

ham, and told him of his intention to give the Chancellor 5000 *l.* Mr. *Cottingham* advised him to make it *Guineas*. And, in pursuance of this Advice, Mr. *Elde* did, on or about the 1st of *Febr.* 1723, carry to the said Lord *Macclesfield's* house 3000 *Guineas* and 2100 *l.* in *Bank-Notes*, muffled up in a *Dutch-Basket*, which he sent up to my Lord by Mr. *Cottingham*, who left it with his *Lordship*, brought down word all was well, and within a day or two after Mr. *Elde* was sworn into his Office.

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

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

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

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

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

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

That, of the money he received from Mr. *Elde*, he

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

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

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

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

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

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

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

Putting up Offices of Justice to Auction, my Lords, is repugnant to the Dictates of plain Reason, and consequently



requently to the whole Sense and Spirit of the Common Law of this Realm, which is founded upon Reason; and in this Repugnance to the Intent and meaning of the Law of the Land, lies this Offence, (in my poor Judgment) as to the Illegality of it.

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

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

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

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

*Bennet* did take it out, and when it came to the Great Seal, no Consideration was had of what he had given before, but it cost him about 64*l.* for the Seal.

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

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

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

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

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

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

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



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

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

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

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

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

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

Mr. *Lutwyche*. My Lords, we are not willing to

trouble your Lordships with more than is necessary, or to go about to prove those Things that are admitted by the Earl's Answer, but where they are not fully admitted in such a Manner as they are charged, and with all that Advantage that we think we can make of them, we must beg leave to trouble your Lordships with the Proof of them. My Lords, it is admitted by the Answer, that there was an Oath of Office taken; and it is likewise set forth in the Answer, what that Oath was, but the Answer goes no farther, and doth not admit any Thing as to another Oath founded on the Statute of the 12th *Rich. 2.* which hath frequently been taken by the noble Lord; we think it therefore necessary to have the Statute of *Rich. 2.* first read, and the Oath that is there prescribed, and to shew you that the Noble Lord within the Bar, did take that Oath several times.

Then the Clerk read the Statute of 12 *Rich. 2. chap. 2. viz.*

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

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

Mr. *Thomas Eyre* sworn.

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

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

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

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

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

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

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

Mr. *Eyre*. Yes, several Times.

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

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

Earl



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

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

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

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

*Mr. Serj. Pengelly.* My Lords, we desire he may read it.

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

[*Mr. Eyre reads the Statute.*]

Anno xii Richardi Secundi.

**I**TEM, Accorde est & assentez' que le Chancellor & Treasurer Gardain du Privy Seal Senescall' de Hosteil le Roy, Chamberleyn du Roy, Clerke du Rolls, Justices de lune Bank & de lautre, Barons de le Exchequer & toutz autres, que Serrount Appelles Dorjoigner nomer ou fair Justices de la Peace, Viscounts Escheators, Customers Comptrollers, ou Ascune autre Officer du Roy, ou Ministre, seroit firmement Jurez, & Serementez, quils ne Ordeigne noient ne facent Justices de la Peas, Viscounts Escheators, Customers Comptrollers, ne null autre Officer ne Ministre du Roy, par null' manner Don' ne Brocage favor n' affection, nique null' que par sui par luy ou par aut' en priv' ou en Apert Destre en Ascune manner Office, soit mijs en mesme l' Office, ou en Ascune aut', unque que ils facient toutz tielz Officers & Ministers de le plus Bon & Loyalz & les plus sufficients a leur essient & leur Conscience.

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

*Mr. Eyre.* Yes.

*Earl of Macclesfield.* I suppose you read in that very manner.

*Mr. Eyre.* Yes.

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

*Mr. Eyre.* No.

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

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

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

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

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

*Mr. Eyre.* No.

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

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

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

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

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

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

*Mr. Lutwyche.* I desire he may be asked, whe-

ther this hath not been taken to be Swearing them to do what is commanded by this Statute?

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

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

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

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

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

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

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

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

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

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

*Mr. West.* We submit this matter to your Lordships: This Statute prescribes, that an Oath shall be particularly taken; the Fact has been stated by the Witness: And whether it does not amount to the Proof of an Oath, that they will comply with that Act of Parliament, we leave to your Lordships Judgment.

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



The particular Oath very little varies from the Oath administred to the Lord Chancellor, which, in his Lordship's Answer, is set out at large. However, we shall now beg leave to produce the Oath, ; and to that purpose, we desire Mr. Pynsent, the Deputy-Clerk of the Crown in Chancery, may be examined, and he will produce the Oath before your Lordships.

Mr. Pynsent sworn.

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

Mr. Com. Serj. My Lords, we hope he shall give an Account, whether he hath seen the Oath taken, and hath administred it?

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

Reads the Oath.

Sacram Magistorum Cancellarie } *Y* E shall swear that well and truelie Ye shall serve the Kinge Our Sovereign Lord, and his People, in the Office of one of the Maisters of his Chauncerye, to the whiche Ye be called: Ye shall not assent, ne Procure the Disherytaunce, ne perpetual Damage of the Kinge, to Your Power, ne fraude; Ye shall doe or cause to be made wrongfullye to anye of his People, ne in any thinge that touchethe the Seale: And lawfullye Ye shall Counsaile the thinges that touchethe the Kinge, when ye shall be thereunto required. And the Counsayll that Ye shall geve touching him, Ye shall not disclose. And yf Ye know anye thinge of the Disherytaunce or Damage of the Kinge, or fraude to be made upon anye thinge that touchethe the keeping of the Seale: Ye shall put Your lawfull Power it to redresse and amende; And yf that Ye cannot do, Ye shall advyse the Chauncellor, or Lorde Keeper of the Seale, or other whiche may that amende, to Your Power. As God you helpe, and by the Content of this Boke.

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

The next Evidence we shall produce, are Commissions beginning in the Time of *Edw. VI.* to this time, granted to Masters, appointing them to hear Causes, &c. The first Commission we shall produce, is dated the 9th of *October*, the 4th of *Edw. VI.* My Lords, we desire that Mr. Paxton may be sworn, who has Copies of these Commissions, and has examined them with the Records.

Mr. Ralph Paxton sworn.

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

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

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

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

Mr. R. Paxton. I did.

Mr. Serj. Pengelly. Are they true Copies?

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

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

Mr. Strange. Are they upon Stamps?

Mr. R. Paxton. Yes, Sir, with a double Six-penny Stamp.

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

Clerk reads.

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

Rex &c. Dilcis & fidelibus Consiliariis Suis Rbto Southwell Militi Custodi ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Justic' nrorum ad Plita coram Nob' tenend' assign' Jacobo Hales Militi uni Justic' nrorum de Banco Rico Reade Militi et Jobi Tregonwell Aro Magris Cancellar' nre predee Ac Dilcis Sibi Jobi Olyver Clico Willo Cooke Aro Jobi Croke Aro et Antonio Bellassis Clico Magris ejusdem Cancellar' nre Saltm. Quia Predilectus et fidelis Consiliarius nr' Ricus Riche Miles Dus Riche Cancellar' nr' Angl' adeo Corporis invaliditudine ad presens laborat qd ad ea que in Cur' Cancellar' nre in causis et materiis int' diversos ligeos & Subditos nros ibidem pendent' tractand' audiend' discuciend' et terminand' Sint & fieri debeant ad presens pro tempore non Sufficiat Considerantes igitur ipm ad Saltm cicius posse restitui Si ab arduis negociis nris et detminacois causarum in Cur' Cancellar' nre penden' ad tempus abstineat Et Volentes nichilominus interim in ejusdem Cancellarii nri absencia omibus & Singulis ligeis & Subditis nris quibuscumq; matias suas in Cur' Cancellar' nre predee prosequentibus plenam & celerem Justiciam exhiberi Ac de fidelitatibus & providis circumspccioibus vris plenius Confidentes Assignavimus Vos octo Septem Sex quinq; quatuor & tres vrm quorum Vos presat' Robte Wille Porteman Jacobo Hales Jobes Olyver & Jobes Croke unu' esse Volumus Ac tenore presenciu' Damus Vob' octo Septem sex quinq; quatuor & tribus vrm quorum aliquem vrm Vos presat' Robte Wille Porteman Jacobo Hales Jobes Olyver & Jobes Croke unu' esse Volumus plenam potestatem & auctoritatem audiend' et examinand' quascumq; materias causas & peticoes coram Nob' in Cancellar' nra int' quoscumq; ligeos & Subditos nros tunc pendent' et imposterum ibidem exhibend' & pendent' & easdem matias causas & peticoes juxta Sanas discrecoes vras finalit' tminand' & debit' execuoi demandand' partesq; in matijs Sive causis vel peticoibus illis noitas & Specificatas ac testes & alios quoscumq; quos Vob' fore videbitur evocand' quociens expedire videritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum aliquem vrum vos presate Robte Wille Porteman Jacobo Hales Jobes Olyver & Jobes Croke unu' esse Volumus evocand' ac ipos & eorum quemlibet debite examinari compellend' diesq; productorios imponend' & assignand' processusq; quoscumq; in ea parte necessarios concedend' et fieri jaciend' contemptus etiam quoscumq; ibidem comis' Sive perpetratos debite castigand' & puniend' cetaq; omia & Singula faciend' et exequend' que circa premissa necessaria fuerint Seu quemadmodum oportuna Et ideo Vob' Mandamus qd circa premissa diligent' intendatis ac ca fac' & exequamini cum effectu Mandamus etiam tenore presenciu' omibus & Singulis Officiariis & Ministris nris Cur' nre predee qd Vob' octo Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos presate Robte Wille Porteman Jacobo Jobes Olyver & Jobes Croke Semper unu' esse Volumus in execucoe premissorum diligent' intendant prout decet Volumus etiam & per presentes Concedimus quod omia & Singula judicia Sive finalia decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos presate Robte Wille Porteman Jacobo Jobes Olyver et Jobes Croke unu' esse Volumus Semper hmoi causis Sive materijs reddend' Sive fiend' Sint & esse debeant tanti & consimilis valoris



loris effectus efficacie roboris et virtutis ac si per Cancellarium nrm Angl' et Cur' Cancellar' predict' reddid' sive reddend' forent Proviso Semper qd omnia & Singula hujusmodi judicia sive finalia Decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Jobes Olyver et Jobes Croke unu' esse Volumus virtute presentiu' reddend' sive fiend' manibus vris octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Jobes Olyver & Jobes Croke unu' esse Volumus Subscribantur & consignentur & Superinde eadem judicia sive decreta prefat' Cancellar' nro presententur & libentur ut idem Cancellar' nro antequam irrotulentur eadem Similit' manu sua consignet In cujus rei testimoniu' has Lras nras fieri fecimus Patentes usq; ultimū' diem Novembr' proper' futur' duratur' Si non intrim per alias Lras nras Patentes huic Commissioni supersederi decreverimus T. R. apud Westm' nono die Octobr'

per ipm' Regem  
Concordat' cum Recordo et  
Examinat' per me  
WM. ROOKE.

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

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

Clerk reads.

GEORGIUS Dei Gra' Magnæ Britanniæ Franciæ & Hibniæ Rex fidei defensor &c. Prædilecto & fideli Consiliario nro Josepho Jekyll Mil' Magro Rotlorum Cur' Canc' nre ac Dilcis' & fidelibus nris Littleton Powys Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justiciar' nrorum de Banco Robto Tracy Ar' al' Justiciar' nrorum de Banco Robto Price Ar' un' Baron' Scij nri Johi Smith Ar' al' Baron' Scij nri Robto Dormer Ar' un' Justiciar' nrorum de Banco Robto Eyre Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Pratt Mil' al' Justiciar' nrorum ad plita coram nobis tenend' assign' Jacobo Mountagu Mil' un' Baron' Scij nri Johi Fortescue Aland Mil' un' Baron' Scij nri Thome Gery Mil' Willo Rogers Johi Hiccocks Willo Fellows Jacobo Meller Johi Orlebar Fleetwood Dormer Samueli Browning Robto Holford Henrico Lovibond & Johi Bennet Aris saltm Quia predilect' & fidel' Consiliar' nostr' Thomas Doms Parker Cancellar' nostr' magne Britannie nris arduis negotiis ex Mandato nro continue attendens in eisdem adeo versatur quod continue attendere non potest ea que in Causis & materiis inter diversos ligeos & subditos nros ac alios in Cur' nra Cancellar' penden' agen' tractand' audiend' expediend' discutiend' & terminand' sint & fieri debent Nos premissa Considerantes volentesq; eibus & singulis ligeis nris ac aliis quascunq; materias suas in eadm' Cur' Cancellar' prosequen' sive prosecutur' plenam & celerem Justiciam exhiberi tam in absentia quam in presentia predict' Cancellar' nostr' Magn' Britann' ac de fidelitate & providis circumspectiobus vris in hac parte plumu' confidente assignavimus vos ac tenore prentium Damus vob' & aliquibus tribus vel plur' vrum Quorum prefat'

Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Fortescue Aland unum esse volumus in absentia diei Cancellar' nostr' Magnæ Britanniæ plen' prefat' & auctat' audiend' & examinand' quascunq; materias Causas & petitiones coram nobis in dea Cancellar' nra inter quoscunq; ligeos & subditos aut alios quoscunq; nunc penden' aut Imposter' ibm exhibend' & penden' materias Causas & peticones juxta sanas discretiones vras vel trium vrm Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Fortescue Aland unum esse volumus finaliter terminand' & debit' execution' demandand' Partesq; in materiis causis seu petitionibus illis nominat' & significat' ac Testes & alios quoscunq; quos vobis vel tribus vrm (ut pred' est) fore videbitur evocand' quoties expedire videritis coram vobis vel tribus vrm (ut pred' est) evocand' Ac ipsos & eorum quemlibet debite examinari diesq; productiores imponend' & assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri faciend' Contemptus etiam quoscunq; comis' sive perpetrat' debite castigand' & puniend' ceteraq; oia & singla faciend' & exequend' que circa premissa necessar' fuerint seu quomodolibet opportuna Et ideo vobis mandamus qd circa premissa diligent' intendatis & ea fat' exequamini cum effectū Mandamus etiam tenore prentium Officiar' & Ministr' Cur' nre Canc' pred' qd vobis vel tribus vrm (ut pred' est) in execut' premissorum diligenter intendant prout decet Volumus etiam ac per prentes concedimus quod oia & singula Judicia sive finalia decreta ac Ordines per vos aut tres vrum ut præd' est super hum' causis sive materijs ac peticioibus ut prefertur reddend' sive fiend' sint & esse debeant tanti & consilis valor' effect' efficacie roboris & virtute Ac si per præd' Cancellar' nostr' Magnæ Britanniæ & Cur' Cancellar' nre præd' reddid' sive reddend' forent Proviso tamen quod oia & singula Judicia sive finalia decreta per vos vel tres vrm ut præd' est virtute prentium modo & forma ut prædicitur reddend' sive fiend' Manibus vris vel trium vrm Quorum prefat' Josephum Jekyll Littleton Powys Johem Blencowe Robtum Tracy Robtum Price Johem Smith Robtum Dormer Robtum Eyre Johem Pratt Jacobum Mountagu & Johem Fortescue Aland unum esse volumus subscribentur & consignentur & superinde eadem Judicia sive finalia decreta prefat' Cancellar' nostr' Magn' Britan' presententur & libentur Quodq; null' eorundem Judicior' sive final' decretor' irrotulentur aut quovismodo execut' sint antequam idem Cancellar' nostr' Magn' Britann' ea manu sua propria filiter consignet Et quod he lre nre Patentes durabunt & permanebunt in pleno robore & effect' donec aliter per alias lras nrs Patentes huic Commissioni supersederi mandat' foret aut prædict' Cancellar' nostr' Magn' Britann' in plena Cur' determinari decret' & irrotulat' erit In cujus rei Testimoniu' has lras nras fieri fecimus Patentes Teste meipso apud Westm' duodecimo die Maij Anno Regni nostri quarto

per ipsum Regem

WRIGHTE.

Mr.



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

*Clerk reads.*

GEORGIUS Dei Gratia Magnæ Britanniae, Franciæ, & Hiberniæ Rex, fidei Defensor, &c. Prædilecto & fidel' Consiliar' nro Josepho Jekyll Mil' Magro Rotulor' Cur' Cancellar' nre ac Dilcis & Fidelibus nris Littleton Powys Mil' un' Justic' nroru' ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justic' nrorum de Banco Robto Tracey Ar' al' Justic' nrorum de Banco Robto Price Ar' un' Baron' Sccij nri Robto Dormer Ar' un' Justic' nrorum de Banco Robto Eyre Mil' un' Justic' nrorum ad plita coram nob' tenend' assign' Jacobo Montagu Mil' un' Baron' Sccij nri Johi Fortescue Aland Mil' un' Justic' nrorum ad plita coram nob' tenend' assign' Franco Page Mil' un' Baron' Sccij nri Johi Hiccocks, Willo Fellowes, Robto Holford, Henco Lovibond, Johi Bennett, Rico Godfrey, Jacobo Lightboun, Johi Borrett, Edro Conway, Henco Edwards, & Willo Kynaston, Ar' salum. Quia Charissimus Consanguineus & Consiliar' noster Thomas Comes de Macclesfield Cancellar' noster Magnæ Britanniae nostris arduis negotiis ex Mandato nostro continue attendens in eisdem adeo versatur quod continue attendere non potest ea que in Causis & Materiis inter diversos ligeos & subditos nostros ac alios in Cur' nostra Cancellar' penden' agen' tractand' audiend' expediend' discutiend' & terminand' sint & fieri debent nos premissa considerantes volentesq; omnibus & singulis ligeis nostris ac aliis quascunq; materias suas in eadem Cur' Cancellar' prosequend' sive prosecutur' plenam & celerem Justiciam exhiberi tam in absentia quam in præsentia præd' Cancellar' nostri Magnæ Britanniae ac de fidelitate providis Circumspectionibus vris in hac parte plurimum Confidentes Assignavimus vos ac tenore present' Damus vob' & aliquibus tribus vel plur' vrm' Quorum pefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus in absentia dicti Cancellar' nostri Magnæ Britanniae plen' potestatur & Authoritat' audiend' & examinand' quascunq; materias causas & petitiones coram nob' in dicta Cancellar' nostra inter quoscunq; ligeos & subditos aut alios quoscunq; nunc penden' aut impostur' ibidem exhibend' & penden' & easdem materias causas & petitiones juxta sanas discretionis vras vel triu' vrm' Quorum pefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus finalit' terminand' & debit' execution' demandand' parteq; in materiis causis seu petitionibus illis noiat' & specificat' ac testes & alios quoscunq; quos vob' vel tribus vrm' (ut præd' est) fore videbitur evocand' quoties expedire videritis coram vob' vel tribus vrm' ut præd' est) evocand' ac ipsos & eorum quemlibet debite examinari compellend' diesq; productiores imponend' & assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri faciend' contemptus etiam quoscunq; comis' sive perpet' debit' castigand' & puniend' ceteraq;

oia & singula faciend' & exequend' que circa præmissa necessar' fuerint seu quomodo libet opportuna. *Et Ideo* vob' mandamus quod circa præmissa diligent' intendatis & ea fac' & exequimini cum effectu. *Mandamus* etiam tenore presentiu' officiar' & ministr' Cur' nostre Cancellar' præd' quod vob' vel tribus vrm' (ut præd' est) in executione præmissorum diligent' intendant prout decet Volumus etiam & per presentes concedimus quod oia & singula judicia sive final' decreta ac ordines per vos & tres vrm' (ut præd' est) super hum' causis sive materiis, & petitionibus ut pefert' reddend' sive fiend' sint & esse debeant tanti & consilis valor' effectus efficacie roboris & virtutis ac si per præd' Cancellar' nostr' Magnæ Britanniae & Cur' Cancellar' nostre præd' reddit' sive reddend' forent. *Provisio* tamen quod oia & singula judicia sive finalia decreta per vos vel tres vrm' (ut præd' est) virtute present' modo & formatur predicatur reddend' sive fiend' manibus vris vel triu' vrm' Quorum pefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus subscribantur & consignentur & superinde eadem judicia sive final' decreta pefat' Cancellar' nostro Magnæ Britanniae presententur & libentur Quodq; nulla eorundem judiciorum sive final' decretorum irrotulentur aut quovis modo execut' sint antequam idem Cancellar' noster Magnæ Britanniae ea manu sua propria silit' consignet Et quod he litere nostre paten' durabunt & permanebunt in pleno robore & effectu donec alit' per al' literas nostras patentes huic Commission' supersederi mandat' foret aut per dictum Cancellar' nostrum Magnæ Britanniae in plena Cur' determinari decret' & irrotulat' erit. *In cujus rei testimonium* has literas nostras fieri fecimus patentes Teste meipso apud Westm' Vicefimo die Januarij Anno nri' nri' Octavo.

Per ipsum Regem

W R I G H T E.

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

Mr. *John Meller* sworn.

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

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

Mr. *Meller*. My Lords, according to the best of my Remembrance, I was admitted a Master the latter End of the Year 1708, and continued so till *July* 1720. The general Nature of the Office is, to digest and sum up those matters which are ordered upon Hearing to be referred to us, by way of Report: That is the general Business. There is a further Business, when Bills

of



of Costs are to be taxed, they are taxed and adjusted by us what is to be paid. I don't recollect any more particular Business.

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

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

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

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

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

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

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

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

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

Mr. *Meller*. The Chief matters are the stating of Accounts.

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

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

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

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

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

Mr. *Meller*. The Method is this, when a Report is drawn up, a Copy is given to both Sides, and each Side puts in such Objections to it as they think proper; the Master goes through those Objections, and having gone through them, he

forms an Opinion upon the whole. Then it goes to the Court, and the Parties have Liberty to go upon those Objections before the Court, who finally determine.

