

or Bank Notes? Says he, I believe Goldsmiths Notes will serve: You are to shew the Ballance of your Cash; but I think, Bank-Notes will do better. Upon that Mr. *Lighboun* said, I don't know what the Consequence of this may be. Suppose, when we have produced these Notes, they should be detain'd from us, I am afraid most of the Goldsmiths Shops about *Temple-Bar* would be shut up the next Day, and Inquiry would be made what Holiday it was, and Thousands of Families might be ruin'd by this Transaction. Mr. *Cottingham* propos'd, You may stand by, and assist one another. Mr. *Kynaston*, said, I find, we are like to be sacrific'd, and given up; for my part, I will neither borrow, nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Masters were in great Concern. Mr. *Cottingham* and Mr. *Dixon* went back to my Lord Chancellor, and staid about an Hour and half, and then return'd to us, and said, my Lord was very busie, and dismiss'd us, and so we went home.

Mr. *Serj. Pengelly*. When was the next meeting?

Mr. *Tho. Bennet*. I don't remember; we had several meetings. I don't remember when the next was.

Mr. *Serj. Pengelly*. What pass'd on the 10th of November in the Presence of my Lord *Macclesfield*, at his House?

Mr. *Tho. Bennet*. When we came to my Lord Chancellor's House, upon the 10th of November, all the Masters then present carry'd up their Accompts: Two or three had not their Accompts ready; my Brother and Mr. *Conway* had not theirs; but all that were ready, carry'd them up to my Lord, and, according to Seniority, delivered them to his Lordship. The first was Mr. *Holford*: He had added to his Accompt, a letter, I don't remember the Words, or that it was read; but I remember a Subscription, which my Lord Chancellor read, and that he said it was very good, and he lik'd it very well, and, I think, he laid it down upon the Table. The next master gave his Accompt, and so all the rest. My Lord look'd them all over; some of the masters he objected to. I remember I had written at the Bottom of my Accompt, as near as I can remember, *I am ready and willing that the Bonds and other Securities in my Hands, may be inspected by such Person as your Lordship shall appoint.* My Lord, after looking them all over, said he lik'd Mr. *Holford's* Subscription, and, says he, I wish you would all make use of that: For it would be for your Honour and Service, to make yourselves appear able and sufficient to answer the Effects in your Hands. Somebody ask'd my Lord, what might be the meaning of this Commission being appointed by his Majesty? This, says he, I apprehend, will prevent a Parliamentary Inquiry.

Mr. *Serj. Pengelly*. We desire that Mr. *Bennet* may repeat the Expression my Lord made use of to persuade them to subscribe, as Mr. *Holford* had done.

Mr. *Tho. Bennet*. *That they might appear able and sufficient.* I think, those were the Words.

Mr. *Serj. Pengelly*. My Lords, I desire he may be ask'd, whether my Lord had at that time made an Inquiry of the masters, whether they were able and sufficient?

Mr. *Tho. Bennet*. I can only answer for myself. My Lord did not ask me, whether I was able and sufficient; but only directed me to write that Subscription that Mr. *Holford* had done; and I did go down, and write, in effect, that Subscription. I did subscribe thus: 'My Lord, I have all the Securities standing in my Name, as in the within mention'd Accompt are specified; as also the Tallies, Orders, and Bonds in my custody; and as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto. The Words, *to a Demonstration*, which are in Mr. *Holford's* Subscription, I omitted, because I could not make it out to the Lords of the Council.

Mr. *Serj. Pengelly*. My Lords, We beg leave to produce these Accompts, and shew to your Lordships that Subscription of Mr. *Holford*, that was to be followed by the other masters, and the first Subscription of Mr. *Bennet*.

Mr. *Onslow*. Pray, tell my Lords, if you can remember, was there any other Expression made use of at that time?

Mr. *Tho. Bennet*. The Expression was, it would be for our Honour and Service, to appear able and sufficient.

Mr. *Onslow*. No other Words?

Mr. *Tho. Bennet*. And it would be a means to prevent a parliamentary Enquiry.

Mr. *Onslow*. Was there nothing mentioned relating to a Stand?

Mr. *Tho. Bennet*. I don't remember that then; Mr. *Cottingham* said something of that at a meeting at Mr. *Edwards's*.

(The Subscription shew'd to Mr. *Bennet*. And proved by him to be Mr. *Holford's* Hand.)

Mr. *Serj. Pengelly*. My Lords we beg leave, that this Subscription may be read, which was to be follow'd by all the masters.

Clerk reads.

'I have all these Securities standing in my Name, as in this Accompt is specified, and will procure Certificates from the proper Offices, that I have, and had them before the Account, if your Lordship requires it. And as to the money, I am ready to give your Lordships satisfaction, to a Demonstration, that I have it in my power to answer it to every Person, that shall appear to be entitled to it, and who can give me a Legal Discharge.

Mr. *Serj. Pengelly*. We beg leave to read Mr. *Tho. Bennet's* First Subscription, that my Lord was not satisfy'd with.

Clerk reads.

'My Lord, I am ready and willing the Securities in the foregoing Account mentioned, shall be inspected by such Person or Persons as your Lordship shall be pleas'd to appoint.

Tho. Bennet, 10th Novemb. 1724.

