

a letter writ in a Hand which no man writes, a stiff Hand almost like Print; and it is plain that it is writ to disguise the Hand of the Writer, whoever he was. At the latter End of the letter, when the Person that writ it comes to be tired and off of his Guard, there are several Letters which compared with the Writing of my Lord Bishop of *Rochester*, and what is own'd to be his, appear to be his writing. In the Date of the Letter, which is *December*, the D you frequently find in the Bishop's Hand-writing; your Lordships observe the Letter E that frequently occurs in the Bishop's writing; and your Lordships by comparing that with the Letter produced, will find that they exactly agree.

Whether or no your Lordships won't think it, on those Circumstances, to be the writing of my Lord Bishop of *Rochester* in a disguised Hand, we must submit to your Lordships. But, my Lords, suppose it was not his Hand-writing, here is Evidence that it was his Letter; and that is evident, because it is under his Seal, it is sealed with his own Seal, a Seal that he had in his Custody, and made Use of no longer ago than the 26th of *February* last: I think that is the Day a Letter was taken from his Servant. That we humbly apprehend, my Lords, will plainly shew it is the Bishop's Letter, because it was sealed with his Seal, and the same Seal is made Use of by the Bishop, on the letter that was taken upon his Servant in *February* last.

My Lords, this Matter hath been controverted by my Lord Bishop. He hath call'd Engravers, who believe Seals may be counterfeited, and Impressions may be taken off the Wax, and another Impression made, so as to make it difficult to know which is which. They were a little loose in answering the Question, Whether or no, if the Seal, from whence the Impression was to be taken, was broken in the Middle, it could be done. But one said, the Seal might be mended, and it might pass unobserved, but I find it is extremely difficult. But they did say, Seals may be so counterfeited, that it may be difficult to discover one from the other. My Lords, this is to insinuate, that after such Time as the letter was taken upon my Lord Bishop's Servant, the Person in whose Custody this other Letter of *Dubois* was (which is proved to have been taken the 24th of *Aug.* amongst the Bishop's Papers) hath caused an Impression to be taken off the Seal with which the letter to *Dubois* was sealed, (the Wax broken in two as it was) in order to fix it upon the letter that was taken upon my Lord Bishop's Servant, so as to prove the letter to *Dubois* to be the Bishop's Letter. Who is this to be fixed upon? *Nevree* was gone; I don't know, unless upon the Committee of the House of Commons: for the Bishop's Letter was taken on his Servant the 26th of *February*, the Committee of the House of Commons made their Report on the 1st of *March*, and the letter to *Dubois* had long before the 26th of *February* been in Custody of that Committee. And yet while this letter is in Custody of a Committee of the House of Commons, they will have it, here, is an Impression taken off a broken Seal, and put on this other Letter, in order to shew that these are Letters of the same Person. Who can believe this to be the Case?

An Observation hath been made, that truly the Committee of the House of Commons have not made any Observation of this Kind, with relation to this letter to *Dubois*, that it is the Bishop's letter: which is true; for they had not this Matter relating to the Identity of the Seals, under their Consideration; but this is a new Discovery made since: And therefore, my Lords, they apprehended that this was a letter directed to the Bishop by the Name of *Dubois*, it being found amongst his Papers, and nothing to the contrary did appear, till after they had made their Report.

My Lords, there are other Things your Lordships would have expected to have had an Account of, in answer to this Evidence. Here is a letter found among my Lord Bishop's Papers; consequently so far we apprehend that this Evidence is a legal Evidence against the Bishop, as being a letter found in his Custody; this letter is directed to *Dubois*, and mentions the Hand of *Johnson*. Doth my Lord Bishop of *Rochester* give any Account who *Dubois* is? who this *Johnson* is? how this letter came there? No, my Lords, none at all. Doth his Lordship give you any Account of the Seal? and hath his Lordship said that the Seal, that sealed the letter taken on his Servant, he hath not? or that the Letter was not sealed with his Seal, or that he did not seal it himself? His Lordship did not say one Word to that Purpose, or make any Denial of the Matter, nor give your Lordships any Account who *Dubois* and *Johnson* were; nothing at all, but hath left it to your Lordships on that Foot: That the letter to *Dubois* had an Impression taken off, after it was in the Custody of the Committee of the House of Commons, and that Impression made use of on the other Letter: and that this is another Part of the Contrivance, in order to charge my Lord Bishop of *Rochester* with being concern'd in this Conspiracy.

My Lords, as to the Seal's being the same on the two letters, we humbly apprehend, the Evidence given on the other Side hath strengthened ours. We have produced two Engravers, one of them they own to be the top Engraver of *England*, Mr. *Christian*; he gave your Lordships an Account, that he verily believed these two Impressions to be taken off from the same Seal. Mr. *Rollus* said the same thing, and that he had used the Art long, and could judge. They made no Endeavours on the other Side to try the Skill of Mr. *Christian*: but as to Mr. *Rollus*, they hoped they should be able to puzzle him; and therefore have produced six several Impressions made on Wax by Seals to try his Art; and after he had look'd upon them, he gives you such an Account, that, I believe, your Lordships are satisfied that he is a Man of Skill and Art, and that if these Impressions had been taken off, as they would insinuate they were, he must have discover'd it.

My Lords, here is an Artist brought to make this Experiment on *Rollus*, to try his Skill; yet, notwithstanding all the Art hath been made use of in the Case, that could be, the Man was able not only to distinguish how many Seals the Impressions were made with, but also to give an Account that they were cast Seals, and not grav'd Seals, that made those Impressions.

This,

This, my Lords, will have such a Weight with your Lordships, that we hope your Lordships will believe his Evidence is true; and if it is true, what Answer hath been given it, your Lordships have heard. Whether therefore any satisfactory Answer hath been given, to an Evidence so strong and convincing of *Johnson's* being employ'd in writing Letters for the Bishop of *Rocheſter*, we muſt ſubmit to your Lordships.

My Lords, the next Evidence they went upon was in relation to the Dog. Say they, we will ſhew that this Dog was not for the Bishop of *Rocheſter*, or any other Perſon but Mrs. *Barnes*. As to that, my Lords, I beg leave to remind your Lordships of the Evidence given by Mrs. *Barnes*, that Mr. *Kelly* told her it was for the Bishop of *Rocheſter*. It is a little improbable, if the Dog had been for Mrs. *Barnes*, that he ſhould come and deliver it to her, and tell her 'tis for the Bishop of *Rocheſter*. But it appears by Mrs. *Barnes*, that another Dog was deſigned for her, and that this Dog was for the Bishop of *Rocheſter*. They have read in Evidence a Certificate, ſign'd by Mr. *Birmingham*, and likewise an Affidavit, that there was, in the Month of *March*, a Dog deliver'd to *Kelly* in *France* for Mrs. *Barnes*. That, my Lords, muſt be another Dog, and not this, which we ſay was for the Bishop of *Rocheſter*; for this was not deliver'd to Mr. *Kelly* in *France*, but was ſent over to him after he was in *England*, as appears by the letters; and after he had receiv'd it, he writes, that *he would inform Mr. Jones ſoon of it, to whom cry thing from that Quarter would be very acceptable*. So that, my Lords, if there was another Dog, and by Mr. *Kelly* deſign'd for Mrs. *Barnes*, we humbly apprehend it cannot be applied to this; for this Dog was deſign'd for Mr. *Jones*, and Mrs. *Barnes* ſays, that is the Bishop of *Rocheſter*.

My Lords, the next Evidence given by them is in relation to the letters of the 20th of *April*. They have endeavour'd to prove that, as to my Lord Bishop of *Rocheſter*, it is impoſſible that theſe letters could be written or dictat'd by him. He came to Town the 11th, and went to *Bromley* again the 12th of *April*; he had a Fit of the Gout ſoon after; had Servants that conſtantly attended him, more than one; and theſe Servants give an Account, that no Perſon whatſoever came near him, or could be employ'd by him to write thoſe letters.

My Lords, I beg leave to obſerve, *firſt*, That as to the applying their Evidence to the Writing of thoſe letters on the 20th of *April*, it is very poſſible that the letters were writ on another Day than when they bear Date: Therefore if they prove, that it was impoſſible that theſe letters ſhould be writ or dictat'd by the Bishop of *Rocheſter* on the Day they bear Date, yet they might be writ on another Day, and it is very probable they were.

Your Lordships will obſerve, that theſe letters are in Cyphers; and, I believe, where a Perſon dictates a letter to another, he doth not reduce the letter into Cyphers as it is dictat'd, but he firſt writes it out in Words at length, and afterwards puts it into Cyphers, and when it is proper to ſend it, then is the Time to date it; and if it be left with the perſon that puts it into Cyphers to ſend, as probably it was in this Caſe, it is left to him to date it when he pleaſeth: So that if they ſhould have ſhewn, that upon the 20th of

April the Bishop was incapable of dictating or writing, it is no concluſive Answer to the Charge againſt the Bishop as to theſe letters.

Your Lordships will pleaſe to obſerve, that upon the 11th of *April* the Bishop of *Rocheſter* came to Town, on the 12th he went into the Country; notwithstanding what they have attempted to prove as to the Times that *Kelly* was in Town, and the Bishop was in the Country, yet upon the 11th and 12th they were both in Town; for *Kelly* came to Town from *France* the 11th, and the Bishop came to Town the 11th from *Bromley*.

When the Servants came to be examin'd, what time of the Day the Bishop came to Town on the 11th, they could not give any Account of that: When they were asked, what time of Day it was when he went out of Town on the 12th, they could give no Account of that.

There hath been no Account given to your Lordships who was with the Bishop of *Rocheſter* the 11th and 12th when he was in Town, or where my Lord Bishop was at that Time: So that, my Lords, it is poſſible, from theſe Circumſtances, that theſe letters might be writ when the Bishop was in Town, and *Kelly* was in Town.

But ſuppoſe it ſhould not be ſo; the Queſtion is, whether they could not be writ at *Bromley*. On the 12th of *April* Mr. *Kelly* was at Mrs. *Barnes's*, he did not lie at home that Night; on the 13th he did not lie at home; on the 14th he came, and went to his old lodgings at Mrs. *Kilbourne's*. Theſe two Nights it doth not appear where he was; he might have been at *Bromley*, it is but an Hour's Ride. As to the Servants, ſay they, they ſhould have remember'd his ſetting up his Horſe;---He might ſet up his Horſe at an Inn, and go privately to my Lord Bishop.

Notwithſtanding my Lord Bishop was ill, and tho' he ſhould have proved to your Lordships Satisfaction, that after he was ſo, he did not, nor could admit of Company, yet we ſubmit it to your Lordships that it is no Answer; for he was not very bad till he had been in the Country two or three Days, and theſe letters might be dictat'd or written in thoſe two or three Days before he was ſo ill.

My Lords, I beg leave to obſerve, what the Servants have ſworn. Here is *Grant*, that is my Lord's Butler, he ſays, that my Lord Bishop went the 12th of *April* to *Bromley*, and he attended him there till the 21ſt, and on the 21ſt he was ſent to Town upon ſome Matters relating to the *Westminster-Election*; and another Servant about him gives an Account, that two or three Days after my Lord Bishop came down, he was taken ſo ill in his Hands and Feet, as not to be able to help himſelf.—Theſe are two or three Days beyond the Time that *Kelly* was out of his lodging, which was the 12th and 13th, (and theſe two or three Days muſt be the 14th and 15th) it may be my Lord Bishop was ſo diſabled indeed as he ſays; he ſays he is almoſt certain that no Stranger was with the Bishop; but he ſays the Apothecary or the Miniſter might be with him in his Illneſs, tho' he did not ſee them himſelf. If it is poſſible for the Apothecary or the Miniſter to be with him, and he not ſee them, why is it not as poſſible that Mr. *Kelly* might be there, and he not ſee him there?

The next Witneſs that is called only ſpeaks to the 18th and 19th; when *Grant* came to the Election,

tion, another Servant was sent for, and he went, and he says my Lord Bishop was very ill. *Samuel Steele* gives an Account of my Lord Bishop's Illness, and his attending him.

My Lords, they have brought all the Servants of the House, the very Stable-Boy, to prove that my Lord Bishop could not see any body without their Knowledge; even the Nurse that attended his Lady when she was dying. The Servants that were waiting upon his Lady swear, That it was impossible any body should come to my Lord Bishop, and they not know it; and they are as positive, in relation to any body's coming to my Lord Bishop, as the Servants that immediately attended him.

But, my Lords, there is a Matter, which we shall offer in Evidence, that entirely destroys this Evidence of my Lord Bishop's being so ill, that he could not move Hand or Foot, and of his not being in a Capacity of dictating Letters: that he did actually send a Letter the 21st of *April* to a person in Town; and this very *Grant*, that hath given this Account to your Lordships, brought up the Letter to Town on the 21st of *April*. We have this to give your Lordships in Evidence; then what is the Evidence of all those Servants, who swear that it is impossible these Letters should be writ on the 20th of *April*, and that no body was admitted to come to him in order to write these Letters?

My Lords, as to the Evidence that hath been given, in relation to *Kelly's* Hand-writing, they have called Witnesses to disprove the Evidence on our Side, who, looking upon the Letter of the 20th of *August*, swear they do not believe it to be *Kelly's* Hand-writing. Our Witnesses do believe it; their Witnesses do not believe it to be his Hand-writing, and say that it is not like it.

There are several Letters shown them, tho' in a less Hand, that are agreed to be *Kelly's* Hand-writing; and your Lordships may judge, by looking on them, whether they are not of the same Hand with the Letter of the 20th of *August*; tho' the Character is something less, we humbly apprehend they will appear so to be. Besides, there are those Circumstances relating to the Hand-writing of Mr. *Kelly*, that put it beyond all Dispute that it is his Hand, and that is the Answers he hath received to those Letters which we charge to be written by him. We have traced him from place to place, where the Letters that came in answer to his Letters, were directed; to Mr. *Andrews* at the *Dog and Duck*, there *Kelly* employ'd a Person to take them up, and they were deliver'd to him; and at *Burton's* Coffee-House *Kelly* took up the Letters that were directed thither, in answer to those Letters that were of his Hand-writing. So there is not only the Evidence of Witnesses, that knew his Hand, and believe it to be his Hand, but here are the Answers to them actually taken up by *Kelly* himself: and that we humbly apprehend is so strong an Evidence, joined with the other, that, when one or two Witnesses come and say they do not believe it to be his Hand-writing, their Testimony shall not overthrow it.

My Lords, there is another piece of Evidence given by them, relating to the Letters of the 20th of *April*, which were enclosed in a Packet sent to *Boulogne*; the Packet is directed to Mr. *Alexander Gordon* Banker, at *Boulogne*: they have produced

a Certificate from *Boulogne* upon Oath, wherein it is said, that he is no Banker, and denies that he received any Packet from *Kelly*, or that he knew him: This is a Certificate, and prov'd by a Person who believes it to be so. Your Lordships will please to observe what this Paper is, and that it is brought here by a person that knows nothing of its being sworn, but says, he is used to Transactions of this kind, and he believes it to be a Certificate from *Boulogne*.

My Lords, we shall produce a Gentleman, who was at *Boulogne* at the Time that the printed Report and Appendix of the House of Commons came there, and he was at Mr. *Gordon's* House, when they were discoursing about this Matter; and what they then said, we humbly submit will be believed; for what they then said was spoken as of an indifferent Thing, and they did not then see it could be of any Consequence to disguise the Truth. Mr. *William Gordon* the Father said, that he was at *Paris* when this Packet is supposed to have come: but Mr. *Alexander Gordon* the Son own'd that he was at home, and that this Packet came to him, but, said he, what was in it I know not, but I deliver'd it as is mentioned in the Appendix.

My Lords, there is another piece of Evidence, they have given, with relation to *James Talbot*, to whom the Packet was deliver'd at *Boulogne*. Here is a Witness produced to prove that he was in Town the 29th of *April* 1722, and he could not be mistaken, because he had paid him Money, and he had entred it in his Book. The Evidence goes no farther than to prove, that one *James Talbot*, that was a tall black Man, was then in Town; but it doth not appear that this was the person mentioned to have taken this Packet at *Boulogne*, and carry'd it to *Paris*: So that their proof, as to this Matter, is insufficient.

But we shall shew your Lordships, from an Account we have here from Mr. *Crawford*, his Majesty's Resident at *Paris*, that this *James Talbot* came to *Paris* that very Day, as he is mentioned to have brought those Letters to *Paris*, and was actually there at that Time: and that we humbly apprehend will be a full Answer to them, and take away any ground of Supposition, that the Evidence they have given concerning *James Talbot*, can be apply'd to that *James Talbot* who received the Packet at *Boulogne*.

As to the Evidence relating to Mr. *Kelly's* being in Town the 20th of *April*, we humbly apprehend from what hath been said, it is not material whether he was there or not; but they have not proved it, for Mrs. *Kilbourne* and her Maid, the two Witnesses produced by them for this purpose, say that he came to Mrs. *Kilbourne's* House the latter end of *April*, they believe the 20th, but they are not positive as to the Day. If he had been at Mrs. *Kilbourne's* the 20th of *April*, it is no Answer at all to our Evidence, and the strong Circumstances there are to induce a Belief, that the Letters might be dated at another time than really they were written.

My Lords, another Evidence is Mr. *Pope*, a Gentleman of Learning, with whom my Lord Bishop of *Rochester* used to converse; and he gives you an Account that he knew nothing of this Conspiracy, that the Bishop never open'd his Mouth to him about it, nor acquainted him with it; that he

was frequently with him, and their Discourse was only about Matters of Literature.

No doubt my Lord Bishop hath conversed with Persons on different Subjects, to whom he would communicate nothing of an Affair of this Nature.

My Lords, upon the whole Matter we must submit it to your Lordships, whether we have not made out the Charge against my Lord Bishop of *Rocheſter*, to your Lordships Satisfaction, if not by legal Evidence, yet by Evidence that will satisfy and convince any Person that will consider it.

My Lords, a great deal of Regard is due to the Character and Function of the Reverend Prelate at the Bar: but if my Lord Bishop of *Rocheſter* hath departed from his Character and Function, and hath gone and engaged in a traitorous Conspiracy, and been guilty of Treason towards his King, and Perjury towards his God, we humbly apprehend, if this be proved, that his Character and Function are so far from being a Mitigation, that they are a great Aggravation of his Crime.

We shall submit it to your Lordships, to do what your Lordships think is consistent with Justice and Equity.

Mr. *Wearg* spoke next.

My Lords,

It must be admitted, that the Reverend Prelate at the Bar, has made his Defence with the utmost Force and Beauty of Eloquence.

Was I capable of answering it in the like manner, which I own I am not, yet I should not think myself at liberty to do it, under the present Circumstances.

For, tho' it may be excusable, in a Person upon his Defence, to make use of that powerful Instrument of Error and Deceit, which always imposes upon the Reason, and misguides the Judgment in proportion as it affects the Passions; yet, I can't think the same Methods justifiable in a Person employ'd to carry on the Prosecution.

I shall therefore examine the Force of what has been offered on behalf of the Reverend Prelate, stripp'd of the Ornaments and Colours of Rhetoric.

I shall, in the first place, consider that Catalogue of Hardships, which his Lordship has complain'd of.

1. The first Complaint was that of Severities and Indignities offer'd him during his Confinement: but the Subject of this Complaint not arising from any of the proceedings before your Lordships, I can give it no other Answer, than by saying, that I am very credibly inform'd 'tis a Complaint without Foundation.

2. Reading Extracts of Letters was the next Hardship complain'd of by his Lordship, and represented as if they were read as Evidence against him; when it was declared by the Counsel for the Bill, that they were only read upon the general part of the Bill, and did not affect his Lordship.

3. The third Hardship was, excusing the Decyphers from answering such Questions proposed by his Lordship, as tended to a Discovery of their Art; that is, in other Words, refusing to do an Act which must prejudice another Person, and could be of no Service to his Lordship: for the Truth of what they testified, depended upon the Skill and Integrity of the Decyphers, and not

upon the Method of coming at that Sill, which they could not disclose in so publick a manner, without doing a manifest Prejudice to themselves; which no Witness is ever compell'd to do.

4. The next Hardship is of the like nature, the not suffering the Clerks of the Post-Office to be examin'd, as to the Method and Authority by which they open'd Letters, by which they might have been subjected to the severe Penalties of the Statute 9 *Annæ*, if they had not exactly pursued the Methods prescribed by that Statute. But his Lordship's Innocence could not possibly have been manifested by it; for are the letters less criminal, if the Person who stopped them did not punctually pursue the Directions of that Statute? It would be thought a strange Defence in a common Offender, if, instead of proving his Innocence at his Trial, he should object that he was taken without a proper Warrant; which, if true, don't make him the less criminal.

5. The fifth Hardship was refusing to let Mr. *Lewis* declare any thing that came to his Knowledge by his being employ'd in the Secretaries Office some Years ago. This Hardship could be added only to fill up the Catalogue of Complaints, since, notwithstanding your Lordships Order, Mr. *Lewis* did declare what he was call'd for, tho' he afterwards own'd, that he came to the Knowledge of it by being employ'd in that Office.

6. The sixth Hardship was in reading an Examination not dated, sign'd, or sworn. But I apprehend the Counsel for the Bill have more reason to complain of Hardships of this sort, in reading Papers on behalf of his Lordship, as Examinations sign'd and sworn, without ever proving that they were sign'd or sworn to, or that any such Persons were ever examin'd; whereas the Examination hinted at in the Bishop's Complaint, was read as an Examination, or rather Confession of a Person since dead, not sign'd nor sworn to, and fairly left to your Lordships, to have such Weight as the nature of the Evidence deserved.

7. The next Hardship, *viz.* that of reading Letters wrote by another Person, without Proof that they were wrote with the Prelate's Privy, is begging the Question upon the whole Proceeding. For whether there was Proof of their being wrote with his Privy or not, is the Subject of the present Enquiry.

8, 9. The two last Hardships complain'd of, seem to be calculated for Persons without Doors, who are Strangers to what pass'd at your Lordships Bar, that he was denied a Copy of the letters in Cypher, until the Trial was so far advanced that he could not make the proper use of those Copies. Will any one who reads this Complaint in his Lordship's Speech imagine, that after he had a Copy of those letters, he had twice as much time for his Decyphers to peruse them as he himself desired?

Or will a Person who shall read the next Complaint in his Lordship's Speech, that he was refused to read any of the Papers contain'd in the Trunk that had not been read by the Counsel for the Bill, ever be persuaded that his Lordship read the three first Examinations of *Neynoe*, that had not been read by the Counsel; the Papers taken in *Neynoe's* Pocket, the Certificate of the Surgeon return'd by Mr. *Crawford*, neither of which had been read by the Counsel for the Bill; that his Lordship was expressly told, he was at Liberty to read

read any Paper in the Trunk he should think necessary to his Defence; and was only refused reading one Paper, because he own'd it was for no other purpose, but to raise an Objection to a Matter which had not been insisted on by the Counsel for the Bill, that he might answer the Objection which he himself should raise?

These things will seem incredible to one who shall read this Catalogue of Complaints in his Lordship's Speech; and yet these are some of those Complaints, which with the Assistance of a warm and masterly Style, drew Tears from some of your Lordships Eyes:—

But when stripp'd of that false Beauty, and examined by the sure and unerring Rules of Reason, appear to be without Foundation; and to have been made without that strict Regard to Truth, which, I presume by some part of his Lordship's Speech, he would be thought always to have.

From these Complaints his Lordship proceeds to support some of the Objections taken by his Counsel to the Bill.

And one of the first Objections is of the same nature with some of the Hardships that have been complain'd of; that is, it might be an Objection, did it not want the Foundation of Truth.

The Objection I mean is, that it is a Bill *ex post facto*: Your Lordships have heard a great deal said upon the Hardships of Bills *ex post facto*.

We have been call'd upon to shew against what Law he has offended: it has been said, if he has not offended against any Law, will you make a Law in his Case, which will not be a Law in the Case of any other Man? This is a surprizing Objection.

The Notion I always had of a Law *ex post facto* was, where a Fact was made criminal by a Law, which was not so at the time that Fact was committed.

But is that the present Case? Was it no Offence, before this Bill was brought in, to correspond with the Pretender and his Agents, in order to subvert our Constitution?

Are we to be call'd upon to shew against what Law this is an Offence?

Or to have a Complaint made, that in punishing a Man for such an Offence, you are making a Law in his Case, that will not be a Law in the Case of any other Person?

I hope it will be a Law in the Case of every Man that equally deserves it.

But his Lordship is sensible of this Answer, and therefore gives it a very artful Turn, by applying it, not to the Fact, but to the Evidence. His Lordship seems to argue, that accumulative Evidence is as unreasonable as accumulative Treason; and objects that Proofs which communicate Light and Strength to each other, have only the Formality, without the Force of Evidence.

This Objection is destructive of all Proof that is not Mathematical; for all other Proof must necessarily be what he calls accumulative.

That is, it consists of a variety of Facts and Circumstances laid together, sufficient to induce a Belief which any of them singly would not do. This is the very Principle upon which the Trial of every Matter of Fact, not capable of a Demonstration, does and must proceed.

Your Lordships in the next place have heard a

string of Objections, that have been repeated against each of the Bills.

That a Subject of *England* ought to be tried according to the Laws of *England* and *Magna Charta*:

To be convicted by legal Evidence:

And that Distinction between legal and parliamentary Evidence is absurd.

All these Positions I agree to;

But at the same time I must affirm, that this is a Trial agreeable to the Laws of *England* and *Magna Charta*; and that a Proceeding of this Nature is as necessary a part of our Constitution, as the Establishment of the ordinary Courts in *Westminster-Hall*.

The difference between parliamentary and legal Evidence, taken in the general Sense of the word, Legal, is improper.

And I affirm, the Evidence which has been offered in support of this Bill, is legal Evidence.

What is legal Evidence, depends upon the Nature of the Inquiry, and the Judicature before which the Inquiry is made.

Depositions in writing are not legal Evidence in a Court of Law, but they are legal Evidence in a Court of Equity.

Upon an Indictment for Felony, or any other Misdemeanour, one single positive Witness, or Circumstances only without any positive Witness to the Fact, is legal Evidence.

But upon an Indictment for Treason, the Law requiring two Witnesses in the Courts below, one Witness, or Circumstances, is not legal Evidence.

In parliamentary Enquiries, which are excepted out of that Act and not restrained by any other, every thing is legal Evidence which may properly tend to a Discovery of the Truth.

I can't think myself at liberty at this time of Day, to mention what fell from the other side, against the Power of the Parliament in general, and the rather because the next Objection which they relied upon was introduced with an admission of that Power.

But they say it ought never to be exercised but in Cases of Necessity; and instance particularly in the Bill against the *South-Sea* Directors, as a Case of that Nature. Is there any Comparison between the Offence of those Men, and of one who has endeavoured to subvert our whole Constitution, to destroy our Religion, our Liberty, and every thing that is valuable?

When we reflect that these Endeavours have been constantly carrying on ever since the happy Establishment of the Protestant Succession;

That the many Discoveries of their Plots, the many Examples of publick Justice, have had no other Effect, than to make them more subtle and cunning how to avoid the common Forms of the Law:

These Reflections shew the Necessity of such a Proceeding, to convince the World, according to your Lordships Report, that as Artifice and Disguise don't lessen the Danger to the Publick, nor mitigate the Guilt of the Offender, so neither ought they to protect him from Punishment.

The next Objection was addressed chiefly to one part of your Lordships, who were told that no civil Power upon Earth could deprive a Bishop of the Exercise of his holy Function, but that must be done by another Judicature; and therefore

fore it was observ'd by one of the Counsel, that wherever Issue is join'd in the Common Law Courts, whether Bishop or no, the Court where such Issue is depending, must write to the Metropolitan to try it, according to the Law of the Church.

Whether an Act of Parliament can deprive a Bishop, so as to make the Acts done by him afterwards invalid, is a Controversy not proper at this time; but it will be admitted on all hands, that an Act of Parliament may restrain a Bishop from the Exercise of his Function within any part of this Kingdom, so as to make the Exercise of it Criminal in him, or in any that assists him. And I believe if this Bill should pass into a Law, and there should be a Question whether his Lordship was afterwards Bishop of *Rochester*, the Courts of Law, upon producing the Act of Parliament, would hardly think it necessary to trouble the Metropolitan.

His Lordship has been pleas'd to say, that this is the first Instance where a Member of this House has been judged in another.

I wonder that his Lordship, who is so great a Master of our *English* Constitution, should have forgot the Case of one of his Predecessors in the See of *Rochester*, in the Reign of *Henry VIII.* against whom a Bill was brought in the House of Commons, inflicting severe Pains and Penalties, which pass'd in that House, and afterwards received the Approbation of this, and the Royal Assent.

