

notwithstanding the said Lord *Sommers* well knew that the same had been concluded between his Majesty's Commissioners and the *French* Ambassador, or the Commissioner of the *French* King only; and, that the Purport thereof had never been communicated to the *States-General* at the Time of the Ratification thereof under the Great-Seal of *England*, notwithstanding the Negotiation thereof in *Holland*.

towards the latter End of *September* following; when he had receiv'd an Account, that a Treaty relating to the Succession of the Crown of *Spain* had been adjusted, concluded, and sign'd by the Commissioners named by his Majesty for that Purpose, and the Ambassador and Plenipotentiary of the *French* King. And the said Lord *Sommers* doth deny, That the said Treaty of Partition, or any Proposition for such Treaty, or the Transaction thereof, was communicated to him, the said Lord *Sommers*; nor was he acquainted with the same, or the Design thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the concluding and signing thereof, as aforesaid, than as is herein before mention'd to be done by his Majesty, as aforesaid, and by his and the said Earl of *Portland*'s Letter, herein before-mention'd. And the said Lord *Sommers* doth deny he did, at any Time whatsoever, advise his Majesty to enter into the said Treaty, or any way encourage or promote the same; but having made the Objections before-mention'd in his said Letter to his Majesty, against the Propositions so communicated to him, as aforesaid, and clearly laid open such Thoughts and Observations as occur'd to him upon the said Matter; he did thereby (as he conceived) fully and faithfully discharge his Trust, and the Duty incumbent on him. And the said Lord *Sommers* further saith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had receiv'd, by his Majesty's Command, a Copy of the Treaty relating to the Succession of the Crown of *Spain*, and of Two Secret Articles relating to the Matter of that Treaty; and, that he had likewise his Majesty's Command to prepare the Instruments for the Ratification of the same, and to leave Blanks therein for the Names of the Commissioners of the *States-General*. And accordingly the said Mr. Secretary did prepare the said several Instruments, and did bring the same, so prepar'd, to the said Lord *Sommers*, to pass the same under the Great-Seal; which was done accordingly, the said Lord *Sommers* having a good and lawful Warrant so to do; and the said Ratification was transmitted to his Majesty, to have the same perfected in his Presence: Which Treaty and Secret Articles were to such or the like Effect, as in this Article is set forth; but, for more Certainty, he refers himself to the said Treaty and Articles. And the said Lord *Sommers*, not being privy in any other manner than as aforesaid to the said Treaty, or the Transaction thereof, doth not know when, or in what manner, the same was communicated to the *States-General*.

II. That for the more effectual carrying on the said Treaty, one or more Commission or Commissions was or were prepar'd, amended, enlarg'd, or alter'd by the said Lord *Sommers*, without any lawful Warrant for his so doing; whereunto the said Lord *Sommers*, contrary to the Duty of his said several Offices, and in Violation of the great Trust repos'd in him, in or about the Month of *September*, 1698, without communicating the same to the rest of the then Lords Justices of *England*, or advising in Council with his Majesty's Privy Council thereupon, did presume to affix the Great-Seal of *England*.

That no certain Persons of known Honour, Fidelity, and Experience were therein nominated Commissioners, at the Time of the affixing the Great-Seal of *England* thereto, but a Blank or empty Space was left in the said Commission or Commissions at the Time of the sealing thereof, wherein the Commissioners Names were to be afterwards inserted beyond the Seas; notwithstanding which, an Unlimited Power was thereby granted to the Commissioners, whose Names were therein afterwards to be inserted, as aforesaid, or to either of them, without any written Instructions whatsoever to restrain, guide, or direct them in the Exercise thereof, in his Majesty's Name to confer and treat with the Commissioner or Deputy, or Commissioners or Deputies, of the *French* King, and also with the Commissioners or

Deputies ther any more was requir'd, than that the *English* and *Dutch* should sit still, and *France* it self was to see it executed; and if that were so, what Security ought to be expected, that if, by their being Neuters, the *French* should be successful, they would confine themselves to the Terms of the Treaty, and not attempt to make further Advantages of their Success. And the said Lord *Sommers* saith, That after the writing of his said Letter, he had no Account whatsoever, nor heard any thing of the said Treaty, or knew or heard whether the same was proceeded upon, or not, until to-

wards the latter End of *September* following; when he was acquainted by Mr. Secretary *Vernon*, That he had receiv'd an Account, that a Treaty relating to the Succession of the Crown of *Spain* had been adjusted, concluded, and sign'd by the Commissioners named by his Majesty for that Purpose, and the Ambassador and Plenipotentiary of the *French* King. And the said Lord *Sommers* doth deny, That the said Treaty of Partition, or any Proposition for such Treaty, or the Transaction thereof, was communicated to him, the said Lord *Sommers*; nor was he acquainted with the same, or the Design thereof, or any other Matter relating thereto, at any other Time, or in any other Manner, before he was told of the concluding and signing thereof, as aforesaid, than as is herein before mention'd to be done by his Majesty, as aforesaid, and by his and the said Earl of *Portland*'s Letter, herein before-mention'd. And the said Lord *Sommers* doth deny he did, at any Time whatsoever, advise his Majesty to enter into the said Treaty, or any way encourage or promote the same; but having made the Objections before-mention'd in his said Letter to his Majesty, against the Propositions so communicated to him, as aforesaid, and clearly laid open such Thoughts and Observations as occur'd to him upon the said Matter; he did thereby (as he conceived) fully and faithfully discharge his Trust, and the Duty incumbent on him. And the said Lord *Sommers* further saith, That afterwards Mr. Secretary *Vernon* did acquaint him, that he had receiv'd, by his Majesty's Command, a Copy of the Treaty relating to the Succession of the Crown of *Spain*, and of Two Secret Articles relating to the Matter of that Treaty; and, that he had likewise his Majesty's Command to prepare the Instruments for the Ratification of the same, and to leave Blanks therein for the Names of the Commissioners of the *States-General*. And accordingly the said Mr. Secretary did prepare the said several Instruments, and did bring the same, so prepar'd, to the said Lord *Sommers*, to pass the same under the Great-Seal; which was done accordingly, the said Lord *Sommers* having a good and lawful Warrant so to do; and the said Ratification was transmitted to his Majesty, to have the same perfected in his Presence: Which Treaty and Secret Articles were to such or the like Effect, as in this Article is set forth; but, for more Certainty, he refers himself to the said Treaty and Articles. And the said Lord *Sommers*, not being privy in any other manner than as aforesaid to the said Treaty, or the Transaction thereof, doth not know when, or in what manner, the same was communicated to the *States-General*.

II. and III. To the Second and Third Articles the said Lord *Sommers* saith, That he having receiv'd his Majesty's express Commands, by his Letter mention'd in his Answer to his First Article, to send to his Majesty full Powers, under the Great-Seal of *England*, for negotiating the said Treaty, with Blanks for his Majesty's Commissioners Names; which he humbly conceives, and is advis'd, was a sufficient Warrant for him to pass a Commission under the Great-Seal for that Purpose; and the same being prepar'd in usual Form of Commissions of full Powers, with Blanks for Commissioners Names, according to his Majesty's Directions, he did affix the Great-Seal to the same; and the said Commission was sent to his Majesty, then in *Holland*, to be perfected in his Presence, by inserting the Names of such Persons as his Majesty should think fit to commissionate therein (as he conceives might legally be done); which Commissioners were to receive their Instructions from his Majesty, for the Execution of their said Power, together with their said Commission, in usual manner: But what Instructions, or whether any Instructions in Writing were given to the Commissioners, in relation to the executing the said Power (the same no ways concerning the said Lord *Sommers*) he knows not. And the said Lord *Sommers* saith, He did desire his Majesty, that a particular Warrant for the said Commission (which had been before sent by Mr. Secretary *Vernon* to his

Deputies of the *States-General*, for preserving the publick Peace, and touching the Succession to the Crown of *Spain*; and his Majesty did thereby engage himself to approve, ratify, and confirm whatsoever should be thereupon concluded by them, or either of them.

III. That the said Lord *Sommers*, contrary to the Duty of his said Office of Lord Chancellor, did affix the Great-Seal of *England* to the said Commission or Commissions, not having first receiv'd any lawful Warrant for that Purpose: In hopes of concealing which evil and most dangerous Practice, the said Lord *Sommers*, after he had sealed the said Commission or Commissions, used his Endeavours to procure a Warrant to be transmitted to him, for affixing the Great-Seal to the said Commission or Commissions, and that it might not be known but that he had it in due Time.

IV. That the said Lord *Sommers*, contrary to the Duty of his said several Offices, affixed the Great-Seal of *England* to the Ratification of the said Treaty, made in the Year of our Lord 1698, not having first communicated the same to the rest of the then Lords Justices of *England*, or advis'd in Council with his Majesty's Privy-Council thereupon; and at the Time of his affixing the Great-Seal thereto, one entire blank Sheet, and many other Blanks, were left in the said Ratification, with an Intent to be afterwards fill'd up by other Persons beyond the Seas, as should be thought fit.

V. That in the Year of our Lord 1699, another Treaty was enter'd into, in pursuance of the said Treaty made in the Year 1698, and concluded by and between his Majesty, the *French King*, and the *States-General*, and also ratified under the Great-Seal of *England*, then in the Custody of the said Lord *Sommers*; whereby the Kingdom of *Spain* (in case his Catholick Majesty should die without Issue) was agreed to be divided, and many large Territories thereof were allotted to the *Dauphin* for his Share: Which Treaties were evidently destructive of the Trade of this Realm, dishonourable to his Majesty, highly injurious to the Interest of the Protestant Religion, and manifestly tended to disturb the General Peace of *Europe*, by altering the Ballance of Power therein, and strengthening *France* against the good Friends and ancient Allies of our Sovereign Lord the King.

VI. That whereas by the Laws and Usages of this Realm all Commissions under the Great-Seal of *England*, for the making any Treaties or Alliances with any Foreign Princes, States, or Potentates, and all Ratifications under the Great-Seal of all such Treaties and Alliances, ought to be enrolled and enter'd on Record in the Court of *Chancery*, with or by the Prothonotary of the said Court, for a perpetual Memorial thereof; and, that the Merchants and other Subjects of *England*, having Commerce or Correspondence in Foreign Parts, may not, through Ignorance of the same, incur the Pains and Penalties by the Law due to those who shall any ways infringe, break, or act contrary to such Treaties; he the said Lord *Sommers*, not

his Majesty (as he inform'd the said Lord *Sommers*) for his signing) might be signed and returned: Not that he doubted his Majesty's said Letter to be a sufficient Warrant, but for that such Warrant might be more proper to be produced, if Occasion should require, than his Majesty's said Letter; which, by reason of other Matters therein obtain'd, ought not to be produced without his Majesty's Permission, and which is now made use of by Majesty's gracious Leave. And the said Lord *Sommers* further saith, That his Majesty having by his own, and the Earl of *Portland's* Letter before-mention'd, directed, That his Majesty's said Commands should be kept secret; he did not communicate the making of the said Commission, otherwise than to the Persons mention'd in his Answer to the said First Article.

IV. To the Fourth Article he saith, That Mr. Secretary *Vernon* having prepar'd, by his Majesty's Command, the Instruments for Ratification of the said Treaty, with Blanks therein, as is before set forth, he did affix the Great-Seal to the said Ratification with such Blanks (which he conceives, and is advis'd, he might lawfully do); and having also his Majesty's Command, that the said Treaty should be kept secret, he did not communicate the same to the rest of the then Lords Justices, or his Majesty's Privy Council; which besides he conceiv'd was unnecessary to be done, in regard his Majesty had then, by his Commissioners, perfected the said Treaty, so that the same could not be alter'd.

V. To the Fifth Article the said Lord *Sommers* saith, He believes that in the Year One thousand Six hundred Ninety and nine, another Treaty was enter'd into and concluded between his Majesty, the *States-General*, and the *French King*, to such or suchlike Effect as in this Article is mentioned; to which Treaty, for more Certainty thereof, he referreth himself: And denieth, that he had any Knowledge of such Treaty, or any Transaction in order thereunto, save only that a Draught of the said Treaty was read over in the Presence of divers of the Lords of his Majesty's Privy Council (whereof the said Lord *Sommers* was one); to which Draught the said Lord *Sommers*, as well as others then present, did make several Objections; but they were inform'd by his Majesty's Plenipotentiaries for transacting the said Treaty, who were then also present, That the said Treaty was so far perfected, that nothing could then be alter'd therein; and his Majesty afterwards, by his Warrant, requiring the ratifying of the said Treaty under the Great-Seal, he did affix the Great-Seal to such Ratification, being (as he conceives) oblig'd so to do.

VI. To the Sixth Article he saith, He conceives it was not incumbent upon him, as Lord Chancellor, to see the Commissions or Ratifications, in this Article mention'd, enroll'd, the same being prepar'd and brought to the Great-Seal by the Secretaries of State ready engross'd; and when sealed, taken away by them, and the Original Treaties remaining in their Custody: But the Care of enrolling the same, if necessary, doth (as he conceives) belong to the Prothonotary of the Court of *Chancery*.

he the said Lord *Sommers*, not minding

minding the Duty of his Office, did not in any manner enrol or enter on Record, or cause to be enrolled or enter'd on Record, any of the said Commissions or Ratifications in the foregoing Articles mention'd, as by the Duty of his Place he should and ought to have done; but so to do did totally neglect and omit, in Breach of his Duty, and in Violation of the Laws of this Realm.

VII. That the said Lord *Sommers*, when the Custody of the Great-Seal of *England* was committed to him, did swear well and truly to serve our Sovereign Lord the King, and his People, Poor and Rich, after the Laws and Usages of this Realm, and truly to counsel the King, and his Counsel to keep, and not to know nor suffer the Hurt or Disinheriting of the King, or, that the Rights of the Crown should be decreas'd, as far forth as he might lett it; and, if he could not lett it, that he would make it clearly and expressly to be known unto the King, with his true Advice and Counsel; and, that he should do and purchase the King's Profit in all he reasonably might, or to that effect; and the said Lord *Sommers* afterwards took the said Oath, as Lord-Chancellor of *England*.

That the said Lord *Sommers*, being Lord-Keeper of the Great-Seal, or Lord-Chancellor of *England*, and One of his Majesty's most Honourable Privy Council, whilst this Nation was engag'd in a tedious and most expensive War against the *French* King, for preserving the Ballance and Liberties of *Europe*, and almost exhausted with Supplies and Taxes for carrying on the same, and under such heavy Debts, as without the utmost Frugality, or laying insupportable Taxes on the Commons of *England*, were impossible to be satisfied; contrary to his said Oath, did pass many great, unreasonable, and exorbitant Grants under the Great-Seal of *England*, of divers Manors, Lordships, Lands, Tenements, Hereditaments, Revenues, and Interests belonging to the Crown of *England*, amounting to a most prodigious and excessive Value; and did advise, promote, and procure divers great, unreasonable, and exorbitant Grants to be made of several of the late forfeited Estates in *Ireland*, in Contempt of the Advice of his Majesty's most Dutiful and Loyal Subjects the Commons of *England* in Parliament assembled, and without any Regard to his Majesty's most gracious Assurance thereupon to both Houses of Parliament; and engag'd to procure, and accordingly did procure, divers Acts prepar'd for confirming the said Grants in Parliament in *Ireland*, to be approv'd in Council in *England*, and afterwards remitted the same, under the Great-Seal of *England*, to be pass'd into Laws in *Ireland*.

VIII. That the said Lord *Sommers*, during the Time of his being Lord-Keeper of the Great-Seal, and Lord-Chancellor of *England*, did not only receive and enjoy the Fees, Profits, and Perquisites of, or belonging to the Great-Seal, establish'd by Law, as a sufficient and ample Recompence and Reward for the faithful Discharge of that high Station; but also, as a further Encouragement, through his Majesty's most abundant Grace and Bounty, received an annual Pension or Allowance from the Crown of Four thousand Pounds, and many other Profits and Advantages; notwithstanding which, the said Lord *Sommers*, not being contented therewith, contrary to his said Oath, begg'd and procur'd, for his own Benefit, many great, unreasonable, and exorbitant Grants of several Manors, Lands, Tenements, Rents, Hereditaments,

VII. To the Seventh Article he saith, That when the Great-Seal was committed to his Custody, he took the Oath of Office, to the Effect in that Article set forth; and, during the Time he had the Custody thereof, he did carefully, diligently, and honestly endeavour to keep the said Oath, and hopes and believes he hath duly observ'd the same; and doth acknowledge, That, during the Time he was Lord Keeper and Lord-Chancellor, he did pass several Grants to divers Persons, of several Lands, Tenements, and Hereditaments, belonging to his Majesty in Right of his Crown of *England*; but saith, That before any of them came to the Great-Seal, the same were regularly pass'd thro' the proper Offices, and brought with sufficient Warrants for the Great-Seal; and believes more considerable Grants have pass'd in the like Number of Years, in most his Predecessors Times; and conceives, and is advis'd, That being required by his Majesty, by Warrant, to pass the same, he ought so to do; and denies, That he did ever advise, promote, or procure any Grant to be made to any Person whatsoever, of any Forfeited Estate in *Ireland*, or did procure any Act or Bill prepar'd for confirming any such Grant in the Parliament in *Ireland*, to be approv'd in the Privy Council in *England*; and saith, That what Bills of this Nature were remitted under the Great-Seal of *England*, to be pass'd into Laws in *Ireland*, the same were first approv'd and pass'd in the Privy Council in *England*, according to the usual Form in such Cases; and being so approv'd, were, by Order of Council, sent to the said Lord *Sommers*, who was by the said Order required to affix the Great-Seal thereto.

VIII. To the Eighth Article he saith, He did, during the Time he had the Custody of the Great-Seal, receive the Profits and Perquisites thereto belonging, which before his Time were become very inconsiderable; and did also receive an Annual Pension or Allowance from his Majesty, of Four thousand Pounds, being the like Pension that had been allow'd to several of his Predecessors; but denies, that he did ever beg, or use any Means to procure any Grant whatsoever from his Majesty for his own Benefit; but saith, That what his Majesty was pleas'd to give, proceeded from his Majesty's own Motion, and of his meer Bounty; and (as his Majesty was pleas'd to declare upon that Occasion) as an Evidence of his Gracious Acceptation of the said Lord *Sommers*'s zealous Endeavours for his Service; and the same was done without

reditaments, and Revenues belonging to the Crown of *England*.

That in, or about the Month of *April*, 1697, the said Lord *Sommers*, being then Lord Chancellor of *England*, and One of his Majesty's most Honourable Privy Council, contrary to his said Oath, did procure and pass a Grant, under the Great Seal of *England*, without any real Consideration whatsoever, to *Joseph Jekyll*, Esq; and his Heirs for ever, of the Manour or Manours of *Rygate* and *Howleigh*, with all and singular their Rights, Members, and Appurtenances, situate, and being in the Parish of *Rygate*, or elsewhere, within the County of *Surry*; and of all Quit-Rents, Rents of Assize, Free-Rents, Conventional-Rents, Copyhold and Customary-Rents, and all other Rents whatsoever, to the said Manour or Manours belonging, or appertaining, with the Site of the ruined Castle, and of all other Demesne-Lands of the said Manour or Manours, with the Rents reserved on any Leases then in being, of any Parts thereof, and of all other Lands, Meadows, Feedings, Pastures, Messuages, Houses, Edifices, Buildings, Barns, Stables, Dove-houses, Tolls of Markets, or Fairs, with the Market-house there; and also of all Warrens, Chases, Parks, Commons, Woods, Underwoods, Wood-lands, Wastegrounds, Courts-Leet, Courts-Baron, and other Court-Services, Franchises, Heriots, Fines, Issues, Amerciaments, and all other Profits and Perquisites of the said Courts, Rights, Royalties, Jurisdictions, and of divers other Matters, Hereditaments, and Appurtenances to the said Manour or Manours, or either of them, or to the Royalties thereof belonging, or in any wise appertaining, which Premises were Parcel of the Demesnes and Revenues of the Crown, and of the Value of Twelve thousand Pounds, and upwards.

That under Pretence of purchasing divers Fee-Farm Rents, and other Rents, vested in Trustees for Sale thereof, in pursuance of several Acts of Parliament, made in the Reign of his late Majesty King *Charles* the Second, the said Lord *Sommers*, in the Year of our Lord 1697, procured a Warrant from his Majesty, under his Sign-Manual, to the Commissioners of the Treasury then in being, to contract, or give Warrant to the Trustees for Sale of Fee-Farm Rents, to contract with *Humphry Hetherington*, Esq; or such as he should nominate, for as many Fee-Farms and other Rents, then remaining unfold (except such Rents as were set apart for Payment of Pensions in the Pension-Deed as should amount unto Eight hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that, upon such Contract, the said Commissioners of the Treasury should give Warrant for conveying the said Rents to the said *Humphry Hetherington*, or such as he should appoint, and his Heirs.

That under the like Pretence, and at or about the same Time, the said Lord *Sommers* procured another Warrant from his Majesty, under the Sign-Manual, to the said Commissioners of the Treasury, to contract, or give Warrant to the said Trustees to contract, with *Richard Adney*, Esq; or such as he should nominate, for as many Fee-Farm and other Rents, then remaining unfold (except as aforesaid) as should amount to Seven hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that, upon the said Contract, the said Commissioners should give Warrant for conveying the said Rents unto the said *Richard Adney*, or such as he should nominate, and his Heirs.

That under the like Pretence, and at, or about the same Time, the said Lord *Sommers* procured another Warrant from his Majesty, under his Sign-Manual, to the said Commissioners of the

without any previous Sollicitation by him the said Lord *Sommers*, or any other to his Knowledge or Belief. And that in the Year One thousand Six hundred Ninety-seven, his Majesty, of his own Motion, did grant, for the Benefit of the said Lord *Sommers*, the Manour, or Manours, of *Rygate* and *Howleigh*, as in the said Article is mentioned; but the same was, and is far short of the Value thereby suggested. And the said Lord *Sommers* further saith, He never pretended to purchase in his own Name, or in the Name or Names of any other Person, or Persons, in Trust for him, any of the Fee-Farm Rents, or other Rents vested in Trustees for Sale. But his Majesty taking notice, that several of the said Fee-Farm Rents and other Rents, so vested in Trustees, were unfold, and the said Trustees being, by the Acts of Parliament vested in them the said Rents, declared to hold the same for the Benefit of his Majesty, his Heirs and Successors, his Majesty did, in the Year One thousand Six hundred Ninety-seven, of his own Motion, without any Sollicitation, Procurement or Means used by the said Lord *Sommers*, acquaint the then Lords Commissioners of the Treasury, or some or one of them, That it was his Majesty's Pleasure, that Two thousand One hundred Pounds *per Annum* of those Rents should be granted, to or for the Benefit of the said Lord *Sommers*, and his Heirs; and that all proper Methods should be used for vesting the same for his Benefit, as of his Majesty's Free Gift. And the said Acts of Parliament having directed, That the said Trustees for Sales, should convey the said Rents, pursuant to Contracts to be signed by the Lord Treasurer, or Lords Commissioners of the Treasury for the Time being, or any Two of them, for the Satisfaction of the said Trustees only, and according to the Method that had been used from the Time of making the said Acts, in passing Grants of any of the said Rents, even such as were merely of the Bounty of his Majesty's Predecessors, and of his Majesty; such Warrants were made by his Majesty to the Lords Commissioners of the Treasury, to contract, or give Warrants to the Trustees to contract for the said Rents; and such Contracts were pursuant thereunto made, and such Grants of the said Rents were passed, as in the said Article is mentioned; and the Money mentioned in such Contracts was for the perfecting of his Majesty's said intended Free Gift, discharged by Tallies struck for that Purpose. And the said Lord *Sommers* saith, The said Contracts were not intended, or designed to make the Grantees of the said Rents appear to be Purchasers; but the said Lord *Sommers* always acknowledged he received the said Grants of his Majesty's Bounty; and he humbly conceives it was lawful for him so to accept the same.

the Treasury, to contract, or give Warrant to the said Trustees to contract with *Samuel Newton*, Esq; or such as he should nominate, for as many Fee-farm and other Rents, then remaining unsold, (except as aforesaid) as should amount to Six hundred Pounds *per Annum*, at the Rate of Sixteen Years Purchase; and that, upon such Contract, the said Commissioners should give Warrant for conveying the said Rents unto the said *Samuel Newton*, or such as he should nominate, and his Heirs.

That in Pursuance of Warrants of the said Commissioners of the Treasury thereupon, certain Contracts were made, or pretended to be made, with the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, for the real Sale of divers Fee-farm Rents, and other Rents, of the several and respective yearly Values aforesaid; by Vertue whereof the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton* became oblig'd to pay into the Receipt of his Majesty's *Exchequer* at *Westminster*, for the Purchase of the several and respective Rents to them respectively to be convey'd, as aforesaid, the Sums herein after mentioned; that is to say, the said *Humphry Hetherington* Twelve thousand Eight hundred Pounds, the said *Richard Adney* Eleven thousand Two hundred Pounds, and the said *Samuel Newton* Nine thousand Six hundred Pounds.

That in Pursuance of such Contracts, or pretended Contracts, thro' the Power of the said Lord *Sommers*, and by his Means and Procurement, divers Fee-farm Rents, and other Rents, were, by certain Indentures Tripartite of Bargain and Sale, bearing Date on or before the Sixth Day of *January*, 1697, in Consideration of Three thousand Two hundred Pounds, therein mention'd to have been paid by the said *Humphry Hetherington* unto his Majesty at the Receipt of his *Exchequer* at *Westminster*, or by other Assurance in the Law, granted and convey'd by the said Trustees, by the Appointment of the said *Humphry Hetherington*, to *Leonard Hancock*, of *Chestnut* in the County of *Hertsford*, Esq; and *John Warner*, of the Parish of *St. Clement Danes* in the County of *Middlesex*, Goldsmith, and their Heirs.

And by other Indentures of Bargain and Sale of the same Date, or other Assurance in the Law, divers other Fee-farm Rents, and other Rents therein mention'd, in Consideration of Nine thousand Six hundred Pounds, therein mention'd to have been paid by the said *Humphry Hetherington* to his Majesty, at the Receipt of his *Exchequer* at *Westminster* (being the Residue of the said Sum of Twelve thousand Eight hundred Pounds) were, by the said Trustees, granted and convey'd to the said *Humphry Hetherington*, and his Heirs; which Fee-farm, and other Rents, so convey'd unto or by the Appointment of the said *Humphry Hetherington*, amount to the full yearly Value of Eight hundred Pounds.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in the Law, and in Consideration of Two thousand Four hundred Pounds, therein mention'd to have been paid by the said *Richard Adney* unto his Majesty, at the Receipt of his *Exchequer* at *Westminster*, other Fee-farm Rents, and other Rents, were, by the Appointment of the said *Richard Adney*, granted and convey'd by the said Trustees to the said *Leonard Hancock* and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in the Law, in Consideration of Eight thousand Eight hundred Pounds, in the same Indentures mention'd to have been paid by the said *Richard Adney* to his Majesty, at the Receipt of his *Exchequer* at *Westminster* (being the Residue of the said Sum of Eleven thousand Two hundred Pounds) divers other Fee-farm Rents, and other Rents therein mention'd, were granted and convey'd by the said Trustees to the said *Richard Adney* and his Heirs; which Fee-farm, and other Rents so convey'd to, or by the Appointment of the said *Richard Adney*, amount to the full yearly Value of Seven hundred Pounds *per Annum*.

And by other Indentures of Bargain and Sale, bearing Date on or about the Twenty-fifth Day of *April*, 1698, or other Assurance in the Law, in Consideration of Two thousand Four hundred Pounds, therein mention'd to have been paid by the said *Samuel Newton* to his Majesty, at the Receipt of his *Exchequer* at *Westminster*, other Fee-farm Rents, and other Rents therein mention'd, were, by the Appointment of the said *Samuel Newton*, granted and convey'd by the said Trustees, to the said *Leonard Hancock* and *John Warner*, and their Heirs.

And by other Indentures of Bargain and Sale, of the same Date, or other Assurance in Law, in Consideration of Seven thousand Two hundred Pounds, therein mention'd to have been paid by the said *Samuel Newton* to his Majesty, at the Receipt of his *Exchequer*, at *Westminster* (being the Residue of the said Sum of Nine thousand Six hundred Pounds) divers other Fee-farm Rents, and other Rents therein mention'd, were granted and convey'd by the said Trustees, to the said *Samuel Newton*, and his Heirs; which said several Rents so convey'd unto, or by the Appointment of the said *Samuel Newton*, amount to the yearly Value of Six hundred Pounds.

That the said several Manours and Rents aforesaid, were granted to the said *Joseph Jekyl*, *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and their Heirs respectively, as aforesaid, in Trust for the said Lord *Sommers* and his Heirs.

IX. That the said Lord *Sommers*, in order to procure a Grant of the said Fee-farm Rents for his own Benefit, whilst he was Lord-Chancellor of *England*, and One of his Majesty's most Honourable Privy-Council, whilst his Majesty was engaged in the said War, and the Nation under such heavy Debts, as aforesaid, did enter into several Treaties, and had many Communications

with

IX and X. To the Ninth and Tenth Articles the said Lord *Sommers* saith; That after his Majesty had given such Directions to the Lords of the Treasury, for granting Fee-farm Rents, and other Rents, to the yearly Value aforesaid, for the Benefit of the said Lord *Sommers* and his Heirs; and after Warrants were signed by the Lords of the Treasury to the said Trustees, for making

with divers Persons entrusted with the Care and Management of the said Fee-farm Rents; and particularly with *Reginald Marriott*, of the Parish of *St. Clement Danes*, in the County of *Middlesex*, Auditor of the Rates, or acting as Auditor; and with *John Digby*, of the Parish of *St. Bride's, London*, Clerk of the Trustees for Sale of the said Fee-farm Rents, and other evil-dispos'd Persons; and for encouraging the said *Marriott*, *Digby*, and others, to discover to him such particular Fee-farm and other Rents as then remain'd undispos'd of, to the Intent the said Lord *Sommers* might beg the same, he the said Lord *Sommers* contracted and agreed with the said Mr. *Marriott*, to give the said *Marriott*, for himself and his Accomplices, as a Reward for the said Discovery, one full Fourth Part of all such Rents so discover'd, whereof the said Lord *Sommers* should procure a Grant from the Crown: And accordingly the said several Grants from the said Trustees to the said *Hancock* and *Warner*, being together of the Yearly Value of Five hundred Pounds *per Annum*, and upwards, were so made by the Direction of the said Lord *Sommers*, in Trust for the said *Marriot*, *Digby*, or others.

X. That notwithstanding the said pretended Contracts and Payments, there was not any Sum of Money whatsoever really and *bona fide* paid, as the Consideration of the Conveyances of the said Rents from the said Trustees; but such Contracts and Payments of the said several Considerations (amounting in the whole to Thirty-three thousand Six hundred Pounds) were colourably and fraudulently contriv'd and made by Direction of the said Lord *Sommers*, contrary to his said Oath, in Deceit of his Majesty, and Elusion of the said Acts of Parliament.