Mr. *Serj. Pengelly*. Your Lordships observe, there is nothing in this Subscription, as to the Cash, and the producing it. Now we beg leave to see the subsequent Subscription.

Clerk reads.

'10 Nov. 1724. My Lord, I have all the Securities standing in my Name, as in the within mention'd Accompt are specify'd; as also the Tallies, Orders and Bonds in my custody. And

‘ as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto.

Tho. Bennet.

Mr. Serj. Pengelly. Your Lordships observe, he hath left out the Words *To a Demonstration*, because he thought that he could not so clearly make it out. I beg leave to mention, that these Accompts and Subscriptions thus alter’d, were actually delivered in, and laid before the Council, and are the Original Accompts.

Mr. Serj. Probyn. My Lords, I would ask Mr. *Bennet*, when this Proposal was offer’d to him, that he should subscribe as Mr. *Holford* had done, whether he made any Excuse, or pretended he was not able to do it?

Mr. Thomas Bennet. No, I did not; I did as the rest of the Masters did.

Mr. Com. Serj. I desire he may inform your Lordships when this was?

Mr. Thomas Bennet. I think, it was the 11th or 12th of *November*; I can’t be positive as to the Day.

Mr. Kynaston called.

Mr. Serj. Pengelly. My Lords, we desire that Mr. *Kynaston* may give your Lordships an Account, whether he was present at this Meeting on the 10th of *November*, and what passed there relating to their Accompts?

Mr. Kynaston. Yes, my Lords, I was there the 10th of *November*.

Mr. Serj. Pengelly. What passed at that Time at the Earl of *Macclesfield*’s?

Mr. Kynaston. I think I came there before the rest of the Masters, or only two or three were there before me. We gave my Lord an Account, that we had drawn out our Accompts of the Securities and Cash, and the Ballance in each Master’s Hands. Soon after the rest came. My Lord first received Mr. *Holford*’s Accompt, being the Elder Master. A Letter at the End of his Accompt was read: My Lord seem’d to be affected with, and to approve very well of it. There was some Writing at the End of it relating to the Ability. My Lord said, it would do very well to have something to the same purpose at the End of the other Masters Accompts, and mentioned to us to go down and write it; accordingly we did go down, and most of us, if not all, did write to that Purpose.

Mr. Serj. Pengelly. Can you recollect what Expressions the Earl of *Macclesfield* used, to recommend it to the Masters?

Mr. Kynaston. My Lords, I can’t justly recollect; I think it was, It would look well before the Council, and prevent a further Enquiry, or a parliamentary Enquiry, I am not positive which: But that I understood to be the meaning of it.

Mr. Serj. Pengelly. What was it that would look well to the Council?

Mr. Kynaston. What Mr. *Holford* had writ at the Bottom of his Accompt, *That they were ready, &c.*

Mr. Serj. Pengelly. My Lords, I desire he may be ask’d, whether there was an Enquiry made by the Earl of *Macclesfield*, as to his Ability or Sufficiency?

Mr. Kynaston. No, I am sure as to my self; and I don’t know as to any body else.

Mr. Serj. Pengelly. I desire he would inform your Lordships, what Subscription he had first made, and what was added, or what Advice was given?

Mr. Kynaston. I had writ before: ‘ My Lord, the Person I employed to write out this Account, has only gone thus far as to the Number of the Bonds. I have brought the Bonds with me, and desire you’ll appoint any Person to inspect them, and the other Securities I have here given an account of.

Mr. Serj. Pengelly. What was writ afterwards? This is wrote with a different Ink from that before: *And as to the Money, I am ready to pay it to the Persons entitled thereto.* That is with a different Ink.

Mr. Kynaston. I believe, upon looking upon it, I went down with the rest, and writ that in the Parlour in my Lord’s House.

Mr. Serj. Pengelly. I desire he may be asked, whether he, or any other of the masters then received any Explanation how this Sufficiency or Ability was to appear?

Mr. Kynaston. Not then, I don’t remember any thing of it.

Mr. Serj. Pengelly. Or at any other Time?

Mr. Kynaston. Some time after this, this was the 10th of *November*, and I believe, between that and the 16th, when we were to attend the Judges, the masters were summon’d to meet at Mr. *Edwards*’s House: I understood, it was a Summons from my Lord *Macclesfield*; and when we were here, there came Mr. *Cottingham* and Mr. *Dixon*. I don’t remember all the Discourse; but they were telling us what was to be done: First, we were to produce our Securities, and there would be no great Nicety in producing them: And then, next, we were to produce the Ballance of Cash: And I remember, on that, Mr. *Cottingham* said, You must stand by one another, and assist one another. Bank-Notes, said he, will be best; but if you can’t get them, then Goldsmiths Notes. You must get one or other to produce and shew.

Mr. Lutwyche. I desire he may be asked, what he thought he meant by the Proposal of getting Goldsmiths Notes, or Bank Notes?

Mr. Kynaston. I did take the meaning in the worst Sense to be, for the Masters barely to make a Shew of them; and that made me complain; and I spoke warmly, and said, I saw what the Design was; and whoever borrow’d any money on that Occasion, was a Knave, and he that lent it was a Fool.