They have clos'd their Objections to the Bill, with a very pathetick Admonition against the Consequences of it.

They say the wisest Man can't foresee, nor the most innocent Man declare himself safe from the Consequences of this Bill.

That a wise Man should not be able to foresee what will happen hereafter, is not very strange;

But he must be a very wise Man indeed, in my poor Opinion, who can foresee any danger to Innocence from the Proceedings upon this Bill. Your Lordships have attended with the utmost Patience, for seven Days together, to the Proofs for and against this Bill; and have given the Person accus'd all the Opportunities, afforded him all the Assistance possible to make out his Innocence.

And whoever shall use this Precedent as a handle for Oppression and Injustice, would certainly be guilty of the same Oppression and Injustice without this Precedent.

The next Part of their Defence, consisted in Observations upon the Evidence for the Bill.

They raise great Triumph from *Neynoe's* Examination, which they would represent as the Foundation of the whole Charge, or offered as such by the Counsel for the Bill.

But if it was, they have been so far from weakening, that they have added strength to that Foundation.

As to the Inconsistencies in it, they are not *Neynoe's*, but *Kelly's*. As to the Tale they have told, that at the very Time when he was deluding a great Man with Confessions, either to get Money out of him, or to find an opportunity of making his Escape, he should declare to *Skeene* and to *Steward* that what he had confess'd was false; I say, as this is improbable in itself, so it appears by our Evidence to be a mere Fiction of their own, without any possibility of being true.

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It appears to be an Attempt, by a parcel of desperate People engag'd in the same Interest, to weaken *Neynoe's* Evidence, whom they look'd upon as a Betrayer of their Cause and Party.

From the Evidence of *Neynoe* they proceed to the other Evidence.

And here they tell your Lordships that we have supported the Bill by Innuendo's, Arbitrary and Invidious Interpretations; that when a Woman is named, it means a Man; that two different Names signify the same Person; that Books of Account, and mercantile Terms, by a new kind of Metaphor, are taken in an ill Sense: and all this assisted with the Whimsies and Conjectures of Decypherers.

These are pretty sounding Expressions; but, when consider'd, are nothing but Sound.

Is it an arbitrary Interpretation, when a letter says, I saw Mrs. *Illington*, He is in great Tribulation for poor *Harlequin*, but *his* Obligations are the same, which he desires may be made known; to apply this to a Man? When two letters are wrote by the same Person, but sign'd by different Names, to apply those two Names to that Person?

When letters give a Caution not to write any more, till new Books of Account can be settled and sent over by safe Hands;

Because those who have got part may by the same means have got the whole:

To express a doubt whether they have been betray'd by false Friends, or an open Enemy:

To talk of having Wine, but wanting Barrels: of the absence of the King and Court, as affording a proper opportunity of sending over and selling their Wine:

A Man must have laid aside his Reason, that can think this the language of Persons really dealing in a mercantile way: 'Tis the plain and common Cant of a treasonable Correspondence.

They next object to the unreasonableness of applying the Circumstances which relate to *Jones* and *Illington*, to the Bishop of *Rochester*.

Was no body else besides the Bishop out of Town? Was he the only Man that had the Gout, or who lost his Lady at that time?

Were these Questions to be asked singly, they might be answer'd, that there were other Persons in the like Circumstances.

But then the Answers would be nothing to the Purpose.

The only Question applicable to the present Case would be, Is there no other Person who was in Town on the seventh of *May*, out of Town on the tenth and fourteenth, in Town on the fifteenth; whose Wife died the Week before the thirtieth of *April*, he himself then ill of the Gout; to whom a Dog was sent from *France* of the name of *Harlequin*, that broke its Leg, and was brought to Mrs. *Barnes*, by Mr. *Kelly*, in order to be cured?

These are the Circumstances of *Jones* and *Illington*, and they are every one prov'd true of the Bishop of *Rochester*; and I believe your Lordships can hardly think they are so of any other Person.

They said they should falsify several of these Facts; but they have only said it.

In the Papers they have produc'd from the Surgeon concerning the Dog, he contradicts himself.

In the first he says, he gave Mr. *Kelly* a Dog for his own use, to dispose of as he pleas'd;

In the second he says, he gave it for Mrs. *Barnes*:

But Mrs. *Barnes* tells you, that the Dog design'd for the Bishop was in her Custody, when the other given by the Surgeon was expected over.

Their Attempt to disprove the Circumstances of being in Town, has met with as little Success.

In a letter of the seventh of *May*, 'tis said Mr. *Illington* is come to Town for a Day only:

We shewed that the Bishop was in Town upon that Day; they answer us by saying, he stay'd in Town two Days after.

Does this disprove his being in Town upon the seventh? or does it weaken the Proof of his being then in Town, because he alter'd his mind, and staid two Days longer than perhaps he at first intended?

This is the only Attempt they made to disprove any of the Circumstances relating to Mr. *Jones* and *Illington*. As to the other Instances which they pretend to disprove, they relate to *Weston* and *Rig*, and were not mentioned by the Counsel for the Bill.

They next object to the Method of proving the Similitude of Hands, and observe that the original letter prov'd to be Mr. *Kelly's*, and the three letters applied to the Bishop of *Rocheſter*, are dated at four Months distance; and how is it possible, that the Clerks of the Post-Office should be able to swear upon their Memories that they are of the same Hand-writing?

This is not a fair Representation of the Evidence: For the Clerks told your Lordships that there was not any one Post, during all that time, which did not bring some letter in the same Hand, all which they copied, and had by that means contracted a perfect Idea of the Hand; so that they did not swear from Memory, but from a Knowledge gain'd by Experience, and many constant repeated Observations upon the same Hand.

There have been some other Objections made, that are scarce worth taking notice of.

'Tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, which *Kelly* could never say of the Bishop of *Rocheſter*.

Surely there is nothing in this;

'Tis an Expression that might be used of a Man of the gravest Character in a letter of this sort, to the Author of such a Present.

Mrs. *Illington* is mentioned eleven Days after the Bishop's Lady was dead. This is the Instance where 'tis said Mrs. *Illington* is in great Tribulation for poor *Harlequin*, but *his* Obligation is the same, which he desires may be made known.

That *Jones* is mentioned in other Cyphers for other Persons, as in one for the Duke of *Norfolk*, in *Plunket's* for a different Person.

But does it therefore follow that in *Kelly's* he can't mean the Bishop of *Rocheſter*?

It certainly does not.

And they seem to be convinced that the Bishop is too well described in this Correspondence, under the Names of *Jones* and *Illington*, to doubt whether he is meant by them.

And therefore they endeavour to give it another Turn, by saying this may be a malicious Contrivance of some Persons, who have inform'd themselves of his Lordship's Motions, and the Circumstances of himself and Family: And to make this the more probable, they say that *Jones* and *Illington* are the only Persons mentioned in this Corre-

spondence of Mr. *Kelly's*, with Circumstances of this Nature.

One would not imagine the Persons who made this Objection, had so often heard the letters read.

E. 41. 'Tis said *Hore* is laid up with his old Distemper, *Hobbert* is pretty well recovered.

E. 45. Mr. *Hore* is laid up, and so is *Jemison* with the Gout.

E. 49. *Rep.* is said to be in the Country.

E. 59. *Ho.* and *Den.* are said to be gone into the Country.

E. 62. *Nic. W.* is now in Town, he is well as to Health.

E. 64. *Trotter* is said to be out of Town the next Morning.

E. 69. *Den.* is said to come to Town, *Rep.* and *Ho.* to be in the Country.

E. 73. *C. Saunders* is well, and with a Friend in the Country.

These are all Instances where the same Circumstances are mentioned of other Persons, that are mentioned of *Jones* and *Illington*.

If *Jones* and *Illington* are ostent mentioned, it is because he was the principal Person in this Correspondence.

But this malicious Contrivance must be carry'd on by Mr. *Kelly*: for

It has been proved that the Letters were wrote in his Hand, that the Answers were address'd according to his Directions;

That he received the Letters so directed.

I believe your Lordships have no Suspicion that Mr. *Kelly* bore an Ill-Will towards the Bishop:

I am sure there has been no Proof of it, nor of any malicious Contrivance against him.

But, my Lords, this is the common trite Excuse of every petty Offender.

Your Lordships can scarce read a Trial, where the Defendant don't complain that it is all a malicious Contrivance of his Enemies.

I heard this very thing warmly insisted upon a few Terms ago, at another Bar, and with as much Proof, by a Person concern'd in a Part of this Conspiracy, who has since been attainted and own'd his Guilt.

But we have gone still further, we have shewn that *Kelly* was an Acquaintance of the Bishop of *Rocheſter's*.

Which is indeed acknowledged, without any satisfactory account given for what Purpose his Lordship should contract an Acquaintance with a young Fellow, that has deserted his Orders, and is a professed Nonjuror.

Your Lordships, I presume, from the Behaviour of Mr. *Kelly*, can hardly be persuaded that he had no other Employment under the Bishop than to furnish him with Beaver-Stockings, which the Bishop owns to have received from him as a Present.

But we have proved by the strongest Evidence that can be, by a letter under his Lordship's Seal, and I may venture to say (from the Observations that have been made from the letter itself) under his Hand, that *Johnson*, i. e. *Kelly*, is the Person in whose Hand the Bishop returns his Answers. No Account is given of this letter, by whom it was wrote, nor to whom, nor how it came among his Lordship's Papers.

All that is said in answer to it is, that 'tis possible Seals may be counterfeited, or there may be

be several Impressions of the same Seals: but is there any proof of this?

It appears that the Impression on the first letter was broke when seized; that it was in the Hands of the Committee of the House of Commons before the second letter was taken; which makes it impossible to imagine an Impression should be taken off the first to put upon the second.

But his Lordship is pleased to ask, Is it agreeable to the Cunning with which he is charged, to keep such a letter by him on purpose, as it were, to furnish his Adversaries with Evidence?

No, my Lords, neither do I imagine his Lordship knew he had it by him.

It was found amongst his papers, and, no doubt of it, was left there accidentally; and 'tis by such little Accidents that the most cunning Men are detected; there is no Danger of their committing greater Oversights.

His Lordship is pleased to observe, that at first the House of Commons represented this letter as a letter wrote to him; but now 'tis discovered to be wrote by him: It is so, and very plainly, and his Lordship may thank himself for the Discovery; and the not discovering it sooner is surely no Objection to the Truth of it when discovered.

It may be urged, and has been insinuated, that if Mr. *Johnson* is the person in whose hand the Bishop returns his Answers, yet how does it appear that these particular letters which are applied to the Bishop, were wrote by his Directions?

If it appears that *Johnson* is the person in whose Hand he writes, and that these letters are of the Hand-writing of *Johnson*, signed by that Name, which denotes the Bishop in the Correspondence, this will be thought a reasonable proof that they were wrote with his privacy.

But they said they should prove it impossible that these three letters should be wrote with the privacy of the Bishop; for they bear Date the 20th of *April*, whereas the Bishop came to Town the 11th, went to *Bromley* the 12th, and within two or three Days after was taken so ill with the Gout, that he had neither the use of his Hands nor Feet, and had a Servant always attending him, who will prove that no Stranger came near him all that time.

If this had been made out, it would not be a proof that the letters were not dictated by him; for both *Kelly* and the Bishop were in Town upon the 11th and 12th, and the Bishop was not confined at *Bromley* upon the 13th and 14th, when Mr. *Kelly* was out of Town, and probably at *Bromley*. And tho' the letters bear Date upon the 20th of *April*, yet 'tis not to be imagined, that they were wrote upon that Day; for it requires a good deal of time to reduce three letters into Cyphers; and the Method generally used, where letters are to be sent in Cyphers, is, to write them in common Hand first, and then reduce them to Cyphers after: so that it's probable the Substance of these letters was dictated many Days before they were perfected and sent.

But the Evidence given by the Bishop's Servants is not to be regarded.

The first Servant, when he had sworn what he thought was material for the Bishop, being pressed by a noble Lord with a Question relating to the letter directed to *Dubois*, refused to give any An-

swer, till the Bishop publickly gave him leave; tho' he was sworn to speak the whole Truth: which shews too great an Attachment to his Master's Interest, to deserve much Credit.

He and the second Witness did admit, that the Apothecary, or the Minister of the Parish, might be with the Bishop without their Knowledge; and if so, why not Mr. *Kelly*, whose Visits required more Secrecy than either of the others?

And I must here observe, that what the Reverend Prelate insisted upon, to add Credit to the Evidence of these Witnesses, is the greatest Objection to their Testimony imaginable.

They tell your Lordships, that tho' they were with the Bishop in the Tower, yet he never once spoke to them concerning the Matter they had given in Evidence, till they themselves recollected it upon reading the Report; and finding that the Bishop was charged with being the Author of three letters, dated the 20th of *April*, they immediately recollect that the Bishop was ill at that time, and they constantly about him. This seems to be a Story scarce credible,

That the Bishop himself, who was so nearly concerned, should not, upon reading the Report, recollect the Circumstances he was under at the time when those letters bore Date, if the Truth was as they would represent it; but that the Servants should first recollect this, and suggest it to their Master.

Or if the Bishop did recollect it, 'tis strange he should not mention it to those Servants, who were present with him in the Tower, and the only Persons, who, as they say, were capable of clearing his Innocence.

This had been very natural, and proper under his Circumstances: and his not speaking to them first, could hardly proceed from an unreasonable Scruple, lest he should be suspected of laying a byass upon them; since his Lordship has, after he knew they were to be Witnesses, given each of them a place under him as Dean of *Westminster*.

The rest of the Servants that were called, tho' they contradict the first, by admitting that two other Gentlemen were at the Bishop's at *Bromley*, during the Time in question; yet they plainly shew a greater Regard for their Master's Interest, than for Truth: for tho' one of them was but the Helper in the Stable, and another the Nurse that attended his lady in her Illness, yet they take upon them to swear, that they verily believe no Stranger could be with their Master in private, but they should have known of it, and that they never knew of Mr. *Kelly*'s being there.

Every body's Observation must suggest to them that such a Belief must be without Foundation.

The next Arguments used on behalf of the Reverend Prelate at the Bar, were raised from his unambitious resigned Temper of Mind, and from the Style of the letters laid to his Charge. That it's not probable he should use so indecent an Expression of persons he was concerned with, as to call them *pretending unsupported People*.

What Weight there is in these Arguments, I must submit to your Lordships, who are much better acquainted with his Temper and Style than I can pretend to be.

The last thing pressed by the Reverend Prelate, is a solemn Protestation, I cannot say of Innocence,

cence, because it seems to me to be conceived in such Terms as not to contradict any part of the Charge insisted upon by the Counsel for the Bill:

It is chiefly calculated to answer some particular Circumstances of Times, without any Denial of the general Charge, or the least Declaration of Affection or Loyalty towards his present Majesty.

But if his protestations amounted to a direct and positive Denial of the Charge, they ought not to have any Weight with your Lordships, since this is a Defence equally in the power of the most guilty as well as the innocent: a little proof is better than many protestations.

And I can't help observing upon this Head, and I hope his Lordship won't impute this Observation to ill-nature, but a Sense of my Duty, which obliges me to make all proper Observations, That it appears his Lordship has not always that strict Regard to Truth, which he ought to have, by the Papers taken upon his Servant at the Tower.

The Nature of the punishment has been much talked of in the Course of these proceedings, and great lamentations made upon it, but surely without any Reason.

For this Argument supposes the party guilty of the Charge, or else it's ridiculous to object to the Severity of the Punishment.

And I may venture to affirm, this is the mildest punishment that ever was inflicted for such an Offence.

His life is not touched; his liberty nor property affected; he is only expelled the Society whose Government he disapproves, and has endeavoured to subvert; and is deprived of the publick Employment which that Government had intrusted him with: The Enjoyment of his life, his private Estate, and his liberty, under any other Government that may be more agreeable, is allowed him.

This is scarce to be called a punishment, being nothing more than what was absolutely necessary for the publick Security.

The Commons of *Great Britain* have done their part towards providing this Security, and I don't doubt but it will meet with the Concurrence of your Lordships.

The Counsel having done, the Lords in a grand Committee went thro' the Bill, and about ten of the Clock at Night, adjourned to *Wednesday, May 15*.

Their Lordships being then sat, the aforesaid Bill was read the third time, and a Motion being made, that the Bill should pass, it occasioned a long Debate, in which the Bishop of *Salisbury* spoke as follows.

My Lords,

AS I have sometimes troubled your Lordships with what I had to say in other Debates, I believe it will be expected that I should say something in a Case so extraordinary as this is; and wherein a Brother Bishop is so nearly concerned. I beg leave to begin with taking Notice of some Things that were peculiarly addressed to this Bench, both by the Reverend Prelate, and his Counsel, from the Bar.

The first is, That we would consider how agreeable it may be to the Canons and Discipline of the Church, in this extraordinary Manner to

deprive a Bishop of all his Preferments; and to prohibit him the Use and Exercise of his Function for his life.

As to this Objection, whatever influence it may have abroad among ignorant people, when the Speeches come to be printed; yet, as to your Lordships, who know our Constitution so well, I cannot imagine that it can have any Weight or Influence at all. And indeed when I consider all the Acts of parliament relating to the Supremacy, that have been made for near two hundred Years, when I consider the Articles of our Church, our Canons, and the Subscriptions that the Bishop himself must have made, and must have required from others, in the Exercise of his Function as a Bishop; when, I say, I consider all these things, it is matter of Wonder to me, that such an Objection should be made, either by a Bishop of the Church of *England*, or by a lawyer of the Kingdom of *England*.

I do not indeed recollect above one instance of a particular Act of parliament made to deprive a Bishop; which is, that of *Fisher*, Bishop of *Rocheſter*; who was so deprived in the Time of *Henry VIII*. But, as to general Acts of Parliament, whereby both Bishops and Presbyters have been deprived of their Preferments, we have a good Number. Thus, in the beginning of *Queen Elizabeth's* Reign, almost all the Bishops of *England* were so deprived: And at the Revolution, many were so; and all might have been so, if they had not complied with the Terms of the Act of Parliament: And at the Restoration, many hundreds of Presbyters were deprived in the same manner. And I conceive that it cannot well be doubted, but that the same Authority which can make laws by which the whole Bench may be deprived, may exert itself in a particular Case, if they have just Reasons for it.

As to the Trial of Bishops for any Crimes they shall be guilty of, we are to consider the different Nature of the Crimes of which they are accused; and the Trial by law must be accordingly. If the Crime be of an Ecclesiastical Nature, such as Ecclesiastical Courts can take Cognizance of, as Simony, Heresy, and the like; the Trial regularly must be by the Arch-Bishop of the Province, taking to his Assistance some of his Suffragan Bishops. But even in this Case, if either the Arch-Bishop shall, upon Complaint, neglect to try him; or, if upon Trial he shall acquit and absolve him; the Accuser may appeal to the King in Chancery: Which Court may appoint a Commission of Delegates, who may, by the Authority of the Crown, judge him, deprive him of his Bishoprick, prohibit him the Use of his Function for his life (if the Crime deserve it) tho' he were before acquitted by the Arch-Bishop. But if the Crime be of a Civil Nature, such as Treason (which is the Case now before us) the Ecclesiastical Authority has nothing at all to do with it; and should any Ecclesiastical Judge attempt to meddle with it, he would be judged to attempt against the King's Crown and Dignity, and quickly have his Proceedings stop'd, by a Prohibition out of the Temporal Courts. And I would beg leave to observe further, that were this Bishop to be tried in the common Course of law, for the Crimes whereof he is accused in this Bill, it must be either by your Lordships, as a Member of this House; or by the Judges and

and a Jury in *Westminster-Hall*. I would not at present say which, because it would lead me out of the way: But in this Case, if either your Lordships, or the Judges below, should pass Sentence upon him for the Treason of which he is here accused, that Sentence would, *ipso facto*, deprive him of the Bishoprick: It would also make him liable to lose his life; but it would not, *ipso facto*, take it away, as it would his Bishoprick: He might notwithstanding that Sentence live many Years; but from the Moment of it, would be no more Bishop of *Rochester*.

These Things, I humbly conceive, are abundantly sufficient to answer this first Difficulty; and therefore I shall add no more but this one Observation: That the way that is now taken to deprive him, is the only way that I know of, wherein the Bishops can have any Part in the Sentence of Deprivation.

The next Thing that was suggested from the Bar, particularly to this Bench, was, That we should consider well what we are doing, and have a care that we do not, by concurring in this Bill, make our Titles to our Bishopricks precarious.

As to this Admonition, the Answer is very easy, That it becomes us, as we have the Honour to have Seats in Parliament, to take care to do Justice; as, on the one side, to the Prisoner, so on the other side, to our King and Country; and to trust in God, that in so doing we shall neither hurt ourselves, nor our Successors. But, so far as just Judges may look to Events, the Argument seems to me to lie the other way: For, if for want of doing Justice against Traitors to King *George*, the Pretender should happen to prevail, (which God avert) the Title of Protestant Bishops is like to be very precarious indeed.

As to the power of Parliament to pass Bills of this kind, the Parliament always had it, has frequently exercis'd it, and always must have it; it being essential to the very Being of the Supreme Power. The lives and liberties of every Man in *England* are subject to it: and tho' the Exercise of this Power may be dangerous to Persons who will venture upon treasonable Practices, trusting to their Cunning and Artifice to screen them from the Law; yet I have that Confidence in the Integrity and Justice of the Crown, and two Houses of Parliament, that, so long as this Example is followed, of giving a full and fair Hearing to the persons accused, innocent Men cannot easily suffer; or, in all Events, that if Corruption or Faction should ever so far prevail, that there should be Danger to innocent Persons, it will be much easier to corrupt Witnesses or Juries, or to find other Methods to destroy them, than it will be to prevail upon a Parliament to do it: As I am persuaded that, in this particular Case, had there been any Corruption, some other Method would have been found out, more effectually to come at the Person concerned than this is like to do.

The last Particular that the Bishop peculiarly address'd to this Bench, was, That we would consider the Words of *St. Paul to Timothy*; *Against an Elder receive not an Accusation, but before two or three Witnesses*, 1 Tim. 5. 19. The Sense of which Words his Lordship understood to be, That an Accusation should not be so much as re-

ceived against an Elder or Presbyter, and much less against a Bishop, but upon the Oaths of two or three Witnesses.

In answer to this, I beg leave to observe, that our Translation renders the Words, not, *upon the Oaths*, but, *before* two or three Witnesses: which seems to import a very different Sense from that his Lordship puts upon them. But, not to enter into any critical Examination of the Truth of our Translation, or what the real Sense of the Words is, I would only make these two short Observations: First, that the Sense the Bishop puts upon them, that an Accusation against a Presbyter or Bishop, must not be so much as receiv'd into Court, but upon the Oaths of two or more Witnesses, is not practis'd in the Church of *England*; and, I believe, never was practis'd in any Christian Church whatever.

The second Observation I would make, is, That whatever be the Sense of these Words, it regards only the Conduct of a Bishop towards his Presbyters; but certainly was never intended to give a Law to the Supreme Power of a Kingdom, in its Proceedings in Cases of High-Treason, against any Subject whatsoever.

But the Bishop urges further, that the *Jewish* Law did require at least two or more Witnesses in all Judicial Proceedings; and from thence infers, that it ought to be so amongst us.

In answer to this it may be reply'd, That this is a part of the Judicial Law of the *Jews*, which was not given to us, and therefore doth not oblige us any more than the rest of that Law doth; except where the Reason of the thing lays an Obligation upon us. But indeed, I am of Opinion, that that Law doth oblige us, so far as it was intended to oblige them, and so far as it can be adapted to the infinite Variety of Cases that must happen in Judicial Matters. That Law is very short, and therefore must leave many Questions that may be made about it undetermined: I shall at present take notice of these two only, which may be material to our present Dispute; the first is, Whether the Meaning of it be, that all Controversies and Accusations whatever, must be determined by Witnesses and no other way? or, Whether upon Supposition that the Matter be to be determined solely by Witnesses, and no light can be brought to it any other way; that then the Witnesses must be at least two? The second is, Whether those Witnesses must swear directly to the Fact; for Instance, that they saw such a Man murder another, or the like; or whether it may not be sufficient, that they swear to such Circumstances, as infer a strong and violent Presumption, that such a Fact was committed by such a Person?

These things are left undetermined in that short Law of the *Jews*; but, I humbly conceive, are sufficiently determined by the Nature of the thing, and by the Laws of all Nations, and particularly of our own. It is true indeed, that in Cases of High-Treason, we have from Political Considerations determined, that there must be two positive Witnesses, to some one or more Overt-Acts of the same Treason: but, as to all other Crimes, that equally affect the Lives and Estates of all the Subjects of *England*, this is not the Case; and Men may by Law lose their lives when there is not so much as one positive Witness to the Fact.

I beg leave to explain this in the Words of my Lord Chief Justice Coke; 'When a
* 1 Instit. fol. 6. Trial is by Witnesses, * regularly the
 ' Affirmative ought to be proved by two or
 ' three Witnesses; but when the Trial is by Verdict of
 ' twelve Men, there the Judgment is not given upon
 ' Witnesses, or other kind of Evidences, but upon the
 ' Verdict; and upon such Evidence as is given to the
 ' Jury, they give their Verdict; and many times Ju-
 ' ries, together with other matter, are much induced
 ' by Presumptions.' And indeed, if no Man could
 be convicted of Murder, or Robbery, or other
 Crimes of that Nature, but by two positive Wit-
 nesses that saw the Fact done; nothing would be
 easier or safer than the Commission of those
 Crimes; and no Man could have any Security,
 either for his Person or his Estate: And therefore,
 if in Cases of High-Treason our Law requires po-
 sitive Witnesses, it is not from any moral Necessi-
 ty, or point of Conscience; but from political
 Reasons, which must, and always will be, subject
 to the Judgment of Parliament.

Having now done with what was from the Bar
 peculiarly applied to this Bench, and having, I
 hope, given a very plain Answer to it, I now beg
 your Lordships leave to proceed more directly
 to the Bill itself. And here, two things are ne-
 cessary to be considered, in order to convince
 your Lordships, that it is a Bill fit to be passed:
 The first is, the Lawfulness of it; the second is,
 the Prudence or Expediency of it.

As to the Lawfulness of it, it will be necessary
 also to consider two things; first, Whether your
 manner of Proceeding in this Bill be lawful: se-
 condly, whether the Bishop be really Guilty of
 the Crimes charg'd upon him.

As to the manner of Proceeding, many things
 have been objected: That it is by way of Bill,
 and not a Trial in the Course of Law; That Evi-
 dence has been admitted, that would not have
 been admitted in any of our Courts; That these
 Things are contrary to the liberty of the Sub-
 ject; That every Subject has a Right to the Laws
 of his Country; and That he has an Injury done
 him, if he be denied the Benefit of them. This I
 take to be the Sum of what has been objected a-
 gainst the Justice of your proceedings in this Bill.

In Answer to these Objections, I beg leave to
 consider, first, wherein the liberty of *England*
 consists; which is a Point commonly pretty much
 mistaken. Many People are apt to imagine, that
 the Difference betwixt us, and some of our neigh-
 bouring Countries, is, that they are under Abso-
 lute Power, and we are not; whereas in truth all
 Countries, that are Supreme within themselves,
 have equally an Absolute Power; and in the Na-
 ture of the thing it cannot possibly be otherwise:
 No Government can subsist, if there be not a
 Power in it to change, to abrogate, to suspend,
 or dispense with its Laws, as Necessity or Con-
 veniency shall require; which is what we call
 Absolute Power: and therefore, the Difference
 betwixt one Government and another, does not
 lie in this, that one has such a Power and the
 other has not; but lies merely in the Difference
 of the Hands in which this Power is placed.
 Where this is placed in one Hand, in the King,
 we call that an Absolute Monarchy: Where this
 is not solely in the King, but only as he acts in
 conjunction with the States of the Kingdom,
 that we call a Limited Monarchy; and the

People that live under such Government, are
 called a Free People; because they live under
 Set Laws, which could not at first be made,
 nor can afterwards be altered or dispensed with,
 but by their own Consent. However, there is
 still in such Countries, a Power equally above all
 their Laws, as there is in the most absolute Mo-
 narchy in the World.

What I have said upon this first Head, will in a
 great measure explain a second Question: What
 that Right is, which the Subjects of this Country
 have to its Laws; which is, in short, a Right to
 claim the Benefit of them against the Crown, or
 any Court acting under the Crown, till the States
 of the Kingdom (which are virtually every Man in
 the Kingdom) think fit to consent to the Altera-
 tion of them. The King is indeed Supreme, but
 his power is only according to the Laws in being:
 By them he is bound to act, and if any of his Of-
 ficers act contrary to them, what they do is null
 and void; and they are punishable for it; and
 the Subjects have a Claim of Right against them.
 But if the King and his People think fit to come to
 a new Agreement to alter any such Law, there's
 an end of all Claim of Right in the Subject: the
 Claim is taken away by their own Consent; for,
 as I said before, every Man in the Kingdom vir-
 tually consents to what is done by an Act of Par-
 liament.

