago.

Sir Fr. Winn. What was that his first Lodging after he came last into England?

Dr. Harder. It was in the Hay-Market.

L. C. J. Was it a Corner-House, as the other Witness saith, or not?

Dr. Harder. Yes, it was.

Mr. Williams. Was the Count a private Lodger there?

Dr. Harder. He lay in his Bed when I came to him; he came as a Traveller privately.

Mr. Williams. Did he go by his own Name, or another Name?

Dr. Harder. No body did question him about his Name, but when I did come to him, I did discourse him about his Body.

Mr. Williams. Pray Sir, thus: You went often to visit him, pray did you enquire for him by his own Name, or any other Name?

Dr. Harder. He desired that he might be private, because he was to take some Medicines, and he would not have it known.

Mr. Williams. Now, Sir, I would ask you, did you observe him to be in any Disguise? Did he wear a Perriwig, or how?

Dr. Harder. He had a Perriwig.

Mr. Williams. Was it a fair Perriwig, or what Colour?

Dr. Harder. It was brown or black.

Sir Fr. Winn. Sir, was he in a Disguise, or no? Dr. Harder. He had his own Clothes, but he had a Perriwig.

Sir Fran. Winn. Pray what Name did he go by, his right Name, or any particular Name?

Dr. Harder. In the first Beginning I gave him no Name; but, said he to me, if any Body ask you about me, I would not be known; for if they know that I lie privately thus, they will think I ail some ill Distemper, therefore I would have you call me by the Name of Carlo Cuski.

Mr. Williams. Were you with him, pray Sir, upon the Sunday Morning that Mr. Thynn was

murdered?

Dr. Harder. I cannot certainly tell, but I was with him in the Afternoon.

Sir Fra. Winn. Pray call yourself to Mind, Sir. Dr. Harder. I cannot certainly tell.

Vor. III.

Sir Fr. Winn. What Time were you with him in the Evening?

Dr. Harder. At Nine o'Clock at Night, or thereabouts.

Mr. Williams. Did you receive any Letter from Capt. Vratz at any Time?

Dr. Harder. I did upon Saturday Morning, the Saturday before Mr. Thyun was murdered.

Sir Fr. Winn. Have you that Letter about you?

Dr. Harder. No.

Sir Fr. Winn. What was in the Letter?

Dr. Harder. He defired me to go to the Count, who had a Defire to speak with me. I came there, and had some Speech with him about his Indisposition. I told him he had better stay till next Day before he took Physick, because it was cold Weather. And after that, went with the Polander to my Lodging, and the Captain's Man came in, and then said, here is a Man that will direct you to Captain Vratz's Lodging; which I did not know.

Mr. Williams. Look you, Sir, you say you went to the Count, did you shew the Count that Letter from Capt. Vratz, or no?

Dr. Harder. The Count saw it.

Mr. Williams. Then hear a little, When was it you shew'd the Letter to the Count? Was it Saturday or Sunday?

Dr. Harder. It was Saturday.

Mr. Williams. Now, was the Polander then in the Count's Lodgings, or no?

Dr. Harder. Yes, he was.

Mr. Williams. Was there any Discourse about him then?

Dr. Harder. I had never seen him in my Lise. Mr. Williams. But was there any with the Count?

Dr. Harder. No, not at all.

Sir Fr. Winn. Then, upon your Oath, I ask you once more, Was the Polander ever in Company with you and my Lord at any Time?

Dr. Harder. No.

Sir Fr. Winn. Upon the Sunday, upon your Oath? Dr. Harder. No.

Sir Fr. Winn. Nor the Saturday Evening?

Harder. No, I have not seen him since that Morning when the Captain's Man took him along with him to his Master.

Mr. Williams. Pray, how came the Polander into your Company on Saturday Morning?

Dr. Harder. I had him from my Lord's that Morning.

Mr. Williams. Then my Lord and the Polander were together?

Dr. Harder. No, they were not together.

Mr. Williams. Was the Polander in my Lord's Lodgings?

Dr. Harder. Yes, the Polander was below Stairs. Mr. Williams. And did you take him from the Lodging?

Dr. Harder. Yes, I did.

Mr. Williams. How long did he continue with you?

Dr. Harder. Not at all, I went home with him.

Mr. Williams. Had you no Discourse with him?

Dr. Harder. No, none at all.

Mr. Williams: Where did you part with him? Dr. Harder. I brought him to my House; and when he came in-a-doors, the Captain's Man being there, I told him there was a Man would shew him the Captain's Lodgings; and he took him away along with him.

Qqq2 Mr.

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Mr. Williams. You say, the Captain's Man had the Polander from you; pray name that Man.

Dr. Harder. I cannot tell his Name. Mr. Williams. Was his Name Berg?

Dr. Harder. I believe it was.

Sir Fr. Winn. You say you delivered a Letter from Captain Vratz on Saturday Morning to the Count?

Dr. Harder. Yes.

Sir Fr. Winn. Did the Count read the Letter, and tell you the Contents of it?

Dr. Harder. No, it was not sealed.

Sir Fran. Winn. Did not you know the Contents of it then?

Dr. Harder. No.

Sir Fran. Winn. Pray, when you delivered the Letter from Captain Vratz to the Count, what did the Count say to you?

Dr. Harder. The Letter was not written to the Count, but it was writ to me.

Mr. Williams. What was the Reason that you shewed it to him then?

Dr. Harder. I received a Letter from Captain Vratz, that the Count defired to speak with me; and afterwards I was defired to direct this Man, the Polander, to Captain Vratz; and so I directed him to Captain Vratz, and nothing more I know.

Sir Fr. IVinn. Well, Sir, one thing more and I have done with you; for you will not, I see, give a reasonable Answer; pray, when the Polander came along with you from the Count's, did you observe he had any thing about him?

Dr. Harder. He had a great Campaign Coat. Sir Fr. Winn. Did he feem to have any thing under it?

Dr. Harder. He had a Portmantle under it, I think, or some such thing.

Mr. Craven. My Lord, the Count desires to ask him some Questions.

L. C. J. Let him ask what Questions he will.

Mr. Craven. My Lord, he asks him whether he does not remember, when he first came to Town, he had not his Body full of Spots?

Dr. Harder. Yes, : y Lord, when he came from Tangier, he had Spots over all his Breast; and it was feared they might get up higher towards his Neck, and endanger him very much.

Mr. Craven. He says, if my Lord pleases, he

will shew it openly.

L. C. J. No, there is no need of that, Doctor. Did you give him Physick for that?

Dr. Harder. Yes, for that I did administer Physick to him.

Mr. Craven. He says, my Lord, he over-heated himself in riding to Tangier, thinking to do the King and the Nation Service, and the Heat broke out in Spots over his Breast.

L. C. J. The Doctor knows nothing of that.

Mr. Craven. He asks whether the Doctor was not desired by him to cure him? whether he did not tell him he would cure him of those Spots?

Dr. Harder. He defired me to administer Physick unto him.

Mr. Craven. He says he went to Strasburgh, and when he came back he was in the same Condition he was in before; and he asks whether the Doctor did not undertake to cure him?

Dr. Harder. Yes, I did administer Physick unto Sir him; and this my own Man can testify and be you, i Witness of; because my Lord bid me take Care the Cothat he might be private, for he would not have it tents?

known that he did take Physick; but I told my Man, said I, 'tis my Lord Coningsmark, and therefore pray take Care of him, and see that the Physick be made very well up.

L. C. J. You seem to intimate, as if he lay private to take Physick; pray let me ask you this Question, Did you give him Physick all this Time?

Dr. Harder. Not always purging Physick, but some Sort of Physick all the Time.

L. C. J. What every Night and Morning?

Dr. Harder. Yes, every Day.

Mr. Craven. The Count desires to ask him where he was that unhappy Day this Business was done?

Dr. Harder. I found him that Day ill, lying down upon the Bed, I asked him how his Physick had worked; he told me he was afraid he had got some Cold; and indeed I found him very much disordered, and I went home and setched him some Physick to take that Night.

L. C. J. By the Oath you have taken, was there any other Occasion, or had you any other Discourse with him, when you came on the Sunday Night

but concerning his Physick?

Dr. Harder. My Lord, I will tell you the Truth; I never heard the Count speak any Word in my Life, that he had any Concern, or Design of any Quarrel at all, nor any Discourse, but about the Administration of his Physick.

L. C. J. Let me ask you this Question, for they desire it here, What was the Occasion? and whether you know the Occasion, why my Lord altered his Lodgings so often?