Mr. Lutwyche. I desire he may be ask’d, whether there was any Recommendation by Mr. *Cottingham* or Mr. *Dixon*, and in what particular Expressions those Recommendations were made?

Mr. Kynaston. I believe, Mr. *Lightboun* express’d himself, That if they borrow’d Goldsmiths Notes, and they were detained, the Goldsmiths Shops would be shut, and People would be enquiring what Holiday it was.

Mr. Lutwyche. I desire he may be asked, what was said about making a Shew? if Mr. *Cottingham* own’d what was the meaning of those Words?

Mr. Kynaston. I don’t remember: They were pretty warm and said they would go to my Lord *Macclesfield*, which they did, and return’d again.

Mr. Plummer. My Lords, I desire he may be ask’d whether it was generally understood among the masters, that giving of Bank-Notes and Goldsmiths Notes was to be understood borrowing?

Mr. Kynaston. I understood it so myself, and I believe several others did; Mr. *Lightboun*, and Mr. *Holford*, and some of the others did so, by what they said.

Mr.

Mr. *Serj. Pengelly*. My Lords, we have done with this Witness.

Mr. *Serj. Probyn*. My Lords, I desire to ask this Witness the same Question that I ask'd the other; and that is, whether at the time when this Proposal was made to him, that he should subscribe as Mr. *Holford* had done, he made any Objection to it?

Mr. *Kynaston*. No, I did not make any Objection to it. I had been there first, and with my Lord, and at the farther End of the Room, that I remember less what happened at that time, than other People did.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly*. My Lord, we desire that Mr. *Lightboun* may give an Account of what passed at this meeting, relating to the bringing in of the Accompts?

Mr. *Lightboun*. What meeting? That at Mr. *Edwards's*, or that at the Earl of *Macclesfield's*?

Mr. *Serj. Pengelly*. That at Mr. *Edwards's*.

Mr. *Lightboun*. I was at Mr. *Edwards's* about that Time, at some meeting when our Accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had so many meetings about that time at Mr. *Edwards's*, that I don't remember exactly, which was before, and which after. I remember, at the meeting when Mr. *Cottingham* and Mr. *Dixon* both were there, there was some Discourse relating to the Producing of the Securities, and of the Ballance of the Cash. I then asked, whether we should produce it in Bank notes, or Goldsmith's Notes, and I understood, it was hinted that the Goldsmiths that we had dealt with, would assist any master that wanted money, but by whom it was said, I can't recollect. The Answer I made to that, was, that I should be sorry that any master should borrow Notes of a Goldsmith, and that they should be stay'd or secured when produc'd, which I apprehended would be done; and next morning several Goldsmiths would be forc'd to shut up their Shops, and it would look like a Holiday in *Fleetstreet*.

Mr. *Lutwyche*. Do you remember any Thing concerning a Net?

Mr. *Lightboun*. I don't remember the Expression of a Net.

Mr. *Lutwyche*. What Application was made to any of the masters to carry in their Accompts, and to whom?

Mr. *Lightboun*. My Lord *Macclesfield* one morning sent for me, and desired me, that when the Accompts were brought into the Council, I would be thereabouts, that if there was any occasion to clear up or explain any thing, or give farther satisfaction to the Council, I might be ready. I told his Lordship, I would give no Satisfaction about any one's Accompts but my own. But if his Lordship pleased that I should attend, I would be thereabouts; and if his Lordship pleased, I would have another master with me: I nam'd Mr. *Holford*, and my Lord desired me to acquaint Mr. *Holford* with it, which I did; who said, he was ready to go with me to answer any Questions that should be ask'd, arising on the Perusal of his Accompts.

Mr. *Lutwyche*. What did he desire you to attend for?

Mr. *Lightboun*. To resolve any Question or Difficulty that should arise before the Council. After this, Mr. *Cottingham* told Mr. *Holford* at Mr. *Ed-*

wards's, that my Lord desired that two of the masters should attend the Council with the Accompts of the whole, and that Mr. *Holford* being the senior master, should be one, and he was to choose whom he would have go along with him; and I having given Mr. *Holford* intimation before of my Lord's inclination, Mr. *Holford* desired me to go with him. I told him, I did not care to carry in any other Accompts than my own; as I had not concerned my self in other masters Accompts, I would not then begin; I would not carry any but my own, and no body else should carry mine; I would not be a Representative of the Body. Upon that, Mr. *Holford* recollected himself, and said, nor he neither; he would carry no Accompts but his own. I said, the Accompts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr. *Lutwyche*. Your Lordships will observe, the Persons thought most proper to appear for the rest of the masters, Mr. *Holford* and Mr. *Lightboun*, were so apprehensive of the masters being deficient, that they did not care to appear for them. I desire Mr. *Lightboun* may be ask'd, what pass'd on the 10th of *November*, when the Accompts were deliver'd to the Earl of *Macclesfield*?

Mr. *Lightboun*. My Lords, upon the 10th of *November* my Accompt was not ready at the time I was to deliver it. I rather chose it should not be ready; because I did not care that it should be carry'd in by any body but my self. However, I waited at the proper Time; and when we came there, Mr. *Holford* deliver'd in his Accompt, and a Letter he had writ to his Lordship, and fix'd to his Accompt, which was there read. My Lord seem'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, deliver'd in their Accompts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finish them, and attend his Lordship with them at the *Cock-pit* by Eight of the Clock. Accordingly I did, and sent it in to his Lordship.