And there is an absolute Necessity that there
 should be such a Power as this in every Country;
 for the State of human Affairs is so changeable,
 that it does not admit of any Set of unalterable
 Laws. What is good at one time, may be de-
 structive at another; and what is generally good,
 may, under particular Circumstances, require a
 Dispensation by a proper Authority. And here,
 give me leave to observe to your Lordships, the
 Difference there is betwixt the eternal Laws of
 Justice and Righteousness, and all positive Laws
 whatever. That as to the first, we are made for
 them, and the nearer we do in all things conform
 to them, the more noble, and lovely, and excel-
 lent Creatures we are: but as to positive Laws,
 they are all made for us; and the more they con-
 form to us, the more they obviate all our Wants
 and Difficulties, the more they answer to all our
 Necessities, the better they are.

As to what is complain'd of, that your Lord-
 ships have admitted Evidence to be read, that
 would not have been admitted in the Courts be-
 low: I conceive, that acting in the Capacity you
 now do, you have a full Power to do it, and have
 not broken any of the general Rules of Justice by
 it. You have let in all the light that you thought
 might be proper to give you a full Knowledge of
 the Matter; and in the Capacity you now act, I
 cannot but humbly be of Opinion, it was your
 Duty to do so: but in forming of your Judgments,
 I take for granted, that your Lordships will dis-
 tinguish, and lay no more Weight upon any thing
 than it deserves.

As to the Rules of receiving Evidence in *West-
 minster-Hall*, I conceive, that they are no part of
 natural Justice, but only artificial Rules fram'd for
 Conveniency; and bind no Courts, but as they
 have agreed to them, and so are become the Cus-
 toms of the Court. That these Rules are no part
 of natural Justice appears from hence, that even a-
 mong ourselves they are different in different
 Courts: That those used in our Courts, are very
 different

different from those used in other Countries: That they differ here, according to the different Causes or Crimes that are to be tried. Nay, they are so far from being fundamental Parts of Justice, that they must require a good deal of Time and Art to form them. And I am persuaded, that was a Person of good natural Sense, who knows nothing of the Law, asked his Opinion; he would be apt to think it to be a Part of natural Justice, that every Person that prosecuted a Cause in any Court, should be at Liberty to produce before that Court, whatever he thought material to his Cause. And there is no doubt, but that this was the original Way of Proceeding: but that in process of Time, when Courts came to have a good deal of Business, and they found by Experience, that this Way of laying every thing before 'em, tended to lengthen Causes, (which was especially inconvenient where Juries are concerned, who must end a Cause before they part) these Rules were gradually found out; which, tho' they may be, for the Reasons above specified, generally convenient, yet may sometimes hinder Justice, by not suffering all the Light to come into Court, that may be material in the Cause.

Having said thus much concerning the Justice of your Method of Proceeding, I now come to consider the second and the main Point of Justice to be regarded in this Bill; which is, Whether the Bishop be Guilty, or not, of the treasonable Practices charg'd upon him in it. And in this I shall be the shorter, because your Lordships have heard the Evidence on both Sides, and all that has been said from the Bar by both Sides upon it; and because there are many Noble Lords in the House, much abler to lay things of this Nature distinctly and clearly before your Lordships, than I am.

The Cause of *Kelly* is so connected with that of the Bishop, that I must beg leave to speak a few Words to the one, before I proceed to the other. As to *Kelly*, I would observe in the first Place, that one strong Presumption of his Guilt is, that when he was first taken up, he resisted the Officers; that he seized his Sword, and some Papers that had been taken away from him; and was resolute to burn those Papers, tho' with the apparent Hazard of his own Life, and being guilty of the Murder of one of the Officers that had seized him.

In the next Place, it is prov'd before your Lordships, that after he was taken up, the People at his lodgings burn'd the rest of his Papers; a plain Evidence, that they who knew his manner of Life and Conversation, suspected that he was Guilty. And this is agreeable to what *Neynoe* told the Chancellor of the *Exchequer*; that there was at that time, a general burning of Papers.

Thirdly, Another Presumption of his Guilt, is, that when he was taken up the second time, he offered several Sums of Money to the People of the House where he was in Custody, to suffer him to escape, as appears from their Oaths at the Bar. These things I mention, not as full Proofs of his Guilt, but as strong Presumptions, that make every thing else that is sworn against him very credible.

The chief Evidences of his Guilt, are, a great Number of intercepted letters, both from him, and to him, containing treasonable Matters. Those from him, are by several Witnesses prov'd to be his Hand-writing, particularly by the Officers of the *Post-Office*, who took them and tran-

scribed them. And as to those to him, several Witnesses have prov'd that he gave Orders at several Publick-Houses to take them in, when they came from the Post; that he himself received them from thence, opened, and read them: And it is also farther proved, that Answers were returned to them in his own Hand-writing. These things all together, I take to be such plain and strong Evidences of his Guilt, that I shall trouble your Lordships no farther about him.

As to the Person concerned in this Bill, tho' it be a great Trouble to me, to think that any Bishop of this Church should be guilty of so foul a Crime, as that objected to him; yet I cannot but be of Opinion, that if he be really guilty, the Interest of our Church, as well as Justice to our King and Country, do require, that he should be convicted and punished. And indeed, I cannot but be humbly of Opinion, that whoever believes *Kelly* to be guilty, must believe the Bishop to be guilty too.

I shall not insist upon what is commonly called Hear-say Evidence, tho' there be a great deal of it against the Bishop; only must observe, that the Conduct of a Protestant Bishop must have been very odd and unaccountable, if he be innocent, that so many Jacobites (as have done in this Case) should declare, that they not only esteemed him to be in the Plot, but to be the chief Conductor of it. It is, however, fit to say something as to the Case of *Neynoe*; because the Bishop and his Counsel have taken up so much of your Lordships Time, and produced so many Witnesses to prove him a Knave. I did indeed myself always think him to be a Knave, and that nothing that he said was to be believed, merely upon his Authority: But on the other side, the Testimony of the greatest Knave in the World, may be taken against himself: and they themselves have proved, that he was a Jacobite, and thoroughly in that Interest, even when he was making some Discoveries against them; and therefore, what he says, in that respect, bears some Weight; as being against Persons whom he favoured, and would hurt as little as possible. Some other Things that he had said are also confirmed by concurrent Circumstances, and other Discoveries; and these may have their Weight, tho' he were never so great a Knave. One of the Things that he said in his Confession, was, that he frequently went with *Kelly* to the Bishop of *Rockester's*, and left him there (as *Kelly* told him) to write his letters. This is confirmed by a credible Witness at your Bar, who swears, that *Neynoe* used to be frequently at his House, and told him, at least three or four times, that he waited there for a sensible ingenious Gentleman, that was gone about Business to the Bishop of *Rockester*: He did not indeed tell him his Name; but the thing seems to me to look stronger than if he had; because it would have looked more like a Piece of Art and Contrivance, to have told the Name of a Man, whom he knew to be gone to the Bishop about a criminal Correspondence. I would only beg leave to take notice to your Lordships of one thing more relating to *Neynoe*: the Bishop's Witnesses have fully proved, that *Neynoe* told them, that the Chancellor of the *Exchequer* had given him several Sums of Money, to endeavour to get out of *Kelly*, the Explication of the Cant Names that were used in the Correspondence;

dence; and that he had promis'd him much greater Sums, if he would go to *France*, and get it out of *Dillon* and the Jacobites there: The Inference from which I take to be very plain, that the Court did not then know, who the Persons were, that were designed by those Cant Names; and that they did believe that *Kelly* did know, and that *Dillon* and the Jacobites in *France* knew too: which effectually and fully confutes that Suggestion of the Bishop, of which he did not bring the least Proof, that the Plot was a Contrivance of Persons in Power.

The next Thing I would beg leave to take notice of, relating to the Bishop, is a letter (taken among his Papers) from a lady of great Quality; of which the Bishop, tho' it was objected to him by the Counsel for the Bill, has taken no notice; which I conceive he would and ought to

have done, had it been possible to give any fair Account of it. The

* *The Dutches of Ormond.* Lady * in that letter tells him, that she sent something that she had received, she could not tell for whom; but let it be for whom it would, she thought He might be trusted, and that it could not be put into better Hands. A strong Suspicion this, considering all Circumstances, that here was a Correspondence by Cant Names, which the Lady did not certainly know, but believed the Bishop might; or however, that he was in all Events a Person to be trusted.

Another very suspicious Circumstance against the Bishop, is, the letters from Captain *Halstead*, and what has been proved at your Bar, that this same Captain *Halstead*, a little before he went in his Ship to fetch over the Duke of *Ormond*, waited upon the Bishop, and stay'd with him an Hour. This Thing indeed directly proves nothing; but all things considered, is very suspicious: and the more so, because the Bishop has given no Account, either of his Acquaintance with him in general, or of the particular Reason of that Visit, at a time that leaves so much ground to suspect the worst.

The next Particular that deserves your Lordships Consideration, is, the letter to *Dubois*, found among the Bishop's Papers when he was taken up, and found now to be sealed with the same Seal with that letter taken upon the Bishop's Servant, which he confesseth to be his own Hand-writing. It is not indeed proved, that the letter to *Dubois* is the Hand-writing of the Bishop: but any body that reads it, will easily be persuaded, that it is not the natural and ordinary Way of Writing of any Person, but a disguised Hand like a Print; except only some few letters which escaped the Care of the Writer, and are very like those of the Bishop. But after a long Examination, which has taken up a great deal of your Lordships Time, it appears plainly, that the Seals are the same, and that the one could not be counterfeited from the other; because, the first letter was originally taken with the Seal broken, and was in the Possession of the House of Commons when the second letter was taken upon the Bishop's Servant. It appears plainly by this letter to *Dubois*, that the Person who wrote it was in a secret and dangerous Correspondence; that he was an Acquaintance of Mr. *Johnson*, or *Kelly*; that he received letters by his Hand, and wrote an Answer in his Hand. How far all these Circumstances, taken together, prove the Bishop to

be the Author of this letter, I must submit to your Lordships Judgment: for my part, I think they do; especially considering, that the Bishop has given no Account of it, which he ought to do by Law, of a letter of this Nature, plainly proved upon Oath to have been in his Possession.

I now beg leave to proceed to that which is the principal Charge against the Bishop, the dictating to Mr. *Kelly* the three letters of the 20th of *April*; sign'd, one, by the Name of *Jones*; another by the Name of *Illington*; the third by the Figures 1378; which the Decyphers explain by the Letter *R*. The first, directed to Mr. *Chivers*, or *Dillon*; the second to Mr. *Musgrave*, or Lord *Marr*; the third, to Mr. *Jackson*, or the *Pretender*.

It may be proper, before I take notice of the Proofs which shew that the Bishop did really dictate these letters, to take notice of an Objection with respect to the Time: The letters are dated the 20th of *April*, and the Bishop has produced five or six of his Servants, who swear, that about that Time he was so very ill, that he could not write himself; and that he did not see any Person to whom he could dictate these letters. Now in answer to this, it may replied: That it does not appear, that all the Servants which the Bishop then had, were produced before your Lordships; and you cannot but be sensible, that reasonable Practices are commonly carried on in a very secret Way: and it appears, that the Bishop's Correspondence with *Kelly* has been so carried on; for tho' there is plain Evidence, that they were frequently together, and that they were acquainted is confess'd, both by the Bishop and *Kelly*; yet, scarce any one of the Servants produc'd, would confess, that ever they had seen *Kelly*, or so much as ever heard of the Name of *Johnson*, which was the Name by which he went. In the next place, none of these Witnesses prove, that the Bishop was so bad that he could see no Company, till about the 16th or 17th of *April*; and it's very probable, that the letters must have been dictated so long, if not longer, before the 20th on which they are dated; because *Kelly* was to transcribe and put them into Cypher, which is a Work of Time and Care; and perhaps after all, they might be designedly post-dated, that the Bishop finding himself going into a great Fit of the Gout, might have all that to plead which your Lordships have heard, if the Matter should ever be called in question.

Upon all these Considerations, I cannot but think it very clear, that the Bishop might have dictated these letters: We are now therefore to examine whether he did or no.

The first Thing that brought any Light into this Matter, was the small Accident of a Dog being sent from *France*, which, by the intercepted letters appeared to be sent to one that went by the Names of *Jones* and *Illington*. When Mrs. *Barnes* was examined before the Council, upon *Kelly*'s being taken up, it appears plainly she was upon the Reserve, and would confess nothing that she thought might tend any way to hurt *Kelly*: but being ask'd about this little Dog, who it was for, she readily answered, that *Kelly* had told her it was for the Bishop of *Rochester*; which she has since confirm'd by Oath at the Bar of this House. This little Accident, not suspected at the time of the Discovery to be of any

any Consequence, has given Occasion since, to look into so many Circumstances, as plainly bring the matter home to the Bishop. And indeed, if all the particulars in the intercepted letters be compared, with those things that are in proof with respect to the Bishop, I believe your Lordships will be of Opinion, that they cannot all belong to any one Person in the World besides himself. In the first place, since it's proved that *Kelly* wrote these letters, the person who dictated 'em must have been an Acquaintance of *Kelly's*; it is confessed on all hands that the Bishop was so. In the next place, it is implied in one of the intercepted letters, that the person that went by the Name of *Jones* and *Illington*, was a Clergyman; so far still agrees to the Bishop. Again further: this person is mentioned in all the intercepted letters, as a person of great Consequence and Credit, upon whose advice the party very much depend: and indeed the very Air and Manner of writing the three letters, plainly shew, that the person who wrote 'em, thought himself so; this also agrees with all the other Discoveries about the Bishop. Were there no other particulars but these, it will be hard to imagine that they could well belong to any other person. But if we consider further, that this *Jones* or *Illington* came to Town such a Day of the Month, went out of Town such another Day of the Month, came back again to Town such another Day, was himself sick at such a time, that his Wife was sick at such another time, and that she died at such a time; all which are in Evidence with respect to the Bishop; if we do, I say, consider all these Circumstances together, it will plainly appear, that they can belong to no other Man in the World but the Bishop.

After this, I humbly apprehend nothing need be said; however I beg leave just to mention something relating to the letter that was taken upon the Bishop's Servant; by the whole Air of which letter, it looks as coming from a person who did not esteem himself to be innocent, but who thought, that nothing could be legally proved against him: and therefore there is not one Word of his Innocence in it, which is the first Thought that must naturally have come into the Head of any one that really was so. He writes wholly with the air of a Man that had been used to Intrigues; speaks of the Concern that his Friends should have for him and the Cause; discourses largely about the Kind of Evidence that was against him; takes notice in particular what cannot affect him: *If (says he) the Nar-*

** i. e. Report. rative * relates chiefly to Neynoe's Sample's, and Laver's Affairs, so far it cannot affect me; for I never heard of the Names of either of the Three, till after this Plot broke out.* It is plain by these Words, that he did not then know what was in the Narrative against him; but he is very sure, that neither *Neynoe* nor *Sample*, nor *Laver* could affect him. Could an innocent Man have thus distinguished, and could not they have affected him as much as any body else, if he really was innocent? Nothing can affect such a Person but Forgery, and that may come from any Quarter: but in the whole letter he does not express the least Suspicion of Forgery; and yet, as I said before, this is the first thought that must naturally have come into the Head of an innocent Person, because nothing but Forgery could do him any harm. I would only just beg leave to

hint at this one thing more; That as he says, that these three Persons could not affect him, because he never knew 'em; so accordingly they have not affected him, or said any thing of their own Knowledge about him; which is one good Evidence, that what is said against him is not forged but real.

I am afraid that I have troubled your Lordships too long, tho' with a very imperfect Representation of the Justice of this bill; and therefore shall be shorter upon the next Head, which is the Expediency or Prudence of it.

Had there been what we call legal Evidence against the party concerned, your Lordships, I take for granted, would not easily have gone to this extraordinary Method of Proceeding: for tho' it cannot be doubted but that the Parliament have this Power, whenever they think proper to make use of it; yet, I do agree with other noble Lords, that it is a Power not fit to be used, but where and when the Publick Good requires we should use it, which I humbly conceive is the Case at present. A most dangerous Plot against the Government has been discovered: a great number of letters and papers relating to it have been laid before the two Houses of Parliament: these have been printed and published by Order of both Houses: The Eyes, not only of our own Country, but of all *Europe*, are upon us, to see what we will do. Tho' the Evidence of a Plot in general, be as clear as the light; and the Evidence against several particular Persons very plain; yet, as our laws are, it is not what we call legal Evidence: The Parties concerned will make no Confession, and we have not the Methods used in all other Countries, to extort Confession from them. What then? Shall we see our *King* and *Country* in Danger, and do nothing for them? Shall Conspirators go on with total Impunity, only because they are obstinate, and artificially screen themselves behind the law? I doubt, my Lords, that if this prove the Case, we shall appear ridiculous in the Eyes of all the World: That our Friends and Enemies both at Home and Abroad will think, that we have no Zeal for the Preservation of our King and Government; and if once they do think so, your Lordships cannot but be all sensible, how this must encourage our Enemies and discourage our Friends, and bring us into that contemptible State, in which no Government was ever long supported.

But a noble Lord has been pleased to observe, that the best way to serve the Government, is to do popular Things, and by that to procure the love of the people. I perfectly agree in this with the noble Lord, and cannot but be humbly of Opinion, that this Government has done so, as far as it has been able: Our Religion has been preserved; Justice has been equally administered to all sorts of People; none of our Rights or Liberties have been invaded; we have lived at Peace at home, while many other Countries have suffered all the Miseries of War: these are, or I am sure should be esteemed, popular things; and if some other things, which might have been for the Good of the People, have not been done, it has been the Fault of those that complain most, and not of the Government. And if there be Discontents now in the Kingdom, it's plain that the Foundation of 'em was laid long ago, by the Enemies to our present Happy Settlement: For I am persuaded, that the Discontents were higher

and greater within four Months after the King came to *England*, and shewed themselves much more, in a number of Rebellious Riots and Tumults, than any thing that appears at present; and yet nothing then could be objected to the Government, but that some Persons were not preferred, who both before and since have made it too plain that they were not fit to be trusted.

But as it is the Duty of those in Power, to do all the popular things they can; so I must beg leave to observe, that it is the Duty of all the Subjects (and the greater they are the more it is their Duty) to put the best Interpretation upon the Actions of the Government, that things will bear; not to misrepresent; not to put false Colours upon things; and much more not to invent lyes and slanders, and disperse 'em up and down the Kingdom, in order to alienate the Affections of the People. These things have been done, and done with great Care and Diligence, and by some too, who would take it very ill to be called Jacobites. These are the chief Causes of the Disaffection among us, and indeed of all the real Grievances we labour under. Is the King forced to put the Nation to Charges, to keep up a greater Number of Forces than otherwise would be needful? It is intirely owing to this Cause. Are our Debts not paid? Is our Credit not so good as we would be glad to have it? Let this artificial Raising of Discontents once cease, and these things will quickly mend of themselves. Indeed, were this a time for it, I think it might plainly be proved, that the Debts we labour under had never been contracted, but for this absurd discontented Humour: Nay, it is to this, that we intirely owe the Danger we are in from this very plot; for it's plain from all the Intelligence we have about it, that it was carried on upon the Confidence, that all discontented Persons were Jacobites: and tho' the Conspirators did in this greatly deceive themselves: yet it's certain that they built their Hopes upon this Foundation.

But it's further said by the same noble Lord, that this extraordinary way of Proceedings will not procure Friends to the King; but will rather anger and provoke, and so hurt his Interest instead of helping it.

To this I answer, that I do indeed suspect, that many People will be angry; as I hear that the Jacobites thro' the Kingdom are: A plain Evidence this, that they do not think that the Friends of King *George* are worrying one another; for they would not be angry at that. Those that most desire to destroy our liberties, are become, upon this Occasion, the great patrons of liberty; as indeed they have been in a great measure ever since the Revolution, when any thing has been proposed for the Support of the Government. No sooner were their Schemes of Arbitrary Power in the Time of King *James* overturned, and a new Government settled which they did not like; but they, in order to destroy it, set themselves against every thing that was necessary for it's Defence, under the Colour of liberty; that is, they desired to have their own Hands as loose as possible, to hurt it; and the Hands of the Government as much tied up as possible, that it should not be able, either to hurt them, or defend itself. Thus at present, they clamour against the Additional Forces, tho' established by Parliament; and against all Methods, either to discover or punish

the Conspiracy. And they judge right in this for their Cause; because, if they could have carried these points to their mind, they might then be more free in carrying on their Plots, and with less Danger put them in Execution. For these Reasons I take it for granted, that all these people will be angry; but I cannot but humbly be of Opinion, that it is much better they should be angry with us for defending ourselves, than that they should first sneer at us, as Fools for neglecting our Defence; and then be able more easily to undo us.

As to others, that possibly may be displeased at what we are now doing, I would hope, that a little Time and consideration will set them right, and convince them, that it is not only just, but (all things considered) necessary to be done; because, if the Parliament do, upon this occasion, shew their Zeal in the Defence of the Government, it will animate and give Courage to the Friends of it both at home and abroad. Foreign Powers will be apt to court the Friendship of a Prince, at the Head of a mighty Kingdom; if they see, that he and his Posterity are like to continue there: All the Affairs of the Kingdom, which respect them, will be managed with more Ease, with more Honour, and with less Expence; and they will be inclined, not to foment but to discover Plots, if they came to their Knowledge. But on the contrary, if we give 'em any Reason to suspect, that we look another way, they will quickly do so too, and strive which shall be forwardest to help the Pretender to involve us in Blood and Ruin. And as to the Subjects at home, I would only observe, that all Mankind are apt to shew most Zeal for a Government, when they think it safe, and like to stand, and be able to protect them: But to suspect the contrary is a most dangerous Temptation to the Fidelity of Subjects as has been seen by the Experience of all Ages. And therefore I hope, that your Lordships will, by your Unanimity and Zeal in this matter effectually convince the World, that the Danger does and shall lie in opposing, and not in defending the present Government.

I hope that what I have now been saying, has convinced your Lordships, both of the Justice and Prudence of this Bill; give me leave to observe, that your Moderation has been very great too, both in giving so full and fair a Hearing, and in making the Penalties so much less than the Crimes deserve.

It is now above a Year since the Plot was first discovered; a Plot of a most desperate Nature, to seize the Persons of the King and Prince, and to bring in a Popish Pretender upon us. The Execution of which, was to be begun by seizing the *Tower*, and attacking the City of *London* on all sides; and was thence to spread itself into all parts of the Kingdom. Lord! what Confusion; what Murders; what Plundering; what burnings must this have caused? Whatever had been the Issue, the very Attempt must probably have occasioned the Sacking and Burning of this great City: The utter loss at once of all publick Credit: The Murder of infinite Numbers of People: The Astonishment, and Amazement, and Undoing of almost all, but of those vile Wretches who would have had the plundering of all sides. If it had gone on, how many of the Noble Lords that I now see, would have been
before

before this in their Graves? But I forbear going any further in this Tragical Representation, and desire only to observe, That tho' it has been discovered above a Year, how very little of it we yet know: and I do appeal to your Lordships Consideration, who know the State of the World very well, whether there be any Country in it either Bond or Free, which, had they discover'd but a fifth part of what we know of a Plot of this Nature, would not in a Week's time have found means to get to the Bottom of it. However, my Lords, I still commend your Moderation; and do hope, that we shall never find Reason to repent of it, and that this little which is now doing, will be a Warning to Conspirators, not to provoke further the Patience of an injured Nation.

I doubt not but upon this and all other Occasions, your Lordships will be ready to stand by a wise, a good, and a merciful Prince; and that you will, according to your Oaths, defend him, against all Treasons, and Traitorous Conspiracies whatsoever.

And in the last place, give me leave, as a Christian and a Protestant Bishop to hope, you will do your best, that a Popish Pretender may never be set at the Head of this Protestant Church: One, who must think himself bound in Conscience to destroy it; and instead of that pure Religion which we now enjoy, bring in horrible Superstition and Idolatry, Nonsense and Tyranny; attended with all the sad Calamities, which Popish Princes always have brought, and always must bring upon Protestant Countries.

After whom the Duke of *Wharton* spake as follows:

SOME Words which have fallen from the Reverend Prelate, who spoke last, have made it, in some measure, necessary for me to trouble your Lordships with the Reasons that induced me to differ with him in Opinion, and to give my Negative to the Bill now depending before us.

If I don't misunderstand his Lordship (and if I should mistake his Meaning, I hope he will set me right) he was pleased to say, That Persons without Doors would be apt to cast different Reflections on the particular Behaviour of every Lord this Day: That those who were for the passing of this Bill, would be accused of Malice and Partiality; and those who were of contrary Sentiments, would be branded with Disaffection to the present Happy Establishment.

For my Part, I am far from thinking, that Considerations of this Nature will have the least Weight with any of your Lordships; and am very certain, that every one, who gives his Vote on this important Occasion, has attended, with the greatest Care, to the Evidence that has been given at your Bar, which is the Foundation of this Day's Debate.

The Proofs that have been brought to support the Charge, and the Bishop's Defence, are to be thoroughly considered; and when your Lordships proceed according to the Rules of Justice, you will not fear, nor value, any Consequences which may attend the discharging of your Duty.

So far I will venture to affirm, That the best Way to shew our Zeal to his Majesty, and the present Government, is, To act in all Cases, both in our Judicial and Legislative Capacities, with that Honour and Impartiality, as ought to flourish in this great Council of the Nation.

I could have wished the Noble Lords who have given their Reasons for the passing this extraordinary Law, would have entred into the particular Circumstances of this Case, and considered it singly on its own Merits: But instead of speaking on that Head, I cannot but take Notice, That they have wandered from that (which ought to have been their only Consideration) into learned Discourses on Bills of this Nature in general.

I shall not trouble this House with any Arguments against Attainders. Many Lords, of greater Weight and Abilities than myself, have already spoke fully to this Point in the preceding Debates.

I shall only so far agree with the Reverend Prelate, who spoke before me, That it is proper, that such a Power of punishing by Bill, should be vested in the Legislature, to be exercised on extraordinary Emergencies: But then I must add, If ever that Power is abused: if ever it is employed to destroy innocent Persons, it is evident, That the lives, liberties, and Fortunes of every Subject in *Britain* are in the utmost Danger, and liable to be sacrificed to the Fury of a Party.

It has been admitted, That every Bill of Pains and Penalties is to stand upon its own bottom; and that the passing of one Act of this Nature, is not to be brought as a precedent for the supporting of another, unless there be convincing Evidence to enforce each Case. And therefore the proper Consideration now before us, is, Whether the Evidence offer'd against the Unfortunate Prelate, is sufficient to induce your Lordships to believe him Guilty of the heavy Crimes of which he stands accused?

My Lords, I shall take the liberty of considering the whole Proofs that have been brought on this Occasion, both by way of Charge, Defence, Reply, and Rejoinder; and tho' I own myself very unequal to this Task, yet, since no other Lord, who could do it much better, has undertaken it, I think it my Duty as a Peer, and as an *Englishman*, to lay it before your Lordships in the best Manner I am able.

The Method I shall observe for the more clear Stating of the Case, shall be to lay every particular Branch of Evidence before you, and to distinguish the several Parts of the Accusation, and consider them separately, to avoid Confusion, and to be the more exact in what I have to offer.

I hope, I shall have your Lordship's Indulgence for taking up so much of your Time as this will require: But I assure you, I shall endeavour to be as brief as the Nature of the Thing will admit, and will intrude on your Patience as little as possible.

I must also desire your Lordships will pardon me, if I repeat several Arguments that have been used by the Counsel at the Bar; and if I even mention some Things which fell from me in the Debate on Mr. *Kelly's* Bill, whose Case is very much interwoven with the present; so that it is almost impossible to avoid it.

Before I go any further, I cannot but say, That were these Crimes plainly proved against the Bishop of *Rocheſter*, his Sacred Function and Station in the Church would be Aggravations of his Guilt: But, as this is certain on the one hand, so on the other, your Lordships will require very clear Demonstration, before you can think it possible for a Bishop of the Protestant Church (who has sig-

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nalized himself in Defence of the Reformation, and the only one of that Bench where he had lately the Honour of sitting, that ever wrote in favour of *Martin Luther*) to ingage in a Conspiracy for introducing Popery and Arbitrary Power amongst us.