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

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

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

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

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

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

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

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

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

Mr. *Lutwyche*. As to the taxing of Costs, whether when the Costs are taxed to a particular Sum, that is not final and conclusive, unless the Party makes Application to the Court?

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

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

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

Mr. *Lutwyche*. Another Question I would beg leave to ask. Tho' it is well known, yet it is fit it should appear from the Witness, and that is,



whether the Masters don't sit upon the Bench with my Lord Chancellor in open Court in *Westminster-Hall* every Term?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Serj. Pengelly*. My Lords, I can't tell whe-

ther the managers will have any Occasion to call him again; but he shall stay here to attend, in order to be called when he is wanted, either by the Noble Lord or any other Person. We don't think fit to trouble your Lordships with any other Evidence as to that matter. Their Authority in Court appears by the Commissions that have been produced. It is not said in the Introduction to the Articles, that the Masters are to controul the Lord Chancellor, but to assist him in the Administration and Execution of Justice, of which we think we have produced the fullest Proof; and beg leave to proceed to another Part of our Evidence, that which relates to the Profits of the Office of Lord Chancellor. The ordinary Profits, not to mention the extraordinary ones, which have been made by the Noble Lord within the Bar, I think may be computed to amount to 5000 *l.* a Year, or thereabouts; so that there is no Occasion to use other Means. But not to enter into them all, we shall only beg leave to call one Witness to prove one gross annual Sum of 1500 *l.* a Year paid out of the *Hanaper-Office*. My Lords, we desire Mr. *Pynsent* may be asked, for what annual Sum he accompted to the late Lord Chancellor out of the *Hanaper-Office*, during his Time of being in the said Office; how much he has paid him?

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

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

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

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

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

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

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

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

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

Mr. *Serj. Probyn*. My Lords, we must insist upon our Objection. The Witness says he is uncertain how much he has paid: He says he has Vouchers which will shew the particular Sums he has paid; and



and since it is in their Power to produce those Vouchers, we must submit it that they shall produce the best Evidence they have in their Power to give, and that the Receipts and Vouchers shall be produced.

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

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

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

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

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

Mr. *Sol. Gen.* My Lords, I did not expect this Objection: But we must submit it whether there is any Foundation for it. If the matter of Record be insisted on, only with respect to the Receipt given, there is no Need of it: better Evidence cannot be given to prove Payment, than the man who paid it. The common Evidence to prove Payment of Money, is to produce a man to swear that he paid that money. No better Evidence can be given; and tho' a Receipt is given, yet when a Person proves he paid the money, he need not produce the Receipt: it is better Evidence than the Receipt: A Receipt may be given without Payment. Therefore we apprehend that the Witness's Proof of the Payment, is sufficient to prove this matter of Fact.

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

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

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

E. of *Macclesfield.* My Lords, I am sorry your Lordships Time should be taken up about a Thing of this kind. When the Objection was first made by my Counsel, which I apprehend is right, I stood up to acquaint your Lordships, that I did not insist upon the Nicety of it. This Gentleman used to pay me money, and I believe he is a very honest Gentleman; but when he comes to say he is not sure how much, and they were working him up to a higher Pitch, and these Gentlemen, for ought I know, or their Sollici-

tor, may have the Receipts in their Pockets, I thought it was then high Time to stop them. This Gentleman did say it was more than 1000 *l.* My Lords, I admit it, I believe it to be 1100 *l.* a Year, or thereabouts: if I knew exactly, I would tell it, I never intended to dispute the Matter.

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

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

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

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

Mr. *Pynsent.* No, I do not.

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

Mr. *Pynsent.* I think it is so.

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

Mr. *Pynsent.* I think it is thereabouts.

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

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

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

Mr.



Mr. *Thomas Bennet* sworn.

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

*The Patent begun to be read.*

‘ Teste, &c. 5<sup>o</sup> Septemb’ An. 10 *Georgii* Regis.

Mr. *Serj. Pengelly*. Tho’ the Noble Lord’s Name be not mentioned in the Patent, yet it is sufficiently known from the Date and Time of it, that it was when the Noble Lord was one of the Lords Justices, and had the Custody of the Seals, and that at that time he affixed the Seals to this Patent.

Then the Patent was begun again to be read.

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

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

*Clerk reads.*

‘ **G** E O R G I U S Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos presentes literæ nostræ pervenerint salutem. Cum nos per Literas nostras Patentes sub Magno Sigillo nostro Magnæ Britanniæ confectas geren’ dat’ apud Westm’ vicesimo die Martii, Anno Regni nostri tertio pro nobis Heredibus & Successoribus nostris dederimus & Concesserimus Dilecto & fideli nostro Thomæ Bennet Armigero Officium Clerici ad Scribend’ & Conficiend’ omnia & singula Bria de diem clausit extremum, & Mandamus & Commissiones ad inquirend’ post mortem & de Ideotis & Lunaticis & ad melius inquirend’ inde & supersed’ eorundem ac omnia al’ Bria & Process’ eorund’ ac omnia al’ Bria de Process’ cujuscunque Generis Nominis Naturæ vel Speciei essent vel forent que ante tum de vel nuper in Cur’ Wardor’ & Libationum aliquor’ Predecessor’ nostror’ antetunc Regum vel Reginar’ Angl’ per Warrant’ ibidem dum eadm’ Cur’ stetit & fuit in Usu & Vigore fact’ & Concess’ assignat’ vel appunctuat’ fuerant, vel fieri concedi assignari vel appunctuari consueverant vel debuerant ac de vel in Cur’ nostra Cancellar’ vel aliquor’ Predecessor’ nostror’ antetunc Regum vel Reginarum Angl’ sub Magno Sigillo Angl’ impetrat’ & persecut’ fuerant vel impetrari & prosequi consueverant vel debuerant ac oies & singul’ Literas Paten’ de Custod’ Corporum omnium Wardor’ Idiotor’ & Lunaticor’ nostror’ Hered’ & Successor’ nostrorum & de Maritag’ eorund’ Wardor’ sub Magno Sigillo Magnæ Britanniæ impetrand’ & prosequend’ necnon omnia al’ Bria Commissiones & process’ cujuscunque Generis Nominis Naturæ vel Speciei essent vel forent de vel in Cur’ nostra Cancellar’ Hered’ & Successor’ nostrorum sub Magno Sigillo nostro Magnæ Britanniæ Hered’ vel Successorum nostrorum premissa predicta seu eorum aliqua tangen’ vel concernen’ fiend’ concedend’ impetrand’

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



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

Per bre' de privato Sigillo,

C O C K S.

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

Mr. Com. Serj. I beg leave to make an Objection to that: The Foundation of this Article is a corrupt Agreement for the Resignation of an Office accepted by the Lord Chancellor. Now, in the Letters Patents in general, a Resignation is taken notice of; but they ought to make it ap-

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

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

Lords. Go on, go on.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Tho. Bennet*. Yes.

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

Mr. *Tho. Bennet*. Yes.

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

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

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

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

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

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

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

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

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

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



Sakes, will not permit this Question to be answered?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

could not do it without my Lord Chancellor's Consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Peter Cottingham* sworn.

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

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

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

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

Mr.



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

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

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

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

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

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

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

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

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

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

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

Dr. *Sayer*. Was this on the first Applications?

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

Dr. *Sayer*. It is of Consequence; and therefore I desire it may be asked, whether at the first Time he applied, he made this Offer of One hundred Guineas?

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

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

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

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

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

Dr. *Sayer*. What Character had Mr. *Hamersley*?

Mr. *Cottingham*. A very good one.

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

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

Mr. *Strange*. He is pleased to say Mr. *Bennet* did not inform him what Agreement was made between him and Mr. *Hamersley*. But did not he say on what Account he resigned?

Mr. *Cottingham*. He told me he surrendered the

Office, to reimburse himself the Money he had paid to Mr. *Hiccocks* for his Office.

Mr. *Strange*. What Office was that?

Mr. *Cottingham*. The Master's Office.

Mr. *Strange*. Did he mention that?

Mr. *Cottingham*. Yes, he did mention it.

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

Mr. *Cottingham*. I acquainted his Lordship before.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Cottingham*. He offered the 100 Guineas the first Time.

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

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

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

Mr. *Cottingham*. No, not as I remember.

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

Mr. *Cottingham*. I said on that Occasion, as he



he offered 100 Guineas, I told him my Lord was willing to accept of it.

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

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

Mr. *Lutwyche*. Was that the first Discourse?

Mr. *Cottingham*. The first that I remember.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Tho. Bennet*. At the second meeting. At the first Time he did not, because there was no mention made of money.

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

E. of *Macclesfield*. These Gentlemen are pleased to differ in their Evidence. I would ask Mr. *Bennet* a second time, whether Mr. *Cottingham* told him that he did not know Mr. *Hamerfley*.

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

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

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

E. of *Macclesfield*. You are not positive?

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

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

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

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

Mr. *Tho. Bennet*. Therefore I wondered at it.

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

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

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

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

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

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

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

Mr. *Delafaye* called.

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

Mr. *Delafaye* sworn.

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

Mr. *Delafaye*. Yes my Lords.

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

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

Mr. *Serj. Probyn*. I beg leave to ask him, whether he knew any thing of Mr. *Bennet's* Petition being transmitted to his Majesty abroad, and by whose Direction?

Mr. *Delafaye*. Mr. *Bennet's* Petition was trans-



mitted to his Majesty abroad, by the Direction of the Lords Justices.

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

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

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

*Friday May 7. The second Day.*

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

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

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

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

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

*Mr. William Kynaston* sworn.

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

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

*Mr. Serj. Pengelly.* We desire that he may be asked, concerning the manner of his Admittance, what Transactions there were before-hand about it, with whom, and what he gave the Lord Chancellor for his Admittance?

*Mr. Kynaston.* After I had agreed with *Mr.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Mr. Kynaston.* I did not count it, but the Sum



of fifteen hundred Guineas was carried in a Bag by Mr. Baily to Mr. Cottingham.

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

Mr. Kynaston. Yes.

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

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

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

Mr. Kynaston. 6000 *l.*

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

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

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

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

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

Mr. Kynaston. No, I believe not.

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

Mr. Kynaston. I understood it of both together.

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

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

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

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

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

Mr. Kynaston. Mr. Rogers.

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

Mr. Kynaston. Yes, my Lords, the money lent me to pay Mr. Cottingham, I did accompt for that money out of the money belonging to the Suitors of the Court: I understood it was usual to do so, and that others had done it.

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

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

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

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

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

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

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

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

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

Mr. Kynaston. Yes.

Sir Wm. Strickland. When were the fifteen hundred Guineas paid?

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

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

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

Mr. Charles Baily sworn.

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

Mr. Baily. My Lords, a Day or two before Mr. Kynaston was admitted, I paid fifteen hundred Guineas,



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

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

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

Mr. *Lutwyche*. Upon what Account?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Cottingham* appears.

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

Mr. *Cottingham* sworn.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Serj. Probyn*. I desire one Question more; Whether he remembers that there was any mention made of 1000*l.* or one thousand Guineas by Mr. *Kynaston*?

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

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

(Mr. *Thomas Bennet* sworn before.)

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Tho. Bennet*. I had no Conversation with him before I was sworn. At that Time my Lord was in Bed, and as soon as I was sworn in, my Lord called me to him, shook me by the Hand and wish'd me Joy, and said he had a Respect for my Father Serjeant *Bennet*, his old



Friend and Acquaintance, and the Family; and said he, You are sworn in by a dying Chancellor. I told him, I hoped his Lordship would live a great many Years.

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

Mr. *Cottingham* called, and appeared.

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

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

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

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

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

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

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

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

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

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

Mr. *Cottingham*. 1500 Guineas.

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

Mr. *Cottingham*. Not a Farthing less; he asked me what was expected, I told him the Sum Mr. *Kynaston* had paid, which was 1500 Guineas; and he never offered a Farthing less.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. *Onslow*. I would ask Mr. *Cottingham* one Question, which, I think, he hath not answered; I ask whether he had not, in general, Directions from the Lord Chancellor, to insist upon, or ask any particular Prices for these Places?

E. of *Macclesfield*. My Lords, I am sorry the



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

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

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

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

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

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

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

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

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

Mr. Serj. Pengelly. I desire he may be asked, whether he did not by Direction of my Lord Chancellor insist upon those Sums, and he would not receive under?

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

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

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

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

Mr. Cottingham. I had no such Instructions: The Gentlemen came and talked to me, and proposed to me the Sum they were willing to give, and I laid it before the Earl: I had no particular Instructions.

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

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

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

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

E. of Macclesfield. I desire he may be asked this Question, to each distinctly, whether I so much as knew any Thing of the matter as to any Sum offered by Mr. Kynaston or Mr. Bennet, till he told me the whole Sum?

Mr. Cottingham. No, never.

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

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

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

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

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

Mr.



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

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

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

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

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

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

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

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

Mr. *Elde* called.

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

(Sworn accordingly.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr.



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

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

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

Mr. Elde. I did not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Elde. 3400.

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

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

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Mr. Onslow. In what manner was that money returned to him?

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

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

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

Mr. Elde. Before I went out of Town.

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

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

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

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

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

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

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

Mr. Elde. I believe two or three Days.

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

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

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

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

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

Mr. Onslow. Who was this paid by?

Mr. Elde. By my Lord Parker.

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

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

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

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



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

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

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

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

Mr. *Elde*. Yes.

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

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

Mr. *Serj. Pengelly*. Whether it was not necessary for him to make use of this money, in order to make up this Balance?

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

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

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

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

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

Mr. *Lutwyche*. I mentioned a Question before; Mr. *Elde* was mentioning that my Lord *Macclesfield* had said to him before he went out of Town, that he would make him exceeding easy: I desire he may be asked where he was then going, and upon what Occasion?

Mr. *Elde*. My Lords, I was going into *Staffordshire*, where the little Effects I have in the World lie.

Mr. *Lutwyche*. I would know upon what Occasion?

Mr. *Elde*. I never missed going into the Country the Beginning of *August*, for these ten Years past.

Mr. *Lutwyche*. Whether there was any particular Occasion for his going down into the Country at that Time?

Mr. *Elde*. If your Lordships are of Opinion that this is a fair Question, I will as fairly answer it. I went down to my House, to look into what little Affairs I had there. I called at *Stafford* first, and there declared myself a Candidate for the Election that was to ensue.

Mr. *Lutwyche*. We desire he may be asked, When he returned?

Mr. *Elde*. I returned about the 19th or 20th of *November*.

Mr. *Plummer*. Mr. *Elde* says, when my Lord *Parker* paid him, he had a Note from him, acknowledging the Receipt of the money: I desire to know, Whether that Note was taken up again, and when?

Mr. *Elde*. The Note I gave my Lord *Parker*?

Mr. *Plummer*. Yes.

Mr. *Elde*. My Lord *Parker* sent for me, and gave me the Note again. I do not know that I saw my Lord *Macclesfield* till after I had seen Lord *Parker*, and he had given me up the Note again.

Mr. *Plummer*. I desire he may be asked, When the Note was delivered up to him?

Mr. *Elde*. That was asked before; I cannot tell the Day.

Mr. *Plummer*. It was never asked here before: The Question I ask is, When the Note was delivered up?

Mr. *Elde*. I do not remember the Day.

Mr. *Plummer*. As near as you can?

Mr. *Elde*. In the Beginning of *December*.

Mr. *Sandys*. I beg leave to ask one Question: He says that he applied this money, which he received of my Lord *Parker*, towards making good the Ballance of his Account; Whether or no, he did not first refuse to swear to the Ballance of that Account; and what was the Occasion of it?

Mr. *Elde*. When I had delivered in my Account, the Question I was asked the first Time, was proposed to me, not by any of the Judges who were appointed to inspect our Accounts, but by Sir *Nathaniel Gould*, who proposed it in such a manner, that I could not by any means take it. He asked me, Whether I owed any thing, and I was to swear I owed nothing: I told him I could not swear any such thing. I had some Arguments with him about the Absurdity of such an Oath, and said, if I owe a million of money, that is nothing to the purpose: There is the money due on the Ballance of my Account; I deliver it to you; I laid the money upon the Table, and insisted upon leaving it with them.

Mr. *Sandys*. Whether that Note was delivered to him after he refused to take the Oath?

Mr. *Elde*. It was.

Mr. *Sandys*. Whether that Note was not the Occasion of his refusing to take the Oath?

Mr. *Elde*. I cannot say but it was an Ingredient in it.

Sir *George Oxenden*. I would be glad to know where this Note is?

Mr. *Elde*. When my Lord *Parker* delivered it to me, I lapt it up, and put it in my Pocket: My Lord asked me why I did so? I answered, I would keep it as a memorandum of my Lord Chancellor's Favour to me; but when I came home, considering that it would be of no Service, and that it might be hazardous to keep it by me, I tore it.

Dr. *Sayer*. I desire he may be asked, Whether he did not look upon himself entirely discharged from any Demand on Account of that money, or did think himself bound to answer it?

Mr. *Elde*. I do not think myself bound to answer it.

Dr. *Sayer*. Whether he apprehends it to be a free and perfect Gift?

Mr. *Elde*. I do, my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Pengelly*. My Lords, we left the Basket in the Hands of Mr. *Cottingham*; therefore it is necessary that Mr. *Cottingham* inform your Lordships what became of it afterwards; what he did with the Basket, after he had it from Mr. *Elde*?

Mr. *Cottingham*. My Lords, I carried it up to my Lord, and set it down in his Study.

Mr. *Serj. Pengelly*. What did you say to my Lord?

Mr. *Cottingham*. Nothing. Mr. *Elde* ordered me to carry up the Basket; I carried it up, and there I set it down: I never saw it afterwards.

Mr.



Mr. *Serj. Pengelly*. Whether do you remember what Answer my Lord *Macclesfield* made at that Time?

Mr. *Cottingham*. None that I remember.

Mr. *Serj. Pengelly*. Whether did he open the Basket?

Mr. *Cottingham*. No. The Basket was covered up, and I set it down in my Lord's Closet.

Mr. *Serj. Pengelly*. Whether after that Time he appointed any Time for Mr. *Elde* to be admitted?

Mr. *Cottingham*. I think he was admitted that very same Day.

Mr. *Serj. Pengelly*. I desire this Witness may be asked, whether he received any Thing from Mr. *Elde*, besides what was in the Basket?

Mr. *Cottingham*. Not a Farthing, except my Fees: Nor no more of any of the Matters than my usual Fees.

Mr. *Serj. Probyn*. We desire Mr. *Cottingham* may be asked, whether at this Time, when Mr. *Elde* desired to be admitted into this Office, there was any other Person who desired it, or made any Offer for it?

Mr. *Cottingham*. Mr. *Lucas*, a Gentleman of the *Temple*, was recommended to the Earl by Mr. *Bulstrode*, who is since dead. He had been formerly a Commissioner of the Excise; his Name was *Woollock Bulstrode*. Mr. *Lucas* did tell me upon that Occasion, if the Earl would admit him, he would give him 6000*l.* for the Office. I took a Memorandum of it at that Time, and I had it in my Hands four or five Days ago.

Mr. *Serj. Probyn*. When Mr. *Lucas* told you this, whether did you inform the then Lord Chancellor of it?

Mr. *Cottingham*. Yes, I am sure I did; and the Answer he made me was, that Mr. *Elde* was of a Family which were his particular Friends and Acquaintance, for whom he had a great Friendship and Value, and that he should have it 1000*l.* cheaper, or lesser than any Body else.

Mr. *Strange*. I desire he may be asked, whether before Mr. *Elde* was admitted, he did not acquaint the noble Lord, that this Mr. *Lucas* would give 6000*l.*?

Mr. *Cottingham*. Yes, I did.

Mr. *Serj. Pengelly*. I desire to know whether I understand Mr. *Cottingham* right? He says, that my Lord would let Mr. *Elde* have it cheaper than any Body else: Whether he understood by that, that my Lord expected some Body else would give him more?

Mr. *Cottingham*. My Lord said he would let Mr. *Elde* have it upon the Score of particular Friendship and Acquaintance.

Mr. *Serj. Pengelly*. If I heard him right, I submit it to your Lordships, whether he did not say that Mr. *Elde* should have it 1000*l.* cheaper than any other Person. I ask whether he did not understand my Lord *Macclesfield* would have 1000*l.* more from any other Person?

E. of *Macclesfield*. My Lords, I hope I am not to be charged with the Imaginations of this Gentleman; he is asked about his Apprehension of my Intention in a Case that did not happen. I desire he may be asked, if he knew what Character Mr. *Elde* had?

Mr. *Cottingham*. A very good one.

E. of *Macclesfield*. I desire it may be asked whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Mr. *Cottingham*. He was one your Lordship had a great Opinion of, and that he was very deserving. I never heard your Lordship express a better Opinion of any Man than of Mr. *Elde*.

Mr. *Serj. Pengelly*. We have done with this Article: The next Article is the 8th. We desire Mr. *Thurston* may be sworn.

Mr. *Mark Thurston* sworn.

Mr. *Serj. Pengelly*. My Lords, we desire that Mr. *Thurston* may give your Lordships an Account, When he was admitted into one of the Offices of the Masters in *Chancery*, and upon whose Death?

Mr. *Thurston*. My Lords, I was admitted into this Office upon the Death of Mr. *Borret*, and the Day of my Admission was the 5th of *August* last.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether, before his Admission, he had made any Application either to my Lord *Macclesfield* or his Secretary, or any Person concerned for him?