Mr. *Lutwyche*. What pass'd farther relating to their signing of the Accompts?

Mr. *Lightboun*. I know nothing of it; for I went away to finish my own.

Mr. *Serj. Pengelly*. My Lords, we desire that Mr. *John Bennet* may be call'd.

Mr. *John Bennet* appeared.

Mr. *Lutwyche*. My Lords, we desire that Mr. *John Bennet* may be ask'd, whether he was at this meeting at Mr. *Edwards's* House, and what pass'd at that time?

Mr. *J. Bennet*. My Lords, I was at that meeting at that time, when Mr. *Cottingham* and Mr. *Dixon* came in, and told us they came from my Lord Chancellor; and Mr. *Cottingham* said, he had brought Mr. *Dixon* with him, because he was deaf, and could not well hear. Mr. *Cottingham* said, he had two Questions to propose; first whether we were willing that all our Bonds, and other Securities in our Custody, should be inspected by him or any other? All of us were willing, and agreed to that. The second was, whether we were willing, or would produce the Ballance of Cash in our hands before the Council? To this the masters made a Stand, and said, The Cash was considerable;

ble; and it could not be presum'd that they kept it lock'd up in Chests or Trunks in their own Houses; that was the way to have our Throats cut: But we believ'd we could do it in a reasonable Time. To which Mr. *Cottingham* said, Can't you produce it in Bank Notes or Goldsmiths Notes? Bank-Notes, said he, will be best; but do it in Goldsmiths Notes, if you can't get Bank Notes. To which Mr. *Lightboun* said, If we produce them in Goldsmiths Notes, and there should happen to be a Net thrown over 'em, and they should be secur'd, the Goldsmiths might be oblig'd to shut up their Shops, and People would be enquiring what Holiday it was; and it might be a great Damage to those Goldsmiths.

Mr. *Lutwyche*. I desire he may be ask'd, whether any thing was said of assisting one another?

Mr. *J. Bennet*. Mr. *Cottingham* press'd us very much to help and assist one another, as far as we were able.

Mr. *Lutwyche*. Whether was any other Expression made use of by him?

Mr. *J. Bennet*. I don't remember there was: But he repeated it several times, that we should stand by, and assist one another with Cash.

Mr. *Plummer*. My Lords, I desire to ask this Witness, if, in pursuance of the Advice given by Mr. *Cottingham*, he did assist any of the masters, or was assisted by any of them?

Mr. *J. Bennet*. One of the Gentlemen did assist me with Cash, which is lock'd up in the Chest: I gave him Security for it. And as to my assisting any Body, Mr. *Conway* inform'd me, he had a Real Security for 9000*l.* and begg'd, if I could, that I would assist him with 5000*l.* and in two or three Days I should have it again: I told him, I had in my Accompt mentioned my Cash, and that I had offer'd to make up the Ballance by my Real Estate, and so could not assist him with any Cash. He ask'd me, if I had any Bonds by me? I told him I had 2000*l.* Bonds; and if he could engage to bring them back to me in two Days, he should have them: And upon lodging a Bag of Writings with me, which he told me was a real Security for 9000*l.* I accordingly did lend him them, and he brought them back again to me in two Days Time.

Mr. *Plummer*. I desire he may be ask'd, what his Inducement was for lending the Bonds?

Mr. *J. Bennet*. The real Inducement was the real Security which was given me: But it had been recommended by Mr. *Cottingham* too.

Mr. *Plummer*. I desire to know whether he open'd the Bag, to see what the Security was, or took it by Content?

Mr. *J. Bennet*. No, I did not open it; Mr. *Conway* assured me it was so.

Mr. *Plummer*. What use did he make of those Bonds?

Mr. *J. Bennet*. Indeed I don't know.

Mr. *Lutwyche*. My Lords, I desire he may be ask'd, whether those Bonds belong'd to the Suitors of the Court?

Mr. *J. Bennet*. They were brought in by the Suitors of the Court after my Accompt was deliver'd in, and I must give them in my Post-Accompt: Therefore I said, I must have them again in two Days time.

Mr. *Serj. Pengelly*. I desire he may be ask'd, whether this was after he had given in his own Accompt?

Mr. *J. Bennet*. Yes, it was after I had given in

my own Accompt of my Money Securities, and the Accompt of my Estate.

Mr. *Serj. Pengelly*. I desire to know what Subscription Mr. *John Bennet* made to his Accompt at first, and what afterwards?

Mr. *J. Bennet*. I came to my Lord *Macclesfield* just after the Gentlemen had been delivering in their Accompts; and they were below, writing their Subscriptions to their Accompts. I had then made no Subscription to my Accompt; they told me what my Lord had recommended to them to write; and I had one of them laid before me. I took my Pen and Ink, and varied it in some measure, and made the Subscription in this manner: 'I have all the Securities in my Name, as
' specified on the other Side; and all the Bonds
' and Orders are in my Custody; and I am
' ready to satisfy your Lordship, that I am able
' to answer the money to every Party, that is
' entitled, or shall have a right to receive it.