My Lords, the Counsel for the Bill opened the Charge with acquainting the House, That it was only to be supported by producing of decyphered letters, full of fictitious Names and Cant Words: They were so very fair as to confess, they had not one living Witness that could charge the Bishop with any thing, nor even so much as a letter under his own Hand; therefore, on the first View, this Manner of condemning, on such kind of Evidence, ought to require our utmost Caution, lest we should establish a Method, which our Enemies may hereafter take to destroy the greatest and most innocent Subject in the Kingdom.

Mr. *Weary* cited two Cases, which he would willingly have us receive as Precedents, to justify the admitting of circumstantial Evidence: The one was, the Case of *Ashton*, who was condemned on Circumstances only. But, my Lords, this was before the Treason-Act was passed, which requires Two Positive Witnesses; and nothing could induce the Legislature to pass that Law, but a thorough Conviction of the Danger that might attend the admitting of any Proofs which were not positive or certain.

The second Case he cited, was that of *Harrison* for the Murder of Dr. *Clench*; and the learned Gentleman tells you, that it was the pulling out of a Handkerchief that led to the Discovery of that Murder. It is very certain, Circumstances may lead to the Discovery of Evidence; but must be well supported before they can be converted into convincing Proofs.

The first Piece of Evidence that was offered at the Bar, was the Extracts of Letters from abroad, which this House seems, in some measure, to have declared to be immaterial, when they did not so much as desire to see Copies of the whole letters, nor the Originals; and even admitted one to be read which was Anonymous. But it will not be improper to observe, that thro' this whole Correspondence the Bishop of *Rochester* is not named. And therefore I cannot see why they took up our Time with reading Papers quite foreign from this Case; especially since every Body allows there has been a Conspiracy, which is the only Fact to be gathered from this Correspondence.

The next Point which was attempted to be proved, was, That Captain *Halstead* went to fetch the late Duke of *Ormond*, and was at the Deanery with the Bishop before he embark'd. There are also two letters found in the Bishop's Close-Stool, from this Gentleman to his Lordship, which were read, and are only Appointments for Visits, but mention nothing of this Design; and, I think, there was a Coachman, that proved *Halstead* was an Hour with him some Days before he left *London*.

This, my Lords, was opened as a Matter of great Importance: But your Lordships must remember, that the supposed Design of *Halstead's* bringing the late Duke of *Ormond* into *England*, is only proved by Hearsay. One of the Crew belonging to the Ship in which he went, has deposed, That it was the Common Report at *Bilboa*, that *Halstead* came there on that Errand.

How far common Fame is to prevail, I submit: But if this Hearsay were true, is every Person

who was an Hour with this Gentleman before his Departure, supposed to be privy to this Project? And what a strain'd Construction is it to insinuate, the Bishop of *Rochester* knew of his Intention, because he received a Visit from *Halstead*, who was a Tenant under his Bishoprick? And this is the more extraordinary, since it has not been so much as pretended that any Correspondence has passed between the Reverend Prelate and the late Duke.

They then produced letters directed to one *Dumvill*, which were decyphered. And Mr. *Willes* was examined to prove, that they were rightly and justly explained.

My Lords, It very well deserves your Lordships Consideration, how far this kind of Evidence is to be admitted: It has appeared to your Lordships by the Oath of Mr. *Willes* himself, that it is an Art which depends upon Conjecture; for this Gentleman has confessed, that every Man is liable to a Mistake in this, as well as in other Sciences. He tells you, that he and his Brother Decypherer varied in One or Two Instances: He allows, that the *Chasms*, which they were forc'd to leave in those letters, might alter the Sense of them. And, therefore I cannot but think, that an Accusation grounded on such Proofs, is uncertain and precarious.

The Person who is the Decypherer is not to be confuted, and what he says must be taken for granted, because the Key cannot be produced with Safety to the Publick; and, consequently (if his Conjectures be admitted to be Evidence) our Lives and Fortunes must depend on the Skill and Honesty of Decypherers, who may with Safety impose on the Legislature, when there are not Means of contradicting them for want of seeing their Key.

My Lords, in the Case of *Coleman*, the Key was printed, as has been well observed by the Counsel at the Bar; and I am very much surpris'd, that Gentlemen of such Abilities and Integrity, as the Members of the Secret Committee (who, in another Place, were so exact as to print the *French* Originals with the translated letters, that the World might see how just and candid the Prosecutors of the Plot were) did not, for the Satisfaction of the Publick, permit us to see the Key in print, on the Truth of which depends such a Chain of Consequences.

I own myself intirely ignorant of this Art: But, as I should be very far from condemning a Man on my own Conjecture, I should much less do it on the Conjectures of others.

The greatest Certainty Humane Reason knows, is, a Mathematical Demonstration; and were I brought to your Lordships Bar, to be try'd upon a Proposition of Sir *Isaac Newton's*, which he upon Oath should swear to be true, I would appeal to your Lordships, whether I should not be unjustly condemned, unless he produced his Demonstration, that I might have the liberty of enquiring into the Truth of it, from Men of equal Skill?

I cannot think any Man will allow Evidence of this Nature to be good: But it in this Case relating to the decyphered letters to *Dumvill*, your Lordships should admit it, there is nothing mentioned in them that can affect the Bishop, neither is he at all nam'd in them, but they are only brought to prove the Conspiracy in general.

The Examinations of Mr. *Neynoe* are the next Points that are laid before your lordships: And indeed, I must do the Gentlemen at the Bar the Justice of saying, That they forbore mentioning any thing of them, when they open'd the Charge.

They were so sensible that such Proofs could not have the least weight to affect the bishop, that tho' in the Case of Mr. *Kelly* they were produced against him, as very material to support that Bill, yet they did not think proper to name them against the bishop; which, I am thorowly persuaded, is owing to what appeared at your Bar by the Examination of Mr. *Bingley*, and the universal Opinion which every Person seemed to have of the Villany of Mr. *Neynoe's* Transactions.

My lords, These Examinations were never signed by the Person, neither was he ever examin'd to them upon Oath: So that were they of Consequence, and he a Person of Credit, they could not be admitted to affect any Person whatsoever, in any Court of Justice or Equity. I don't mean, That they could not be read according to the strict Rules of *Westminster-Hall*; which is admitted on all Sides they could not: But I dare affirm, that no Credit can be given to 'em on any Account whatsoever.

The Person was closely confin'd, and consequently in the Hands of the Government; so that he was at that Time under the greatest Apprehensions, which might, in some measure, prevent him from speaking Truth, with that Sincerity and Candour of which every Person ought to be Master, when he is examin'd on Matters of such nice Nature.

Tho' these Papers were intirely given up by the Counsel for the Bill, yet the Extract of them was read, and they are the visible Foundation of this Charge; and if they are insignificant, the whole Accusation falls to the Ground: For the whole Proof of the bishop's dictating to Mr. *Kelly*, depends on Mr. *Neynoe's* bare Affirmation.

The whole of what *Neynoe* says, or is supposed to say, is, That Mr. *Kelly* told him he wrote the bishop's letters for him: Mr. *Kelly* denies it, and Mr. *Neynoe* was so conscious that he had been guilty of many Crimes, that he endeavoured to withdraw from Justice, and the Providence of God, it is said, intercepted him.

My lords, if you will consider the Improbabilities of this Evidence, altho' it were upon Oath, and signed by him, it cannot be supported. He tells you, That he was intrusted to draw up Memorials to the Regent: Yet none of those have been produced: And yet it is apparent the Copies of them might, with Ease, have been obtained, if he had been as thorowly pressed to deliver them, as he was to declare he wrote them.

These Memorials, he says, were wrote by the Order of Mr. *Henry Watson*, whom he takes to be the late Earl *Mariball*: And I am certain your lordships did not think that Fact material, when you came to a Resolution, That the bishop of *Rochester* should not be at liberty to ask, if Enquiry was made of the said *Neynoe*, or if he gave any Satisfaction to the lords of the Council, touching that important Fact of *Watson's*, whom he took to be Earl *Mariball*, lying with him several Nights.

It was very well observed by a learned Gentleman at the Bar, That no body can believe the late Earl *Mariball* would have reposed so great a

Confidence in a Person, who was intirely a Stranger to him, and of such little Note; and the *Jacobite* Party must be in a low Condition, when they make use of such a Creature to write Papers of that Importance.

There is so much Improbability in this and other Points, and so much Contradiction in several Parts of his Examinations, that they appear to me, and must to all reasonable Men, as the Dictates of Fear, and not agreeable to Truth.

He mentions, That the Reverend Prelate (for such I still may call him) had some Favours offer'd him by the Court; but that cannot be true, and must be added to the rest of these Absurdities.

But, my lords, what in my Opinion clears up all these Matters, and makes it impossible for me to give the least Credit to this, or any other Part of the Charge, are, The several Testimonies of *Bingley*, *Skeene*, and *Stewart*.

I must observe to your lordships, That the two first Persons, *Bingley*, and *Skeene*, are actually now in separate Custodies; and consequently could have no Communication one with another. The Third is at Liberty; but his Testimony is so thorowly supported by Mr. *Gordon* and Mr. *Kynaston*, that no doubt can arise as to the Veracity of it.

These Gentlemen, who are in the Hands of the Government, are under Hopes and Fears; and therefore, it is certain, when they speak a Language, which, perhaps, may be disagreeable to those on whom they at present chiefly depend, it must be the Spirit of Truth that prevails.

Mr. *Bingley* was before us in the Case of *Kelly*, and was also examin'd at the Bar of the House of Commons, tho' not upon Oath; and tho' he has been more severely treated, as he told your lordships, and more strictly confined since his first Examination, yet he has persisted in his Story: And tho' he was so long at your Bar, and so many Questions put to him, yet he never varied in any one Circumstance, but appeared consistent thro' the whole Course of his Behaviour.

I shall not detain your lordships with recapitulating his whole Evidence, for I did it very fully on a former Occasion. But your lordships will remember, he told you, *Neynoe* abounded in Money, which *Neynoe* said (after he was apprehended at *Deal*) an Honourable Person (and on this Occasion, I hope, I may name him) Mr. *Walpole* gave him: And more particularly, he mentions 50*l.* which *Neynoe* said he received the Night before he went to *France*.

Bingley told your lordships, That *Neynoe* had assured him, he used to meet this Honourable Person in the Stable-Yard at *Chelsea*: And, my lords, the Errand on which he was going to *France*, was, To discover some Secrets relating to Cyphers, which he would have engaged *Bingley* to have done for him; and particularly, to get them, if possible, out of Mr. *Kelly*, Which, he said, could be obtain, would be of great Advantage to him.

That *Neynoe* had declared to him, He would be even with Mr. *Kelly*, before he was aware of it, or Words to that Effect: And that Mr. *Kelly* always seem'd averse to any Acquaintance with Mr. *Neynoe*, of whom he entertained a mean Opinion,

That *Neynoe's* Father refused him Money; which makes it highly probable that his Poverty was the Occasion of his Villany: And that when he was taken at *Deal*, he had declared to him, Mr. *Walpole* expected to find the Plot about him;

and since Mr. Walpole could not, he must make one for him.

Neynoe told Bingley, That this Honourable Person had vow'd Destruction to the Bishop of Rochester, by saying, He would pull down the Pride of this Haughty Prelate; which is sufficient to convince your lordships how little Regard ought to be had to the Hearsay Evidence of so false a Wretch.

Mr. Bingley says, That part of this Account he had given to the lords of the Council: And I could have wished, that his Examination (as well as some others to the same purpose, which were taken about the same time) had been laid before the Parliament.

Mr. Skeene, who is also in Custody, has deposed, That he lay in the same House with Neynoe, and had some Conversations with him.

That Neynoe had told him, *What he had said of the Bishop of Rochester was intirely false.* And,

That Mr. Walpole had offer'd him a considerable Annuity to turn Evidence; and had given him Instructions before he was called in to the Lords, what Questions would be ask'd him, and what Answers he should make, and threaten'd him with Newgate if he would not comply.

Skeene says further, That Neynoe swore (and I hope the Reverend Bench will, in such a Case, permit me to repeat the Words) *by God, there were two Plots; One of Mr. Walpole's, against the protesting Lords, and one of his, to bite Mr. Walpole of Money:* And this seems to be the only Time that ever Mr. Neynoe averr'd any thing upon Oath.

To convince the World, what a Creature this Neynoe was, he tells Skeene further, *That once at Lord Townshend's Office, he had a great Inclination to have stabb'd the Chancellor of the Exchequer.* He tells you, That Neynoe had wrote a Paper to declare, *That all he had said of Lord Orrery was false.*

My lords, The next witness was Mr. Stewart, who was unfortunately in Custody when Neynoe was brought to Town from Deal.

Stewart says, That he slept the second Night with Neynoe: That Neynoe had told him *what he had said of the Bishop, was false; and that Mr. Walpole had offer'd him a great Sum of Money, if he would swear to what he said, and turn Evidence, which he declared he could not do.*

That Mr. Walpole had taken him into another Room before he was examined, and told him what Questions he would probably be ask'd, and what Answers he should give.

He says, That Neynoe told him also, *That he had like to have kill'd Mr. Walpole, and so put an End to the Plot: And that Mr. Walpole had given him a Paper of Directions, which he was to answer, in order to be a Witness against the Protesting Lords.*

As a Confirmation of his Testimony, Stewart says, He told this to Mr. Gordon before Mr. Neynoe was drowned, and to Mr. Kynaston before the Meeting of the Parliament.

Mr. Gordon confirms this Part of his Evidence, and assures your lordships, that he had heard it from Stewart before the Death of Neynoe. And Mr. Kynaston, a Gentleman of an undoubted Character, lately a Member of Parliament for *Shrewsbury*, has assured your lordships, That he was acquainted with Stewart's Account of Neynoe before the Meeting of the Parliament: And adds this Circumstance, That when in the *Appendix* he saw those six Questions printed, he shew'd them to

Stewart, who seem'd rejoyced, and said, *You see, Sir, what I told you is true.*

Such concurring Testimonies from Persons kept so separate, and who are speaking against their own private Interest, must have the greatest Weight, and must at least prevent any rational and impartial Person from giving the least Credit to the bare Hearsay of this *Philip Neynoe*.

If any doubt could remain, as to the Validity of this Testimony, it is sufficiently confirm'd by the Persons brought to disprove it.

The Chancellor of the Exchequer himself does not pretend to deny that Neynoe told these Things, but only adds other Circumstances to convince you of Neynoe's Villany, and assures you, That at the Time he was receiving Favours from him, he was thorowly convinc'd he intended to cheat him, which was the Occasion of his being apprehended.

He own'd the Transactions between them before Neynoe went to France, and particularly the Money mention'd by Bingley; which are Proofs that Neynoe must have disclosed these Secrets since they could not come from Mr. Walpole, and He and Neynoe only were privy to it.

Mr. Walpole has shewn your lordships the foul Draught of the Questions mention'd by Stewart; and when he denies that part of Neynoe's Declaration relating to the Instructions given him before the Examinations, he owns, he was twice alone with him; once the first Night of his being brought to Town, and the second time, when he gave him the Paper of Directions, which might be Foundation enough for Neynoe to frame so notorious a Falshood.

The Witnesses brought by the Counsel for the Bill, to the Character of Mr. Bingley, seem rather to confirm it than otherwise; and all agree, they never heard any thing against his Morality.— They indeed have said, he bore the Character of a *Jacobite*; and suffered for having dispersed a Libel: But Mr. Baron *Gibert*, who was his Judge when that Punishment was inflict'd on him, has told your lordships, That his private life was not vilified at his Trial, and that neither Perjury nor Forgery were ever laid to his Door.

Tho' the Punishment he suffered was the Pillory, yet it is the Crime, and not the Punishment, that makes the Ignominy; and for this I can appeal to the learned Judges.

In order to destroy the Evidence of Mr. Skeene, they produced one *Pancier*, who tells you, That Skeene had revealed many Secrets to him relating to the Plot; and particularly of a Military Chest, which was collected to carry on these supposed Designs, and support the *Jacobites*.—But I presume every body who heard the two Persons at the bar, could not but remark the Steadiness with which Mr. Skeene denied these Affeверations, and the Confusion with which the other affirmed them.

Mr. *Pancier* seem'd to drop something which intirely destroys any Credit that could be given to him, by saying, That he had own'd to Mr. Skeene, that he was a Friend to this Administration; and yet has sworn, That after such a Declaration, Skeene had still persisted in his Story, and reveal'd some Part of this Intelligence to him. How far this is probable, your lordships are the best Judges.

Mr.

Mr. *Pancier* goes further, and tells you, That Part of this Conversation happened in *St. James's Park*, in the presence of one *Dufour*. This *Dufour* was in the Hands of the Government; and I can't conceive why we have never seen him or his Depositions, when it would have been so easy to have brought this corroborating Witness to Mr. *Pancier's* Testimony.

I can't but think, That the not producing this Man's Evidence, is a strong Circumstance to convince your Lordships he did not agree in the same Story with Mr. *Pancier*.

They also produced *Skeene's* Attainder for the *Preston Rebellion*: But there have been many Acts of Grace since, so that he is capable of being an Evidence: and there has nothing appeared to traduce his Character as a Man of Morals.

In order to shew your Lordship's, that *Neynoe* could not possibly make these Confessions to Mr. *Skeene* and Mr. *Stewart*, the Counsel for the Bill maintain, That they will prove *Neynoe* and the Prisoners were not together after the first Night.

This, my Lords, would be very material; but I think it appears, by the proofs brought to support this Assertion, that they frequently have conversed one with another.

The first Witness they call'd, was Mr. *Crawford* the Messenger, in whose House the Prisoners were in Custody; and my Lords, I can't but say, it seems very odd, they should bring a Man to swear he had done his Duty: He has told your Lordships, That Lord *Townshend* had given him Orders, that *Neynoe* should be close confined; and if, after that, it should appear, that he had neglected such Directions, there is no question, but that he instantly, and deservedly, would have been removed out of his Employment.

This Messenger, in this Situation, tells you, That after the first Night they never convers'd, to the best of his Knowledge: That Mr. *Skeene* call'd *Neynoe* a Rogue of an Informer; and spoke in very hard Terms of him; which I indeed think it appears the Fellow well deserv'd.

Crawford says, That Mr. *Neynoe* had some paper, two Sheets of which he found missing. He likewise swears, That Mr. *Stewart* lay upon the Stairs; and owns, he had at that time two Servant-maids.

Mrs. *Crawford*, his Mother, swears, That, to the best of her Knowledge, the prisoners were never together: That she kept the Keys of the Rooms herself, but used to send up the Maid, *Hannab Wright*, with the Dinner.—Your Lordships will observe, that both this Woman and her Son swear to the best of their Knowledge only, and are far from positive Witnesses.

Hannab Wright, when she was first call'd, spoke in the same Language with them, tho' she afterwards recollected herself better.

When the Bishop came to rejoin, *Francis Wood*, *Thomas Wood*, and Mr. *Ruffel* severally say, That this *Hannab Wright* had declared to them, That she used to let the prisoners converse together whenever she had an Opportunity, which was when Mr. *Crawford* and his Mother were out of the way; and that she used to stand upon the Stairs and give Notice when any person came, that they might retire into their several Rooms. And the other Maid, whose Name is *Christian*, has deposed, That *Hannab* gave the Key of *Neynoe's* Room to *Stewart*, and several times desired *Stewart* to go up

to him, and that they were together an Hour or more. And when *Hannab* was called a second Time, she own'd she was turn'd away for Suspicion of having help'd *Neynoe* in his Escape; That she has left *Skeene's* Door open, who lay near *Neynoe*; and that there was a large Hole in *Neynoe's* Door, thro' which they might converse.

She said, That *Neynoe* gave her a Paper, which she was to convey for him; but that it was taken out of her Bosom, and burnt by one of the Prisoners.

When Mr. *Stewart* said, That he sat upon *Neynoe's* Bed the second Night, and lay in the Garret where there was a Partition, but a Communication between 'em, *Hannab* said, She could not be positive to that, but believes it true.

Mr. *Crawford*, when he was call'd to that Point, according to his usual Custom denies it to the best of his Knowledge.

Your Lordships will now judge, whether the greatest Credit is to be given to the Belief of a Messenger and his Mother, who are swearing that they did their Duty; or to the positive Oaths of *Skeene*, *Stewart*, *Gordon*, *Kynaston*, *Francis Wood*, *Thomas Wood*, *Ruffel* and *Christian*, confirm'd by the Confession of *Hannab Wright*. when she came to be cross-examined and confronted.

This, my Lords, concludes what has appear'd at the Bar, relating to Mr. *Neynoe* and his Transactions; and I am pretty certain, every impartial Body must agree with me, That so far from giving the least Credit to what he says, there have appeared such Circumstances in the Transactions which are now come to Light, that must make the greatest Caution necessary, before we believe any other part of the Charge.

Your Lordships will take notice, That Mr. *Crawford* confesses Mr. *Neynoe* had the Use of Paper, and found two Sheets missing; and *Hannab Wright* owns she had a Paper from him, which was burnt by one of the Prisoners. This, my Lords, undoubtedly was the Paper relating to Lord *Orrery*, mentioned by *Skeene* in his Evidence.

My Lords, I am now coming to the great and only Foundation remaining to support this Bill, viz. *Neynoe's* Examination: for if his Hearsay is not to be believed, which is the Proof that was offered to shew that Mr. *Kelly* was the Bishop's Secretary, and used to write for him: and particularly, That the Bishop dictated Three Letters, which were wrote in *Kelly's* Hand, and transmitted to *France* under Cover to Monsieur *Gordon le Fils*;

Then, as every Body must agree, the Bishop ought to be acquitted; and when hereafter this great Affair comes to be canvass'd by Posterity, it will stand or fall as this Fact shall be strongly made appear,

They first read *Plunket's* Cypher, and Mr. *Vanradike* attests it to be his Hand-writing.

When this Piece of Evidence was offer'd, People were at a loss to know what they intended to make of it, and little thought that they should be drove to make use of *Jackson*, standing for the Pretender in that Cypher, to shew that the letter directed to *Jackson* (one of the three before-mention'd, affirm'd to be dictated by the Bishop of *Rocheſter* to Mr. *Kelly*) was to the Pretender. I shall take notice of this extraordinary Proceed-

ing when I come to consider those Letters: I shall only say now, That were Mr. *Plunket's* Correspondence to be regarded, the plot is of a very deep Nature; for he has had the Impudence to insinuate the most ridiculous Aspersions against the greatest Men amongst us.

Three of his letters were read out of Cypher, in Two of which Mr. *Johnson* is named, that is Mr. *Kelly*; but neither Mr. *Kelly*, nor the Bishop of *Rochester* are allowed places in his Cypher, and consequently were not in an Association with him. *Johnson* is only spoke of by *Plunket*, when he is mentioning Domestick News, and in no other than might be in every News-Letter that went by the General Post.

My Lords, in order to shew that the Three letters sent under Cover to Mr. *Gordon le Fils*, were Mr. *Kelly's* Hand-writing, which they very justly thought was necessary to be made appear before they proved that the Bishop was concerned in them; they produced a letter of the 20th of *August*, which a Clerk of the Post-Office swears was stopt at the General Post-Office.

To convince us this letter is Mr. *Kelly's* Writing, *Hutchins* the Messenger says, To the best of his Knowledge it is Mr. *Kelly's* Hand; and at the same time owns, he never saw him write till after his Commitment, and then he stood by him while he wrote two letters, one to Lord *Townshend*, the other to Mr. *Delafaye*: Those letters were produced at the Bar, and therefore every Lord in the House is as good a Judge of the Similitude as the Messenger, who has lately been restored into Favour, on what Account I cannot tell.

If Mr. *Kelly*, during his Confinement, counterfeited and disguised his Hand, then the Messenger's Evidence can't be of any Weight; and if he wrote as usual, then every person is equally capable of framing an Opinion of it, who sees the Three Letters.

The next Witness is *Malone*, who swears, he has seen him direct letters, but can't tell how long since he saw him write, nor how often.

The persons who contradict this Evidence are so positive, so clear, and so concurring in their Testimony, that no Doubt can rise upon it.

Mr. *Bingley*, when he was shewn this letter, swears it is not like his Hand-writing.

Mr. *Brown*, a Peruke maker, well vers'd and acquainted with his Writing, when he was shewn the letter of the 20th of *August*, and the Date of it hid, by the Counsel for the bill (so that he could not know what paper it was before him) swears, it is not his Hand-writing. When the letter to *Delafaye* was produced, he declared, That was his Hand-writing: When another paper was shewn, (I think it was the Marriage Articles) he said, That was more like his Hand-writing than that of the 20th of *August*, but he did not believe it was wrote by him; and when they question'd him upon the letter to Lord *Townshend*, he swore it was Mr. *Kelly's* Hand-writing.

Mr. *Pickering*, who had Occasion to know Mr. *Kelly's* Hand, having lent him some Money, and received several notes and letters from him during that Transaction, does agree with Mr. *Brown* in every particular and most minute Circumstance; which is a clear and evident proof, that this letter of the 20th of *August* was not wrote by Mr. *Kelly*.

The Difference which they tell your Lordships they observe, between the Cut of the letters in that of the 20th of *August*, and the others, is, That one is longer and straiter, the other wider and shorter: which is obvious to any body that will look on both, and is a Confirmation of their Veracity.

The prosecutors of the plot might have prov'd this better, and not have been driven to the Testimony of a Messenger to support this great Foundation of their Charge. It is notorious what Search they have made for Evidence of all kinds; and as Mr. *Kelly* was educated in a College, they might easily have found credible Witnesses to that point, if those letters had been wrote by him.

In the Case of Similitude of Hands, when it has been the most clearly and positively proved, as on the Trial of Colonel *Sidney*, it has been esteemed to be cruel, that a Man should be convicted on such kind of Evidence; and the Attainder of that unfortunate Gentleman was reversed for that Reason.

In *Sidney's* Trial, his bankers swore, They used to pay bills drawn by him in the Hand-writing they were shewn, and no persons could contradict them; and yet the Sentence against him was a great blemish to that Reign. The Great Lord Chief Justice *Holt*, in the Case of *Crosby*, refus'd to admit it; and the Lord Chief Baron *Bury*, on *Francia's* Trial, follow'd that Example.

At present, give me leave to say, There is no Evidence that it is Mr. *Kelly's* Hand, and there is positive proof that it is not.—Therefore, we who live under so equitable, just, and happy a Government, can never convict a Man, in these Days of Liberty, on such insufficient Conjectures.

They next produced the Three letters, which, they would insinuate, were wrote by *Kelly*, and dictated by the Bishop, which were mentioned by me before, and which were sworn by the Clerks of the Post-Office to have been stopt going to *France*.

The Bishop desired to examine them relating to these letters being detain'd, and would fain have known who took them out of the Mail: this he thought was proper for him to demand, since he seem'd to insinuate, That he question'd their ever having been in the Post-Office. But your Lordships would not suffer any Enquiry to be made on this Head, and voted it inconsistent with the publick Safety, and unnecessary for the Defence of the prisoner, to permit any further Questions to be ask'd in relation to this important Affair.

These honest Gentlemen, the Clerks of the Post-Office, have deposed further, That the papers produced, are true Copies of the Originals detain'd by them; tho', at the same time, they confess, they never examin'd them after they had copied them.

They positively swore further, That the Originals were of the same Hand with the letter of the 20th of *August*, tho' they affirm this barely upon Memory, never having mark'd any letter in order to know it again: and one of them declared upon Oath, That he did not believe there could be such an Imitation of *Kelly's* Hand as could deceive him; tho' the whole House agrees That Hands may be counterfeited so as to deceive the Men that wrote them.

They

They own, they never compared two original letters between the 20th of *April*, and 24th of *August*, tho' they might have stopt a letter one Post, without Prejudice to the Government, in order to be more certain in their Evidence.

Thus, my Lords, should this Bill pass, [this great Man must fall by the Dependance this House must have on the Memory of these Clerks.

Mr. *Lewis*, who has long serv'd in the Secretary's Office, tells us, that frequently letters and Seals used to be counterfeited: and, in a more particular manner, by one *Brocket*, who excelled so much in this Art, that he has cheated many Persons, and has so far deceived them, that they have not known his Copy from their own Originals.

When these letters, thus attested, came to be read, they are in Cypher; so that it must again depend on the Honesty of a Decypherer, before they can possibly be made Treasonable.

Mr. *Willes* declares, They were truly decyphered according to the best of his Judgment and Skill; and more particularly, that the Number 1378, which is subscribed to the third letter directed to *Jackson*, stands for the letter *R*. But when some Lords ask'd him a Question, which perhaps had he answer'd, might have proved him to be under a Mistake; he refuses to give an Answer, either in the Affirmative or Negative, for fear of revealing his Art. Your Lordships thought proper to prevent any further Cross-Examination of this Gentleman, by a Resolution.