Mr. *Thurston*. My Lords, before my Admission, I did make some Application to my Lord Chancellor's Secretary Mr. *Cottingham*; and at that Time I made a Proposal of making a Present of 5000 Guineas, to be admitted into the Office. Mr. *Cottingham* asked me several Questions about my Circumstances, and what Persons I could name that would recommend me to his Lordship: To which I gave the proper Answers, and mentioned several Gentlemen he knew. After that, I having the Honour of being acquainted with my Lord Commissioner *Gilbert*, before I took any other Steps, I waited on his Lordship, and acquainted him with my Resolution, and begged the favour of him, that he would take the Trouble to recommend me to my Lord Chancellor, as his Friend, and a fit Person for the Office. His Lordship did take that Trouble, and waited upon my Lord at *Westminster*, who was then sitting upon the Bench; and after Notice was sent him of that Gentleman's being in the little Room behind, his Lordship came off the Bench; and some Time being spent in Conversation between them, I was called in, and kindly recommended by that honourable Person; and my Lord *Macclesfield* seemed to approve of me upon his Recommendation. But I should acquaint your Lordships, that as to that Part of the Transaction with Mr. *Cottingham*, he said that he would report those Things to my Lord *Macclesfield*, of my Character and Person, though he never reported any thing back to me again upon it: But I took the next ensuing Steps, by the intervention of the honourable Gentleman, my Lord Commissioner *Gilbert*.

Sir *Will. Strickland*. Whether he did not understand, that my Lord *Macclesfield* agreed to his Proposals?

Mr. *Thurston*. Yes.

Sir *Will. Strickland*. After this Transaction with Mr. *Cottingham*, what further Application was made? And why he was not immediately admitted at that Time?

Mr. *Thurston*. It was not expected by me to be immediately admitted at that Time: Because my Lord Chancellor did not absolutely determine me to be the Person; but said he had so good a Character of me, that he believed I should be the man.

Sir *Will. Strickland*. Whether Mr. *Thurston*, being uneasy about the delaying of admitting him, did apply to any other Person afterwards?

Mr. *Thur-*



Mr. *Thurston*. After my being introduced to my Lord Chancellor, there was some Time for my Lord's Consideration. Near a Week after, a Message was sent me by Mr. *Cottingham*, that my Lord would be ready to admit me such a Day. Before the Day came, I had a Message contradicting it, upon my Lord Chancellor's being engaged to attend the Council on that Day. After that, I expected the Appointment of another Day for that purpose; and in the mean time this Affair had got into the publick News-Papers, as every thing does, and I was named by every body to be the Person fixed upon; and People resorted to me to transact the Business of the Office, which I could not do without being duly admitted. And shortly after that Time, there was a Report spread, that my Lord Chancellor had designed to make a Present of the Place to some Gentleman in the Country, which gave me an Uneasiness, and put me upon an Expedient, that since I could not have ready Access to so great a Person as his Lordship, I went to *Kensington* one morning to wait upon the Countess of *Macclesfield*; and upon sending up my Name, and that I desired to speak with her, in a short Time I had the Honour of seeing her, and acquainted her that I was the Person that my Lord had promised the Office to, and that I could not proceed therein without being sworn; therefore I desired her Ladyship to intercede with my Lord, that I might be speedily sworn in. Her Ladyship said, she never did meddle in any Affairs of a publick Nature. I used several Arguments with her, as that the Thing was now publick and in Print, that it might be a great Disappointment to me, and might affect my Character, if my Lord did not think fit to admit me. I laid a good deal of Strefs upon these Arguments, and I acquainted her Ladyship that I did not expect or desire to come in without the due Present that is always esteemed the Perquisite of the Great Seal. Then I repeated those other Arguments again, that my Character might be affected by these Disappointments; whereby her Ladyship was prevailed upon to promise she would write a letter, and acquaint my Lord Chancellor with it. Before I went away from the Room where I had the Honour to be with the Lady, I did leave upon the Table, Bank Notes to the Value of 5250 Pounds.

Mr. *Serj. Pengelly*. How were they directed?

Mr. *Thurston*. I directed them to the Countess of *Macclesfield*.

Mr. *Serj. Pengelly*. I desire he may be asked, How soon after this he was admitted?

Mr. *Thurston*. I believe it was within two or three Days after at farthest, that I was admitted and sworn into this Office.

Mr. *Serj. Pengelly*. We desire he may give your Lordships an Account who was his Predecessor?

Mr. *Thurston*. Mr. *Borret*, as I acquainted your Lordships before.

Mr. *Serj. Pengelly*. We desire he may acquaint your Lordships of the State of the Office, as it came into his Hands. What was the Deficiency of the Office, due to the Suitors of the Court, not answered by the Effects of Mr. *Borret*, when it came into your Hands?

Mr. *Thurston*. That is a Question I can't possibly answer, because I never had those Accompts

under my Inspection; and I don't find the Gentlemen that have, can give an Account of it.

Mr. *Serj. Pengelly*. I do not ask to a particular Sum; but whether there was a Deficiency, any Deficiency, and about what Sum?

Mr. *Thurston*. I do not know any Thing at all about the matter; I might as well guess what a Gentleman is worth that I know nothing of.

Mr. *Serj. Pengelly*. Whether there were Effects sufficient to answer all the Suitors Demands?

Mr. *Thurston*. I cannot tell; because there was not any particular or exact Accompt taken of it, that is come to my Knowledge.

Mr. *Serj. Pengelly*. Whether the Suitors have been paid the money left, or deposited by them in the hands of Mr. *Borret*?

E. of *Macclesfield*. My Lords, if there be any Order of the Court for their being paid, it will appear, and they may produce those Orders to your Lordships: How can they pay without any Order?

Mr. *Serj. Pengelly*. I do not speak of Orders, I only ask, Whether he knows that the Suitors have been paid?

Mr. *Thurston*. It is impossible for me to have any Knowledge of it, for the Reasons I gave you before; having had no Inspection of those Accompts.

Mr. *Lutwyche*. I desire he may be asked, Whether any Effects, or Money, or Cash, and to what Value, have been transferred to him, as the Effects of Mr. *Borret*?

Mr. *Thurston*. About 4200 *l*.

Mr. *Lutwyche*. Whether he knows what the Cash was, that was in Mr. *Borret*'s Hands?

Mr. *Thurston*. No, my Lords, I do not know.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether he has been applied to by any of the Suitors of the Court, upon the account of money deposited in Mr. *Borret*'s Hands?

Mr. *Thurston*. I cannot say no body has applied to me for money due in Mr. *Borret*'s Office; several Suitors or their Representatives have been enquiring after such Things, who have been satisfied with having such an Answer as the present Circumstances would furnish. There were some Sums of money, before this broke out, paid to Suitors, that was Interest money; and who were represented to me as People in Necessity, to the amount of 3 or 400 *l*. When this broke out, I then desisted Payment, upon the Advice of a great Friend.

Mr. *Lutwyche*. I desire he would explain himself, what he means by saying, before this broke out?

Mr. *Thurston*. What I mean was, the Inquiry made into the Masters Accompts, by his Majesty's Direction in Council.

Mr. *Lutwyche*. The Sum of money he paid, I desire he may be asked, Who he received that Sum from?

Mr. *Thurston*. I received it from Mr. *Godfrey*, the Master in *Chancery*.

Mr. *Lutwyche*. I desire he may be asked, Whether he knew of any Administration taken out to Mr. *Borret*, and at what Time?

Mr. *Thurston*. I believe Mr. *Godfrey* and Mr. *Bennet* were desired to take that Trouble upon them, to look into Mr. *Borret*'s affairs, by the Lord Chancellor; which they proceeded and took some steps in, till



till they were discouraged from it by the Enquiry that was set on foot. They tell me now, that Administration is granted to Mr. Paxton.

Mr. Serj. Pengelly. I desire he may inform your Lordships, since he paid the Interest, why he did not pay the Principal?

E. of Macclesfield. I believe it would save your Lordships time, if Mr. Serjeant would ask his Questions in such a manner, as not to imply something which was not admitted, or said by the Witnesses. The Question supposes a principal Sum demanded; the proper Question is, first to ask if any principal Sum was demanded, and whether it was, or was not paid.

Mr. Serj. Pengelly. I apprehend that Mr. Thurston says, That Creditors came to him, Suitors of the Court, and he could not pay any more than the Interest; therefore I apprehend they came to him for the money lodged in the Hands of Mr. Borret. Therefore I desire he may be asked, whether any of those Persons that demanded their money were paid?

E. of Macclesfield. I desire he may be asked, whether any demanded the principal Sum? and by what Order?

Mr. Serj. Pengelly. I desire to ask my own Questions; I apprehend I am not to be directed in the asking my Questions by the Lord impeached. I desire to ask what Suitors applied, and what Sums they demanded?

Mr. Thurston. The Names of the Suitors I can't recollect, I believe it is not necessary to trouble your Lordships with them. The Sums demanded were only Interest money. The principal Sum, for which I paid the Interest, to the best of my remembrance, was 700*l.* There was no Demand made of principal money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was so very unfortunate, that I could not inform his Lordship of the State of what he enquired after.

Mr. Plummer. Mr. Thurston says, he desisted from paying any further Sums, upon very good Advice; I desire to know why, or by whose Advice, he desisted paying?

Mr. Thurston. It was upon a prudential Reason I did desist; because, when a publick Inquiry was set on foot, I did not know how far I might be affected, in being made answerable my self for it.

Mr. Plummer. Whether he had any Suspicion that there was a Deficiency in Mr. Borret's Office?

Mr. Thurston. There was a Suspicion that there was not competent money to satisfy all the Suitors Demands.

Mr. Lutwyche. I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. Borret's Hands to him?

Mr. Thurston. Upon the Admission of every master, there is an Order of Course signed by the Lord Chancellor, to transfer the Effects to the Successor.

Mr. Lutwyche. I ask if any such Order came to him?

Mr. Thurston. There did, my Lords.

Mr. Lutwyche. Was there any Transfer of the Effects according to that Order?

Mr. Thurston. No, there was not a compleat Transfer.

Mr. Lutwyche. Why was it not, as usual in the Case of other masters, that either are removed,

and are able to transfer; or in Case, upon Death, where their Representatives are able to do it?

Mr. Thurston. The Reason it was not done, I conceive, was because it was impracticable, there being no Representative of my Predecessor, no Administration being taken out.

Mr. Serj. Pengelly. I desire he may inform your Lordships, whether he was not applied to, by a noble Peer of this House, concerning some Effects deposited in the Hands of Mr. Borret, and what account he then gave him of the State and Situation of the Office?

E. of Macclesfield. I am really very sorry to trouble your Lordships so often. What is it to me what this Gentleman said? He is now upon his Oath, and to give to your Lordships an Account what he knows; but to ask him what he said at such a Time, to affect me, I hope they will not insist upon it.

Mr. Serj. Pengelly. When he has declared what he said, then there will be another Question, whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of Macclesfield. If Mr. Serjeant will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. Pengelly. We apprehend it is proper Evidence to be given, that he gave such an Account of the Office, in answer to the noble Lord: Therefore I desire to know what Account he gave to that noble Lord?

E. of Macclesfield. My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. Lutwyche. I believe the same End may be obtained by asking a Question without Dispute, and to which there can be no Objection; that is, Whether or no he had any Reasons to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. Strange. My Lords, we beg leave to oppose that Question: What his private Opinion may be, is no Evidence; he and another may think variously of the same matter. They are to ask him as to Fact, and not to his Opinion.

Mr. Plummer. I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence: But surely when your Lordships are examining a Person to the Deficiency of his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat money of Mr. Borret's transferred to him?

Mr. Thurston. The compleat money of the Office hath not been transferred to me, and for the Reasons I have mentioned to your Lordships; for want of an Administration.

Sir Wm. Strickland. I would beg leave to ask Mr. Thurston one Question, and I hope a material one; Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. Thurston. I can't say that upon my Admission into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Sir W. Strickland. I desire he may be asked, whether, if he had known the State of this Office, he would have given Five thousand Guineas for it?

Mr. Thurston. If I had known the State of the Office, and the Consequences of it, as appear at



this Time before your Lordships, rather than have given 5000*l.* for it, I would have given 5000*l.* to have been without it.

Mr. *Serj. Probyn.* Of the money he paid or left at the time he mentions, on my Lady *Macclesfield's* Table, I desire to know if he received any of it back again?

Mr. *Thurston.* I received back again, from the Lady *Macclesfield*, the Sum of 3250*l.* in Bank-Notes, the same as I enclosed, when I first left it.

Dr. *Sayer.* Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be returned? Give a full Account of that whole Transaction.

Mr. *Thurston.* Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business stirring, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to *London*, and in a Day or two went myself to my Lord Chancellor's House, and I sent to know what the Occasion of those messages was. They said, it was not from my Lord Chancellor, but it was a message from my Lady *Macclesfield*. Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so large a Present with her, as she found it was: And declaring I should be used with Honour, she returned to me 3250*l.* and the other part, she said she would appropriate to her own Use.

Mr. *Serj. Probyn.* We desire Mr. *Thurston* may be asked, if there was any notice taken of any Order or Directions from my Lord Chancellor about re-payment of the Money? or whether it was only a Transaction between him and my Lady *Macclesfield*.

Mr. *Thurston.* There was no Notice taken of any Orders from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. *Strange.* I would ask when this money was restored?

Mr. *Thurston.* The time when the money was restored, was about the middle of *October*.

Mr. *Com. Serj.* I desire he may be asked, whether at the time he first applied to Lady *Macclesfield*, he laid down the Paper those Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. *Thurston.* I laid down the Bank Bills on the Table, to the best of my Remembrance, at the time of my coming away, and taking leave.

Mr. *Com. Serj.* Whether they were inclosed in a Paper?

Mr. *Thurston.* They were inclosed in a Paper, and also sealed up.

Mr. *Com. Serj.* Whether they were opened during the Time he was there?

Mr. *Thurston.* No, they were not.

Mr. *Com. Serj.* Or taken up by my Lady during that Time?

Mr. *Thurston.* No, my Lords, I don't remember they were.

Mr. *Com. Serj.* Whether he named the particular Sum to her Ladyship?

Mr. *Thurston.* No, my Lords, not in the least. I did not give any Intimation what Sum was inclosed.

Mr. *Strange.* I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. *Thurston.* To the best of my Remembrance it was not opened, before I went out of the Room.

Mr. *Strange.* I desire he may be asked this further Question, whether he apprehended that my Lady *Macclesfield* was acquainted with the Contents, till after he was gone?

Mr. *Thurston.* I did not apprehend that my Lady *Macclesfield* was acquainted with the Contents of it, till afterwards.

Mr. *West.* Since that Gentleman hath been asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the money?

Mr. *Serj. Probyn.* We submit it to your Lordships, whether that be a fair Question.

Mr. *West.* Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. *Thurston.* I do not apprehend, that if I had come without the money, I should have been admitted. But if the Notes had been return'd to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Sir *John Rushout.* I desire he may be ask'd, whether he had any particular Acquaintance with the Lady *Macclesfield* before?

Mr. *Thurston.* I had not that Honour.

Sir *John Rushout.* Whether he had ever seen her, or been in her Company before?

Mr. *Thurston.* My Lords, I believe I never was.

Sir *John Rushout.* My Lords, we desire he may be asked what he apprehends was the Reason of 3250*l.* being returned to him?

Mr. *Thurston.* I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. *Serj. Pengelly.* I desire he may be ask'd, when the 3250*l.* was returned, in what month it was?

Mr. *Thurston.* It was in *October*.

Mr. *Serj. Pengelly.* Whether he can recollect in what Time of the month?

Mr. *Thurston.* I believe it was about the middle of *October*, to the best of my Remembrance.

Dr. *Sayer.* My Lords, we desire he may be ask'd, whether the return of this money was before or after the then first Seal before *Michaelmas* Term?

Mr. *Thurston.* To the best of my Remembrance, the first Seal was about the middle of *October*, and it was returned before the first Seal.

Mr. *Serj. Probyn.* My Lords, I desire he may be ask'd, whether there was any message sent about the returning of the money, before the Return was made?

Mr. *Thurston.* I have acquainted your Lordships that several messages past, while I was in the Country.

Mr. *Robins.* When he waited upon my Lady *Macclesfield*, after his Return out of the Country, I desire he may be asked, whether she mentioned any Thing to him of the Reason of those messages?

Mr. *Thurston.*



Mr. *Thurston*. She mentioned the Reason, and said, that it was to return the money, which she said was too large a Present, and that she was afraid my Lord Chancellor should come to the knowledge of it.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, when he went to *Kensington* to my Lady *Macclesfield*, where my Lord *Macclesfield* was?

Mr. *Thurston*. When I went to *Kensington* to my Lady *Macclesfield*, my Lord *Macclesfield* was then engaged in the Business of the Court of Chancery, at the latter end of the Sittings, or first Seal after *Michaelmas* Term.

Mr. *Serj. Probyn*. In what state of Health was my Lord Chancellor at that time? Had he not continued some time before at *London*, and not at *Kensington*?

Mr. *Thurston*. My Lord Chancellor, by the enquiry I made, was at that time in *London*.

Mr. *Serj. Probyn*. How soon after your Admission did the Lord Chancellor go into *Oxfordshire*?

Mr. *Thurston*. The very Day after my Admission, my Lord Chancellor went into *Oxfordshire*, as I was informed by one of my Lord's Officers, who came to me that Day upon some Business.

Mr. *Cottingham* again call'd.

Mr. *Serj. Pengelly*. My Lords, I desire Mr. *Cottingham* may be asked, whether upon the Proposal of 5000 Guineas made to him by Mr. *Thurston*, he acquainted my Lord *Macclesfield* with it?

Mr. *Cottingham*. I acquainted my Lord Chancellor with the Proposal made by Mr. *Thurston* of 5000 Guineas.

Mr. *Serj. Pengelly*. Whether did he approve of it, or reject it?

Mr. *Cottingham*. I am not very certain, whether the Earl did not say he would take time to consider of it. But in the main, according to my Apprehension, the Earl seem'd to approve of it.

Mr. *Serj. Pengelly*. I desire he may be ask'd, Whether he receiv'd any thing for my Lord *Macclesfield*'s Use upon Mr. *Thurston*'s Admission?

Mr. *Cottingham*. No, my Lords, I receiv'd nothing but my own Fees.

Mr. *Serj. Pengelly*. If he received nothing, Whether he receiv'd any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. *Cottingham*. The Earl was pleased to tell me, he had a design to have given that place to Dr. *Sayer*, but he was at that time in the country, out of town, at *Durham*: He proceeded so far as to order me to take no money of Mr. *Thurston*.

Mr. *Serj. Pengelly*. When was that?

Mr. *Cottingham*. Very soon before he was admitted.

Mr. *Serj. Pengelly*. My Lords, we submit this as Evidence of the Lord's knowing of the Receipt of this Present of 5000 Guineas.

Mr. *Lutwyche*. My Lords, I desire to know of Mr. *Cottingham*, Whether my Lord *Macclesfield* had any acquaintance with Mr. *Thurston* before this Proposal?

Mr. *Cottingham*. I can't say as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer*. I desire he may be ask'd one Question, Whether he made any difficulty of accepting his Fees on Mr. *Thurston*'s Admission?

Mr. *Cottingham*. Yes, I did.

Mr. *Plummer*. And why?

Mr. *Cottingham*. The Earl ordered me to take no money of him. Upon that general Order I made a little difficulty, and told him of it; the answer he made me was, Why should I make any difficulty, when he had been thus generously dealt with by my Lord Chancellor?

Sir *Wm. Strickland*. Whether at that time, when he first mention'd the 5000 Guineas, it was not a Day or two before his admission?

Mr. *Cottingham*. I believe it was a Day or two before his admission.

Mr. *Serj. Pengelly*. My Lords, we have done with Mr. *Cottingham*; since the name of Dr. *Sayer* is mentioned on this Occasion, whom the noble Earl declared he would compliment with the Place that fell vacant, I desire this Witness may be asked, Whether that was a real Compliment to Dr. *Sayer*, or whether Dr. *Sayer* made any application, or was to give any thing for it?

Mr. *Cottingham*. I believe, if Dr. *Sayer* had been then in Town, my Lord would really have made him a Compliment of it without any present. My Lord told me Dr. *Sayer* was his particular Friend, and he had a great Value and Respect for him.

Mr. *Plummer*. My Lords, I beg leave to ask a Question upon that Question. He says he thought my Lord *Macclesfield* would have given it him for nothing; I ask him, If he then thought he gave it Mr. *Thurston* for nothing?

Mr. *Cottingham*. The Answer I can make to that Question is, that I did not apprehend my Lord was so well acquainted with Mr. *Thurston*, as to give it him for nothing.

Dr. *Sayer*. I desire he may be ask'd, Whether he did not represent to the Earl of *Macclesfield*, that there was a necessity for the immediate putting a Master into that Office, for the dispatch of Business?

Mr. *Cottingham*. I did represent it to the Earl, that it was necessary to put somebody into the Office, for several Practisers had been with me about their affairs in that Office, and otherwise the Business might be transferred to another Office, which would have been a great prejudice. Upon that the Earl said, Mr. *Thurston* should be admitted.

Mr. *Serj. Probyn*. Whether you had not application from the Suitors themselves, and whether there was not a Clamour from them on account of the stop it put to Business?

Mr. *Cottingham*. Yes, there was; it happened to be in the long Vacation, and something, I told the Earl, must be done, there was an absolute Necessity to come to some Resolution or other in the matter.

Mr. *Serj. Pengelly*. In this Article, as an aggravation, it is alledg'd, that Mr. *Borret* died insolvent: We beg leave to call some Witnesses to give an account of the State of the Office at his admission, and afterwards at the time of his Death.

Mr. *Meller* called.

Mr. *Serj. Pengelly*. My Lords, we desire Mr. *Meller* may be ask'd, what Sums in Cash and Effects he delivered over to Mr. *Borret*, at the time of his coming into the Office?

Mr. *Meller*. My Lords, I take it to be about 120,000*l*. I refer myself to the account given in



to the Judges, and Directors of the Bank, and signed by my Hand.