Dr. Harder. The first Occasion was this; Because it was in the Hay-market; and his Man said it would be quickly known if he did continue there; so he would take another Lodging, which was in Rupert-street, and there he lodged three Days; but the Chimney did so smoke, that my Lord could not stay, because he could have no Fire in his Chamber, and the Weather was very cold, for it did snow, and therefore I told my Lord, it was not so proper for taking of Physick: Thereupon he desired me to take him another Lodging in Queen-street, which I did look about for, but it was not ready, so he had a Lodging taken for him in St. Martin's-Lane, where he lodged till he went away.

Mr. Williams. Pray, Sir, the Physick that you gave the Count, did it require his keeping within Doors? might not he walk abroad with it, upon your Oath?

Dr. Harder. It did require him to keep in.

Mr. Williams. Pray then, how comes it to pass that the Count so suddenly could go by Water to Gravesend?

Dr. Harder. I do not know what was done afterwards.

Sir Fr. Winn. I would alk you one Question, and I would fain have you give me a fair Answer to it, What became of the Letter that Captain Vratz writ to you, and you shewed to the Count?

Dr. Harder. It remained there upon the Table. Sir Fr. Winn. Did not you keep your own Letter?

Dr. Harder. It was not of any Concern.

Sir Fr. Winn. If the Letter were written to you, it is not so long since, but you can tell us the Contents of it; Pray, what were the Contents?

L. C. J. Can you remember what were the

Contents?

Dr. Harder. He desired me to go to Count Coningsmark, who would speak with me, and that I would give his Man an Answer when I came from him.

Sir Fr. Winn. But what were you to go to the

Count to do?

Dr. Harder. Nothing; but the Count discoursed to me about his own Body and Indispofition.

Sir. Fr. Winn. But Captain Vratz was no Physician; why should he send you a Letter to talk about Phylick?

Dr. Harder. It was nothing but my Lord would

fpeak with me.

Mr. Williams. We need not trouble ourselves with this Fellow, he confesses he found the Polander in the Count's House.

Sir Fr. Withens. Pray, Sir, let me ask you, who was with the Count on Sunday Night.

Dr. Harder. Mr. Hanson was there, I think.

Sir Fra. Withens. Who else?

Dr. Harder. The Captain came in, and went out agam.

Sir Fr. Winn. What Time of Night was it that Wratz came in to the Count?

Dr. Harder. It was at the same Time that I was with him.

Sir Fr. IVinn. That he swears to be about nine o'Clock: Was it after Mr. Thynn was killed?

Dr. *Harder*. We had not heard it.

Sir Fra. Winn. Sir, was it nine of the Clock?

Dr. Harder. Yes, it was.

Mr. Williams. You say you found the Polander at the Count's Lodgings?

Dr. Harder. Yes, upon Saturday Morning.

Mr. Williams. Then he came along with you from the Count's Lodgings?

Dr. Harder. Yes, to my House.

Mr. Williams. And you parted with him there?

Dr. Harder. Yes, the Captain's Man took him away with him.

Mr. Williams. That was Berg, wa'nt it?

Dr. Harder. Yes.

Then this Evidence was interpreted to the Jury.

Mr. Craven. He desires the Jury should know what the Doctor said about his Sickness.

 $L. C. \mathcal{I}$ . Let it be repeated to them.

Mr. Craven. He desires to know whether he may not speak it in French himself?

L. C. J. No, the Interpreter must do it; (which was done.) My Lord, would you ask any more Questions of the Doctor?

Count Con. No more Questions but them I have asked.

Sir Fr. Winn, Call Thomas Howgood.

[Who was Jworn.] you an Account.

Mr. Williams. Pray, did you fell any Sword to the Count?

Mr. Howgood. I fold a Sword to the Governor; a broad Horseman's Sword.

Mr. Williams. When was this?

Mr. Howgood. On Saturday was Fortnight.

Mr. Williams. What Time was it that he befpoke it?

Mr. Howgood. He bespoke it half an Hour after Six at Night.

Mr. Williams. What did he say to you when he bought it?

Mr. Howgood. He said he would call for it about eight o'Clock at Night, when he came from the Play.

Mr. Williams. What Kind of Sword was it?

Mr. Howgood. An Horseman's Sword, as broad as two Fingers, such as the Gentlemen of the Guards wear.

Sir Fra. Winn. When he came for the Sword, what faid he?

Mr. Howgood. He was angry it was not done, and I told him that I would send it to him quickly.

Sir Fr. Winn. Where was it sent?

Mr. Howgood. To the Governor's Lodgings at the Academy.

Mr. Williams. Now, my Lord, we will call feveral Persons that were privy to the concealing of this Gentleman, that can give you a better Account, Richard Hays and Robert French.

Robert French appeared, and was sworn. Sir Fra. Winn. Pray will you tell my Lord what you know of the Count's concealing himself and changing his Habit.

Mr. French. I never saw him, my Lord, before I came here in Court; but it seems he did lodge in

my House three or four Days.

Sir Fr. Winn. How long is it since?

Mr. French. Between three Weeks and a Month ago, just ten Days before the Murder.

Sir Fr. Winn. What Name did he go by then? Mr. French. I did not know his Name.

Sir Fr. Winn. Who used to resort to him at that Time?

L. C. J. You fay, Sir, you faw him not, what Company did come to him?

Mr. French. I did not see him indeed.

Sir Fra. IVynn. Pray did Captain Vratz come to him to your House?

Mr. French. He lodged with him all the Time. Sir Fr. Winn. You say you know Capt. Vratz was there?

Mr. French. Yes.

Mr. Williams. Did Dr. Harder use to come to him?

Mr. French. Yes, several Times a Day.

Mr. Williams. What Name did he enquire for him by?

Mr. French. The Doctor took the Lodging, and it was for a Stranger; I heard no Name at all.

Interpreter. My Lord desires to know, whether you did not suspect he took Physick in the Houle?

Mr. French. I suppose the Doctor did give you an Account of that; I don't know that he did.

Interpret. Did not your Maid know of any fuch Thing?

Mr. French. My Maid is here, she will give

Sir Fr. Winn. Call Ann Prince: (Who was sworn.) Pray do you acquaint my Lord what you know of Count Coningsmark; whether ever you saw him at your Master's House in the Hay-market?

Prince. Yes, he lodged there.

Mr. Williams. When?

Prince. He came thither last Friday was a Month.

Mr. Williams. How long did he stay there? Prince. 'Till Wednesday.

Mr. Williams. At that Time, who used to frequent his Company?

Prince,

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Prince. I know no Body but the Doctor that used to come to him.

Mr. Williams. What Name did he go by?

Prince. No Name at all, as I know of; they did not ask for him by any Name.

Mr. Williams. Did the Captain use to come to

him?

L. C. J. Her Master says he did lie there.

Prince. Yes, he used to lodge there.

Mr. Williams. Did the Captain give him any Physick?

L. C. J. No, but the Doctor did.

Sir Fr. Winn. He only asks a merry Question.

L. C. J. But we are now upon the Life and Death of a Man, pray let us have those Questions asked that are serious, not such light Things as are permitted in ordinary Cases.

Sir Fr. Winn. Now, my Lord, we will call

Francis Watts,

Mr. Craven. Maid, my Lord asks, whether he did not take a Vomit in your House?

Prince. Not that I know of.

#### Then Francis Watts was sworn.

L. C. J. How old is the Child?

Fr. Watts. Fisteen Years old last Christmas.

L. C. Baron. Ask him whether he understands what an Oath is?

Mr. Thynn. He was fworn before the King and Council.

L. C. Baron. If he were sworn before the Council, he may give Evidence here sure.

Sir Fr. Winn. Were you at the Count's Service at any Time?

Watts. Yes.

Sir Fr. Winn. How long?

Watts. I was with him eleven Days: I came to him upon the Friday.

Sir Fr. Winn. How long was it before the Death of Mr. Thynn?

Watts. I think it was ten Days before the Death of Mr. Thynn.

Sir Fr. Winn. Wat was your Employment with him?

Watts. His Boy to wait upon him.

Sir Fr. Winn. Did you lie in the same Lodging?

Watts. No, at my Father's.

Sir Fr. Winn. What was the Agreement between your Father and the Count?

Watts. Six-pence a Day and my Diet.

Sir Fr. Winn. What Company did you observe came to the Count's Lodgings?

Watts. That Gentleman there in the black Perriwig.

Sir Fr. Winn. Was he often with your Master? Watts. Yes, every Day.