Mr. *Willes* says. He shew'd these letters decyphered to my Lord *Townshend*, before he communicated them to Mr. *Corbire*, who is a Clerk in the Secretary's Office, and then he says, That Mr. *Corbire* and he agreed.

Before these letters can yet prejudice the Bishop, the Cant Names in them must be explain'd, according to the Key which the Prosecutors of the Plot have made; and in order to it we must believe that *Jackson* stands for the Pretender, because Mr. *Plunket* gave him that Title in his Cypher. Can there be a greater Absurdity, than to imagine a Person of the Bishop of *Rochester's* Capacity, should borrow a Name of that Consequence, from so insignificant a Wretch as *Plunket*, who it does not appear ever saw him?

Indeed, the Counsel for the Bill did not read these letters against the Bishop, since they had no Proof of his dictating them, and they were only read on Account of the general Conspiracy.

I must observe, It was a great Artifice of these learned Gentlemen, whenever there was a Piece of Evidence to which the Bishop objected, they constantly pretended, they produc'd it to the Plot in General; for they knew it could not be admitted against the Reverend Prelate: But yet when they came to sum up, they applied them to this particular Case; which is not agreeable to that Candour that is necessary on such Occasions.

If your Lordships should be of Opinion, that *Kelly* wrote them; that they were stopp'd at the Post-Office; that they were duly copied; that they were truly decyphered, and the Cant Names explain'd; yet still this cannot affect the Bishop, unless it be fix'd upon him that he dictated them: Two of them were sign'd *Jones* and *Illington*, and to induce your Lordships to believe the Bishop was Guilty, as they affirm'd, they endeavour to prove those Names must denote him. And, in Order to it, they read some letters, affirm'd in the same manner, (as before mention'd) by the

Clerks of the Post-Office, to be his Hand-Writing: But first they read a Cypher taken upon Mr. *Dennis Kelly*, and sworn by the Messenger *Hutchins* to be wrote by *George Kelly*.

I can observe nothing upon this Cypher, but that the Bishop of *Rochester* is not mention'd in it; which seems very extraordinary, and is not a Proof of the Reverend Prelate's being in a Conspiracy.

The letters they read of Mr. *Kelly* are of no Moment, and are only calculated to fix the Names of *Jones* and *Illington* upon the Bishop.

They give an Account of his Lady's Death, the Bishop's own Illness, his going to and from *Bromley*; and in some of them, the Dog *Harlequin* is mentioned.

It seems repugnant to Reason, that in a Treasonable Correspondence of this Importance, a Gentleman should venture his life to give an Account of the State of one Person's private Affair, and entertain his Friends Abroad with no other Business in such a Tract of Time.

In the letters directed to Mr. *Andrews* at the *Dog and Duck*, which are proved to have been received by Mr. *Kelly*, *Jones* and *Illington* are not named; and those in which we find them, were such as pass'd thro' the Post-Office, and were attested like those under Cover to *Gordon le Fils*.

It is not likely, that in a Transaction of so secret a Nature, Mr. *Kelly* should take such Pains to give such a Description as might give the least room for a Suspicion that the Bishop was concerned; much less to have mentioned so many Particulars, as it may be suggested he has done, if there could be any Possibility of wresting the Meaning of *Jones* and *Illington*, and interpreting of them to mean the Bishop.

William Wood, the Bishop's Coachman, is brought to prove the particular Times of the Bishop's being in or out of Town, in order to shew, that they agree with the Times mentioned of *Jones* and *Illington* in the intercepted Correspondence; and he refreshes his Memory by a Book of *Memorandums*, which might have been destroyed, if it had been apprehended by the Bishop's Friends, that such Evidence could affect him.

What they next attempt, was to shew, That the Dog brought over by Mr. *Kelly* from *France*, and which Mrs. *Barnes* swears, that he once told her was for the Bishop of *Rochester*, was a strong Circumstance to fix the Name of *Illington* on the Bishop.

My Lords, Mrs. *Barnes*, who is under the Custody of a Messenger, is the only Witness to this Point; and what she says, is only Hearsay from *Kelly*: She owns that *Kelly* never told her so but once, and that was when she thought to have kept it for herself: And indeed, it might be barely an Excuse to prevent his parting with it, for he had promised to bring her such a Present before he went to *France*.

She owns, that to her Knowledge, the Bishop never saw the Dog, nor sent any Message about it; which seems to be very extraordinary, that if this Present was of such great Consequence, he should not have had Curiosity enough, at least, to see it: An Affidavit was read from *Birmingham*, a Surgeon in *Paris*, which says, That he gave this Dog to Mr. *Kelly*, for Mrs. *Barnes*.

Before I leave this Circumstance of the Dog, it is proper to observe another great Improbability, which is, in a letter wrote a few Days after the Death of the Bishop's Lady, it is said, Mrs. *Illington* was in great Tribulation for the loss of poor *Harlequin*;

Harlequin; and can it be supposed, that at a Time when the Bishop was in Affliction for the Death of his Wife, he should indecently discover so much Grief for such a Trifle?

I think this is sufficient to convince any Person whatsoever, that this Correspondence is of a very extraordinary Nature.

Mrs. *Barnes* has told your Lordships, That Mr. *Kelly* came from *France* the 11th of *April*.

My Lords, I am now come to the only Piece of Evidence that seems particularly levelled at the Bishop; which is, The Proof that has been given of the dictating those letters: and unless this be clearly and plainly made appear, I cannot conceive that any thing can be laid to this Prelate's Charge.

Unless it is evident, that the Bishop did dictate as alledged, I cannot think any of your Lordships can vote him Guilty according to the Rules of Justice; for no Man is safe either in his Life, Liberty, or Fortune, if he may be deprived of either, on account of a Correspondence in which it does not appear he was concerned. Tho' your Lordships should so far credit the precarious Evidence at your Bar, as to believe that *Jones* and *Illington* stood for the Bishop of *Rochester*; yet unless it is plain that it was with his privity, it is certainly impossible this Bill should pass: And if it should, it will hereafter be in the power of any two Men, one at Home, and one Abroad, to ruin the most innocent Person, by entring, without his Knowledge, into a Correspondence of this Nature.

If the being named in Treasonable letters be a Crime, tho' it does not appear it was with the privity of such Persons, I will submit to your Lordships, how far Men of the greatest Zeal to the present Establishment, are to be affected by Mr. *Plunket's* Insinuations.

No Man ought to suffer for the Suggestions of another Person, unless it appears he has given great Foundation for them. And in this Case, would it not be most extraordinary and most unjust, to punish this Reverend Prelate, for a Crime which there is no Proof he ever committed? I mean, the dictating of these letters. And if, on the other hand, the unfortunate Circumstances of his Affairs have furnished him with Means of shewing, beyond Contradiction, that he could not be concern'd in the letters of the 20th of *April*; that for a considerable time he could not see Mr. *Kelly*; and that there never was an Intimacy between them: Then, my Lords, I hope, every Man who gives his Vote for the rejecting this Bill, has the strongest Evidence of his Side to support his Opinion; and need not be afraid or ashamed to own it here, or any where else.

This part of the Evidence being of great Consequence, I must beg your Lordships Attention, whilst I recapitulate the Heads of it, as clearly and distinctly as possibly I can.

The first Witness they call'd, was *Flower*, a Chairman, who swears, That he carried *Kelly* twice or thrice to the Deanery; but that the Bishop was never at Home, and consequently did not see him. His Partner swore, he had carried him, with *Flower*, one of those Times.

The next Person produced, was a Porter, one *Vanlear*, who deposed, That he went about Christmas was Twelve-Months, twice, with Messages from *Kelly* to the Bishop; the last of which Times, he carried some *Beaver* Stockings; that the Bishop sent for him up Stairs, gave his Service to Mr. *Johnson*, and thank'd him for his Present.

Mrs. *Kilburne*, at whose House Mr. *Kelly* lodged, says, That once a Servant came from the Bishop, to know how Mr. *Johnson* did, and was sorry he could not have his Company at Dinner.

William Wood, the Bishop's Coachman, says, he, once stopp'd in *Bury-Street*; but does not know for what; and that the Bishop sent a Servant some where, who presently returned. And,

Lloyd, who keeps the *Star and Garter* in *Palace-Yard*, has told us, That *Neynoe* once came to his House, and told him, he staid for an ingenious Gentleman, who was gone to the Bishop of *Rochester's* House.

This, my Lords, is all the Proof they offered of this Intimacy; from which they would infer, that the Bishop dictated these letters, and is consequently Guilty of the Crimes laid to his Charge.

If your Lordships consider what was produced on the other side, I am sure you must agree there is no Foundation for this Assertion.

Mrs. *Kilburne* denies, to the best of her Knowledge, that the Bishop ever came to her House, or that his Coach ever stopp'd there, or ever was sent for *Kelly*.

That *Kelly* did not go out of Town, from the time he came from *France*, till he was taken up, the 19th of *May*, and never lay out of her House one Night.

This, my Lords, was confirmed by her Maid *Anne Ellis*.

Mrs. *Barnes* says, She never heard of any Message from the Bishop to *Kelly*, nor ever had any Conversation with him about the Bishop.

William Wood the Coachman, who liv'd with the Bishop four Years, has declared, that the Bishop of *Rochester* never sent him with his Coach to *Bury Street* to fetch any Person from thence, that there was no Stranger at *Bromley* for a Fortnight before his Lady died, which was the 26th of *April*; that no-body could come in a Coach or on Horseback, but he must know it; that he never saw such a Person as Mr. *Kelly*, till he was shew'd him at the *Tower*; and, that the Bishop went ill of the Gout to *Bromley* the 12th of *April*, and did not return to *London* till the 7th of *May*.

Malone, Mrs. *Barnes's* Servant says, That she never saw the Bishop, or any of his Servants, with Mr. *Kelly*.

Thomas Grant, who has been the Bishop's Servant nine Years, has declared, That the Bishop went to *Bromley* the 12th of *April* very ill of the Gout, and that no Stranger could come to him, from the time he went to *Bromley*, till after his Wife's Death; that one or other of the Servants always sat up with him; and that no Person could visit him, but they must know it; for they were either in the same Room, or the next Room to him: and that no Stranger, except Dr. *Aldridge* and the Apothecary, came near him. *Grant* says, That he was forc'd to go to Town to attend at the *Westminster* Election of Scholars on the 21st of *April*, but left *Beauchamp* there, who came down for that purpose on the 18th.

Beauchamp and *Steen*, who were the two Servants that attended with *Grant*, swear the same thing.

Susannah Harvey, *Sarah Jones*, *Thomas Farnden*, *Elizabeth Higginson*, and all the Servants agree, that they never heard of any person by the Name of *Kelly* or *Johnson's* being with the Bishop. And,

Mrs. *English*, who took the Names of the Bishop's Visitors for many Years, does not remember, that she ever heard of such a Person as *Kelly*

or *Johnson*. And I doubt not, but that every Lord must allow, that it is not possible to have a more clear, a more strong, or legal Proof to a Negative, than this is.

I must observe to your Lordships, that most of these Servants have been in strict Custody, and severely used, particularly *Farnden*, and yet your Lordships see how unanimous they are in their Evidence: and their Testimony is so positive, that I cannot conceive any person can suggest there was the least Intimacy between this Reverend Prelate and Mr. *Kelly*; and much less, that he could be with him to write the letters that are dated the 20th of *April*.

Mr. *Reeves* did, indeed, so far agree, as to be of Opinion, that they might have been wrote the 11th of *April*, which was the Day *Kelly* came from *France*: But, my Lords, Mrs. *Barnes* has deposed, he went to Bed the Minute he came home, and lay there for a considerable time; besides, it is improbable that letters wrote the 11th, should not be sent till the 19th. But if any further Argument was necessary to confute this absurd Supposition, the Earl of *Sunderland's* death is mentioned in the letter to *Chivers*, and that Noble Lord died the 19th; at which Time it hath been proved, Mr. *Kelly* was not with the Bishop.

The Bishop of *St. Asaph* did at first peremptorily contradict one part of Mr. *Grant's* Evidence, by saying, he had received a letter from the Bishop of *Rocheſter*, at the Time which *Grant* has sworn he was so ill of the Gout that he could not write.

His Lordship positively affirmed, That he received this letter on *Saturday* the 21st of *April* in the Morning, and saw *Grant* in *London* between Twelve and Two: But when it was proved that *Grant* did not leave *Bromley* till the Evening of that Day, and that another person officiated for him as *Butler* in the Deanery, by Reason of his Absence, then the Bishop seemed to think himself under a Mistake, and allowed it might have been some time before.

His Lordship owned, He never received a letter from the Bishop of *Rocheſter* before nor since, and therefore was a Stranger to his Hand.

I could have wished this Reverend Prelate had recollected himself more fully, before he had given his Testimony in a Matter of this great Importance to one of his Brethren.

There was another Witness examined, which was *Crofton* the Shoemaker, to prove, that *Talbot* (who was said to have received the three letters directed to *Gordon le Fils*) was at that Time in *London*, when he was supposed to have been in *Boulogne*. *Crofton* swears he saw him in Town the 29th of *April*, and proved it by his Book.

There was another person called, whose Name was *Donner*, that deposed, *Gordon* owned to him the receiving of this packet; but an Affidavit was produced from *Gordon*, in which he denies it. *Donner's* Evidence is only hearsay, the other is positive.

My Lords the Counsel for the Bill produced some papers which were taken in the Bishop's Custody when he was apprehended, and endeavour to draw very ill-natured and forced Constructions from them.

The First was a letter from the Dutcheſs of *Ormond*, in which she acquaints him, That she had something to send him, which she could not trust to a better Hand, or Words to that effect. And this they would pretend to insinuate, were some treasonable papers.

I appeal to all Mankind, whether it is not very extraordinary to suppose, that the Bishop should be presumed to convey a Traitorous Correspondence thro' that Channel. Every Body knows the Friendship which was between the Reverend Prelate and that Family; and it is not surprizing that this unfortunate Lady should think him a proper person to consult, and intrust with her own Affairs. Therefore I can't think, that these general Expressions can at all affect him.

The next they read, is a paper found, or pretended to be found, at the Deanery, subscribed to *Dubois*, but without Date: In this the Person who writes it, says, He received a letter by Mr. *Johnson*, to which he returned an Answer in his Hand.

The Secret Committee, at first, apprehended that this was received by the Bishop; and thus it passed, till upon seizing a letter wrote in the Tower by his Lordship, they found a Similitude in the Seals, which immediately enlightned them, and then it was presently said to have been wrote by the Bishop.

They then wanted to fix this to be the Bishop's own Hand-writing, and they could find no other Way of doing it, but pretending there was a Similitude between the E's in this letter, and those which the Bishop generally used. I believe it is the first time that ever such an Argument was brought to prove that the whole letter has been wrote by a Person: much less was it ever pretended to be offered to a Court of Justice against any prisoner whatsoever: But, I believe, there is no Man acquainted with the Bishop's Hand, but sees it is not wrote by him.

They would also affirm, that when in this letter the Bishop is supposed to say, That he returned an Answer in Mr. *Johnson's* Hand, it must be understood to be his Hand-writing: which, I must confess does not at all appear to be a necessary Conclusion; for he might deliver his Answer into Mr. *Johnson's* Hand, which, I think, is more natural to suppose than the other.

Your Lordships must judge, how improbable it is, that the Bishop should keep such a letter by him, which he wrote himself; or that when such Care is taken, as the prosecutors of the plot themselves say, for preventing any person's discovering the Intimacy between Mr. *Kelly* and him, such a Secret should be trusted in Writing, and even without a Cypher. — The Two Seals which gave this Turn, are *Cicero's* Heads, which are very common. And are to be found every where. They are one broke, the other whole, which must make it very difficult to judge of them: and it is allow'd, that, at best, it is but precarious Evidence.

If Mr. *Neynoe* speaks Truth, when he said, The Bishop had Notice of the Storm that threatned him, I am certain, that this paper, if it could have been apprehended of Consequence, would have been destroyed: But, I believe, it was impossible for him, or any body else, to think it should meet with such an Explanation.

The next letter they produced, which they seemed to think material, was that which was seized on his Servant going to Mr. *Morrice*: In this he says, That the Evidence of *Plunket*, and those people, could not affect him; but as he does not mention Mr. *Kelly*, they would have it presumed, that this a proof, that *Kelly* could have said something of him. But, I think, this must appear to be a very ill-natured Assertion.

Your lordships will consider, he was then writing

ing to his Son-in-law; and therefore no great Accuracy was necessary.

In another place, he says, That if they impeach'd him, he should remain in prison for some time; and this they would decypher to be an Implication of his Guilt. — But, in my poor Opinion, it is the Reverse: He seems to say, That if the Commons should be induced to send up an Impeachment against him, he was so satisfied of his own Innocence, and your Lordships Justice, that he thought the Confinement till his Trial, would be the only Misfortune that could attend him. The Example of the Earl of *Oxford* was recent in his Memory, and might justly create in him a Fear of undergoing a long Imprisonment.

It is objected, That he, in this Letter, makes no protestations of his Innocence: But if you will consider he writes to Mr. *Morrice*, I believe every body will agree, that such Declarations were not necessary.

Mr. *Layer's* Attainder was read; but it does not appear, That the Bishop had any Correspondence with him; therefore I can't conceive why we were troubled with it.

My Lords, I have now gone thro' the whole Evidence that is brought to justify this extraordinary proceeding, and must observe the Steps that have been taken to procure all the possible Means to work the Destruction of this Great Man.

You have seen his very Servants confined, who, it does not appear, were guilty of the least Glimpse of Treason.

Lawson, a Baker of *Bromley*, who appeared at your Bar, has been employed to examine the persons in the Bishop's Neighbourhood, in order to find the least particular that could amount to the Shadow of a proof; and went so far, as to offer *Wood* the Coachman the Wages that were due to him, if he would have gone the lengths that were required.

Mr. *Bingly* told us in the Case of *Kelly* (and as it has not been disproved, it is to be taken for granted) that a Warrant was shewn by the Messenger, signed by a Secretary of State, to carry him to *Newgate*, which he was told was unavoidable, unless he would own the letter of the 20th of *August* to be Mr. *Kelly's* Hand-writing: But it appeared the next Day, to be nothing but in order to terrify him.

Mr. *Kelly* himself has told your Lordships, That Mr. *Delafaye* offered him his own Terms, if he would have turned Evidence: And this was done to destroy the Bishop of *Rocheſter*; or, to speak in the language mentioned at your Bar, *To pull down the Pride of this haughty Prelate*.

Your Lordships may remember, That Mr. *Weary* objects to the Bishop's Servants, because two of them had Employments, as appears by his Lordship's own letter: but, my Lords, when they were examined, they acquainted the House, that it was upon reading of the *Report*, that they recollected the Bishop's Circumstances before the Death of his Wife. And if every Man who has a Place under the Bishop, is not to be esteemed a free Agent, when he is upon Oath, I hope it will be allowed, on the other hand, that those who have Employments under the Government, ought not to be admitted; then all the Witnesses that have been brought to support the bill, from the Decypherer to the Messenger, will be discredited, and the whole Prosecution must fall to the Ground.

My Lords, it has been a Hardship that has attended the Bishop, that he has been forced to prove a Negative; and the Difficulty has been the stronger upon him, that your Lordships have not permitted Mr. *Kelly* to be examined, as was moved by a Learned Lord, in my Eye; and if the Gentleman had sworn what he so solemnly affirmed at your bar, relating to this Affair, I can't conceive we could have had the least Debate.

The Noble Lords who appeared the most zealous in this prosecution, were those who opposed the Examination of Mr. *Kelly*; which in my poor Opinion, is a strong Argument, That, if he had been brought before us, he would have persisted in his Declarations of the Bishop's Innocence.

The Reverend Prelate has desired of any Lord in the Administration, and even the Honourable Person who appeared at your bar, to declare, whether any one single Person had charged him (on their own Knowledge) of being guilty of any treasonable Practice. And it has appeared to the contrary: Therefore this whole Charge is founded upon the slight Circumstances and improbable *Innuendoes* before-mentioned.

Another Objection, which has been raised, is, that Mr. *Kelly* made Resistance, when he was seized, till he had burnt some of his Papers: But, my Lords, I don't see any Reason to lay this to the Charge of the Bishop.

Kelly is to answer for his own Actions, and is unfortunately like to suffer for 'em: A Person of his Age might have many letters in his Custody, which he did not Care should be seen, and yet of a different Nature from a Traiterous Correspondence.

After this Evidence is considered, I cannot think your Lordships will establish such a Precedent, which hereafter may be employed to ruin the greatest amongst you. And if ever hereafter, pains and penalties are unjustly inflicted on any person, posterity will derive the Original of such Bills from the proceedings of this Parliament; and what Opinion will be framed of us, should this be passed into a Law, I submit to every impartial Person.

It must be left to your Lordships Consideration, which will be of most fatal Consequence to the Publick, The leaving this Precedent (of Condemning on such kind of Evidence) like a Sword which your Enemies may take up when they please, or the banishing the Bishop of *Rocheſter*, in the Evening of his Days, who alone could do, in his single Person, no Prejudice to the Constitution. If he were inclined to overturn it, as his Enemies suggest, he is in a better Situation Abroad than at Home, to execute that Design, and direct the Counsels of the Disaffected. The Ruin of one Man will not heal the Wound, that the passing of this bill seems to make in the Government of this Kingdom.

It has been said in the Debate, That the bishop ought to have made Protestations of his Zeal for his Majesty and his Family: But, I think he took the most ready Way of performing his Duty, when he shew'd himself Innocent of the Crimes laid to his Charge.

If he had made use of any Expressions, which those lords blame him for omitting, the same *Good nature* would have call'd it *Hyprocrisy*; and those who are displeas'd with his *Silence*, would have accused him of *Insincerity*.

My

My lords, this bill seems as irregular in the Punishments it inflicts, as it is in its Foundation, and carries with it an unnatural Degree of hardship.

It is Felony for his Children to correspond with him: And in this Circumstance, it is different from the only bill that carries with it the least Resemblance of this; I mean, That for the banishment of the Earl of *Clarendon*.

The Earl had flown from the Prosecution, and retired beyond Sea. The Charges against him were, principally, *for advising a Standard Army*; and another Article exhibited was, *That he had advised and procured divers of his Majesty's Subjects to be imprison'd against Law, in remote Islands, Garisons, and other Places, thereby to prevent them of the Benefit of the Law, and to produce Precedents for the Imprisoning any other of his Majesty's Subjects in like Manner.*

The 7th Article against him was, *That he had, in a short Time, gain'd to himself a greater Estate than can be imagin'd to be gain'd lawfully in so short a Time: And contrary to his Oath, he had procured several Grants under the Great Seal from his Majesty, for himself, and his Relations, of several of his Majesty's Lands, Hereditaments and Leases, to the Disprofit of his Majesty.*

There need not have been any Witnesses of these Crimes, for they were apparent; and every body knew that he was *Prime Minister*: Yet Sir *Francis Goodier*, upon that Debate in the House of Commons, declared the Sentiments which I express'd at the Beginning, *That he was not against Proceeding, but unsatisfied to do it without Witness, it being like swearing in verba Magistrum.*

Another great Man, upon the same Question, and an Ancestor to a Noble Lord near me, said; *That if the Parliament set aside Law in this Case, we should be happy to see Law declaring the Power of Parliaments.*

The Punishment for Corresponding with the Earl was High-Treason, and then Two positive Witnesses were necessary to convict: But in this Case, one corrupt, terrified, and perjurd Person may take away the Life of the most innocent Man.

There is another great Misfortune which this Bill brings upon the bishop, which is, That he is incapable of receiving his Majesty's Pardon. This, my lords, is an Entrenchment upon the Prerogative. And what must make it the more severe in this Case, is, That his Majesty's Inclinations to Mercy (which are the distinguishing Characters of his Life) are stop'd by this Law, which the unfortunate Prelate might have Hopes of receiving when he had merited it, by a dutiful behaviour to the Country that had sent him to wander abroad in Exile, and by his future Conduct have confirm'd, if possible, the Evidence he has given of his Innocence.

My lords, in the Case of the Earl of *Danby*, your lordships have declared, That his banishment should be no Precedent, nor drawn into Example for the Time to come, and have so enter'd it in your Journals.

It has been prov'd, That this Reverend Prelate was at the time that he was suspected to be acting in Treason, engaged in Studies of the most high Nature, which is a Circumstance that ought to have some Weight.

If this Bill pass into a Law, such Evidence is establish'd, and such a Method of Proceeding introduc'd, as must effectually render all that is dear to us precarious; and if ever, hereafter, we

should see a wicked Administration, supported by a corrupt Majority in Parliament, this Step taken in these Times of Liberty, will be a sufficient Precedent to give a Colour of Justice to the Actions of those who should be wanton in Tyranny.

The Reverend Prelate, who spoke before me, mentions some Cases relating to Bills of Attainder, which in my poor Opinion, differ very much from our present Question.

The Attainder of Sir *John Fenwick* was only to supply the want of a Witness who had deposed against him upon Oath before the Grand Jury, and who was spirited away by the Prisoner's Friends: But at present, your lordships are to supply the Defect of Evidence, by condemning on improbable Conjecture. There was a Noble Lord in this House the other Day, I don't see him now, who made the greatest Figure in Opposition to that Bill, I wish we could have his Assistance on this Occasion.

My lords, since that Reverend Prelate has quoted some Cases, he will permit me to remind him what has been formerly said upon Acts of Attainder; That such Bills, like *Sisyphus's* Stone, have frequently roll'd back upon those that were the chief Promoters of them.

This prudential Argument should restrain us from being too forward with them at this Time of Day.

The Act for the Attainder of the Earl of *March* pass'd, because he had been instrumental in procuring the Attainder of another lord, under pretence of a letter, which the Record says, was no Evidence.

The lord *Cromwell* is another known Instance of this Observation: He was the first who advised this violent Proceeding in *Henry* the 8th's Time: And it is remarkable, that the Advice he gave to the Ruin of others, prov'd, not long after, fatal to himself.

I have now given your lordships the Reasons why I am against the Bill. I fear I have tired your Patience, and shall therefore conclude with the Words of the Great Man I before mentioned; I mean, Sir *Henry Finch*, in the Case of the Earl of *Clarendon* — 'We have an Accusation upon Hear-say, and if it is not made good, the blackest Scandal Hell can invent, lies at our Doors.'

The Result of this Debate was, that the Bill, pass'd the House; it afterwards obtain'd the Royal Assent, and was as follows:

An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester.

WHEREAS in the Years One thousand seven hundred and twenty one, and One thousand seven hundred and twenty two, a detestable and horrid Conspiracy was formed and carried on by divers Traitors for invading your Majesty's Kingdoms with foreign Forces, for raising an Insurrection and Rebellion against your Majesty, for seizing the *Tower* and City of *London*, and for laying violent Hands upon your Majesty's most sacred Person, and upon his Royal Highness the Prince of *Wales*, in order to subvert our present happy Establishment in Church and State, by placing a Popish Pretender on your Throne: And whereas for the better concealing and effecting the said Conspiracy, divers treasonable Correspondences were, within the time aforesaid, carried on by Letters

written in Cyphers, secret Words, and fictitious Names: which Conspiracy, had it not been disappointed by the Goodness of Almighty God, would have deprived your Majesty's Kingdoms of the Enjoyment of their Religion, Laws and Liberties, involved them in Blood and Ruin, and subjected your people to the Bondage and Oppression of *Romish* Superstition and Arbitrary Power: For which execrable Treason *Christopher Layer* hath been indicted, tried, convicted, and attainted. And whereas *Francis* Lord Bishop of *Rocheſter*, notwithstanding the many solemn Assurances by him given of his Faith and Allegiance to your Majesty, by taking the Oaths by Law appointed to be taken, instead of the Oaths of Allegiance and Supremacy; which Oaths he had likewise taken at sundry Times, during the respective Reigns of their late Majesties King *William* and Queen *Mary*, and of her late Majesty Queen *Anne*; and notwithstanding he had frequently abjured the Pretender, hath, in direct Violation of his said repeated Oaths and Obligations, and to the great scandal of Religion, and his Holy Function, been deeply concerned in forming, directing, and carrying on the said wicked and detestable Conspiracy, and hath been a principal Actor therein, by traitorously consulting and corresponding with divers Persons to raise an Insurrection and Rebellion against your Majesty within this Kingdom, and to procure a foreign Force to invade the same, in order to depose your Majesty, and place the Pretender on your Throne; and by traitorously corresponding with the said Pretender, and Persons employed by him, knowing them to be so employed: Therefore to manifest our just Abhorrence of so wicked and abominable a Conspiracy, and our Zeal and tender Regard for the Preservation of your Majesty's Person and Government, and of the Protestant Succession in your Majesty's Royal Family, the solid Foundations of our present Happiness and future Hopes; and to the end that no Conspirator may, by any subtil Contrivance or Practice whatsoever, escape Punishment, and that all others may by the Justice of Parliament be for ever hereafter deterred from engaging in any traitorous Conspiracies or Attempts, We your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal, and Commons in Parliament assembled, do humbly beseech your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That the said *Francis* Lord Bishop of *Rocheſter*, from and after the first Day of *June*, in the Year of our Lord One thousand seven hundred and twenty three, shall be, and is hereby, to all Intents and Purposes, deprived of all and singular his Offices, Dignities, Promotions, and Benefices Ecclesiastical whatsoever, and that the same, and every of them, shall from thenceforth be actually void, as if he were naturally dead; and that the said *Francis* Lord Bishop of *Rocheſter* shall from thenceforth for ever be disabled, and rendered incapable of and from taking, holding, or enjoying any Of-

fice, Dignity, Promotion, Benefice, or Employment within this Realm, or any other his Majesty's Dominions, and also of and from using or exercising any Office, Function, Authority, or Power Ecclesiastical or Spiritual whatsoever; and shall and do suffer perpetual Exile, and be forever banished this Realm, and all other his Majesty's Dominions, and shall depart out of the same on or before the Five and twentieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty three: And that if the said *Francis* Lord Bishop of *Rocheſter* shall return into, or be found within this Realm, or any other his Majesty's Dominions at any time after the said Five and twentieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty three, he the said *Francis* Lord Bishop of *Rocheſter*, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without Benefit of Clergy, and shall be utterly incapable of any Pardon from his Majesty, his Heirs or Successors.