XI. That many Quit-Rents and Copyhold-Rents standing in Charge as Parcel of, or belonging to several Manours, or reputed Manours, Rents reserv'd upon Leases or Estates, the Reversion whereof was in his said Majesty King *Charles* the Second at the making the said Acts, Rents convey'd before in Lease, or granted to other Persons; Rents appropriated by, or in pursuance of Act or Acts of Parliament, for Payment of Pensions, Stipends, Salaries, Annuities, Alms, and Allowances for the Maintenance of Grammar-Schools or Scholars; or for, or towards the Reparation of Churches, Chapels, Highways, Causeys, Bridges, Schools, Alm-houses, Castles, or other Uses; and many Quit-Rents of Manours, and other Rents by Act of Parliament united and annex'd to the Castle of *Windsor*, with Intent to support and maintain the Yearly Reparations and Charges of the said Castle, and discharge and pay the Fees and Wages of the Officers, Servants, and Attendants in the same Castle, and the Forests, Chases, and Parks to the same belonging, and for

making Contracts for conveying Rents of the said Yearly Value, for the Benefit of the said Lord *Sommers*, it did appear, that the said intended Contracts and Grants could not be perfected, for that neither the Lords of the Treasury, nor the said Trustees, were sufficiently inform'd what Fee-farm Rents, or other Rents, remain'd undispos'd of; so that the whole Benefit of his Majesty's intended Bounty would have been lost, without Information could be gain'd of such particular Rents. And the said Lord *Sommers* being inform'd, that *Reginald Marriott* and *John Digby*, in this Article named, were the most likely, if not the only Persons capable, to give Information therein, Application was made to them for that Purpose; and the said *Marriott* and *Digby* being so apply'd to, after the said Warrants of his Majesty and the said Lords of the Treasury were executed, as aforesaid, did refuse to give any Account of such Rents, unless they might have, as a Reward for their so doing, Rents amounting to near a Fourth Part of such Rents whereof they should give such Account, convey'd in Trust for them in such manner as in the said Article is mention'd; which the said Lord *Sommers* did (as he conceives he lawfully might, it being only to his own Loss and Prejudice) comply with, not in order to any such End as is suggested in the said Article, but that he might perfect the Grant before design'd and appointed to be made to him by his Majesty, of his own Free-will, and not at the said Lord *Sommers's* Sollicitation; the Discovery of any of the said Rents not being made by the said *Marriott* and *Digby*, or any other Person, till after the said Warrants of his Majesty and the Lords of the Treasury, as aforesaid. And accordingly the several Grants, in this Article mention'd, were made to *Hancock* and *Warner*, in Trust for the said *Marriott* and *Digby* (as was affirm'd to the said Lord *Sommers*); and the said Lord *Sommers* saith, There was not any Sum of Money paid as the Consideration of the Grants of the said Rents; but the Contracts were made, and the Payment of the several Considerations thereof were discharg'd, in the Manner, and for the Reasons, herein before set forth; and were not colourably or fraudulently contriv'd in Deceit of his Majesty, or Elusion of the said Act of Parliament.

XI. To the Eleventh Article the said Lord *Sommers* saith, He believeth, that several of the Rents mention'd to be granted in Trust for him, as aforesaid, had been before granted to other Persons by the said Trustees; and, that others of them were not in the Power of the said Trustees to grant, which was and is very much to his Prejudice; and believes the same were inserted by mistaken Informations given touching the same, and not out of any Design; and the like Mistakes have frequently happen'd in other Grants of other of the said Rents; and denies, that to his Knowledge or Belief, any of the said Rents so granted for his Benefit, were ever united or annexed to the Castle of *Windsor*, for any Purpose whatsoever; or, that any Oppression or Vexation hath happen'd to any of his Majesty's Subjects by reason of the granting of any of the said Rents; and, as he believes, little or no new Charge to the Crown.

many Years apply'd according to the Intention of the said Act; and also many Quit-Rents of or belonging to divers ancient Manours, heretofore and yet Parcel of the Demesnes or Possessions of the Crown, as if the same had been entire Fee-farm Rents issuing out of those Manours, were, by the aforesaid several Indentures of Bargain and Sale, thro' the Direction and Power of the said Lord *Sommers*, convey'd by the said Trustees for Sale of Fee-farm Rents, to the said *Humphry Hetherington*, *Richard Adney*, and *Samuel Newton*, and to the said *Hancock* and *Warner*, and their Heirs, or unto some of them, contrary to the true Intent and Meaning of the said Acts of Parliament, to the great Vexation and Oppression of many of his Majesty's good Subjects, and creating many new and unreasonable Charges on other Revenues of the Crown.

XII. That by the Direction of the said Lord *Sommers*, the said *Humphry Hetherington*, *Richard Adney*, *Samuel Newton*, *Leonard Hancock*, and *John Warner* surrender'd several of the said Rents to them, granted as aforesaid, amounting to the yearly Value of Three hundred Forty-seven Pounds Eleven Shillings and Five Pence Farthing, on Suggestion, that the same were either convey'd before in Lease set apart for Payment of Pensions, old Supers bad or illeivable, or Part thereof bad or illeivable, or wrong convey'd: And the said Lord *Sommers*, in the Year of our Lord 1699, being then Lord-Chancellor of *England*, and One of his Majesty's most Honourable Privy-Council, in Breach of his Duty, and contrary to the Laws and Statutes of this Realm, procur'd other Rents of the yearly Value of Three hundred Ninety-one Pounds Three Pence Half-penny, to be allow'd by way of Reprise, and to be convey'd to the said *Richard Adney* and his Heirs, in Trust for the said Lord *Sommers* and his Heirs, as if the said yearly Rents of Three hundred Forty-seven Pounds Eleven Shillings and Five Pence Farthing, so surrender'd, had been really and *bona fide* purchas'd in pursuance of the said Acts for Sale of Fee-farm Rents.

XIII. That in the Year of our Lord 1695, the said Lord *Sommers*, being then Lord-Keeper of the Great-Seal of *England*, and also One of his Majesty's most Honourable Privy-Council, together with *Edward* Earl of *Orford*, then First Commissioner for executing the Office of Lord High-Admiral of *England*, and Commander in Chief of his Majesty's Navy Royal, and One of his Majesty's most Honourable Privy-Council, *Richard* Earl of *Bellamont*, in the Kingdom of *Ireland*, Governor of *New-York*, *New-England*, and others then in high Stations, and in great Power and Authority, procur'd a Commission to be granted unto one *William Kidd*, a Person of evil Fame and Reputation, and since that Time convicted of Piracy, to apprehend and take into his Custody divers Persons therein named, and all such Pirates as the said *Kidd* should meet with upon the Coasts or Seas of *America*, or in any other Seas or Parts, with their Ships and Vessels, and also such Merchandizes, Goods, and Wares as should be found on board or with them. And afterwards the said Lord *Sommers*, in the Year of our Lord 1697, with the Assistance of the said Earl of *Orford*, and other Persons aforesaid, procur'd a Grant from his Majesty, and the said Lord *Sommers* pass'd the same under the Great-Seal of *England*, whereby all and whatsoever Ships, Vessels, Goods, Merchandizes,

XII. To the Twelfth Article the said Lord *Sommers* saith, That his Majesty having design'd, of his Bounty to him, the said Lord *Sommers* and his Heirs, Fee-farm and other Rents, to the annual Value of the said Grants mention'd; and the said Trustees having covenanted, as was usual for them to do, That they had not made any former or other Grant, or Conveyance, of the said Rents, or any of them; and Three hundred Forty-seven Pounds Eleven Shillings and Three Pence Farthing *per Annum* of the said Rents so granted, as aforesaid, having appear'd to be granted before, or not to be grantable by the said Trustees, or not leviable on Surrender of such Rents, the said Trustees, by Warrant of the Lords Commissioners of his Majesty's Treasury (who were thereunto sufficiently authoriz'd) in Lieu and Satisfaction of the said Rent, and Arrears thereof, and in Discharge of the Covenants of the said Trustees, did, the Twenty-first Day of *October*, 1699, grant divers other Rents, amounting to the yearly Value of Three hundred Ninety-one Pounds and Three Pence Half-penny, to *Richard Adney* and his Heirs, as in the said Article is mention'd; which were not so granted, as if the said yearly Rents of Three hundred Forty-seven Pounds Eleven Shillings and Three Pence Farthing had been *bona fide* purchased, but was in Lieu and Reprise for the same as granted of his Majesty's Bounty, for the Benefit of the said Lord *Sommers* and his Heirs, as aforesaid; which he conceives might be, and was lawfully done.

XIII. To the Thirteenth Article the said Lord *Sommers* doth admit, That in the Year 1695, he being then Lord-Keeper of the Great-Seal of *England*, his Majesty being inform'd, as the Truth was, That *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and several other of his Majesty's Subjects in his Plantations of *America*, had associated themselves, and did frequently commit great Piracies, Robberies, and Depredations on the Seas in the Parts of *America*, and other Parts, to the Hindrance and Discouragement of Trade and Navigation; for preventing the said Mischief, did grant a Commission, as in this Article is mention'd, unto *William Kidd*, in this Article named (who was then Commander of the Ship call'd *The Adventure Galley*, and was not then, to the Knowledge or Belief of the said Lord *Sommers*, esteem'd a Person of ill Fame or Reputation) to apprehend, seize, and take into his Custody the said *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, and all such other Pirates as he should meet with in the Seas of *America*, or any other Seas, with their Ships and Vessels, and such Merchandizes, Moneys and Wares as should be found on board or with them, and to cause such Pirates to be brought to a legal Trial: the granting of which Commission was then apprehended to be necessary for the Preservation of Trade and Naviga-

dizes, Treasure, and other Things whatsoever, which since the Thirtieth Day of *April*, 1696, had been taken or seiz'd upon or with, or did belong to, or which should be taken or seiz'd upon or with, or did, or should belong to *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze* (in the said Letters Patents mention'd to have been complain'd of, and inform'd against, for committing many Robberies, Piracies, and Depredations upon the Seas in the Parts of *America*, and other Places, but never convicted or attainted for the same, or which since the said Thirtieth Day of *April*, 1696, had been taken or seiz'd upon, or which did, or should belong to any of the Adherents of the said *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, or any other Pirates, Free-booters, and Sea-rovers, by the said *William Kidd*, or other Commander of *The Adventure Galley*; or which by, or by means of, the said Ship or Galley should be taken, or forced on Shore in any of his Majesty's Plantations of *America*, were granted unto the said *Richard Earl of Bellamont*, and unto *Edmund Harrifon* Merchant, *Samuel Newton* Gent. *William Rowland* Gent. *George Watson* Gent. and *Thomas Reynolds*, of *St. Martins*, their Executors, Administrators, and Assigns, to their own sole Use and Benefit, and as their own proper Goods and Chattels, without any Account thereof or therefore to be made: In which Grant the Name of the said *Samuel Newton* was used in Trust, and for the only Benefit and Advantage of the said Lord *Sommers*: Which said Grant under the Great-Seal of *England* manifestly tended to the Obstruction and Discouragement of Trade and Navigation, the great Loss and Prejudice of Merchants and others, being his Majesty's Subjects, or Subjects of the Friends and Allies of his Majesty, and the Dishonour of the King and Kingdom; and the said Lord *Sommers* was, by procuring and passing the said Grant, Guilty of a notorious Breach of his Duty.

*Thomas Reynolds*, and *Samuel Newton* of the other Part; They, the said Earl of *Bellamont*, *Edmund Harrifon*, *William Rowley*, *George Watson*, *Thomas Reynolds*, and *Samuel Newton*, did Covenant, Promise, and Agree with his Majesty, his Heirs and Successors, well and truly to account for, and deliver upon Oath, to the Use of his Majesty, his Heirs and Successors, or the Commissioners of his or their Treasury, or his or their High-Treasurer, a clear Tenth Part (the whole in Ten equal Parts to be divided) of all and every such Ships, Vessels, Goods, Merchandizes, and other Things whatsoever, which in and by the said Grant should be given, or which should from Time to Time be taken, or seiz'd, or secur'd by them, or any of them, their, or any of their Executors or Administrators, Officers, Agents, Servants, or Assigns, by Vertue or Colour thereof. To which Grant and Indenture the said Lord *Sommers*, for more Certainty, referreth himself; and further saith, He conceives, and is advis'd, That the said Grant did not any way tend to the Obstruction or Discouragement of Trade or Navigation, or to the Loss or Prejudice of Merchants, or others his Majesty's Subjects, or the Subjects of his Friends or Allies, nor to the Dishonour of his Majesty or the Kingdom; nor was the passing of the same any Breach of the Duty of the said Lord *Sommers*; but the said Grant was form'd as a Recompence to the said Grantees, who, at their own Charge, had provided and fitted out the said Ship, to enable the said *William Kidd* to execute the Powers in the said Commission mention'd, whereby the Publick might have receiv'd great Benefit, had the said *William Kidd* faithfully discharg'd the Trust in him reposed by his Majesty and the said Grantees: Which he failing to do, the Owners of the said Ship have lost their Expences, and have not receiv'd any Benefit of his Majesty's said Grant.

XIV. That the said *John Lord Sommers*, to the great Oppression of the Subject; and contrary to *Magna Charta*, and divers good Statutes of this Realm, and in manifest Breach and Violation of his Oath, as Lord High-Chancellor of *England*, hath, in several Causes depending before him, by many extraordinary Methods, and unwarrantable Practices for several Years, delay'd Proceedings in the

Navigation: And the said Lord *Sommers* doth also admit, That a Grant, dated the Twenty-seventh Day of *May*, 1697, did pass under the Great-Seal of *England*, as in this Article is mention'd, whereby reciting the said Commission so granted to the said *William Kidd*; and, that the said *Adventure Galley* was with his Majesty's Knowledge and Royal Encouragement bought and fitted out to Sea for the Execution of the said Commission, at the Charge of the Earl of *Bellamont*, *Edmund Harrifon*, *Samuel Newton*, *William Rowley*, *George Watson*, and *Thomas Reynolds*, in this Article named; his Majesty, for encouraging and rewarding the said Undertaking, did grant unto the said Earl of *Bellamont*, *Edmund Harrifon*, *William Rowley*, *George Watson*, *Thomas Reynolds*, and *Samuel Newton* (who was named by, and in Trust for, the said Lord *Sommers*) their Executors and Administrators, all and whatsoever Ships, Vessels, Goods, Merchandizes, Treasure, and other Things whatsoever, which since the Thirtieth Day of *April*, 1696, had been taken or seiz'd upon or with, or did belong to, or should happen to be taken or seiz'd upon or with, or which did, or should, belong to the said *Thomas Too*, *John Ireland*, *Thomas Wake*, and *William Maze*, or their Adherents, or any other Pirates, by the said *William Kidd*, or other Commanders of the said *Adventure Galley*, or which by, or by Means of, the said Ship or Galley should be taken, or forced on Shore, on any of his Majesty's Plantations in *America*, so far as the said Premises, or any of them, did, should, or might belong to his Majesty, or could or might be granted or grantable by him, or was or were in his Power to dispose of: Which Grant was not intended to be without an Account. For the said Lord *Sommers* saith, That by Indenture, bearing Date the Two and twentieth Day of *May*, 1697, made (after the Warrant for the said Grant was sign'd, and before it was pass'd) between his Majesty of the one Part, and the said Earl of *Bellamont*, *Edmund Harrifon*, *William Rowley*, *George Watson*, *Thomas Reynolds*, and *Samuel Newton*, did Covenant, Promise, and Agree with his Majesty, his Heirs and Successors, well and truly to account for, and deliver upon Oath, to the Use of his Majesty, his Heirs and Successors, or the Commissioners of his or their Treasury, or his or their High-Treasurer, a clear Tenth Part (the whole in Ten equal Parts to be divided) of all and every such Ships, Vessels, Goods, Merchandizes, and other Things whatsoever, which in and by the said Grant should be given, or which should from Time to Time be taken, or seiz'd, or secur'd by them, or any of them, their, or any of their Executors or Administrators, Officers, Agents, Servants, or Assigns, by Vertue or Colour thereof. To which Grant and Indenture the said Lord *Sommers*, for more Certainty, referreth himself; and further saith, He conceives, and is advis'd, That the said Grant did not any way tend to the Obstruction or Discouragement of Trade or Navigation, or to the Loss or Prejudice of Merchants, or others his Majesty's Subjects, or the Subjects of his Friends or Allies, nor to the Dishonour of his Majesty or the Kingdom; nor was the passing of the same any Breach of the Duty of the said Lord *Sommers*; but the said Grant was form'd as a Recompence to the said Grantees, who, at their own Charge, had provided and fitted out the said Ship, to enable the said *William Kidd* to execute the Powers in the said Commission mention'd, whereby the Publick might have receiv'd great Benefit, had the said *William Kidd* faithfully discharg'd the Trust in him reposed by his Majesty and the said Grantees: Which he failing to do, the Owners of the said Ship have lost their Expences, and have not receiv'd any Benefit of his Majesty's said Grant.

XIV. To the Fourteenth Article the said Lord *Sommers* saith, He did not delay any Proceedings in any Cause or Causes depending before him, as Chancellor of *England*, longer or otherwise than as the Circumstances and Justice of each Cause requir'd; but did, to the very manifest impairing of his Health, constantly apply himself to the Dispatch of the Causes depending before him; and



the said Causes; and, by Colour of his Office, hath made divers Arbitrary and Illegal Orders, in Subversion of the Laws and Statutes of this Realm; and hath, of his own Authority, revers'd Judgments given in the Court of *Exchequer*, and without calling before him the Barons of the *Exchequer*, to hear their Informations, and the Causes of their Judgments, as the Statute in those Cases expressly direct; assuming thereby to himself an Arbitrary and Illegal Power; and hath declar'd and affirm'd in publick Places of Judicature, That particular Subjects might have Rights and Interests without any Remedy for Recovery of the same, unless by Petition to the Person of the King only, or to that effect: Which Position was highly dangerous to the legal Constitution of this Kingdom, and absolutely destructive to the Property of the Subject.

And the said Knights, Citizens, and Burgeses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said Lord *Sommers*; as also of replying to his Answer which he shall make unto the said Articles, or any of them; and offering Proofs to all and every the aforesaid Articles, and to all and every other Articles, Impeachment or Accusation which shall be exhibited by them, as the Cause shall, according to the Course of Parliament, require; do pray, That the said *John Lord Sommers* may be put to answer the said Crimes and Misdemeanors; and, that such Proceedings, Examinations, Trials, and Judgments may be thereupon had and given as is agreeable to Law and Justice.

After reading this Day the Articles of Impeachment brought up from the House of Commons against *John Lord Sommers*, and hearing his Lordship thereupon, who desir'd a Copy of the said Articles, and said, He would put in his Answer so soon as possible he could; It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Sommers* may have a Copy of the said Articles against him.

*Die Martis 20<sup>o</sup> Maii, 1701.*

The Earl of *Orford* desiring that a Day may be appointed for his Trial, the House thereupon order'd, That the Committee appointed to consider of the Manner in delivering Articles of Impeachments by the Commons be reviv'd, to inspect the Books, and meet immediately.

Then the House was adjourn'd during Pleasure, and the Lords went to the Committee.

After some Time, the House was resumed, and the Earl of *Stamford* reported the Precedents following; *viz.*

‘ 21 Decem. 1680. That Mr. *Seymour* was Impeach'd, and Articles deliver'd.

A Message was sent to the House of Commons by Sir *Robert Legard* and Mr. *Gery*, to acquaint them, “ That the House having been desir'd by the Earl of *Orford*, that a Day may be appointed for his speedy Trial, their Lordships finding no Issue join'd by Replication of the House of Commons, think fit to give them Notice thereof.

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and denies, that he did ever make, by Colour of his Office, any Arbitrary or Illegal Order, to the Subversion of any Law or Statute of this Realm, or did ever assume to himself any Arbitrary or Illegal Power, or ever reverse any Judgment given in the Court of *Exchequer*, otherwise than as is warranted and allow'd by the Law, and in the Presence of the Barons of the Court of *Exchequer*, who were always present in the Court of *Exchequer*-Chamber, when their Judgments were examin'd, as the Statute in such Cases directs; nor did ever deliver in any Court of Judicature, or other Place whatsoever, any Position whatsoever dangerous to the Legal Constitution of the Kingdom, or destructive to the Property of the Subject, as is charg'd by the said Articles.

And as to all other Matters and Things in the said Articles contain'd, and not herein before particularly answer'd unto, the said Lord *Sommers* saith, He is not Guilty of them, or any of them, in Manner and Form as the same are charg'd upon him in and by the said Articles; and humbly submitteth himself to your Lordships Judgment.

S O M M E R S.

‘ 23 Decemb. 1680. He deliver'd in his Answer.

‘ 3 Jan. That he petition'd for a Trial; whereupon the same Day a Message was sent to the Commons, That the House finding no Issue join'd by Replication from the Commons, thought fit to give them Notice thereof.

‘ Then Council were assign'd him.

‘ 8 Jan. Saturday the Fifteenth was appointed for his Trial.

‘ 27 Apr. 1695. the D. of *Leeds* was Impeach'd.

‘ 29 Apr. the Articles were brought up.

‘ 30 Apr. the Duke of *Leeds* put in his Answer, and a Copy thereof was sent to the Commons.

‘ 1 May, the Lords sent to the Commons, to know when they should be ready to make good the same.

‘ 3 May, the Commons desir'd a Conference on the Lords Message; and at the Conference acquainted the Lords, That Mr. *Robart*, a material Witness, was withdrawn. The Lords mov'd the King, that a Proclamation might be issued for his Apprehension. The same Day the Parliament was Prorogued.

A Message was brought from the House of Commons by Mr. *Bromley* and others (the 31<sup>st</sup> of May) to acquaint this House, “ That in answer to the Message of the One and twentieth Instant, the Commons have prepar'd a Replication to the Earl of *Orford*'s Answer to the Articles of Impeachment of High Crimes and Misdemeanors exhibited against him, and at present desir'd  
“ bring-

A Message was also sent to the House of Commons by Sir Robert Legard and Mr. Grey, to acquaint them, ' That they having, on the First Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, for High Crimes and Misdemeanors; and having also, on the Fifteenth Day of the same Month, Impeach'd Charles Lord Halifax for High Crimes and Misdemeanors; and there being as yet no particular Addresses exhibited against the said Lords, their Lordships think themselves oblig'd to put them in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concern'd, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.

' bringing it up to your Lordships, because in the Trials of the several Impeachments now depending, the Commons think it most proper, from the Nature of the Evidence that will be given at the said Trials, to begin with the Trial of the Impeachment of John Lord Sommers of High Crimes and Misdemeanors. And as to your Lordships other Message, the Commons take it to be without Precedent, and Unparliamentary; they, as Prosecutors, having a Liberty to exhibit their Articles of Impeachment in due Time; of which they who are to prepare them are the proper Judges: And therefore, for your Lordships to assert, That having not yet exhibited particular Articles against William Earl of Portland and Charles Lord Halifax, is a Hardship to them, and not agreeable to the usual Methods and Proceedings in Parliament in such Cases; does, as they conceive, tend to the Breach of that good Correspondence betwixt the two Houses, which ought mutually to be preserv'd.

*Die Mercurii 21<sup>o</sup> Maii, 1701.*

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons will send an Answer to the said Messages relating to the said Impeachments, by Messengers of their own.

*Die Sabbati 24<sup>o</sup> Maii, 1701.*

The Lord Sommers deliver'd his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk. See Page 355.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That a Copy of the Answer of John Lord Sommers (deliver'd this Day) to the Articles of Impeachment depending against him, be sent to the House of Commons; and accordingly a Message was sent to the House of Commons by Sir Robert Legard and Sir John Hoskins, to carry down a Copy of the Lord Sommers's Answer to the Articles of Impeachment against him.

*Die Veneris 30<sup>o</sup> Maii, 1701.*

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That Monday the Ninth Day of June next shall be, and is hereby appointed for the Trial of Edward Earl of Orford, in Westminster-Hall, upon the Articles brought up against him by the House of Commons, whereby he stands charg'd with several High Crimes and Misdemeanors.

A Message was sent to the House of Commons by Sir Robert Legard and Sir John Hoskins, to let them know, ' That this House hath appointed Monday the Ninth Day of June next, for the Trial of Edward Earl of Orford, in Westminster-Hall, upon the Articles sent up against him, and that the Commons may reply, if they think fit.

A Message was sent to the House of Commons by Sir Robert Legard and Sir John Hoskins, to acquaint them, ' That they having on the First Day of April last, sent up to their Lordships an Impeachment against William Earl of Portland, for High Crimes and Misdemeanors; and having also, on the Fifteenth Day of the same Month, Impeach'd Charles Lord Halifax for High Crimes and Misdemeanors; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves oblig'd to put them in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concern'd, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.'

It

A Message was brought from the House of Commons by Mr. Harcourt and others (the Fifth of June) to acquaint this House, ' That the Commons, on Consideration of your Lordships Message to them of the One and thirtieth of May, concerning the Earl of Orford, think it their Undoubted Right, when several Persons stand Impeach'd before your Lordships, to bring to Trial such of them, in the first place, as the Commons apprehend, from the Nature of the Evidence, ought first to be proceeded against; to the intent all such Offenders may, in due time, be brought to Justice: And, That no Day ought to be appointed by your Lordships for the Trial of any Impeachment by the Commons, without some previous Signification to your Lordships from the Commons, of their being ready to proceed thereon.

' The Commons could not receive this Message from your Lordships without the greatest Surprise; your Lordships Proceedings in this Case being neither warranted by Precedents, nor (as the Commons conceive) consistent with the Methods of Justice, or with Reason: Where-

‘ Wherefore the Commons cannot agree to the Day appointed by your Lordships for the Trial of the Earl of *Orford*.

‘ As to your Lordships Message, at the same time, relating to the Earl of *Portland*, and *Charles Lord Halifax*, the Commons take the same to be without Precedent. and Unparliamentary; and conceive your Lordships frequent Repetition thereof, in so short a Time, after the Commons had transmitted to your Lordships their Articles against Two of the Irpeached Lords, and were daily preparing their Articles against the others, manifestly tends to the Delay of Justice, in obstructing the Trials of the Impeached Lords, by introducing Disputes, in Breach of that good Correspondence between the Two Houses, which ought inviolably to be preserved.’

It is order’d by the Lords Spiritual and Temporal in Parliament assembled, That the Lord Great-Chamberlain do attend his Majesty, humbly to acquaint his Majesty, That this House hath appointed *Monday* the Ninth Day of *June* next, for the Trial of *Edward* Earl of *Orford*, in *Westminster-Hall*; and humbly to move his Majesty, that he will be pleased to give Order for a Place to be prepar’d in *Westminster-Hall* against the said Time, for this House to proceed upon the said Trial.

*Die Sabbati 31<sup>o</sup> Maii, 1701.*

A Message was brought from the House of Commons by Mr. *Bromley*, and others. See Page 356.

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons will send an Answer by Messengers of their own.

*Die Lunæ 2<sup>o</sup> Junii, 1701.*

Order’d, That the Committee appointed to consider of the Manner in delivering Articles of Impeachments by the Commons, be revived, to meet on *Monday* next, to draw an Answer to be sent to the House of Commons to their Message receiv’d the 31<sup>st</sup> Instant.

The House was adjourn’d during Pleasure. After some Time, the House was resum’d, and the Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner in delivering Articles of Impeachments by the Commons, the Precedents following; viz.

‘ 7 Feb. 25 H. 8. The Bishop of *London* Impeached by the Commons, for imprisoning *Tho. Phillips* on Suspicion of Heresy.

‘ 9 Feb. The Articles were read.

‘ 20 March, 1620. The Commons, at a Conference, accused the Lord-Chancellor *St. Alban* and the Bishop of *Landaff* of Bribery and Corruption.

‘ 16 April, 1624. The Commons, at a Conference, accuse the Earl of *Middlesex*, Lord-Treasurer, of Bribery.

‘ 19 May, 1624. The Commons accuse the Bishop of *Norwich* of several Matters by them then particularly mentioned at a Conference.

‘ 29 Decemb. 1640. The Commons accuse Sir *George Radcliffe* of High-Treason.

‘ 31 Decemb. They delivered the Articles at a Conference.

‘ 22 Decemb. 1640. The Lord-Keeper *Finch* was Impeached.

‘ 29 Jan. 1640. Report of what he was accused of at a Conference.

‘ 18 Decemb. 1641. *Daniel O-Neal* Impeached.

‘ 30 August, 1641. The Earl of *Bridgewater* Impeached, and Articles read, but not entered.

‘ 6 Decemb. 1660. *William Drake* Impeached, and Articles brought up.

‘ 24 April, 1668. Sir *William Pen* was Impeached, and the Articles delivered at a Conference the same Day.

‘ 29 Decemb. 1666. The Commons, at a Conference, Impeached the Lord Viscount *Mordaunt*.

‘ 3 Jan. The Conference was reported, and the Articles read.

‘ 23 Decemb. 1678. *Post Meridiem*, the Earl of *Danby* was Impeached, and Articles brought up against him at the same Time.

‘ 5 Decemb. 1678. The Earl of *Powis*, Lord *A. Wardour*, Lord *Bellafyse*, Lord *Petre*, and Lord Viscount *Stafford*, were Impeached.

‘ 30 Decemb. The Parliament was prorogued to the 4th of *February*, and was dissolved the 24th of *January*.

‘ 6 March. A new Parliament met.

‘ 7 April, 1679. Articles were brought up against them.

‘ 21 Decemb. 1680. Mr. *Edward Seymour* was Impeached, and Articles brought up at the same Time.

‘ 7 Jan. 1680. Sir *William Scroggs* was Impeached, and Articles brought up at the same Time.

‘ 7 Jan. 1680. The Earl of *Tyrone* was Impeached, but no Articles brought up.

‘ 10 Jan. The Parliament was prorogued to the 20th. Dissolved the 18th.

‘ 26 March, 1681. Mr. *Fitz-Harris* was Impeached: No Articles brought up.

‘ 28 March. The Parliament was dissolved.

‘ 26 June, 1689. *Blair*, *Vaughan*, *Noel*, *Elliot*, and *Grey*, were Impeached, and Articles brought up.

‘ 26 Octob. The Earl of *Salisbury* and Earl of *Peterborough* were Impeached. Special Matter assigned the same Day.

‘ 27 April, 1695. The Duke of *Leeds* was Impeached.

‘ 29 April. Articles were brought up.

‘ 10 May, 1698. *Goudet* and others were Impeached.

‘ 17 May. Articles brought up.

‘ 28 May, 1698. *John Auriol* and *John Dumestre* were Impeached.

‘ 8 June. Articles were brought up against them.’

The Lord Great-Chamberlain acquainted the House, That he had attended his Majesty with their Address for a Place to be prepared in *Westminster-Hall*, for the Trial of the Earl of *Orford*; and his Majesty was pleased to say, *He would give Order for the Place to be prepar’d, as desir’d.*

Order’d, That the Committee, appointed on Saturday last, do meet presently, to draw an Answer to be sent to the House of Commons, to the

their Message received the One and Thirtieth of May last.

Then the House was adjourned during Pleasure.

After some Time the House was resumed, and

“ The Lords do think fit, upon Occasion of the  
 “ Message of the Commons of the 31st of May,  
 “ to acquaint that House, That having been desir’d  
 “ by the Lord Sommers, that a Day may be ap-  
 “ pointed for his speedy Trial, and their Lordships  
 “ finding no Issue joined by Replication of the  
 “ House of Commons, judge it proper to give  
 “ them notice thereof, that the Commons may Re-  
 “ ply, if they think fit, and at the same time their  
 “ Lordships let the Commons know, that they will  
 “ proceed to the Trial of any of the Impeached  
 “ Lords, whom the Commons shall be first ready  
 “ to begin with, so as there may be no Occasion  
 “ taken from thence for any unreasonable Delay in  
 “ the Prosecution of any of them: And further to  
 “ acquaint them, That having searched their own  
 “ Journals, they do not find, that after a general  
 “ Impeachment there has ever been so long a  
 “ Delay of bringing up the particular Articles  
 “ of Impeachment, fitting the Parliament: And  
 “ therefore the Lords do think they had Reason  
 “ to assert, That it was a Hardship to the two  
 “ Lords concerned (especially after this House  
 “ had put the House of Commons in mind of ex-  
 “ hibiting such Articles) and not agreeable to  
 “ the usual Proceedings in Parliament. And as  
 “ the Lords do not controvert what Right the  
 “ Commons may have of Impeaching in general Terms, if they please; so the Lords, in whom the  
 “ Judicature does intirely reside, think themselves obliged to assert, That the Right of limiting  
 “ a convenient Time for bringing the particular Charge before them, for avoiding of Delay in  
 “ Justice, is lodged in them.

“ The Lords hope the Commons, on their Part, will be as careful not to do any Thing that  
 “ may tend to the Interruption of the good Correspondence between the Houses, as the Lords  
 “ shall ever be on their Part: And the best Way to preserve that, is for neither of the two  
 “ Houses to exceed those Limits which the Law and Custom of Parliament hath already esta-  
 “ blished.

The House went into Consideration of this Report; and after Debate, it was order’d, That the further Consideration thereof, and Debate thereupon, be adjourn’d till To-morrow Twelve a-Clock.

*Die Martis 3° Junii, 1701.*

The House resumed the Adjourned Debate Yesterday, in relation to the Report of the Answer drawn by the Committee to be sent to the House of Commons, to their Message received the One and Thirtieth of May last.

The Report was read by Paragraphs, and agreed to, and sent to the House of Commons by Sir Richard Holford and Mr. Pitt.

*Die Jovis 5° Junii, 1701.*

A Message was brought from the House of Commons by Mr. Harcourt, and others. See Page 357.