Sir Fr. Winn. How many Lodgings had he while you were with him?

Watts. Three: One in the Hay-market, and one in Rupert-Street, and then the last in St. Martin's.

Mr. Williams. Thus, Child; do you remember the Time of killing Mr. Thynn?

Watts. Yes.

Mr. Williams. Were you in your Master's Service then?

Watts. Yes, I was.

Mr. Williams. Who was in your Master's Company that Morning before Mr. Thynn was killed? Watts. I came up, as I used to do in the Morn-

ing, to my Master, and he asked me what was the Matter with the Bustle in the Street? And I told him some Body was taken upon Suspicion for killing Esquire Thymn.

Sir Fr. Winn. That was on Monday Morning; but the Sunday Morning before, what Company

did you observe there then?

Watts. I cannot tell any Thing exactly of the Sunday Morning.

Sir Fr. Winn. Was Captain Vratz there?

Watts. I can't exactly remember.

Sir Fr. Winn. What Time in the Evening was it reported Mr. Thynn was killed?

Watts. About eight o'Clock.

Sir Fr. Winn. Can you tell who brought the first News?

Watts. One of my Lady Seymour's Maids, who was telling the People of it below.

Sir Fr. Winn. Did you observe any Body come to your Master's Lodgings afterwards?

Watts, Yes.

Sir Fr. Winn. Pray who came?

Watts. That Gentleman in the black Perriwig. Mr. Williams. Pray in what Habit was he? And how came he in?

Watts. He came in a great Coat; I can't tell whether it was Cloth or Camblet.

Mr. Williams. And what, did he speak to any Body, or go strait up?

Watts. No, he spoke to no Body, but went strait up Stairs.

Mr. Williams. Did he go up to your Master's Lodgings?

Watts. Yes, I believe so, but I stayed below in the Shop.

Mr. Williams. How long did you stay in the Shop?

Watts. I stayed there about half an Hour. Mr. Williams, Did you leave him there?

Watts. Yes, I did.

Mr. Williams. Did he continue there all the Time that you were in the House?

Watts. Yes.

Mr. Williams. What Time did you go away? Watts. About three Quarters of an Hour after that Gentleman came in.

Sir Fr. Withens. Do you remember you had any Discourse with the Count, about riding on Sunday?

Watts. He asked me on Sunday in the Forenoon, whether People were suffered to ride about the Streets on Horseback on Sundays?

Sir Fr. Winn. This was that Sunday Morning, was it?

Watts. Yes: He asked if they might be suffered to ride about the Streets on Sunday? I told him yes, before Sermon-time and after Sermon-time.

Sir Fr. Winn. About what Time of the Day was it that he had heard this Discourse?

Watts. About ten or eleven o'Clock.

Sir Fr. Winn. Are you fure it was Sunday? Watts. Yes.

Sir Fr. Winn. Then I ask you another Question: Upon Sunday Morning, or any other Time, do you remember that the Polander was with the Count, your Master?

Watts. He came in on the Saturday Morning. Mr. Williams. Was he in the Company or Prefence of the Count?

Watts. I was above Stairs when he came in.

Sir Fr. Winn. What do you know of any Sword

that was delivered to him?

Watts. Upon the Sunday Morning there was a Sword brought to my Master's Lodgings, and my Master's Man took it of me, and carried it up Stairs, and this Man, the Polander, afterwards, had it below Stairs.

Mr. Williams. When was this Sword brought

to your Master's House?

Watts. It was on the Sunday Morning.

Mr. Williams. What, the Cutler brought the Sword?

Watts. No, it was fent by a Porter from Mr. Hanson.

Mr. Williams. What Room was it carried into

when it was brought?

Watts. I think I did not carry it up: Yes, truly, now I remember, I did, and delivered it to my Master.

Mr.Williams. Pray what did the Count say to you? Watts. I asked him if there needed an Answer to the Note I carried with it, and he said no.

Mr. Williams. To whom was the Sword delivered afterwards?

Watts. It was brought down, and afterwards this Polander had it.

Mr. Williams. That Man there?

Watts. Yes.

Mr. Williams. You say that the Sword was given to the *Polander*: Pray speak that the Jury may hear. Who brought down the Sword?

Watts. I faw it in the Polander's Keeping when it was below, but I cannot fay who brought it down.

Sir Fr. IVinn. Where did the Polander dine on Scturday?

Watts. He dined with my Master's Man and I on Saturday.

Sir Fr. Winn. Where did he lie that Night? At whose Chamber?

Watts. At our Lodgings in the Garret, in my Master's Man's Chamber.

Sir Fr. Winn. What Day was this, do you say? Watts. Saturday.

Mr. Williams. When the Polander had the Sword, do you remember any Boots that he had under his Arm?

Watts. Yes, he had Boots under his Arm.

Mr. Williams. And he had the Sword with him when he went away?

Watts. Yes.

Mr. Williams. Had he any Coat?

Watts. Yes, a new Coat.

Mr. Williams. Well, I ask you once more, what Time of Day was it that he went away with the Sword and the Boots?

Watts. It was in the Forenoon.

Mr. Williams. What Day of the Week? Watts. Sunday Morning.

L. C. J. Ay, but your Doctor that you examined before, fays, the Polander went away with him, and he was not there on Sunday Morning.

Sir Fr. Winn. It is true, my Lord, it was too tender a Point for the Doctor, he lies under some Suspicion; and 'tis proximus ardet with him.

L. C. J. Well, call him again: Look you, Doctor, you were asked before, and now you are asked again, -Were you at Count Coningsmark's Lodgings on Sunday Morning?

Dr. Harder. I cannot certainly tell.

L. C. J. When did you see the *Polander* at the Count's Lodgings, and whether was it on Sunday Morning?

Dr. Harder. On Sunday Morning I did not see him. The only Time was when I fetched him from my Lord's; I have not seen him before nor lince.

L. C.J. Then call the Boy again. Where did the Polander dine on Saturday?

Watts. He dined with me and my Master's Man.

L. C. J. Where?

Watts. Below in the Kitchen of our Lodgings. L. C. J. Where lay the Polander that Night? Watts. He lay in our Garret.

L. C. J. When went he from your Master's Lodgings?

Watts. On Sunday Morning.

Mr. Williams. Had he an old Coat or a new Coat upon him?

Watts. He had a new Coat.

L. C. J. Was the Doctor with him?

Watts. Yes, the Doctor went away with him.

Dr. Harder. I have not feen the Polander above once in my Life.

Sir Fr. Winn. But were you at the Count's on Sunday Morning, or no, I ask you?

Dr. Harder. I do not know whether it was Saturday or Sunday?

L. C.  $\mathcal{F}$ . But when you fetched him away, was it Saturday or Sunday Morning?

Dr. Harder. My Lord, I cannot very well remember.

L. C. J. Had the *Polander* a Sword when you went away with him?

Dr. Harder. I cannot politively say, but (as Travellers commonly have) he might have a Sword.

Sir Fr. Winn. Now come to yourfelf, and deal honestly, for you are upon your Oath; I ask you, Friend, this, You say he might have a Sword, do you remember a Pair of Boots?

Dr. Harder. No, I do not.

Sir Fr. Winn. Do you remember the Coat he had uppermost?

Dr. Harder. Yes, he had fomething under his Coat, but I don't know it was Boots.

L. C. Baron. Had he a Buff-Coat under his Campaign?

Watts. Yes.

Sir Fr. Withens. Let me ask you one Question, young Man; Do you remember you faw any Musquetoon in your Master's Lodging?

Watts. I did see a Gun there.

Sir Fr. Withens. When was that?

Watts. I saw it upon Saturday.

Mr. Williams. The Musquetoon or Gun that was in your Master's Lodgings, was it that which was brought by the *Polander*, or no?

Watts. I can't tell that.

Mr. Williams. Was it a long Piece or a short Piece ?

Watts. It was not a short Piece.

L. C. J. Did the Polander take it away with him? Watts. No, not that I know of.

Mr. Williams. Now, young Man, I would ask you as to Monday Morning: About what Time on Monday Morning did you come to your Mafter's Lodgings?

Watts. It was between seven and eight o'Clock, a little after seven.

Mr. Williams. What Condition was he in? Was

packing up?

he in Bed, or up. Watts. He was up. Mr. Williams. What was he doing? Was he

Watts.

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Watts. Not that I see.

Sir Fra. Winn. It was when he asked you about the Hubbub in the Street; pray tell what he said

to you.