Mr. *Serj. Probyn*. My Lords, we submit it, whether this is regular, to examine to an *Accompt Viva Voce*, which account hath been reduced into writing?

Mr. *Serj. Pengelly*. Surely the Witness may make use of his own paper to refresh his memory.

E. of *Macclesfield*. I don't know what these Gentlemen intend. They are reading a Charge against Mr. *Borret*, to shew what was delivered over to him, at the time he came into the Office. Is it expected I should be able to give an account what was paid to him, or by him, while he was Master? that I should give an account of his Estate and Effects, what it is, and if there was sufficient to pay, in his Hands, or not? If these Gentlemen had any Order of the Court, in which this had been fixed and settled, that might have been something. It is impossible for me to enter into it.—It appears he died intestate, Administration was not granted till a great while after his Death; not till very lately: What account hath been taken of his effects I don't know, nor can any way shew. They are beginning with an account which I apprehend is not a proper Evidence to be given as against me, to prove that this Gentleman had not Effects sufficient to answer the Demands upon his Office.

Mr. *Serj. Pengelly*. My Lords, this Evidence relates to an accompt delivered in by the approbation of the Lord impeached, on the Enquiry made before the Lords of the Council. As this Accompt was delivered in before them, we apprehend so far it is a proper Evidence, and a Foundation for a farther Enquiry, how much of it remains in the Office: We shall ask other persons afterwards, as to the Deficiency. All the use we now make of it, is, to shew the gross Sum that was at first transferred over to him.

E. of *Macclesfield*. My Lords, if they mean only to satisfy your Lordships Curiosity, by shewing how great a Sum there was in that Office, I think it is of no great importance.

Mr. *Lutwyche*. All that we endeavour to prove now, is, what was very notorious at the time of Mr. *Borret's* Death; that there was a great Deficiency, and that he died insolvent, and the Earl goes a great way in this matter in his own answer. He says in his answer, That on the Death of Mr. *Borret*, he desired Mr. *Godfrey* and Mr. *Bennet* to enquire into his Effects, and to enter a proper Caveat in the Prerogative Court, to prevent Administration being granted to any person who might embezzle the said *Borret's* Estate, and to obtain Administration to be granted to them for the benefit of the Suitors of the Court. This goes a good way, I apprehend, to incline your Lordships to believe, that there were those steps used, which are unusual in the case of a man's Solvency. Therefore what we would ask to, is, that the Witness would give an account of what he knows concerning the Deficiency in this Office, or give an account of such Circumstances, as may induce your Lordships to believe there was such a Deficiency.

Mr. *Com. Serj.* If the Gentlemen who appear on the behalf of the House of Commons think fit to rely upon our answer, they may do it.

Mr. *Sol. Gen.* I think Mr. *Meller* hath proved that he transferred 120,000*l.* to Mr. *Borret*; we will now go on, and prove the Deficiency.

Mr. *Com. Serj.* Mr. *Meller* hath spoke *Viva Voce*, in a matter which we apprehend is capable of much

better proof; therefore we hope what he has said shall not go for Evidence. There must have been a Schedule, and he has the counterpart of that Schedule, by which the Effects were deliver'd over.

Lord *Trevor*. Mr. *Meller* hath a Paper in his Hand; I desire to know, What that Paper is?

Mr. *Meller*. The Paper I have before me, is the very Account of the money delivered to Mr. *Borret*, and the several Times when; it is made by way of Schedule. There is another Paper by way of Abstract. I drew them together at the time I delivered it to the Judges. I had not time to draw out the full account, and therefore I made an Abstract, both which are signed.

E. of *Macclesfield*. The noble Lord asked the Question exceeding proper. The Question asked is, What this Paper was? Perhaps it is the very accompt Mr. *Borret* and he made up between them, and signed. I ask therefore, Whether it is the accompt between them, or whether it is an accompt of his own drawing up since?

Mr. *Meller*. This is the accompt I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all these *Items*, and likewise proved the payment of the money by Goldsmiths and Bank Notes.

Mr. *Sol. Gen.* We apprehend that this is as full Evidence as can be laid before your Lordships.

Mr. *Serj. Probyn*. We submit it, Whether your Lordships are of opinion, that this is proper Evidence? Mr. *Meller* hath been proposing a Paper, which is not the original accompt delivered; it is not the Book, but a Copy of the Book taken out, and given in Evidence in another place: Now he would by this Evidence, signed by himself, charge Mr. *Borret* with money deliver'd over to him; but as it is an accompt only signed by Mr. *Meller*, we submit it, Whether it can be a Charge upon the Representative of *Borret*, and consequently if it can be any Evidence at all?

Mr. *Serj. Pengelly*. We beg leave to insist upon it as proper Evidence. When a person makes up an accompt of his own Hand-writing, and draws it up, and swears that to be a true accompt upon his own Knowledge, Whether this is not proper Evidence?

E. of *Macclesfield*. This Gentleman has really given his Evidence, though it was objected to: It will be a proper enquiry hereafter, when we come to consider the Evidence that hath been given, Whether it be good proof of what it is brought for?

Dr. *Sayer*. We shall reserve our Objection to the last.

Mr. *Sol. Gen.* They may reserve what Observations they please; it is an Objection to be made now, or not at all.

Lord *Lechmere*. It would be of some Service to prevent mispending your Lordship's Time, if the noble Lord would distinguish between Objections and Observations; for a great deal of Time has been taken up in Observations on Evidence, which are proper afterwards on the Defence.

Mr. *William Thompson* called.

Mr. *Serj. Pengelly*. Mr. *Thompson* is one of the Gentlemen, who by the consent of the Lord within the Bar, as well as of the rest of that Committee, did examine into the accompts of the Masters in Chancery; and we beg leave to ask him, In the accompt delivered in before the noble Lord himself



self, what appeared to be the Deficiency upon Mr. *Borret's* Account?

E. of *Macclesfield*. If it does appear by those accounts, those accounts may be produced before your Lordships, and your Lordships may be Judges; but I beg they may not insist upon this Gentleman giving his Opinion, in order to affect me with his Collections or Inferences upon them.

Mr. *Sol. Gen.* The original accompts are here. They are on your Lordships Table. It will be proper to examine this Gentleman as to that.

Mr. *Plummer*. I beg leave to make one Observation, and I believe it may prevent mispending your Lordships time. They make an Objection to this Evidence, as if your Lordships were going to try how the Deficiency was made up; whereas your Lordships are only trying, whether there was or was not a Deficiency.

E. of *Macclesfield*. If the accompts are before your Lordships, and lie upon your Lordships Table, and he only declares to your Lordships his Observations on those accompts, for your Lordships Ease, and to save you some Trouble, I have no Objection to it.

Mr. *Serj. Pengelly*. Upon the stating the accompt, as I apprehend is a matter of Evidence, when a Clerkman computes the Sum on one Side, and the Sum on the other Side, we desire to know what appears to Mr. *Thompson* to be the Deficiency?

Mr. *Thompson*. I can't rely upon my memory for the Sum, but I have in my Hand a Report made to the Committee of Council, that I signed with my Name; by which it appears, that Mr. *Meller*, at several times, paid to Mr. *Borret* 120,000*l.* That Mr. *Borret* paid out to the several Suitors 77,485*l.* and I find the Charge remaining on Mr. *Borret's* Office unpaid to the Suitors, is 42,515*l.* These are the Sums that, upon Examination of the accompts, we find to be right.

Dr. *Sayer*. If the Gentlemen that are Managers for the House of Commons have done, we beg leave to ask Mr. *Thompson* this Question, Whether on the making up of these accounts any Executor or Administrator of Mr. *Borret* was present.

Mr. *Thompson*. When we examined the accounts, we understood there was no Representative of Mr. *Borret*; and I think it is put in the Report, that we could get no account but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Masters in Chancery.

Mr. *Com. Serj.* What Books were they he formed those accounts from?

Mr. *Thompson*. The first Charge, or the Charge from Mr. *Meller* on Mr. *Borret*, was taken from Mr. *Meller's* account. The 77,485*l.* paid out, was an account from Mr. *Borret's* Books, made up by his Clerk, under the Inspection of Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Com. Serj.* I desire he may be asked, Whether he himself knew those to be Mr. *Borret's* Books, or only by relation from other Persons?

Mr. *Thompson*. Only by relation from his Clerk.

Mr. *Com. Serj.* Then, with Submission, they must go further before the Ballance can be taken notice of. They must establish that these Books are Mr. *Borret's* Books.

Mr. *Sol. Gen.* We have done with Mr. *Thompson*.

Mr. *Serj. Pengelly*. We hope the Counsel for the Earl impeached, will be pleased to read his own Answer, wherein he owns that Mr. *Godfrey* and Mr.

*Bennet*, were employ'd by himself to take the Effects of Mr. *Borret* into their Custody.

E. of *Macclesfield*. If I apprehend Mr. *Thompson*, he says, the Charge is taken from the account given by Mr. *Meller* himself. I desire to know, Whether Mr. *Meller* was not called upon to discharge himself of the money he had in his hands, before he surrender'd to Mr. *Borret*, and whether that was not the Occasion of his being there?

Mr. *Thompson*. I apprehend Mr. *Meller* was sent for, in order to know the State of the Office at the time he left it.

E. of *Macclesfield*. So he gave an account how it stood at the time of quitting the Office, and what he paid over to Mr. *Borret*?

Mr. *Thompson*. I apprehend he did so.

Mr. *Serj. Probyn*. I desire Mr. *Thompson* may be ask'd, Whether the 77,485*l.* Discharge, was taken from the relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books themselves; or whether he did examine the Books himself?

Mr. *Thompson*. I went through every Particular of Mr. *Meller's* accompt; as to the other, my memory does not serve me to answer particularly.

E. of *Macclesfield*. Whether they did not report at that time, they could not take the accompts perfectly, for want of an Administrator?

Mr. *Thompson*. I believe, my Lords, we might do so; and I believe, if the Report is turn'd to, it will appear so. I don't mention these Sums as an exact accompt, they were the best accompts we could get?

Dr. *Sayer*. The Question I would trouble your Lordships with, because it is of great consequence, is, Whether the accompt of 120,000*l.* which lies as a Charge upon Mr. *Borret's* Office, is not the accompt which Mr. *Meller* is to discharge himself by, and of those Effects for which he otherwise remains responsible?

Mr. *Thompson*. How far Mr. *Meller* is to discharge himself, I am no competent Judge. This is the accompt that the Office, as I apprehend, stood charged with.

Dr. *Sayer*. To put the Question shorter, Whether it is the accompt of Mr. *Meller*, as Predecessor in the Office to Mr. *Borret*?

Mr. *Thompson*. I apprehend it so.

Mr. *Plummer*. Whether Mr. *Meller* did not produce Receipts for Mr. *Borret*, for this whole accompt?

Mr. *Thompson*. To the best of my remembrance, Mr. *Meller* did produce Vouchers for every article set down in his accompt.

Mr. *Serj. Probyn*. I desire he may be ask'd, Whether there were any Proofs made of these Vouchers?

Mr. *Thompson*. What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret's* own Hand for the whole Sum.

Mr. *Com. Serj.* I desire he may be ask'd, Whether he is acquainted with Mr. *Borret's* Hand-Writing, or whether there was any Proof made of it?

Mr. *Thompson*. Mr. *Borret's* Clerk was there, and affirm'd every Receipt to be Mr. *Borret's* Hand-writing.

Mr. *Com. Serj.* I would ask, if there was any Oath made, or if it was only upon his Word?

Mr. *Thompson*. If your Lordships will give me leave to have recourse to the Report, I will recollect myself. I can't say whether Mr. *Borret's* Clerk was sworn or no, I think he was; I don't find it set down in the Report.



Mr. *Lutwyche*. I would beg leave to ask this Question; This Report, that is sign'd by him as one of the Committee, whether it was laid before the Council, and to whom delivered in, in order to be laid before the Council?

Mr. *Thompson*. This very Report was delivered by Mr. *Baron Gilbert*, to the Committee of Council.

E. of *Macclesfield*. I hope it is the same that is before your Lordships, if it is not, I can't tell what to say to it.

Mr. *Serj. Pengelly*. This is the original Report, of which your Lordships have a Copy on your Lordships Table.

E. of *Macclesfield*. I desire it may be delivered in, and lie upon the Table.

Mr. *Godfrey* called.

Mr. *Sol. Gen.* We desire Mr. *Godfrey* may be ask'd, Whether upon the Death of Mr. *Borret*, he was directed to take an account of the State of his Office?

Mr. *Godfrey*. Upon the Death of Mr. *Borret*, my Brother *Bennet* and I were desired by my Lord *Macclesfield*, to look into the Affairs of Mr. *Borret's* Office, and see how the accompt stood; and likewise to see what Securities were in the Bank, in the Exchequer, and *East-India* Company, and other Funds. Accordingly, I went to the Bank, and the *East-India* House, and took an Account of what I found stood in his Name there. I believe Mr. *Bennet* will satisfy your Lordships, he went to the Exchequer and other Places. I applied first to the Bank, to Mr. *Hanger*, who was then Deputy Governor, and he was so kind to send an Officer to search the several Books, and I had this Accompt: There was in Mr. *Borret's* Name 1000*l.* in 5*l. per Cent.* Annuities, 1000*l.* Bank Stock. And then I went to the *East-India* House, and there was 240*l.* *East-India* Stock in his Name. This was all the Account I took.

Mr. *Sol. Gen.* In what State was the Office in general?

Mr. *Godfrey*. I did not look over the Office Books. I believe Mr. *Bennet*, who was with me, took that Charge upon him: I believe he is capable of giving you an account. I did not see the Office-Books at all: But upon my talking with Mr. *Bennet* about it, he found there was more Stock and Security in Mr. *Borret's* Name in the several Funds, than he could find him charg'd with in the Books of the Office.

Mr. *Serj. Pengelly*. When Mr. *Thompson* and the other Gentlemen enquired into the particular Effects, whether, when he appear'd there, the accompt he gave in was a true accompt?

Mr. *Godfrey*. To the best of my knowledge, in relation to Mr. *Borret's*, it was.

Mr. *Sol. Gen.* I desire one Question more, Whether it is usual to enquire into the Effects of a Predecessor, unless there is reason to suspect a Deficiency?

Mr. *Godfrey*. I don't know whether it is usual, but it is extremely necessary. When this Gentleman was expiring in such an Office, having no Friends in Town, nor any intimate acquaintance besides myself to take care of his Effects; I thought I ought to take some care, that his Office should not be plundered; and that was the only Reason that induced me to take care of his Effects, that they might not be embezzled.

Mr. *Serj. Pengelly*. Whether they did not find the Office in great Confusion?

Mr. *Godfrey*. In that Part of his Office which

was at his Chambers in the Temple, we found his Papers in great Confusion, lying without any method or order. We collected them as well as we could, and what Things we found of Value, or belonging to the Suitors, as Goldsmiths Notes, Notes under Hand for money, we put them upon a File; and that File, together with other little moveables we found belonging to him, as rings and a watch, were all put in a Bag, and sealed up by Mr. *Bennet* and myself, Mr. *Grant*, who was Mr. *Borret's* Lady's Father, and Mr. *Grant* the Clergyman, who was his Lady's Uncle; and we put them into a Trunk, and lock'd them up; and they are now at my House.

Sir *Wm. Strickland*. I would ask him, Whether the next of Kin did not refuse to take out Administration, because of the Deficiency?

Mr. *Com. Serj.* Here can be no answer, but yes or no; I hope Gentlemen will not ask such Questions.

E. of *Macclesfield*. I desire he may be ask'd, Whether any Advice was given concerning taking out, or not taking out Administration?

Mr. *Godfrey*. Mr. *Grant* the Uncle said, that he was a Creditor of Mr. *Borret's* by Bond (which indeed I was surprized to hear, I did not think he owed any man a Shilling) between 6 and 700*l.* And being so great a Creditor, he thought if he took out Administration he should be paid first. I told him, as Mr. *Borret* had been in an Office of great weight, and there was a great Trust, I could not tell how matters stood in the Office; and if there should prove a Deficiency, I believed he would involve himself in taking out Administration, in much more trouble than he was aware of.

Sir *Wm. Strickland*. I desire he may be ask'd, If he did not apprehend there would be such Deficiency?

Mr. *Godfrey*. I did not apprehend at that time there would be any Deficiency. He had been in the Office about four Years; he had had Opportunities of re-imbursing himself: He had a handsome Fortune of his own when he came in, and had with his Lady 3000*l.* therefore I was under no apprehension that there would be a Deficiency.

E. of *Macclesfield*. I beg leave I may ask Mr. *Godfrey*, Whether he was acquainted very well with the Affairs of Mr. *Borret*, and knew his Circumstances?

Mr. *Godfrey*. I have had some Years acquaintance with Mr. *Borret*. As to his real Estate, I was not perfectly acquainted with it, I had it only by common relation, that he had an Estate of about 400*l.* a Year, or rather better; but I don't know it of my own Knowledge.

E. of *Macclesfield*. As to his real Estate, you say you don't know it of your own Knowledge; Whether are you particularly acquainted with his personal Estate?

Mr. *Godfrey*. No, my Lords.

E. of *Macclesfield*. I desire Mr. *Godfrey* to inform your Lordships, what he said to me after Mr. *Borret's* Death, Whether there would be a Loss or not a Loss in Mr. *Borret's* Office?

Mr. *Godfrey*. I can't at present remember what Discourse passed between the noble Earl and myself, upon the death of Mr. *Borret*. I believe I might say, and it was my opinion, that there would be no Deficiency. I have heard his Estate was such, and I knew very well that his Lady's Fortune was



so much, and that he disposed of a Place, which was the Filazer of *Yorkshire*; for which he had, as I have been inform'd, 4200*l.* And these were the Reasons that induced me to believe there wou'd be no Deficiency; and I knew very well that I could say of my own Knowledge, Mr. *Borret* liv'd at no extravagant rate; for I am sure all the Time he was a Matter, and in Town, he never spent 200*l.* a Year.

Sir *Wm. Strick.* He says, he has heard he had 400*l.* a Year in Land: Does he not as well know that that Estate was settled upon his Family and Children?

Mr. *Godfrey.* I have heard, that upon his Marriage, some part of it was settled, but whether all be settled, or not, I can't tell.

E. of *Maccles.* It seems this Gentleman says, he did not spend 200*l.* a Year. How came you to imagine that he should spend no more than 200*l.* a Year?

Mr. *Godfrey.* He told me so.

E. of *Maccles.* Where was his Family?

Mr. *Godfrey.* In the Country.

E. of *Maccles.* With whom?

Mr. *Godfrey.* With his Lady's Father; and when he was in Town, he had private Chambers in the *Temple*, and only kept one Servant, and one Horse.

E. of *Maccles.* I desire he may be asked, whether he did not once intend and propose himself to take out Administration to Mr. *Borret*, and if he did not take some Steps towards it?

Mr. *Godfrey.* I had so great a concern for the Office, and the Securities not being transferred to a proper Hand, that I was willing to take out Administration, rather than there should be any clamours on account of the neglect of Business in the Office. But, my Lords, upon considering the Matter, I did not apprehend that I was so fit a Person for that purpose. I was not very young my self, I had two Children, and those young: I apprehended that if I should drop off before things were settled, the Case might be still the same as I found them: Therefore, I desired I might have somebody joined with me in this troublesome Affair, for I did foresee a good deal of Trouble in it. However, I said I was willing to engage in it, if my Brother *John Bennet* were joined with me, rather than there should be any clamour upon the Office; and I persuaded him to do the same; and accordingly, I went down to the Commons, to see if Administration could be granted to us two. The Relations in the Country, and those People concerned for them, were very willing that Administration should be granted to Mr. *Bennet* and my self; and accordingly Process was sent to cite the Children; and that done, as I am inform'd, Sentence was given, that I and my Brother *Bennet* should have the Administration. But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reason I declined it.

E. of *Maccles.* Has Mr. *Borret* a Wife living, or is she dead?

Mr. *Godfrey.* His Lady died a month before him.

E. of *Maccles.* What age are his Children?

Mr. *Godfrey.* The eldest is about three Years old, and the youngest about two, as I am informed; I never saw them.

Mr. *John Bennet* was called and sworn.

Sir *Wm. Strick.* The Question I desire he may be asked is, whether he did not, upon the enquiry

into the Affairs of Mr. *Borret's* Office, apprehend that there was a Deficiency.

Mr. *J. Bennet.* I did hear it reported that there would be a great Deficiency in that Office, at the Time I was desired by my Lord *Macclesfield* to look into it; and I was likewise informed soon after, that there was like to be no Deficiency.

Sir *Wm. Strick.* I desire he may be asked, how he found it?

Mr. *J. Bennet.* I found his Papers and Accompts in the utmost Confusion. His Accompts were mostly in loose Papers: There was one Book indeed, but that extended no farther than to the *Christmas* before his death, which was near three quarters of a Year before he died. Mr. *Godfrey* desired I would join with him in taking out Administration; after a good deal of importunity I did consent.

Sir *Wm. Strick.* I desire one Question more. He says he was informed soon after, there was like to be no Deficiency in the Office. I desire to know, whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

Mr. *J. Bennet.* No, I did not, but I did inform him, that there was not so great a Deficiency as was reported, which was 25 or 30,000*l.* I could make no regular Computation, every thing was in the utmost Confusion, as I acquainted my Lord.

E. of *Maccles.* I desire he may be asked, whether he did not inform me, that he found more Stock in *Borret's* name, in the Books of the several companies, than he could find charged upon him in the Office?

Mr. *J. Bennet.* Not to my Remembrance; for I did not look into the Stocks of the Companies; that was Mr. *Godfrey's* Business.

E. of *Maccles.* You then look'd into his Books?

Mr. *J. Bennet.* I did so.