And be it further enacted by the Authority aforesaid, That all and every Person and Persons, who shall, from and after the said Five and twentieth Day of *June*, in the Year of our Lord One thousand seven hundred twenty three, be aiding or assisting to the Return of the said *Francis* Lord Bishop of *Rocheſter* into this Realm, or any other his Majesty's Dominions, or shall harbour or conceal him within the same, or any of them, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without benefit of Clergy.

And be it further enacted by the Authority aforesaid, That if any of the Subjects of his Majesty, his Heirs or Successors, except such Persons as shall be licensed for that Purpose by his Majesty, his Heirs or Successors, under his or their Sign Manual, shall, from and after the said Five and twentieth Day of *June*, in the Year of our Lord One thousand seven hundred and twenty three, within this Realm or without, hold, entertain, or keep any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said *Francis* Lord Bishop of *Rocheſter*, or with any Person or Persons employed by him, knowing such Person or Persons to be so employed, such Person so offending, being thereof lawfully convicted, shall be adjudged Guilty of Felony, and shall suffer and forfeit as in Cases of Felony, without benefit of Clergy.

And be it further enacted, That if any Offence against this Act shall be committed out of this Realm, the same shall or may be alledged, laid, enquired of, and tried in any County within *Great Britain*.

In pursuance of this, on *Tuesday* the 18th of *June*, the deprived bishop of *Rocheſter*, accompanied by his Son-in-Law Mr. *Norrice* and his Wife, embark'd on board the *Aldbrough*, one of his Majesty's Ships of War, and on *Friday* the 21st, landed at *Calais*.



CXCV. *The Trial of Thomas, Earl of Macclesfield, Lord High Chancellor of Great Britain, before the House of Lords, for High Crimes and Misdemeanors in the Execution of his Office, May 6, 1725.*
10 Geo I.

The FIRST DAY.

ABOUT Eleven of the Clock, the Lords being seated in their House, the Managers for the House of Commons being in the Conveniencies made for them at their Lordships Bar, Thomas Earl of Macclesfield, having a Stool plac'd for him within the Bar, and his Counsel, viz. Mr. Serjeant Probyn, Doctor Sayer, Mr. Lingard, Common-Serjeant of the City of London, Mr. Robins, and Mr. Strange, standing near him at the Bar, the Serjeant at Arms made Proclamation as follows :

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

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

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

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

A R T I C L E S

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

WHereas the Office of Lord Chancellor of *Great Britain* is an Office of the highest Dignity and Trust, upon the impartial and uncorrupt Execution whereof the Honour of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend : And whereas *Thomas Earl of Macclesfield*, in or about the Month of *May*, in the Year of our Lord, One thousand seven hundred and eighteen, by the great Grace and Favour of his most Excellent Majesty, was constituted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the usual Oath for the due Execution of that High Office, whereby he did swear well and truly to serve our Sovereign Lord the

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

tinued

tinued in the said Office of Lord Chancellor, did Illegally, Corruptly, and Extorsively take and receive to his own private Use the following or some other great Sums of Money.

ARTICLE I.

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

ART. II.

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

ART. III.

That *John Borret*, Esq; having contracted with

John Meller, Esq; One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Nine thousand Pound, or some other great Sum of Money; the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *John Borret* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively insist upon, take and receive of and from the said *John Borret* the Sum of fifteen hundred and seventy-five Pounds, or some other Sum of Money, for the admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *John Borret* should have, exercise and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *John Borret* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Meller*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

ART. IV.

That *Edward Conway*, Esq; having contracted with *John Orlebar*, Esq; one of the late Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Edward Conway* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take, and receive of and from the said *Edward Conway*, the Sum of fifteen hundred Pounds, or some other Sum of Money, for the admitting of him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Edward Conway* should have, exercise, and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Edward Conway* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Orlebar*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

ART. V.

That *William Kynaston*, Esq; having contracted with *William Rogers*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of six thousand Pounds, or some other great Sum of Money, the

the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *William Kynaston* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, illegally, corruptly, and extorsively insist upon, take, and receive of and from the said *William Kynaston*, the Sum of fifteen hundred and seventy-five Pounds, or some other Sum of Money, for the admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *William Kynaston* should have, exercise, and enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *William Kynaston* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *William Rogers*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

ART. VI.

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

ART. VII.

That the Office of one of the Masters of the said Court of Chancery, becoming vacant by the Death of *William Fellows*, Esq; one of the late Masters of the said Court, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *Francis Elde*, Esq; into the said Office of One of

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

ART. VIII.

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

ART. IX.

That whereas *Thomas Bennet*, Esq; in or about the Month of *August*, in the Tenth Year of his Majesty's Reign, was possess'd of an Office in the Court of Chancery, called the Office of Clerk of the Custodies, for the Term of his Life, by Virtue of his Majesty's Letters Patents under the Great Seal of *Great Britain*, which Office is an Office of Trust in the said Court, in the Gift and Disposal of the Crown by Grant under the Great Seal, and concerns the writing and making Com-

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

A R T. X.

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

A R T. XI.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued in the Office of Lord Chancellor of *Great Britain*, in order to advance and in-

crease the illegal and corrupt Gain, arising to himself from the Sale and Disposal of the Offices of Masters of the Court of Chancery, in Violation of the great Trust reposed in him for the Care and Protection of the Suitors of the said Court, whose Money and Effects were, by Orders of the said Court, lodged in the Hands of the Masters of the said Court of Chancery, did admit several Persons to the said Offices of Masters of the said Court of Chancery, who, at the Time of such their Admissions, were of small Substance and Ability, very unfit to be trusted with the great Sums of Money and other Effects of the Suitors of the said Court, lodged in their Hands by the Orders of the said Court; and did publicly in open Court, when he sat there as Lord Chancellor, falsely represent the said Persons, so by him admitted to the Offices of Masters of the said Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors of the said Court.

A R T. XII.

That whilst the said *Thomas*, Earl of *Macclesfield* executed the said Office of Lord Chancellor, an unjust and fraudulent Method was practised in the Court of Chancery upon the Sale of the Offices of Masters of the said Court, and upon the Admissions of new Masters, that the Prices or Sums of Money agreed to be paid for the Purchase of the said Offices, and for the Admissions therinto, were satisfied and paid out of the Monies and Effects of the Suitors of the Court deposited in the Hands of the respective Masters, surrendring their Offices, or dying, either by way of Retainer of the Purchase Money in the Hands of the Master resigning, or of replacing the Money disbursed for such Purchase or Admission by the succeeding Master, out of the Money and Effects of the Suitors coming into his Hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions therinto, during the time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to contract for the said Offices, upon a Prospect of the easy method of paying for the Purchase of the same, by means whereof great Deficiencies have incurred in the Offices of several Masters of the said Court, admitted by the said *Thomas*, Earl of *Macclesfield*, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well informed thereof, and fully acquainted therewith, yet the said *Thomas*, Earl of *Macclesfield*, in order to increase his own unjust and corrupt Profit in the selling the said Offices, and the Admissions thereto (which in consequence of this evil Practice was raised and received by him out of the Effects of the Suitors, for whom he was intrusted) did not at any Time, whilst he continued in his Office of Lord Chancellor, use or take any measures to reform the said Abuse, or to prevent the same, either by causing proper Schedules to be taken of the money and Effects of the Suitors delivered over and transferred, or by appointing any Person, in his Behalf, to inspect or supervise the Transfers or Deliveries thereof, or in any other manner; but on the contrary, the said *Thomas*, Earl of *Macclesfield*, unjustly, corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Masters, and

and of their Accounts did appertain) did suffer the said fraudulent Practice to proceed and be exercised without any Controul or Check, whereby great Embezzlements have been made of the Suitors Money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their respective Ballances owing upon their Accounts, in breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Suitors, to the Dishonour and Discredit of the said Court, and to the great Injury and Defrauding of the said Suitors, in a Court of Equity, established for their Relief and Protection.

A R T. XIII.

That *Fleetwood Dormer* Esq; one of the Masters of the Court of Chancery, having embezzled great part of the Money and Effects belonging to the Suitors of the said Court, with which he was intrusted by the said Court, and disposed of the same for his own private Advantage, by Means whereof there became, and still continues a great Deficiency in that Office, to the Amount of twenty five thousand Pounds, or some other great Sum; and the said *Fleetwood Dormer*, having absconded, and for some time absented himself, Application was made to the said Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, to secure the Person of the said *Fleetwood Dormer*, and to take proper Methods for compelling the said *Fleetwood Dormer* to make Satisfaction to the Suitors for the Money and Effects, which he had so embezzled, yet the said Earl, from an Apprehension that a publick Discovery of the said Deficiency might lessen the unjust Gain he proposed to make to himself, by selling and disposing of the said Offices of Masters of the said Court, neglected and declined either to secure the Person of the said *Fleetwood Dormer*, and his Estate and Effects, or to make a proper Enquiry into the said Deficiency: But on the contrary, the said Earl, whilst he continued Lord Chancellor of *Great Britain*, did endeavour, by many indirect Practices, to conceal from the Suitors of the Court, the true State and Condition of the said Office, as well with respect to the Effects of the said *Fleetwood Dormer*, as to the Debt due from him to the Suitors of the Court; and upon Motion made in the said Court of Chancery (after the said Earl knew that the said *Fleetwood Dormer* had so absconded) on behalf of some of the Suitors of the Court, to have their Effects transferred from the said *Fleetwood Dormer* to some other Master, for the better securing thereof, the said Earl of *Macclesfield*, (in order to delude the Suitors of the said Court into a Belief that their Effects were safe, and thereby to prevent a publick Inquiry) then sitting as Lord Chancellor in open Court, did say, That the said Parties need not be in haste, and did at the same time falsely and deceitfully declare, that the said *Fleetwood Dormer* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

A R T. XIV.

That the said *Fleetwood Dormer*, having towards Satisfaction of the Suitors of the said Court, assigned to *Henry Edwards* Esq; (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of Twenty four thousand and

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

A R T. XV.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, to carry on his corrupt and unjust Purposes, and to conceal the Deficiency that was in the Office of the said *Fleetwood Dormer*, did, in or about the Month of *February*, in the Year of our Lord, One thousand seven hundred and twenty, order the several Masters of the said Court of Chancery to bring in their Accounts of the Cash, Effects, and Securities in their Hands belonging to the Suitors of the Court, not with a Design of examining their Accounts, or securing the Estate and Effects of the Suitors, but with an intent to terrify the said Masters, and thereby oblige them to contribute great Sums of Money towards answering the Demands that should, from time to time, be made upon the said Office; for which purpose, he the said Earl did at several Times represent, or cause to be represented to the said Masters, that if they refused so to do, the Money and Effects of the Suitors would be taken out of their Hands, and the said Masters deprived of making any Profit of the same; by which Practices the said Earl, being then Lord Chancellor of *Great Britain*, by colour of his Authority, did persuade and induce nine of the Masters of the said Court of Chancery, to pay Five hundred Pounds each for the purposes aforesaid, several of whom paid the same out of the Money or Effects of the Suitors in their Hands; but after such Payments, the said *Thomas*, Earl of *Macclesfield*, did not oblige the said Masters to deliver in their Accounts in pursuance of such his said Order.

A R T. XVI.

That *Elizabeth Clitty*, Widow, having obtained an Order of the Court of Chancery, on or about

about the seventeenth Day of *March*, in the tenth Year of His present Majesty's Reign, made by the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards* Esq; one of the Masters of the said Court of Chancery, who succeeded *Fleetwood Dormer* Esq; in the said Office, was ordered to pay her the Sum of one thousand Pounds, part of the Sum of ten thousand Pounds, or other great Sum of Money, formerly paid into the Hands of the said *Fleetwood Dormer*, as a Master of the said Court, and by the said Order mentioned to be then in the Hands of the said *Henry Edwards*; and the said *Henry Edwards* complaining to the said Earl, that the making Orders upon him to pay Money which had been received by the said *Fleetwood Dormer*, was a very great Hardship upon him the said *Henry Edwards*, in regard he had not any Money or Effects in his Hands to answer such Demands, the said Earl of *Macclesfield*, being then Lord Chancellor, in further prosecution of his unjust and corrupt Purposes, did, by colour of his Authority, endeavour to prevail with the Masters of the said Court of Chancery, to raise the said Sum of one thousand Pounds out of their Effects, by representing to them, that a Discovery of the Deficiency in the said Office might occasion a Parliamentary or Publick Enquiry into the Nature and Condition of their Offices, and hazard the Forfeiture of the same, by reason of their having bought the said Offices contrary to Law, which the said Earl then declared would affect him, but themselves much more, or to that effect; but the said Masters refusing to raise the said Sum of one thousand Pounds, the said Earl of *Macclesfield* did order his Secretary *Peter Cottingham* Esq; to pay the said one thousand Pounds; who, in pursuance of the said Earl's Directions, in or about the Month of *July*, one thousand seven hundred and twenty four, did pay the same to *Ascan Christopher Lockman*, for the Use of the said *Elizabeth Chitty*; and the said Earl of *Macclesfield*, upon Application made to him by the said *Ascan Christopher Lockman*, for Payment of the said Money, did acquaint him, that he, the said Earl, had given Directions to his Secretary for payment of that Sum, but at the same time declared to the said *Ascan Christopher Lockman*, that he, the said Earl, believed this would be the last payment she was like to receive out of the said Money paid into the Hands of the said *Fleetwood Dormer*, for the Residue thereof was in great Danger of being lost, by reason of the Deficiency in the Effects of the said *Fleetwood Dormer*, or to that effect. Notwithstanding all which proceedings, in this and several other Articles mentioned, upon a Motion made in the Court of Chancery before the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, on or about the fifth Day of *December* last, in a Cause there depending between *Jane Harper*, Plaintiff, and *Thomas Case*, and others, Defendants, relating to the Sum of two hundred and sixty Pounds, or some other Sum, deposited in the Hands of the said *Fleetwood Dormer*, before his absconding, and which was then apprehended in great Danger of being lost, the said *Thomas*, Earl of *Macclesfield*, then sitting in Court as Lord Chancellor, did publickly, falsely, and deceitfully declare, that he had heard there was a Deficiency in the Office of the said *Fleetwood Dormer*, but that he, the said Earl, knew nothing of it, only as publick News, or to that Effect; and there-

upon did order, that the said *Henry Edwards* should examine in what Manner the said two hundred and sixty Pounds was deposited with the said *Fleetwood Dormer*, and whether there was likely to be a Loss of any Money deposited with the said *Fleetwood Dormer*.

A R T. XVII.

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

A R T. XVIII.

That the said *Thomas*, Earl of *Macclesfield*, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their Power, from Time to Time, and at their Pleasure to dispose of and employ the Money and Effects belonging to the Suitors of the said Court, which were intrusted with them respectively, and more particularly, that the Deficiency appearing in the Office of *Fleetwood Dormer*, Esq; one of the Masters of the Court of Chancery, was chiefly occasioned by his, the said *Fleetwood Dormer*'s, having taken upon himself unduly to dispose of and employ the Money and Effects belonging to the Suitors of the said Court, which were intrusted in his Hands; and notwithstanding that, soon after the said *Fleetwood Dormer* became insolvent, it was represented and proposed to the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, in order to prevent for the future any Losses that might happen to the Suitors of the said Court, that the several Effects and Securities belonging to the Suitors should be placed out in such Manner, as that the Power of disposing, imploying, or in any manner trading with the same, might be totally taken away from the said Masters, for the effecting of which just Design, a particular Method was laid before the said Earl; and it was also further proposed, that the said Masters should give some reasonable Security to answer the Ballance of such Cash, as should, from Time to Time be in their Hands; and notwithstanding the said Earl was credibly informed, that the Sufficiency of some other of the said Masters was very much suspected, yet the said *Thomas*, Earl of *Macclesfield*, whilst he was Lord Chancellor of *Great Britain*, contrary to the Duty of his Office, and thereby proposing to make unlawful Gain

himself by the Disposal and Sale of the Offices of Masters of the said Court of Chancery; and in order to induce Persons to give him, the said Earl, a greater Price or Reward for their being admitted to the same, did not require or demand any Security whatsoever, to be given by any of the said Masters, upon their being admitted to their Offices, or at any other Time; and the said Earl with the same corrupt View and Intention, and to keep up the Price of the said Offices, totally neglected to enquire into the Accounts of the said Masters, and did fraudulently, unjustly, and in Breach of the Trust reposed in him, permit and encourage the Masters of the said Court, to employ and traffick with large Sums of Money belonging to the Suitors of the said Court, and to make Interest thereof for their own unjust Gain and Profit; and the said Earl, after such Proposal made to him, as aforesaid, or at any other Time, during his Continuance in the said Office did not take any Care that the Effects of the said Suitors should be placed out in such Manner, as to prevent the Masters from trafficking therewith, or that the said Masters should give such Security, as was proposed; by Means whereof great Deficiencies, to the amount of many thousand Pounds, have been, through such Default of the said Earl, occasioned in the Offices of several other of the Masters, to the great Loss and Injury of the Suitors of the said Court.

A R T. XIX.

That whereas his most Sacred Majesty, out of his fatherly Goodness to his People, did, in or about the month of *November* last, direct an Enquiry to be made into the Accounts of the matters of the said Court of Chancery, to the Intent that proper methods might be taken for the Security of the Suitors of the said Court; the said *Thomas, Earl of Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his Majesty's most Honourable Privy Council, in order to obstruct the same, and to prevent a parliamentary Enquiry into the State and Condition of the Offices of the said Masters, in Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters to assist and supply each other with money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient, and that, if they made a bold Stand now, it might prevent a parliamentary Enquiry, or to that Effect, and did persuade several of them to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their respective Accounts delivered to the said Earl, to be laid before his Majesty, to the Effect following (*viz.*) That they were able to answer the money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereunto, although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the Ballance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of their Suitors in their Hands, some of the said Masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a false shew and appearance of their Ability and Readiness to answer the Ballance of their Accounts.

A R T. XX.

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

A R T. XXI.

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

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

And the said Knights, Citizens, and Burgeses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter. any further

Articles, or other Accusation or Impeachment against the said *Thomas, Earl of Macclesfield*, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, that the said *Thomas, Earl of Macclesfield*, may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Trials, and Judgments, may be thereupon had and given, as are agreeable to Law and Justice.

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

THE said Earl, saving to himself all Advantage of Exception to the said Articles, and of not being prejudiced by any Words or want of Form in this his Answer, and also saving to himself all Benefit and Advantage of the Act for the King's most gracious, general, and free Pardon herein after mentioned, and all Rights and Priviledges belonging to him as one of the Peers of this Realm, for Answer to the said Articles saith, That he, having for several Years executed the Office of Chief Justice in the Court of King's-Bench, his Majesty of his royal Grace and Favour was pleased, the tenth Day of *March*, One thousand seven hundred and fifteen, to advance the said Earl to the Dignity of a Peer of this Realm, and created him Baron of *Macclesfield*; and, in regard to his Circumstances at that Time, was further pleased, for the better Support of that Honour, to grant to the said Earl the pension of Twelve hundred pounds *per Annum*, in the Articles mentioned, payable at the Receipt of the Exchequer; and his Majesty was then likewise pleased to declare his Royal Intentions of giving to the said Earl's only Son, *George Parker*, for his Life, an Office of considerable Profit, when a proper Opportunity should offer; that in the Beginning of *May*, in the Year One thousand seven hundred and eighteen, he the said Earl, was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was sworn before his Majesty in Council the fourteenth Day of that Month, when the following Oath, being the usual Oath of Lord Chancellor, was administered to him, (*viz.*)

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

As God shall help you.

And

And the said Earl at the same Time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth; and the said Earl doth admit, that, during his Continuance in the said Office of Lord Chancellor, he did enjoy the usual Salary, Fees, and Profits belonging to such Office, which, he says, are of much less annual Value than they are generally (as he believes) esteemed to be; and that his Majesty was pleased to grant him the Salary or Allowance of Four thousand pounds *per Annum*, in the Articles mentioned, during such Time as he should continue to be Lord Chancellor; but the same is so far from being particular in the Case of the said Earl (as the said Articles would insinuate) that it is no other than what hath been for many Years past constantly granted to, and enjoyed by his predecessors in the said Office; and the said Earl doth likewise admit, that his Majesty did, of his royal Grace and Bounty, sign a Warrant for payment of the Sum of Fourteen thousand pounds mentioned in the said Articles, to the said Earl, out of the Receipt of the Exchequer, whereof Two thousand pounds was the constant usual Allowance from the Crown to the Lord Chancellor or Lord Keeper, for and towards the Expences in entering upon the said Office; and the Residue of the said Fourteen thousand pounds, over and above the usual Fees and Deductions upon payment thereof, was his Majesty's royal Munificence to the said Earl, and the same was received by him accordingly; and the said Earl doth likewise, with the greatest Gratitude, own, that about the same Time, his said Son being then of a proper Age, and desirous to go abroad to travel, his Majesty was pleased to grant to the said *George Parker* the yearly pension of Twelve hundred pounds, payable out of the Receipt of the Exchequer, during the joint Lives of his Majesty, and the said *George Parker*, determinable upon his Majesty's granting to him, the said *George Parker*, in Possession or Reversion, the Office of one of the Tellers of the Exchequer, for Life, and his coming into the actual Possession thereof, and which the said Earl likewise admits has been since granted to his said Son, and that he came into the actual possession thereof in or about *July*, One thousand seven hundred and nineteen, whereby the said yearly pension is determined; and the said Earl saith, that, during his continuance in the said Office of Lord Chancellor, or at any other Time, he never once had a Design, or View, or Wish to raise to himself any exorbitant Gain or Profit, much less used or ever thought of using any Unjust or Oppressive Methods to Extort or Obtain any Sum whatsoever, as in the said Articles is suggested, but such Views and Practices are inconsistent with the whole Tenor of his Life and Actions; and in case it shall be thought proper for the said Earl to lay before your Lordships an Account of his Estate and Fortune, and of the considerable Sums of Money he has distributed for the Relief and Support of others, it will appear that he is not such a designing, avaritious, and oppressive Man, as in the said Articles he is represented; and the said Earl humbly hopes, that he shall be allowed, in this his Answer, to distinguish between Acts themselves, and the Inferences drawn from them by the said Articles, and that, whenever he admits any Fact, he may not be understood to admit that such Fact was by him done or committed upon such Mo-

tives, and with such Designs, or in such Manner, as is suggested in the said Articles, and with this Reservation he answereth, as followeth: By way of general Answer to such of the said Articles, as relate to the making any present by persons admitted to the Office of Masters in Chancery; the said Earl doth say, that the same has been long used and practised in the Time of his Predecessors, in the said Office, and that such presents have been reckoned amongst the ancient and known perquisites of the Great Seal, and the making and accepting thereof has been notorious to all the World, and never before looked upon to be criminal or complained of as such; and the said Earl humbly hopes, that the giving or receiving of a Present on such Occasion is not criminal in itself, or by the Common Law of this Realm, and that there is not any Act of Parliament whatsoever, by which the same is made criminal, or subject to any Punishment or Judgment, which can be prayed in this Prosecution; and the said Earl thinks himself obliged humbly to lay this before your Lordships, not only in his own Defence, but in Vindication of the Honour of so many Great and excellent Men, who have been his Predecessors in the said Office, and have all along done the same, for which the said Earl is now complained of, and of others having been Lords Chief Justices of the King's Bench and Common Pleas, Masters of the Rolls and other Judges, who have likewise received Presents in Money, upon the Admission of the several and respective Officers under them, in several Courts of Justice, and who, the said Earl is assured, never apprehended themselves to be Guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm.

I. &c. To the first, second, third, fourth, fifth, sixth, and seventh Articles, the said Earl further saith, that long before the 24th of *July*, One thousand seven hundred and twenty one, he did admit and swear *Richard Godfrey*, *James Lightboun*, *John Borret*, and *Edward Conway* Esquires, into the Offices of Masters of the Court of Chancery, and every one of them did freely and voluntarily, and of their own accord, as former Masters had done to the Predecessors of the said Earl, send to the said Earl a Present upon Occasion of their respective Admittances, which the said Earl accepted, and that after the said 24th of *July*, One thousand seven hundred and twenty one, he did admit and swear *William Kynaston*, *Thomas Bennet*, and *Francis Elde* into the Offices of Masters of the Court of Chancery, and saith, that every of the said Persons last named, did freely and voluntarily, and of their own Accord, in like Manner, send a Present to the said Earl upon Occasion of their respective Admittances, but saith, that, it being pretended by the said *Kynaston* and *Bennet*, that they were by such Presents disabled from answering so much of the Money due from them to the Suitors of the Court, he the said Earl did afterwards, and before the Impeachment, deliver the Present so sent him by the said *William Kynaston*, being fifteen hundred seventy five Pounds; and also the Present so sent him by the said *Thomas Bennet*, being the like Sum of Fifteen hundred seventy five Pounds, into the Court of Chancery, in open Court, to be applied for the Benefit of the Suitors, as the Court should Direct, and that the said Earl retained of the Present so sent him

by

by the said *Francis Elde*, no more than the Sum of One thousand eight hundred and fifty Pounds.

VIII. To the eighth Article the said Earl further saith, That in *July* last the Office of one of the Masters of the said Court became vacant by the Death of *John Borret* Esq; who died intestate, but whether solvent or not, he cannot say; but upon notice of his Death, the said Earl did at first desire *Richard Godfrey* Esq; one of the Masters of the said Court, who had been very well acquainted with the said Mr. *Borrett*, and his Affairs, and afterwards the said Mr. *Godfrey* and *John Bennet* Esquire, another of the Masters of the said Court, to inquire into his Effects, and to take what Care they could about the same, who, after some Inquiry, informed the said Earl, that they believed there would be no Deficiency, and secured a considerable Part of the Effects of the said Mr. *Borrett*, and entred a proper Caveat in the Prerogative Court, to prevent Administration being granted to any Persons who might embezzle the said *Borret's* Estate; and afterwards, at the Request of the said Earl, proceeded so far, as to obtain a Sentence in the said Prerogative Court, for Administration to be granted, for the Benefit of the Suitors of the Court, to them, the said Mr. *Bennet* and Mr. *Godfrey*, which was afterwards, upon their waving thereof, granted to Mr. *Paxton*, as the said Earl believes, but the said Earl thought it proper and necessary to admit another Master in his Place, to carry on the Business of the Court, and to be intituled to demand the Effects of the Suitors, from the Representative of the said Mr. *Borrett*, when one should be appointed; and therefore, about the fifth Day of *August* last, did admit and swear *Mark Thurston* Esq; into the said Office, vacant by the Death of the said *Borrett*, and the said Earl admits the said *Mark Thurston* did upon that Occasion freely and voluntarily, and of his own Accord, send a Picant, whereof two thousand Pounds, and no more, were retained.