Upon receiving a Message from the House of Commons, in Answer to a Message sent to them by this House the One and Thirtieth of May last, it is ordered, That the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do meet To-morrow at

the Earl of Stamford reported the Answer drawn by the Committee, to be sent to the House of Commons, to their Message received the One and Thirtieth of May last, which was read as follows, viz.

Mr. Harcourt, at a Conference (the Sixth of June) delivered himself in the following manner.

“ The Commons have desired this Conference  
 “ upon your Lordship’s Message of the Fourth of  
 “ June, in order to preserve a good Correspondence  
 “ with your Lordships; which will always be the  
 “ Endeavour of the Commons, and is at this Time  
 “ particularly necessary, in order to bring the Im-  
 “ peached Lords to a speedy Trial. And because  
 “ the Messages which your Lordships have  
 “ thought fit to send to the Commons, and the  
 “ Answers thereunto, seem not to tend towards  
 “ expediting the Trials, which the Commons so  
 “ much desire, but may rather furnish Matter of  
 “ Dispute between the two Houses; the Com-  
 “ mons therefore chuse to follow the Methods  
 “ formerly used with good Success upon the like  
 “ Occasions: And for the more speedy and easy  
 “ adjusting and preventing any Differences which  
 “ have already happened, or may arise, previous  
 “ to, or upon these Trials, the Commons do pro-  
 “ pose to your Lordships, That a Committee of  
 “ both Houses be nominated, to consider of the  
 “ most proper Ways and Methods of Proceeding  
 “ on Impeachment, according to the Usage of  
 “ Parliament.

if they please; so the Lords, in whom the Judicature does intirely reside, think themselves obliged to assert, That the Right of limiting a convenient Time for bringing the particular Charge before them, for avoiding of Delay in Justice, is lodged in them.

Nine of the Clock in the Forenoon, to consider the said Message, inspect the Journals, and report to the House what they shall think proper in this Case.

*Die Veneris 6° Junii, 1701:*

A Message was brought from the House of Commons by Mr. St. John and others, to desire a Conference with this House upon the Subject Matter of the Message of this House of the Fourth Instant.

It being proposed to return Answer, That this House will send an Answer by Messengers of their own, and Debate thereupon:

The House agreed to a present Conference.

Then the Commons being called in, were told, That the Lords agreed to a Conference as desired, and appoint it presently in the Painted-Chamber.

Lords were named Managers of the Conference.

The Commons being come to the Conference, the House was adjourned during Pleasure, and the Lords went to the Conference; which being ended, the House was resumed, and the Lord-Steward reported, That the Lords had attended the Conference, and that Mr. Harcourt managed the Conference, and said, *As above.*

*Or-*

Ordered, That the Lords Committees appointed to consider of the Manner of the Proceedings on Impeachments, do meet To-morrow upon the Report of this Conference, and inspect the Journals, and Report to the House.

*Die Sabbati, 7<sup>o</sup> Junii, 1701.*

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, That they have inspected the Journals, and ordered him to report the Precedents following; *viz.*

‘ 16 *April*, 1624. Report is made of the Commons Complaint and Charge at a Conference against the Earl of *Middlesex*, Lord-Treasurer.

‘ 24 *April*, 1624. Ordered, That the Lord-Treasurer shall appear on *Tuesday* next at Nine a-Clock, to answer his Charge at the Bar; and that if he hath any Witnesses to be examined, they may in the mean time be Sworn and Examined.

‘ 27 *April*. The Lord-Treasurer petitioned, That his Witnesses might not be examined, till he hath answered; but the House did not think fit to alter the Day.

‘ 28 *April*. The Lord-Treasurer desires the Interrogatories to his Witnesses may be respited till he hath answered; and that he may have Copies of the Depositions taken on both Sides.

‘ His Lordship was answered, That his Desire is so unfit, as the Lords think him ill advised to make such a Request; and according to the former Order, expect his Appearance To-morrow, and to hear such Answer as he shall make.

‘ 29 *April*. The Lord-Treasurer petitions, That in regard of his being indisposed, he may have a further Day for presenting his Answer. The House, in respect of his Indisposition, is pleased to respite his Appearance this Day, but enjoin, that *Saturday* next he brings in his Answer, according to former Orders; and the Lords do peremptorily assign *Friday*, the Seventh of *May*, for his Appearance in Person, and for the final Hearing and Determining of the Cause.

‘ 7 *May*. The Lord-Treasurer was accordingly brought to the Bar, and the Trial proceeded.

30 *Aug.* 1641. The Earl of *Bridgewater* was Impeached by the Commons.

‘ 6 *Sept.* 1641. Ordered, To answer the second *Tuesday* in *November*.

‘ 17 *Octob.* 1641. Ordered, To be heard on the Ninth of *December*.

‘ 2 *November*, 1641. Ordered, That the Earl of *Bridgewater* may answer on the Ninth of *November*.

‘ 31 *March* 1642. At a Conference desired by the Commons, they desired Articles of Impeachment against *George Benyon*. *Benyon* was ordered to answer in four Days, and to have Liberty, with his Keeper, to go any where, and Council assigned.

‘ 4 *April*, 1642. *Benyon* put in his Answer: Then it was ordered, That this Cause against *George Benyon*, upon the Impeachment of the House of Commons, shall be proceeded in on *Wednesday* next at this Bar.

‘ 5 *April*, 1642. A Message was sent to the House of Commons, to acquaint them, That the Lords have appointed to proceed in the Cause against *Benyon* To-morrow.

‘ The House of Commons return Answer, That they will send a Committee of their House, to manage their Evidence against *Benyon*, To-morrow.

‘ 6 *April*, 1642. The Committee of the House of Commons being come to manage the Evidence against him, had the Articles read, &c. and the Trial proceeded.

‘ 5 *July*, 1642. Sir *Robert Gurney*, Lord-Mayor, was Impeached at a Conference, and brought to the Bar, and heard the Articles read, had Council allowed him, and was ordered to Answer on *Friday* next.

‘ 8 *July*, He deliver’d in his Answer, which was read, and the Cause was ordered to be heard on *Monday* next, and the Commons were acquainted therewith by Message.

‘ 11 *July*, The Commons at a Conference deliver in a further Impeachment against him, and the Articles were read to him at the Bar, and he desired Council, which was allowed, and he had Time given him to answer till To-morrow Seven-night.

‘ 19 *July*, Sir *Richard Gurney* put in his Answer; and the same Day it was order’d, That this House will proceed against him on *Friday* next, on both the Impeachments; and the House of Commons are then to produce all their Proofs to prove the said Impeachments: And a Message was sent to the Commons to acquaint them with the said Order.

‘ 22 *July*, The Committee of Commons being come to manage the Evidence, the Trial was proceeded in.

‘ 17 *July*, 1645. The Earl of *Stamford* desiring Time to put in his Answer to the Impeachment of the House of Commons against him, it was Ordered, he put in his Answer on *Monday* next.

‘ 21 *July*, The Earl of *Stamford* delivered in his Answer; which was read, and ordered to be heard at the Bar on *Friday* next; and the Commons were acquainted therewith by Message.

‘ 25 *July*, A Message from the Commons to desire another Day for hearing of the Cause of the Earl of *Stamford*’s Impeachment, because they cannot be ready this Day.

‘ *Eodem Die*, A Message to the Commons, That they have appointed *Monday* next; and in regard it concerns his Lordship so much, their Lordships have appointed so short a Day.

‘ 26 *July*, 1645. A Message from the Commons, to desire a further Day, in regard their Witnesses cannot be ready.

‘ 28 *July*, 1645. Ordered, That the Earl of *Stamford*’s Business shall be heard the first *Tuesday* after *Michaelmas*.

‘ 30 *Septemb.* The Clause of the Earl of *Stamford*, upon the Impeachment of the House of Commons, was heard, a Committee of the Commons managing the Evidence against him.

‘ 21 *Decemb.* 1680. *Edward Seymour*, Esq; was impeached of High Crimes, &c. the Articles were brought up against him; he had the Articles read to him, and ordered to answer.

‘ 23 *Decemb.* He delivered in his Answer.

3. *January*, Mr. *Seymour* petitions for a speedy Trial: Whereupon a Message was sent to the House of Commons, That the House finding no Issue join'd by Replication from the House of Commons, thought fit to give them Notice thereof.

8. *January*, Order'd, That *Saturday* the Fifteenth is appointed for the Trial of Mr. *Seymour*.

Upon Consideration of the Precedents above-mentioned, it is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to acquaint them, That in Answer to the Message of the House of Commons, of the Fourth Instant, the Lords say, by their Message sent on the Third, wherein they declare themselves ready to proceed to the Trial of any of the Impeach'd Lords, whom the Commons should be first ready to begin with, They have given a full Proof of their Willingness to comply with the Commons in any thing which may appear reasonable, in order to the speedy determining of the Impeachments now depending: And therefore, as the Lords conceive the Commons had no Occasion to begin any Dispute on that Head, so their Lordships are careful to decline entering into a Controversy which seems to them to be of no Use at present.

The Lords think themselves obliged to assert their undoubted Right to appoint a Day for the Trial of any Impeachment depending before them, if they see good Cause for it, without any previous Signification from the Commons of their being ready to proceed; which Right is warranted by many Precedents, as well as consonant to Justice and Reason; and their Lordships, according to the Example of their Ancestors, will always use that Right with a Regard to the equal and impartial Administration of Justice, and with a due Care to prevent unreasonable Delays.

This being the Case, the Lords cannot but wonder, that the Commons, without any Foundation for it, should make use of Expressions which, as their Lordships conceive, have never been used before by one House of Parliament to another, and which, if the like were return'd, must necessarily destroy all good Correspondence between the two Houses.

The last Part of the Commons Message being in effect a Repetition only of their former, of the Thirty-first of *May*, to which the Lords have already returned a full Answer, their Lordships think it not requisite to say more, than That they cannot apprehend with what Colour their calling upon the House of Commons to

send up Articles against Two Lords, whom the Commons have so long since impeach'd in general Terms, can be said to tend to the Delay of Justice: And therefore, as the Lords think the Commons ought to have forborn that Reflection, so their Lordships, in saying no more upon the occasion of this Message of the Commons, think they have given a convincing Proof of their Moderation, and of their sincere Desire of preserving a good Correspondence between the two Houses, which is so necessary for the Publick Security, as well as doing Right upon the Impeachments.

meet on *Monday* next, at Ten a-Clock in the Forenoon, to draw an Answer to be sent to the House of Commons, to their Message receiv'd the Fifth Instant.

*Die Lunæ 9<sup>o</sup> Junii, 1701.*

The Earl of *Stansford* reported from the Lord Committees (appointed to consider of the Manner of Proceedings on Impeachments) what was drawn by them, to be sent to the Commons, in Answer to their Message of the Fifth Instant; which was read, amended, and agreed to, as follows; *viz.*

A Message was brought from the House of Commons by Mr. *Harcourt*, and others, (on the Tenth of *June*) to acquaint this House, That the Commons, in hopes of avoiding all Interruptions and Delays in proceeding against the Impeach'd Lords, and the many Inconveniences which might arise thereby, having proposed to your Lordships, at a Conference, that a Committee of both Houses might be nominated, to consider of the most proper Ways and Methods of Proceedings on Impeachments, think they might have justly expected your Lordships Compliance with their said Proposition, instead of your Lordships Answer to their Message of the Fourth Instant, which they Yesterday receiv'd: In which Answer of your Lordships, tho' many Matters of great Exception are contain'd, a suitable Reply whereunto would inevitably destroy all good Correspondence between the two Houses; yet the Commons, from an earnest Desire inviolably to preserve the same, as well as give the most convincing Proof of their Moderation, and to shew their Readiness to bring the Impeach'd Lords to speedy Justice, at present insist only on their Proposition, for a Committee of both Houses to settle and adjust the necessary Preliminaries to the Trials; particularly, Whether the Impeach'd Lords shall appear on their Trials at your Lordships Bar, as Criminals? Whether, being under Accusations of the same Crimes, they are to sit as Judges on each other's Trial for those Crimes, or can vote in their own Cases, as we find, from your Lordships Journals since their being impeach'd, they have been admitted so to do? Which Matters, and some others, being necessary to be adjusted; the Commons cannot but insist on a Committee of both Houses to be appointed for that Purpose; their departing from which would be giving up the Rights of the Commons of *England*, known by unquestionable Precedents, and the Usages of Parliaments, and making all Impeachments, the greatest Bulwark of the Laws and Liberties of *England*, impracticable for the future.

The Earl of *Stamford* also reported from the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, what Precedents they have found in pursuance of the Order of the Seventh Instant; which are as follow; *viz.*

21. *May, 1614,* A Message from the Commons, to desire a Conference upon the Point of Impositions.

24. *May,* the Question being proposed, Whether this House shall meet with the Lower House, and give them Hearing, touching the Point of Impositions: The greater Number of the Lords answered, *Not Content.*

26. *May,* a Message to the Commons, That the Lords are, and always will be, ready and willing to hold loving and mutual Correspondence with them; but their Lordships having entered into a grave and serious Consideration, as well of the Matter it self, as of divers incident and necessary Circumstances, do not think it convenient to enter into any Conference of this Cause, concerning the Point of Impositions, at this Time.

1. *February, 1666,* a Message from the Commons, to desire a Conference touching the Manner of Proceedings upon the Impeachment against the Lord Viscount *Mordaunt.*

The Lords answer, That they will send Answer by Messengers of their own.

Then a Committee was appointed to consider, whether ever the Commons desired any Conferences concerning the Manner of Proceedings upon Judicature before their Lordships.

4. *February, 1666,* after Report of the Conference so had, the Lords resolved to let the Commons know at a Conference, That they are resolved, that their former Answer given them the Eight and twentieth of *January,* and confirmed the One and thirtieth of the same Month, shall stand.

31. *January,* Which Answer was, That they judge it a Right inherent in every Court, to order and direct such Circumstances and Matters of Form, that can have no Influence to the Prejudice of Justice, in such Way as they shall judge fit, where the same are not settled otherwise by any positive Rule.

4. *February, post Meridiem,* A Conference was accordingly had at the Desire of the Lords.

5. *February,* A Message from the Commons to desire a Free Conference upon the Subject-matter of the last Conference.

The Answer returned was, That the Lords have already stated the Manner of Proceedings in the Impeachment of the Lord *Mordaunt,* and have declared it in their last Conference; and in that Conference gave the House of Commons Notice, That they were ready to proceed this Morning in that Business.

They adhere to their former Resolution, and are ready to proceed in the Trial.

6. *February,* A Message from the Commons, to desire a Conference upon the last-mentioned Answer.

7. *February,* The Lords gave the Conference desired; whereat the Commons acquainted their Lordships, That Conferences and Free Conferences, when desired, are essential to the Proceedings of Parliament, the only Means to preserve the good Correspondence between the Two

Houses; and the Denial thereof, destructive to the Proceedings of Parliament, and unprecedented.

*Eodem Die,* a Free Conference was had at the Desire of the Lords, concerning the Subject-matter of the last Conference; whereat the Managers were to let the Commons know, That their Lordships desire not this Conference in reference to the Free Conference lately desired by them, but in relation to the Assertion of the Commons in their last Conference, which their Lordships can no way allow; and therefore commanded the Lords that are to manage this Free Conference, as to justify the Proceedings of their Lordships, so to make it appear to the Commons, that what they have done is neither destructive to the Proceedings of Parliament, nor unprecedented.

27. *May, 1694,* The Lords did not agree to a Conference desired by the Commons on the One and twentieth, because it was desired upon the Answer sent by the Lords of the Seventeenth Instant, wherein the whole Matter concerns the Judicature of the Lords, on which they can admit no Debate, nor grant any Conference: But the Lords agree to a Conference desired concerning the Privileges of the Commons, always provided nothing be offered thereat that may concern their Lordships Judicature.

6. *May, 1679,* A Message to the Commons, to acquaint them, That the Lords have appointed to try the Five Lords on the Thirteenth Instant.

8. *May, post Meridiem,* A Message from the Commons, to desire a Conference concerning the Matter of their Lordships Message concerning the Trial of the Lords in the *Tower;* and a Conference was had thereupon.

At the Conference the Commons proposed to have a Committee of both Houses nominated, to consider the proper Ways of Proceedings upon Impeachment; and, upon the Question, it was carried, Not to agree with the Commons in this Proposal.

9. *May,* A Message to the Commons for a Free Conference of the Subject-matter of the last Conference, which was had; and at the Conference the Lords told the Commons, That they did not agree to the nominating a Committee of both Houses, because they do not think it conformable to the Rules and Orders of Proceedings of this Court, which is, and must be, tender in Matters relating to Judicature.

10. *May,* A Message from the Commons for a Conference, &c. which was had; and the Commons told the Lords, That Things standing thus, they cannot proceed to the Trials of the Lords, before the Method of Proceedings be adjusted between the Two Houses.

11. *May,* A Message to the Commons for a Conference, &c. which was had; and the Lords also asked the Commons, What were the Methods of Proceedings they would confer about? The Commons answer, They had no Directions from their House concerning the same.

A Message from the Commons for a Free Conference, which was had; and upon the Report of it, the Lords appointed a Committee to meet with a Committee of the House of Commons, to consider of Propositions and Circumstances, in reference to the Trials of the

Five Lords in the *Tower*; and a Message sent to the Commons to let them know it.

12 May, A Report from the Committee of both Houses, That (*inter alia*) the Commons propose a longer Day for the Trial of the Lords; whereupon the Lords order'd their Trials to be put off till further Order.

16 May, The Lords appointed a Day for the Trial of the Five Lords.

19 May, The Commons tell the Lords, That when the Methods of Proceedings are adjusted, their House will be ready to proceed upon the Trial of the Earl of *Darby*, against whom they already demanded Judgment, and afterwards to the Trial of the Five Lords; and propos'd several Difficulties, in respect of the Bishops being present at the Trial of the Earl of *Darby*. They say further, that the Lords seem to lay the Stop at the Commons Door, by naming a Day; which they conceive ought not to have been appointed before the Methods be considered; that the Lords may as well make the Judges Part of their Court, as the Bishops, in this Point. The Commons will give no Disturbance to the ancient Judicature, and they conceive they have a Right to know before what Court they shall appear.

20 May, Upon Debate of the Report from the Committee of both Houses, the Lords appoint a Day for the Trial of the Five Lords.

22 May, The Lords sent a Message to the House of Commons to acquaint them, That

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to let the Commons know, That the Lords have appointed *Friday* next for the Trial of *John Lord Sommers*, upon the Impeachment against him.

on *Friday* next, upon their Impeachment against him: In which they observe, your Lordships have not nominated any Place for his Trial, tho' your Lordships thought fit to make that Matter, on the last Impeachment for Misdemeanors, the Subject of a long Debate.

And they cannot but take Notice, That your Lordships have taken as long a Time to give your Answer to the common Desire of a Committee of both Houses delivered at a Conference on *Friday* last, as you are pleas'd to allow the Commons to have of a Day appointed by your Lordships for the said Trial.

Your Lordships appointing so short a Day, especially whilst the Proposition made to your Lordships for a Committee of both Houses was undetermin'd, the Commons take to be such a Hardship to them, and such an Indulgence to the Person accused, as is not to be parallel'd in any Parliamentary Proceeding.

The Commons must likewise acquaint your Lordships, that their Experience of the Interruption of a former Trial on an Impeachment for Misdemeanor, for want of settling the Preliminaries between the Two Houses, obliges them to insist on a Committee of both Houses, for preventing the like Interruption.

And they conceive, 'twould be very preposterous for them to enter upon the Trials of any of those Lords, till your Lordships discover some Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reason to insist upon another Day to be appointed for the Trial of the Lord *Sommers*. And the Commons doubt not but to satisfy your Lordships, at a Free Conference, of the Necessity of having a Committee of both Houses, before they can proceed upon the said Trial.

the Lords have appointed a Day for the Trial of the Five Lords.

Then it being moved to have a Conference with the Commons, to let them know, That the Lords do not agree to a Committee of both Houses, in relation to the Trials of the Impeached Lords, and Debate thereupon. The Question was put, Whether a Committee of this House shall be appointed to meet with a Committee of the House of Commons, in relation to the Proceedings upon the Impeachments?

It was resolv'd in the Negative.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Lords Committees appointed to consider of the Manner of Proceedings on Impeachments, do meet To-morrow at ten of the Clock in the Forenoon, and draw Reasons to be given at a Conference with the House of Commons, Why their Lordships cannot agree, that a Committee of both Houses be nominated to consider of the Methods of Proceedings on Impeachments.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that *Friday* the Thirteenth Day of this Instant *June*, is hereby appointed for the Trial of *John Lord Sommers* in *Westminster-Hall*, upon the Articles brought up against him by the House of Commons, whereby he stands charged with several High Crimes and Misdemeanors.

A Message was brought from the House of Commons, by Mr. *Harcourt* and others (the 11th of *June*) to acquaint this House, That the Commons on *Monday* last received a Message from your Lordships, that your Lordships had appointed the Trial of *John Lord Sommers* up-

on *Friday* next, upon their Impeachment against him: In which they observe, your Lordships have not nominated any Place for his Trial, tho' your Lordships thought fit to make that Matter, on the last Impeachment for Misdemeanors, the Subject of a long Debate.

And they cannot but take Notice, That your Lordships have taken as long a Time to give your Answer to the common Desire of a Committee of both Houses delivered at a Conference on *Friday* last, as you are pleas'd to allow the Commons to have of a Day appointed by your Lordships for the said Trial.

Your Lordships appointing so short a Day, especially whilst the Proposition made to your Lordships for a Committee of both Houses was undetermin'd, the Commons take to be such a Hardship to them, and such an Indulgence to the Person accused, as is not to be parallel'd in any Parliamentary Proceeding.

The Commons must likewise acquaint your Lordships, that their Experience of the Interruption of a former Trial on an Impeachment for Misdemeanor, for want of settling the Preliminaries between the Two Houses, obliges them to insist on a Committee of both Houses, for preventing the like Interruption.

And they conceive, 'twould be very preposterous for them to enter upon the Trials of any of those Lords, till your Lordships discover some Inclination to make the Proceeding thereupon practicable; and therefore they think they have Reason to insist upon another Day to be appointed for the Trial of the Lord *Sommers*. And the Commons doubt not but to satisfy your Lordships, at a Free Conference, of the Necessity of having a Committee of both Houses, before they can proceed upon the said Trial.

Die Martis 10<sup>o</sup> Junij, 1701.

The Earl of *Stamford* reported from the Lords Committees (appointed to consider of the Manner of Proceedings on Impeachments) the Reasons drawn by them, to be given to the House of Commons, at a Conference upon the Subject.

Matter of the last Conference: Which Report was read, and agreed to, as follows; *viz.*

The Lords have desired this Conference, upon occasion of the last Conference, in order to preserve a good Correspondence with the House of Commons, which they shall always endeavour. As to the late Messages between



the Two Houses, their Lordships are well assured, that on their Part, nothing has passed, but what was agreeable to the Methods of Parliament, and proper to preserve that good Understanding between both Houses, which is necessary for the carrying on of the Publick Business.

As to the Proposal of the Commons, That a Committee of both Houses should be appointed, to consider of the Ways and Methods of Proceeding on Impeachments, their Lordships cannot agree to it:

I. Because they do not find that ever such a Committee was appointed, on occasion of Impeachments for Misdemeanors; and their Lordships think themselves obliged to be extremely cautious in admitting any thing new, in Matters relating to Judicature.

II. That although a Committee of this Nature was agreed to, upon the Impeachments of the Earl of *Danby*, and the five Popish Lords, for High-Treason, yet it was upon occasion of several considerable Questions and Difficulties which did then arise; and their Lordships do not find, that the Success in that Instance was such as should encourage the pursuing the same Methods again, though in the like Case; the Lords observing, that after much Time spent at that Committee, the Disputes were so far from being there adjusted, that they occasioned the abrupt Conclusion of a Session of Parliament.

III. Their Lordships are of Opinion, That the Methods of Proceedings on Impeachments for Misdemeanors, are so well settled by the Usage of Parliament, that they do not foresee any Difficulties likely to happen, at least none have been yet stated to them; and all the Preliminaries in the Case of *Stephen Goudet*, and others (which was the last Instance of Impeachments for Misdemeanors) were easily settled and agreed to, without any such Committee.

IV. The Lords cannot but observe, that this Proposal of the Commons comes so very late, that their Lordships can expect no other Fruit of such a Committee, but the preventing of the Trials during this Session.

The Lords assure the Commons, that in case any Difficulties shall arise in the Progress of these Trials (which their Lordships do not foresee) they will be ready to comply with the Commons in removing them, as far as Justice and the Usage of Parliament will admit.

A Message was sent to the House of Commons by Sir *Richard Holford* and Mr. *Gery*, to desire a present Conference in the *Painted Chamber*, upon the Subject-Matter of the last Conference.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Page 361.

Ordered, That the Message received this Day from the House of Commons, shall be considered To-morrow at twelve a-Clock.

The Messengers sent to the House of Commons return Answer, That the Commons will give a Conference as desired.

Then the Commons being come to the Conference, the Managers Names of the last Conference were read, and the House adjourn'd during Pleasure, and the Lords went to the Conference; which being ended, the House was resumed, and

the Lord Steward reported, that the Lords had been at the Conference, and delivered their Reasons as ordered.

*Die Mercurii 11<sup>o</sup> Junii.*

The Message received Yesterday from the House of Commons was read; and after Debate of the several Particulars contained in it, this Question was proposed;

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar?

Then the previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar?

It was resolved in the Affirmative, *Nemine Contradicente.*

Resolved, By the Lords Spiritual and Temporal in Parliament assembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar.

Then after further Debate, this Question was proposed,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Trial?

Then the previous Question was put, Whether this Question shall be now put?

It was resolved in the Affirmative.

Then the main Question was put,

That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Trial?

It was resolved in the Affirmative.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting, on any Occasion, except in his own Trial.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Committee appointed to consider of the Method of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock in the Forenoon, and do draw an Answer to the Message received Yesterday from the House of Commons upon the Resolutions of the House this Day; and that the Committee do assert in their Answer, That by the Journals of this House, it doth not appear the Lords Impeached have Voted, as is inserted in the Commons Message.

A Message was brought from the House of Commons by Mr. *Harcourt*, and others. See Page 361.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Debate which hath arose upon the Common Message received this Day, be adjourned to To-morrow Eleven a-Clock, and no other Business to intervene, and all the Lords summoned to attend.

Die Jovis 12<sup>o</sup> Junii, 1701.

The Earl of *Stamford* reported from the Lords Committees appointed to consider of the Man-

ner of Proceedings on Impeachments, what was drawn by them in Answer to a Message from the House of Commons of the Tenth Instant; which was read and agreed unto, as follows :

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That in Answer to the Message from the House of Commons of the Tenth Instant, the Lords say, That although they take it to be Unparliamentary in many Particulars, yet to shew their real Desire of avoiding Disputes, and removing all Pretence of delaying the Trials of the Impeached Lords, they will only take notice of that Part of their Message, wherein the Commons propose some Things as Difficulties, in respect of the Trials; which Matters relating wholly to their Judicature, and to their Rights and Privileges as Peers, they think fit to acquaint the Commons with the following Resolutions of the House of Lords :

I. That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar.

II. That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Trial.

Their Lordships further take notice of a Mistake in point of Fact alledged in the Message of the Commons; it no way appearing upon their Journals, that the Lords Impeached have Voted in their Case.

The Lords being well assured, that all the Steps that have been taken by them, in relation to these Impeachments, are warranted by the Practice of their Ancestors, and the Usage of Parliament, have Reason to expect the Trials should proceed without Delay.

That there is a Mistake in Point of Fact, alledged by the Commons, this House may take Notice of the Caution used by your Lordships, in wording that Part of your Message; for they know your Lordships are too well acquainted with the Truth of the Fact, to affirm, that the Impeached Lords did not vote in their own Cases: And though the appearing or not appearing upon your Lordships Journal, does not make it more or less agreeable to the Rules of Justice, yet the Commons cannot but add this further Observation from your Lordships Journal, That the Impeached Lords Presence is not only recorded when those Votes passed, but they also find some of them appointed of Committees for preparing and drawing up the Messages and Answers to the House of Commons; which they do not think has been the best Expedient for preserving a good Correspondence between the Two Houses, or adjusting what will be necessary upon these Trials. And therefore the Commons cannot think it agreeable to the Rules of Parliament, for them to appear at a Trial, till all necessary Preliminaries are first settled with your Lordships.

A Message was brought from the House of Commons by Mr. *Granvill* and others, to desire a Free Conference with this House, upon the Subject-Matter of the last Conference.

The Commons were called in, and told, That the Lords will return an Answer by Messengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That *John Lord Sommers* shall be tried in *Westminster-Hall*, upon the Articles of Impeachment against him, on *Tuesday* the 17th Day of this Instant *June*, at Ten of the Clock in the Forenoon.

A Message was brought from the House of Commons by Mr. *St. John*, and others (the 13th of *June*) to acquaint this House, That the House of Commons find greater Reasons to insist upon their Proposal of a Committee of both Houses, from the two Messages received Yesterday from your Lordships; for their Ambiguity and Uncertainty do shew the Methods of former Parliaments to be the most proper Way for Dispatch of Business.

The Commons have been obliged to employ that Time in considering and answering your Lordships Messages, which otherwise would have been spent in preparing for the Lord *Sommers's* Trial; so that the Delay must be charged where the Occasion ariseth. And the Commons having desired a Committee of both Houses, to adjust the Preliminaries of the Trials, cannot but think it strange your Lordships should come to Resolutions upon two of those Points, while the Proposal of the House of Commons is under Debate at Conferences between the Two Houses; the Commons having other Difficulties to propose, which concern them as Prosecutors, and all future Impeachments.

And though the Commons leave the Subject of your Lordships Resolutions, with other things, to be debated at a Committee of both Houses; yet they cannot but observe, that your Lordships Second Resolution is no direct Answer to the Commons Proposal, which was, Whether Peers Impeached of the same Crimes, shall Vote for each other upon their Trial for the same Crimes: And the Commons cannot believe that any such Rule can be laid down in plain Words, where there is a due Regard to Justice.

And as to what your Lordships observe, Ordered, That the Committee appointed to consider of the Manner of Proceeding upon Impeachments, do meet presently, and draw an Answer to the Message received Yesterday from the House of Commons.

The Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner of Proceedings on Impeachments, what is drawn by them to be sent to the House of Commons, in Answer to their Message of the Eleventh Instant; which was read and agreed to, as follows :

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That in Answer to the Message of the House of Commons Yesterday, the Lords say, That they cannot give a greater Evidence of their sincere and hearty Desires of avoiding all Differences with the House of Commons, and proceeding on the Trials of the Impeachments, than by not taking Notice of the several just Exceptions to which that Message is liable, both as to the Matter and Expressions.

The Lords have nothing further from their Thoughts, than the going about to do any thing which might have the least Appearance of Hardship in relation to the Commons.

But the Answer of the Lord *Sommers* to the Articles exhibited against him, having been sent down to the Commons on the Four and twentieth of *May* last; and they having by their Message of the One and thirtieth of *May*, signify'd to their Lordships their Intention of beginning with the Trial of his Impeachment in the first place:

The Lords considering how far the Session is advanced, thought it reasonable to appoint the Thirteenth Instant for the said Trials; their Lordships finding several Precedents of appointing Trials on Impeachments within a shorter Time.

The Lords also think it incumbent upon them to endeavour to dispatch the Trials of all the Impeached Lords before the Rising of the Parliament. This is what Justice requires, and cannot be look'd upon as a Matter of Indulgence. Nevertheless, that the Commons may see how desirous their Lordships are to comply with them in any thing which may be consistent with Justice, they have appointed the Trial of Impeachment against *John Lord Sommers*, on *Tuesday* the Seventeenth Day of this Instant *June*, at Ten of the Clock in the Forenoon, in the House of Lords, which will be then sitting in *Westminster-Hall*.

A Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, That the Lords agree to a Free Conference, as desired, and appoint the same to be To-morrow at One a Clock in the *Painted Chamber*.

*Die Veneris 13<sup>o</sup> Junij, 1701.*

A Message was brought from the House of Commons by Mr. *St. John* and others. See Page 365.

The Messengers were called in, and told, That the Lords will send an Answer to the Commons Message, by Messengers of their own.