Watts. He asked me what the Matter was with the Bustle in the Street, and I told him that some were taken that had killed Esquire Thynn; and I told him all the Story, as near as I could: He asked me when Esquire Thynn was murdered; I told him the Night before; but I did not mind any thing that was done: But as I went down Stairs, I met with a Stranger, and he went up Stairs, but I never saw my Master after, till he was taken.

Sir Fr. Winn. Did he ask you what Mr. Thynn was?

Watts. Yes, and I told him I heard he was a Man of a great Estate, and well beloved, and that the Duke of Monmouth was in the Coach but a little before, and if he had not gone out, he had been killed too.

Sir Fra. Winn. What faid the Count to you, when you told him Mr. Thynn was well beloved? Watts. He said nothing.

Sir Fr. Winn. Can you remember who it was came to your Master then?

Watts. I know the Man if I see him again. Sir Fr. Winn. Do you know his Name?

Watts. No, I do not know his Name.

Mr. Williams. Were any of your Master's Goods carried away then?

Watts. Yes.

Mr. Williams. What Goods were carried away then?

Watts. Two Portmantles.

Mr. Williams. Who carried them away? Watts. My Father carried them away.

Mr. Williams. What Time was it?

Watts. Between eight and nine of the Clock.

Sir. Fr. Winn. It was Time to be gone. How parted you and your Master?

Watts. The Stranger did come in, and I never faw my Master afterwards.

Sir Fr. Winn. What, did your Master take no Leave, nor say any Thing to you?

Watts. No.

Sir Fr. Winn. What Kind of Perriwig had he when he went away?

Watts. He had a black Perriwig. Sir Fr. Winn. What Clothes?

Watts. A light-coloured Suit, with Gold Buttons.

L. C. Baron. Will the Count ask the Boy any Questions?

Mr. Craven. Did you see the Gun in the Room after the Polander was gone?

Watts Yes.

L. C. J. 'Tis very plain that this Gun was none of the Gun that did this Mischief, but the Gun the Polander brought over from beyond Sea.

Sir Fr. Winn. Call the Boy's Father, Thomas Watts, (who was sworn.) How long have you known the Count?

T. Watts. I do not know him, but as I have feen him.

Sir Fr. Winn. Were you employed to carry any Thing for him?

T. Watts. Two or three Times I was.

Mr. Williams. When were you last employed by him?

T. Watts. The Morrow after the Murder was committed.

Mr. Williams. What Time in the Morning was it?

T. Watts. It was between eight and nine of the Clock in the Morning.

Mr. Williams. What was it you did for him? T. Watts. I carried a Portmantle, and a Portmantle-Trunk, and some other Things.

Mr. Williams. Where were you directed to deliver these?

T. Watts. His Man told me they were to go to Windsor.

Mr. Williams. Well, tell the whole Story.

T. Watts. He bid me carry them to Charing. Cross, that they might be put into the Coach there. But when he came to Charing-Cross, a Coachman and he had some Words, and he bid him open his Boot, and then he took the Things from me, and put them into the Coach.

L. C. J. Who was it that told you they were to go to Windsor?

T. Watts. It was his Man.

Sir Fr. Winn. I would ask you, Sir, when was the first Time you knew the Count?

T. Watts. It was ten or eleven Days before.

Sir Fr. Winn. What was the Occasion that brought you acquainted with him?

T. Watts. I was Dr. Frederick's Porter, and he fent me to carry some Things to the Count.

Mr. Williams. Was it your Son that waited upon him?

T. Watts. Yes. For when I brought the Things, they faid they had forgot to give me a Sword which I was to carry with the Things; and I faid, that I had a Boy that I would fend, and I did so, and so they took a Liking to the Boy.

Mr. Williams. What was the Agreement for your Son's Service?

T. Watts. Six-pence a Day and his Victuals.

Sir Fr. Winn. What was the Man's Name (as you remember) that gave you the Things to carry to the Coach, which were said to go for Windfor?

T. Watts. I can't tell his Name.

Mr. Williams. He that pinched and pushed you back, and took the Things from you, and put them into the Coach?

L. C. J. Did you see the Count that Morning?

T. Watts. No, I did not see him.

Mr. Williams. Have you been laboured and fought to by any Body to conceal your Boy, that he should not be brought at this Trial?

T. Watts. No, Sir.

Mr. Williams. Had you no Endeavours used with you about it?

T. Watts. No.

Mr. Williams. Did no Body speak of any such Thing to you?

T. Watts. No.

Mr. Williams. Did any Merchant or any Body fend to you about this Boy, to take him into Service?

T. Watts. There was a Merchant that would have helped the Boy to a Place on Saturday last, but the Persons that would have procured it, were about it a good while ago.

Mr. Williams. Call Derick Raynes and Richard Chappel, (who were sworn, and Raynes stood up.) When did you see the Count, the Prisoner at the Bar?

Raynes. On Monday in the Afternoon.

Mr. Williams. What Time was it in the Afternoon?

Raynes.

Raynes. In the Evening.

Mr. Williams. Where was it?

Raynes. At my House.

Mr. Williams. Where is that?

Raynes. At Rotherbith.

Mr. Williams. How came the Count to your House?

Raynes. I know not; I was not at Home when

he came.

Mr. Williams. Pray when you saw him, had he his own Hair or a Perriwig, or how was he habited?

Raynes. He had black Hair then.

Mr. Williams. How long did he continue at your House?

Raynes. From Monday 'till Thursday Morning. Mr. Williams. Was he privately there or pub-

lickly?

Raynes. He walked up and down the House. Sir Fr. Winn. What Countryman are you? Raynes. I am a Swede.

Sir Fran. Winn. What became of him after Thursday?

Raynes. On Thursday Morning he took Water and went to Deptford.

Sir Fr. Winn. What Way did he go, by Boat, or how?

Raynes. A Waterman carried him.

Mr. Williams. Pray what did the Count say to you about his coming in a Disguise to your Houle?

Raynes. I knew nothing at all. I came late home, and when I came to know of him what he was, then he told me that he was Count Coning/mark.

Mr. Williams. What did he say to you when you discovered that he was the Count? What did

he tell you of his Business?

Raynes. He said nothing; but that he was de-

firous to go to Gravesend.

Sir Fr. Winn. Upon your Oath, Sir, did you furnish him with any Clothes?

Raynes. Yes, I lent him a Coat.

Sir Fr. Winn. What fay you to a black Suit? Raynes. The black Suit did not belong to me. Sir Fr. Winn. What fay you to a Velvet Cap? Raynes. I helped him to a Coat, Stockings, and

Shoes.

Sir Fr. Winn. Then I ask you, what did he declare to you?

Raynes. Why, he did desire to have those Clothes.

Sir Fr. Winn. You are an honest Man, tell the Truth,

Raynes. He declared nothing to me.

Sir Fr. Winn. When you dressed him, why did he put on that Habit?

Raynes. He thought his own Clothes were too cold to go upon the Water.

Sir Fr. Winn. Had he no Clothes before?

Raynes. Yes, he had.

Mr. Williams. You had the warmer Coat, had you?

Sir Fr. Winn. Did he desire you to let him have your Clothes, because he was in Trouble?

Raynes. He desired a Coat of me, and a Pair of Stockings to keep his Legs warm; and when he had got them, his own Shoes would not come on, fo I lent him a Pair of Shoes.

Sir Fra. Winn. I doask you, did he declare the Reason why he would have those Clothes, was, because he would not be known?

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Raynes. He said he was afraid of coming into Trouble.

Sir Fr. Winn. Why were you unwilling to tell this?

Raynes. As foon as I came to know he was the Man, I told him he should not stay in my House.

Sir Fr. Winn. Did you lend him those Clothes, or fell them?

Raynes. I lent him them.

Sir Francis Winn. Had you them again?

Raynes. No, I had not.

Sir Fr. Winn. Are you paid for them, or no?

Raynes. No, my Ship lies at the Key, and I came home late in the Evening, and found him there.

Sir. Fr. Winn. Set up Richard Chappel.

Mr. Williams. When did you first see that Gentleman?

Chappell. On Thursday Morning at Ten of the Clock.

Mr. Williams. Where?

Chappel. At Rotherhith.

Mr. Williams. How came you to him? Who brought you?

Chappel. That Man.

Mr. Williams. What were you to do with him? Chappel. To carry him to Gravesend.

Mr. Williams. Do you row in a Pair of Oars, or a Sculler.

Chappel. A Sculler.