E. of *Maccles.* Then upon your looking into his Books, and Mr. *Godfrey's* looking into the Companies Books, and comparing them together, I desire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

Mr. *J. Bennet.* Upon Mr. *Godfrey's* Accompt there appeared, upon casting it up, to be more Stock in his Name than the Securities he was answerable for to the Court.

E. of *Maccles.* He has said, he could not tell what the Deficiency would be, because he could not make up a regular Accompt; I desire he may be asked, whether he did not tell me that he believed there would be no Deficiency?

Mr. *J. Bennet.* No, I did not.

E. of *Maccles.* Did you not upon your Oath?

Mr. *J. Bennet.* After Mr. *Borret's* death, I did say to several People, when they were clamorous (but whether I said so to my Lord *Macclesfield*, I can't tell) that upon the best Accompt I could make of his confused Affairs, there would be a Deficiency of 4 or 5000*l.* and I believed not more.

Mr. *Com. Serj.* Tho' Mr. *Bennet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occasion?

Mr. *J. Bennet.* Yes.

Mr. *Com. Serj.* I desire he may be asked, whether he did not tell Mr. *Godfrey* afterwards, that upon what appear'd, there would be no Deficiency?

Mr. *J. Bennet.* No.

Mr. *Plummer.* Mr. *Bennet* has said, upon comparing the Books, he found more Stock in Mr. *Borret's*



*Borret's* Name, than he was charged with to the Court. I desire he may be asked, if he found more Stock than the money and the Effects he was charged with to the Court?

Mr. *J. Bennet*. No my Lords, the best Calculation I could make, was, that there was near 4 or 5000 *l.* Deficient.

Mr. *Serj. Pengelly*. We shall leave this Article, with this Observation, that Mr. *Borret* died insolvent, and a debtor to the Suitors of the Court, of which we have given full Evidence; and that Mr. *Thurston* was admitted into that Office by the Earl Impeach'd, without procuring satisfaction to the Suitors of the Court, or Security for their Debts: If that was done, it lies upon the noble Lord to prove it.

Mr. *Onslow*. My Lords, the Commons having made good that part of their *Impeachment*, by which the *Earl of Macclesfield* stands charged with extorting many great, and extravagant Sums of money, for the admission of several of the Masters of the Court of Chancery into their respective Offices: We shall now proceed, my Lords, to support the *Eleventh* and *Twelfth* Articles, which contain many corrupt Practices, used by the said Earl, to advance and encrease the illegal Gain, arising to himself from the Sale and Disposal of those Employments.

The *Eleventh* Article charges him, my Lords, with admitting several Persons to those Offices, who at the Time of their Admission, were of small Substance and Ability, and highly unfit for so great a Trust, as by the nature of their Employments at that Time, was to be placed in 'em.

The Masters in Chancery, my Lords, have of late Years, been the *Treasurers* of that Court; the *Repository* of the money and the Effects brought into the Court; brought there my Lords, not by the choice and consent of the Parties concerned, but by the compulsion of the Court, under the Faith of a better Security: But so, my Lords, has it fallen out, that this pretended Security, has served only to delude the Suitors of the Court, into a false Quiet, whilst their Estates have been made a Prey to infamous *Stock-jobbers*, and wantonly wasted, by some of 'em, to support the extravagancy of their Living.

The Fortunes, my Lords, of Orphans and Lunatics, are from the Compassion of our Government, a part of the Care of the Court of Chancery; and have been lodged in the Hands of the Masters, as a Place of Sanctuary, till the Owners should become capable of managing their Estates themselves: When they come my Lords, to require their Fortunes, he, who was the *Supreme Judge* in a Court established for their Relief; He, who was the *Great Guardian* of Infants and Lunatics, will be found to have suffer'd an advantage to be taken of the weakness of the One, and the misery of the Other, to render their helpless condition a means of their Ruin, instead of their Protection.

This, my Lords, is the nature of the Trust reposed in the Masters of the Court of Chancery, and this the Use they have been permitted to make of it. The Greatness of the Trust, will shew your Lordships, what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments; and the Abuse of this Trust, will demonstrate how little His care has been, whose Duty it was to provide Persons of Integrity, and responsible Men, for the execution of these Offices; but *æbò*, my Lords, unfortunately

for the Suitors, and to the dishonour of the publick Justice of the Kingdom, presided seven Years in the Court of Chancery; in which Time, a deficiency of above *four score thousand Pounds*, has happened upon the Masters He admitted; and, what perhaps may be worthy of your Lordships particular Notice, of the six masters on whom there appears to be a Deficiency, Four of them were admitted by Him. If our Evidence, my Lords, as to this Article, rested only on the Proof of these Deficiencies, it would, we apprehend, be sufficient to evince what the Commons have here alledged, That Persons of small Substance and Ability, have, by the Earl at the Bar, been preferred to be masters of the Court of Chancery. But, my Lords, to bring this Charge still nearer to the Earl, we have it in Proof, and strongly so, that little or no inquiry was ever made by him, into the Characters and Circumstances of those He admitted into these Offices. That in fact, my Lords, they were Men of very mean Fortunes. No security ever required of Them; which still made it the more necessary, that their own Ability should be thoroughly looked into and well approved. We shall shew your Lordships, That they were entrusted, some of 'em, with *forty, sixty, one of 'em, I think, to the amount of a hundred thousand Pounds* in Cash and Securities: And yet, my Lords, no other Use was made of This, but to enhance the Price of the Office, when it was to be Sold and Barter'd, for the benefit of the Earl. The Argument used, to bring up any Person to the Rate the Earl insisted on, was the largeness of the Sum to be transfer'd to the Purchaser. The Temptation generally succeeded: The Reason your Lordships will easily imagine; and when the Price was thus agreed upon, no other Qualification was required, the Person stood right in the Earl's Opinion, and was thought proper to be Associated to him. — Were it only that, my Lords, the Commons would not have troubled your Lordships with this Article, — but to be Associated to him in the Administration and Execution of Justice, and to be entrusted with the Fortunes of whole Families, whose only support, perhaps, depended on the Ability and Integrity of these Men: How well, my Lords, the Earl consulted in the appointment of these Officers, the Honour of that publick Justice they were to assist him in; What Regard He has had for the Interest of Those, whose Estates He thus flung into their Hands, The Evidence we shall produce to your Lordships, and your own Observations upon it, will abundantly shew, notwithstanding his flat denial of this part of the Charge.

I will trouble your Lordships but with one particular more in this Article, and it is what the Article concludes with. A remarkable Declaration by the Earl, of the Ability, and other Qualifications of the Masters, particularly those promoted by him; and this happened, my Lords, upon as remarkable an Occasion. A very honourable Person, then a Judge also in that Court, and now justly at the Head of it, having seen with Indignation, the Harcock that was making of the Effects of the Suitors; out of compassion to them, and from a Zeal for Justice, endeavour'd to put some stop to it, in an Instance that came within his Cognizance. An Order was made by him, my Lords, on one of the masters, to allow some Profit to a Suitor arising from her own money, which the master designed as it was thought, to have sunk to his own Use. The master thought himself aggrieved, and fled for Redress to his Pa-



iron, the then *Lord Chancellor*, the *Earl* now under your Lordships Consideration; and he was secure in so doing, for the Order was immediately discharged; and then it was, my Lords, to obviate the Clamours that were breaking out from all sorts of People against the Masters, that the *Earl* did in open Court, then sitting as *Lord Chancellor*, in his *judicial Capacity*, declare, that the present Masters were Men of as great Probity, Fortunes, and Abilities, as any set of Masters that ever were in that Court; and that he had had the Satisfaction of putting in most of them himself. As this, my Lords, was spoken in general of them all, but with a peculiar Regard to those he had admitted; the Commons have laid it to be to the manifest *Deceit* and *Injury* of the Suitors of the Court, which they are justified in doing, by the Thing itself being *false*, by the Proof we have, my Lords, that the *Earl* must know it to be *false*, and by the Resemblance it bears to that Series of other mean *Artifices* he had long been practising to give a *counterfeit* Credit to these *corrupt* Officers. A Credit, my Lords, he was soon to receive some *Benefit* from; for the Witness will inform your Lordships, that a Vacancy of a Master in Chancery happened the Day before this *significant* and *memorable* Declaration was made.

My Lords, The Commons have made this Article a part of their *Charge* against the *Earl of Macclesfield*, as being the great Source of the *Evil* that is likely to befall the unhappy *Sufferers* in the Court of Chancery; and as it was the *Means* he made use of to draw to himself those extravagant Sums of Money we have proved him to have received: For Men of small Fortunes, my Lords, as they have more Temptations, so they run less hazard than others in preying upon Money that is entrusted with them; and it is this, my Lords, that encourages such Men to give exorbitant Rates for Employments which afford them those Opportunities.

Thus, my Lords, I have opened to your Lordships the Substance of the *Eleventh* Article, and the nature of our Proof upon it. The *Twelfth* Article will be opened and enforced to your Lordships by the Gentleman who is to come after me. I shall therefore detain your Lordships no longer than to make this one Observation, That as the Office of a Master in Chancery is of great *Trust* and *Importance*, that as these Officers are appointed to this Trust by the *sole Discretion* of the Lord Chancellor; and that the Effects of the Suitors of the Court are deposited in their Custody, by his *immediate* Orders, which he might have placed in *safer* Hands if he had thought fit; he becomes by all this in the nature of a *superior Trustee* for, and is therefore justly *answerable* to the Suitors for the Behaviour of these *Men*. So, my Lords, in some Degree may the Publick be thought *answerable* for him; which makes his Guilt without Measure, who has thus brought a Disgrace upon his Country, by prostituting one of its highest Courts of Justice to his own *Avarice* and *Corruption*, to the *Rapine* and *Corruption* of his inferior Officers, and to the *Undoing* of those, who, by the Constitution of the Kingdom, have been forced into his Power.

Mr. Palmer. My Lords, The Gentleman that spoke last has fully opened the Evidence of the *Eleventh* Article, and has shewn to your Lordships, that for his own private and illegal Gain, the impeach'd Lord did commit the Money and Effects of the Suitors, to Men no way of Substance sufficient

for so great a Trust. The *Twelfth* Article will lay before you a most corrupt Practice, used without Controul, while the *Earl* was Chancellor, by which this illegal Gain was immensely increased; and whereby those Masters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their Offices at extravagant Prices.

Your Lordships will see what Methods were used on the Admission of Masters in Chancery: Great Sums were paid for the Surrenders and Admissions, and those Sums were taken from the Money of the Suitors; sometimes the Purchase-Money was borrowed; but after Admission, repaid from the Cash of the Office; sometimes the Value of the Purchase was left in the surrendering Master's Hands: Whatever different ways were taken at the beginning, they all tended to this; the Suitors were to make the Purchaser easy, and the People were persuaded to bid high, by being told how easily the largest Sums could be raised.

It was a common Recommendation to a Purchaser, to tell him how much Cash was in the Office; and that he need not be afraid to make any Contract good, Money would be ready as soon as he was admitted: Your Lordships will see the Consequences of such Recommendations. Masters did offer, and give more than could be presumed they were worth, the Suitors Money was at Hand to make good the Bargain; and these are the masters in whose Offices appear the greatest Deficiencies.

It will appear to your Lordships, that Mr. *Kynaston*, and Mr. *Thomas Bennet*, procured their Places in this manner. Mr. *Kynaston* discharged a Bond of six thousand Pounds to his Predecessor, by giving a Receipt of the same Value. Mr. *Bennet* gave a Receipt to his Predecessor for ten Thousand Pounds; both acknowledged a Transfer of so much of the Suitors money, the one received but Nine Pounds, and the other Fifteen Hundred, the rest was kept back as part of the price of their Office; and is now a part of their Deficiencies. How great their Deficiencies are, may be observed to your Lordships; Mr. *Bennet's* is near Ten Thousand Pounds, and Mr. *Kynaston's* above Twenty Thousand.

This is the Practice, the impeached Lord, in his Answer, declares himself totally ignorant of, and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are satisfied will be fully maintained, this Article will be supported by Proofs, that the impeached Lord was well informed of what he now denies the Knowledge of; that it was the Subject of his Discourse, and that he feared, and endeavoured to prevent a Discovery.

And your Lordships will find him observing on the Accounts of some of the Masters, as they were given in on the late Enquiry, *That they were given in in the worst Manner; That they should convince the World that they paid for their Places out of the Suitors Money; and, That they would at last discover what he had always, when asked, taken care to deny.*

The impeached Lord admits, in his Answer, that he never caused any Schedules to be made of the Suitors Effects, to be transferred over to succeeding Masters: That it was what his Predecessors ne-



ver did before him, and that if the Consequences alledged by the Commons, have arisen from this Practice, or the not ordering such Schedules; he thinks he is not Criminal.

My Lords, the Charge of the Commons is general, that he knew the Abuse, and took no Care to reform it; if he had taken Care that the Effects of the Suitors should have been transferred by Schedule; if he had appointed any one to overlook the Transfer; if he had taken any method at all to be assured that the Effects of the Suitors were duly made over according to this Order of Transfer, the Commons would not have charged as they have done, and perhaps he had not at this Time appeared so nigh your Lordships Bar.

But if the impeached Lord thinks he is justified by saying, it was not his Duty, and therefore the Omission no Offence: The Commons aver in their Article, that it is the Duty of the Chancellor of *Great Britain*, to superintend the Masters and their Accounts; and it is submitted to your Lordships, whether he is not Criminal, if he suffers money deposited by the Orders of his Court in the Hands of the masters, to be without Order, conveyed or left in private Hands.

I shall say no more to your Lordships on this Article, but leave the Proof of it to the Evidence.

Mr. Serj. *Pengelly*. My Lords, the Proof in support of these Articles, will go to them both promiscuously. In the first Place we beg leave to shew to your Lordships, the several Orders of Court, which state the Deficiencies of several Masters.

Mr. *Ralph Paxton* sworn.

Mr. Serj. *Pengelly*. We desire he may be asked, whether the Papers he produces, are true Copies of the Orders Examined by the Books in the Office.

Mr. *R. Paxton*. My Lords, they are true Copies, I examined them.

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Lords Com. *Ordo Curie.*

*Veneris 29. Die Januarii, 1724.*

WHEREAS, by an Order made by the Rt. Hon. the late Lord High Chancellor of *Great Britain*, the *Seventeenth* Day of *December* last, it was (*inter al'*) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, Sir *Nath. Gould*, Mr. *Thomson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy-Governour of the Bank of *England*, by the several masters of this Court, upon the Examination of their Accompts, for or towards answering the Ballance of Cash admitted by their said Accompts, to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up and left in the Custody of the Bank of *England*, in such manner as by the said Order is provided: And whereas, the masters had in their several Accompts, given in Particulars of Stock and of Annuities, transferrable in the Books of the several Companies, standing in their Names, which belonged to the several Suitors of this Court,

or as their own proper Stock and Annuities, by which part of the Ballance of Cash in their Hands might be made good, or secured. It was further ordered, That they should each of them forthwith, deliver into the respective Companies, a Declaration in writing, wherein such Stock in each respective Company, or the Annuities there transferrable, as by their respective Accompts appeared to belong to the Suitors of the Court, and likewise the Stock and Annuities by them respectively proposed towards making good, or securing their Ballance of Cash, or so much thereof as should equal the Ballance of their said Accompts; in Case they had in their Names, more than sufficient for that purpose should be declar'd to be upon Trust to attend the Orders of this Court: And it was further order'd; That the said several masters, should forthwith give to the said Mr. Baron *Gilbert*, their Post Accompts of their Receipts and Payments since the former Accompts; and by a subsequent Order of the 21st Day of the said *December*, It was order'd, That the several and respective masters, whose Effects so ordered to be secured, did not amount to the whole Ballance of the Cash admitted by their Accompts to be in their Hands, should forthwith secure the rest of the Ballance of the Cash appearing to be due on their respective Accounts, by depositing in like manner Bank Notes, or other Effects to the Amount thereof, or enter into a Recognizance in a competent Sum of money, with two or more Sureties to be approved of by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them, for duly answering from Time to Time as this Court should direct, such Sum and Sums as the remaining Deficiencies of their said respective Ballances amount unto. And whereas, Mr. *Edward Conway*, one of the masters of this Court, did, on the 19th Instant, attend the Right Hon. the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, and acknowledge that he was Debtor to the Suitors of the Court on the Ballance of his Cash Accompt, the Sum of 13039*l.* 4*s.* 4*d.*  $\frac{1}{2}$ . and that he had brought into the Chest the Sum of 3000*l.* only, so that he remains Debtor on the said Cash Ballance, the sum of 10039*l.* 4*s.* 4*d.*  $\frac{1}{2}$ . and that since making the said former Orders, he had sold 3500*l.* South Sea Stock, in the Cause between the Lord and Lady *Faulconberg*, which was intended a Security for the sum of 3425*l.* and that he had since paid off only the sum of 2593*l.* 9*s.* 3*d.* pursuant to the Orders of this Court in that Cause, so that there remained the sum of 831*l.* 10*s.* 9*d.* in his Hands, to be applied to the Parties concerned in that Cause; and that he had since sold 2000*l.* South Sea Annuities Stock, part of the Sum of 17950*l.* South Sea Annuities Stock, belonging to the Suitors of the Court in several Causes, which he ought to replace. Their Lordships did thereupon order, That the said Mr. *Conway*, should in a Week, depose the Sum of 10039*l.* 4*s.* 4*d.*  $\frac{1}{2}$ . and also the said Sum of 831*l.* 10*s.* 9*d.* belonging to the said Cause of *Faulconberg* and *Faulconberg* in Bank Notes, or money in his Chest at the Bank of *England*, and also should replace the said Sum of 2000*l.* South Sea Annuity Stock, or that he should enter into a Recognizance of 26000*l.* with two sufficient Sureties to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, for answering the said Sums, and replacing the said 2000*l.* South Sea Annuity Stock, in such



such Manner as this Court should direct: And this Court being Yesterday informed by Mr. *Attorney General*, on behalf of the Suitors of this Court, that the said Mr. *Conway* had not deposited either of the Sums aforesaid, or entered into a Recognizance with two Sureties, as by the said Order he was directed: It was thereupon ordered that he should on this Day attend the Court, to shew Cause why he did not yield Obedience to the said Order. And he now attending accordingly, and admitting that he had not deposited either of the Sums aforesaid, nor replaced the said 2000 *l.* South-Sea Annuity Stock, or given Security with two Sureties, as by the said Order is required: And whereas he did formerly upon Examination of his Accompts, produce to the Persons who inspected the same, bank bills, and notes, sufficient to make good the said Sum of 13039 *l.* 4 *s.* and 4 *d.*  $\frac{1}{2}$ : being the whole ballance of his Cash Accompts, but had only deposited 3000 *l.* part thereof in pursuance of the said Order: And it being several times demanded by the Court, whether he did know or remember the Names of the person or persons from whom he had the said bank notes, or any of them; or did know or remember the Names of the person or persons to whom he had since paid or delivered them, or any of them, he declined giving any direct Answer to the said question relating to his own proper knowledge and remembrance, but upon Oath said, it was impossible for him to answer the same; whereupon, and upon hearing of Mr. *Attorney General* and Mr. *Sol. Gen.* on behalf of the Suitors; and what was farther insisted on, this Court doth declare, that the said Mr. *Conway* is guilty of very high Contempts, and doth therefore do for his said Contempts, stand committed to the prison of the *Fleet*; and that for making provision for the Execution of his Office, and that no prejudice may happen to the Suitors of the Court by reason of the said Commitment, he do in the Custody of the Warden this Afternoon, deliver all his books and papers belonging to his Office, unto Mr. *Holford* one other of the Masters of this Court, who is to act therein as he the said Mr. *Conway* ought to have done during his Commitment; and the Clerk of Mr. *Conway* is to be at liberty, if he thinks fit, to attend Mr. *Holford* therein, and Mr. *Conway* is at liberty from time to time to make such Proposals to the Court for making good his Deficiency as he shall think proper.

R. P. Examined 6th of May, 1720. by Book of Entries, Cur' Canc' Letter B.

### Lords Com. Ordo Curia.

*Mercur. tertio Die Febr. Ann. Regni Georgii Regis undecimo.*

Whereas, by an Order of the 29th of *Jan.* last, &c. the Reasons therein contain'd, it was ordered that Mr. *Thomas Bennet*, one of the

Masters of this Court, should then sitting in the Court, give his own Recognizance to be taken by Mr. *Holford*, one other of the Masters of this Court in the Penalty of 18150 *l.* conditioned to answer and pay the Sum of 9075 *l.* therein mentioned, in such Manner as this Court should direct; and that upon his so doing, the time for his performing of an Order of the 12th of *Jan.* last, for depositing the said 9075 *l.* or procuring two or more Sureties, to enter into a Recognizance of the Penalty aforesaid, as in the said Order is mentioned, should be enlarged till this Day: And if he should procure such Sureties to enter into such Recognizance, he was first to give the Names of the intended Sureties to Mr. *Paxton* (Soll. on behalf of the suitors of this court) to the end he might enquire after their Abilities; and the said Mr. *Thomas Bennet*, was this Day to attend the Right Honourable the Lords Commissioners, for the Custody of the Great Seal of *Great Britain*, when such farther Order should be made as should be just. And the said Mr. *Thomas Bennet* this Day attending their Lordships, in the Presence of Mr. *Attorney General*, and Mr. *Sollicitor General*, on behalf of the Suitors of the Court; and the said Mr. *Thomas Bennet*, now delivering into Court a Particular of several Estates which he proposed to assign and convey as the Court shall direct, in trust for the Suitors of the Court, and submitting to be examined upon Interrogatories, for discovery of all other Estate he has both Real and Personal, and that the same shall be also assigned and conveyed to the same Trust: Their Lordships do therefore Order, that the time for the said Mr. *Thomas Bennet's* giving his Recognizance with two or more Sureties in the Penalty aforesaid, be enlarged until *Wednesday* next, at which time the said Mr. *Thomas Bennet* is to attend in Court, when such farther Order shall be made as shall be just. But in the mean time, he is to assign and convey the several Estates by him now proposed, unto the said Mr. *Holford*, as he, the said Mr. *Holford*, shall approve and direct, and is also within that time to produce and leave with the said Mr. *Holford*, all Deeds and Writings in his own Hands relating thereto; and so far as he is able to procure the Mortgagee and Annuitant, to produce and leave with the said Mr. *Holford*, the several Deeds and Writings in their respective Hands relating to the said Persons. And the said Mr. *Thomas Bennet* is also within the same time to be examined upon Interrogatories, before the said Mr. *Holford*, for discovery of all other, his real and personal Estates, and is also to assign and convey the same to the said Mr. *Holford*, as he shall approve and direct. And what Estates shall be by him, the said Mr. *Thomas Bennet*, so assigned and conveyed to the said Mr. *Holford*, as aforesaid, the same are to be upon Trust for the Suitors of the Court, as the Court shall direct; and the said Mr. *Paxton* is forthwith to prepare and lay Interrogatories before the said Mr. *Holford* for the Purpose aforesaid.