The Commons being come to the Free Conference, the Managers Names were read; then the House was adjourned during Pleasure, and the Lords went to the Free Conference: Which being ended, the House was resumed, and the Lord Steward reported, That the Lords had attended the Free Conference, as commanded; and that Mr. *Harcourt* opened the Free Conference, and argued against the Reasons given by this House why they could not agree to a Committee of both Houses; and that the Lord *Haversham*, in Answer to some Part of the Arguments of Mr. *Harcourt* and Sir *Bartholomew Shower*, used some Expressions, at which the Commons ta-

king Exceptions, abruptly broke up the Conference.

After Debate thereupon, a Message was sent to the House of Commons by Dr. *Newton* and Mr. *Gery*, to acquaint them, that the Lords having been informed by their Managers, that some Interruption happened at the Free Conference, which their Lordships are concerned at, because they wish that nothing should interrupt the publick Affairs, do desire the Commons would come again presently to the said Free Conference, which they do not doubt will prove the best Expedient to prevent the Inconvenience of a Misunderstanding upon what has pass'd.

The Messengers sent to the House of Commons return Answer, that they have delivered their Message to the Commons, as ordered; and that the Commons say, they will return Answer by Messengers of their own.

A Message was brought from the House of Commons by Sir *Christopher Musgrave* and others, to acquaint this House, *That the Commons desiring to keep up a good Correspondence with your Lordships, do think it necessary to acquaint your Lordships with what has happened at the Free Conference.*

One Thing there is, tho' I can't speak to it, because I am bound up by the Orders of the House; yet it must have some Answer: That is, as to the Lords voting in their own Case, it requires an Answer, tho' I can't go into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men guilty of the same Crimes to Vote in their own House; and therefore we have not made any Distinction in our House, that some should Vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they hope Justice shall never be made use of as a Mask for any Design: And therefore give me Leave to say, (tho' I am not to argue it) 'tis a plain Demonstration, that the Commons think these Lords innocent: And I think the Proposition is undeniable, for there are several Lords in the same Crimes, in the same Facts, there is no Distinction, and the Commons leave some of these Men at the Head of Affairs, near the King's Person, to do any Mischiefe, if their Persons were inclined to it, and Impeach others, when they are both alike guilty, and concerned in the same Facts. This was a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.

*These were the Words spoken by John Lord Haversham; and the Commons have ordered me to communicate this Resolution to your Lordships.*

Resolved, *That John Lord Haversham be charged before the Lords, for the Words spoken by the said Lord this Day at the Free Conference; and that the Lords be desired to proceed in Justice against the said Lord Haversham, and to inflict such Punishment upon the said Lord, as so high an Offence against the House of Commons doth deserve.*

Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords, who were at the Free Conference, do meet presently at a Committee, and draw up what was offered at the Free Conference, and report to the House To-morrow at Eleven a-Clock.

*Die*

*Die Sabbati 14<sup>o</sup> Junii, 1701.*

A Message was brought from the House of Commons by Mr. *Bruges* and others, with the Articles of Impeachment against *Charles Lord Halifax*, and to acquaint this House, That the Matter of the Charge was contain'd in the Articles; and

also, that he was commanded to pray and demand, That *Charles Lord Halifax* do give sufficient Security to abide the Judgment of the House of Lords.

The Articles were read by the Clerk, as follows; *viz.*

ARTICLES exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in Maintenance of their Impeachment against *Charles Lord Halifax*; of High Crimes and Misdemeanors.

The ANSWER of *Charles Lord Halifax* to the Articles exhibited against him by the Knights, Citizens, and Burgesses in Parliament assembled, in Maintenance of their Impeachment against the said *Lord Halifax*, for High Crimes and Misdemeanors, suppos'd to be committed by him.

WHEREAS several Persons, contrary to their Duty and Allegiance to his Majesty and his late Royal Consort, of ever blessed Memory, traitorously adhering to their Majesties Enemies, did levy and maintain, within their Majesties Realm of *Ireland*, a desperate and bloody War and Rebellion against their Majesties; and were, by his Majesty's Conduct and Courage, at the great Expence of his *English* Subjects, reduced to their due Obedience to the Crown of *England*.

THE said *Lord Halifax*, saving to himself all Advantages of Exceptions to the said Articles, and of not being prejudiced by any Words, or want of Form; and saving to himself all Privileges and Rights belonging to him, as One of the Peers of this Realm; for Answer to the said Articles, humbly saith,

And whereas upon the Fourth Day of *April*, in the Year of our Lord One thousand Six hundred and Ninety, 'twas resolv'd by the Commons of *England* in Parliament assembled, That a Bill shou'd be brought in, to attain all Persons guilty of Rebellion in *Ireland* or elsewhere, against their Majesties King *William* and Queen *Mary*, and to enact and declare their Estates to be Forfeited, and to be Sold for the reducing of that Kingdom.

I. To the First Article he saith, True it is, that several Persons did levy and maintain a desperate and bloody War and Rebellion in *Ireland* against their Majesties, and were by his Majesty's Courage and Conduct, at the great Expence of his *English* Subjects, suppress'd and reduced to their Obedience, as in this Article is alledg'd. And he further answereth and saith, He believes it to be true, that on the Fourth of *April*, 1690, such Vote or Resolve was made by the then House of Commons for that Purpose, and such Assurance was given by his Majesty, and such Addresses were made by the House of Commons in the Year 1690 and 1692, That no Grant should be made of the Forfeited Lands in *Ireland* till there should be another Opportunity of settling that Matter in Parliament, in such Manner as should be thought most expedient; and such Answers were given thereunto as in this Article is and are set forth, as by the said several Votes, Resolves, Speeches, Addresses and Answers, to which the said Lord craves Leave, for more Certainty, to refer himself, may appear.

And whereas his Majesty, in his gracious Speech to both Houses of Parliament, did, upon the Fifth Day of *January* One thousand Six hundred and Ninety, assure them, That he would not make any Grants of the Forfeited Lands in *Ireland*, till there should be another Opportunity of settling that Matter in Parliament, in such Manner as should be thought most expedient.

That in the Years 1693, 1694, 1695, the Parliament of *England* did meet, and no Act was pass'd touching the Forfeited Estates, tho' by other Ways great Sums were rais'd for the carrying on and defraying the Charges of the War in those Years; and his Majesty did after, as Rewards to several Persons who had serv'd him in *Ireland* and elsewhere, grant to them some of the Forfeited Estates in *Ireland*, and the Grantees did enjoy the same.

And whereas the Commons of *England* in Parliament assembled, by their humble Address to his Majesty, upon the Fourth Day of *March*, One thousand Six hundred Ninety-two, did humbly beseech his Majesty, That (according to the Assurance his Majesty had been pleas'd to give them) no Grant might be made of the Forfeited Estates in *Ireland*, till there should be an Opportunity of settling that Matter in Parliament, in such Manner as should be thought most expedient: To which his Majesty was pleas'd to give a most gracious Answer. Whereby, and by many other Endeavours of the Commons in the following Sessions of Parliament, it appears, That what has since been declar'd by Act of Parliament, was the continued Sense of the Commons of *England*; That it was highly reasonable, that the Forfeited Estates of Rebels and Traitors in *Ireland*, should be apply'd in Ease of his Majesty's faithful Subjects of the Kingdom of *England*.

And the said *Lord Halifax* further saith, That his Majesty did never grant to him, or any in Trust for him, or to his Use, any of the said Forfeited Lands; but of his Grace and Favour, and as a Reward for his Faithful Services (which his Majesty was pleas'd to accept) did, by Letters Patents under the Great Seal of *England*, bearing Date on or about the Eleventh Day of *May*, 1697, grant to *Thomas Railton*, Esq; in Trust for the said *Lord Halifax*, (who was then One of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and One of the Members of the House of Commons,

And whereas 'twas the apparent Duty of every Officer or Minister of State, to have had so much Regard to the Resolutions and Address of the House of Commons, to the Publick Good, and

his Majesty's Honour, as to have dissuaded and prevented (as much as in them lay) the procuring or passing any Grant or Grants of the said Forfeited Estates in *Ireland*; yet *Charles* (now) Lord *Hallifax*, then the Honourable *Charles Montagu*, Esq; being a Member of the Honourable House of Commons, One of the Lords of the Treasury, Chancellor of the *Exchequer*, and One of his Majesty's most Honourable Privy-Council, hath, since the aforesaid Fourth Day of *March*, One thousand Six hundred Ninety-two, presumed to advise, pass, or direct the passing a Grant to *Thomas Railton*, Esq; in Trust for himself, of several Debts, Interests, Sum and Sums of Money, amounting in the whole to the Sum of Thirteen thousand Pounds, or thereabout, due, owing, and which ought to have accrued to his Majesty, by reason of Attainers, Outlawries, or other Forfeitures of the respective Persons for whom the same were enter'd on Record; whereby he hath much contributed to the contracting great Debts upon the Nation, the laying heavy Taxes upon the People, hath highly reflected on his Majesty's Honour, and fail'd in the Performance of his Trust and Duty.

II. Whereas by an Act of Parliament, made in the Eleventh and Twelfth Years of his Majesty's Reign, entituled, *An Act for granting an Aid to his Majesty by Sale of the Forfeited and other Estates and Interests in Ireland, and by a Land-Tax in England, for the several Purposes therein mention'd*, 'tis amongst other Things enacted, That all and every Person or Persons whatsoever, who had by Vertue of any Grant or Disposition from his Majesty, or from his Majesty and the late Queen, receiv'd for his or their own Use or Benefit, any Debt or Debts, or Sum or Sums whatsoever, due from any Debt or Debts of any Forfeiting Person, mention'd or describ'd in the said Act, or from any Person or Persons, subject or liable to the Payment of any Sum or Sums of Money whatsoever, to any of the said Forfeiting Persons, should be, and they are thereby declared to be respectively liable, and are required to repay every such Debt or Debts, Sum or Sums of Money whatsoever, so by him, her or them respectively received, into the Receipt of his Majesty's *Exchequer* in *Ireland*, on or before the Four and twentieth Day of *August*, One thousand Seven hundred.

And whereas the said *Charles* Lord *Hallifax* had, before the making of the aforesaid Act, procured for *Thomas Railton*, Esq; in Trust for himself, a Grant of several Debts by Judgments and otherwise, to several of the said Forfeiting Persons, amounting to the Sum of Thirteen thousand Pounds; or thereabouts, forfeited to his Majesty by the Attainer, Outlawries, or other Forfeitures of the respective Persons to whom such Debts were originally due; and, by Vertue of the said Grant, the said Lord *Hallifax* actually received to his own Use the Sum of One thousand Pounds, part of the before-mentioned Sum of Thirteen thousand Pounds; which said Sum of One thousand Pounds he the said *Charles* Lord *Hallifax* ought to have repaid before the said Four and twentieth Day of *August*, One thousand Seven hundred, into the Receipt of his Majesty's *Exchequer* in *Ireland*, as

as in this Article is set forth) several Debts, Interests, Sum or Sums of Money, amounting in the whole to the Sum of 11546 Pounds, 17 Shillings and 8 Pence, or thereabouts: Which Grant he conceives, and is advised, his Majesty might then lawfully make, and was lawful for him to accept, without Breach of his Duty, or the Trust reposed in him; and denies, That he did ask for, or procure the said Grant; but confesseth, He accepted the same as a Mark of his Majesty's Grace and Favour; and saith, The said Grant hath since been taken away by Act of Parliament; and saith, That the said Grant, made to *Thomas Railton*, is the same which was mention'd, or intended, by the said Article of Impeachment; and although the Debts, therein mention'd to be granted, amount to 11546 Pounds, 17 Shillings and 8 Pence, and no more, yet the said Grant it self, at the Time of making thereof, or at any Time afterwards, would not be valued at near the said Sums, because a great part of the said Debts were not recoverable; and he hath not made clear thereof, as yet, above 400 *l.* and humbly hopes the said Grant hath very little, if at all, contributed to the contracting any Debts upon the Nation, or laying heavy Taxes upon the People, or any ways reflected upon his Majesty's Honour, or, that he hath failed in the Performance of his Trust or Duty, as in the Article is suggested.

II. To the Second Article the said Lord *Hallifax* saith, That he believes it to be true, that such Act was made, and such Clause therein as in this Article is mentioned; and also in the said Act there is a further Clause, That the Grantees from the King of any of the Forfeited Estates thereby resumed, should not be accountable for the Rents, Issues, and Profits of the same, by them receiv'd before the Second Day of *November*, 1699, but might retain the same to their own Uses.

And the said Lord *Hallifax* doth acknowledge, That after the making the said Grant before-mentioned to the said *Thomas Railton*, the Agents of the said Lord *Hallifax* did receive some Monies, not exceeding One thousand Pounds (as he is informed) out of the Rents and Profits of the Forfeited Estate of the Earl of *Clancarty*, of which no more than the abovesaid Sum did come clear to him the said Lord *Hallifax*; and no more, to his Knowledge or Belief, hath been received or recovered upon the aforesaid Grant. That the said Lord *Hallifax* gave Direction, after the said Act pass'd, to his Agents in *Ireland*, to do, in relation to the Money received, as should be advised by Council there; by whom his Agents were advised (as they informed the said Lord, and which he believes to be true) that the said Monies, being received out of the Mean Profits which were remitted by that Act, were not within the first-mentioned Clause in the said Act: And therefore the said Lord does believe, and admit, the same were not paid into the Receipt of his Majesty's *Exchequer* in *Ireland*, nor ought to have been paid into the *Exchequer*, as he humbly insists, and is advised: And he doth deny, That the Non-payment of the said Money into the said Receipt is any Wrong to his Majesty or the Publick, or any Misapplication; and in case the said Money ought to have been paid into the said Receipt, there are proper Methods and Remedies in the said Act prescribed, to compel the Payment of the same.

by the said Act he was requir'd to have done; yet the said *Charles* Lord *Hallifax* did not repay the said Sum of One thousand Pounds, as by the said Act he was requir'd to do; but has hitherto; in contempt of the Act; refus'd or neglected to repay the same: Which Neglect or Refusal of him the said *Charles*, Lord *Hallifax*, to repay the said Sum of One thousand Pounds, is a manifest Wrong to his Majesty and the Publick, and a Misapplication of that Sum, to other Uses and Purposes than by the Act 'tis appropriated; and ought to have been apply'd.

III. That the said *Charles*, Lord *Hallifax*, being a Member of the Honourable House of Commons, One of the Commissioners for executing the Office of Lord-Treasurer of *England*, Chancellor of the *Exchequer*, and One of his Majesty's most Honourable Privy-Council, not contented with the many Employments and Places of Honour bestow'd upon him by his Majesty, nor with the large and excessive Gains by him made, by the Incomes and Profits arising from such Offices and Preferments, did (in opposition to what he well knew to be the true Interest of *England*, and contrary to his Oath as a Privy-Counsellor, and his Duty as a Publick Minister, at a Time when the Nation was engag'd in a tedious and expensive War against *France*, for preserving the Ballance and Liberties of *Europe*, and under such heavy Debts as, without laying unsupportable Taxes on the People, were impossible to be satisfied) Advise, Procure, and Assent, not only to the passing of divers Grants to others in *England* and *Ireland*, but did obtain and accept of several beneficial ones to, or in Trust for himself: Which said Practices of him, the said Lord *Hallifax*, were a most notorious Abuse of his Majesty's Goodness, a great Breach of his Trust, and a very high Vexation and Oppression of his Majesty's other Subjects.

IV. Whereas by the Common-Law, and by many Statutes and Ordinances of this Realm, it appears to have been the great Care of our Ancestors, that the King's Forests should be preserv'd, and in particular the Timber therein growing, for the building and repairing of the Navy Royal, which has ever been accounted (as it undoubtedly is) the great Security of this Realm: And whereas *Charles* Lord *Hallifax* was, in the Year of our Lord One thousand Six hundred Ninety-seven, One of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and of his Majesty's Privy-Council, and oblig'd, as well by repeated Oaths, as by the Duty he ow'd to his Majesty and his Country, to have advised, consult-ed, and promoted such Matters and Things as should, or at least were most likely to, redound to his Majesty's Honour and the Nation's Safety; yet the said *Charles* Lord *Hallifax*, not regarding the Laws and Ordinances of this Realm, nor his said Duty to his Majesty and the Publick, but pursuing his private Interest, did, by Letters of Privy-Seal, bearing Date on or about the Sixth Day of *May*, which was in the Year of our Lord

III. To the Third Article he saith, He was a Member of the House of Commons; One of the Commissioners of his Majesty's Treasury, Chancellor of the *Exchequer*, and Privy-Counsellor, as in the Article is set forth; and serv'd his Majesty faithfully, as he hopes and believes, in those Stations, and was contented with the Employments and Places of Honour bestow'd upon him, and with the Incomes and Gains by him made by the just and lawful Fees and Profits of the same, and his Majesty graciously accepted of such his Services; and, as a Mark of his Royal Favour to him, did make, for his Benefit, the Grant in the Answer to the precedent Article, and the Grant in the Answer to the subsequent Article mention'd; which were all the profitable Grants he, or any in Trust for him, ever had from his Majesty: And the said Lord *Hallifax* says, He conceives, and is advis'd, that his accepting such Grants were not any Abuse of his Majesty's Goodness, nor Breach of the Trust reposed in him, nor were any of his Majesty's Subjects thereby oppress'd: And denies, that he ever did, in opposition to what he knew to be the true Interest of *England*, or contrary to his Oath or Duty, at any time Advise, Procure, or Assent to the passing of any Grant or Grants to himself, or to any Person in Trust for him, or to any other Person or Persons whatsoever; but saith, He, as One of the Commissioners of the Treasury, in conjunction with the other Commissioners, did sign several Warrants and Dockets for such Grants as his Majesty was pleas'd to direct to be pass'd by them; and which, he humbly conceives and is advis'd, he was, by the Duty of his Place, oblig'd to do.

IV. To the Fourth Article he saith, He believes it to be true, That our Ancestors did take great care to preserve the King's Forests, and the Timber therein growing, for the building and repairing the Navy Royal, which the said Lord doth own hath ever been accounted (and as he believes very rightly,) the great Security of the Realm: And saith, True it is, he was in the Year 1697 One of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and One of his Majesty's Privy-Council, and did from time to time advise and promote such Matters and Things as were most likely to redound to his Majesty's Honour, and the Nation's Safety; and denies, that he, at any time, prefer'd his Private Interest to that of the Publick: But doth confess and admit, that his Majesty, by his Letters of Privy-Seal, dated the Sixth of *May*, 1697, did, out of his Grace and Favour design'd to the said Lord *Hallifax*, grant unto *Henry Segar*, in the Article mention'd, and which was in Trust for the said Lord, the Sum of 2000 *l. per Annum*, to be rais'd by the Fall of scrubb'd Beech, Birch, Holly, Hazle, Thorns, and Orle, in the Forest of *Dean*, in the County of *Gloster*,

One thousand Six hundred Ninety-seven, (the Kingdom being then engag'd in an expensive War, and the Debts of the Nation requiring the best and most frugal Management) procure from his Majesty a Grant to *Henry Segar*, Gent. in Trust for himself, of the Sum of Fourteen thousand Pounds, of so much scrubb'd Beech, Birch, Holly, Hazle, Thorns, and Orle, as should by Sale raise the said Sum of Fourteen thousand Pounds, to be fallen in his Majesty's Forest of *Dean*, in the County of *Gloucester*, within the space of Seven Years time, from the Five and twentieth Day of *December*, One thousand Six hundred Ninety-seven: Under colour of which Grant, Beech of a much greater Value, a great Number of Sapling-Oaks, which might and would have been serviceable to the Realm, and also many Tons of the well-grown Timber, fit for the present Use of the Navy, have been cut and fallen, and sold and disposed of for the Benefit of the said Lord *Hallifax*.

V. Whereas there is not any thing that so much conduceth to his Majesty's and the Nation's Honour and Safety, as the due Ordering and Managing of the King's Treasure, and the Publick Revenues; for the Receiving and Issuing forth of which, the Wisdom and Policy of this Nation has provided and appointed several and distinct Officers, with beneficial Salaries, in order that they may be a Check to each other, and that no Loss may accrue to his Majesty or the Publick, by the Corruption, Unskilfulness, or Negligence of any particular Officer: Yet he, the said *Charles Lord Hallifax*, being one of the Lords of the Treasury when by the Death of the Honourable Sir *Robert Howard* the Office of the Auditor of the Receipts, and Writer of the Tallies, became vacant, not regarding the ancient Constitution and approv'd Methods in ordering his Majesty's Treasury, and the publick Revenues, did grant, or procure to be granted, to *Christopher Montagu*, Esq; the Brother of him, the said *Charles Lord Hallifax*, and then One of the Commissioners of the Excise, the said Place and Office of Auditor of the Receipts, and Writer of the Tallies; which said Grant was so made and procur'd by the said Lord *Hallifax* in Trust, as to the Profits thereof, for himself: So that from and after the passing of the said Grant, he, the said Lord *Hallifax*, was in effect at the same Time one of the Commissioners of the Treasury, Chancellor of the *Exchequer*, and Auditor of the Receipts, and Writer of the Tallies, and enjoy'd the Profits of the said several Offices; which, by the Constitution of the Treasury, are manifestly inconsistent, and never were, or ought to be, trusted in the same Person: The making and procuring of which said Grant by him, the said *Charles Lord Hallifax*, as aforesaid, was a manifest Violation of the establish'd Course and Constitution of the *Exchequer*, a Breach of his Trust, of evil Example, and tending very much to the great Loss and Prejudice of his Majesty and the Publick, by opening a Way to all manner of corrupt Practices in the future Management of the Revenues.

*cester*, for the space of Seven Years, from the 25th of *December*, 1697, as by the said Letters of Privy-Seal, to which the said Lord, for more Certainty, referreth himself, may appear; which Grant was not, nor could be, prejudicial to any Timber growing in the said Forest; and believes no Sapling-Oaks, or Timber, or Trees likely to be Timber, were cut down by colour of the said Grant; and if any Abuse were in cutting the Wood, he conceives he is not answerable for the same, such cutting not having been by his Direction, nor he any ways concerning himself therein, the Setting-out and Cutting whereof did belong to his Majesty's Surveyor-General, and other his Majesty's Officers, who (as the said Lord hath been inform'd and believes) faithfully discharg'd their Trust in the Execution thereof, and took particular Care to preserve the Timber there.

V. To the Fifth Article the said Lord *Hallifax* answereth and saith, He believes it to be true, that the Ordering and Management of the King's Treasure and publick Revenues conduceth very much to the Honour and Safety of his Majesty and the Nation; and, that there are several distinct Officers with Salaries, for the better receiving and issuing forth of the same, and that are Checks upon each other, to prevent any Loss to his Majesty or the Publick: And the said Lord saith, True it is, he was One of the Commissioners of the Treasury, when, by the Death of Sir *Robert Howard*, his Office of Writer of the Tallies and Counter-Tallies, commonly call'd *Auditor of the Receipt of Exchequer*, became vacant; and thereupon the then Commissioners of the Treasury did grant the said Office to *Christopher Montagu*, then One of the Commissioners of Excise, and Brother to the said Lord; which the said Lord does own and admit was done at his Desire and Request; but humbly insisteth, the same was not granted contrary to the ancient Constitution, or approv'd Methods, in ordering his Majesty's Treasury, or Publick Revenue: And saith, He the said Lord did procure the said Office to be granted to his Brother, intending in a short time after, by his Majesty's Permission, when his Majesty's Affairs would permit thereof, to leave his the said Lord's, Employments and Places in the Treasury, and to obtain a Surrender from his said Brother of the said Office, and procure a Grant thereof to himself; which he hopes, and humbly insists, was lawful for him to do: And saith, His said Brother duly executed the said Office till after the said Lord had left, or laid down by his Majesty's Leave, his Places in the Treasury; and then, and not before, his said Brother surrender'd the said Office, and he, the said Lord, obtain'd a Grant of the same, as he conceives was lawful for him to do. In all which Proceedings; nothing was done by him, the said Lord, as he is advis'd, in violation of the establish'd Course and Constitution of the *Exchequer*, or to the Loss or Prejudice of his Majesty, or the Publick: And saith, He does not know, or believe, that the said several Offices, as they were executed, were in their Nature inconsistent with one another; and is very sure his Majesty, or the Publick, were no ways prejudic'd by the Execution of the same.

VI. Whereas a Treaty and Alliance between *Jeopold* the Emperor of *Germany*, and the *States-General* of the *United-Provinces*, was made and concluded in the Year of our Lord One thousand Six hundred Eighty-nine, upon the Consideration of the Greatness of the Common Danger, which then threaten'd all *Christendom*, from the Excessive Power of *France*, and the unconstant Faith of the *French* in the Observance of Treaties; whereby it was agreed, That there should be, and remain for ever, a Constant, Perpetual, and Inviolable Friendship and good Correspondence between his Imperial Majesty and the *States-General*, that each of them should be oblig'd to promote the other's Interest, and, as much as in them lay, prevent all Damages and Inconveniencies to each other.

And whereas certain Separate Articles were also at or about that Time made and annex'd to the aforesaid Treaty, whereby the *States-General*, maturely considering that *France* had openly declar'd in several Courts, that (notwithstanding the most solemn Renunciation) they continued their Pretension by Force of Arms to assert for the *Dauphin* the Succession of the *Spanish* Monarchy, in case the King of *Spain* should die without Issue; and also considering what a Blow their State would receive, and what Prejudice might happen thereby to the Publick Affairs and Quiet, did promise, That in case his said Catholick Majesty should die without Issue, they would, with all their Force, assist his said Imperial Majesty, or his Heirs, in taking the Succession of the *Spanish* Monarchy, lawfully belonging to that House, together with its Kingdoms, Dominions, and Rights, and in their obtaining and securing the quiet Possession thereof, against the *French* and their Adherents, who should directly or indirectly oppose that Succession, and with Force repel that Force which should be brought against them.

That at the Instance of the *States-General*, in pursuance of the said Treaty and Separate Articles, our most Gracious Lord and Sovereign, his most Excellent Majesty King *William* the Third, was invited to enter into the Alliance of the aforesaid Treaty, and into the Agreement of the said Separate Articles; and thereupon, for restoring and preserving the Publick Peace and Quiet, did afterwards, in the Year of our Lord One thousand Six hundred Eighty-nine, enter into, and under the Great Seal of *England* accept, approve, and ratify, and in the most solemn manner engage and promise, Religiously and Inviolably to observe the same, without Violating the said Treaty or Separate Articles in any Article, or suffering the same, to the utmost of his Power, to be Violated.

That in the Year of our Lord One thousand Six hundred Ninety-eight, a Treaty was projected and contriv'd in *France*, to be set on foot between his Majesty, the *French* King, and the *States-General*, for a Partition of the *Spanish* Monarchy, whereby many large Territories thereunto belonging, in case of the Decease of the King of *Spain* without Issue, were to be allotted and deliver'd up to *France*.

The Tenor and Design of which last-mentioned Treaty, whilst the same was in Negotiation, was communicated to the said *Charles* Lord *Hallifax*, then One of the Commissioners for executing the Office of Lord High-Treasurer, Chancellor of the Exchequer, and One of his Majesty's most Honourable Privy-Council: That the said *Charles* Lord *Hallifax*, well knowing the most apparent evil Consequences, as well as the Injustice of the said Partition, did not, according to the Trust and Duty of his said several Offices, dissuade, or endeavour to obstruct its taking Effect; but, on the contrary, having neither Regard to his Majesty's Honour, engaged by the above-mentioned

VI. To the Sixth Article the said Lord *Hallifax* saith, That he believes, that in the Year 1689, such Treaty, and Alliance, and Separate Article were made between the Emperor of *Germany* and the *States-General* of the *United-Provinces*, (into which his Majesty and the late Queen entered) and such Ratifications thereof were made as in this Article is mention'd; and also saith, He hath heard, and believes, that in the Year of our Lord 1698 a Treaty was made to such Effect as in this Article is mention'd; and saith, He never saw the said Treaty, or heard the same read, or does as yet know the Articles or Agreement it contains; and denies, that he ever advis'd his Majesty to enter into or make the said Treaty, or was ever consulted upon any Clause or Article thereof, or ever encourag'd or promoted the same. And the said Lord saith, That, as he remembers, Mr. Secretary *Vernon* did at one time send for him, and discourse with him and others upon an Intimation that was given by a Letter from the Earl of *Portland*, as he remembers, that the *French* King was disposed to commence a Negotiation upon some general Terms, that were then mention'd, to prevent a War in case of the King of *Spain*'s Death, who was then reported to be very ill; and afterwards the said Matter was discours'd between the Secretary, the then Lord-Chancellor, and the said Lord *Hallifax*, at *Tunbridge-Wells*, when and where the said Lord *Hallifax* made several Objections to the same; and denies, that he gave any Opinion to encourage or promote the said Treaty, or ever afterwards was inform'd of any one Particular relating to it, or was ever Consulted or Advised upon any Clause or Article of it, or was ever after told or inform'd, that the said Negotiation or Treaty did go on or proceed; and saith, That not being advis'd with, or any ways knowing of the said Treaty or Negotiation (except as aforesaid) he could not dissuade or obstruct its taking Effect; and saith, As he cannot tell what the Effects of the Treaty might have been, if the said Treaty had been observ'd, so he conceives and insisteth, that he is not, nor ought to be answerable for the same.

And having thus laid his Case before your Lordships, he humbly saith, and insisteth upon it; That he is Not Guilty of all or any the Matters by the said Articles charg'd, or in them specified, in Manner and Form, as the same are therein and thereby charg'd against him.

HALLIFAX.



Treaty with the Emperor, and the States-General, to the Trade and known Interest of these Kingdoms, or the Peace of *Europe*, did advise his Majesty to enter into the said Treaty; and did so far encourage and promote the same, that the said Treaty was concluded and ratified under the Great-Seal of *England*: Which said Treaty was evidently destructive of the Trade of this Realm, a Breach of the former Treaty made with the Emperor in One thousand Six hundred and Eighty-nine, dishonourable to his Majesty, highly injurious to the Interest of the *Protestant* Religion, and manifestly tended to disturb the general Peace of *Europe*, by altering the Ballance of Power therein, and strengthening *France* against the good Friends and ancient Allies of our Sovereign Lord the King.

And the said Knights, Citizens and Burgesses, by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said Lord *Hallifax*; and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proofs to all and every the aforesaid Articles, and to all and every other Articles, Impeachment or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, That the said *Charles* Lord *Hallifax* may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Trials and Judgments, may be thereupon had and given, as is agreeable to Law and Justice.

After reading this Day the Articles of Impeachment brought up from the House of Commons against *Charles* Lord *Hallifax*, and hearing his Lordship thereupon, who desired a Copy of the said Articles, and said he would put in his Answer so soon as possible he could: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Hallifax* may have a Copy of the Articles against him.

Ordered, That the Lords Committees (appointed to draw what was offered at the Free Conference) do inspect the Journals, as to what hath happened upon any Occasion, in relation to what pass'd at a Free Conference Yesterday, and what hath been done thereupon, and Report to the House.

A Message was sent to the House of Commons by Sir *John Hoskins* and Dr. *Newton*, to acquaint them, "That upon the Occasion of their last  
" Message Yesterday, in order to continue a  
" good Correspondence between the Two Hou-  
" ses, their Lordships did immediately appoint  
" a Committee to state the Matters of the Free  
" Conference, and also to inspect Precedents of  
" what has happened of the like Nature: And  
" that the publick Business may receive no In-  
" terruption, the Time desired by their Lord-  
" ships for renewing the Free Conference being  
" elapsed, their Lordships desire a present Free  
" Conference in the *Painted-Chamber*, upon the  
" Subject-Matter of the last Free Conference.

The Lord-Steward reported from the Committee appointed to draw up what was offered at the Free Conference; *viz.*

That Mr. *Harcourt* opened the Conference, and argued first against the Reasons given by this House, why they could not agree to a Committee of both Houses; but afterwards entered into a Debate against the Two Resolutions of this House, relating to Impeachments depending; *viz.*

Resolved by the Lords Spiritual and Temporal in Parliament assembled, *Nemine Contradicente*, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar.

Resolved by the Lords Spiritual and Temporal in Parliament assembled, That no Lord of Parliament, Impeached of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Trial.

And in his Arguments he used this Expression, That he wished their Lordships had sent their Reasons, as well as their Resolutions.