J. Bennet.

Mr. *Lovibond* called.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he was present at this meeting (that hath been so often mentioned) at Mr. *Edwards's*?

Mr. *Lovibond*. My Lord, I was there but a very little while.

Mr. *Lutwyche*. I desire he may be asked, while he was there, whether any thing was proposed, and by whom, for the masters to lend one another money or Notes?

Mr. *Lovibond*. There was Mr. *Cottingham* and Mr. *Dixon*, and one of them said, that the masters should stand by one another, and recommended it to them to assist one another with Bank Notes or Goldsmiths-Notes.

Mr. *Serj. Pengelly*. To what Purpose?

Mr. *Lovibond*. Neither of them said to what Purpose.

Mr. *Serj. Pengelly*. What was the Discourse about at that Time?

Mr. *Lovibond*. The Discourse was about the Accompts, and how every Man's Ballance was to be made up.

Mr. *Serj. Pengelly*. I desire to know, during that Time, whether Mr. *Lovibond* observ'd that Mr. *Cottingham* or Mr. *Dixon* went to my Lord Chancellor?

Mr. *Lovibond*. Yes, my Lords, they both went, and I came away, and did not stay till they return'd.

Mr. *Serj. Pengelly*. I desire to ask, Whether Mr. *Lovibond* did not lend some of the masters some money?

Mr. *Lovibond*. I lent some money to Mr. *Bennet*.

Mr. *Serj. Pengelly*. How much was it?

Mr. *Lovibond*. It was 10,200 and odd Pounds.

Mr. *Serj. Pengelly*. I desire to know, whether Mr. *Lovibond* was present upon the Delivering in of the Accompts on the 10th of *November* last?

Mr. *Lovibond*. Yes, my Lords, I was.

Mr. *Serj. Pengelly*. I desire he would look upon that Subscription he at first made upon the Accompt, when he delivered it in.

Mr. *Lovibond*. It is here.

Mr. *Serj. Pengelly*. Read it.

Mr. *Lovibond* reads. 'All which before-
' mention'd Particulars I am ready to answer on
' demand, or to give Security so to do, whenever
' requir'd.

H. Lovibond.

Mr.

Mr. *Serj. Pengelly*. I desire he may be ask'd, whether my Lord *Macclesfield* made any Objection to any Part of that Subscription, and what Part in Particular?

Mr. *Lovibond*. He made an Objection to the latter Part of it, because that might imply that my Effects were not ready.

Mr. *Serj. Pengelly*. Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Mr. *Lovibond*. My Lord *Macclesfield* mention'd, that Mr. *Holford's* Conclusion of his Accompt was most proper; and I had best alter it to that, and make that the Form; accordingly I did, I went down Stairs, and altered it as it now stands.

Mr. *Lutwyche*. Read this Subscription.

Clerk reads.

‘ All these Securities standing in my Name as
‘ in this Account is specified, I am ready to pro-
‘ cure Certificates from the proper Offices, that
‘ I have, and had them before this Account, if
‘ your Lordship requires it; and as to the mo-
‘ ney, I am ready to answer it upon Demand to
‘ every Person entitl'd thereto, and who can give
‘ me a legal Discharge.

November 10th 1724. II. *Lovibond*.

Mr. *Lutwyche*. My Lords, I beg leave to make one Observation upon this: I would not trouble your Lordships with observing upon every one of them; but there is something very particular and remarkable in this Case of Mr. *Lovibond's*. Mr. *Lovibond* had said, as the Truth of the Case was, when he deliver'd in his Accompt, and this Subscription, that he was able to produce or give Security, &c. That would have lookt before the Council as if the money was not ready to be produced, it was only giving Security; and for that Reason this Alteration is to be made, to make it look as if he had the actual Ballance in his hands.

Mr. *Serj. Probyn*. My Lords, we desire he may be asked, whether at the Time that he wrote this Subscription, he was not able to produce the Ballance?

Mr. *Lovibond*. My Lords, I did in my Conclusion offer it; and I could have done it the next Day.

Mr. *Strange*. I desire he may be ask'd, whether he could have done it out of his own Estate, or Effects?

Mr. *Lovibond*. I could have done it out of my own Estate.

Mr. *Strange*. Did not you mention the Sum of 10,000 and odd Pounds lent? I desire to know, whether you took real Security for it?

Mr. *Lovibond*. Yes, I have a Real Security.

Mr. *Strange*. In Land?

Mr. *Lovibond*. Yes, in Land.

Mr. *Plummer*. I desire he may be asked, if my Lord *Macclesfield* asked him any Questions about his Ability?

Mr. *Lovibond*. No, my Lord did not ask me any Questions about my Ability.

Dr. *Sawr*. I desire he may be asked, whether at that time he did not believe, that all the masters were sufficient and able to make good their Accompts?

Mr. *Lovibond*. I did believe so, from what Discourse I heard pass among themselves. I had no Knowledge of their Affairs, or of their Estates.

Mr. *Edwards called.*

Mr. *Serj. Pengelly*. My Lords, I desire Mr.

Edwards may give your Lordships an account of what pass'd at this meeting at his House?