R. P. Examined 6th of May, 1725; by Book of Entry, Cur' Canc' Letter B.



*Ordo Curie.**Martis Decimo Nono Die Januarii, 1724.*

**W** Hereas, by an Order made by the Right Honourable the Lord High Chancellor of *Great Britain*, the seventeenth Day of *December* last, it was (amongst other things) ordered, that the bank notes and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, Sir *Nathanael Gould*, Mr. *Thompson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the several Masters of this Court, upon the Examination of their Accounts, for, or towards answering the ballance of cash admitted by their said Accompts to remain in their respective hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up, and left in the Custody of the *Bank of England*, in such manner as by the said Order is provided. And it was further ordered, that the said several masters should forthwith give to the said Mr. Baron *Gilbert*, Post Accompts of their Receipts and Payments since their former Accompts. And by a subsequent Order of the one and twentieth Day of the said *December*, it was ordered, that the several and respective Masters of this Court, whose Effects, so ordered to be secured, did not amount to the whole Ballance of the Cash admitted by their Accompts to be in their Hands, should forthwith secure the rest of the Ballance of the Cash appearing to be due on their respective Accompts, by depositing in like manner, Bank Notes, or other Effects, to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties, to be approved by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them, for duly answering from time to time, as this Court should direct, such Sum and Sums, as the remaining Deficiencies of their said respective Ballances amount unto. And Mr. *Edward Conway*, one of the Masters of this Court, this day attending the Lords Commissioners for the Custody of the *Great Seal of Great Britain*, and acknowledging that he was debtor to the Suitors of the Court on the Ballance of his Cash Account, in the Sum of thirteen Thousand and thirty nine Pounds four Shillings and four Pence half Penny; and that he had brought into the Chest the Sum of three thousand Pounds only, so that he remains Debtor on the said Cash Ballance, the Sum of ten Thousand and thirty nine Pounds four Shillings and four Pence Half Penny; and that since the making the said former Orders, he has sold three Thousand five Hundred Pounds South-Sea Stock, in the Cause between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of Three Thousand four Hundred and twenty five Pounds; and that he hath since paid off only the Sum of two Thousand five Hundred and ninety three Pounds nine Shillings and three Pence pursuant to the Orders of this Court in that Cause; so that there remains the

Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, in his Hands, to be applied to the Parties concerned in that Cause; and that he has since sold two Thousand Pounds South Sea Annuity Stock, part of the Sum of seventeen Thousand nine Hundred and fifty Pounds South Sea Annuity Stock, belonging to the Suitors of the Court in several Causes, which he ought to replace: Their Lordships do thereupon Order, that the said Master *Conway*, do in a Week, depote the said Sum of ten Thousand and thirty nine Pounds four Shillings and four Pence Half Penny, and also the said Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, belonging to the said Cause of *Faulconberg* and *Faulconberg*, in Bank Notes or Money in his Chest at the Bank of *England*; and also do replace the said Sum of two Thousand Pounds South-Sea Annuity Stock; or that he do enter into a Recognizance of twenty six Thousand Pounds, with two sufficient Sureties, to be approved of by one of the Lords Commissioners for the Custody of the *Great Seal of Great Britain*, for answering the said Sums, and replacing the said two Thousand Pounds South-Sea Annuity Stock, in such Manner as this Court shall direct.

*Tho. Parnell, Dep. Reg.**R. P. Examined 6th of May, 1725. with Book of Entries, Court Canc' Letter B.**Ordo Curie.**Mercurii Vicesimo Die, Januarii. 1724.*

**W** Hereas by an Order made by the Right Honourable the late Lord Chancellor of *Great Britain*, the seventeenth day of *December* last, it was (among other Things) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*; and Sir *Nathanael Gould*, Mr. *Thompson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank of *England*, by the several masters of this Court, upon the examination of their accounts, for, or towards answering the ballance of cash admitted by their said accounts to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several chests, and that then the said chests should be locked up and left in the custody of the Bank of *England*, in such manner, as by the said Order is provided. And it was further ordered, that the said several masters should forthwith give to the said Mr. Baron *Gilbert* Post Accounts of their receipts and payments since their former accounts. And by a subsequent Order of the one and twentieth day of the said *December*, It was ordered, That the several and respective masters of this Court, whose Effects so Ordered to be secured, did not amount to the whole ballance of the Cash admitted in their accounts to be in their Hands, should forthwith secure the rest of the ballance of cash appearing to be due on their respective accounts, by depositing, in like manner, bank Notes, or other effects, to the amount thereof, or enter into a Recognizance in a competent Sum of money, with two or more Sureties



ties, to be approved by Mr. Baron Gilbert, Mr. Justice Denton, and Mr. Justice Raymond, or any two of them: for duly answering from Time to Time, as this Court should direct; such Sum and Sums as the remaining Deficiencies of their said respective Ballances amounted unto; and Mr. Kynaston, one of the Masters of this Court, being this Day present before the Right Honourable Sir Jeffery Gilbert, Knight, one of the Lords Commissioners for the Custody of the Great Seal of Great Britain, and being examined touching the Money and Effects for which he was answerable to the Suitors of the Court, did admit, that the Sum of thirty one thousand nine hundred and fifty four Pounds, fifteen Shillings and a Farthing, was the Cash Ballance in his Hands, due to the Suitors; and that he had deposited in his Chest at the Bank, the Sum of four thousand six hundred and eighty six Pounds, one Shilling and nine Pence, in pursuance of the Order of the seventeenth of December aforesaid; and that he had declared a Trust of three hundred Pounds South-Sea Stock for the Suitors, which at the present valuation is three hundred and sixty Pounds; so that there remains the Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, deficient and unsecured to the Suitors of the Court; and proposed towards Satisfaction thereof, to Assign over a Debt of twenty thousand eight hundred and fifty Pounds, owing to him from Mr. Delabaye, in such manner as should be thought proper for the benefit of the Suitors: But alledged that he was not to be charged with the Sum of seven thousand five hundred and seventy five Pounds, mentioned in his Accounts to be part of the aforesaid twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing. Whereupon their Lordships considering what was alledged by him, were of Opinion, That he was answerable to the Suitors of the Court for the said Sum of seven thousand five hundred and seventy five Pounds; and do therefore Order, That the said Mr. Kynaston do, in a Week, deposite the said Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in Money or Bank Notes, in his Chest at the Bank of England, or enter into a Recognizance in the penalty of fifty three thousand eight hundred and seventeen Pounds, with two or more Sureties, to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of Great Britain, to Answer and Pay the said Sum of twenty six thousand nine hundred and eight pounds, eleven Shillings and three pence Farthing, in such manner as this Court shall direct.

*Tho. Parnell,*  
*Dep. Reg.*

*R. P. Examined the 6th of May, 1725. by the Book of Entries. Cur' Canc' Letter B.*

Mr. Sol. Gen. The Managers for the House of Commons lay before your Lordships these Orders, to shew, that the several Masters therein mentioned, were deficient. It will be incumbent on the noble Lord to shew; that when they were admitted, they were of Ability proper for such a Trust. We now proceed upon the Declaration that was made on the 21st of January last was twelve-month, and desire that Mr. Waller may be called,

Mr. Waller Sworn.

Mr. Sol. Gen. My Lords, we desire he may be ask'd, whether he applied to my Lord Chancellor upon an Order made by his Honour the Master of the Rolls, relating to Mr. Conway; and what it was my Lord Chancellor said on that Occasion?

Mr. Waller. In July 1723. I had Directions from my Client, to apply to Mr. Conway, to lay out upon South-Sea Annuities the Sum of 4000*l.* that had been brought before him in a Cause between Mr. Davenant and my Lord Cardigan. The Master told me at first, he would take Care of it. Upon further Application, he said the Order had directed another Sum of Money should be brought before him in the same Cause, and that he could not put out the one without the other. Upon this, I applied, by Petition, to the Master of the Rolls, praying, that Mr. Conway might be oblig'd to put out the Money, and that he might answer Interest for it after he had had it a reasonable Time in his Hands. Upon that, the Master of the Rolls directed he should lay out the Money immediately.

Mr. Serj. Probyn. I beg your Lordships Pardon for interrupting this Witness. In the manner he is going on, your Lordships observe, he is taking Notice of Orders, Petitions, Acts of the Court, and this he gives upon his Memory. We think these ought to be produced. —

Mr. Sol. Gen. If they are desirous to entertain your Lordships with them, we have them all here. We only make use of them to let in the Declaration of the noble Lord.

E. of Maccles. If that be all the Use, there is no need to produce these Orders: But if they are to introduce Evidence with relation to the Merits of the Cause, it is proper to have them produced.

Mr. Sol. Gen. We don't dispute the Justice of the Order then made, but ask the Occasion of it; and all we desire is, what was declared, and what was the Occasion of the Declaration.

Mr. Serj. Pengelly. The Managers don't enter into the Consideration whether the Order is just, or no. All they represent to your Lordships, is the Occasion of this Declaration. Whether a Man acts justly, that detains Money, and does not pay it out when he ought to do it, that we leave to another Determination. But what we ask now, is the Declaration of the Earl of Macclesfield, and the Occasion of it.

Mr. Waller. Upon the Petition to the Master of the Rolls, he made an Order to put the Money out, and that the Master should pay some Interest. On this, he applied to my Lord Chancellor, to discharge this Order. My Lord, upon that Occasion, said, the Master was not to blame, and that the then Masters were a Set of Masters of as great probity, ability, and fortune, as ever had been before; and that his Lordship had had the Satisfaction of having put in most of them himself. I can't say that these were the very Words, but it was to this Effect.

Mr. Sol. Gen. When, at what Time was this?

Mr. Waller. This Declaration was made the 21st of January, 1723.

Mr. Sol. Gen. Where was it?



Mr. *Waller*. In Court, at my Lord's House in *Lincoln's-Inn-Fields*, where he usually sat.

Mr. *Sol. Gen.* Was there at that time any Vacancy of any Master's Office; and how long did that Vacancy happen before?

Mr. *Waller*. Mr. *Fellowes* died either the Day before, or the Day but one before.

Mr. *Sol. Gen.* Was there any Observations made at that Time of any Person in Court that took notice of what was said?

Mr. *Waller*. One of the Counsel took Notice of somebody taking Notes, and said he believed it would be in the *Amsterdam Gazette* in a short Time; or to that Purpose. My Lord Chancellor ask'd who he was?

E. of *Macclesf.* I desire he may tell your Lordships, when Application was made to me by way of Complaint of it, what it was I said at that Time?

Mr. *Waller*. I don't remember.

E. of *Macclesf.* Pray recollect your self, if I did not say it was right, and they had a Right to take Notes there.

Mr. *Waller*. I don't remember that you did.

E. of *Macclesf.* Did I make no Answer?

Mr. *Waller*. Not as I remember.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether he kept any Notes or Memorandum of the Words that were then said?

Mr. *Waller*. No, my Lords.

Mr. *Serj. Probyn*. How does he then come to remember the very Words?

Mr. *Waller*. Since my Lord *Macclesfield's* Counsel will have it, I must acquaint your Lordships, that it struck me with so much Astonishment to hear such a Declaration made on the Masters, which most People thought they did not deserve, that indeed I could not but remember it, and have remembered it ever since.

Mr. *Serj. Pengelly*. We have several other Persons who were present at this Time, when this Declaration was made; but we apprehend it was so publick, so notorious, and has been so distinctly proved by a Person present, that it will be unnecessary to call further Evidence to it.

Mr. *Sol. Gen.* We beg leave to trouble your Lordships as to one Circumstance, to ascertain the Death of Mr. *Fellowes*: We have one of Mr. *Fellowes's* Servants here.

*Edward Ange* sworn.

Mr. *Sol. Gen.* We desire he may be ask'd, whether he was a Servant to Mr. *Fellowes*?

Mr. *Ange*. I was a Clerk in Mr. *Fellowes's* Office, at the Time of his Death, and many Years before.

Mr. *Sol. Gen.* When did he die, what Day?

Mr. *Ange*. Upon the 19th of *January*, 1723.

Mr. *Sol. Gen.* It was the 21st that the Declaration was made, so that it seems that it was necessary; and such a Declaration was wanting at that Time to keep up the price of the Office.

Mr. *Lightboun* called.

Mr. *Sol. Gen.* We desire Mr. *Lightboun* may be ask'd, whether he gave any Intimation to the Earl of *Macclesfield*, that the Circumstances of some of the Masters were suspicious, before the 21st of *January* was twelve-month?

Mr. *Lutwyche*. I desire Mr. *Lightboun* would give your Lordships an Account what Discourse he had concerning the Masters with the Earl of *Macclesfield*.

Mr. *Lightboun*. I can't say I acquainted him with my suspecting any of the Masters by Name, being deficient, but I told him in Conversation, that as a Deficiency had happened in Mr. *Dormer's* Office, the like Accident might happen in others; and that it might be proper for his Lordship to take some measures to prevent the like for the future, if possible.

Mr. *Lutwyche*. In the Year 1723. Whether had you any Discourse with my Lord Chancellor relating to the Circumstances of any of the Masters, or about any Proposals of Security to be given by them?

Mr. *Lightboun*. In the Year 1723. I had some Conversation with my Lord upon that Subject, and it was upon the Occasion of my Lord's sending for me to know why I had not complied with a Proposal of the Masters, to pay 500*l.* towards making good Mr. *Dormer's* Deficiency. I ask'd, whether it was his Lordship's Proposal, or whether it was a Proposal from some of the Masters. My Lord said, it was mention'd by the Masters, and he approved of it; and as the rest had complied, he hoped I would.

Mr. *Sol. Gen.* You need not now give a particular Account of this; this will be proper on another Occasion; that I desire to ask you now, is only in general, whether before the 21st of *January* 1723. you had any Conversation with my Lord about the Deficiency of the Masters, and that there was Reason to suspect a Deficiency in some of the Masters?

Mr. *Lightboun*. I did not mention any particular Person, but only that an Accident had lately happen'd, and as it had happen'd, it might happen again; but I was far from mentioning any Master by Name, for I might thereby have made my self liable to an Action.

Mr. *Sol. Gen.* We don't desire to ask him whether he mention'd any particular Master, but only in general, whether he did not say he had Grounds to suspect some of them? The Question is in general.

Mr. *Com. Serj.* The Question was first ask'd in general, but the Answer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Answer required is only *Yea* and *No*. This we apprehend not to be altogether so regular, we therefore desire the Question may be ask'd in other Terms.

Mr. *Sol. Gen.* My Lords, I will ask the Question in general, whether he gave any Intimation in general, that there might be a Suspicion of the Masters?

Mr. *Lightboun*. I did in general acquaint my Lord, as this Accident had happen'd, I did not know how soon it might happen again. The Year 1720. had made great Havock, and I did not know what Effect it might have had amongst us.

Mr. *Serj. Pengelly*. I desire Mr. *Lightboun* may be ask'd, whether he can recollect that he had any Discourse with my Lord *Macclesfield* to that Effect at any other Time before *January* 1723.

Mr. *Lightboun*. My Lords, I can't confine my self to a particular Time. I have had the Honour of many Conversations with my Lord *Macclesfield* on this Subject, and what passed at one particular Time



Time more than another, I can't remember I have often had the Honour to hear his Lordship mentioning the Methods which he thought of, to prevent it, and to propose such Methods as I thought of, but I can't tell all the particular Times.

Mr. Serj. *Pengelly*. I desire he may be ask'd, whether from the Conversation which pass'd between the Earl of *Macclesfield* and himself, it appear'd to him, that the Earl had any Suspicion of a Want of Substance in the Masters?

Mr. *Lightboun*. My Lord, when I mention'd it, seem'd unwilling to think so. He said he hop'd not; he hop'd there was no manner of Danger, they were all recommended to him for Men of Fortunes, or to that Effect. Latterly, this last Year, when my Lord was talking of this Matter, he seem'd to think there was a Necessity that there should be an enquiry into this Affair: and when the Matters were ordered to bring in their own Accompts, I remember I told my Lord I question'd if they were able to do it. My Lord said he hop'd it, and wish'd it.

E. of *Abington*. If Mr. *Lightboun* be left to his own Discretion, to relate without Interruption whatever he can recollect that pass'd between him and Lord *Macclesfield* before *January* 1723. when this Declaration was made in Court, it may give your Lordships a fuller Light and Satisfaction.

Mr. *Lightboun*. I don't remember to have had any particular Conversation about the Abilities of the Masters, farther than I have mentioned to your Lordships. I have told you that I did give some Hints in a doubtful Manner, that I was dissatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. *Pengelly*. My Lords, we proceed now to examine some Witnesses upon the Article relating to the Masters coming in, and in what manner the Money was paid upon their Admission, either on a Surrender, or Death of a former Master; and out of what Fund that Money was paid. We beg leave to call Mr. *Kynaston*.

Mr. *Kynaston* called.

Mr. Serj. *Pengelly*. We beg leave he may be ask'd, in relation to his Treaty with Mr. *Rogers*, when he came into his Office? and in what Manner the Money paid for the Office was raised?

Mr. *Kynaston*. It was in *May* 1721.

Mr. Com. Serj. Before Mr. *Kynaston* answers to this, we hope the Managers shall intimate to your Lordships, that they have Evidence to apply this to the Lord who now stands accused; otherwise a bare Discourse between Mr. *Rogers* and Mr. *Kynaston*, cannot affect the Earl of *Macclesfield*.

Mr. *Lutwyche*. I apprehend this Interruption is very unnecessary: It is the first part of the Article we are going to prove, that it was a Practice among the Masters in Chancery, to pay the Money for their Places out of the Suitors Money; and that though the Chancellor had good reason to suspect or know this, yet he applied no Remedy or Redress, but let it go on for his own Benefit: Therefore we must begin with the first part of the Article. They are not to examine and ask the Managers, whether they have any Proof of the latter part of the Article; we are beginning

with the first part of the Article, and then shall bring it home to the noble Lord.

Mr. Sol. Gen. We shall prove the whole, that there was such a Practice, and that it is reasonable to think the noble Lord knew it, or had reason to suspect it, and did not prevent it. We must first begin with the Practice.

Mr. Serj. *Pengelly*. My Lords, we desire he may give your Lordships an Account of the Methods taken at the time he came into the Office, of selling and paying for those Offices, and in what Manner the Agreement for his Office was transacted?

Mr. *Kynaston*. My Lords, I treated with Mr. *Rogers* for the Sale of his Place in *May*, 1721. I did understand then, and had heard before, that the Method was, that they retained so much of the Money belonging to the Office for their places, and that such had been the practice. I did agree with him, and entered into Articles to pay him 6000*l.* for his Place. I went for some time into the Country, and when I was there, he wrote to me, and told me that he designed to resign the place on the 9th of *August*. I did come up to Town, and on the 9th of *August* I gave him a Bond for 6000*l.* Then I went with him to my Lord *Macclesfield*, and was sworn in Master. There was a general Order for him to deliver over the Effects and Securities to me; after this he delivered up the Bond which I had given him, and retain'd so much Money belonging to the Suitors of the Court, as amounted to 6000*l.* He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6009*l.*

Mr. Serj. *Pengelly*. I desire to know what was paid for his Admission?

Mr. *Kynaston*. 1500 Guineas were paid to Mr. *Cottingham* by Mr. *Baily*.

Mr. Serj. *Pengelly*. How was it repaid?

Mr. *Kynaston*. In *February* afterwards, I stated an Account with the Person that was my Cash-Keeper and kept my Money, in relation to the Money receiv'd and paid, and he charg'd me with the 1575*l.* and deducted it out of the Money of the Suitors which he had received.

Mr. Serj. *Pengelly*. I desire he may be asked, how much Cash, what Sum of Money, came to his Hands from Mr. *Rogers*?

Mr. *Kynaston*. Something above 20000*l.*

Mr. Serj. *Pengelly*. I desire he may be asked, whether when these Effects were by the Order of Transfer delivered from Mr. *Rogers* to him, there was any Person present on behalf of my Lord *Macclesfield*, to see them delivered over?

Mr. *Kynaston*. No.

Mr. Serj. *Pengelly*. Was there any Account demanded of him afterwards, either by my lord Chancellor or his Agent, of the *Quantum* of the Effects or Cash?

Mr. *Kynaston*. I don't remember there ever was.

Mr. Serj. *Pengelly*. I beg leave to ask, whether at that Time he had Money enough of his own to pay Mr. *Rogers* 6000*l.* for his Place, and 1500 Guineas to my Lord *Macclesfield* for his Admission?