Sir *Bartholomew Shower* spoke next, in Pursuance of the Argument begun by Mr. *Harcourt*,

A Message was brought from the House of Commons by my Lord *Cbeney* and others (*Eodem Die*) to acquaint this House, *viz.* "That the  
" Commons are extremely desirous to preserve a  
" good Correspondence between the Two Houses,  
" and to expedite the Trials of the Impeached  
" Lords; but conceive it is not consistent with  
" the Honour of the House of Commons to re-  
" new the Free Conference, until they have re-  
" ceived Reparation by your Lordships doing  
" Justice upon *John* Lord *Haversham*, for the  
" Indignity he Yesterday offered to the House  
" of Commons.

against the abovesaid Resolutions; and in giving Reasons against the latter of the said Resolutions, amongst other Things did affirm, That such a Proceeding would be abhorrent from Justice.

In Answer to those Gentlemen, the Lord *Haversham* used some Arguments and Expressions, which the Managers for the House of Commons took Exceptions at; but what those were the Committee cannot so charge their Memories, as to give the House a particular Account of them. And the Lord *Haversham* being desired by the Committee to recollect what he had said, did inform their Lordships, That observing in the Free Conference several Things said by Mr. *Harcourt* and Sir *Bartholomew Shower*, that reflected on the Honour and Justice of this House, as he apprehended, and that he took to be foreign to the Subject-Matter of the Free Conference, he thought it his Duty to take notice thereof; but in what Expressions, he hoped their Lordships would excuse him from giving a particular Account; but denies, that he said several Things contained in the Paper sent up by the House of Commons: but says, That he desired to be heard

heard out, and that the Words he had spoken might be writ down; but the Managers for the Commons broke up abruptly.

The Lord *Haversham* this Day moved, That he may have a Copy of the Commons Charge against him; and Time to answer. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lord *Haversham* shall have a Copy of the Charge against him; and do Answer thereunto; and that he shall have Council allowed him, in order to Answer the Charge against him.

The Messengers sent to the House of Commons, return Answer, That the Commons will send an Answer by Messengers of their own.

A Message was brought from the House of Commons by the Lord *Cheney*, and others, to acquaint this House — See Page 372.

The House being moved, To insist not to have a Committee of both Houses, touching the Trial of the Impeached Lords; and Debate thereupon:

The Question was put, Whether this House shall insist upon their Resolutions, of not allowing a Committee of both Houses?

It was resolved in the Affirmative.

A Message was sent by the House of Commons by Sir *Robert Legard* and Dr. *Newton*, to acquaint them, “ That the Lord *Sommers* having informed this House, That Sir *Stephen Fox*, *John Smith*, Esq; *William Lowndes*, Esq; *Stephen Harvey*, Esq; and *William Gulston*, Esq; Members of their House, may be material Witnesses for him at his Trial on *Tuesday* next in *Westminster-Hall*, this House desires, That they may have Leave to attend, and give their Testimonies at the said Trial; and that a Letter which his Majesty was pleased to write to him in One thousand Six hundred Ninety-eight, being now in their House, will be necessary for his Defence at his Trial; this House desires that the said Letter may be produced at the said Trial.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That an humble Address be made to his Majesty from this House, That he will be pleased to give Order, that the Original Treaties of Partition, of One thousand Six hundred Ninety-eight, and One thousand Six hundred Ninety-nine, and the Earl of *Portland's* and Mr. Secretary *Vernin's* Letters relating thereunto, or Authentick Copies of them, may be laid before this House on *Monday* next, at Eleven of the Clock; and that the Lords with White Staves attend his Majesty with this Address.

*Die Lunæ 16 Junii, 1701.*

The Messengers sent on *Saturday* last to the House of Commons, to desire some of their Members may give Evidence for the Lord *Sommers* at his Trial in *Westminster-Hall*, return Answer, That they will send an Answer by Messengers of their own.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Lords with White Staves do humbly attend his Majesty from this House, to desire, That the Lord *Haversham* may have Liberty to Inspect the Treasury-Books, in relation to several Commissions

from time to time renewed, and Grants of the Forfeited Estates in *Ireland*, which are necessary for him towards his Defence.

The Earl-Marshal reported from the Lords Committees appointed to consider of the Methods and Preliminaries, in order to the Trials of the Lords Impeached; viz.

That the Serjeant at Arms be continued in the House, to make Proclamations; which are to be made in the King's Name.

That the whole Body of the House of Peers shall meet in the House.

That being so met, they shall go to Prayers as a House, and after Prayers they shall adjourn into *Westminster-Hall*.

That from this House the Lords shall go in this Manner.

First the Clerks, then the Masters of the Chancery, then the Judges, the Gentleman Usher of the Black Rod, then the Lords two and two, the youngest Barons to go first, and so in Order according to their Precedency, Garter King at Arms calling them in their due Places by a List; and when they come into *Westminster-Hall*, the Lords are to place themselves according to their Precedency in the House there, till all the Peers are placed.

That the Serjeant at Arms do go before the Lord-Keeper.

That in *Westminster-Hall* (the House sitting there) the other Ceremonies to be observed by Officers necessary to manage the said Trial, be left to be performed according to the usual Methods of such Trials.

That the Lord-Keeper ask Leave of the House for the Judges to be covered.

That Proclamation be made for keeping Silence.

That at the Trial of the Impeached Lord, the lower Barons Bench shall be removed, and a Stool set near the Bar, where the said Lord is to sit Uncovered, as a Peer, but not in the Capacity of a Judge; and that he shall be admitted Council for his Defence.

That the Lord Great-Chamberlain be ordered to take care that the Places behind the Lords be kept for Peeres and their Daughters; and that his Majesty's Surveyor be required to view the Court and Scaffold in *Westminster-Hall*, and see that they be strong and firm.

A Message was sent to the House of Commons by Sir *John Franklyn* and Sir *Richard Holford*, to acquaint them, “ That the Lords taking into their Care the Ordering of the Trial of *John Lord Sommers* on *Tuesday* the Seventeenth of *June* Instant, at Ten of the Clock in the Forenoon, in *Westminster-Hall*, have prepared some Notes and Rules to be observed at the said Trial, which the Lords have thought fit to communicate to them, as follows; viz.

*That the whole Impeachment is to be read, and then the Answer; which being done, the Lord-Keeper is to tell the Commons, That now they may go on with their Evidence.*

*Then the Lord-Keeper is to declare, That now the Court is proceeding to hear the Evidence, and desire the Peers to give Attention.*

*If any of the Peers, or the Members of the House of Commons, that manage the Evidence, or the Lord Impeached, do desire to have any Question asked, they must desire the Lord-Keeper to ask the same.*

*If*

*If any Doubt doth arise at the Trial, no Debate is to be in the Court, but the Question suspended to be debated in this House.*

*The Members of the House of Commons to be there before the Peers come.*

*None to be covered at the Trial but the Peers.*

*That such Peers, at the Trial of the Impeached Lords, who at the Instance of the said Lord or of the Commons, shall be admitted Witnesses, are to be sworn at the Clerks Table, and the Lord-Keeper to administer the Oath, and to deliver their Evidence in their own Places.*

*Those Witnesses that are Commoners are to be sworn at the Bar by the Clerk, and are to deliver in their Evidence there.*

*The Oath to be:* The Evidence which you shall give upon the Impeachment of shall be the Truth, the whole Truth, and nothing but the Truth: So help you God and the Contents of this Book.

*The Impeach'd Lords may cross-examine Witnesses viva voce.*

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lords with White Staves do humbly move his Majesty, from this House, That he will be pleas'd to give Order, that such Guards do attend at the Trial of the Lord Sommers To-morrow in *Westminster-Hall*, as has been usual in such Cases.

Sir *Christopher Wren* being come, he was call'd in — says, The Court is made like this House, and a Place for the Commons. He was told, he must take away the lowest Form, and a Stool must be set within the Bar, for the Lord to be try'd.

Order'd by the Lords Spiritual and Temporal in Parliament assembled, That all the Lords be summon'd to attend this House in their Robes, To-morrow at Nine of the Clock, otherwise to incur the utmost Displeasure of this House.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Lord Great-Chamberlain be desired to take Care, and give Order, That the Place for the House of Commons in *Westminster-Hall* be kept clear for the Commons only; and also, That a Place be made for the Managers of the Commons.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That Mr. Serjeant *Prat* shall be, and he is hereby assign'd Council for the Lord Sommers, at his Trial upon the Articles of Impeachment against him.

A Message was brought from the House of Commons by the Earl of *Dyset* and others, (the 17th of *June*) to acquaint this House, “ That the Commons, in this whole Proceeding against the Impeached Lords, have acted with all imaginable Zeal to bring them to a speedy Trial; and they doubt not but 'twill appear, by comparing their Proceedings with all others upon the like Occasion, that the House of Commons have nothing to blame themselves for, but that they have not expressed the Resentment *THEIR ANCESTORS* have justly shewed upon much less Attempts, which have

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That Sir *John Talbot*, Sir *Edmund Harrison*, *Robert Yard*, *John Ellis*, *John Tucker*, *Leonard Hancock*, Esqrs; *John Tench*, and *William Popple jun.* Gent. do, and they are hereby required to attend this House To-morrow at Ten of the Clock in the Forenoon, as Witnesses on the behalf of *John Lord Sommers*.

The Messengers sent to the House of Commons, return Answer, That they have delivered their Message.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to acquaint them, That the Lords, in order to keep a good Correspondence between the Two Houses, and to put the Charge against *John Lord Haversham* in a Course of Justice, have ordered (at his Lordship's Mention) his Lordship a Copy of the Charge against him, and that he do put in his Answer thereunto, in order to bring that Matter to a speedy Judgment.

The Lord *Hallifax* delivered in his Answer to the Articles of Impeachment of the House of Commons against him, which was read by the Clerk. See Page 367.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Richard Holford*, to carry down a Copy of the said Answer, and to acquaint them, That they having, on the First Day of *April* last, sent up to their Lordships an Impeachment against *William Earl of Portland*, for High Crimes and Misdemeanors; and there being as yet no particular Articles exhibited against him, their Lordships think themselves obliged to put them in mind thereof.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Henry Baldwyn*, *Samuel Baldwyn*, *Thomas Engebam*, *George Liddel*, *Charles Saunderson*, *Edward Hayman*, *John Mum*, *Benjamin Baldwin*, *Reginald Marriot*, and *John Digby*, do, and they are hereby required to attend this House To-morrow at Ten of the Clock, as Witnesses on the behalf of *John Lord Sommers*.

*Die Martis 17<sup>o</sup> Junii, 1701.*

The Lord *Wharton* reported his Majesty's Answer to the Address, in relation to the Original Treaties; viz.

*That his Majesty would do what he could towards it; and that He had not the Original Papers.*

*As to the Address for Guards, his Majesty hath complied with it, and given Order for them accordingly.*

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Lacon-William Child*, on the 20th Instant, to acquaint them, “ That the Lords, in Answer to the Message of the Commons of the Seventeenth Instant, say, The only true Way of determining which of the Two Houses has acted with the greatest Sincerity, in order to bring the Impeached Lords to their Trials, is to look back upon the respective Proceedings.

“ The Lords do not well understand what the Commons mean by that Resentment which they speak of in their Message. Their Lordships

have been made their Power of Impeachments.

The Commons, on the 31st of *May*, acquainted your Lordships, That they thought it proper, from the Nature of the Evidence, to proceed in the first place upon the Trial of the Lord *Sommers*. Upon the first Intimation from your Lordships, some Days afterwards, That you would proceed to the Trial of any of the Impeached Lords whom the Commons should be first ready to begin with, notwithstanding your Lordships had before thought fit to appoint which Impeachment should be first tried, and affix a Day for such a Trial, without consulting the Commons, who are the Prosecutors.

The Commons determining to expedite the Trials to the utmost of their Power, in hopes of attaining that End, and for the more speedy and easy adjusting and preventing any Differences which had happened, or might arise, previous to or upon these Trials, proposed to your Lordships, at a Conference, the most Parliamentary and Effectual Method for that Purpose, and that which in no manner intrenched upon your Lordships Judicature; That a Conference of both Houses should be nominated, to consider of the most proper Ways and Methods of Proceedings upon Impeachments, according to the Usage of Parliament.

In the next Message to the Commons, upon *Monday* the 9th of *June*, your Lordships thought fit, without taking the least Notice of this Proposition, to appoint the *Friday* then following for the Trial of the said Lord *Sommers*; whereunto, as well as to many other Messages and Proceedings of your Lordships upon this Occasion, the House of Commons might have justly taken very great Exceptions; yet, as an Evidence of their Moderation, and to shew their Readiness to bring the Impeached Lords to speedy Justice, the Commons insisted only on their Proposition for a Committee of both Houses, to settle and Adjust the necessary Preliminaries to the Trial; particularly, Whether the Impeached Lords should appear on their Trial at your Lordships Bar as Criminals: Whether being under Accusations of the same Crimes, they should sit as Judges on each other's Trial for those Crimes, or should Vote in their own Cases, as 'tis notorious they have been permitted by your Lordships to do in many Instances which might be given: To which Particulars your Lordships have not yet given a direct Answer, though put in mind thereof by the Commons.

Your Lordships, at a Conference, having offered some Reasons why you could not agree to a Committee of both Houses, to adjust the necessary Preliminaries, the Commons thereupon desired a Free Conference, and your Lordships agreed thereunto; at which 'tis well known to many of your Lordships, who were then present, what most scandalous Reproaches and false Expressions, highly reflecting upon the Honour and Justice of the House of Commons, were uttered by *John* Lord *Haversham*; whereby the Commons were under a Necessity of withdrawing from the said Free Conference: For which Offence the Commons have, with all due regard to your Lordships, prayed your Lordships

ships own, that the House of Commons have a Right of Impeaching: And the Lords have the undoubted Power of doing Justice upon those Impeachments, by bringing them to Trial, and condemning or acquitting the Parties in a reasonable Time. This Power is derived to them from their Ancestors; which they will not suffer to be wrested from them by any Pretences whatsoever.

Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the beginning on the Trials; no mention being made of such a Committee from the First of *April* to the Sixth of *June*, although, during that Interval, their Delays were frequently complained of by the House of Lords.

The Manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houses yielded to by the Lords, in case of any Impeachment for High Crimes and Misdemeanors; so their Lordships do insist, that they will make no new Precedent upon this Occasion. Many Impeachments for Misdemeanors have in all Times been determined without such a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuse for not prosecuting their Impeachments, it is demonstrable where the Obstruction lies.

As to the Preliminaries, which the Commons mention in particular, as proper to be settled at such a Committee, they have received the Resolutions of the House of Lords therein by their Message of the Twelfth Instant; from which (being Matters relating entirely to their Judicature) their Lordships cannot depart.

As to the last Pretence the Commons would make to shelter the delaying the Trials, from some Expressions which fell from the Lord *Haversham* at the Free Conference, at which Offence was taken; their Lordships will only observe;

*First*, That they have omitted nothing which might give the Commons all reasonable Satisfaction, of their Purpose to do them Justice in that Matter, so far as is consistent with doing Justice to that Lord; and also to preserve all good Correspondence with them, as appears by the several Steps they have taken.

*Secondly*, That this Business has no relation to the Trials of the Impeached Lords: And therefore their Lordships cannot imagine why the Commons should make Satisfaction and Reparation against the Lord *Haversham* a necessary Condition for the going on with the Trials, and at the same time find no Difficulty in proceeding on other Business.

Justice against the Lord *Haversham*, but have as

‘ The Commons restrain themselves from enumerating your Lordships very many irregular and unparliamentary Proceedings upon this Occasion, but think ’tis what they owe to Publick Justice and all the Commons of *England*, whom they represent, to declare some few of those Reasons, why they peremptorily refuse to proceed to the Trial of the Lord *Sommers* on the Seventeenth of *June*.

‘ *First*, Because your Lordships have not yet agreed, That a Committee of both Houses should be appointed for settling the necessary Preliminaries; a Method never, until this Time, deny’d by the House of Lords, whensoever the Commons have thought it necessary to desire the same.

‘ *Secondly*, Should the Commons (which they never will do) be contented to give up those Rights which have been transmitted to them from THEIR ANCESTORS, and are of absolute necessity to their Proceedings on Impeachments; yet, whilst they have any regard to Publick Justice, they never can appear as Prosecutors before your Lordships, till your Lordships have first given them Satisfaction, that Lords impeach’d of the same Crimes shall not sit as Judges on each other’s Trials for those Crimes.

‘ *Thirdly*, Because the Commons have, as yet, receiv’d no Reparation for the great Indignity offer’d to them at the Free Conference by the Lord *Haverſham*. The Commons are far from any Inclination, and cannot be suppos’d to be under any Necessity of delaying the Trial of the Lord *Sommers*: There is not any Article exhibited by them in maintenance of their Impeachment against the Lord *Sommers*; for the Proof whereof they have got full and undeniable Evidence, which they will be ready to produce as soon as your Lordships shall have done Justice upon the Lord *Haverſham*, and the necessary Preliminaries, in order to the said Trial, shall be settled by a Committee of both Houses.

‘ The Commons think it unnecessary to observe to your Lordships, That most of the Articles whereof the Lord *Sommers* stands impeach’d, will appear to your Lordships to be undoubtedly true, from Matters of Record, as well as by the Confession of the said Lord *Sommers*, in his Answer to the said Articles, to which the Commons doubt not but your Lordships will have a due regard, when his Trial shall regularly proceed.

The House being mov’d to go into *Westminster-Hall*, in order to the Trial of the Lord *Sommers*:

After Debate, this Question was put, Whether this House shall go this Day into the Court in *Westminster-Hall*, in order to proceed upon the Trial of the Lord *Sommers*, according to the Order of the Day?

It was Resolv’d in the Affirmative.

A Message was sent to the House of Commons by Mr. Baron *Tracey* and Mr. Baron *Berry*, to acquaint them, That the Lords intend presently to proceed to the Trial of *John Lord Sommers* in *Westminster-Hall*.

The Messengers being return’d, acquainted the House, That the Commons were adjourn’d.

Then this Question was proposed, Whether the Earl of *Orford*, and Lord *Hallifax*, may withdraw at the Trial of the Lord *Sommers*?

Then this previous Question was put, Whether this Question shall be now put?

It was Resolv’d in the Affirmative.

Then the main Question was put, Whether the Earl of *Orford*, and Lord *Hallifax*, shall have Leave to withdraw at the Trial of the Lord *Sommers*?

It was Resolv’d in the Affirmative.

Then the Lord-Keeper desir’d, That some further Directions be given to him, in order to the Trial in the Hall; and thereupon it was proposed, that this Proclamation be made in the Hall, *viz.*

*Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of Themselves and all the Commons of England, against John Lord Sommers, all Persons concern’d are to take Notice, that he now stands upon his Trial, and they may now come forth, in order to make good the said Charge.*

After Debate, the Question was put, Whether this Proclamation shall be made?

It was Resolv’d in the Affirmative.

Order’d, That the said Proclamation be made in the Hall before the reading the Articles of Impeachment, and the Lord *Sommers*’s Answer, and also after they are read.

Order’d, That the Court in *Westminster-Hall* be clear’d for the Lords.

Then the House adjourn’d to *Westminster-Hall*, and the Lords were call’d by the Herald, and went as order’d; and, being seated in the Hall, the House was resumed.

Then Proclamation was made for Silence, as follows:

*Our Sovereign Lord the King strictly Charges and Commands all manner of Persons to keep Silence, upon pain of Imprisonment.*

Then the Lord-Keeper ask’d Leave for the Judges to be cover’d: Which was agreed to.

Then Proclamation, as order’d, was made.

After which, the Articles against *John Lord Sommers* were read, and also his Lordship’s Answer to them.

After which the same Proclamation was again made.

Then the Lord-Keeper declar’d, the House was ready to hear the Evidence against *John Lord Sommers*, and therefore desir’d the Lords to give Attention.

The Lord *Sommers* mov’d to have his Council heard.

Whereupon the House adjourn’d to the House above, and went back in the same Manner as they came down; and being there, the House was resumed.

The House being mov’d to acquit the Lord *Sommers*; and after long Debate, and hearing the Judges to several Questions ask’d them by the Lords, this Question was proposed:

That *John Lord Sommers* be acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain’d; and, that the said Impeachment be dismiss’d.

Then

Then this Question was put, Whether the Question now stated shall be put in the Court below?

It was Resolv'd in the Affirmative.

Then it was agreed and order'd, That in *Westminster-Hall* the Lord-Keeper shall read the Question, and then call the junior Baron present first, and ask every Lord, Whether *Content?* or *Not Content?* and, That every Lord stand up when call'd to, and give his Vote *Content*, or *Not Content*; and that the Lord-Keeper, having taken their Votes, declare the Majority; and if the Majority be for Acquitting the Lord *Sommers*, the Lord-Keeper is to declare it so, and particularly to the Lord *Sommers*.

Then the House adjourn'd again to *Westminster-Hall*, and the Lords went in the same Manner as before: And being come there, the House was resumed, and Proclamation was made for Silence.

The Lord-Keeper put the Question as follows:

That *John Lord Sommers* be Acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd, and that the said Impeachment be dismiss'd.

Then the Lord-Keeper ask'd every Lord, Whether *Content*, or *Not?*

Lord <i>Haversham</i>	Content
Lord <i>Herbert</i>	Content
Lord <i>Jeffreys</i>	Not cont.
Lord <i>Godolphin</i>	Not cont.
Lord <i>Guilford</i>	Not cont.
Lord <i>Dartmouth</i>	Not cont.
Lord <i>Offington</i>	Content
Lord <i>Osborne</i>	Content
Lord <i>Cornwallis</i>	Content
Lord <i>Granville</i>	Content
Lord <i>Berkely</i>	Content
Lord <i>Lexington</i>	Not cont.
Lord <i>Rockingham</i>	Content
Lord <i>Lucas</i>	Content
Lord <i>Colepeper</i>	Content
Lord <i>Byron</i>	Content
Lord <i>Fermyn</i>	Not cont.
Lord <i>Mobun</i>	Content
Lord <i>Howard Esrick</i>	Not cont.
Lord <i>Lovelace</i>	Content
Lord <i>Hunsdon</i>	Not cont.
Lord <i>North</i>	Content
Lord <i>Wharton</i>	Content
Lord <i>Eure</i>	Content
Lord <i>Fitzwalter</i>	Content
Lord <i>Latwarr</i>	Not cont.
Lord <i>Bergavenny</i>	Content
Lord Bishop of <i>Chichester</i>	Content
Lord Bishop of <i>Lincoln</i>	Content
Lord Bishop of <i>St. Asaph</i>	Content
Lord Bishop of <i>Bristol</i>	Content
Lord Bishop of <i>Gloucester</i>	Content
Lord Bishop of <i>Peterborough</i>	Content
Lord Bishop of <i>Norwich</i>	Content
Lord Bishop of <i>Coventry and Lichfield</i>	Content
Lord Bishop of <i>Ely</i>	Content
Lord Bishop of <i>Bangor</i>	Content
Lord Bishop of <i>Sarum</i>	Content
Lord Bishop of <i>Exeter</i>	Not cont.
Lord Bishop of <i>Rocheſter</i>	Not cont.
Lord Bishop of <i>London</i>	Not cont.

Lord Viscount <i>Weymouth</i>	Not cont.
Lord Viscount <i>Say and Seale</i>	Content
Earl of <i>Rochford</i>	Content
Earl of <i>Romney</i>	Content
Earl of <i>Warrington</i>	Not cont.
Earl of <i>Scarborough</i>	Content
Earl of <i>Marlborough</i>	Not cont.
Earl of <i>Montagu</i>	Content
Earl of <i>Portland</i>	Content
Earl of <i>Plymouth</i>	Not cont.
Earl of <i>Abingdon</i>	Not cont.
Earl of <i>Rocheſter</i>	Not cont.
Earl of <i>Nottingham</i>	Not cont.
Earl of <i>Berkeley</i>	Content
Earl of <i>Radnor</i>	Content
Earl of <i>Macclesfield</i>	Content
Earl of <i>Feverſham</i>	Not cont.
Earl of <i>Shaſtbury</i>	Content
Earl of <i>Burlington</i>	Content
Earl of <i>Bath</i>	Content
Earl of <i>Effex</i>	Content
Earl of <i>Scarſdale</i>	Not cont.
Earl of <i>Tbanet</i>	Not cont.
Earl of <i>Carnarvon</i>	Not cont.
Earl of <i>Kingſton</i>	Content
Earl of <i>Stamford</i>	Content
Earl of <i>Peterborough</i>	Not cont.
Earl <i>Rivers</i>	Content
Earl of <i>Denbigh</i>	Not cont.
Earl of <i>Dorſet</i>	Content
Earl of <i>Suffolk</i>	Content
Earl of <i>Huntingdon</i>	Content
Earl of <i>Derby</i>	Not cont.
Earl of <i>Oxford</i>	Not cont.
Lord Chamberlain	Not cont.
Earl-Marſhal	Content
Lord Great-Chamberlain	Not cont.
Marquis of <i>Normanby</i>	Not cont.
Duke of <i>Newcaſtle</i>	Content
Duke of <i>Schomberg</i>	Content
Duke of <i>Bolton</i>	Content
Duke of <i>St. Albans</i>	Content
Duke of <i>Northumberland</i>	Not cont.
Duke of <i>Somerſet</i>	Not cont.
Lord Steward	Content
Lord Privy-Seal	Content
Lord Archbiſhop of <i>Canterbury</i>	Content

The Lord-Keeper declar'd, the Majority was for Acquitting; and then declar'd,

That *John Lord Sommers* was Acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain'd; and, That the said Impeachment was dismiss'd.

And also declar'd to the Lord *Sommers*, That he was Acquitted.

Then the House adjourn'd to the House above; and being come thither, the House was resumed, and the following Order made.

It is Consider'd, Order'd, and Adjudg'd by the Lords Spiritual and Temporal in Parliament assembled, That *John Lord Sommers* shall be, and he is hereby Acquitted of the Articles of Impeachment against him exhibited by the House of Commons, and all Things therein contain'd; and, That the said Impeachment shall be, and is hereby dismiss'd.

It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Proceedings in this House upon the Impeachments be

printed; and, That the Lords Committees appointed to consider of the Manner of Proceeding on Impeachments, do meet To-morrow at Ten a-Clock, and inspect the Journals, and draw up the Matter relating thereunto, in order to be printed, and report to the House.

A Message was sent to the House of Commons by Sir *John Francklyn* and Dr. *Edisbury*, to acquaint them, *That this House hath appointed Monday, the Three and twentieth Day of this Instant June, for the Trial of Edward Earl of Orford, in Westminster-Hall, at Ten a-Clock.*

*Die Mercurii 18<sup>o</sup> Junii, 1701.*

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That this House will proceed to the Trial of *Edward Earl of Orford* on *Monday* the Three and twentieth Day of this Instant *June*, at Ten of the Clock in the Forenoon, in *Westminster-Hall*.

A Message from the House of Commons by the Lord *Mordaunt* and others (on *June* the 20th) to acquaint this House, *That in Answer to the Message of the Lords, appointing Monday next for the Trial of the Earl of Orford; That the Lords have been acquainted, that the Commons would proceed, in the first place, against the Lord Sommers; and they are ready to go to that Lord's Trial, as soon as ever the Commons have receiv'd Satisfaction for the Affront offer'd to the House of Commons by the Lord Haversham at the Free Conference, and that the necessary Preliminaries are adjusted by a Committee of both Houses.*

*Die Jovis 19<sup>o</sup> Junii, 1701.*

The House being mov'd, That an Answer be drawn to the Message receiv'd from the House of Commons the Seventeenth Instant, it is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Committee appointed to consider of the Manner of Proceeding on Impeachments, do withdraw presently, to draw an Answer to the said Message.

Then the House was adjourn'd during Pleasure, and the Lords went to the Committee; which being ended,

The House was resumed, and the Earl of *Stamford* reported what they had drawn in Answer to the Message receiv'd from the House of Commons the Seventeenth Instant; which was read, and agreed to.

A Message was sent to the House of Commons by Sir *John Francklyn* and Sir *Lacon-William Child*. See Page 374.

This Day *John Lord Haversham* delivered his Answer to the Charge of the House of Commons exhibited against him the Thirteenth Instant; which was read by the Clerk, as follows; *viz.*

*The ANSWER of John Lord Haversham, to the Charge exhibited against him by the Commons, for Words spoken at a Free Conference, on the Thirteenth Day of this Instant June, One Thousand Seven Hundred and One.*

THE said Lord *Haversham* saving to himself all Advantages of Exception to the said Charge, and of not being prejudic'd by any want of Form in this his Answer; and also saving to himself all Rights and Privileges belonging to him as one of the Peers of this Realm; for Answer to the said Charge, saith, That on the Sixth Day of *June*, One thousand Seven hundred and One, the Commons, by a Message sent to the Lords, desir'd a Conference upon their Message to the Commons of the Fourth of *June*; in which Conference they propos'd to the Lords, That a Committee of both Houses should be nominated, to consider of the most proper Ways and Methods of proceeding on the Impeachments of the Lords, according to the Usage of Parliament. That on the Tenth of *June* the Lords desir'd another Conference with the Commons; in which they deliver'd them their Reasons why they could not agree to the appointing such Committee; *viz.* *First*, That they could not find that ever such a Committee was appointed on Occasion of Impeachments for Misdemeanors; and their Obligation to be cautious in admitting any thing new in Matters relating to Judicature. *Secondly*, That altho' a Committee of this nature was agreed to, upon the Impeachments of the Earl of *Danby* and the five Popish Lords for High-Treason; yet the Success, in that Instance, was not such as should encourage the pursuing the same Method, tho' in the like Case: And, that after much Time spent in that Committee, the Disputes were so far from being adjusted, that they occasion'd the abrupt Conclusion of a Session of Parliament. *Thirdly*, That the Method of Proceedings on Impeachments for Misdemeanors are so well settled by the Usage of Parliament, that no Difficulties were likely to happen, nor none had been stated to them: And, that all the Preliminaries in the Case of *Stephen Goudett*, and others, (which was the last Instance of Impeachments for Misdemeanors) were easily settled and agreed to, without any such Committee. *Fourthly*, That the Proposal of the Commons came so very late, that no other Fruit could be expected of such a Committee, but the preventing of the Trials during this Session. Whereupon the Commons, on the Twelfth of *June*, desir'd of the Lords a Free Conference on the Subject-Matter of the last Conference. That the Lords, on the said Twelfth of *June*, came to Two Resolutions in relation to the Lords impeach'd: "*First*, That no Lord of Parliament, impeach'd of High Crimes and Misdemeanors, and coming to his Trial, shall, upon his Trial, be without the Bar. *Secondly*, That no Lord of Parliament, impeach'd of High Crimes and Misdemeanors, can be precluded from Voting on any Occasion, except in his own Trial." And by Messengers of their own the Lords acquainted the Commons with the said two Resolutions, and also, that they agreed to a Free Conference with the Commons, and appointed the next Day. That upon the Thirteenth of *June*

Mr. *Harcourt*, one of the Managers, began the Free Conference on the Part of the Commons, and argued upon the Four Reasons given by the Lords, why they could not agree to the appointing a Committee of both Houses; and principally relied upon the Instance in the Case of the Popish Lords; and insisted upon the Delay, that the not agreeing to the Nomination of such a Committee would necessarily occasion, whereby the Lords Trials, and the Justice due to the Nation would be retarded. And departing from the Subject-Matter of the said Conference, (which was, Whether it was requisite to appoint or not appoint such a Committee?) the said Manager discoursed upon the latter of the Two Resolutions of the Lords communicated to the Commons, and said, *That he wished the Lords had sent down their Reasons, as well as their Resolutions:* Which Words seemed to the Lord *Haversham*, to carry therein an Implication, as if the said Resolution could have no Reason to justify it. That Sir *Bartholomew Shower*, another Manager for the Commons, observed the same Method of Discourse: And having argued upon the Lords Reasons, departed from the Subject-Matter of the Free Conference: And inveighing against the Manner of the Lords Judicature, asserted by their Resolutions, said, *That it was abhorrent to Justice.* Which Expression being foreign (as the said Lord *Haversham* apprehended) to the Subject-Matter of the said Free Conference, which was, Whether such Committee of both Houses should be appointed or not? the said Lord being appointed by the Lords for One of the Managers of the said Free Conference on their Behalf, in Vindication of the Honour and Justice of the House of Peers, and of their Judicature and Resolutions, in Answer to what has been said by the Managers for the Commons, he spoke to the Effect following:

“Gentlemen, I shall begin what I have to say, as that worthy Member who opened this Conference, That there is nothing the Lords more desire, than to keep a good Correspondence, which is so necessary to the Safety of the Nation, and the Dispatch of the publick Business; and nothing they have more carefully avoided, than what may create a Misunderstanding between the Two Houses. A greater Instance of which could not be given, than the Messages my Lords returned to some the Commons had sent them up; in which they took care to express themselves so curiously, that no Heat might arise from any Expression of theirs. And as to what the worthy Members mentioned, in relation to Delay, the repeated Remembrances sent the Commons, with relation to the sending up the Articles against the Impeached Lords, are a sufficient Instance how desirous they are that these Matters should proceed. And the Lords have this Satisfaction, that it is not on their Part that the Trials are not in a greater Forwardness; they cannot but look upon it as a great Hardship, that any should lie under long Delays of Impeachment: Persons may be incapable; Facts may be forgotten; Evidences may be laid out of the way; Witnesses may die; and many the like Accidents may happen. The Instance the worthy Members give of the Popish Lords, as it is a Crime of another Nature, and not fully to

“the Point, so it seems to make against what it was brought for: For the worthy Members say, There was but One of the Lords brought to Justice, though Four more (as I take it) were accused. And can any Man believe, that the Commons have a mind to bring only One of these Lords to Trial? It is inconsistent with the Opinion that every body must have of their Justice. And as to the Point of Judicature, it were very hard upon the Lords, that no Person should be brought to Trial, till the Judicature of the House be so first. The Judicature of the Lords is their Peculiar, and hath in former Ages been Sacred with the Commons themselves. And this House perhaps hath as much Reason to be jealous and careful of it, as any other House ever had, especially when one single Precedent is so urged and insisted upon. One Thing there is, which a worthy Member mentioned, though I cannot speak to it at large, because I think my self bound up by the Resolutions of the House; yet it must have some Answer; (this is) As to the Lords voting in their own Case: It requires an Answer, though I cannot enter into the Debate of it. The Commons themselves have made this Precedent; for in these Impeachments they have allowed Men, equally concerned in the same Facts, to vote in their House: And we have not made the Distinction in ours, that some should vote, and some not. The Lords have so high an Opinion of the Justice of the House of Commons, that they believe Justice shall never be made use of as a Mask for any Design. And therefore give me leave to say, though I am not to argue it, 'Tis to me a plain Demonstration, that the Commons think these Lords innocent; and I think the Proposition is undeniable: For when there are several Lords in the same Circumstances, in the same Facts, there is no Distinction; and the Commons leave some of these Men, at the Head of Affairs, near the King's Persons, to go any Mischief, if they were inclinable to it; it looks as if they thought them all innocent. This is a Thing I was in hopes I should never have heard asserted, when the Beginning of it was from the House of Commons.”