Mr. *Edwards*. My Lords, I received a message from Mr. *Cottingham*, to know if I would give Leave for the masters to meet at my House? to which I consented. Some came before Mr. *Cottingham*, and asked me if I knew what this meeting was about; I could give them no Account of it. Mr. *Cottingham* soon after came, and the rest of the masters. Mr. *Cottingham* said, he had two or three matters to lay before them; One was, whether we were willing that our Bonds and Securities should be inspected, by my Lord Chancellor, or by any Person he should appoint? Every body consented hereto. I think, another thing was, my Lord Chancellor thought it proper, we should carry our Accompts to the Council: There were some objected to that, and we thought it not proper; and the Conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the Council.

Mr. *Serj. Pengelly*. Was that all that was offer'd at that meeting?

Mr. *Edwards*. Really I don't know but that there was a third thing mention'd. I can give you but a very imperfect Account of this meeting; and that for this reason; it was not thought proper that my Servants should come in, and they oblig'd me to go often out, which I did; and afterwards I heard the chief Substance of this meeting. And I remember, that after I had heard the main matter, I said, Gentlemen, the chief Consideration is to get your money ready as soon as you can; I think the intent is plain to get the money away from you.

Mr. *Serj. Pengelly*. Whether do you remember any Advice that was then given, relating to the making up of the Ballance?

Mr. *Edwards*. No, my Lords, I do not remember: I heard something afterwards by the masters, about producing Notes; but if any thing was mention'd about it, it was when I was out of the Room.

Mr. *Serj. Pengelly*. Whether on the 10th of November was you present at the Earl of *Macclesfield's*?

Mr. *Edwards*. Yes, my Lords, I was.

Mr. *Serj. Pengelly*. Look upon that Accompt and Subscription.

Mr. *Edwards looks upon it.*

Mr. *Serj. Pengelly*. I desire he may be asked, what Subscription he first made, when he gave it in, and whether any Alteration or Addition was made by him afterwards?

Mr. *Edwards*. Some of the masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my Accompt before I came there: So I went into a Room, and writ this that was first writ: ‘ My Lord, I am ready and willing, the Securities
‘ in the foregoing Accompt mention'd, shall be
‘ inspected by such Person or Persons as your
‘ Lordship shall be pleas'd to appoint.

II. *Edwards.*

Mr. *Serj. Pengelly*. What other Subscription was made after that?

Mr. *Edwards*. After I had made this Subscription, I carried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subscription, did not seem to approve of it: But he thought Mr. *Holford's* more proper, and desir'd

me to alter it, that all might be as Mr. *Holford's* was. I then went out of the Room, and transcribed the Substance, if not the Words of Mr. *Holford's* upon my Account, and then I delivered it to my Lord again.

Mr. *Serj. Pengelly*. Read that Subscription.

Mr. *Edwards* reads.] 'The several Sums of money and Securities mention'd in this Account are what have come to my Hands since I was admitted a Master, separate from what were in the Hands of Mr. *Dormer* during the time he was a master (the account whereof, by reason of the Shortness of time, I have not been able to settle; but will as soon as possible) and for which I am ready to procure Certificates from the several Companies and Offices, if your Lordship requires it. And as to the Money, I am ready to pay it to every Person lawfully intitled thereto, having a proper Discharge for the same.

Nov. 10. 1724. *H. Edwards*.

Mr. *Serj. Probyn*. My Lords, if they have done with this Witness, I desire he may be asked, if he was not ready to pay his Ballance according to his Subscription?

Mr. *Edwards*. Yes, I was; I could have paid it in a Week sooner than the time required.

Mr. *Conway* called.

Mr. *Sol. Gen*. My lords, I desire that Mr. *Conway* may give your lordships an account whether he was at this meeting?

Mr. *Conway*. My lords, I was present at the first meeting at Mr. *Edward's* House, when Mr. *Cottingham* deliver'd my Lord Chancellor's Command, that we should provide and prepare our Accounts: But nothing more happen'd during the time of my stay at that meeting: I went away immediately. At the second meeting Mr. *Cottingham* and Mr. *Dixon* were there: Mr. *Cottingham* had a great Cold; and, as I remember, there were two Proposals made: The first was in relation to our Bonds and Securities; and the 2^d. was in relation to the Money and Cash. After every Master had deliver'd his Opinion to these Points, Mr. *Cottingham* and Mr. *Dixon* went to wait upon my Lord Chancellor with an account of what the masters had said; and before they came back, I was gone.

Mr. *Serj. Pengelly*. I desire he may be ask'd, whether at that time, when it was propos'd to the masters to produce their Cash, they said they were able to do it?

Mr. *Conway*. Every master deliver'd his Opinion as he thought fit. Mr. *Lighbourn* merrily said, If we produced Goldsmiths Notes, and they should be secured, the Goldsmiths Shops would be shut up, and People would be enquiring what Holiday it was. Mr. *Kynaston* made some Observations, every one spoke as they thought fit.

Mr. *Serj. Pengelly*. I desire he may be asked, whether they all declared, they were able and ready to make good their Accounts?

Mr. *Conway*, I think they all did.

Mr. *Serj. Pengelly*. Whether to produce their Effects or their Cash?

Mr. *Conway*. I am not sure, whether it was mentioned Cash or Effects; we made no distinction at that time between Cash and Effects.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he himself declared, that he was able and ready to produce his Effects?