IX. In Answer to the ninth Article the said Earl saith, That he believes *Thomas Bennet* Esq; in this Article named, was possessed of the Office of Clerk of the Custodies, in the Article described, and that such Office is in the Gift and Disposal of the Crown, by Grant under the Great Seal, but denies that he did at any time insist upon the Sum of one hundred and five Pounds, or any other Sum of Money, to permit or accept of the Resignation of the said *Thomas Bennet*, or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum on that Account; but saith, That although the said Office be usually granted by the Crown, yet it has always been looked upon to be the Right of the Lord Chancellors, or Lord Keepers, to recommend to that, and other Offices under the Great Seal, and to approve and allow of the Deputies to execute the same; and, upon such Recommendations and approving of Deputies, have accepted Presents, and looked upon the same as their Right; and further saith, That there have been two of such Offices granted in his Time, one of which appearing to him to be a Case wherein the Party had suffered great Hardship, the said Earl passed the same without any Present whatsoever, though the Office be of considerable Value; the other was the Case of Mr. *Hammersley*, in the Articles

mentioned, in which the said Earl owns he did accept a Present.

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

XI. In Answer to the eleventh Article the said Earl saith, That the same not containing any particular Charge, he apprehends himself not obliged to give any particular Answer thereto; but however, in general, does say, That he never did admit any Person into the Office of a Master of the Court of Chancery, but who was either known to be of Substance and Ability, and fit to be trusted in such Office, or, upon a proper Enquiry, very well recommended to him as such; and, whenever there have been several Candidates, the said Earl has constantly given the Preference to him that he thought would best discharge the Office, and most for the Honour of the Court, and the Advantage of the Suitors; and believes that he may, upon some Occasions, have declared, that he thought the then Body of Masters as good, with respect both to their Estates, and Ability for Discharge of the Office, and their Integrity, as had been at any time before, or to that Effect, and what he did say to that Purpose, he thought to be really true.

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

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

XIV. To the Fourteenth Article the Earl saith, That *Henry Edwards*, Esq; in this Article mentioned, succeeded to the Office of Mr. *Dormer*, about the the eighteenth Day of *May*, one thousand seven hundred and twenty-one; but, by reason of the Disorder the said Office was then under, and the great Danger of a Loss therein, the Earl had given up and quitted all the Advantage which might accrue to him upon the Disposal thereof, and left it entirely to the other Masters to raise what money they could thereby, which was agreed to be all applied towards making good any Deficiency or Loss, which might happen to the Suitors of the Court concerned in that Office; and thereupon the Sum of five thousand Pounds was raised, by the Disposal of the said Office to Mr. *Edwards*, and was applied accordingly; and the said Earl believes the Debt from *William Wilson*, in this Article mentioned, was assigned by the said Mr. *Dormer* to the said Mr. *Edwards* in Trust, and to the Intent, that he

should pay, apply, and dispose of the said Debt, or such Part thereof, as should be, from time to time, by him got in, and received of and from the said *William Wilson*, in such manner as the Court should order and direct, or to that Effect; after which said Assignment so made, the Earl believes that the said Mr. *Edwards* used great Endeavours to obtain Payment and Satisfaction of the said Debt from Mr. *Wilson*; but finding all his Endeavours fruitless, and that the said *Wilson* had long before stopt Payment, and was in no Condition of paying his Creditors the whole of their Debts, but that he was willing, and had offered to come to a Composition, and to pay them in Proportion the utmost he was able; the said Mr. *Edwards* thereupon, about the thirtieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty two, preferred his Petition to the said Earl, as Lord Chancellor, setting forth in Substance the State of the Case, as before-mentioned, and praying that it might be referred to one of the Masters of the Court, to see if such Composition, so proposed by the said *William Wilson*, were for the Benefit of the Persons intitled to receive the same; and the same was accordingly, by Order of the said Earl, referred to Mr. *Hiccocks*, the then senior Master of the Court, to enquire into, and make his Report therein; and about the six and twentieth Day of *July*, then next following, the said Mr. *Hiccocks* made his Report, that the said *William Wilson* had, under his Hand in Writing, proposed to assign over to the said Mr. *Edwards*, as a Composition for, and in full Discharge of, the Sum of twenty four thousand forty six Pounds and four Shillings, therein mentioned to be due and owing from him to the said Mr. *Edwards*, as Assignee of the said Mr. *Dormer*, the Sum of ten thousand Pounds, Part of a large Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, Gentleman, in this Article mentioned, and to pay the said Mr. *Edwards* in Specie, the Sum of one thousand four hundred sixty three Pounds, two Shillings and one Penny, over and above the Sum of five hundred and sixty Pounds, then already paid to the said Mr. *Dormer*, in part of the said Composition; and that upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, he was of Opinion, that the accepting the said Composition would be for the Benefit of the Person or Persons intitled to receive the same; upon which said Report the said Mr. *Edwards*, about the third of *August* then next, preferred another Petition to the said Earl, with the said Report annexed, and thereby expressly prayed the said Earl to order him, the said Mr. *Edwards*, to accept of the said Composition, whereupon the said Earl, in a proper and usual manner, ordered the same as prayed; and the said Earl saith, that he was informed, and believes, that the said Composition was made and agreed to, upon a Consultation of all or most of the Masters of the said Court, who the said Earl did believe would use their best Endeavours to get as much as they could; and the said Earl saith, he hath heard, and believes it to be true, that besides the one thousand four hundred sixty three Pounds, two Shillings and one Penny, then paid down, there hath been since got in by Mr. *Edwards*, on account of the said Debt from *Edward Poulter*, the Sum of one thousand Pounds, or there-

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

XV. To the fifteenth Article the Earl saith, That about the Month of *February*, in the Year of our Lord one thousand seven hundred and twenty, he gave Orders to his Secretary to write to the several Masters of the Court of Chancery, to bring in their Accounts of the Cash, Effects, and Securities in their Hands, belonging to the Suitors of the Court, and believes he did so, but denies that the same was done with any unjust Purpose, or with any Thought to terrify the said Masters to make any Contribution, towards satisfying the Demands upon the said Office of *Fleetwood Dormer*, but believes, what they did contribute, they paid freely and voluntarily, and out of their own Money, and therein, as the said Earl believes, did no more than follow a Precedent of the like Nature, on the Failure of *Dr. Eddisbury*, formerly a Master of the said Court; and the said Earl saith, That his real and whole Intention in calling for the said Accounts, was to inform himself, in the best manner he was able, of the State and Condition of the several Offices, and thereby to be the better able to make proper Regulations concerning the same; and therefore, though the said Article seems to insinuate, as if the calling for the said Accounts was dropped, as soon as the Masters were prevailed on to contribute, the said Earl saith, That afterwards, and without any Regard thereto, he still continued to call for the said Master's Accounts, and not finding them brought

in, as he expected, he did, about the Beginning of *November* following, cause another letter to be sent to them, requiring them to bring in their Accounts; and, by both the letters sent to them on that Occasion, he directed the particular Method in which he would have their Accounts made up; but the said Earl, being afterwards convinced how difficult and tedious a Work it would be, and what Obstruction it would give to the Business of the Court, and that at last it could not be depended upon with any Certainty, was forced to lay aside that Design, and to content himself with going on in the same Road which his Predecessors had done; and humbly begs leave to observe, That what has been lately done, with respect to the Accounts of the said Masters, plainly shews the insuperable Difficulties of such an Undertaking.

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

And as to the last Branch of the said Article the said Earl saith, that the Fact was, that one *Jackman*, having, in the Cause in the Article mentioned been confirmed the best Purchaser of part of the Estate of *T. Harper* at the Price of two hundred and sixty Pounds, so long ago as the nineteenth of *December*, one thousand seven hundred and seventeen, and it being at the same time ordered, That the Writings belonging to such Estate, should be delivered to his Counsel, and that the Tenants should attorn to him, on his

his bringing his Purchase Money before Mr. *Dormer*, then one of the Masters, and the said Money having been brought before the said Master the twenty fourth Day of *December*, one thousand seven hundred and seventeen, and the Tenants, having attorned to *Jackman*, but the Conveyances not being then executed, though long before approved, a Motion was made in the Court of Chancery before the said Earl on the fifth Day of *December* last, that all Parties might execute the Conveyances, and the two hundred and sixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand she had out of the Estate of the said *Harper*; and those that were to have the *Residuum* of the said *T. Harper's* Estate, insisted, that they were always ready to join in the Conveyances, if the Purchase Money were applied to discharge the rest of the Estate, that they were apprehensive of a Deficiency of Mr. *Dormer's* Estate, and therefore neither they nor the Plaintiff ought to be Sufferers by such Deficiency, the Delay having been occasioned by the Purchaser, and not by the Plaintiff, and therefore scrupled executing the Deeds, unless upon Payment of the Money to the Plaintiff, and discharging the rest of the Estate therefrom; and this being the first Time that any Question relating to Mr. *Dormer's* Deficiency had been laid before the Court, by any of the Suitors, the said Earl took notice of its being so, and believes he might express himself to this Effect, That he had indeed heard of the said *Dormer's* Deficiency, but that it had never yet come judicially before him, upon Complaint of any of the Suitors of the Court; and further declared, That if there should be any Deficiency in his Office, several Circumstances had concurred thereto, as *Wilson* the Banker's stopping Payment, greatly indebted to him, *Poulter's* going away in *Wilson's* Debt eighteen thousand Pounds, and upwards, after a Verdict and Judgment at Law, and *Poulter* in actual Execution for it; and that, as he had heard, *Wilson* had then lately brought an Action of Escape against the Marshal, and recovered a Verdict against him for the like Sum; and how all these Matters would at last come out, the said Earl said he did not know, or he expressed himself to that Effect, and no other; and thereupon ordered, that it should be referred to Mr. *Edwards*, to examine whether the said two hundred and sixty Pounds was deposited with Mr. *Dormer* for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Conveyances were not executed, and the said two hundred and sixty Pounds, Purchase Money, paid out before the Year one thousand seven hundred and twenty; and whether there was likely to be a Loss of any Money deposited with the said Mr. *Dormer*, and that upon the Master's Report such further Order should be made, as should be just; and the said Earl hopes the said Order was very proper and necessary, and takes the Liberty of representing to your Lordships, That this was after the Accounts of the Masters had been laid by the said Earl before the Lords of the Council, and had been for some Time under the Consideration of the Judges and others, appointed by His Majesty to inspect the same.

XVII. To the seventeenth Article the Earl saith, That he never endeavoured to conceal the Deficiency occasioned by Mr. *Dormer's* Failure, but as the said Earl was under a full Persuasion,

that the same would all in due time be made good, and as Mr. *Dormer's* Effects were coming in by degrees, and no Application was made to him by any of the Persons concerned, to put a stop to, or any Restraint upon, the Payments; he did not think it incumbent upon him, *ex Officio*, to make a Declaration of an Average. And the said Earl saith, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Dormer*, except the Order aforementioned, in the Case of *Chitty*, but believes several Orders have been made by the Court for that Purpose, and that the said Mr. *Edwards*, under a firm Persuasion that the whole Deficiency would be made good, paid out the whole Sums so ordered, so far as the Money then in his Hands would extend.

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

That several Proposals were made to him by the Persons he consulted upon that Occasion, but none that he believes, it will be held criminal not to have then established; some things were proposed that he thought impracticable, some insufficient, some inconsistent with that compleat Regulation he hoped to make, the Objects he proposed to himself, were to provide for whatever Deficiency might happen in the Office late Mr. *Dormer's*, to secure the Suitors from any future Loss, and to make several Regulations relating to the Offices of the Masters, and he thought these would be best done together, nor had he perfected the Scheme of any one of them to his own Satisfaction; he remembers no Proposal, that he thought would take it totally out of the Power of the Masters, to dispose of the Securities or Effects, or effectually secure the Cash. The said Earl admits, that he did not demand any Security to be given by any of the said Masters at the time of their Admittance, because it had not been done by his Predecessors, who were much wiser Men than himself, nor was he so much as asked by any of the Parties interested so to do; as to what the said Earl did with relation to the Accounts of the said Masters, he hath already set forth, and saith, That he gave no Permission nor Encouragement to the Masters of the Court, to employ or traffick with the Suitors money for their own Gain or Profit; he owns, that with respect to the Securities in the Hands of the Masters, he made no general Order, and thinks it the less material, because, notwithstanding what is alledged in the Close of this Article, he believes all the present Masters did, in *December* last, produce all the Securities in their Hands, and the Court of Chancery hath since secured the same for the Benefit of the Suitors.

XIX. To the nineteenth Article the said Earl saith, That upon great Consideration of Mr. *Dormer's* Deficiency, and of the Danger there might be of further Inconveniences, with relation to the Money and Effects in the Hands of the Masters,

Masters, and of several Disputes and Differences that had arisen in the Court of Chancery, and of some Applications of the said Masters, for establishing them in their just Rights, and of some Practices of the Masters, which the said Earl thought ought to be reformed; he was convinced, that the same was a work of too great Consequence for him singly to attempt, and being highly sensible of his most sacred Majesty's paternal Goodness to his people, did presume humbly to beseech his Majesty, as the Fountain of Justice, to depute some of His most Honourable Privy Council, to take the matters aforesaid into Consideration, in order to the establishing such Regulations, as might tend to the Honour of that High Court, and to the Advantage of his Majesty's Subjects being Suitors there; which Request, His Majesty, out of His wonted Goodness, was pleased to receive very graciously, and named several Lords, and other Honourable Persons of His Privy Council, to be a Committee, to take the same into Consideration; and pursuant to His Majesty's Command, the said Committee met, and began with the Accounts of the said Masters, wherein the said Earl begs leave to appeal to such of your Lordships, who attended in that Committee, whether he did not contribute to the utmost of his Power, to have every thing done which the said Committee thought expedient: And the said Earl saith, that he made all such Orders as were by them judged requisite, and so pressed the Execution thereof, that not only the Accounts of all the Masters then in being were brought in, but all the Securities in all their Hands, and the Cash of most of them were actually lodged in the Bank of *England*, and therefore the said Earl is greatly surprized, to find himself charged with obstructing the taking those Accounts, which he had thus desired might be taken, and contributed to the taking of them with all his Power. And the said Earl saith, That he never thought of preventing a parliamentary Enquiry, any otherwise, than by making it unnecessary, and procuring to the Suitors a full Redress of all their Grievances, and rectifying whatever he found amiss, and that he looked upon to be his Duty, and begs leave to say it here once for all, in answer to all the several Insinuations of that kind contained in the Articles.

And the said Earl further saith, that while the said Accounts were taking, every one of the said Masters declared over and over, that they had Effects sufficient to answer their whole Accounts, and the said Earl firmly believed the same to be true, and as all of them, that he saw (which he believes were all, or at least all but Mr. *Kynaston*) had told the said Earl, that they were able to answer their Accounts; and when they brought their Accounts to the said Earl, for him to lay before the said Committee, Mr. *Holford* had wrote under his Account some Declaration to that Effect, and some others of them, as he remembers, had made use of some other Expressions, which he thought not so proper; and some, as he believes, had wrote nothing (but he cannot distinguish the Persons) and the said Earl thinking that when the said Accounts came to be laid before the Committee of Counsel by him, it would be proper that the same Thing should be declared to the Committee, which had been said to him singly, he advised them all to write the same Words under their Accounts, and did tell them, in great Sincerity and Friendship, that at a Time when

so many Men's Mouths were open against them as Insolvent, it would be for their Honour and Interest to make it appear, that they were able and Sufficient, as he then believed them to be, but never thought of a Contrivance to have them Deceitfully appear or seem what they really were not; and he says they did then withdraw to make the Subscription, or at least so many of them whose Accounts were then ready; and soon after delivered them to the said Earl, who carried them with him to the Committee of Council, whither he was then going, without looking upon them; but upon reading them at the Council, it was observed that they had not all used the same Words, having varied considerably, but what any of the Subscriptions were, he cannot take upon him to set forth.

And the said Earl further saith, that a subsequent Order being made by the said Earl, for the said Masters to produce their Securities, and their Cash, before the Persons appointed to inspect their Accounts, they made great Complaint, that so many hundred thousand Pounds should be required at so short a Warning, and some of them saying, that though they had Effects sufficient, and could raise the Whole, if they had a little Time, desired the said Earl to allow them further Time for that Purpose; but the said Earl saith, that he required them to beseech themselves, and raise it immediately, telling them that since they had Effects to give Security, they might find Friends to furnish the Money; and believes he did say, that some of their own Brethren might perhaps be able to let them have Money till they could raise it another Way.

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

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

XXI. To the One and twentieth Article the said Earl saith, that upon the strictest Review of his own Behaviour, during the Time he had the Honour of serving his most Sacred Majesty in the Office of Lord Chancellor, he is not conscious to himself that he ever did, in any illegal or arbitrary manner, extend his Power, or the Power of the Court, beyond their lawful and just Bounds, or that he did arbitrarily or illegally assume to himself, as Lord Chancellor, or by Colour of his Office, any unjust and unlimited Power of dispensing with, suspending, or controuling the Laws or Statutes of this Realm, or that he any ways oppressed the Suitors of the Court, or was guilty of any Breach or Violation of the Rights or Liberties of the Subject, or of his own Oath, as Lord Chancellor: And with regard to the particular Complaint against him in this Article, the said Earl saith, that *Rachel Tyson*, in the Article named, as the Earl is informed, caused a Bill to be exhibited in the Court of Chancery, in the Name of her Son and Daughter, in the said Article likewise mentioned, by their *Prochein Amy*, against herself, and the said *John Tyson* and others, to have the Trusts in the Will of her late Husband duly performed; and the same was brought to Hearing at the Rolls the seventh Day of *July*, One thousand seven hundred and eighteen, and by the Decree then made, it was amongst other Things ordered, upon the Prayer (as the said Earl hath heard and believes) of the Counsel employ'd by the said *Rachel Tyson*, that a Receiver should be appointed of the Rents and Profits of the Real Estate, who was to have a Salary allowed him, and Power to let and set the said Estate, as there should be Occasion, with the Approbation of the Master, to whom the Cause was referred: and the said Earl saith, that an Execution of that Part of the Decree, which directed a Receiver to be appointed, the Master having certified that he had appointed *John Nicholas*, Esq; to be the Receiver of the Rents and Profits of the said Estate, the said *John Tyson*, thinking himself aggrieved thereby, did, in the usual Course of Proceedings in the said Court, cause Exceptions to be filed against the same, and upon the arguing thereof before the said Earl, by Counsel of both Sides, Affidavits were read, to shew that the said *John Nicholas* was an improper Person; that the said Testator had declared in his Life-Time, that the said *John Nicholas* by Name should not have any Thing to do with the management of his Estate; and that a considerable Part thereof consisted in old Houses and Water-Works: and the said Earl, upon a full Hearing of both Parties, was of Opinion that the said *John Nicholas* ought not to be appointed the Receiver; and upon the Proposal of the said *John Tyson*, then in Court, order'd *Robert Doyley*, Esq; to be Receiver, he giving Security to be approved of by the said Master; which Order was made, as he believes, on the fifteenth of *January*, in the Year One thousand seven hundred and eighteen; and affirmed upon the Re-arguing the said Exceptions on the sixth of *March*, in the Year One thousand seven hundred and eighteen; since which Time the Parties interested have never thought fit to complain thereof to your Lordships by Appeal, in order to have it reversed, as mistaken or unjust, though now the making thereof is complained of as a crime; and the said Earl is not ashamed to own, that he was very well acquainted with the said *Robert Doyley* for some Years before the said Order, and believed him to be a Person of great Honour and Integrity, Application and Exactness, and believes there are several Persons of Distinction to whom he had the Honour to be known, who had the same Opinion of him; but the said Earl did not appoint

him Receiver because of his own Respect for him, but because he was named by the said *John Tyson*, who was Uncle of the said Infant, and Executor of his Father's Will in Trust for him, and by the same Will appointed his Guardian in case of his Mother's Death or Marriage, and to whom the said Testator had devised the said Estate, in case of the Death of the said Infant without Issue Male, and whose Interest it therefore was to take Care of the Infant's Interest in that particular; and the said *John Tyson* and Sir *Cesar Child* (whose Daughter the said *John Tyson* had married) had such Confidence in him the said *Robert Doyley*, that upon the eighteenth Day of *March*, One thousand seven hundred and eighteen, they entred into a Recognizance, together with him, in the Penalty of seven thousand Pounds, for the said *Robert Doyley's* duly accounting for and paying the money he should receive out of the said Infant's Estate; and the said Earl saith, that no Complaint was ever made to the said Earl against the said *Robert Doyley* to the Time of his Death, but he owns that he hath heard, that upon the Master's Stating the Accounts since *Christmas* last, there does appear due from the said *Robert Doyley* about Two thousand and five or six hundred Pounds, but believes there is not any Fear or Doubt but that the same is very well secured by the said Recognizance.

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

Thus the said Earl has laid his Case before your Lordships, and doth further, for answer to all the said Articles, say, that he is not guilty of all or any of the matters contained in the said Articles, or any of them, in manner and Form as they are therein charged against him; and the said Earl doth further insist upon the Benefit of his Majesty's most gracious and general Free Pardon, granted to all his Subjects (not therein excepted) in and by an Act of Parliament for that Purpose made in the seventh Year of his Majesty's Reign, in Bar of, and in his Defence against the said Impeachment, and the said Articles exhibited in maintenance thereof, and all and every the Proceedings thereupon, so far as the same extend to any Neglect, Offence, or Misdemeanor, or supposed Neglect, Offence, or Misdemeanor, or any other Act, Matter, or Thing, suffered, done, or committed, or omitted, by him the said Earl, before the four and twentieth Day of *July*, in the Year One thousand seven hundred and twenty one, and doth humbly insist, that no Evidence ought to be given against him for or concerning any of the Matters or Things aforesaid, in and by the said Act pardoned, or any of them; and doth aver, that he is not within any of the Exceptions in the said Act contained.

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

THE Commons have considered the Answer of *Thomas, Earl of Macclesfield*, to the Articles exhibited against him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, and obſerve, that the ſaid Earl hath induſtriouſly avoided giving a direct and particular Answer to ſeveral matters poſitively and certainly alledged againſt him in the ſaid Articles, which, from the Nature of the Facts themſelves, muſt neceſſarily lie in his own Knowledge, and hath attempted to diſguiſe and cover the real Crimes laid to his Charge, by immaterial and evaſive Inſinuations of Facts of a different Nature; and that many Parts of the ſaid Answer are contradictory to, and inconſiſtent with each other, upon which they might demand your Lordſhips immediate Judgment: Yet the Commons being able to maintain the Truth and Juſtice of their Accuſation, are willing to enter into the due Examination thereof: and do aver their Charge of High Crimes and Miſdemeanors againſt the ſaid *Thomas, Earl of Macclesfield* to be true, and that the ſaid Earl is Guilty, in ſuch Manner as he ſtands impeached; and that the Commons will be ready to prove their Charge againſt him, at ſuch convenient time as ſhall be appointed for that Purpoſe.

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

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

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

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

In order to ſet this in the cleareſt light, I muſt go on and obſerve, That the Commons charge in the next place, That inſufficient Perſons were found out and pitched upon, to be admitted Maſters of the Court;

Men of ſmall Subſtance and Ability; no ways fit to be entrusted with the great Sums of Money and Effects lodged in their reſpective Hands.

My Lords, the natural Qualities and Endowments requiſite to recommend Men to ſo great a truſt ought to have been Honesty and Probity; the acquir'd ones, thoſe of Knowledge and Experience; without a due Mixture of theſe it was very hazardous to admit any into truſt: But no doubt Credit and Competency of Fortune were Ingredients perfectly neceſſary; becauſe whatever Loſs, or Miſfortune, might attend the Management of a Maſter ſo accompliſhed, in the ordering the Suitors Money, here might be ſome Proviſion coming out of his Eſtate to make Reparation. Your Lordſhips will, no queſtion, at the firſt View, think it carries an odd Appearance, when this unfortunate Earl had reſolved within himſelf, at all Hazards, to raiſe exorbitant and immense Treasures out of the Sale and Diſpoſal of the Maſters Places, how it ſhould answer his corrupt Deſigns to admit into them Perſons of ſmall Subſtance, and ſome of almoſt deſperate Fortunes, utterly unable to lay down the vaſt Prices thoſe Offices were ſold for at publick Auction: But, my Lords, the Vaſtneſs of the Price was no Objection, or Diſcouragement, to a Perſon already undone, provided he might be made eaſy in the manner of Payment, and run no Hazards. Men of Subſtance might very well be afraid to *Preſent*, as his Lordſhip's Phraſe is, a whole Eſtate at once for an uncertain and precarious Proſpect, either of Succeſs in the Office, or of Life, or Health, to enjoy it; ſo that the fitteſt Engines and Inſtruments to effect the noble Lord's Purpoſes, were Men of ſmall and ſhattered Circumſtances. And therefore the Commons go on and charge, That there was a fraudulent and unwarrantable Method made uſe of in paying for the Maſters Offices out of the very Money belonging to the innocent Suitors of the Court.—That this Practice was notorious and publick, and the Perſon at the Bar well acquainted therewith. Your Lordſhips now obſerve, That the greateſt Difficulty of all to an indigent Perſon, *viz.* the Payment of the Money, was, by this dangerous and unjuſtifiable Contrivance, totally removed, and when a Man was neither to be out of Pocket himſelf, nor thrown into any Fears and Apprehenſions of being queſtioned for miſapplying the Suitors Money, is it at all to be wondered at, that the price of theſe Offices ſhould ſwell to that Bigneſs, as long to be the topick of Converſation in the World about us, and at laſt become the Subject of a national Enquiry? This ſcandalous Method of Payment is of the moſt malignant Kind, and a Suitor is, contrary to the Law of Nature, made the Inſtrument of his own Deſtruction; his Subſtance which ought to be his Support and Relief, is turned to his Oppreſſion, or if Part only be taken from him, it is in order to arm another to diſpoſſeſs him of the Reſt. The great Perſon, whoſe Duty it is to protect his Property, is the Promoter of his loſs, and is the more unpardonable in it, as he turns that loſs to his own Advantage. If it be a thing univerſally condemn'd, for a Perſon in the Earl's late high Station, to borrow a Suitor's Money without his Knowledge, notwithstanding he offers a moderate Intereſt for it, becauſe it is encouraging the Maſters, by his own Example, to lend out Sums with as much Juſtice to other People, How infinitely greater is this Offence? If it be a Crime to put Mens properties to hazard, how much blacker is it to take them to one's ſelf, and incorporate the Widow's Mite with one's own Heap! But, my Lords, when ſuch

such prodigious Sums were extorted from the Masters, could it be any Mystery how they were to re-imburse themselves? For although they paid no Money of their own, yet they made themselves accountable for what they used of the Suitors; was it not an obvious Consideration, That if they dared pay for their Employments with part of the Trust-Money, they meant to traffick and game with the remainder too? They came in Masters upon such Terms, for no other Purpose but to pillage and fleece those under their Care. What must be the natural and unavoidable Consequence of lodging in their Hands such uncontrollable and licentious Power over their Cash, but that the first ill Run would crush them at once, and pave the Way to great Deficiencies! But lest the prospect of so calamitous a Case should deter the most greedy from contracting for a Master's place on Terms the most inviting, you will see, in the Series of this Affair, what Shifts, what Artifices were employed, to hide such a miserable Scene from the Eyes of the World. For the Commons in the next place charge, That *Fleetwood Dormer*, Esq; having embezzled great part of the Effects belonging to the Suitors of the Court, died, indebted to them in divers Sums of Money, amounting in the whole to 25000*l.* and upwards; that the noble Lord at the Bar has not made any proper Inquiry into *Dormer's* Deficiency, taken no Care about his Effects, but has endeavoured to hide and conceal, from the Suitors, the State and Condition of the Office, and that this Concealment was, lest a publick Discovery of the Deficiency might lessen the unjust Gains he proposed to himself from the sale of the Masters places. Your Lordships observe here, That one Accusation is, a great and manifest Neglect in the Execution and Discharge of his Duty; a wilful and deliberate Neglect; not arising from the Infirmary of human Nature, but growing out of the Corruption of it; mitigated by no one Shadow of Excuse, but aggravated by the Attendance of many foreseen ill Consequences. If an Office abused in the most fatal Manner, on the Brink and precipice of utter Destruction, was not a proper Object of his immediate Inspection, no wonder the most prosperous Offices did not deserve his Care; what Master, who was an Eye-Witness of this, would be under that decent and necessary Awe of the presiding Person, and keep himself within the just Bounds and Limits of his Office? This, my Lords, is indeed a wilful Neglect: But if you look on it in another Light, in order to conceal the Deficiency, that the Value of the Masters Places might not be run down, it will appear, in its worst Colours, an Artifice to support and carry on a Fraud, a Contempt of Duty for the sake of Corruption. The Series of the Accusation will evidently shew, that the Earl's Heart was set upon this Concealment; for we shall now find him beginning to display his utmost Ingenuity; here was an Accident, which, unless great Care were taken, would entirely frustrate and blow up his Designs; were *Dormer's* Deficiency divulged abroad, and the whole Body of the Suitors (who had sure a Right, even from Compassion, to be taken care of) made acquainted with the ruinous Condition of his Office, who would answer that the Government itself might not have been alarmed, and a publick Inspection made four Years ago into the other Masters Accounts too? The dread of a publick Examination now overbalanced all other Considerations; and as some of the Suitors (whose Intelligence and Sagacity were better than the rest) were daily pressing and soliciting for their Due, the Office-money embezzled, no care taken to secure *Dormer's* Effects, all Supplies and Demands on *Wilson* cut off by the wretched and unwarrantable Composition made for the Suitors without their Consent or Knowledge: These Distresses and Difficulties pressing and surrounding this unfortunate Earl, it