Mr. Williams. Whither did you carry the Count that Day?

Chappel. To Deptford.

Mr. Williams. Whither the next Day?

Chappel. To Greenwich.

Mr. Williams. And whither then?

Chappel. To Greenhith, and then the next Day to Gravesend.

Mr. Williams. Was he in the same Clothes all the while?

Chappel. Yes, all the while.

L. C. Baron. Were you hired to wait upon him all that time?

Chappel. Yes, I was to have five Shillings every 24 Hours.

L. C. Baron. Was he alone?

Chappel. No, this Man was with him.

L.C.J. Did he go in the Sculler with him? Chappel. Yes, to Deptford,

Mr. Williams. Well, now we will call the Gentleman that seized him at the Waterside at Gravesend.

Sir Fr. Winn. What did the Count call himself? What Profession did he tell you he was of?

Chappel. He told me he was a Merchant.

Sir Fr. IVinn. Did he say he was a Jewelier, upon your Oath?

Chappel. Yes, he said he had bought Jewels. Sir Fr. Winn. Where is Mr. Gibbons, and Mr. John Kid?

[Who were fworn, and Mr. Kid flood up.] Mr. Williams. Mr. Kid, pray, Sir, will you acquaint my Lord and the Jury in what Condition you found the Count at Gravesend? Tell the whole Story, and speak aloud, that all may hear you.

Mr. Kid. I had fome Information upon Friday Night of him.

Mr. Williams. Of whom, and what?

Mr. Kid. Of the Count where he was. So I made it my Buliness to enquire into it. On Saturday in the Afternoon a Gentleman came to

Rrr me,

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me, and gave me certain Information where he thought that Gentleman the Count was. This Gentleman coming to me, said, Mr. Thynn is a Stranger to me, but said he, I would not have Mr. Thynn's Blood lie at my Door. This same Person who is put out in the Gazette, I believe, is at a Neighbour's House of mine. Says he, I desire you to be private in it, because it may do you a Prejudice; so we went into a Coach at Charing-Cross to go to a Justice of Peace; I did not know where Sir John Reresby lived, but enquired of Mr. Gibbons, who told me, but he was not at home, and Mr. Bridgman was not at home; so we went to the Recorder, and there we had a Warrant, and then I came by Water to Rotherbith, and this same Raynes that was examined, and his Wife, where he lay, were gone to Greenwich to carry his Clothes, a grey Suit, and other Clothes that he had left. So going down to Greenwich, we called every Boat that was upon the River aboard of us, to know whence they came. And we had taken her Sifter along with us, and she called out her Sister's Name, Mall Raynes, and her Brother's Name, Derick Raynes, and so at last we got the Boat wherein they were, on board us. And we asked the Man what he had done with the Gentleman that lay at his House? He declared he was gone away, he did not know whither. So I went back again to this Gentleman that gave me this first Information, who did go to him as a Neighbour, to know whither he was gone, and where he was to be found, and where he would land. So he declared the Particulars: That if we missed him that Night, we should have him in the Hope upon Monday Morning, upon a Vessel that was to be cleared on Monday Morning. So upon Sunday Night coming to Gravesend about Eight or Nine o'Clock, or thereabouts, there he landed. There were 13 or 14 Swedes at the same House where he was to land; so we thought it convenient to take him at his first landing, for fear of further Danger. So I staid at the Red-Lion Backstairs, and he lande, at the Fore-stairs, where the Watermen were. As foon as he was laid hold of, I came to him; said I, your Lordship shall not want for any thing that is convenient. He defired to know whether I knew him; I told him yes; and that his Name was Count Coningsmark. That is my Name, fays he; I do not deny it. So the Mayor came and the Custom-House Officers fearched him, and found nothing at all of any Arms about him. He defired he might be used like a Gentleman, and so he was; for there was no Abuse given to him, as I know of. Coming up the River, the most of my Discourse was about martial Affairs; a Serjeant that had the Command of a File of Musqueteers, which the Deputy-Governor sent to guard the Count to Whitehall, a Gentleman sitting there by me, was alking me concerning Mr. Thynn's Murder; I told him, that I was at Newgate on Friday, and there I saw those that had done that barbarous Fact. With that, my Lord asked what Lodgings there were in Newgate. And whether the Captain had a good Lodging? I told him a very good one. He asked me whether he confessed any thing? I told him he had confessed fome Particulars. And, said I, 'tis the most barbarous Thing that ever was done. Certainly, says my Lord, this Mr. Thynn must have Cor- had like to have killed a more particular Friend, respondence and Commerce with some Lady that and a Master: So, my Lord, he seemed to be

this Captain knew, that belonged to the Court, or he would never have done it. As for the Polander, I told him that he had confessed, he wept mightily. With that my Lord seemed very much concerned, and took up his Clothes and bit them, and fat a while up, but was very much discomposed, and then desired to lie down.

Sir Fr. Winn. That was, when you told him, the *Polander* had confessed.

Mr. Kid. Yes; my Lord was mightily altered in his Countenance.

Sir Fr. Winn. Did you at the first time that you feized him charge him with the Murder?

Mr. Kid. No, I did not.

Sir Fr. Winn. Was he in a black Perriwig.

Mr. Kid. His Cap fell off, and his Perriwig, just as I came to him.

Sir Fr. IVinn. Set up Mr. Gibbons. Pray will you tell what passed?

Mr. Gibbons. My Lord, as foon as ever he came to shore, I walked by him, and gave him a little kind of a Justle; and my Reason was, to see whether he had not a black Coat under his Campaign: I walked close to him just in this Manner, as he walked along, so he turns about again, and went down to the Waterside, and asked the Watermen; Watermen, Have you stowed your Boat? They answered, Yes. Then come away, faid he; fo foon as he came back again, I catched him fast hold by the Arm, and the first Word he said to me was, What do you come to rob me? Said I, my Lord, you are my Prisoner, and I and him I was the King's Messenger, that had waited there several Days for him; and holding of him very hard, whether that was the Occasion of it, or the Watermen that were on the other fide of him, he dropped down his Sword between his Legs; but when I named his Name, he gave a little Start, and his Perriwig dropped off his Face. We went up the Street to the Mayor, and the People crowding about us, were very rude and very rugged, and he desired he might be well used. We did all we could to keep the People from him: We went up to the Mayor's House, and when we came there, I desired he might be searched, whether he had any Arms: He said he had none, and there was none.

Sir Fra. Winn. When you had the Custody of him, whither did you carry him?

Mr. Gibbons. We carried him to the Mayor's Houle, and afterwards we removed him from his Houle to an Inn.

Sir Fr. Winn. What did you do the next Day?

Mr. Gibbons. We staid there about some two or three Hours. After an Hour, or half an Hour's Time, near upon an Hour, my Lord came to me, and asked me my Name; and he said, the Reason was, that after his Trouble was over, he would give me Thanks for my Civility to him. Captain Sinkleer, who stood by, gave him my Name before I could, that it was Gibbons. Yes, faid I, my Name is Gibbons, and I belong to the Duke of Monmouth: Why, fays he, the Duke of Monmouth has no Command now, and therefore how could I take him by his Order? My Lord, said I, I do not apprehend you by his Order; you have killed a very good Friend of mine, and had not Providence ordered it otherwise, you

very forry at that; but, fays he, I don't think they would have done any Harm to the Duke of Monmouth.

Sir Fr. Winn. What else did he say?

Mr. Gibbons. I think I have told you all that is material.

Sir Fr. Winn. Were you in the Boat at any Time, and gave him any Account of the Man's having confessed; what did he say to it?

Mr. Gibbons. Sir, I was not there, nor I did not

come up in the same Boat with him.

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Mr. Williams. Did he mention any thing about a Stain to his Blood?

Mr. Gibbons. I ask your Pardon, he did so.

Mr. Williams. What did he say?

Mr. Gibbons. Says he, it is a Stain upon my Blood; but one good Action in the Wars, or one Lodging upon a Counterfearp will wash away all that.

L. C. J. What did he say was a Stain upon his Blood?

Mr. Gibbons. My Lord, if you please, I will tell you: As I said, he asked me my Name, becaule he would come to give me Thanks for my Civility after his Trouble was over; the Captain, being quicker than I, told him my Name: Yes, Sir, said I, 'tis Gibbons, and I belong to the Duke of Monmouth; said he, he has no Command now, how could you come upon his Order? Said I, I do not come upon his Command, but you have killed a very good Friend of mine, and a Countryman; and if Providence had not ordered it otherwise, you had killed a more particular Friend of mine, and a Master, that I had served many Years; said he, I don't think they would have done the Duke of Monmouth any Injury: After that he walked up and down awhile, and then said he, 'tis a Stain upon my Blood; but one good Action in the Wars, or Lodging upon a Counterscarp, will wash away all that. The Mayor was in the Room, and several others.