The said Lord being here interrupted, he desired to be heard out, and that his Words might be taken down in Writing. But the Managers for the Conference broke up, and departed, refusing to hear any Explanation. Now the said Lord, as to any implicit Charge of a Design to reflect on, or dishonour the House of Commons, denies any such Design or Intention, having for many Years had the Honour to sit in the House of Commons, and having ever had an honourable and respectful Sense thereof: But the said Lord was led to express himself in the manner aforesaid, for the Reasons aforesaid; and takes himself to be justified therein, by the Facts and Reasons following.

That the Nature of that Conference was, That it should be Free: The Occasion of it, because either House apprehended the other to be in an Error: And the End of it, That each Side may urge such Facts as are true, and such Reasons are as forcible to convince. That one Article of Impeachment against *John Lord Sommers* was, That the Treaty of Partition, of One



thousand Six hundred Ninety-nine, was ratified under the Great-Seal, which then was in the Custody of the same Lord, then Lord Chancellor of *England*. That the Commons, on the First of *April*, One thousand Seven hundred and One, resolved, That the Earl of *Portland*, by negotiating and concluding the Treaty of Partition, was guilty of a High Crime and Misdemeanor; and pursuant thereto, lodged an Impeachment against him in the House of Peers. Which Vote and Impeachment could not have Reference to any Treaty, other than the Treaty of Partition of One thousand Six hundred Ninety-nine, the Treaty of One thousand Six hundred Ninety-eight not being before the House of Commons till after the Time of that Vote and Impeachment; and yet the Earl of *Jersey*, who then was Secretary of State, and Privy-Counsellor, and actually signed the said Treaty of One thousand Six hundred Ninety-nine, as a Plenipotentiary with the Lord *Portland*, stands Unimpeached, and continues at the Head of Affairs, being Lord Chamberlain, near his Majesty's Person, and in his Presence and Councils (without Complaint.) That the Earl of *Orford*, and the Lord *Sommers* and *Hallifax* are severally Impeached for advising the Treaty of Partition of One thousand Six hundred Ninety-eight; and yet Mr. Secretary *Vernon*, who then was Secretary of State, and a Privy-Counsellor, and acted in the promoting of the Treaty of Partition of One thousand Six hundred Ninety-eight, stands Unimpeached, and still continues one of the Principal Secretaries of State: And Sir *Joseph Williamson*, who then was a Privy Counsellor, and transacted and signed the Treaty of Partition of One thousand Six hundred Ninety-eight, as a Plenipotentiary, stands Unimpeached. That the Lord *Hallifax* is Impeached, for that he, being a Commissioner of the Treasury, assented to the passing of divers Grants from the Crown, to several Persons, of Lands in *Ireland*; and yet Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, who being severally Lords Commissioners of the Treasury, did severally assent to the passing of divers like Grants from his Majesty of Lands in *Ireland*, stand Unimpeached. That in the Impeachments against the Earl of *Orford* and Lord *Sommers*, one of the Articles against them is for procuring a Commission to Capt. *William Kidd*; and likewise a Grant under the Great-Seal, of the Ships and Goods of certain Persons therein named, to certain Persons in Trust for them; and yet other Lords, equally concerned in procuring the said Commission and Grant, stand Unimpeached. That the said Mr. Secretary *Vernon*, Sir *Edward Seymour*, Sir *Stephen Fox*, and Mr. *Pelham*, notwithstanding their being Parties in the same Facts charged in the same respective Impeachments, have been permitted to sit and vote in the House of Commons touching the said Impeachments, and the Matters thereof. That these Facts being true, and publickly known, the Consequences resulting therefrom (as the Lord *Haversham* apprehended) are undeniable; *viz.* That the doing of the same Thing by Two Persons in equal Circumstances, cannot be a Crime in one, and not in the other. That the Commons had no Reason to insist, That the Lords should not permit that in their Members, which the Commons had first permitted, and continued to

permit; and so begun the first Precedent in their own Members. That it must be thought, that the Impeached Lords (notwithstanding the Facts alledged in the Impeachments) are innocent of Danger to the King, when the Lord *Jersey* and Mr. Secretary *Vernon*, who are respectively concerned in the Partition Treaties, are permitted, without Complaint, to be at the Head of Affairs, and in the King's Presence, and of his Councils, as not dangerous. That the Word *Innocent*, used in the Words spoken by the said Lord *Haversham*, can extend no farther than to such Matters as were done by the Impeached Lords, of the same Nature with what was done by those Unimpeached. All which Facts being true, and the Consequences obvious, the said Lord being ready to prove the same; he insists, That the Words spoken by him at the said free Conference, were not scandalous or reproachful, nor false or reflecting on the Honour or Justice of the House of Commons; but were spoken upon a just Occasion given, in Answer to several Expressions that fell from the Managers for the Commons, remote (as he conceives) from the Matter in question, and reflecting on the Honour and Justice of the House of Peers, and in Maintenance and Defence of the Lords Resolution and Judicature, and conformable to the Duty he owes to the said House. And the said Lord humbly demands the Judgment of this Honourable House therein. And the said Lord *Haversham* denies, That he spoke the Words specified in the said Charge, in such Manner and Form as the same are therein set down. And having thus given a true Account of this Matter; and it being true and indisputable, That some Lords in this House, equally concerned in Facts, for which other Lords are Impeached by the House of Commons, are still near the King's Person, in the greatest Places of Trust and Honour, and Unimpeached; and also, That several Members of the House of Commons, equally concerned in the same Facts, for which some of the Lords are Impeached, do however remain Unimpeached; the said Lord thinks, such a Truth could never have been more properly spoken, in the Maintenance and Defence of your Lordships Judicature and Resolutions: And insisteth, That what he had said at the Free Conference was not any scandalous Reproach, or false Expression, or any ways tended to make a Breach in the good Correspondence between the Lords and Commons, or to the interrupting the Publick Justice of the Nation, by delaying the Proceedings on the Impeachments, as in the said Charge alledged; but agreeable to Truth, in Discharge of his Duty, and in the Defence of the undoubted Right and Judicature of this House.

#### H A V E R S H A M.

*Ordered*, That a Copy of the Lord *Haversham's* Answer be sent to the House of Commons.

Then a Message was sent to the House of Commons, by Sir *John Francklyn*, and Sir *Lacow William Child*, to carry down a Copy of the aforesaid Answer.

*Die*

*Die Veneris 20<sup>o</sup> Junii, 1701.*

A Message from the House of Commons by the Lord *Mordaunt*, and others. See Page 378.

Order'd, That the Committee appointed to consider of the Manner of Proceedings on Impeachments, do meet presently, and draw an Answer to this Message.

The Earl of *Stamford* reported from the Lords Committees, appointed to consider of the Manner of Proceedings on Impeachments, the Answer drawn by them, in answer to the Commons Message this Day: Which was read, and agreed to, as follows:

A Message was sent to the House of Commons by Mr. *Grey* and Dr. *Newton*, to acquaint them, "That in Answer to the Message of the House of Commons this Day, the Lords do acquaint the Commons, That they might have known, by the Records of the House of Lords, that the Lords have proceeded to the Trial of the Lord *Sommers*, on *Tuesday* last, being the Day appointed; and the Commons not appearing to maintain their Articles against the said Lord, the Lords have, by Judgment of their House, acquainted him of the Articles of Impeachment against him, exhibited by the House of Commons, and all things therein contain'd, and have dismiss'd the said Impeachment.

"And the Lords have appointed *Monday* next for the Trial of the Earl of *Orford*; on which Day they will proceed on the said Trial.

"The Commons still pressing for a Committee of both Houses (which the Lords never can consent to, for the Reasons already given) their Lordships can infer nothing from their persisting in that Demand, than that they never design'd to bring any of their Impeachments to a Trial.

"As to the Lord *Haversham*, his Answer is now before the House of Commons, and the Lords resolve to do Justice in the Matter.

*Die Sabbati 21<sup>o</sup> Junii, 1701.*

The House being mov'd to consider what is fit to be done in relation to the Charge of the House of Commons against *John Lord Haversham*; and after due Consideration thereof, and the Lord *Haversham* desiring to be prosecuted, it was proposed as follows:

That the Answer of *John Lord Haversham* to the Charge sent up against him by the House of Commons, having been sent down to that House; It is resolv'd, by the Lords Spiritual and Temporal in Parliament assembled, That unless the said Charge shall be prosecuted against the said Lord *Haversham* with Effect by the Commons, before the End of this Session of Parliament, the Lords will declare and adjudge him wholly Innocent of the said Charge.

Then this Question was put, Whether this Resolution shall be agreed to?

It was resolv'd in the Affirmative.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That Sir *David Mitchell*, Sir *Edmund Harrison*, *George Dorrington*, Esq; *Joseph Burchet*, Esq; Capt. *George Byrns*, *Brooke Bridges*, Esq; *George Cornwall*, Esq; Capt. —

*Griffith*, — *Holmes*, *Edmund Hayman*, and — *Traverse*, Esq; his Majesty's Surveyor-General, do, and they are hereby requir'd to attend this House on *Monday* next, at Ten of the Clock in the Forenoon, as Witnesses on the behalf of *Edward Earl of Orford*.

A Complaint being this Day made of certain printed Votes of the House of Commons, dated the 20th Instant, wherein there are several Things highly reflecting on the House of Peers; It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Consideration thereof shall be adjourn'd to *Monday* next, and all the Lords summon'd to attend with Special Notice of this Order.

*Die Lunæ 23<sup>o</sup> Junii, 1701.*

The Earl of *Stamford* acquainted the House, from the Lords Committees appointed to draw, or extract out of the Books, what is to be printed in relation to the Lords Impeach'd, and the Proceedings thereupon, what was transcrib'd in order thereunto; and, that there was more to be extracted, which as yet was not transcrib'd: Whereupon it was ordered, by the Lords Spiritual and Temporal in Parliament assembled, That any Three of the Lords of the said Committee do meet when they please, after the House is up, and give Order to the Clerk for what shall be further transcrib'd out of the Journals, in order to the printing thereof.

The House resumed the adjourn'd Debate upon the printed Votes of the House of Commons of the Twentieth Instant. After Debate, it was proposed to declare, That the Resolutions of the House of Commons, in their Votes of the Twentieth Instant, contain most unjust Reflections on the Honour and Justice of the House of Peers, and are contriv'd to cover their affected and unreasonable Delays in prosecuting the Impeach'd Lords.

The Question was put, Whether this shall be the Resolution of the House?

It was resolv'd in the Affirmative.

I. It is resolv'd, by the Lords Spiritual and Temporal in Parliament assembled, That the Resolutions of the House of Commons, in their Votes of the Twentieth Instant, contain most unjust Reflections on the Honour and Justice of the House of Peers, and are contriv'd to cover their affected and unreasonable Delays in prosecuting the Impeach'd Lords.

It being also proposed to declare, That the said Resolutions do manifestly tend to the Destruction of the Judicature of the Lords, to the rendering Trials on Impeachments impracticable for the future, and to the subverting the Constitution of the *English* Government.

The Question was put, Whether this shall be the Resolution of the House?

It was resolv'd in the Affirmative.

II. It is resolv'd by the Lords Spiritual and Temporal in Parliament assembled, That the said Resolutions do manifestly tend to the Destruction of the Judicature of the Lords, to the rendering Trials on Impeachments impracticable for the future, and to the subverting the Constitution of the *English* Government.

It being also proposed to declare, That whatever ill Consequences may arise from the so long defer-

deferring the Supplies for this Year's Service, are to be attributed to the fatal Counsel of putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

After Debate, the Question was put, Whether the last Words shall stand Part of the Resolution?

It was resolv'd in the Affirmative.

Then the whole Resolution was read, and the Question was put, Whether these Words shall be the Resolution of the House?

It was resolv'd in the Affirmative.

III. It is resolv'd by the Lords Spiritual and Temporal in Parliament assembled, That whatever ill Consequences may arise from the so long deferring the Supplies for this Year's Service, are to be attributed to the fatal Counsel of putting off the Meeting of a Parliament so long, and to the unnecessary Delays of the House of Commons.

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That the several Resolutions made this Day be printed, with what was formerly order'd to be printed out of the Journals relating to the Lords that were Impeach'd.

Then the House was adjourn'd during Pleasure to Robe.

Then the House was resumed.

The House was call'd over by the Clerk, and the Names of the Lords present set down by the Heralds.

Then the House was adjourn'd to *Westminster-Hall*, and the Lords went in the same Order as they did to the Lord *Sommers's* Trial: And being come to the Hall, and seated, the House was resumed.

Leave was given to the Judges to be cover'd.

Proclamation being made for Silence, the following Proclamation was made for Prosecution; *viz.*

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

Then the Articles of Impeachment against *Edward Earl of Orford* were read, and also his Lordship's Answer to the said Articles.

Then the same Proclamation as before was made for Prosecution; and the Lord-Keeper declar'd, That the Court is now ready to proceed upon the Trial of *Edward Earl of Orford*, and therefore their Lordships are to give Attention.

The Earl of *Orford* said, His Council were ready to be heard, if the House pleas'd.

Then the House was mov'd, and did adjourn to the House above, and return'd in the same Manner as they went down.

Then the House was resumed, and order'd, That the same Method be observ'd, in giving Judgment in the Hall, as was at the Lord *Sommers's* Trial, and the like Question put in the Hall.

The House being call'd over, and the Name of every Lord present writ down for the Lord-Keeper.

The House was again adjourn'd to *Westminster-Hall*, where the House was resumed, and Proclamation made for Silence.

Then the Lord Keeper put this Question,

That *Edward Earl of Orford* be Acquitted of the Articles of Impeachment exhibited against him by the House of Commons, and all Things therein contain'd; and, That the said Impeachment be dismiss'd.

The Lord-Keeper ask'd every Lord present, Whether *Content*, or *Not Content*, beginning at the lowest Baron.

Lord <i>Haversham</i>	Content
Lord <i>Herbert</i>	
Lord <i>Ossulston</i>	
Lord <i>Cornwallis</i>	
Lord <i>Berkeley</i>	
Lord <i>Rockingham</i>	
Lord <i>Lucas</i>	
Lord <i>Colepeper</i>	
Lord <i>Mobin</i>	
Lord <i>Lovelace</i>	
Lord <i>North</i>	
Lord <i>Wharton</i>	
Lord <i>Eure</i>	
Lord <i>Fitzwalter</i>	
Lord <i>Bergavenny</i>	
Lord Bishop of <i>Chichester</i>	
Lord Bishop of <i>Peterborough</i>	
Lord Bishop of <i>Lincoln</i>	
Lord Bishop of <i>Norwich</i>	
Lord Bishop of <i>Coventry and Lichfield</i>	
Lord Bishop of <i>Ely</i>	
Lord Bishop of <i>Sarum</i>	
Lord Viscount <i>Say and Seale</i>	
Earl of <i>Rochford</i>	
Earl of <i>Scarborough</i>	
Earl of <i>Montagu</i>	
Earl of <i>Portland</i>	
Earl of <i>Berkeley</i>	
Earl of <i>Radnor</i>	
Earl of <i>Macclesfield</i>	
Earl of <i>Shaftsbury</i>	
Earl of <i>Burlington</i>	
Earl of <i>Essex</i>	
Earl of <i>Kingston</i>	
Earl of <i>Stamford</i>	
Earl <i>Rivers</i>	
Earl of <i>Huntingdon</i>	
Earl Marshal	
Duke of <i>Newcastle</i>	
Duke of <i>Schomberg</i>	
Duke of <i>Bolton</i>	
Lord Steward	
Lord Arch-Bishop of <i>Canterbury</i>	Content.

After which the Lord-Keeper declar'd, That the Votes were Unanimous in the Affirmative.

Then the Lord-Keeper declar'd, That *Edward Earl of Orford* was Acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd; and that the said Impeachment be dismiss'd.

And his Lordship also declared to the Earl of *Orford*, That he was Acquitted.

Then the House adjourn'd to the House above, and being resumed, It is Consider'd, Order'd, and Adjudg'd, by the Lords Spiritual and Temporal in Parliament assembled, That *Edward* Earl of *Orford* shall be, and is hereby Acquitted of the Articles of Impeachment against him, exhibited by the House of Commons, and all Things therein contain'd; and, That the said Impeachment be dismiss'd.

*Die Martis 24<sup>o</sup> Junii, 1701.*

It is order'd by the Lords Spiritual and Temporal in Parliament assembled, That all the Articles of Impeachments, and Answers to them; The Lord *Haversham's* Charge and Answer; The Lord *Sommers*, and the Earl of *Orford's* Trial, and all other Things relating thereunto, and The Resolutions of *Monday* last, be transcrib'd and printed; and, That the Duke of *Bolton*, the Earl of *Stamford*, the Lord *Wharton*, the Lord *North*, Lord *Haversham*, and Lord *Sommers*, or any Three of them, do inspect the Journals, and take care that what is or shall be transcrib'd, in order for printing, be perfect; and give Order to the Clerk for printing thereof.

Then the House taking into Consideration, That there were several Lords charg'd and impeach'd by the Commons, and no Prosecution against them; Order'd as follows; *viz.*

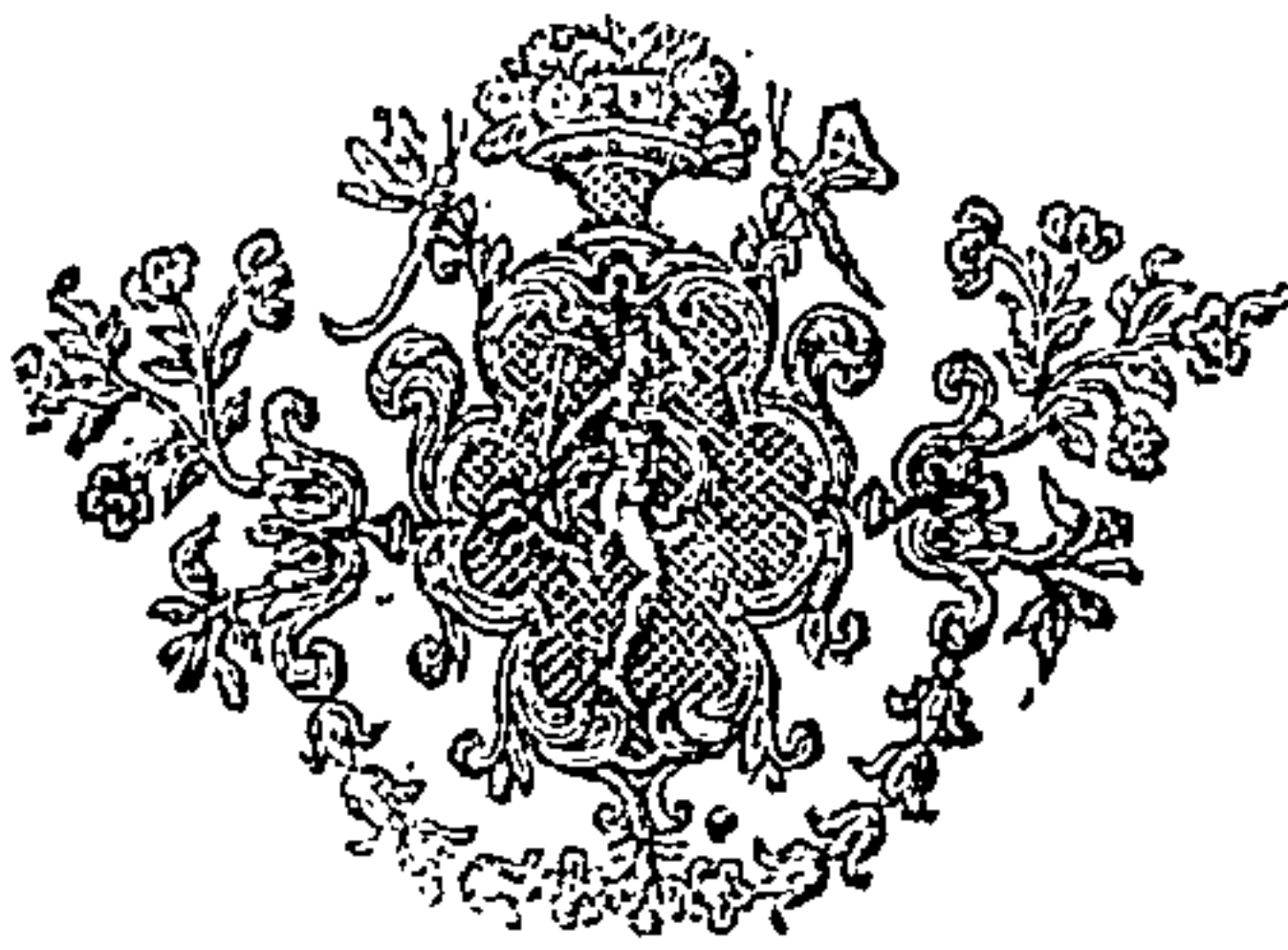
The House of Commons not having prosecuted their Charge, which they brought up against *John* Lord *Haversham*, for Words spoken by him at a Free Conference the Thirteenth Instant; it

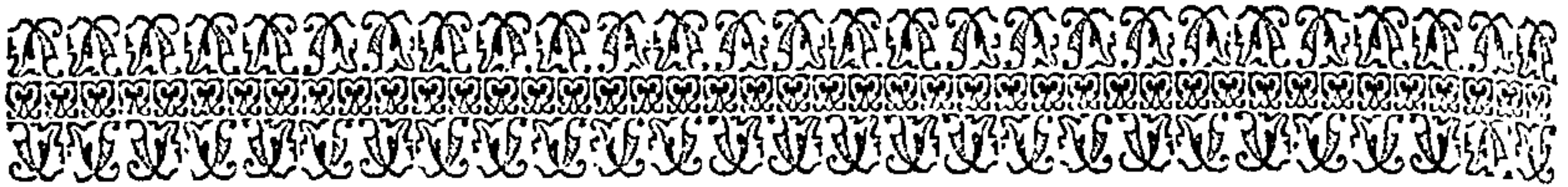
is this Day Order'd, by the Lords Spiritual and Temporal in Parliament assembled, That the said Charge against *John* Lord *Haversham* shall be, and is hereby dismiss'd.

The Earl of *Portland* being Impeach'd by the House of Commons of High Crimes and Misdemeanors, the First Day of *April* last; It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the Impeachment against *William* Earl of *Portland* shall be, and is hereby dismiss'd, there being no Articles exhibited against him.

The House of Commons having Impeach'd *Charles* Lord *Hallifax* of High Crimes and Misdemeanors, on the Fifteenth Day of *April* last, and on the Fourteenth Day of this Instant *June* exhibited Articles against him; to which he having answer'd, and no further Prosecution thereupon; It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the said Impeachment, and the Articles exhibited against him, shall be, and they are hereby dismiss'd.

The House of Commons having Impeach'd *Thomas* Duke of *Leeds* of High Crimes and Misdemeanors, on the Seven and twentieth of *April*, One thousand Six hundred Ninety-five, and on the Nine and twentieth of the said *April* exhibited Articles against him, to which he answer'd; but the Commons not prosecuting, It is Order'd by the Lords Spiritual and Temporal in Parliament assembled, That the said Impeachment, and the Articles exhibited against him, shall be, and they are hereby dismiss'd.





## CLXXI.

*The Trial of PATRICK HURLY, of Moughna, in the County of Clare, Gent. at the King's-Bench in Ireland, upon Two (several) Indictments, the one for Perjury, and the other for Conspiring with Daniel Hicky, &c. to Cheat the Popish Inhabitants of the County of Clare, &c. May 31, 1701. Pasche 13 Will. III.*



HE Prisoner being brought from the Marshalsea to the Bar, and a Full Jury appearing, the Clerk of the Crown bid him look to his Challengers: And after some Challenged by him, the Jury Sworn, were

Edmund Perry,	}	John Drew,
James Mac Donnel,		Hugh Brady,
John Brady,		Edward Mealing,
Dennis Mac Mabone,		Austin Bennis,
Richard Hen,		Joseph Cecil,
Thomas Brown,		Patrick Council.

*Clerk of the Crown.* Gentlemen of the Jury, you are to understand, That Patrick Hurly stands indicted of Perjury, for Swearing before Neptune Blood, Dean of Kilsnora, One of his Majesty's Justices of the Peace for the County of Clare, That he was Robbed of Three Hundred Pistoles in Gold, and several other Things, by four Persons altogether unknown to him, but whom, by the Tone of their Voice, he believed to be Irishmen and Papists; whereas, in Truth and Fact, he well knew them by their Names and Persons, being set on by himself, and did not take any thing at all from him.

*Mr. Attorn. General.* Clerk of the Crown, You have another Indictment against the Prisoner at the Bar; pray charge him with it.

*Cl. of the Crown.* Gentlemen of the Jury, you shall likewise understand, That the same Patrick Hurly stands here indicted, for that he did falsely and deceitfully conspire with one Daniel Hicky and several other Malefactors, unjustly to oppress the Popish Inhabitants of the County of Clare, and cheat them of a great Sum of Money, by colour of the Rapparee Act.

*Mr. Attorn. Gen.* May it please your Lordships, and you Gentlemen of the Jury, the Prisoner at the Bar, Patrick Hurly, is here indicted for Perjury; and the Perjury is this, That the Sixth of March, 1699, he came before Dean Neptune Blood, one of his Majesty's Justices of the Peace for the County of Clare, and made Oath

before him, pursuant to the late Statute for suppressing Tories, Robbers and Rapparees, That being at his Father's House in the aforesaid County of Clare, several Persons, with their Faces masked, came unto the said House in the Night-time, and forced into his Chamber, made a shot at him, and tied him and another Man with Cords fast to a Bedstead; that by the Tone of their Speech they seemed to be Irishmen, and that he believed them to be Papists; that he knew not one of them either by their Names or Persons; that immediately they broke open several Trunks, and took out of one of them a Bag, wherein were 374 Guineas, and 345 Pistoles; 4 Gold Crosses set with Diamonds, and several other Diamonds to a great Value; and a great Number of Holland Sheets and Holland Shirts, all to the Value of about 1300 Pounds; all which he swore they took away from him; and this he swore, in order that he might (according to the late Act, called the Rapparee Act) make the Country re-imburse this 1300 Pounds to him. Gentlemen, this was all false, and nothing at all in it but a Mock-Robbery, acted by Persons employed and set on by himself, whom he very well knew, and who took nothing at all from him, but it was only designed to Cheat the Country; and in truth he was not robbed at all, not of the Value of a Farthing. The Second Indictment is for a Cheat, in Conspiring with the Malefactors to wrong the said Country, and deceitfully and unjustly to raise Money upon the Country, under Colour of the Act of Parliament.

*Mr. Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury, Mr. Attorney General has given you an Account of the Indictments: The Second is the Consequence of the First. If Mr. Hurly was really and truly Robbed, then he did not design to cheat the Country: But if he was not really and truly robbed, but that his Examinations be all false, then he was not only perjured, but did likewise conspire to Cheat the Country. We will begin with our Evi-

Evidence of the Perjury, and the Force of our Evidence is this: Mr. Hurly pretends to be robbed of about Thirteen Hundred Pounds, in March 1699. We will shew you, That Mr. Hurly, instead of being a Man of so much Cash at that Time, was the contrary, to an extream Degree: That to prevent Arrests, he had several Protections; and he told a Gentleman, there could not be a readier Way to get Money, than by the Act of Parliament; if he could fix a Robbery on the Country; he could Tax what Sum he pleased. We shall shew you with whom he concerted this pretended Robbery, and by whom 'twas acted, and that Mr. Hurly himself contrived the whole Matter, and the several Goods, that he pretended to lose, he had back again, and they were sent another Way afterwards by Mr. Hurly; and that the Gold he pretended to lose, was but Counters. We will trace you the whole Drift and Contrivance of the Matter. My Lord, we shall first produce the Information of Mr. Hurly, sworn before Dean Blood.

[Dean Neptune Blood sworn.]

Court. Look on that Paper: Was that Examination sworn before you, Sir?

D. Blood. Please your Lordship to give me leave to read it.

Court. Do so, Sir; take your own Time — You have read that Paper?

D. Blood. Yes.

Court. Was that Examination taken before you upon Oath?

D. Blood. Yes, my Lord.

Court. Who was the Person that swore it?

D. Blood. Patrick Hurly.

Court. Is that the Man, that stands there?

D. Blood. Yes, that is he.

[Clerk reads the Examination.]

Com. Clare. The Information of Patrick Hurly of Moughna, in the said County, Gent. taken before Neptune Blood, Dean of Killsherra, One of his Majesty's Justices of the Peace for the said County.