was necessary some measures should be immediately concerted to prop and support this tottering Office; and therefore, my Lords, you will now find him arming himself with the Weapons of Authority and uncontrollable power, and playing the Tyrant under the specious pretence and colour of Duty. For the Commons go on and charge, that the Person at the Bar, during the time he was Lord Chancellor, made an Order for the Masters to bring in their respective Accounts of the Cash and Securities in their Hands; (a very proper Inspection, no doubt, had it been well designed) but your Lordships will observe the Charge is, That this was done to terrify and induce the Masters to contribute money towards *Dormer's* Deficiency; to conceal the true State of the Deficiency from the Knowledge of the World: and they further alledge, That in pursuance of this intimidating Order, money was contributed for that purpose, part of which we shall prove to be paid since the act of Grace, on the 11th of *August*, 1721, and that those Accounts were not insisted upon after that. My Lords, This proposal met with its deserved Opposition from the Masters; however, the apprehension of losing the Cash and Effects prevailed at last, the point was carried, and a Sum accordingly contributed. When your Lordships have but just now seen that there was a very visible, and designed Neglect in forbearing to inquire into *Dormer's* Effects, and to go to the Bottom of his Deficiency; is it to be imagined, that this calling for the State of their Accounts 'cou'd be done out of Vigilance and Duty? No man can think so; were they ever insisted upon after the Contribution? His Lordship knows they never were; if the real Design was to search and examine them, it was as proper a time to do it after the 11th of *August* as before, no body believes they were in a better Condition, the Masters had the same free power of their Cash, and the Person at the Bar had as deep a Sense of his Duty after that day sure, as before. If the misbehaviour of *Dormer* gave occasion to this designed Inspection into the general Condition of the other Offices, how came it about the Design was never carried into practice, till his Majesty, out of Compassion and paternal Goodness to his oppressed People gave directions for that End? The Deficiency of *Dormer* continues still, and yet the Earl impeached has made no Regulations in the Offices, examined no Accounts during the Time he remained in that high Post; nor set up any Lights, or Land-marks, whereby the present deficient Masters might have cleared the Rocks on which they have split. No, my Lords, this was only a pretence of regulating; a Dissimulation of Duty, for the better Concealment of *Dormer's* Frauds. Besides, the Proposal that the Masters should contribute to the patching up a Deficiency in another's Office, is unjust in itself, and fatal in its Consequence. Can any thing be more repugnant to Justice than to oblige one Person to repair the Losses of another, incurred without his Knowledge or Fault? Or where is the Advantage to the Offices in general, allowing it to be just? If *Dormer's* Deficiency be supplied out of other Offices, will not those Offices miss those Supplies, and be as much impoverished in the general, as *Dormer's* is mended in particular? Surely, my Lords, there needs no reasoning about this, the Thing speaks itself. The Commons take notice of an alternative in this Article offered to the Masters, either to consent to a Contribution, or to be immediately stripp'd of the Cash and Effects; so that upon paying down the Sum demanded, a Master was confirmed afresh in the ill Conduct of his Affairs, he pays his Fine, and renews his Lease of Knavery and Impunity; his Books may be kept as close from Inspection as the Books of the Sybils, they contain alike the Destiny of Mankind, and he may go on with Authori-

ry to prey upon the properties of the Fatherless and Widow; and no doubt the Master argues upon as good Grounds as the noble Earl; and concludes, that if for the Advantage of his unjust Schemes, the impeached Lord thinks it highly reasonable to extort money from him belonging to the Suitors, which is never to be restored, it may, with parity of Justice, be as decent for him to take the same liberty with their Cash too, for the Service of his own. But the Commons detest the corrupt Practices of both, and expect exemplary Justice on the great Offender at the Bar.

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

Your Lordships will observe in the ensuing Charge, That Mrs. *Elizabeth Chitty*, an unfortunate Widow, having obtain'd an Order from the Earl at the Bar, by virtue of which Mr. *Edwards*, *Dormer's* Successor, was to pay her 1000*l.* part of a much larger Sum deposited in the Hands of Mr. *Dormer*, and *Edwards* refusing to pay the same, not having sufficient in his hands, out of *Dormer's* Effects, to answer the said Demand. The impeach'd Lord did again make use of the same Artifices and Stratagems to compel the several Masters to contribute this further Sum of 1000*l.* to stop the Complaints, and stifle the murmurings of Mrs. *Chitty*; and did also intimidate them, by representing, That if the Deficiency were known, a parliamentary Enquiry would probably ensue, and the Masters be deprived of their Offices, having bought them contrary to Law: This not taking Effect, the Commons charge, That in order to accomplish his wicked and corrupt Purposes, he did himself pay the 1000*l.* into *Lockman's* Hands, for the Use of Mrs. *Chitty*, saying, this was the last money she was ever likely to receive, by reason of a Deficiency in *Dormer's* Office. My Lords, you see here is a second Attempt, a fresh Endeavour to conceal the deficiency by the aid and assistance of the same measures made use of before, but backed by the Terrors of a national Inspection. The Continuation of these Arts is no small presumption, that the End designed was unjust in the Earl's own Judgment. His Condemnation, in this Instance, arises and springs out of his own Arguments and Conduct. If a publick Discovery of this Deficiency would lay the Foundation of a publick and national Examination; what safer, what more expedient measures could be concerted and taken, than immediately to satisfy Mrs. *Chitty's* Demands; by the Refusal of which, this publick Discovery, so much, and so justly apprehended, might come out? And what stronger Inducement could he lay before the Masters, why the Burden of this Payment should fall upon them, than by shewing in how fatal a manner that national Examination would affect themselves? He represents to them their having purchased their Offices (and many of them of himself too) in direct defiance of the Law, and that it was their near Concern to avoid the Pit, in which they were likely to be swallowed up. My Lords, I take this to be a plain Confession of his Crime: Our Accusation is, That the sale of these Offices is repugnant to Law and Justice; here is his own manifest Acknowledgment that it is so, but aggravated and heightened by this flagitious Circumstance, That whilst he is reminding the Masters of that Guilt which he himself shared, he draws an Argument from that very Guilt, why they should assist him in a fresh Offence; and since they

had already offended against the Laws of the Land, if they would avoid Punishment, the best way of doing it, was by a new Transgression. You have his own Word for it, that he knowingly exceeded the statutable Limits prescribed by the Wisdom of our Ancestors, for the Safeguard and Protection of the Rights and Properties of the *British* Nation. If the Buyer is Criminal, how can the Seller be Innocent? And yet his Lordship, it seems, knows of no Statute now in being, on which Judgment can be prayed in this Prosecution. 'Tis this wilful and deliberate Transgression of the Laws that has opened that Fountain of Iniquity which has drowned and laid waste the Fortunes of our Fellow Subjects.

In stating the Charge thus far, it is evident, That neither a wilful Neglect of Duty has been wanting, nor a thorough Contempt of Justice; no Pains spared, no Artifices unemploy'd to plunge the Deficiency in *Dormer's* Office in the deepest Obscurity. You have found him forcing and wresting a Contribution from the Masters; not such a one, my Lords, as would equally answer all Demands on the Office, but as a bare Sufficiency to satisfy the Importunities of Persons for the present, and thereby lull others into a destructive and fatal Security; to make a false shew and appearance of Ability in this Office, which the Masters were afterwards directed to do in theirs. Your Lordships shall soon find him acting another Part, and disheartning *Lockman* from engaging any further in the Marriage with Mrs. *Chitty* (for the Sollicitations of a weak Woman to have her just Due might be easier dealt with) assuring him, that the Deficiency was such as must infallibly root out all future Hopes and Expectations on her Account; and yet the close of this Article sets forth, That so lately as the fifth of *December* last, this Earl sitting then in open Court, did, in a Cause depending before him, protest and affirm, That, for his part, he knew nothing of *Dormer's* Deficiency, but as publick News. My Lords, if Truth and Sincerity are not to be found in the Seat of Judgment, where must we look for them? Where shall we place our Confidence, if there is no Dependence on the Affirmation of a Judge? Where shall we seek Examples worthy our Imitation, if the uprightest Places afford them not? But to pass over this unpleasing Scene, your Lordships will be pleased to take notice, That the unfortunate Person at your Bar, in hopes still to cover the Deficiency, made divers Orders on Mr. *Edwards* for the discharging and paying the intire and full Dues to some of the Suitors, whilst others were put off with an inconsiderable Share. Is there any thing more noble in the Mind of Man, than a desire of distributing equal Justice? Without equality Justice is destroy'd and sacrificed to the Passions and Infirmities of Men; and yet your Lordships will find there is no Virtue so lovely, no Principle so amiable, but must be abandoned and prostituted to the carrying on this wretched Scheme. Such is ever the miserable Fate of those who dip their Hands in Corruption; they engage originally in one Vice only, but are forced to adopt and cherish a number of others to keep that one a Secret from the World. For it becomes, at last, necessary to do injustice for the sake of Security; Peoples Necessities, tho' they may be alike, yet are their Passions quite different, and a necessitous and starving Suitor of a broken and worn-out Spirit might be turned away from his Lordships Prefence with a tenth Part of his Right, whilst one of a more obstinate Make, and a bolder Constitution, would insist upon, and wrangle for the whole. This difference of Tempers might facilitate, possibly, such unjust Dealings for a Time; but could this partial Preference of one Person to another, in manifest Contempt and Violation of the Rules of Equality, be

be any otherwise of Service to this Noble Lord, or make any amends for diminishing Reputation, but by stopping the mouths and Cries of the soliciting Suitors with such Proportions as would go down with them, prevent the Contagion from breaking out, and disappoint the Application of a publick Remedy! You see plainly the miserable Consequences the Sale of the Masters Places has been attended with; the fraudulent method of Payment; the unjust and uncontrouled Abuses of the Masters; the great Neglect of *Dormer's* Deficiency; the unjustifiable Concealment of it; the stretches of Art and Injustice in the manner of doing it; 'tis one continued Series and Succession of male-administration, calculated for the advancing the Profit and Gain of the Person at your Bar. Your Lordships would, no doubt, wonder else, why so great a Trust as upwards of a million of money, should be reposed in the Masters, without some reasonable Security on their Part, or some proper Restraint laid upon them for their due and fair Discharge of it, especially, since *Dormer* had broke, and brought upon the Sufferers so fatal a misfortune: And this it is, my Lords, that raises the resentment and amazement of the Commons, who farther charge, That, notwithstanding the Earl well knew that *Dormer's* Deficiency was chiefly occasion'd by the liberty he assumed to himself of Trafficking and Gaming with the Suitors Effects, and that the other Masters did, or had it in their Power so to dispose of, or otherwise misemploy the money and Securities in their Hands; and, notwithstanding a reasonable and proper Scheme was laid before him, whereby the like misfortune might be prevented for the future, yet the Earl never required any Security, or laid any Restraints on the Masters, but left them to the wide and boundless Liberty of abusing their Trust as Avarice and Ambition suggested Occasions. I will not enter into the Consideration how far it may have been the Practice not to require Security, I take it for granted, if none has been formerly demanded, it was because the Presiding Persons were vigilantly executing the Duty of their Offices, and by frequent Inspections into the Masters Accounts, restraining them from the Exercise of unwarrantable Power. But were that otherwise, bad Precedents, my Lords, will not justify Omissions; no, nor extenuate them, tho' I believe not any Instance can be produced, not so much as the Appearance of any, where it was so indispensibly and absolutely Necessary as in this Case; there was no need or use of any Example to remind him of it, common Prudence teaches us the Necessity of providing against Disorders or Losses for the time to come, which our past Negligence has once brought upon ourselves or others; 'tis the only Attonement a man can make for his former Faults; and if the Person at the Bar had had at heart the least Intention of repairing the Breaches made in the Justice of that Court where he governed, here was the most fortunate Opportunity of doing it; for your Lordships shall find the very Masters themselves, in a manner, importuning and soliciting him to tie up their Hands by such proper and equitable Restrictions, as would put the fluctuating Fortunes of their Fellow-Subjects on the firmest Establishment. Had the Noble Lord listened to this Proposal (which will come more properly within the Province of another Gentleman to open to your Lordships) the unhappy Deficiencies in the present Masters Offices had been fortunately prevented, the Clamours of the World about us had been stopt, and the Nation easy. Did not Necessity demand it? The deplorable Havock committed since shews it did. Did not the national Voice call aloud for it? The Prosecution of this Day is sufficient Testimony. Was it not his Duty? Sure I am, it would have been his Happiness. And shall not the

Ruin of Widows and Orphans plead for Punishment and Reparation? The Commons rely upon your Lordships Justice that they shall.

But, my Lords, there is a Charge behind, which contains matter worthy your Observation; it sets forth; That his most sacred Majesty, out of his fatherly Goodness to his People, having directed an Enquiry to be made into the accounts of the Masters in Chancery, in the month of *November* last, the Earl impeached did, by his advice and authority, persuade and induce them to make false Representations of their Accounts and Circumstances to his Majesty in Council, and to assist one another with cash and effects to make a false shew and appearance of their ability, that a parliamentary Enquiry might be prevented; and did oblige them to declare in Writing, at the Foot of their Accounts, That they were able and willing to pay the Ballance, although the Earl well knew many of them were not. Your Lordships, sure, cannot but be astonished at the Boldness of this Attempt, to defeat and frustrate the gracious Intentions of his most sacred Majesty, to take from his unfortunate Subjects that redress and satisfaction, which their Duty and Loyalty, their Wrongs and Sufferings had claimed in his Royal mind; to deceive his Majesty at the very Council-Table, where he had the Honour himself to sit; and to deprive the Commons in Parliament of that Inquisition for Justice, which the Nation expected at their Hands. The Dread and Apprehension of parliamentary Justice is a strong Presumption of his Guilt. Why, my Lords, should publick Enquiries terrify and dismay an innocent Person? National Acquittals are eternal Monuments of Renown; they are more glorious and lasting than Pillars of Marble, or triumphal Arches; they remain upon Record to all Posterity, never to be defaced by the malice or Teeth of Time. But, my Lords, as there are monuments of Praise, so there are Columns of Infamy; there are National Condemnations as well as National Acquittals; and the noble Lord must now take his Fate in the Judgment of your Lordships, which he so much dreaded. It is an Evidence of a Man's Crime, if he flies for it; it betrays a Self-Conviction in the Party accused, in that he dares not abide a legal Trial; it is another Circumstance against a Man, to be found tampering with a Witness, and carries with it some Presumption of his Guilt; because no innocent Person wants the aid and assistance of a false Evidence. Your Lordships have seen him as it were flying from his Trial, and you will now find him tampering and intriguing with the Masters in the most dangerous and artful manner; and that the Masters are Evidence, and close ones too, will fully appear at your Bar. You shall find him colouring and glossing over the Masters Accounts, with Touches and Strokes of his own, hoping to shelter his own male-Administration, by putting the Vizard of Integrity on theirs; *this* is the glorious Exit he makes; *thus* he finishes his *Impartial and Just Administration*.

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

The Ground-work and Basis of this noble Person's Crimes is Corruption, a thing in private life the most detested, and in publick Persons, of the most malignant Influence to the State. It deprives the Crown of that solid Strength and Grandeur, that shining Lustre and Beauty, which a just Execution of the Laws reflects upon it; it disarms the People of that Security and Safety which naturally flows upon them from an impartial and uninterrupted Administration of Justice. The Consequence

quence of which will ever be, the Crown will lose that proper reverence and veneration from the People which are its due; and the Subjects, restless and uneasy for want of Justice, will lay hold on the first Opportunity of throwing off Allegiance itself. It brings a national Reproach upon us; and, by sowing the Seeds of discontent at home, exposes us to the Incurfions and Depredations of our Enemies: But, my Lords, when it protects itself under the Shadow of Justice, and puts on the Smiles of Innocence, 'tis high time to rise up in Defence of our violated Laws, and set a publick mark of infamy upon it. To what purpose are Judges and Ministers restrained, by the Provision of Acts of Parliament, from selling Offices under their Protection and Care, if Men shall hide themselves under example in bar of the Laws! Will Example plead for him? Surely, my Lords, there are none such: Or, if there were, what would that be but to defend Crimes by their own Blackness and Malignity? As if a Distemper were not to admit of any Remedy, because it is general and contagious. But supposing, for Argument's sake, there have been Great Persons, his Predecessors, who have ventured upon small Presents and Gifts on such Occasions, does it follow, with any colour or pretence of Reasoning, because those have been confined within the bounds of moderation, therefore the Extortion of exorbitant Sums, to connive at outrageous Measures and Oppressions, exceeding almost the Fears of the Oppressed themselves, should take Shelter under the poor Pretence of Precedent and Example? Alas! my Lords, I am afraid Example only operates according to Mens Appetites and Passions; else whence comes it about, that Example should have all the Beauty of an Angel in this Instance, and all the Deformity and Horror of a Fiend in another? His great * Predecessor made no Attempts to conceal a deficient Office in his Time. No, my Lords, he had no corrupt Purposes to feed. The same noble Person never ordered some Suitors their entire Demands, and left others groaning and starving under the Pressure of an unequal Distribution; he did the direct contrary. Happy had it been for this unfortunate Person, happy for the Widows and Fatherless, had he copied after the Example of his renowned Predecessors, in their wise and upright Distribution of Justice, as well as shewn to their eminent Names for Protection, in the illegal Practices wherewith he is charg'd! To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences; if Bribery shall receive a Patronage from great Examples, and the basest Actions be adorned with the same Lustre and Honour, that are only due to the most virtuous. But, my Lords, the Commons have found him bargaining and bartering an † Office, in the Gift of the Crown, for the poor and sordid Advantage of an hundred Guineas. This is an Instance wherein the very Person of the King is insulted in the most flagrant manner; 'tis a Prostitution of the Regal Honour and Dignity, by one who had the Trust reposed in him, as one of the joint Guardians of the Realm during his Master's Absence: As if too there was no Access to the Throne for Grace and Favour, no tasting the refreshing Streams of that Fountain of Goodness, which rises in his Majesty's Breast, for the universal Comfort of a dutiful and happy People, but by the Assistance of the most abandoned Measures. Can your Lordships any longer wonder the People's Properties were employed to ill Purposes, when his Majesty's Prerogative is traffick'd with and sold? Could it be expected a poor Suitor's Rights should remain secure under his Protection, as Chancellor, when the King's were precarious in the Hands of his own Trustee? And yet, my Lords, how often and how gloriously has

* Lord Cowper.

† Clerk of the Custodies.

this Nation vindicated and asserted its own Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers! It was the Loss and Forfeiture of all the Lands and Estate of Sir *William Thorpe*, Justice of the King's Bench, who was sentenced for Bribery in the Reign of *Edw. III.* Nay, the Sentence extended even to Loss of Life itself, though that part has been thought not sufficiently warranted, and should have ended in Imprisonment only. Every one knows the Vengeance hurled on the Earl of *Middlesex*, which is to be found in the Rolls of Parliament. This unfortunate Earl, having delayed Justice to the Farmers of the Customs, in a Matter referred to him by King *James I.* and having polluted his Hands with exorbitant Bribes, was sentenced in Parliament to lose all his Offices, which he held in the Kingdom; to be forever incapable of any Office, Place, or Employment in the State; to be imprisoned in the Tower of *London* during the King's pleasure; to be fined 50,000*l.* never to sit in Parliament any more, nor to come within the Verge of the King's Court. The Case of my Lord *Bacon* is another Instance of the Virtue and Integrity of your Ancestors, in the Abhorrence they shewed, and the Punishment they inflicted on that Great Man's Crimes.

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

When the Commons consider the high Station in which this noble Lord was placed, the many signal marks of his Majesty's Favour and munificence bestowed upon him; the notorious Breach and Violation of his Oath, and of the several great Trusts reposed

in him; when they have found him prostituting and abusing the Authority and Dignity of the Crown, trampling upon the Laws and Statutes of the Realm, destroying and confounding the Properties and Rights of divers of his Majesty's Subjects; the Commons could not sit still, and see this great Offender triumph in the Luxury of unpunished Crimes, without using their best and most effectual endeavours to bring him to Punishment, and to make him an Example of the Justice of the present Age, a Warning and a Terror to Times to come.

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

The Nature of the Charge consists,

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

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

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

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

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

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

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

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

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

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

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

But it must be owned, the Expressions made use of by his Lordship, are conceived in such doubtful Terms,

that it is difficult to know whether he intends to represent the lawfulness of selling those Places for a Price; or only of taking a Present which the Party gives freely, voluntarily, and of his own accord, and which his Lordship says his Predecessors used to take.

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

But, my Lords, even this may be said to be nothing more than an Offence against the Statute of *Edw. VI.* which as it creates the Offence, so it prescribes the Punishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But

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

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

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

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

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

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

But there was then a Master's place vacant.

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

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

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

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

How that is consistent with his quitting 1500 *Guineas* from the Danger of a great Loss in that Office, I shall submit to your Lordships; but surely the manner in which *Dormer* withdrew was a strong symptom of a Deficiency, when the Masters intrusted to secure his Effects found little more than the Debt from *Wilson* to answer a Ballance of near 40,000 *l.*

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

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

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

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

The Suitors might have had some Warning to have used their Diligence in discovering his Estate, and preventing any Concealment of it.

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

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

Orders were made for the payment of money out of

that Office, as if it had been clear from all Suspicions of Loss, contrary to that Rule of Equality, which is a fundamental principle of a Court of Equity, That where several persons have Demands out of a Fund like to prove deficient, they must bate in proportion.

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

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

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

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

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

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

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

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

My Lords, We shall shew you, that notwithstanding the many *great and beneficial Favours* bestowed upon this *Earl* by the bountiful Hand of his Majesty; and all those *Honours* confer'd upon Himself and his Family; the *Dignity* of his high Office, and the great *Trust* reposed in him, have been *prostituted*, in order to satiate a *boundless Appetite* for *unlawful Gain*.

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

The first beneficial Grant the *Earl*, in his Answer, *owns* to have receiv'd from his Majesty, before the Honour of Peerage was confer'd upon him, was 1200 *l.* a Year granted to him and his Assigns, during the life of his Majesty, in, or about *June* 1716; in the next place, that in the Year 1718 he was created *Lord High Chancellor of Great Britain*; and, that at the same time, his Majesty, out of his Royal Bounty, did bestow upon him 14000 *l.* and likewise granted to his eldest Son, now *Lord Parker*, an annual pension of 1200 *l.* payable during the joint Lives of his Majesty and the said

said Lord Parker, but determinable whenever he should be put into possession of one of the Offices of a *Teller* in the *Exchequer for Life*, and which Office he has since obtained; and over and above all these *great and beneficial Grants*, the usual *Salary* of 1500 *l.* a Year out of the *Hanaper Office*; the other great *Profits* and *legal Perquisites* of his high Office, the Earl owns to have had an allowance of 4000 *l.* a Year. As these were all marks of the greatest *Honour, Esteem* and *Confidence* from his great and munificent Benefactor, so surely they ought to have produced in him all suitable Returns of *Gratitude*, by a *just and impartial Execution* of the *Trust* reposed in him, to the *Honour* of his Majesty, and the *Good and Welfare* of his Subjects.

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

I must take notice that his Lordship, in his Answer, does not *deny* to have taken all the several Sums laid to his Charge by the Commons, on the Admission of the *Masters*, mentioned in the *Articles* of *Impeachment*, to their respective Offices; but alledges that he took them as *Presents* only, *freely* and *voluntarily* given, and such as had been *usual* on such Occasions. But, my Lords, we shall shew you that the Sums of money taken by him were taken in the *Manner* alledged in the *Articles*; and by the Evidence I shall now open, your Lordships will see how very *different* this matter will appear from that which the Earl would insinuate in his Answer; I shall begin by opening the Evidence to the *5th Article*, which relates to the *illegal* and *corrupt* admission of Mr. *William Kynaston* to the Office of a *Master* in *Chancery*, in *August 1721*. We will shew you that before Mr. *Kynaston* was admitted to be a *Master*, he was advised by Mr. *Rogers* (with whom he had then contracted for the *Sale* of his Office for 6000 *l.*) that the *Lord Chancellor* would expect 6 or 700 *l.* for his admission; upon this he applied to my Lord's Secretary, Mr. *Cottingham*, (who appears to have been the *Broker* on all these Occasions) and desired to be recommended to the *Chancellor* for that Office, and told Mr. *Cottingham*, that if it was necessary, he could obtain my Lord *Bradford's* Recommendation; the Secretary only answer'd, that another *Master* had given 1500 *Guineas* on the same Occasion; Mr. *Kynaston* then offered 1000 *l.*; *Cottingham* reply'd, he could mention nothing *less* to the *Lord Chancellor* than 1500 *l.*; but being afterwards asked by the person who was to pay the *Money*, what Sum would be *insisted on*; answered, It must be 1500 *Guineas*; nothing it seems was to be abated, for this (Mr. *Cottingham* told Mr. *Kynaston*) was one of the *best* Offices, being the fullest of *Money* and *Securities*. *Money* and *Securities*, my Lords, the property of the *Suitors* of the Court; and how *fatal* the *Masters* making *Use* of such *Money* for their *own Profits* has been, in order to *reimburse* themselves for the very great Sums paid for their Offices, is now too severely felt by Numbers of *helpless Orphans* and *injured Suitors*. Mr. *Kynaston*, however, seeing no *Possibility* of admission without paying the *whole sum* of 1500 *Guineas*, comply'd at last, sent the *Guineas* to Mr. *Cottingham*, who afterwards paid them to the *Chancellor*; and the next Day Mr. *Kynaston* was admitted and sworn a *Master*.

I come now to open to your Lordships, the Evidence

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which we shall produce to make good the *6th* article, which relates to the *illegal* and *corrupt* admission of Mr. *Thomas Bennet* to the Office of a *Master* in *Chancery*.

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

However, Mr. *Bennet* again desired he would go to the *Chancellor*, and said that if the *Sum* he had offered would not do, he would give 1500 *l.*; *Cottingham* desired to be excused from going on *that* message, and said my *Lord* did not love *Haggling*; and that if Mr. *Bennet* would give no *more*, he might *lose* the Office, for that if the *Chancellor* should refuse *that* Sum, he would not go with any other *Offer*. Upon this, my Lords, Mr. *Bennet* at last, consented to give the 1500 *Guineas*; and this will appear to have been what the *Lord Macclesfield* calls Mr. *Thomas Bennet's free Gift*. The *Guineas* were paid to Mr. *Cottingham*, who paid them to the *Chancellor*, for which Mr. *Bennet* was admitted into his Office, which appears to have cost him 9075 *l.* and that very Sum, upon the making up of his *Accounts*, appeared to have been wanting in his Office, for the making up of his *Balance* due to the *Suitors* of the Court. I must take Notice to your Lordships, that the *Lord Macclesfield*, in his Answer, alledges, that the said *Kynaston* and *Bennet* pretending they were disabled from answering to the *Suitors* of the Court, so much *Money* as he had taken from them at their respective *Admissions*, the said Earl did, *before* the *Impeachment*, pay into the Court of *Chancery*, for the *Use* of the *Suitors* of that Court, the two several Sums received by him from Mr. *Kynaston* and Mr. *Bennet*; but, my Lords, that we shall shew to be a *gross Mistake* in the *Answer*, for we shall prove the said Sums were not repaid by him till *after* the *Impeachment*, and after they had by *Affidavit* charged the *Payment* of these Sums as one *Cause* of the *Deficiency* in their Offices.

I come next to shew the *Manner* in which Mr. *Francis Elde* was admitted to his Office of a *Master* in *Chancery*, which happened in *February, 1723*, upon the *Death* of Mr. *Fellows*; we shall shew your Lordships, that Mr. *Elde* applied personally to the *Chancellor*, who told him he would *treat* with him in a *different* manner from any man living; in two or three Days after this he applied again to the Earl for the Office, and then did mention a Sum of 4 or 5000 *l.* my Lord told him, Mr. *Elde* and I must not make *Bargains*. So, my Lords, Mr. *Elde* after this went to Mr. *Cottingham*,