Sir Fr. Winn. Pray, Sir, one Thing more; when you did speak to him of Confession, did he say any

thing to you about Capt. Vratz?

Mr. Gibbons. Sir, he was only asking of me how Things were, what the People said, or some such Thing? I was not forward to tell him at first, but afterwards I did tell him, that the Captain had made a Confession, though it was a Thing I did not know then. Says he, I do not believe the Captain would confess any thing.

L. C. J. Did he fay fo?

Mr. Gibbons. Yes, he did, to the best of my .Remembrance.

Sir Fr. Winn. We have done with our Evidence, my Lord.

L. C. J. My Lord Coning smark, will you ask him any thing?

Count Coningsmark. No.

L. C. J. Then the next Thing is, you heard the Evidence that is given against you. Now you must come to your Desence: I will put you in mind of some Things, my Lord, which Things it will concern you to give some Account of. It is here laid to your Charge, That you were accessory to this Murder of Mr. Thynn, and that you were the Person that directed and designed it. And these Evidences there are against you, That you were cognizar: of this, and that you were the Person that designed this: That you were into England about a Fortnight or three Yol. III.

Weeks before the Death of Mr. Thynn; that Captain, Vratz, who was one of them that killed him, came with you, that he lay at your Lodging, that he was constantly with you, that you lay incognito there, and private, would not be known what your Name was, that you shifted Lodgings from Time to Time, that Borofky the Polander came over by your Order, was brought to your Lodging, was provided, for there, that he had Clothes, and he had a Sword provided by your Lordship for him, and that there was Care taken that it should be an extraordinary good Sword, that you did discourse to, Mr. Hanson about your calling Mr. Thynn to Account, and this much about the Time, or a little before the Time of his Death, and what the Laws of England would be in case you should call Mr. Thynn to Account; and particularly you defired to know what Monsieur Lienberg's Opinion might be concerning it, and especially what in Relation to my Lady Ogie. And that after all this, Mr. Borofky was not only clothed by you, but was fent by you to Vratz, (that the Doctor says) and after Vratz him, that he lay in your Lodging that Night before this evil Thing was done, and that after the Thing was done, the same Night Vratz came to your Lodging and was with you, and had private Conference with you, that the next Morning you got up and went away, though you had taken Physick the Night before, and though you yourlelf, nor your Doctor, thought you fit to go abroad, and you go away incognito, in a Perriwig, disguised, you direct your Servant to carry your Clothes one way, while you go another; then you go down to the Water-side, and lie private near the River, at a Swede's House at Rotherhith for several Days together; you afterwards take great Care to conceal yourself, by changing your Clothes, and putting yourself in a Garb not like your own, and giving out you were a Merchant or a Jeweller, or some other Trade; that afterwards you trifled away the Time and went two or three Miles, and then struck in upon one Side of the River, and afterwards on the other Side of the River, suspiciously up and down not to be known, and this not like yourself in any manner, but in a pitiful poor Difguise, and hire a Sculler to carry you, from whom you concealed yourself, and fo all along you trifled away the Time 'till you were taken at Gravesend: That afterwards when you were taken, you were inquisitive about the Captain, whether he did confess; that you should likewise say some such suspicious Words as these, That you believed those that killed Mr. Thung had no Design against the Duke of Monmouth; that you believed the Captain would not confess; that you seemed to be concerned when you were told the Polander had confessed; that afterwards you should say, my Lord, this is a Stain to my Blood; but one good Action in the Wars, or Lodging upon a Counterscarp, will take away all this, or wash it clean. And then, which is also testified against you, that you should ask the Boy that very Morning of the Day the Murder was committed, whether they used in London here to permit Men to ride up and down on Horseback upon a Sunday? Now these Things, my Lord, it will import you to give some Account

Sir N. Johnson. My Lord says, he desires he may answer all these Things one after another.

R r r 2

L. C. J.

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L. C.J. Let him do so. And first let him anfwer what his Reason was to come into England in such a Manner incognito, at this Time, and lie concealed when he had been in England before, and lived in a mighty good Equipage and Condition?

Mr. Craven. My Lord, he fays that hearing there was a Peace between Swedeland and England, and Holland designed, and like to be confirmed fuddenly against the French, he came with a Design to serve England, and to raise a Regiment of Horse here for the Service of the King of England.

Count Coning smark. If any such Peace should be, if any Appearance of an Alliance between England and Holland, and Swedeland, I had a Defign to propose, if I could have a Regiment.

L. C. J. Why did he come unknown, and in

a Disguise?

Sir N. Johnson. Secondly he says, my Lord, the Reason of his coming incognito was, because he had a Distemper upon his Arms and Breast, and having formerly tried and employed this Phyfician, and having Experience that he was an able Man, he was resolved to lie privately till he had cured himself; for he could not drink Wine nor keep Company, having this Distemper upon him, and he was afraid, if he had kept Company, it would have hindered his Cure, and he should not have been so soon cured as if he kept in the House; and he says, that this Equipage could not come 'till after, and he would not willingly appear 'till he had his Equipage as a Man of his Quality ought to do; and these were the Reasons that made him keep private.

 $L. C. \mathcal{I}$ . Pray ask him upon what Occasion he

did change his Lodgings fo often?

Sir N. Johnson. He says that his first Lodging was changed because it was too cold for him; and he says, the next Lodging, where he was, those that were there can tell, the Room where he was fmoked to cruelly, that he was not able to endure it. And he fays, he liked the House so well, that he fent to fee if the Chinney could be mended, and it was not to be done, otherwise he had gone back to that House, and he has the Man and his Wife to bear Witness of it, if you please.

L. C. J. Let him call them.

Count. Call Joseph Parsons and his Wife.

But they did not appear.

L. C. J. Then ask my Lord this, To what Purpose he did bring over this *Polander* here? He ought to consider of that, and give an Account why he brought him hither.

Interpreter. He says this Pole was taken into his Service when he went to Tangier, when he went several Thousand Miles to do the King Service, and he had designed at that Time to bring him into England to dress his Horses after the German Way.

L. C. J. Had the *Polander* been a Groom for-

merly?

Interpreter. He says, he thinks he had been Groom to his Uncle before.

L. C. J. But to what Purpose did he bring him hither?

Interpreter. He says there was a great Discourse about Strasburgh's being besieged, he did design to buy some Horses, for every one did arm themselves; and he says he sent over 1000 Pistoles Ogle before you last came into England?

to be answered by the Merchants here, to buy Horles.

L. C. J. Hath he any body to prove it?

Count. There is Mr. Rifby, Mr. Hanson, and my Brother.

Toung Count. My Lord, I had a Bill of Exchange.

L. C. J. For how much Money, my Lord? Young Count. For 1000 Pistoles, to buy Horses, and he has bought one Horse, and was to

buy more.

L. C. J. Do you hear, Gentlemen, what he says? He came over to buy Horses, and he returned 1000 Pistoles for that Purpose; and his Brother does attest there was such a Sum returned by Bills of Exchange, for the buying of Horses.

Interpreter. My Lord, he says he does sear that the Jury that do not understand English, do not understand his Reasons for being in a Difguife,

 $L.C.\mathcal{J}$ . Can't he give an Account of it himfelf?

Mr. Williams. No, my Lord, his Evidence must be interpreted to them by the Interpreter.

L. C. J. The Doctor's Evidence hath been

heard already about the fame Matter.

Sir N. Johnson. He desires, my Lord, to know this; whether he may not say the same Things over again to the Jury in French, there are a great many Persons of Quality that understand it, and they will fee whether he speak true.

L. C. J. Let him, if he pleases.

Sir Fr. Winn. But then, my Lord, I hope that your Lordship will tell the Jury it goes for nothing without Proof.

[Then the Count spake to the Jury in French.] L. C. J. My Lord, I do not know whether the Gentlemen that are of your Right-Hand heard you or not.

Juryman. We understand not French.

[Then the Count spake it in Dutch.] Interpreter. He says, if it had not been for the great stormy Weather, the Polander had been sooner in London, for he sent for him before. He says, the Letters go from Strasburgh to Hamburgh in feven Days, and that most commonly Ships do come from thence in eight Days, but in a great deal less Time than the Polander came over in. And he fays, that he writ four Months before to fetch the *Polander* over, and he might have been here long e're now, if it had not been for the Weather.