Mr. *Kynaston*. Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. *Pengelly*. What was his Inducement to come into this Office?

Mr.



Mr. *Sol. Gen.* Or, I would ask it in other Words, whether the easiness of his paying for his Place was not one Thing that induc'd him to Purchase?

Mr. *Kynaston*. Yes, I believe it was one Inducement to me to purchase the Place.

Sir *Wm. Strickland*. I beg leave to ask another Question. Mr. *Kynaston* says he had more Money of his own at that Time, but I desire to know whether he could have paid 7575 *l.* which he gave for his Office, unless he had paid it out of the Suitors Money?

Mr. *Kynaston*. No, I could not have paid the whole.

Mr. Serj. *Probyn*. If the Gentlemen have done, I desire he may be asked, what Money he had of his own at that Time, either in Cash, or in his Banker's Hands, or in Security?

Mr. *Kynaston*. I really cannot tell, I believe I might have between 2 and 3000 *l.*

Mr. Serj. *Probyn*. How much can you take upon you to say you had?

Mr. *Kynaston*. Really I cannot tell.

Mr. Serj. *Probyn*. Speak to the nearest you can.

Mr. *Kynaston*. I believe I had about 2000 *l.* very near three in Money and Effects.

Mr. Serj. *Probyn*. What other Estate had you? Had you any real Estate?

Mr. *Kynaston*. I had an Estate settled upon me at my Marriage, no other Estate.

Mr. Serj. *Probyn*. I desire you to give an Account, whether you had any other personal Estate?

Mr. *Kynaston*. No, I do not remember I had, except you reckon Timber such.

Mr. *Com. Serj.* I desire my Lords, he may be asked, what the annual value of his real Estate was?

Mr. Serj. *Pengelly*. I submit, whether he be obliged to tell his whole Circumstances?

Mr. *Kynaston*. I am very willing to tell, it was about 400 *l.* a Year.

Mr. *Com. Serj.* Whether he had not his Estate without Impeachment of Wast?

Mr. *Kynaston*. Yes.

Mr. Serj. *Probyn*. Of what Value might the Timber be?

Mr. *Kynaston*. I was once bid 2500 *l.* for it, but now they know I have an Occasion to sell, they will not give me so much.

Mr. Serj. *Pengelly*. I beg leave he may be asked, whether at that Time his Father was living?

Mr. *Kynaston*. Yes, he was at the Time of my purchasing the Place.

Mr. Serj. *Pengelly*. As the Cash was above 20000 *l.* of what Value were the Securities?

Mr. *Kynaston*. Really I cannot tell, I have given in an Account of the Effects.

Mr. Serj. *Pengelly*. About what Sum?

Mr. *Kynaston*. I have given it in my Accounts what it was.

Mr. Serj. *Pengelly*. To what Sum doth the whole both in Cash and Securities amount?

Mr. *Kynaston*. I believe under 50,000 *l.* about 46000 *l.*

Mr. Serj. *Pengelly*. The Securities as well as the Cash?

Mr. *Kynaston*. I mean the Securities and the Cash together.

Mr. Serj. *Pengelly*. Upon this evidence, we submit it to your Lordships, whether the Timber upon his Estate was a proper Security for 50,000 *l.* to be put into his Hands.

E. of *Macclesf.* He now represents his Estate to be 400 *l.* a Year. How was it reputed?

Mr. *Kynaston*. I believe about 500 *l.* per Annum.

Mr. *Plummer*. I desire to ask him, whether if he had felled every stick of Timber on his Estate, that and his personal Estate would have paid what he was to give for his Master's Place?

Mr. *Kynaston*. No, it would not.

Mr. Serj. *Pengelly*. My Lords, We make Use of this as a Proof of the former Article.

Mr. *Thomas Bennet* called.

Mr. Serj. *Pengelly*. My Lords, We desire he may be asked in what manner the Transfer of his Office was transacted, and how the money was paid for his Master's Place?

Mr. *Tho. Bennet*. My Lords, when I treated with Mr. *Hiccocks* about the Surrender of his Office, one of the first Things he told me was, that I need raise no money to come into this Office, for whatever money we agreed for, should be deducted out of the money to be paid over to me, which I understood to be the money belonging to the Suitors of the Court.

Mr. Serj. *Pengelly*. What was done in pursuance of this?

Mr. *Tho. Bennet*. This encouraged me to go on and proceed, in order to come into this Office, I supposed this to be the Practice, else I had not gone in.

Mr. Serj. *Pengelly*. Whether was that generally reputed to be the Practice?

Mr. *Tho. Bennet*. I own I thought so. I was a younger Brother, and had not money enough of my own to come into that Office.

Mr. Serj. *Pengelly*. We beg leave that he may inform your Lordships how much he was to pay, and how it was raised and paid?

Mr. *Tho. Bennet*. The Sum I agreed to pay Mr. *Hiccocks* was 1500 *l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 9075 *l.*

Mr. Serj. *Pengelly*. We hope that he shall inform your Lordships how it was raised and paid.

Mr. *Tho. Bennet*. As to the 1500 Guineas, I acquainted your Lordships I borrowed it of my Brother, and the next Day returned it him again out of the money I received of Mr. *Hiccocks*. As soon as I was admitted, I went to Mr. *Hiccocks*, and demanded of him the Suitors effects. He paid me 1500 *l.* and told me I must give a Receipt for 9000 *l.* I told him, it was hard to have no more money paid me, when he told me there was much more Cash in the Office, and that I had given my Lord *Macclesfield* more than he had offered to pay me: He said he should pay me more afterwards, but he insisted on my taking this now, so I took the 1500 *l.* and gave him a Receipt for 9000 *l.*

Mr. Serj. *Pengelly*. I desire he may be asked, whether upon any Occasion he had any Discourse with the Earl of *Macclesfield* relating to the method of his coming in, or about the re-payment of the 1500 Guineas he paid him.

Mr. *Tho. Bennet*. In order to give an account of this, I must acquaint your Lordships of the Occasion of my waiting on his Lordship. Mr. *Holford* told me, that my lord Chancellor had sent to him, and desired that he and my Brother *John Bennet* would endeavour to accommodate matters between Mr. *Hiccocks* and my self, on Occasion of the Deficiency of my Accounts. Mr. *Holford* said he did not care to go, but my Brother did go to Mr. *Hiccocks*. He would do nothing, no Accommodation could be made; but my Brother told me that my lord Chancellor would pay back to me the 1500 Guineas which he had received, so the matter with Mr. *Hiccocks* might be accommodated.

Mr. Serj.



Mr. Serj. *Pengelly*. When was this?

Mr. *Tho. Bennet*. It was about the time of our giving in our Accompts.

Mr. Serj. *Pengelly*. Was it before *Christmas*, or after?

Mr. *Tho. Bennet*. It was before *Christmas* last, in *December*. I think about the 7th of *December*. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas? And he said, Yes, he had it from his Lordship; and he did assure me I might depend upon it; but he said nothing could be done with Mr. *Hiccocks*. Then I desired them to acquaint my Lord with it; they both declined it, and desired I would go my self upon this Occasion. I went, and I told my lord, I was come to wait upon his Lordship to thank him for the kind Offer he had made to my Brother, of returning the 1500 Guineas, and I wished the same could be said of Mr. *Hiccocks*, and I could prevail with him; but nothing could be done: I came to return his Lordship thanks; and I thought I should have received the Money then. My Lord asked me to sit down, and then told me if he had known I had been to give so great a Sum of Money for the Office, he would not have admitted me. I told him I did give so great a Sum, but immediately as soon as I was admitted, I insured my Life to the Value of 8000*l.* which cost me 400*l.* so that if I had died, no harm would have come to the Suitors. My Lord said, it was very honourably done. Soon after that, he said, he was very sorry to see the *Items* that were put into my Accompt and Mr. *Kynaston's* in relation to Sums in the Hands of an honourable Person; for, says he, that hath discovered the Method of purchasing these Offices, that the Money is deducted out of the Suitors Money, which, said he, I have always taken pains to deny, when ever I have been asked the Question.

Mr. Serj. *Pengelly*. We beg leave now to ask him, how much the whole of the Cash, and Securities transferred from Mr. *Hiccocks* to him, amounted to?

Mr. *Tho. Bennet*. I believe near 100,000*l.*

Mr. Serj. *Pengelly*. I apprehend he said before, he was a younger Brother, and had but little Fortune of his own; I desire he may be asked whether any Care was taken by my Lord *Macclesfield* as to the transferring the Effects of the Suitors in Mr. *Hiccocks's* Hands over to him? and whether any Person was employed by my Lord to see the Effects transferred over?

Mr. *Tho. Bennet*. No.

Mr. Serj. *Pengelly*. Whether there was any other Security for this great Sum of Money deposited in his Hands, besides what was made by this Insurance on his Life?

Mr. *Tho. Bennet*. No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.

Mr. *Lutwyche*. My Lords, Mr. *Bennet* says, he had some reason to hope that the 1500 Guineas would be given him back again; I desire he may be asked whether there was any subsequent Overture about paying the 1500 Guineas back again?

Mr. *Tho. Bennet*. My Lord Chancellor dismissed me at that time, and told me, I should not know by what means, or by what methods I should receive the Money, or by whose Hands; but his Lordship would take Care that one way or other I

should receive it: He would not say how, because I might be called upon to answer what Discourse passed between his Lordship and me in another place.

Mr. *Lutwyche*. Was there any thing done upon that?

Mr. *Tho. Bennet*. Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. *Dixon*, and told him that I had used such Expressions in my Accompt, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I desired him to acquaint my Lord that I could not pay this Money, and that I must discover it in a Day or two. This was *Sunday* Night: The same Night Mr. *Dixon* return'd from my Lord, and told me, that if Mr. *Holford* would be present the next morning at the payment of the Money at Mr. *Kynaston's* Chambers, that Mr. *Kynaston* and my self should receive it. We were there the next day. Mr. *Dixon* came, but brought no Money, said my Lord expected some Indemnification. We said, as to an Indemnification we could give none. He said he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he said it was an Holiday, and no Money could be had, and desired we would go to the Judges, and desire two or three days time to produce this Money. I told him we could not do it, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he said my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.

Mr. *Lutwyche*. My Lords we desire he may answer this Question, whether it was explained what that Indemnification was, which was expected, and in what manner it was to be?

Mr. *Tho. Bennet*. My Lords, Mr. *Dixon* explained it thus,—

E. of *Macclesfield*. I hope whatever Mr. *Dixon* said, shall not affect me; but that they will produce him: He is able to speak for himself.

Mr. *Lutwyche*. Then I only desire he may be asked what Officer Mr. *Dixon* was under my Lord Chancellor?

Mr. *Tho. Bennet*. Mr. *Dixon* was my Lord's Secretary.

Mr. *Lutwyche*. Whether at that time that you had the Discourse with my Lord *Macclesfield*, you mentioned or said any thing of Mr. *Dixon's* having come to you, in my Lord *Macclesfield's* name?

Mr. *Tho. Bennet*. No my Lords, that was before Mr. *Dixon's* coming to me.

Mr. *Lutwyche*. Did you take Notice at any time to my Lord *Macclesfield* of Mr. *Dixon's* coming to you?

Mr. *Tho. Bennet*. No, I never spoke to my Lord Chancellor afterwards. This was the 27th of *December*, and it was the 7th of *December* that I waited upon my Lord.

Mr. Serj. *Pengelly*. We think it appears that Mr. *Dixon* was an Agent of my Lord *Macclesfield's*: I desire to know what the Nature of the Proposal of Indemnification was, that he made?

E. of *Macclesfield*. I can't think Mr. Serjeant is in earnest. Have they proved that he was employed



ployed by me? I have heard no proof of it, only Mr. *Serjeant* hath said it. Mr. *Dixon* himself is the proper person to give an Account of what he told them from me. If they do insist upon it, I must beg your lordships Judgment.

Mr. *Serj. Pengelly*. If it is insisted upon by the Noble lord, to disavow the proceedings of his own Agent, we will waive it.

E. of *Macclesfield*. I neither avow nor disavow, but I object to the Evidence of this Gentleman about the Discourse of what Mr. *Dixon* said, who is living, and can speak for himself.

Mr. *Serj. Pengelly*. If the noble lord will ask him any thing, he may, we have done.

E. of *Macclesfield*. I beg leave that Mr. *Bennet* may be asked two or three Questions: He has indeed given Evidence which greatly surprizes me. In the first place I desire he may inform your lordships, whether, when he was with me, he did not tell me that if Mr. *Hiccocks* would pay 2000 *l.* he would make good the whole Money?

Mr. *Tho. Bennet*. No, I did not say so; I could not make good the whole Money, or any thing like it. I said that such a Report had been spread, that I proposed, that if Mr. *Hiccocks* would pay me 2000 *l.* I would answer the rest; but I was not able.

E. of *Macclesfield*. I would be glad to know how he came to tell me of a Report of his own Act: Was it a Report without any Foundation?

Mr. *Tho. Bennet*. I went to Mr. *Hiccocks*, and told him I wanted 6000 *l.* but he said if 2000 *l.* would do, he believ'd he could lend me that. Lend it me, said I; if you give me 2000 *l.* it is something. And this was the Foundation of this Report.

E. of *Macclesfield*. I cannot give Evidence myself to disprove him in this; and therefore I desire to know whether he has said to any other Persons, that if Mr. *Hiccocks* would pay him two thousand, or three thousand Pounds, or thereabouts, he would pay the rest?

Mr. *Tho. Bennet*. I might say, I would endeavour to raise the rest; but I never said I would pay the whole, for I knew I was not able.

E. of *Macclesfield*. Mr. *Bennet* understands my Question, to which he hath given no Answer. My Question is, Whether he hath not told some other People, that in Case Mr. *Hiccocks* would pay 2 or 3000 *l.* he would pay all the rest?

Mr. *Tho. Bennet*. No, my Lords, I never told any Body that I would pay the rest; but I believe I might say, if Mr. *Hiccocks* would give me 2 or 3000 *l.* I would stand the Hazard; for I did not expect that all the Money should be taken out of my Hand.

E. of *Macclesfield*. I desire he may be asked, whether at that time he was with me, I did not ask him, with what Conscience and Honesty he could buy a Place, when he had not Money to pay for it? or whether it was not in answer to that, that he told me that he had insured his life?

Mr. *Tho. Bennet*. My Lord did say so to me. I answered, I had not Money; that I had not bought the Place, had it not been for the Cash of the Suitors; and that I had since insured 8000 *l.* on my life, in order to secure the Suitors.

E. of *Macclesfield*. I desire to know what visible Estate the Gentleman then had, and of what yearly Value?

Mr. *Tho. Bennet*. My Lords, when I came into the Office, I believe I had about 250 *l.* a Year, or thereabouts.

E. of *Macclesfield*. I desire to know whether he was married before?

Mr. *Tho. Bennet*. I was.

E. of *Macclesfield*. What Fortune had you with your Wife?

Mr. *Tho. Bennet*. The Fortune I had with my Wife, was in the Whole between 2 and 3000 *l.* part of it was an House.

E. of *Macclesfield*. What was the Value of that House?

Mr. *Tho. Bennet*. I had not let it then, but since my coming into the Office I have let it for 90 *l.* a Year.

E. of *Macclesfield*. I desire to know if he did not keep his Coach and Equipage at that time?

Mr. *Tho. Bennet*. I did set up my Coach in the unfortunate Year 1720. I was once worth 20,000 Pounds, but lost it all, and became much indebted; the Estate I had of my own was mortgaged for more than it was worth.

E. of *Macclesfield*. Whether he was married in the Year, 1720?

Mr. *Tho. Bennet*. No, I was not.

E. of *Macclesfield*. I desire to know what Estate he hath given into the Court of Chancery?

Mr. *Tho. Bennet*. That Account lies upon the Table.

E. of *Macclesfield*. What yearly Value is that?

Mr. *Tho. Bennet*. About 900 *l.* per Annum; part of it is settled, the rest mortgaged, and an Annuity charged on it more than it is worth.

E. of *Macclesfield*. Has any Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. *Tho. Bennet*. Part of that given in was 50, 68 *l.* per Annum, and 40 *l.* per Annum.

E. of *Macclesfield*. Has any other Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. *Tho. Bennet*. None, but what I have given in. I have given in every Shilling.

Mr. *Com. Serj.* My Lords, I desire he may be asked, whether he was not at the Time of his becoming Master in Chancery, in Possession of the Office of Clerk of the Custodies?

Mr. *Tho. Bennet*. Yes, I was.

Mr. *Com. Serj.* Now, my Lords, it will be very proper to ask him what that was sold for, that the Value of his Estate may be known.

Mr. *Tho. Bennet*. That may affect me and my Successor.

Mr. *Lutwyche*. I don't know whether we need put you in mind, that the late Act of Parliament only indemnifies the Masters, but there is none to indemnify the Clerk of the Custodies.

Mr. *Com. Serj.* Which way it will affect Mr. *Bennet* I don't know. I apprehend no Action can lie against him for the Money he received, nor any criminal Prosecution or Information. But that I may not mispend your Lordships Time; I desire Mr. *Bennet* may inform your Lordships of the yearly Value of the Place.

Mr. *Tho. Bennet*. It is about 250 *l.* a Year.

E. of *Macclesfield*. A Patent for Life?

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

Mr. *Serj. Probyn*. How much hath it been sold for?

Mr. *Tho. Bennet*. I can't tell what it hath been sold for: It may have been once sold for about 1200 *l.*

Mr. *Serj.*



Mr. *Serj. Probyn*. At that time when you surrendered, what might it have been sold for?

Mr. *Tho. Bennet*. I beg leave to submit, whether I am obliged to answer that Question.

Mr. *Serj. Pengelly*. If it was not saleable by Law, it was not worth a Farthing. I beg leave to put your Lordships in mind, that Mr. *Bennet* was excused Yesterday from answering a Question of the same Nature: The Counsel hope that this Day, being a new Day, they may have Liberty to ask the same question over again.

Mr. *Com. Serj.* There was another Ingredient in your Lordships Resolution Yesterday. I hope it is no Injury to him to answer how much he hath known it to be sold for; without mentioning by whom.

Mr. *Serj. Probyn*. We hope Mr. *Bennet* will answer the question, what is the most he hath known it to be sold for?

Mr. *Plummer*. My Lords, I object to his answering that question, because if he did sell it himself, that might be the greatest Sum that he hath known to be given for it, and that will subject him to a Penalty.

Mr. *Serj. Probyn*. We don't ask who gave it, or who received it: but what is the greatest Price he hath known that Office to be sold for?

E. of *Macclesfield*. He says he hath known it to be sold for 1200 *l.* I desire he may be asked whether he hath not known that it hath been sold for more?

Mr. *Thomas Bennet*. I believe it hath been sold for more.

E. of *Macclesfield*. And how much more?

Mr. *West*. This question is an indirect way to come at that question that was denied them Yesterday.

Sir *Will. Strickland*. My Lords, with humble Submission, the question asked by the Noble Lord, tends directly to make Mr. *Bennet* tell what he sold his own Office for; for if his own Office was sold, it is probable that he sold it for the greatest price; and to tell that, is to make him say what he sold his own Office for.

Mr. *Lutwyche*. By this method your Lordships Resolution of Yesterday will be evaded. We took it then, that the Witness was not obliged to discover what he sold the Office for. Now they are asking what is the greatest price he knew the Office sold for? Then the next question may be, to whom was the Office sold, and by whom was it sold? Therefore we must humbly submit it to your Lordships, that it is not a question to be asked.

Mr. *Com. Serj.* To object to a question because another may follow, is odd arguing. When such a question is made, it will be then time enough to oppose it: Therefore I hope that we shall go on.

Mr. *Serj. Probyn*. My Lords, I apprehend this question is proper, and the Answer to it is necessary.

Lord *Lockmere*. Your Lordships will observe some Rules in your proceedings. An Objection hath been made: An Answer hath been given: both Sides insist upon your Lordship's Judgment: that being done, they must withdraw. Therefore I desire they may withdraw.

E. of *Macclesfield*. The Reply is not yet made; something has been said by the Gentlemen who are managers by way of Objection to the questi-

on that was proposed, which, if they insist upon, I desire my Counsel who are to reply, may be heard before they withdraw.

Mr. *Serj. Probyn*. The managers for the House of Commons have been pleased to examine into the Circumstances of Mr. *Bennet*, at the time he was admitted Master, in order to shew that he was then not of Substance fit to be intrusted with so great a Sum of money. We are then in Duty obliged to examine him as to that substance, and the value of his Effects. He hath told your Lordships what Estate he hath in land; we are now to examine him as to his personal estate: He hath told us he had an Office, the Clerk of the Custodies; that he hath parted with it; the money arising by that Office must be reckoned as part of his personal Estate. To come at the Value of the Office, we do not ask him any question that makes him liable to a penalty; but such a question, where the answer to it may be given with safety; and that is, what is the greatest sum he hath known to have been given for the Office of the Clerk of the Custodies? He may answer this without involving himself in any Difficulties, for it is not asked what he himself hath sold that Office for? No answer to this general question can affect him with any ill Consequence.

Dr. *Sayer*. I humbly apprehend this is no way irregular. We are inquiring about his Effects; it is owned he had the Office of Clerk of the Custodies, therefore that must be a part of his personal Estate: The answer to our question can't any way involve him in Danger, or subject him to any Penalty; because it doth not necessarily follow that he sold his place at the greatest price that he ever knew it sold for. We submit it, whether it is not a question fair with regard to the Witness, and proper to be put to him.

Mr. *Robins*. We agree that where he may subject himself to a loss, there is no forcing him to answer; no person is bound to accuse himself. But this is only a matter of discovery what the Value of this Office is; the answer cannot affect him; and therefore we hope we shall have an answer.