Mr. *Conway*. I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects?

Mr. *Serj. Pengelly*. Whether there was any, and what Advice or Instruction given, relating to their assisting of one another?

Mr. *Conway*. No such thing happened while I staid there.

Mr. *Serj. Pengelly*. I desire it may be asked, whether Mr. *Conway* at any time afterwards borrowed any money of any of the masters and of whom?

Mr. *Conway*. The first time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the same time, without borrowing a Farthing from any Person: Before the Securities were gone through, and the Account of my Effects taken, it was observed, that the same was liable to Objection, as consisting of Land, Mortgages, Bonds and Notes, and things of that kind. And before I went, I was told, that some of the masters had taken an Oath; I desired to know what that Oath was: It was answered, that it was a voluntary Oath; and I said, I could only swear, that I had Effects to answer; and that I would endeavour to turn those Effects into Cash, and so withdrew.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he borrowed any money?

Mr. *Conway*. Some time after this I waited upon Mr. *Godfrey*; and before I came away, he asked me if I had any Bonds? I told him I had; then pray, says he, let me have what you can spare, and send them immediately: Whereupon I went Home, and sent him 5000*l.* *India* Bonds. Some Days after that I expected Mr. *Godfrey* to return me the Favour; and I carried to him Effects to (as I apprehended) the Value of 6 or 7000*l.* or more; and I desired him to lend me Bonds, and he seemed unwilling without the Security, and he kept the Security.

Mr. *Lutwyche*. He hath not answered to those Questions, whether he borrowed money, and what Sums.

Mr. *Conway*. Mr. *Godfrey* lent me upon the Bonds, 9000*l.* and Mr. *Bennet*, 2000*l.*

Mr. *Lutwyche*. Only to pursue this Question, I desire to know, whether the Securities were turned into money, or into Notes?

Mr. *Conway*. Yes, my lords, they were turned into Notes.

Mr. *Lutwyche*. I desire he may be asked, whether they were lock'd up, or he did take them back again?

Mr. *Conway*. I took them back again.

Mr. *Lutwyche*. What became of them afterwards?

Mr. *Conway*. Some of them I paid off, others I returned to the Person that had advanced me money on those Bonds.

Mr. *Lutwyche*. I take it, he says, he had the Effects that produced those Notes from Mr. *Godfrey* and Mr. *Bennet*; therefore I desire to know, what became of those Notes after he carried them back from the Judges?

Mr. *Conway*. I returned them to the Person that had advanced me the Notes on those Bonds.

Mr. *Lutwyche*. Who was that?

Mr. *Conway*. The Goldsmith, Mr. *Rogers*, at *Temple-Bar*.

Mr.

Mr. *Plummer*. I desire to know when he returned those Bonds again?

Mr. *Conway*. In a few Days after.

Mr. *Lutwyche*. My lords, it may be necessary to examine how it was that he persuaded the Goldsmith to let him have those Notes?

Mr. *Conway*. I gave him Bonds for them.

Mr. *Lutwyche*. Whether were those the Bonds that you had from Mr. *Godfrey* and Mr. *Bennet*?

Mr. *Conway*. They were.

Mr. *Lutwyche*. Whether they were not delivered to the Goldsmith in the Nature of a Pledge for those Notes?

Mr. *Conway*. Yes, they were.

Mr. *Lutwyche*. What became of the Bonds?

Mr. *Conway*. I return'd them.

Mr. *Lutwyche*. To whom?

Mr. *Conway*. To Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Serj. Pengelly*. When he carried back the Notes to the Goldsmith, at that time, whether he took up the Bonds?

Mr. *Conway*. I did.

Mr. *Serj. Pengelly*. As I apprehend, he says, he had lent Mr. *Godfrey* 5000 *l.* *India*-Bonds, and in return he expected that Mr. *Godfrey* should assist him; I desire he may be asked this Question, whether the 5000 *l.* in *India*-Bonds he supplied Mr. *Godfrey* with, was after or before he produced his Cash to the Committee?

Mr. *Conway*. After.

Mr. *Serj. Pengelly*. Was it before *Godfrey* had done it?

Mr. *Conway*. After he had produced his Securities.

Mr. *Serj. Pengelly*. Was it before or after he had produced his Cash?

Mr. *Conway*. It was after he had produced his Securities, and before he had produced his Cash.

Mr. *Serj. Pengelly*. My Lords, we think it will be very necessary to lay before your lordships a General State or Account of the total Deficiency; to shew how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the several Offices amount to; and we apprehend, that we are able likewise to give an Account of some additional Deficiencies that have been discovered since. I apprehend, there was at that time near 100,000 *l.* Deficiencies.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether at that time when he wrote the Subscription, he was able to pay the Ballance of his Account?

Mr. *Conway*. I was, in Effects I had, and I said no otherwise.

Mr. *Sandys*. I desire he may be asked, if my Lord *Macclesfield* asked him as to his Ability?

Mr. *Conway*. No, my Lords, he did not; to my remembrance he did not. I deliver'd my Account to Mr. *Cottingham*.

Mr. *Serj. Pengelly*. I desire he may be asked, what Deficiency there remains upon his Office; whether he can recollect how much it is?