L. C. J. Then, my Lord, I would alk you fome more Questions, which it concerns you to answer. Upon what Occasion did you make your Discourse of Mr. Thynn's Death to Mr. Hanfon? Had you any Discourse with him? And upon what Occasion?

Sir N. Johnson. My Lord, he says in common Discourses, 'tis impossible to give an Account of the Discourse, or remember the Occasion of it so long ago.

L. C. J. Ask him if he had any Quarrel with

Mr. Thynn? Or knew Mr. Thynn?

Sir N. Johnson. He says, my Lord, that he never had any Quarrel with Mr. Thynn, nor to the best of his Remembrance, with his Eyes, never faw Mr. Thynn.

L. C.J. Then I ask you this, my Lord, Did you ever hear Mr. Thynn had married my Lady

Interpreter-

Interpreter. He says, he never heard of it 'till he was going to Strasburgh, and then all the whole Town did talk of it.

L. C. J. How long is that ago? Interpreter. Half a Year ago.

L. C. J. Then it was before his last coming

into England.

Sir Fr. Winn. My Lord, his Discourse with Mr. Hanson, was not when he was last in Town, but before.

L. C. J. Then pray ask him this, What Occasion he had to ask the Boy upon Sunday, Whether Horses might ride about the Town of a

Sunday?

Interpreter. He says, my Lord, this is a very strange Thing, That he should go and ask a Scullion-Boy, whether People might ride on Sundays, when he himself over and over again has rid upon Sundays to Hyde-Park, as many Persons of Quality do.

L. C. J. Has he any Body to prove it?

Sir N. Johnson. Here is Major Oglethorp, (who with divers other Gentlemen, testified they had feen him riding divers Times, on Sundays, in Hyde-Park.)

L. C. J. Then that Question signifies nothing,

there could be nothing in that Question.

Sir N. Johnson. My Lord, he desires that I may be examined concerning the Boy, of what I heard by Chance from the Boy himself, and I will give you an Account of it upon my Faith and Reputation.

L. C. J. Do so, Sir Nathaniel, say what you

can lay.

Sir N. Johnson. My Lord, I having had the Honour to serve a-while under my Lord's Father, I was defirous, knowing the Honour of the Family, and bearing a great Respect to it, to do my Lord all the reasonable Service I could. So hearing my Lord was taken, and in Nevogate, I went to wait upon him; and coming there, Mr. Richardson told me, there was a little Boy waited at the Count's Door for his Wages, as he said. So I spake to the Boy, and asked him, what do'st thou stay for? He told me for his Wages. Said I, certainly my Lord will pay you your Wages; how long have you served him? He said a little Gentlemen in Germany, wear such broad Swords. while; and then said I, if you lived with him, what do you know of his Business? And then of himself he began and told me: Only this I know, That Vratz was in my Master's Chamber that Night, and the *Polander* that Night went out with a Pair of Boots under his Arm, and more than this I do not know. Said I, Boy, Who do you terve? Says he, I have no Master at present; but then of his own Accord he told me, Sir Thomas Thynn had promised him a Place, and in the mean Time, I am, fays he, to go to serve my Lord Privy-Seal; fo my Lord gave him twenty Shillings for his Wages.

Interpreter. My Lord defires the Boy may be aiked, whether he did not go to fetch Physick.

L. C. J. Ask him; where is the Boy? Watts. No, I do not remember it.

L. C. J. Now, you should put the Count in Mind.

Sir Fr. Winn. We observe what a Sort of Interpreter Sir N. Johnson is: He speaks more like an Advocate than an Interpreter; he mingles Interpreter, and Witness, and Advocate together, I don't know what to make of him.

L. C.J. The Count had taken Physick that

Day.

Sir Thomas Thynn. My Lord, I desire to be heard, I never spake to the Boy in all my Life.

Mr. Thynn. Nor I. But he gave the same Testimony he gives now, before the King and Council.

L. C. J. Look you, Sir Thomas, it does not concern you at all to speak to that, there is no Reflection made upon you in it. But my Lord Coninsgmark, it will concern you a little, to shew upon what Occasion Captain Vratz came to you that Night that Mr. Thynn was killed.

Interpreter. He says, my Lord, he can't tell why he came there; 'tis a proper Question to ask Captain *Vratz* himfelf.

L. C. J. That can't be.

Interpreter. He says, my Lord, he kept his Chamber at that Time; he had taken Cold upon his taking Physick, and the Captain came to give him a Vilit, and he never reflected what any one came for; he was lying upon his Bed.

L. C. Baron, Pray ask my Lord this: Why this Man, that was fent over to attend Horses, should come upon the Friday, and a Campaign Coat be bought him on the Saturday, and he fur-

nished with a Sword on the Sunday?

Interpreter. My Lord, the Noise is great, but I suppose your Lordship desires to know what was the Realon why he bought a Sword for him and a Coat?

L. C. Baron. Ay, and how he came by the Buff-Coat?

Interpreter. He says he had that before.

L. C. Baron. But why must be have such a strong Basket-hilted Sword furnished him in a Day's Time.

Interpreter. He says, my Lord, as to the Clothes, when he saw him with all his Clothes torn, he must of Necessity get him a Coat, or else he was a Shame to him and his Service. And as for the Sword, it was no more (he fays) than what Servants of his Bulk and Making used to wear.

Sir N. Johnson. And he says all the Servants of

L. C. J. You know it yourself, Sir Nathaniel Jobnson, you have travelled there.

Sir N. Johnson. Yes, my Lord, they do; and the *Poles* much broader and greater Swords than the others. Here is one in Court that hath a great broad Sword now by his Side.

L. C. J. Now, my Lord, it will import you to give some Account, how, you having brought over this Polander (as you say) to choose Horses, and help you in the Management of them, to take Care of them in the Nature of a Groom, how you came to part with him to Captain  $Vrat \approx$ as foon as he came over?

Interpreter. My Lord, he fays, being that he was sick himself, and there was no Hopes of the Alliance between England and Holland, he had no such Occasion for him, as when he wrote for him, and therefore faw no Reason to keep him.

L. C. J. How long was it before that he wrote for him?

Count. My Lord, after the Siege of Strasburgh, when every Body thought there would have been a War, but it was not so; therefore I had not Need

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Need of him, but he had been seven Weeks at Sea; and, my Lord, 'tis a common Thing in Germany.

Interpreter. He says, 'tis a common Thing in their Country, to give Servants away, if there be no Occasion for them.

Count. My Lord, 'tis a common Thing in Germany, it may be, it may not be so much used in England to give a Servant away.

L. C. Baron. What, the next Day that he comes over?

L. C. J. What say you, Sir Nathaniel John-

Sir N. Johnson. Yes, my Lord, 'tis very frequent in Germany to give a Servant away if there be no use of him, for these Polanders are like Slaves.

Interpreter. And, my Lord, he says, that Mr. Russel does know, that the Merchant that sent him over hither is a Man of good Repute; and if this Man had had an ill Reputation in Germany, he would not have sent him.

Witness. My Lord, I know very well he is a Man of very great Credit in Hamburgh, and of great Estate.

L. C. J. Did he send over this Polander? Witness. Yes, my Lord, so I understand.

L. C.J. Can you speak of his Credit, Sir Nathaniel Johnson?

Witness. Of the Merchant's Credit I can, my Lord; I know him to be a Man of considerable Estate and Credit. He is a Man of such Reputation, that he would not send a Man of an ill Reputation.

L. C. Baron. Oh, Sir, Nemo repente fit turpissimus. He could not be so ill a Man at the first Dash; he must be a Man probable for such a Service.

Sir Fr. Winn. You may observe, my Lord, how Sir Nathaniel Johnson, who is Interpreter in the Case, is a Witness, and argues for the Prisoner too.

Mr. Williams. Pray, Sir Nathaniel, is a Rencounter the killing of a Man after this Manner?

Sir N. Johnson. A Rencounter is another Sort of Thing, Sir; you don't speak as if you were a Soldier.

Mr. Williams. My being a Soldier or not is nothing to the Buliness; but the Captain said, he intended to have made a Rencounter of it.

Sir Fr. Winn. But, my Lord, we desire to take Notice of Sir Nathaniel's Forwardness; for it may be a Precedent in other Cases.