Mr. *Strange*. My Lords, I am surprized to hear it said that this is not a question material for the Noble Earl's defence: Surely it is as material for us to increase his estate, as it is for them to diminish it. They have already examined into particulars, to shew what small substance he was of, and what the Estate he had was mortgaged for: the proper answer to be given to that, as far as it will go, will be to shew that he had other Estate and effects, and we are not able to shew that without examining him. I humbly submit it therefore that we are as proper to go into that Evidence, as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are intitled to examine to it likewise on behalf of the Noble Earl.

E. of *Macclesfield*. I apprehend the Objection is, That he is not to be asked a question, which if he answers he will charge himself with a Crime or penalty. Whatever answer he makes to this question cannot charge him: Let him answer and say that he hath known this place sold for 1000, 1500, or 2000 *l.* can that be given in Evidence so as to affect him? Therefore the Question to Day is not the same as was asked yesterday: It was then asked, what he had received for his place? and if he had



had answered and said what he had received, it would have been a Confession, which would have convicted him: But if the Answer be, That he knows it was sold for such a price, and that is given in Evidence, by that answer it doth not appear that he sold it: Therefore upon that I humbly submit to your Lordships, and we are ready to withdraw.

Mr. Serj. Pengelly. This is by a Side-wind to know your Lordships Opinion upon the 9th Article.

E. of Macclesfield. I beg leave to interrupt that worthy Gentleman. I agree that the Commons that bring in the Charge, have a right to reply; but with Submission this is an Objection arising from my Counsel, and the reply belongs to them.

Mr. Serj. Pengelly. My Lords, we apprehend the Objection arises from the managers, and therefore the Reply belongs to them. The managers made the Objection, therefore we beg leave to observe, that this is in Consequence to desire your Lordships Judgment upon the 9th Article, Whether the office of the Clerk of the Custodies be saleable by law, or no? If he is obliged to answer this Question, it is upon a supposition that the Transaction is lawful: Therefore in an Affair of this Nature, there can be no other View but to get an opinion upon this article. My Lords, we apprehend this proceeding is in consequence the same as if a question was proposed to your Lordships, whether my Lord Macclesfield could by law sell the Place of Clerk of the Custodies?

Mr. Lutwyche. My Lords, I must beg leave to mention this to your Lordships. When it is considered upon what Foundation this question is asked, and what it doth mean, it can be only to elude your Lordships Resolution yesterday, and to make that of no Effect. My Lords, there should be always the greatest candour used before your Lordships, that no Tricks or Methods should be made use of to ask that which should not be asked. Now, my Lords, what is the question they are examining to, and the Use to be made of it? Here is a Person that is alledged to be of mean Ability, and the question is, What Substance and Estate he hath? and they would reckon into part of his Estate an Office not saleable by law, and ask him, what that Office is worth? From whence the Inference must be, that he sold it.

E. of Macclesfield. That is not the question, what it is worth; but a particular Fact, what is the most that it hath been sold for?

Mr. Lutwyche. What doth that tend to? The question is, What Estate this Gentleman had that could enable him to pay this money for this office? They have examined him about his own Estate, and his Wife's Estate, but then there is another part of his Estate; which was this office of Clerk of the Custodies. What is that? It is that very thing which we say it is unlawful to sell. Therefore we submit it to your Lordships as no way material to the Defence of the Earl. We hope your Lordships will not admit that to be done by an indirect method, which would not be admitted to be done by a direct one.

Ordered to withdraw. Which was accordingly done; and all parties concerned being after some time called in again,

The Lord Chief Justice King declared to them, That it was the order and judgment of the Lords, that the said question was not to be asked.

Mr. Plummer. I would ask Mr. Tho. Bennet one question, Whether every thing he had in the World at the Time of his Purchase of the Mastership, was worth the money he gave for it?

Mr. Tho. Bennet. All I had in the World was not worth it.

Mr. Serj. Probyn. My Lords, Mr. Bennet says he mortgaged his Estate for more than it was worth; I desire he may be asked whether he knew at that time, that it was not worth so much as it was mortgaged for?

Lords. No, No.

Mr. Plummer. My Lords, I beg leave to ask this question, and I hope it will be very proper, that is, I desire to ask Mr. Bennet, as he hath given an account of a conversation with my Lord Macclesfield; I desire to know if my lord Macclesfield, at the time of his Admission into his office, did ask him what he was worth?

Mr. Tho. Bennet. My lord Macclesfield never asked me any questions in Relation to my circumstances, or any thing like it.

E. of Macclesfield. My lords, I desire he may be asked, whether I had any notice of his losses by the South-Sea?

Mr. Tho. Bennet. Not that I know of: I don't know that my lord Chancellor had any Notice of it.

Mr. Serj. Pengelly. My Lords, if the Counsel have done, we shall not give your Lordships any farther trouble on these two Articles: Both of them are as clearly and as fully proved and substantiated as it is possible. It comes out now upon the Examination, that tho' several masters were intrusted with 40, 50, or 80,000 *l.* they were not of any competent Substance, not really worth what they paid for their particular places. As to the manner of their paying for their places, if we have not given a direct evidence that his Lordship knew it, yet the practice and notoriety of the Fact being proved, and that it was thus generally understood, is a reasonable evidence in itself, and by the notice the Earl took of it himself by the several questions he hath asked, we think it is yet clearer. We humbly submit whether upon this evidence every part of these two Articles is not sufficiently proved? We depend upon the Examination already taken, and will take up your Lordships time no farther.

Then the Managers and the Counsel were directed to withdraw; and the Lords adjourn'd to the next Morning at Ten a Clock in the Forenoon.

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Saturday May 8th. *The Third Day.*

THE Lords being seated in their House, proclamation was made by the Serjeant at Arms for Silence; and another Proclamation, That all persons concerned were to take Notice, that Thomas Earl of Macclesfield now stood upon his Trial, and they might come forth in order to make good the Charge.

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

Mr.



Mr. *Gybbon*. My Lords, Your Lordships having already heard what has been offered in Support of the preceding Articles, I am commanded by the Commons to assist in maintaining the 13th and 14th Articles of their Impeachment against the Earl of *Macclesfield*.

The Charge in these Articles is, That the Earl knowing Mr. *Dormer* (one of the Masters in Chancery) had disposed of great Part of the Suitors Money for his own private Advantage, by which there became and still continues a Deficiency of at least 25000*l.* and that Mr. *Dormer* absconded upon that Occasion; That Application was made to the Earl thereupon, who instead of taking proper Methods to compel Mr. *Dormer* to make Satisfaction to the Suitors (from an Apprehension that a publick Discovery of the said Deficiency might lessen the unjust Gain the Earl proposed to himself, by selling and disposing of the said Offices) did endeavour by many indirect Practices to conceal from the Suitors of the Court the true State and Condition of the said Office, and did falsely and deceitfully declare that Mr. *Dormer* was only gone to take the Air; that he would return in a little time, and all would be well. That Mr. *Dormer* having towards a Satisfaction to the Suitors of the Court, assigned to Mr. *Edwards* (who succeeded him in his Office of Master) a Debt of 24046*l.* 4*s.* due from Mr. *Wilson* (a Banker) to Mr. *Dormer*, to the intent the Money received on that Account should be applied as the Court of Chancery should direct, the Earl of *Macclesfield*, for the unlawful Purposes aforesaid, without regard to the Interest of the said Suitors, by Colour of his said Office, did in an unwarrantable, clandestine, and unusual Manner, authorize, direct and establish a precarious and trifling Composition with the said *Wilson*, upon his paying 1463*l.* 2*s.* 1*d.* and assigning 10,000*l.* part of a Debt of 22,060*l.* 12*s.* 5*d.* pretended to be due to the said *Wilson* from *Edward Poulter*, in Discharge of the said Debt; and to that End, on Mr. *Hiccocks's* Report, then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order, not made in open Court, order Mr. *Edwards* to accept the said Composition in full Discharge of the said Debt; which said *Poulter* was a Person Insolvent, and has since absconded for Debt, and none, or very small part of the said 10,000*l.* has been, or is ever likely to be received.

Your Lordships will please to observe, that the Earl is charged with the highest Breach of Trust in relation to the Suitors of the Court of Chancery, and to have committed that Breach of Trust for the most unjustifiable End.

The Crimes, my Lords, stated in these Articles, are in themselves so heinous, they need no aggravation; and I think the noble Lord's Answer shews they are capable of no Excuse.

He is pleased to say, "That Mr. *Dormer* being out of Reach, his Effects unknown, except the Stock, which could not be transferred without his Concurrence, and the Earl seeing no other way open to get any thing for the Suitors, and being made believe, if a Deficiency

" should happen, the same should be made up by other Masters; did agree, that in Case Mr. *Dormer* would come over, and make a full Discovery of all his Effects, and assign the same for the benefit of the Suitors, the said Earl would allow him his Liberty on that Condition, and not otherwise.

The noble Lord says, No other way was open to get any thing. Sure, my Lords, the granting of a Sequestration would have been one and the speediest way to have found out and secured the Effects; but it might have been a way too open; for it must have published the Deficiency of the Office; whereas Mr. *Dormer's* coming home, and quietly resigning, hushed all Enquiry.

What the Earl means by being made to believe the Deficiency should be made up, I am at a Loss, my Lords, to know. Made believe! how, or by whom? It does not appear the Masters entred into any Contract to do it; and could his Lordship think any Discourse between him and the Masters (if such there was) could be a sufficient Security for the Suitors of the Court?

But suppose the Masters had contracted to supply the Deficiency, I submit to your Lordships how far that Contract would have been justifiable; for how should that Supply arise? If out of the Suitors Money in the Masters Hands, that was only supplying one Deficiency by making another; and if it was to be out of their own Estates, that likewise, by lessening the Substance of the Masters, would diminish the Security of their own Suitors; and what, my Lords, could induce the Masters to enter into such a Contract? I can imagine nothing, but to conceal the Deficiency, in order to raise a Value on their own Places upon their Resignations. I therefore submit to your Lordships, whether the Earl's Answer is not an implied Confession of an Endeavour to conceal this Deficiency, in order to keep up the Price of the Office? Your Lordships observe on what Condition the Earl says he permitted Mr. *Dormer* to come over. But I do not find the noble Lord alledges, that in order to gain the End proposed, Mr. *Dormer* was examined on Interrogatories touching the Debts due to the Suitors of the Court, or to what Estate or Effects he had to answer the same: We can shew your Lordships there was no such Examination. We shall prove, that Mr. *Dormer* did not give a satisfactory Account of his Balance, and with great Difficulty was prevailed on to convey his Estate for the Benefit of the Suitors: But yet, my Lords, he continued to have his Liberty. How the Earl will account for those Proceedings, I leave to your Lordships Consideration: I can see no possible Account can be given but this, that an Examination on Interrogatories touching the Debts of the Suitors, and Mr. *Dormer's* Answer and Confinement, must have published the Deficiency of the Office. The Earl is pleased to say, "He did not doubt but the whole Debt upon the said *Fleetwood Dormer* would be paid.

I presume he did not doubt but it would be, because he knew in Justice it ought to be paid; and since it is before your Lordships, I likewise do not doubt but it will be paid.



The noble Lord in his Answer is pleased to quote on some Occasions the Example of his Predecessors; I wish, for the Sake of the unhappy Suitors, and for the Honour and Justice of the Court of Chancery, he had here followed the Steps of his Predecessors in the Case of Dr. *Eddisbury*.

“ The noble Lord insists, He does not remember any Application made by the Masters for any Assistance of the Court, touching the Person or Effects of Mr. *Dormer*, but what he granted, as far as he thought tended to the Benefit of the Suitors.

We shall offer Proof to the contrary: But had that been so, was that, my Lords, sufficient? Was the Earl to wait the setting of a Prosecution on Foot, ’till Application made by the Masters? It was not probable many of them (who had bought at high Prices, and on Resignations, were to make the most of their Places) would apply for the securing the Person or Effects of Mr. *Dormer*, they would not willingly have had a Master imprisoned; the Discovery of a Deficiency in him would have made other Suitors apprehensive that the same might have happened to them; for every one knew how freely those Gentlemen trafficked in the fatal Year 1720. The very Notion of a Deficiency would have put the Suitors on an Inquiry, and upon calling the Money out of the Masters Hands. Could then the Earl expect they would interest themselves much in an Examination of this Kind? But was it less his Duty to enquire and give all necessary Orders, and take all proper Precautions for the Suitors Safety, because the Masters neglected it? No, certainly, unless for the Reason assigned in the Article.

The Earl says, “ He did never endeavour to conceal the true State and Condition of the Office from the Suitors, nor did any of them, until very lately, apply to him to look into the same.

He well knew, that many of them called for their Money, and were ordered their whole Demands, while Mr. *Edwards* had wherewithal to pay; but those unhappy Suitors, who did not know of the Deficiency and, from such Orders for the whole Money, might well be persuaded there was no Deficiency, and consequently did not complain, have now, I fear, a melancholy Case. And with what Grace the Earl can insist, that no Suitors ever did, or at least till very lately, complain, I leave to your Lordships Consideration.

The Earl is pleased to say, “ He remembers nothing of his using the Expression charged in the Article, either before or after he knew of Mr. *Dormer*’s absconding.

I believe the noble Lord, on a little Recollection, will easier call to Mind what he said on this Occasion, than be able to give a justifiable Reason for it.

He is pleas’d to say in his Answer to the 14th Article, “ He quitted all the Advantage of the Disposal of Mr. *Dormer*’s Office.

The Gentlemen, who have spoke before me, have, I hope, sufficiently made it appear to your Lordships, that there could be no such

legal or just Advantage. Where then is the Generosity? A Sum of Money, which he ought not to have taken, is given up towards answering the Debt of the Court, for which I take it his Lordship himself is answerable.

He is pleased to say, “ That after Mr. *Dormer*’s assigning Mr. *Wilson*’s Debt to Mr. *Edwards*, the Earl believes Mr. *Edwards*, used great endeavours to obtain Payment and Satisfaction of the said Debt from Mr. *Wilson*; but finding all Endeavours fruitless, and that Mr. *Wilson* had stopped Payment, and was in no Condition of paying his Creditors the whole of their Debts, but had offered to come to a Composition, and to pay them in Proportion the utmost he was able, Mr. *Edwards* thereupon petitioned his Lordship.

What those great endeavours were, I am, my Lords, at a Loss to know; for I can’t find there was any Commission of Bankruptcy taken out against *Wilson* (though that was advised and pressed as a safe and necessary Method) no Suit in the Court of Chancery, or in any other Court commenced against him, to get in this Debt, or that he was so much as served with any Process about it. How then the Earl can say, that all Endeavours were found fruitless, I leave to your Lordships Consideration.

He is pleased to say, “ Mr. *Hiccocks* reported, ’twas his Opinion the accepting the said Composition would be for the Benefit of the Persons entitled to receive the same.

My Lords, It does not appear Mr. *Hiccocks* had looked much into *Wilson*’s Circumstances, had examined the Particulars of his Books on Oath, had called the Creditors before him to enquire into the Justice of their Debts, or to know the Amount; but yet took upon him to appropriate Part of *Poulter*’s Debt, as a Composition for the Suitors of the Court, though it will appear that *Wilson* paid several of his Creditors afterwards their full Demands.

Strange Proceeding sure in an Affair of this Nature! for which I will not pretend to Account. But, my Lords, I cannot but observe that the two Masters, who were employed to take Care on this important Occasion, for the innocent unhappy Suitors, were very soon (pending the Affair) allowed to sell their Places at exorbitant Prices. Mr. *Rogers*, August 1721. for 6,000*l.* and Mr. *Hiccocks*, June 1723. for 7,500*l.* and which very Sums now remain a Debt to the Suitors of the respective Offices. Your Lordships have already heard what was demanded and paid on those Resignations.

The Earl is pleased to say, “ That on Mr. *Edwards*’s second Petition with Mr. *Hiccocks*’s Report annexed (in which Mr. *Edwards* expressly prayed, that he might be ordered to accept the said Composition) the Earl in a proper and usual Manner ordered the same as prayed, and was informed, and believes, that the said Composition was made and agreed to on a Consultation of all or most of the Masters of the said Court.

I have heard, my Lords, the proper and usual Manner is to have Petitions of this Nature set down to be heard in Publick, and the Parties concerned



concerned to be summoned; Petitions relating to Bankrupts, to Lunatics, to Idiots, I believe are so: The Statute in the Case of Bankrupts directs publick Notice to be given in the *Gazette*, for the Creditors to meet; they have an Opportunity there to make all proper enquiries, and see every thing done that may be most for their Advantage; the Bankrupt is not entitled to his liberty, nor any Benefit allowed him, without a Certificate that he has made a full Discovery of his effects, and that there appears no Reason to doubt of the Truth of such Discovery; and not then neither, unless four Parts in five in Number and Value of his Creditors sign such Certificate, and testify their Consent. How the Earl could think it just that the Suitors of the Court of Chancery (whose money was forced from them by the Power of that Court, and put into the Hands of a Bankrupt Master) should have less Care taken of them, less Privileges allowed them for their Security, than any other Creditors in the Kingdom, I can no way comprehend, but must think, my lords, this clandestine and unusual Proceeding a strong Proof of the Crime charged in these Articles.

“As to what the Earl says of the Composition being agreed to by most of the masters; if that, my Lords, had been so (though we shall give Evidence to the contrary) I should not at all have wondered at it; for any Composition obstructed the Inquiry and Proceedings, which otherwise must necessarily have been publick: But, my Lords, had the Composition been agreed to on a Consultation of all or most of the Suitors concerned, that indeed would have been a good Defence of the noble Lord.

“He is pleased to say, at the Time of *Wilson's* Assignment of *Poulter's* Debt, that *Poulter* was looked on to be a substantial Person.

We shall produce to your lordships evidence to the contrary: And I must observe that the Earl does not offer to shew any proper Inquiry was made touching his Solvency. Sure, my lords, when that Debt was taken as a Payment for the Suitors of the Court, his Circumstances should have been carefully looked to, and a Recognizance with Securities taken in Court; but that could not be done without a publick Notice of the Deficiency.

When I consider, my lords, the long experience and great Abilities of the noble Earl, I can never think the Remissness in this Inquiry these clandestine and unusual Proceedings, this precarious and trifling Composition, could have happened through Inadvertency only: I therefore, my lords, must insist upon it as a manifest Proof of the Charge contained in these Articles.

The Gentleman who speaks after me on this Occasion, will open the evidence we shall offer, and I will therefore take up no more of your lordships time.

*Mr. Hedges.* My lords, it falls to my Share to endeavour to be Assistant to the Gentleman who spoke last, in maintaining the 13th and 14th Articles; which I shall do by stating the evidence to your lordships, as shortly as I can.

My lords, The 13th Article sets forth, that *Mr. Dormer* having *embezzled* great Part of the

Suitors effects, to the amount of 25,000 *l.* or some other great Sum, and he thereupon *absconding*, Application was made to the Earl of *Macclesfield*, then lord Chancellor, to *secure his Person and Effects*, which his lordship *neglected and declined* to do; and *endeavoured to conceal* the true State of the Office, as well with respect to *Mr. Dormer's* effects, as to the Debt due from him to the Suitors. And upon motion made in the Court of Chancery (after his lordship *knew* that *Mr. Dormer* had *absconded*) that the effects of some of the Suitors might be *transfer'd* to a more *secure* Office, his lordship in order to *delude* the Suitors into a Belief of the Safety of their effects, and to prevent a publick Inquiry, then sitting in open Court, did say, That the Parties need not be in haste; *falsely and deceitfully* at the same Time declaring that *Mr. Dormer* was only gone to *take the Air in the Country*, and that he would return in a little time, and *all would be well*, or to that Effect. And, my Lords, notwithstanding the Earl's Endeavour in his Answer to *evade* the Charge contain'd in this Article, I am persuaded, upon hearing the Evidence, your Lordships will rest satisfy'd, that it has been *made out* in every particular. For, my Lords, as to the first part of the Charge, where he denies that he was ever *advis'd to secure Mr. Dormer's person*, it will be made appear to your Lordships, that *Mr. John Bennet*, and *Mr. Lightboun*, went from a Meeting of several of the Masters, and in their Names *acquainted* the Lord Chancellor, that it was their Opinion, that *Mr. Dormer* had *not fairly* stated his Accounts; that there was a *Deficiency* of upwards of 20,000 *l.* and that it was necessary for example's sake, he should be committed, according to the *Precedent* set him by the lord *Cowper* in *Dr. Eddisbury's* Case. But the Earl insisting on *Mr. Dormer's Liberty*, they again repeated the *necessity* of making such an Example, but at last left the Earl *fixed* in his Resolution of continuing *Mr. Dormer* at Liberty.

My Lords, this Promise of Freedom to *Mr. Dormer* was only conditional; If he gave in a fair and just Account, and assisted in getting in the Debts. But he was so *far* from complying with these Conditions, that when he gave an Account in Writing of the Ballance of his Cash, amounting to 49,000 *l.* he only inform'd them, that 24,000 *l.* of it was due from one *Wilson* a Banker, *since broke*; but as to the Remainder, the Master, to whom it was given, could never obtain from him any other Notice where it lay, or what was become of it.

Immediately upon this, the Masters were *summon'd*, and *acquainted* with it; and the next morning that Account was *left* with *Mr. Cottingham* for the Lord Chancellor's *perusal*.

Your Lordships will be farther inform'd, that *Mr. Rogers* and *Mr. Hiccocks*, being directed by the Lord Chancellor to procure a Conveyance of *Mr. Dormer's* Estate to them, for the Benefit of the Suitors, it was with the *greatest Difficulty* that *Mr. Dormer* was *prevailed* upon to *comply* with it.

In the next place, my Lords, his Lordship, in his Answer, denies, that he endeavour'd to *conceal* the true State of the Office from the Suitors; or that he *remembers* any thing concern-