THE said Informant being duly sworn on the Holy Evangelists, and examined, saith, That on Sunday, the Third of March, One thousand Six hundred and Ninety-nine, about Eleven of the Clock at Night, being then at his Father's House at Moughna aforesaid, and in his Chamber, he saw three Men armed burst in an Out-door of the said House, which opened into a Garden, threw down Mr. Ronane, who was near the said Door, in a rude manner, with Swords and Pistols in their Hands, entered into the said Chamber, dragging the said Mr. Ronane with them: Instantly there appeared a fourth Person armed, and with their Faces masked; and making a Shot at the Informant, they immediately tied him and the said Mr. Ronane with Cords fast to a Bedstead, calling the Informant Rogue, Rascal, Son of a Whore, Treacherous Villain to his Country, and many absurd Words to that Effect. The said Informant further saith, That the said Persons, by the Tone of their Speech, seemed to be Irish-

men, and believes them to be Papists, but knows not any one of them by their Names or Persons. That immediately they broke open three large Trunks, and took out of one of the said Trunks a Bag, wherein were Three hundred Seventy and Four Guineas, and Three hundred Forty and Five Pistoles, amounting in all to the Sum of Eight hundred Forty and Eight Pounds, Nine Shillings Sterling, or thereabouts, together with a Gold Cross set with Diamonds, and several other Diamonds, to the Value of Two hundred Twenty and Five Pounds Sterling; and also the Number of Twenty-four large Holland Sheets, each of them containing Ten Yards, or thereabouts, Price Seventy and Two Pounds Sterling, and Thirty-five Holland Shirts, amounting to the Value of One hundred Fifty and Seven Pounds Ten Shillings Sterling. The said Informant further saith, He heard a great Bustle and Noise, and Shots made in the other Parts of the said House at the same Time, which he understands was done by others of the said Robbers. And further saith, That the said Robbers took away all the aforesaid Gold, Diamonds, Sheets and Shirts, and left the said Informant and Mr. Ronane tied as aforesaid, and locked the said Door on the outside. He further saith, That he never got any of the said Gold or Goods since the said Robbery. And further saith, That when he perceived the said Robbers were gone away, he, this Informant, sent some of his Servants out through a Window about Four of the Clock next Morning, to make a Hue and Cry, and to raise the Country, to pursue after the Robbers. The said Informant being asked, Whether the said Robbery was committed by any Contrivance of his own, or any Friend of his, with Expectation to get Money raised on the Country, or for any other Self-end? Declares, That it was not, nor does know of any such Contrivance or Design, by any Person whatsoever, either directly or indirectly. The said Informant further saith, That two of the said Robbers, which came into his Chamber, had red Cloaths, and understands that there were in and about the said House the Number of seven more of the said Robbers, besides the aforesaid four that entered into the said Chamber. He further saith, That he cannot give any Description of any of the said Persons, more than is herein set forth. And being examined, Whether any of his Servants or Family were from home at the same Time when the said Robbery was committed? he said, That he sent one Calaghan Carty, a Servant of his, that same Day to Mr. John Forster, at Rathorpa in the County of Gallway, for a Suit of Mourning Cloaths, which the said Mr. Forster brought from Dublin for the said Informant; and the said Calaghan returned the next Day, being Monday the Fourth of March Instant, with a Letter from the said Mr. Forster, and that the said Informant's Wife and her Brother, Mr. Edmond Tirrey, and Mr. Ulick Bourk, who is married to her Sister, were the same Night when the said Robbery was committed at Captain Christopher O'Brien's House at Imishtiman in the said County of Clare. The said Informant further saith, That Moughna aforesaid, where the

“ said Robbery was committed, is in the Barony  
 “ of *Corcumoroe*, and County aforesaid. He fur-  
 “ ther saith, That he had about Four Hundred  
 “ Pounds of the aforesaid Gold from Alderman  
 “ *Walton* in *Dublin*, and had the rest sometime  
 “ before from Mr. *Christopher Fitz-Symonds*, Mer-  
 “ chant in *Dublin*. The said Informant further  
 “ saith, That he knows not who any of the afore-  
 “ said seven Persons were, that were in and about  
 “ the said House, nor yet any of the Four Per-  
 “ sons as aforesaid, nor from whence any of them  
 “ came, nor whither they went, and further  
 “ saith not.

*Jurat coram me*  
 6° Martii 1699.

NEP. BLOOD.

Vera Copia

GUL. TISDAL.

*Court.* Mr. Dean *Blood*, Is this the very Exa-  
 mination that Mr. *Hurly* gave in upon his Oath  
 before you?

*D. Blood.* Yes, Sir.

*K. Council.* Did he swear it all?

*D. Blood.* Yes, he swore all the Contents of  
 this Examination to be true.

*Mr. Soll. Gen.* My Lord, and you Gentlemen  
 of the Jury, the Scope of the Evidence against  
 the Gentleman at the Bar is thus: We will shew  
 you the great Necessity he was under, and the  
 pressing Occasions he had for Money; and that  
 being in great Straits, he was contriving how  
 to stave off his Creditors, and save his Reputa-  
 tion. We will produce the Persons that he  
 had Discourse with about the probable Way of  
 getting Money; and some of the very Persons  
 that were to act in order to it; and that when  
 Mr. *Ronane* was in the House, these Actors were  
 to rush in, and to tie him and Mr. *Patrick Hurly*  
 together; and then to look in such a Trunk,  
 and there they should find something like  
 Gold. That the Actors did lurk in and about  
 the House by Mr. *Hurly's* Appointment; and came  
 into the Dwelling-house, as was contrived be-  
 tween them, rushing in with the said Mr. *Re-*  
*nane*, who went out into the Garden after Sup-  
 per, as was contrived beforehand. When Mr.  
*Hurly* was giving in his Information, Mr. *Blood*  
 asked him, What Witnesses he had besides him-  
 self? He said, a Servant of his, one *Calaghan*  
*Carty*. We will produce that same *Calaghan*  
*Carty*, who will give a full Relation of the Mat-  
 ter.

*Calaghan Carty call'd.*

*Mr. Bernard.* My Lord, one Word for the Tra-  
 verfer. My Lord, this *Calaghan Carty* and others  
 were the Persons taken up for this Robbery, and  
 actually in Goal for it; they were the Persons  
 that did actually rob us. My Lord, they were  
 put into Irons; and threatened to be hang'd un-  
 less they would swear it was a Sham-Robbery;  
 and thereupon were discharged; and after came  
 to this Town, and went before my Lord Chief-  
 Justice *Pyne*, and they swore, That their Exami-

nation was forced from them. It is here in  
 Court.

*Calaghan Carty sworn.*

*Court.* Do yo know *Patrick Hurly*?

*Carty.* Yes, my Lord.

*Court.* How long have you been acquainted  
 with him?

*Carty.* Since he came into this Kingdom from  
*England*.

*Court.* How long was he come before he was  
 profecuted?

*Court.* 'Twas about two Years.

*K. Council.* Will you give the Court and the  
 Jury an Account what you know concerning this  
 Robbery? Tell the whole Truth, and nothing  
 but the Truth.

*Carty.* My Lord, I was one of his Servants.  
 He came to me, and called me out to his Stable,  
 and drew out a Purse of Gold, and shewed it me,  
 and told me, he was to pay one Mr. *Arthur* some  
 Money, who was to come such a Day to com-  
 pound with him for the Money; and if he did  
 give him that Money, he would be ruin'd for  
 ever; but that if I would do as the rest would, I  
 would do him a Kindness: And says, That when  
 Mr. *Arthur* should hear the Money was robbed,  
 he would compound with him: And he told me  
 where the Money was to be, and the Trunk he  
 would put it into.

*Court.* Did you, according to his Desire, take  
 away the Gold and the Linnen?

*Carty.* Yes, my Lord.

*Court.* Was there any others to do it besides  
 your self?

*Carty.* Yes, Four more, *Donagh O-Brien An-*  
*drews, Daniel Hicky, Daniel Carty, and Teigue Carty.*

*Court.* What did you do with the Linnen?

*Carty.* It was *Daniel Hicky* took it out, and, he  
 said, he gave it all back again to his Master.

*Court.* Were you disguised?

*Carty.* Yes, we had some of us Blue Coats,  
 and some of us Red Coats and Vizards.

*Court.* Where had you the Coats?

*Carty.* Mr. *Hurly's* Man threw them into the  
 Barn to us.

*Court.* Had you any Arms?

*Carty.* Yes, my Lord, we had Swords.

*Court.* Who gave the Arms to you?

*Carty.* *Daniel Mac-Cay*, Mr. *Hurly's* Footman.

*Court.* Whose were the Swords?

*Carty.* I was told they were brought from  
*Dublin* by Mr. *Hurly*.

*Court.* Was there any Fire-Arms?

*Carty.* Yes, there was Fire-Arms left on a Table  
 by the Door, and charged with Powder.

*Court.* Had you any Directions about them?

*Carty.* Yes, my Lord, they were laid there on  
 purpose for the Men.

*Court.* Who gave those Directions about the  
 Fire-Arms?

*Carty.* It was *Daniel Mac-Cay*.

*Court.* Were they charg'd?

*Carty.* Yes, with Powder only.

*Court.* Was any of 'em fired off then?

*Carty.* Yes, there was.

*Mr. Sol. Gen.* My Lord, though they were fired  
 off, there was no Ball in them: It was not to do  
 Harm, but only to frighten those who were not  
 in the Secret.

*Court.* Did you take the Gold in the Purse; or whatever it was?

*Car.* My Lord, we were directed by Mr. Hurly to pour it on the Table, that Mr. Ronane might see it.

*Court.* How long had Mr. Ronane been there?

*Car.* Two Nights.

*Sir J. Mead.* Was there any particular Time appointed when you was to do this Fact?

*Car.* There was, my Lord; when Mr. Ronane should come out of the Back-door.

*Court.* Had you any Directions in particular what to do with the Servants?

*Car.* Yes; we had Directions to tie Mr. Hurly and Ronane together, and there was a Bed-cord laid in the Room ready for the Purpose.

*Mr. Recorder.* Who gave you the Directions to tie them?

*Car.* Mr. Hurly.

*Mr. Sol. Gen.* Do you know one Walter Neylar?

*Car.* Yes.

*Mr. Sol. Gen.* Where was he?

*Car.* He was in Goal at Ennis, for Mr. Hurly's Debt.

*Mr. Sol. Gen.* You were Mr. Hurly's Servant.— Pray, did he appear publickly about that Time? or, Was he on his Keeping?

*Car.* He was on his Keeping.

*Court.* Explain you self — What was that Keeping?

*Car.* My Lord, he was on his Keeping, for fear of being taken upon Writs and Executions: He had Servants in his House, and he kept one watching constantly, for fear of being taken.

*Court.* At whose Suit?

*Car.* At Mr. Arthur's Suit.

*Mr. Atto. Gen.* My Lord, I am told his House was a sort of a Garrison, and there were regular Works about it.

*Court.* You say, there were Scouts abroad, and some Wall: Pray give an Account what Works there were about the House.

*Car.* Yes; there was a Brick-Wall about one Side of the House.

*Court.* Do you imagine it was to prevent his being arrested, that he built that Wall?

*Car.* Yes, it was, my Lord.

*Mr. Recorder.* What sort of Money was there when you open'd the Bag? — What did appear to be?

*Car.* It was yellow Pieces; and Mr. Hurly gave his Seal, to seal the Bag up again.

*Court.* Was Mr. Ronane there at that Time?

*Car.* The Seal was given before, my Lord.

*Mr. Sol. Gen.* He says, It was not he that pour'd the Money out. — Did you judge the Money to be Gold or Counters?

*Car.* That, my Lord, I did not know.

*Mr. Sol. Gen.* My Lord, Mr. Hurly pretends, that this Man gave an Examination contrary to this. Now we will shew you, That that was done by another Person, employ'd by Mr. Hurly to personate this Man. But, before that, please to ask him as to the Linnen that was carried away, what became of it, and who disposed of it.

*Court.* You say, there was Linnen taken away, — What Linnen?

*Car.* There was Holland Sheets, and they were put into a Chest in the Barn; and we brought them in again.

*Court.* Who brought them in?

*Car.* Daniel Hicky, and I my self.

*Court.* Who did you deliver them to?

*Car.* To Mr. Hurly's Wife.

*Court.* Was he privy to it?

*Car.* Yes, he was.

*Court.* Did you ever make Mr. Hurly acquainted, that you had restor'd the Linnen?

*Car.* Yes, my Lord.

*Mr. Recorder.* Pray, was there any Jewels or Diamonds taken away?

*Car.* My Lord, he said there was some in a little Bag; some Jewels and Diamonds; and he bid us not to open it, and we did not.

*Court.* Was that Bag in the same Drawer with the other Money?

*Car.* Yes, my Lord, it was.

*Sir J. Mead.* Pray, my Lord, I desire to know, whether he was ever tamper'd with by any body, and who it was.

*Court.* Was you ever tamper'd with, to take off your Evidence?

*Car.* Yes, my Lord, I was — by Daniel Carty, and I refus'd it.

*Court.* Was you by Mr. Hurly?

*Car.* No, ——— but he sent his Brother to me.

*Mr. Forster.* Pray, my Lord, let us see that Examination: He, after that Examination, gave Evidence contrary to what he has now given.

*Court.* Do you admit, that there was an Examination?

*Mr. Sol. Gen.* That there was an Examination sworn before my Lord Chief-Justice ——— But that this was not the Man.

*Mr. Recorder.* Was you sworn before my Lord Chief-Justice Pyne?

*Car.* Never in my Life.

*Court.* Look on it; Is that your Hand?

*Car.* It's none of my Hand?

*Mr. Recorder.* Pray look upon it.

*Car.* It's none of my Hand.

*Mr. Forster.* (Produces another Paper.) — Pray look on that Paper, and see if that be your Hand or not.

*Car.* I don't know whether it be or no; I believe it may.

*Mr. Sol. Gen.* Pray mind which he owns to be his Hand, and which not.

*Recorder.* We have to deal with a nimble Person.

*Court.* What will you have next?

*Mr. Bernard.* The next Thing is, What Time of the Day or Night the Robbery was committed.

*Car.* My Lord, it was about Ten a-Clock at Night, before the People went to Bed.

*Court.* What Month?

*Car.* The Month of March.

*Court.* What Day of the Month?

*Car.* As I understand, the Third of March.

*Court.* What Day of the Week?

*Car.* Sunday.

*Mr. Bernard.* Where was you on Monday Morning?

*Car.* I was at Corrofin.

*Mr. Bernard.* How far is that from Mr. Hurly's?

*Car.* It is five Miles.

*Court.* How long did you stay at Corrofin?

*Car.* I stay'd there till News came, that the Robbery was committed; I stay'd till Night.



Mr. Bernard. Pray, was Mr. Ronane privy at all to this Robbery?

Car. I don't know; I believe he may, for I know no other Business he had there, nor I saw no other Business he did there.

Court. Mr. Bernard, he says this, —As Mr. Ronane was to go out of the Back-door, then at that very Time they came thro' the Garden.

Car. Yes, my Lord, Mr. Hurly's Man came to give us a Call.

Court. He says, Hurly's Man did give them Notice when Mr. Ronane did go abroad.

Mr. Bernard. Do you believe that Mr. Ronane went abroad?

Court. He says, it was usual for Mr. Ronane to go abroad.

Mr. Att. Gen. My Lord, the next Witness we shall produce is another Servant, that was in the House with Mr. Hurly the same Time.

*Margaret Conneene.*

Mr. Sol. Gen. This Lady goes in the Family by the Name of *Peggy Rabbet*; *Margaret* is *Peggy*, and *Conneene*, *Rabbet*.

[*An Interpreter sworn, because she could not speak English, —Then she was sworn.*]

Mr. Sol. Gen. Pray ask her, whether she knew *Patrick Hurly*, and let her point at him.

Con. There he is.

Mr. Sol. Gen. What does she know of this Robbery, this pretended Robbery?

Court. Pray ask her, how long she has been acquainted with Mr. Hurly.

Interp. This Year and a half.

Court. Was she a Servant, or no?

Interp. Yes, a Servant in the House for a Year and half.

Court. Does she know of any Robbery, or pretended Robbery, committed on Mr. Hurly?

Interp. She knows there was a Robbery.

Court. Was she a Servant in his House at that Time?

Interp. Yes, my Lord, she was.

Court. Let her tell what she knows of it from the Beginning to the End.

Mr. Record. The whole Story, the whole Intrigue.

Interp. She says, one *Hicky*, and *Calaghan Carty*, *Donogh O-Brien Andrews*, came into the House at Night, and *Teigue Carty* and *Daniel Carty*.

Court. Were they disfigur'd?

Interp. Yes, she says, they were.

Court. How did she know them?

Interp. As *Calaghan Carty* told her.

Court. When was that?

Interp. After he came out of Goal.

Court. Did she know any of them when their Disguise was on?

Interp. No, she did not.

Court. Did she know of any Contrivance of a Robbery?

Interp. No, she did not.

Court. What Time of the Day or Night was this Robbery committed?

Interp. She says, my Lord, about Ten of the Clock at Night.

Court. What Month? or, What Time of the Month?

Interp. She does not know; but it was about Ten of the Clock at Night, as she believes.

Court. Pray, in what Manner was it that they came into the House?

Interp. She says, my Lord, that about that Hour of the Night she came in before Mr. Ronane went out at the Back-door; and, That these Five Persons came in at that Time into the House.

Court. What Part of the House was she in then, when these five Persons came in?

Interp. She was in the Kitchen.

Court. Ask her, How could she see these Persons, when they came into the House, from the Kitchen?

Interp. She says, she could not.

Court. How soon after they got in had she Notice the Robbers were got into the House?

Interp. She says, that as soon as they came in, one *Mac Caie* cry'd Murder, and said, his Master was kill'd.

Court. Where were the Robbers then?

Interp. In the Parlour, near her Master's Chamber.

Court. What Arms had they that Time there?

Interp. She says, that they had Fire-Arms and a Sword; and, that they shot at them.

Court. Which of them had Arms?

Interp. She says, All that she saw had Arms.

Court. Was there any Body wounded? or, Was there any Opposition given by any Servants, that occasion'd them to fire?

Interp. There was no Body to oppose them.

Court. What made 'em fire off the Gun then?

Interp. She does not know, unless 'twas to keep them in, and frighten 'em.

Court. How far was this House where Mr. Hurly liv'd from any Neighbours?

Interp. She believes there were some Neighbours half a Mile off.

Court. Was she in the Parlour? or, Did she see any Arms in the House before the Robbers came in? or, Did they bring the Arms with 'em?

Interp. She says, there were Arms in the Parlour when they came in.

Court. Were these Arms she saw with them the same that she saw in the Parlour before they came in?

Interp. They were the same Arms?

Court. Did she see those Arms? — How long did she see 'em there before the Robbers came in?

Interp. She says, that the Arms lay there all the Evening before.

Court. Was it usual for the Arms to lie there before?

Interp. 'Twas so sometimes.

Mr. Sol. Gen. What was Mr. Hurly's Motive for keeping Arms always ready at the Door? What Occasion had he for them?

Interp. She does not know any other, than that her Master was in Debt, and apprehensive of Trouble; and, that he kept those Arms for his Defence.

Court. Pray, does she know what was taken away from her Master at that Time?

Interp. She knows that they took twelve Pair of *Holland Sheets*.

Court. Did she ever see any of the Linnen that was taken away from her Master with him afterwards?

Interp.

*Interp.* There were Sheets in the House after the Robbery, and she believes they were the same Sheets.

*Mr. Butler.* The Sheets in the Robbery were large, double Holland Sheets.—Pray, what Sheets were they she saw afterwards in the House?

*Interp.* Large Holland Sheets.

*Mr. Sol. Gen.* How many Pair of Holland Sheets did she see in the House after the Robbery?

*Interp.* She saw four or five Pair of Holland Sheets in the House after the Robbery.

*Mr. Sol. Gen.* Pray, how soon after the Robbery did she see those Sheets in the House?

*Interp.* After the Affizes.

*Mr. Attor. Gen.* Pray ask her, whether any Goods were sent out to any Neighbour's House, and what Neighbour's, and what Goods.

*Interp.* She believes 'twas usual, when *William Haloway* came to the House, that was a Person who prosecuted *Mr. Hurly* for Debt, to send away the Goods, to secure them.

*Mr. Attor. Gen.* As I understand this Woman, when these Robbers had come into the Parlour, *Daniel Mac Caie* ran into the Kitchen, and cry'd Murder! Murder! I would fain know; since *Daniel Mac Caie* was not tied, and that the Robbers did not tie her, why they did not go out to make Hue and Cry, and raise the Country.

*Interp.* She says, my Lord, that there was none of them tied; but they did not go out.

*Court.* Pray, how came it about, that after the Shots went off, no Neighbours came in?

*Interp.* She says, she believes they could not hear.

*Mr. Attor. Gen.* Pray, when they fired off the Fire-Arms, did they present them at her, or at *Daniel Mac Caie*? or, Did they find any Holes the Shots had made in the Cieling, or Marks of the Bullets in the Wall, or in any other Place?

*Interp.* She says, they hurt no Body, and they saw no Holes or Marks of Shot or Bullets.

*Mr. Attor. Gen.* Ask her; whether the Arms that were in the Parlour did not usually hang on Racks or Hooks; and where were they a little before the Robbers came into the Parlour.

*Interp.* They were upon the Table, my Lord, near the Door.

*Court.* Where did these Arms use to be at other times?

*Interp.* She says, at the same Place, near the Door.

*Mr. Forster.* What number of Arms did *Mr. Hurly* use to have in the House? and, Of what Sort?

*Interp.* A couple of Fuzees, a Blunderbuss, a couple of Carbines, and Pistols.

*Mr. Bernard.* Pray how many Swords were there usually?

*Interp.* She did not know of any but her Master's Sword; she saw but Two.

*Mr. Bernard.* How does she know that the Shots were made out of these Arms that were *Mr. Hurly's*?

*Interp.* She says, that she was shot at twice.

*Mr. Bernard.* And was it out of these Arms that used to be in the Parlour?

*Interp.* She was shot at with a Pistol.

*Mr. Bernard.* Was it with *Mr. Hurly's* Pistol?

*Interp.* She believes it was.

*Court.* Whether these Arms, that were fired off; were the Arms that lay on the Table?

*Interp.* She was told afterwards, by the Person that did it, that they were her Master's Arms.

*Court.* Who told her of it?

*Interp.* *Calaghan Carty*.

*Mr. Bernard.* She has no other Knowledge of this but as *Calaghan Carty* told her?—When was it he told you this?

*Interp.* After he came out of Gaol.

*Mr. Bernard.* How long was that after the Robbery?

*Interp.* They were long in Goal—she does not know.

*Mr. Bernard.* Tho' she was our Servant then, we shall shew whose Servant she is now, and how she has been promis'd to be Portion'd and Petticoated: ——— Does she know *Teigue Carty*?

*Interp.* Yes, she does.

*Mr. Bernard.* Does she know *Daniel Hicky*?

*Interp.* Yes, my Lord.

*Mr. Bernard.* Does she know *Donogh O-Brien*?

*Interp.* Yes, she does.

*Mr. Bernard.* Had she this Account from any of those Persons?

*Interp.* She did not ask them.

*Sir John Mead.* Whether the Arms *Mr. Hurly* had, were carried away by these Persons; or left there?

*Interp.* She says, they took 'em out, and lock'd the Door, and left 'em without the House.

*Mr. Sol. Gen.* Upon my Word, a Man that had robb'd Thirteen hundred Pounds, would hardly have parted with his Arms till he was safe lodg'd: ——— What became of the Arms? Who had 'em afterwards?

*Interp.* She saw the Arms in the House again.

*Court.* Were the Arms abused any ways?

*Interp.* She heard they were stuff'd with Gravel; but she does not know whether it was so or no:

*Court.* Who did she hear say so?

*Interp.* She heard the Family say so.

*Mr. Bernard.* Pray, when did she see that *Calaghan Carty*? How long was it from the Time of the Robbery to the Time he told her this?

*Interp.* Next Day in the Evening she saw him after the Robbery.

*Mr. Bernard.* About what Time?

*Interp.* She does not know certainly what Time of the Day.—It was afternoon, pretty late, after the Cows were milk'd.

*Mr. Hurly.* She says, the next Day this Man came back.—The Man says; he was at *Gorrofin* till Night.

*Mr. Sol. Gen.* He says, That after the Robbery was committed, he went that Night as far as *Gorrofin*; and, that being weary himself, he sent his Father with the Letter to *Mr. Forster's*, and afterwards came back again in the same Evening.

*Mr. Sol. Gen.* My Lord, we are inform'd, that this Woman can give direct Proof, that some of the Goods, and particularly the Linnen, came back to the House; and that, being dirty, she wash'd them.

*Court.* What Goods were taken away, does she know; the Night *Mr. Hurly* was robb'd?

*Interp.*

*Interp.* She says, they took Twelve Pair of Holland Sheets, and about Three and Thirty Shirts.

*Mr. Sol. Gen.* I desire to know, Did she afterwards wash any Linnen, Sheets or Shirts, and how they were dirty'd with ordinary wearing, as by going abroad?

*Interp.* She says, there was at least four or five Pair of Holland Sheets that were soil'd.

*Mr. Sol. Gen.* Did she wash any Linnen?

*Interp.* She was at the Washing of 'em.

*Mr. Sol. Gen.* Did she observe after what manner they were dirtied, by People lying in them, or otherwise?

*Interp.* She does not know.

*Mr. Butler.* Does she know of any Holland Sheets sent to any Gentleman in the Country from Mr. Hurly?

*Interp.* She knows that some of his Linnen was sent to Mr. O'Brien's.

*Mr. Dean.* How came she to stay in the Room after Shots made at her? How came she to be so stout?

*Interp.* She says, she durst not stir: One had a Pistol in one Hand, and a Sword in the other, and she durst not stir.

*Mr. Dean.* How long before the Robbery did she see Calaghan Carty?

*Interp.* That Day the Robbery was committed, which was Sunday, he dined there.

*Mr. Bernard.* My Lord, I desire to know whether she did not see Calaghan Carty very often after the Time the Robbery was committed, and how often.

*Interp.* My Lord, she says, that after the Robbery was committed, Calaghan Carty was in the House after his Return from his Errand: He continued in the House until such time as he was taken.

*Mr. Bernard.* Pray, who took him?

*Interp.* One Haloway, she says, one Buck, and some Dragoons.

*Mr. Bernard.* Pray, did Calaghan Carty tell her any thing of this Robbery during the Time he was in Prison?

*Interp.* She says, he did not.

*Mr. Bernard.* Whether she did not believe this to be a real Robbery, until he told her after he came out of Prison?

*Interp.* She did then believe it was a real Robbery.

*Mr. Bernard.* Does she believe now, in her Conscience, it was a real Robbery?

*Interp.* She does not.

*Mr. Bernard.* What is the Cause she does not believe it now?

*Interp.* She says, that she found it out since to be otherwise.

*Mr. Sol. Gen.* Ask her again, — What is the Reason that she does not believe it to be a real Robbery, as well now as at the Time it was committed?

*Interp.* She says, my Lord, the Reason for believing that it was not a real Robbery, is, That she found it out to be otherwise, not only by the Actors, but by the Servants and the Neighbours.

*Mr. Sol. Gen.* Pray ask her again.

*Interp.* She believes it was not, for she found it out, and they confess'd it: And a Portmanteau with some Linnen, that was sent away to

Mr. O'Brien's, being afterwards come back from Mr. O'Brien's, when the Linnen was taken out of it, she saw there the Table-Cloth that was taken away by the Robbers that Night.

*Mr. Attor. Gen.* Pray, was that Table-Cloth used that Night of the Robbery at Mr. Hurly's Table?

*Interp.* She says it was.

*Mr. Sol. Gen.* She was ask'd, Whether or no she believes it was a real Robbery? and she says, It was not a real Robbery; and her Reason was, That in a Portmanteau that came from Mr. O'Brien's House there came back a Table-Cloth that was used and taken away that very Night of the Robbery at Mr. Hurly's House.

*Court.* Ask her, whether she took Notice of any Table Cloth that was in Mr. Hurly's House the Night of the Robbery, that afterwards came back from Mr. O'Brien's.

*Interp.* She says, they had that Table Cloth in the House that Night of the Robbery.

*Court.* Was it taken away by the Robbers?

*Interp.* They did take it away that Night: It was upon the Table in the Parlour, and they took it away.

*Court.* She says, the Table-Cloth was in the Parlour, on the Table, the same Night the Robbery was committed: Pray ask her, Was it on the same Table where the Arms were?

*Interp.* It was upon a Side-board, my Lord.

*Mr. Bernard.* Pray, when did she leave Mr. Hurly's Service?

*Interp.* She says, that she left his Service, and continued in his Father's House, till about Christmas.

*Mr. Bernard.* Pray, whose Service did she go to afterwards?

*Interp.* She went to Service to one Mr. Wigan.

*Mr. Bernard.* Was she at Sir Donogh O'Brien's House after that Time? — Whether she was sent for by Sir Donogh O'Brien — and for what?

*Interp.* She was there after she left her Service.

*Mr. Bernard.* How long after she left her Service?

*Interp.* She believes, within two or three Days after.

*Mr. Bernard.* Did she go of herself, or was she sent for?

*Interp.* One Constance Davoir brought her there.

*Mr. Bernard.* Is he a Servant?

*Interp.* No.

*Mr. Butler.* He is a Man that keeps an Ale-house in Corrofin. — Did he tell her Sir Donogh O'Brien sent for her?

*Interp.* No, he did not.

*Mr. Bernard.* What Business had she there?

*Interp.* He did not tell her what Business.

*Mr. Bernard.* To what End or Purpose did she go there?

*Interp.* She said, that he was her Friend, and she went along with him.

*Mr. Sol. Gen.* What did she go thither for?

*Interp.* To give an Account of what she knew concerning this Robbery.

*Mr. Bernard.* Mr. Hurly was very severe on Sir Donogh O'Brien. — Did she see Sir Donogh O'Brien?

*Interp.*

*Interp.* She did.

*Mr. Bernard.* Had he any Discourse with her?

*Interp.* She said nothing to Sir *Donogh*, nor Sir *Donogh* to her — but she was carried before a Justice of Peace.

*Mr. Bernard.* What Justice of Peace?

*Interp.* She does not know that.

*Mr. Bernard.* Whether Sir *Donogh O-Brien* was there? — Whether she did not hear the Country, and all the Neighbourhood, say, That if they did not make this no Robbery, Sir *Donogh* would be ruin'd?

*Interp.* She says, she heard no such thing; but was desir'd to say nothing but Truth.

*Mr. Bernard.* Was there any Promise made you of a Portion?

*Interp.* No, there was not.

*Mr. Bernard.* Was she tamper'd with by any?

*Interp.* She says, No.

*Mr. Sol. Gen.* Don't ask her if she has been tamper'd with, for she does not understand it; but, whether she was offer'd any thing at all for Swearing in this Cause?

*Interp.* She says, No; she was offer'd nothing at all.

*Mr. Sol. Gen.* Now we will call *Walter Neylan*, who will give an Account of this Matter out of *Mr. Hurly's* own Mouth.

*Walter Neylan sworn.*

*Court.* Give an Account to the Jury what you know in this Matter.

*Mr. Sol. Gen.* Let him tell if he was in Prison in *Ennis* Goal, and on what Account, and what pass'd there between him and *Hurly*.

*Neylan.* My Lord, the same Time that *Mr. Hurly* was committed upon Suspicion of the Robbery, I was in Prison my self.

*Court.* On what Occasion was you there then?

*Neylan.* I was bound for *Mr. Hurly*, and was confined for his Debt. I was in Conversation with him during his Confinement.

*Court.* Was he confined in the same Goal?

*Neylan.* Ay, and in the same Room.

*Court.* Who was in the Goal with you? Was there one *Donogh O-Brien Andrews* there?

*Neylan.* There was four Servants of *Mr. Hurly's*, *Donogh O-Brien Andrews*, *Daniel Hicky*, *Calaghan Carty*, and, I think, *Daniel Carty*.

*Court.* What pass'd between you and *Mr. Hurly*?

*Neylan.* My Lord, Three of them discover'd the Robbery, and the other held out for two or three Days. But, as I was coming out of the Room where I was confined, this Man, *Donogh O-Brien Andrews*, said to me, Do you know whether my Master is working any thing for my Liberty? No, says I, I do not. Pray, says he, tell him out of Charity, that he take Care for my Releasment, or else I must discover as well as the rest.

*Jury.* We do not hear him.

*Court.* He says, he was in Prison at the same Time with *Mr. Hurly* and four of his Men at *Ennis*: That he was conversant with *Hurly*, being Chamber-fellows: That Three of the Persons, that were thus confined, confess'd the Rob-

bery; but there was *Donogh O-Brien Andrews*, he stood out, and disown'd it for some Time; and afterwards this *Donogh O-Brien Andrews* came, and said to him, Pray, do you know whether my Master is doing any thing for my Releasment? and he said, No, he did not. Pray tell my Master out of Charity, that if he does not soon work out my Liberty, I must discover, as well as the rest of my Fellow-servants.