L. C. J. What do you talk of a Precedent? When did you see a Precedent of a like Trial of Strangers, that could speak not a Word of English; but you would sain have the Court thought hard of, for doing Things that are extraordinary in this Case.

Mr. Craven. My Lord, he desires he may inform the Jury what he sent for this Polander for.

L. C. J. Let him.

[Then the Count spake it in French and Dutch.]

L. C. J. My Lord, another Thing is this, how came your Lordship presently to go away in such a private secret Manner, and to direct your Clothes to be sent as it were to Windsor? And yourself to go away, and to make such a private withdrawing of yourself down the River in this Manner?

Mr. Craven. My Lord, he fays, that one

Markbam, that is here, came and told him, that upon the killing of this Man by the Polander and the Captain, who were taken in such a Fact, there was a Discourse of it that it might turn to his Prejudice, and that the common People do commonly fall upon Strangers; that his Taylor told him, that he heard the common People name him as concerned in it, and that he believed, if the common People did catch him, they would tear him to Pieces, and so his Friends did counsel him that he would withdraw himself.

L. C. J. Is the Taylor here? Call him. Interpreter. Call Markham the Taylor.

[who stood up.]

Sir N. Johnson. My Lord, he says, that he was afraid the People might tear him to Pieces, before he could come to justify himself.

L. C. J. Look you, Friend, did you come to Count Coningsmark's Lodgings after Mr. Thymn was killed, on the Monday Morning?

Markham. Yes.

L. C. J. What did you tell him?

Markham. I told him nothing, but I was fent there by Mr. Hanson; says he, tell the Count that the Duke of Monmouth and several Noblemen have been here: Now I had not seen the Count at that Time before, but he told me where he lodged; when I came there I told the Count of it, but he told me he knew nothing of it; but, said he, I am forry if any such Thing be done.

L. C. J. But what did you say his Friends ad-

vised him to about it?

Markham. I did say nothing of it.

[Then the Count spake to him in Dutch.]

Markham. That was afterwards.

L. C. J. What was that afterwards?

Markham. I was told, the People said, if he were taken, he would be knocked on the Head.

L. C. J. What Time afterwards was it? Markham. After he went away.

L. C. J. Who told you so then?

Markham. Mr. Hanson told me so then; I would not tell a Lie for all the World.

Count. He can tell also when I went away——the rest he spake in Dutch.

Interpreter. He says this Man can witness, that he asked his Man what Money he had left, and he told him that he had not above 10 or 11 l. so he put his Hand in his Bag and took out some, and put it into his Pocket.

Count. So ill was I provided for an Escape.

L. C. J. Ask him that Question; do you know any Thing of what Money he took with him?

Markham. No, I saw him take an handful of Silver, but what it was 1 can't tell.

Mr. Thynn. He had 7 or 81. about him when he was taken.

Interpreter. He desires Leave to tell it to the Jury, (which he did.)

L. C. J. Now, my Lord, this will repaire some Answer; how came you to tell those Gentlemen that took you, that you believed Mr. Vratz and the rest would have done the Duke of Monmouth no harm?

Interpreter. He says, the People told, when he was taken, that the Duke of Monmouth was in the Coach, and that they did follow the Coach a great way, and would not do the Action 'till the Duke of Monmouth was out of the Coach.

a Count.

Count. They did tell me, the Croud that were about me, that those that were taken said they would not do it till the Duke was out.

Interpreter. And he says, that gave him sufficient Reason to say to Mr. Gibbons that he did believe they had no Design upon his Grace the Duke of Monmouth.

L. C. J. He heard it so commonly, it seems. Now, my Lord, there is one Thing more that you should explain yourself in, what you meant by this, when you said it would be a Stain upon your Blood, yet one noble Act in War, or the Lodging upon a Counterscarp, would wash it off?

Interpreter. He fays, my Lord, that though he knew himself not Guilty of any Thing, yet his being taken upon Suspicion, and clapped up in Prison, would be a great Disgrace to him, and would be worse resented in his own Country than the Thing itself was: It being not the Custom in his Country to take Persons of his Quality Prisoners in that Manner.

L. C. J. Now, my Lord, is there any Person that you would have called to ask any Questions of? If you have, they shall be called.

Count. No, my Lord; but if you please to give me Leave to tell something that may be necessary.

[Then he spake in Dutch.]

Sir N. Johnson. My Lord, he says, if you will give him Leave, though it does not come very well from himself, yet he desires to say something for his own Reputation.

Mr. Williams. He should be armed with Witnesses to make his Defence.

L. C. J. 'Tis fit for Men that stand here to say any Thing that is reasonable for themselves. My Lord, if you can speak any thing that you apprehend the Jury can understand, speak to them what you please, so as they understand it, but do not be too long.

Mr. Craven. My Lord, if your Lordship please, he says he would speak it first in French, and then in German.

L. C. J. Ay, but then the Englishmen of the Jury will not understand a Word of it; he had better speak in English to the Jury.

L. C. J. North. My Lord, it is an indifferent Thing, it may be interpreted, not being Matter of Fact.

Sir N. Johnson. My Lord, he says it is a great Happiness in all his Trouble, that he was in a Country where he was to appear before a Proteflant Judicature, himself being a Protestant, and his Fore-fathers also. He says, that his Forefathers, under Gustavus Adolphus, were Soldiers, and did there, with their Swords in their Hands, and the Loss of their Blood, endeavour to settle the Protestant Religion in Germany, and protect it there: He says, that it has been the Honour of himself and his Family, that they have always been ready to venture their Blood and their Lives for the advantage of the Protestant Religion, as the Examples of his Grandfather and Father do shew; and there never was any thing done by his Family but what was done for the Honour of his Country, and his Religion: And he fays, that if any of his former Actions can give any the least Sufpicion of his being Guilty of this, or any foul Fact, he is very willing to lay down his Life, and very willing to have it cut off immediateCount. Immediately.

Sir N. Johnson. He says, that he is very ready, upon all Occasions, to serve the King of England; and that he loves the English Nation so well, as always to be ready to do any Thing to serve them.

Count. Without any Interest in the World, against the Will of all my Relations; and I have brought my Brother into England to be brought up into the Protestant Religion, to shew my Inclinations to the Religion, and the English Nation.

L. C. J. Have you done?

Sir Fra. Winn. Yes, my Lord, we have done with our Evidence, and we have no Matter of Fact to reply unto; but we think it is our Duty, confidering the Defence my Lord has made, that we should take some Care to put the King's Evidence a little together, it being a Case of such Nature, and so cruel and horrid a Murder.

My Lord, and you Gentlemen of the Jury, I am of Counsel here for the King, and you are Gentlemen upon an Enquiry to find out the Offenders in a very great, a barbarous, and a wilful Murder. And, my Lord, in relation to the Principals, I need not spend your Lordship's and the Jury's Time about them; for all those three Men, that are indicted as Principals, do, my Lord, confess the Fact, though they do it in a different Manner, and though in Form of Law they have pleaded Not Guilty; yet when they come to be asked the Question, their Guilt slies in their Faces, and they cannot deny it. So then for those three Men there is no Need to spend Time in repeating the Evidence.

But, my Lord, that that feems to require the Consideration of the Jury is, whether this wicked and horrid Murder be only circumscribed in the Guilt of it to those three Men that have contessed it, or whether any rational Man in the World will believe, upon the Account they give themselves, that they had only a Design, a Study, or a Delight to kill this innocent Gentleman. No, my Lord, the Thing must lie a little deeper, and there must be some other Reason why this barbarous Murder was committed, I would crave your Pardon for what I say. My Lord, I would not speak any Thing that should missead a Jury in Matters of Blood, and I think it was rightly faid by your Lordship, that when a Man is tried for his Life, we ought all to behave ourselves feriously, as in a Matter of Weight and Moment. And so it is, I think, a very serious Thing, and a Matter of Concernment to us all to enquire who hath shed innocent Blood; for such was this poor Gentleman's Blood that was killed, innocent Blood.

My Lord, this Count is a very unhappy Perfon to have such a Relation as has been proved to be of the Principals: I will do my Lord no Wrong in the Repetition, if I do, and am mistaken, I crave your Direction, I am sure you will correct me in it. Two of the Persons that are Principals, that was Captain Vratz and the Polander, happened to be Persons relating to my Lord's Family, as his Servants. For it is agreed by the Witnesses that were that Count's Friends, that they came over into England with the Count, the last Time he came over in that private Manner; and 'tis likewise proved, and not denied by him, that Captain Vratz was frequently with him, not only to the very Day when this bloody

Fact