*Neylan.* My Lord, upon this I came to *Mr. Hurly*, and told him the whole Matter. Says *Mr. Hurly*, If that Man does own it, I am undone, for he is the Man that knows most of it; and call'd me aside, gave me a Piece of Money, and desired me to give it to him, that he might not discover; and to tell him, that he would send for Security, and get him discharg'd, tho' it were from the County of *Galloway*. I went down accordingly with the Piece of Money into the Goal; and because I was unwilling to hold any Discourse with the said *Donogh O-Brien Andrews* alone, I gave the Piece of Money to *Calaghan Carty* to give him, and told him what *Mr. Hurly* said. Says *Donogh O-Brien Andrews*, This will not do, for I love Liberty better than my Life, and I will discover. At the Time of this Man's saying he would discover, *Mr. Hickman*, a Justice of Peace, came into the Goal; whereupon *Mr. Hurly* desired me to speak to *Mr. Hickman*, and pray him to speak to the Goaler, that this same *Donogh O-Brien Andrews* may have more Liberty than he had, and desired me to be Security for him, and that he would give me Counter-Security. I told him, I would not speak to him: Says *Mr. Hurly*, You ought to do it, if not in point of Friendship, yet in point of Gratitude; for it's through your Means I was forced to take those Measures.

*Court.* *Mr. Neylan*, Pray, Sir, what did *Mr. Hurly* say to you when you came to him, and told him what *Donogh O-Brien* said to you?

*Neylan.* He said, That was the First Man to whom he communicated the Contrivance of the Robbery; and, That it was most dangerous if he should discover it.

*Mr. Sol. Gen.* Who said so?

*Neylan.* *Mr. Hurly* said, That this Man was the First Man that he spake to of the Contrivance; and he said, He was the Principal of the Four that contriv'd it.

*Mr. Sol. Gen.* Who did you give this Information to?

*Neylan.* I gave it to *Mr. Butler*; and there was present three or four Justices of Peace more.

*Court.* At the Time he was examined before the Justices of the Peace, he did not give the latter Part of the Evidence: I ask'd him why he did not? he says, Because he did not recollect himself. The first Part he did not give, concerning the Piece of Money.

*Mr. Forster.* The Prisoner desires to know after what distance of Time he recollected himself?

*Court.* After he had given his Examination in to the Justices of Peace.

*Neylan.* A Month or Six Weeks, I think, my Lord — But I told several People of it before.

*Mr. Forster.* How came he to send for a Justice of Peace to take his Examination at first, and not

to do so afterwards, when the latter Part of it came to his Memory ?

*Neyland.* Because Mr. *Hurly* was in Goal at the first Time, and I thought he might have come to a Trial ; but after he was remov'd up here, I despair'd of his coming to a Trial, and so did not think it material.

*Mr. Hurly.* My Lord, this is a Man that was in Trouble for me, and bound to *Thomas Arthur* on my Account: He had a Pique to me, and I to him ; he lampoon'd me, and I him. I appeal to the Gentlemen of the Jury, whether I, that had my Wife and Sister with me, whether they don't think I should rather have trusted them with such a Thing ? All that he here says is out of Pique and Malice, which the Gentlemen of the Country do know.

*Court.* Mr. *Hurly*, you are a Man of Parts, and you know what is used to be done in this kind : If you please, you may have Pen, Ink, and Paper to take Notes ; and, when it comes to your Turn, you shall ask what Questions you please.

*Mr. Hurly.* My Lord, 'tis all Malice.

*Neyland.* My Lord, I did contrive to make him pay the Debt of Two hundred Pounds (for which I was bound for him) ; but I suffer'd Damage above Threescore Pounds more—— I did indeed get an Execution against his Goods.

*Court.* He says, he was mightily damnified by being bound for you ; and that, having Counter-Security, he did order Judgment to be enter'd up against you ; knowing that you had valuable Goods in the Goal, he order'd them to be taken.

*Mr. Hurly.* He says, my Lord, that he was so much damag'd : I'll prove, my Lord, that his Debt was satisfied, and over and over.

*Mr. Attor. Gen.* My Lord, we will produce a Witness, that saw this Rapparee Act perus'd in Mr. *Hurly's* House at *Moughna* ; and we will shew you what pass'd at reading the Act.

*Capt. Charles Mac-Donogh sworn.*

*Mr. Attor. Gen.* My Lord, Captain *Mac-Donogh* will give your Lordships and the Jury an Account of the Necessity the Prisoner was under ; and, that the Rapparee Act being read on some certain Occasion at a certain Place, what happen'd thereupon.

*Court.* Pray, Sir, give an Account to the Jury what you know of Mr. *Hurly*, and his Circumstances.

*Capt. Mac-Donogh.* My Lord, I was very well acquainted with Mr. *Hurly* since the Time he came out of *England* ; I receiv'd Letters from him, and I was employ'd by him in negotiating several Affairs in the Country, and particularly against his Brother, that ow'd him some Money. I thought he was very severe against his Brother, and I charg'd him for being so unkind to him : He said, He was in want of Money, and so could not help it. And I was with him when he was reading the late Act of Parliament relating to the Article-men, and he said, He would pass his Adjudication according to the Articles of *Galloway*. I said, I thought he was in *France*, and not in *Galloway*. Said he, It's no matter, I will prove it. And he came after to *Dublin*, and pass'd his Adjudication. And after he came down again

from *Dublin* I was with him ; and he brought with him the Act of Parliament, commonly call'd *The Rapparee Act* ; and he said, That Rapparee Act was a cleaver Way to recover Money from the Country.

*Court.* When was this ?

*Capt. Mac-Donogh.* The latter end of *Christmas*, before the Robbery.

*Court.* Pray, what Year ?

*Capt. Mac-Donogh.* My Lord, it was *Christmas* 1699.

*Mr. Butler.* Have you any of those Letters of Mr. *Hurly*, that shews he was in great Want of Money ?

*Capt. Mac-Donogh.* Yes, I have.

*Mr. Recorder.* Pray, in what Circumstances was he at *Christmas* 1699 ?

*Capt. Mac-Donogh.* He was poor and indigent ; and he said, He was so great a Friend to his Brother, and lov'd him so well, that he would not have prosecuted him, if he had not wanted Money.

*Mr. Attor. Gen.* Had you any Discourse with Mr. *Hurly* after the Robbery ? Pray, what was it ?

*Capt. Mac-Donogh.* My Lord, *Capt. O'Brien* writ me a Letter after he came to the Place, and was perswaded by him, that it was a real Robbery, and desir'd me to come, that we might consult the Matter : And knowing, that he had no such Money, I wrote him a Drolling Letter, That I believ'd it was some *Papists* robb'd him ; and, that he would recover his Money of the County. I came to *Ennis*, and he told me, He had lost all that he had in his House to pay his Debts ; which I smil'd at, because I was before in his House when he came from *Dublin* ; and I said to him, I hope you have brought Money, for otherwise the Country will be too hot for you now, because Mr. *Neylan* lies in Goal for you ; and this Sheriff is not your Friend. And he did not pretend that he had Money ; but, said he, never matter that, for Sir *Toby Butler* and Colonel *John Macnamarra* will make my Interest good with the Sheriff. And so the Letter coming after from *Capt. O'Brien* to me, that Mr. *Hurly* had lost such a Sum of Money, I laugh'd at it, because I knew that he had no such Sum. And when he told me, at the Assizes at *Ennis*, how that he was robb'd, he said, He would give me Two hundred Guineas if I manag'd the Business for him, to get the Money from the County.

*Mr. Att. Gen.* You had several Letters from Mr. *Hurly* : Pray, let us see 'em.

[*Shews a Letter.*]

*Mr. Recorder.* Did you receive this Letter from Mr. *Hurly* ?

*Capt. Mac-Donogh.* Yes, 'tis his Hand-writing—— There has pass'd many Letters between him and I.

*Mr. Recorder.* Did you ever discourse with him since you receiv'd this Letter about the Subject and Matter of it ?

*Capt. Mac-Donogh.* Yes, I did.

*Court.* Did you ever answer it ?

*Capt. Mac-Donogh.* Yes, I did.

[*The Letter read.*]

Thursday, August 17. 1699.

Dear Cousin,

JUST now I received the enclosed from our never-failing little Agent. What we have hitherto done, is but very insignificant to the main Matter. If this be not duly executed, and without Loss of Time, there is no other Way on Earth to do it, but that we thought of and proposed; that is, When the Colonel comes in Person, immediately after the Assizes, to execute the Surplus of the Fier. Fac. The Gentleman will, no doubt on't, send to him (as he did before) to know if he has any against his Person? When he sends him Word he has not, he will come to him; and when they are together, you must get some Clever Fellow, that will put it into his Hands. Spare no Cost to do this, my Dear Friend: You possess the Matter fully, and I have several convincing Proofs of the Sincerity of your Intentions towards me; therefore will say no more, but refer it wholly and solely to your Self; and desire once more, you will spare no Cost to compass it. The great Friend arrived in Dublin, and he expects our Cousin there Wednesday next: He goes away Saturday Night to Solomon his Brother-in-Law's House, where it would be a vast Comfort for him, towards his Journey, and the carrying on the Clever Touch, to receive a Box of Pills from you, which will be very much wanting. If not, and that you could get a Bill for't from Pierce Verrony, who will be there to meet my Brother John, it shall be highly serviceable; make it payable to our Agent, at Mr. Thomas Hewlet's House in Smithfield, and she will pay it to Mr. Baldwin. Let not our generous Friend's Good-Nature be prevail'd upon to give any Time or Forbearance; for, I do assure you, that and more must be laid out to carry on the Clever Touch; which I have the greater Hope will not fail taking the good Effect, since you are so positive in it. I hope you have a Will. Do your Business with Sir Theo --- and send his Opinion about the Elegit. Our Cousin will write to you from Dublin, directed as you shall appoint in the Answer to this. I will take Leave, begging the Favour you will remember me most thankfully to our worthy Friend, whose Services I shall find a Way to return as he deserves. The longer he stays after the Assizes, the worse 'twill be for us. Dispatch me back the Bearer as soon as you can, and pay an Express, if you do not come your self, of Saturday Night to Solomon's: Our Cousin will go from thence on Sunday before Day. My Service to Mr. Conner, and know whether he delivered and seconded the Letter to my Lord C. J. Put this Letter and the enclosed into your Fob, lest you should drop it. As you have appeared all along a true Friend for me, my Dear Kinsman; go through with it, and assure your self, your Pains shall not be ill bestowed. The executing

this is the Clever Touch indeed; and I am sure it will succeed, since you undertake it. My most kind Service to my worthy Friend; I hope he bunted well.

Mr. Soll. Gen. Pray give me that Letter— My Lord, I shall take leave to read it, and ask some Questions out of it.—Sir, by the Oath you have taken, pray what does he mean by Our never-failing little Agent?

Capt. Mac-Donagh. That was his Wife, that was here in Dublin—There was a *Fieri Facias* against the Goods of his Brother John; but that would not do, so he desired his Wife to send an Execution against his Body.

Mr. Soll. Gen. Our great Friend is arrived at Dublin—Who does he mean by that?

Capt. Mac-Donagh. Really, Sir, by what I understand, it was the *Attorney-General*.

Mr. Soll. Gen. Who was his Cousin here, Solomon?

Capt. Mac-Donagh. He is one *Donogh O-Dea*; married to his Sister, whom he thought an insignificant Man; and therefore he called him *Solomon*, by way of Ridicule.

Mr. Soll. Gen. What was the Clever Touch, and the Box of Pills?

Capt. Mac-Donagh. The Clever Touch, was the Adjudication; and the Box of Pills, was the Money to be sent to Dublin, to pass the Adjudication.

Mr. Butler Have you any other Letters?

Capt. Mac-Donagh. Yes, I have.

Moughna, October the 5th, 1699;

I Have Advice from a very sure Hand, Dear Sir, that I am liked to be Blocked up very soon, or rather regularly Besieged by the formidable Captain Thomas Bourk, and a select Party he brags to have hired of the Enniskillin Dragoons for that Purpose. He received Fifty Pounds Sterling for that generous Undertaking, and entered into Bonds of Two Hundred Pounds Penalty, to have me in Salv. Custod. before the First Day of next Term. And, as I am resolved to keep my Ground, and maintain this Post to the last Extremity, I have detached Corporal Malone for Ammunition to put my self in a Condition to receive the Thrice-worthy Captain; for this is no Time of Day for me, (*post varios Casus*) to give my Head for the Washing. The Corporal is but very lately arrived into my Service, and consequently has but young Skill in Powder and Ball: Therefore must entreat you to chuse and send me a Pound of the best Powder, and three Dozen of Carbine, Musket, and Pistol-Ball.

Poor Tom is very much in the right on't, to revenge his Quarrel with a Party, since his Courage never inspired him to do it single Hand: And his select Party (as he calls them) are resolv'd to follow the Col. General of the French Dragoons (Mareschal de Boufflers) Maxim: For he was of Opinion, No Man was fit for a Dragoon, that in Time of War out-liv'd two Campaigns; or in Peace, did not once at least in every fifteen Days, seek Adventures for a broken Head. Pray dispatch me back the Corporal; and though the Enemies Lines of Circumvallation should be perfect, nay, their very Batteries be rais'd and fix'd, if you let me know the Day precisely that you intend to call this Way, I will make a Sortie to facilitate your Entrance. I have not one Word from our Friend since I saw you. If your Leisure will permit it, pray let me know what Progress you have made in the last Affair that was communicated and recommended to you by, Dear Sir,

Your affectionate Kinsman,

and very humble Servant,

Patrick Hurly.

For Capt. Charles Mac-Donagh. at Ennis.

Mr. Soll. Gen. You see that the Gentleman was very apprehensive of Debt, and guarding himself against it at this Time.

Mr. Attor. Gen. I desire to know, in this first Letter, who it was that was his good Friend?

Capt. Mac-Donagh. He told me, Sir, he look'd upon you to be his great Friend?

Court. Had you any Communication or Discourse with Mr. Hurly about this Robbery? Did he confess it?

Capt. Mac-Donagh. I did not put it to him: But I told him he would be Indicted for Perjury, and lose his Ears. He said, twenty Pounds would save them.

Mr. Hurly. He said, I must not stay in the Country, if I did not pay Mr. Arthur. I desire to know, Whether I did not tell him I was to meet Mr. Arthur?

Capt. Mac-Donagh. You told me you would make an end with Mr. Arthur: And you said at the same Time, that you had Sir Toby Butler and Mr. Macnamarra to make the Sheriff your Friend: And that did imply to me, that you had no Money.

Mr. Hurly. I came to Dublin in August, and they arrested me. I went to perfect Bonds to Mr. Arthur for the Debt, which was 723 Pounds.

He exacted upon me, and I was forced to consent to him a Bond for the whole Demand. I sent for Sir Toby Butler, and we made up the Account; and Mr. Arthur made it up near 1000 Pounds, for which I gave him my Bond. Mr. Butler told me, you will be reliev'd, by preferring a Bill in Chancery against Arthur. I did not serve him with a Subpœna, but he absconded, and so I got no Remedy to this Day. And the Reason why I paid him not, was to make him come to Terms, that I might retrench the extravagant Charge.

Court. Did he give that as a Cause why he would not pay Arthur, because he had exacted upon him?

Capt. Mac-Donogh. He did not tell me so.

Court. Was this the Reason, as you apprehended, why Mr. Hurly absconded, that he was on his keeping for fear of Arthur?

Capt. Mac-Donogh. For ought I know, it was for fear of others as well as Mr. Arthur. I remember the Night he came home from Dublin, some few Days before the Robbery, that he was barricading his Door, and telling me of making the Sheriff his Friend; whereby I concluded, that he could not have that Money that he afterwards pretended he had lost.

Court. How came you, Mr. Hurly, to barricade that House, when Mr. Arthur had promised not to disturb you at the Assizes of Ennis? He swears the very Night you came from Dublin you were barricading that House.

Mr. Attor. Gen. I desire to know, whether he believes that he had Money in his House the Night he was robbed?

Capt. Mac-Donogh. He did tell me so; but I did not believe him.

Court. Do you know any thing of those Counters?

Capt. Mac-Donogh. My Lord, about February last, the Wife of Daniel Hicky, who was suspected to be in the Robbery, came to me and said, that her Husband was like to be undone for passing some Counters: That if he could get his Liberty, he would go to Dublin, and swear the Cheat of the Robbery; and, says she, we have some of the Counters, that they said was Gold, in our keeping, and we will produce them.

Court. Did you see any of those Counters at any Time?

Capt. Mac-Donogh. Yes, I did, when the Constable took them out of Hicky's House.

Mr. Soll. Gen. It seems that Daniel Hicky's Wife told him, that she could produce the Counters. We shall shew you, that there was search for them accordingly. To whom did you make a Discovery of this of Hicky's Wife?

Capt. Mac-Donogh. I told it to Mr. Entler, who is a Justice of the Peace in the County of Clare, and to Capt. Bindon: The Woman was taken and Indicted for passing these Counters.

Mr. Foster. How came she to be discharged after she was taken?

Capt. Mac-Donogh. She was bail'd at the Quarter-Sessions.

Mr. Soll. Gen. My Lord, we shall shew you where the Counters were found, and who found them.

Mr. Bernard.

Mr. Bernard. And we shew, that the Man that found them hid them.

*The high Constable Walter Huonin sworn.*

*Court.* Had you any Warrant, and from whom, to search for Counters or Counterfeit Money?

*Huonin.* Yes, my Lord, I had a Warrant from Dean Blood, to search for Goods that were pretended to be robb'd from Patrick Hurly. I came to the Town of Moughna, and brought with me five Men and a Petty Constable; and I went to the House of John Hurly, Patrick Hurly's Father, who was Bed-ridden, and removed him out of his Bed: And I went to Carty's House, and dug there, and found none; and I came to Daniel Hicky's, and digged about; and there was a Bed of Dung by the side of the House, where they fodder their Cattle, and it was a Foot above the Floor of the House; and after searching the rest of the House, I ordered the Dung to be removed out of the Place; and I bid the Fellows come and dig there, and they did; and Hicky's Wife held the Candle her self; and one of the Men that was next the Wall hit a Stone in the Ground, and it was a Slate over a hole in the Floor, and the next of them threw it out, and along with it a Suggane and a Purse; and when I saw the Purse, I would not let him handle it. I opened it, and found it full of yellow Counters, and took an handful of them out, and called the People of the Town, and reckon'd them all before their Faces.

*Court.* What did you find in the Purse?

*Huonin.* My Lord, nothing but Counters.

*Court.* Have you them?

*Huonin.* Yes, I have all that was found—I came to the Assizes at Ennis, and my Lord Chief-Justice Haly ordered me to keep them till I should appear at the Trial.

[*Shews the Suggane and Purse with the Counters, which was opened, and were 121 in Number.*]

The reason why I was so careful to search there, was because Hicky's Wife was pressing for my not touching the Dung; and after they were found, when she saw the Counters, she dropt the Candle, and went away: Says I, good Woman, you must go along with me. I brought the Woman to Ennis; and I was brought before my Lord Chief-Justice, who desired me to keep the Counters against the Trial.

Mr. Hurly. Whether it be likely, that this Woman, that was Indicted for these Counters, would not have removed them, and thrown them into a by-hole; and if they were in the Ground, whether the Purse would not be rotten.

*Court.* He says, when it was taken up, the Suggane that was about it was mouldy and wet, for the Purse it self is damnified.

Mr. Soll. Gen. Pray what is the Name of the Village where the House stands?

*Huonin.* It is Moughna, where the Father of Mr. Hurly lives.

Mr. Bernard. How long after the Robbery was this found?

*Huonin.* It was a whole twelve Month.

Mr. Bernard. Was you directed to search that

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Dunghill before you went to the House?

*Huonin.* No; I was not; only a Fellow told me that he suspected that Place.

Mr. Recorder. Was it in the first Place; or in the last Place; you search'd, that you found these Counters?

*Huonin.* It was in the last Place.

Mr. Recorder. How near is this Hicky's House to Mr. Hurly's?

*Huonin.* About a quarter of a Mile; or less.

*Alderman Walton sworn.*

Mr. Forster. Sir, Mr. Hurly calls you, to know what Money you paid him?

*Ald. Walton.* My Lord, I came over with Mr. Hurly in October, 1697. And some time after he was here, he came to me and told me, he had some Money to receive, and ask'd me if I would receive it for him? I told him it was Mr. Burton's business; but he said he was a Stranger to him, and so let my Servant receive 400 Pounds from Mr. Arthur, and 100 Pounds from Mr. Fitz-Symons.

Mr. Bernard. I desire Ald. Walton to tell, when they came over in the War-time, whether he saw any Jewels with Mr. Hurly?

*Ald. Walton.* We did see a Ship, that we thought was a Privateer, but it prov'd a Friend: He then told me, he had some things of great Value, which he was going to secure; but I did not see them.

Sir John Mead. How long was the Money in your Hands?

*Ald. Walton.* It was all drawn out in three or four Months time.

Mr. Attor. Gen. Pray was it all drawn out of your Hands before 99?

*Ald. Walton.* Yes, yes.

Mr. Soll. Gen. The next thing that was drawn out was Writs and Proviso's, to force Mr. Hurly to pay back the Money to Mr. Fisher. My Lord, we will call two that were by when these Counters were found by the Constable.

*Thomas Edwards sworn.*

*Court.* Do you know of any Search made in any Body's House concerning Gold or Money?

*Edwards.* My Lord, I was commanded by the High-Constable, Walton Huonin, to the House of Daniel Hicky; and when I came, I found a Youth on his Knees making up the Dung: I asked him, what he was doing there? The Woman said, He was endeavouring to hide some Potatoes. I told her, there was no body would take them away. Now, my Lord, there was no Potatoes there; but we found the Counters under the Dung, about eight Inches deep in the Ground; they were in a Leather Wallet, whip'd about with a Thumb-Rope of Hay.

*Court.* How did the Woman behave her self?

*Edwards.* When the High-Constable told her, You must go along with me, she said, Now these are found, I believe I must.

Mr. Foster. Did you see the Counters when they were taken?

*Edwards.* Yes, I did.

Mr. Foster. Did they look fresh?

*Edwards.* Yes, they did.

E e e 2

Mr. Soll.



Mr. *Soll. Gen.* My Lord, before we go any further, the Gentlemen that are Council for the Traveller, would fain insinuate, that the Counters were laid there, — that *They that hide can find*. Now therefore, to shew that to be impossible, we shall prove to you, that this Woman, the Wife of *Daniel Hicky*, did offer some of these Counters for a Cow, before this Discovery.

Mortogh Mac-Colloghy sworn.  
(Per Interpreter.)

Mr. *Attorn. Gen.* Does he know one *Daniel Hicky*?

*Interp.* He does.

Mr. *Attor. Gen.* Does he know his Wife?

*Interp.* Yes.

Mr. *Attor. Gen.* Had he any Dealing with any of them?

*Interp.* He says, he had a Cow, and it was stray'd, and he found her, and was hurrying her home by *Hicky's House*; — he rested there, being weary, and was taking a Pipe of Tobacco, and they ask'd him, if he would sell the Cow? He said, he would: And she went into a Back-room, and brought two yellow Pieces, — he says, he has the two Pieces here to shew.

[*Produces the Pieces, being two yellow Counters, the same with those that Huonin produced in the Purse.*]

*Court.* Are those the Pieces *Hicky's Wife* offer'd him for this Cow?

*Interp.* He says, they are. When he was receiving the two Pieces the Woman gave him, he ask'd her what they were? She said, Two Guineas: He said, He believ'd they were some of *Patrick Hurly's Gold*.

*Court.* Why did he say so?

*Interp.* Because he imagin'd he had some Gold Counters.

*Court.* Did he sell his Cow for the Money then?

*Interp.* No.

*Court.* How came he to keep the Money then?

*Interp.* He told her, he did not like the Coin, and he would not sell his Cow for them, because they were some of *Patrick Hurly's Gold*; and he said, What will you take for 'em? I have Three-pence Half-penny, and some Tobacco, and if you will take them, I'll give 'em you for the Pieces: Yes, said she, I will; and I wish I had so much for every one I have.

*Court.* He says, he was after this examin'd by a Justice of Peace concerning these Things; How came he to be examin'd?

*Interp.* He went himself, and shew'd 'em to Mr. *Bindon*.

*Court.* Did he go of himself? or, Was he sent?

*Interp.* He says, he told Sir *Donogh O'Brien* what had happen'd, and he directed him to go to the Justice.

*Court.* Pray, how long was it after he had these Counters?

*Interp.* He says, Nine or Ten Days.

*Court.* Did he go to Sir *Donogh* of his own accord? or, Did any one bid him go?

*Interp.* He went freely of himself.

*Court.* When was it that he receiv'd those Counters he speaks of?

*Interp.* About *Christmas* last.

*Court.* When was it he bought the Cow?

*Interp.* He says, he bought her at *Clare Fair*, about *Allbolland-tide* before.

*Court.* What Time was it that the Woman would have bought it of him?

*Interp.* It was a good while after.

*Court.* Was it before or after *Christmas* he was selling the Cow to this Woman?

*Interp.* After *Christmas*, my Lord.

*Court.* How long after?

*Interp.* He does not exactly remember the Time.

*Court.* Now, pray Gentlemen, we must do right to every body. — When he comes to receive the Counters, he said, it was about *Christmas*; — and when he comes to tell you when he bought the Cow, it was all at the same Time.

Mr. *Soll. Gen.* No, no; the Matter of the Counters was at the Time when she cheapen'd the Cow; but he bought the Cow at *All-Saints* before, and he was about selling her at *Christmas*.

Mr. *Recorder.* About nine Days after he was in possession of the Gold, he came to Sir *Donogh O'Brien*, of his own accord, and he bid him go to a Justice of Peace.

Mr. *Bernard.* Pray, why did he not go to Sir *Donogh O'Brien* sooner? — And, what made him go then?

*Interp.* He waited for the Quarter-Sessions.

Mr. *Bernard.* Who is the nearest Justice of Peace living next his House?

*Interp.* Mr. *Bindon*.

*Court.* How came he not to go before Mr. *Bindon* immediately when he got the Counters?

*Interp.* He says, he waited for the Quarter-Sessions.

*Court.* Pray, how came he not to go immediately to Mr. *Bindon*, being the next Justice of Peace, rather than to Sir *Donogh O'Brien*?

*Interp.* He expected all the Justices would be together at the Quarter-Sessions.

Mr. *Forster.* Mr. *Hurly* desires to ask that Man some Questions. — How came the Cow to go out of the Barony after he had bought her? How came the Cow there?

*Interp.* The Man that sold him the Cow in *Clare Fair* liv'd there, and she stray'd back again.

Mr. *Hurly.* How came the Cow to go astray?

Mr. *Soll. Gen.* We cannot tell you; you may examine the Cow, the Cow knows best.

Mr. *Attor. Gen.* We will not shew, that when *Hurly* came from *Dublin* he lodg'd at Capt. *Jobe Lynch's House*, and he pull'd out of his Portmanteau a large Bag, that look'd as if it were full of Gold; and Capt. *Lynch* handling of it, and finding it light, he open'd it, and found it to be Counters. This Capt. *Lynch* is Landlord of *Menghina*, and they were intimate together.

Capt. *Lynch* sworn.

Mr. *Attor. Gen.* Pray, do you know Mr. *Patrick Hurly*, now at the Bar?

Capt. *Lynch*. I have known him these Thirty Years.

Court. Have you intimate acquaintance with him?

Capt. *Lynch*. He cannot deny but I have.

Mr. *Attor. Gen.* Pray give an Account of his coming to your House.

Capt. *Lynch*. I met Mr. *Hurly* at *Loughbrea*, at one *Harry Barger's* House, in the Year 1699, either a little before or after *Christmas*.

Court. Where was he going?

Capt. *Lynch*. He was going to the County of *Clare*, from *Dublin*; and as we were drinking a Bottle of Wine, — he went to a Portmanteau that lay on a Table, and taking out Linnen, he pull'd out a Bag that held about a Quart; said I, Mr. *Hurly*, you are well flock'd with Money coming from *Dublin*. — And I clapp'd my Hand into the Bag, took out an handful, and they were Counters, my Lord, of several sizes, like single and double *Louis d'Ors*.

Mr. *Soll. Gen.* Shew him some of the Counters.

[*He looks on them.*]

Capt. *Lynch*. This is like them.

Mr. *Hurly*. When was it?

Capt. *Lynch*. It was a little before *Christmas*, or soon after. — I wonder, Mr. *Hurly*, that you should deny it.

Mr. *Soll. Gen.* Upon the Oath you have taken, Had you any Discourse at this Meeting about any Acts of Parliament?

Capt. *Lynch*. I'll tell you, my Lord: He ask'd how Mr. *Banks's* Money went? (Mr. *Banks* was one that was robb'd of the Value of Two hundred and fifty Pounds, and the Grand-Jury, at the Assizes, allow'd him the Money, when he petition'd for it.) A while after, in our Journey, says he, Cousin, I have a great deal of Confidence in you, and if you'll assist me to get Money — I told him, in any just Way I would, but not otherwise.

Mr. *Attor. Gen.* Had you any Discourse about the Rapparee Act?

Capt. *Lynch*. He told me plainly, that if I would but assist him, — and then brought down the Statute, and ask'd me again, how Mr. *Banks's* Money went in our County? I told him, he recover'd his Money from the County. Says he, Cousin, I really want Money; and if you'll assist me in such a Matter, and come to me, I will deliver you your Lease. I told him, I would assist him in any just Way, but no further.

Mr. *Recorder*. You said just now, that he spoke of the Act.

Capt. *Lynch*. He told me, That the Act was a very good Way for a Man to get Money that wanted it.

Mr. *Attor. Gen.* Are you a Relation to Mr. *Hurly*?

Capt. *Lynch*. I have a Friendship for him; and if I had known I was to be summon'd, I would not have been within forty Miles of this Place this Day.

Court. Pray, what Relation are you to him?

Capt. *Lynch*. His Brother was married to my Sister, and he and his Father was Tenants to me and my Father these forty Years.

Court. Had you any Linnen sent to your House? And by whom?

Capt. *Lynch*. My Lord, I cannot tell was it Linnen or no, but there came a Trunk, and I had a Letter beforehand (it was in *April* or *May* 1700) informing me, that the Trunk would be with me that Night, and desiring me, that I would not let the Men that brought it see it afterwards.

Court. Did the Trunk come?

Capt. *Lynch*. Yes.

Court. Was it weighty?

Capt. *Lynch*. It was as much as any Two could carry. — The Servants told me, they were coming all Night, that they did not sleep.

Court. How far is your House from Mr. *Hurly's*?

Capt. *Lynch*. Seventeen Miles.

Court. Had you any Discourse with him in the Goal of *Emmis*?

Capt. *Lynch*. Yes; I went to see him at the Goal of *Emmis*, and Mr. *Butler* met me: I told him, I was going to see *Hurly*. And as we were taking a Bottle of Wine together, I said, Cousin, it is not fit for any Gentlemen to visit you, for the Pranks you play'd in *France*, and now this Robbery. — He said, Sir *Donogh O-Brien* was the greatest Enemy he had against him, — but he would lose his Blood, or he should lose his.

Court. Did the Servants that brought the Trunk tell you what was in the Trunk?

Capt. *Lynch*. They told me, that it was really full of Linnen. — And *Ulick Bourk* came, and expected Mrs. *Hurly* that Night. — My Wife was like to die. — The Servants that brought me the Trunk brought me a private Token, not to let any body have it, — not Capt. *Bourk* himself. — But I suspected there was no good in it, and I let them take it away; so the Trunk was taken away from my House that Night, and brought to a Neighbour's about a Mile off.

Mr. *Soll. Gen.* What Relation is *Ulick Bourk* to Mr. *Hurly*?

Capt. *Lynch*. They are married to two Sisters.

Mr. *Bernard*. My Lord, this Gentleman hath sworn very materially, and I desire he may fix a Time, and tell us within a Fortnight: Was it before or after *Christmas*?

Capt. *Lynch*. I am not positive, but it was in the Year 1699.

Mr. *Attor. Gen.* What House was it at *Loughbrea*?

Capt. *Lynch*. It was at *Harry Barger's* House. Mr. *Hurly*. What Time was it?

Capt. *Lynch*. I cannot be positive to Time, but it was before the Robbery.

Court. Pray recollect, as near as you can, what Time it was you were together at *Loughbrea*.

Capt. *Lynch*. I can't be positive.

Mr. *Bernard*. Was it in the Time of *Lent*, or not? It is strange!

Capt. *Lynch*. If I did know to a Day, I would tell it.

Mr. *Recorder*. You say, it is strange; he says, that Mr. *Hurly's* Denial to him is more strange! He is particular as to the Time of the Trunk, and yet he can't be so as to the other Time.

Court.