Mr. *Conway*. My Lords, I believe it is 13,000 *l.* my Charge, of which I can take off something in my Post-Account.

Mr. *Serj. Probyn*. I desire he may be asked, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway*. Yes, my Lords, I am.

Mr. *Serj. Probyn*. Whether he hath made any Conveyance of any Estate as a Security for it?

Mr. *Conway*. I have.

Mr. *Serj. Pengelly*. I desire he may be asked,

whether any thing, or how much hath been rais'd out of that Estate?

Mr. *Conway*. It is made so very lately, that I don't know that any thing hath been raised since: It is but a few Days ago that it hath been made.

Lord *Lechmere*. My Lords, I would be glad to know, as there is a Ballance of 13,000 *l.* whether he stands indebted to any other Persons, but to the Suitors of the Court, and to whom?

Mr. *Conway*. No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Lutwyche*. I should be very glad if Mr. *Conway* could extricate himself out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Estate, that is to be made good.

Mr. *Conway*. It is to be made good by an Estate in land.

Mr. *Lutwyche*. I desire to know whether that Estate is settled, whether it was not settled upon his marriage?

Mr. *Conway*. It was never settled on my marriage. I was Tenant in Tail, and my Wife and Son joined with me in levying a Fine.

Mr. *Lutwyche*. Whether it is not settled by Will?

Mr. *Conway*. I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joined with me.

Mr. *Onslow*. What Interest had your Son in it?

Mr. *Conway*. No Interest, as I apprehend; but I thought it was necessary he should join, to take off all Difficulties and Objections to the Title.

Mr. *Onslow*. Whether there are no Annuities charged upon that Estate, and what they are?

Mr. *Conway*. There are no Annuities charged on that Estate.

Mr. *Onslow*. No Payment to the Mother?

Mr. *Conway*. There is, out of another Estate.

Mr. *Onslow*. What are the rents of the Estate you have secured for the Payment of this money;

Mr. *Conway*. Between 5 and 600 *l.* a Year.

Mr. *Onslow*. Is that your Computation, or is it let at so much now?

Mr. *Conway*. I can't say it is all let so; there are some Demesns.

Mr. *Onslow*. What are the Rents of that part of the Estate that is let?

Mr. *Conway*. I take it to be 500 *l.* a Year.

Mr. *Onslow*. What, let at 500 *l.* a Year?

Mr. *Conway*. Yes, or thereabouts.

Mr. *Onslow*. Do you reckon the whole Estate to be worth 500 *l.* a Year?

Mr. *Conway*. No, I don't reckon in the whole Estate, but only that which is conveyed for the securing of this money.

Mr. *Onslow*. Then I desire to know what are the Rents of this Estate as it is let?

Mr. *Conway*. I take it to be 500 *l.* a Year, or thereabouts, that is applied for, and as a Security to answer my Deficiency.

Lord *Lechmere*. This 13,000 *l.* Ballance is due to the Suitors, which he says is secured by this Estate: I would be glad to know how the Deficiency came, and what is become of this 13,000 *l.* that is due to the Suitors?

Mr. *Conway*. The Occasion of it was, my coming into the Office cost me to my Predecessor 6000 *l.* I paid besides 1500 *l.* upon my Admission, and 500 *l.* Contribution towards making good Mr. *Dormer's* Deficiency.

Mr. *Onslow*. How was the rest of the Debt contracted? You have mention'd but about 8000 Pounds.

Mr.

Mr. Conway. I believe I might, upon Account of my Brother, borrow 1500 or 2000*l.* to satisfy his Account to the Crown.

Mr. Serj. Pengelly. Out of what Cash did you repay it?

Mr. Conway. I believe it might be out of the Office.

Mr. Onslow. What is become of the rest; how did you apply the Remainder?

Mr. Conway. The Remainder; I can't tell but I may have so much due among my Acquaintance; I believe I may.

Mr. Onslow. Did you then lend your Acquaintance out of the Suitors money?

Mr. Conway. I believe I might at times lend Friends out of the Cash that remained dead and useless, and because I apprehended it was Secure.

Mr. Onslow. You say, you have lent to several of your Acquaintance out of the Suitors Cash; I would have you name any one Person to whom you have lent any of the money of the Office?

Mr. Conway. I remember a noble Person, if it is proper to mention his Name, to whom I lent 2600*l.* he is now dead.

Mr. Serj. Probyn. I don't know whether your lordships will not be pleased to confine the managers to examine only to the particular Article they are now on.

Mr. Onslow. We are now upon the Article of the Deficiencies, and the Question hath been asked by the Counsel for the Noble Lord, whether this Deficiency can be made up by Mr. Conway? therefore it is proper to know, whether this Deficiency is likely to be made up, and to know where the Money is, and therefore I would ask who this six and twenty hundred Pounds was lent to?

Mr. Serj. Probyn. My Lords, I submit it whether that Question be proper, because Mr. Conway hath given Land Security to make good this Deficiency: and therefore it is not material for your lordships Judgment, to enquire how this Deficiency happened.

Mr. Lutwyche. I am very sorry to lay before your lordships the Reasons and the Order upon which he was committed. I apprehend it extremely material upon this Point, and ariseth from what the Counsel for the noble Lord have entred into themselves; for they have asked, whether he was able to make good his Deficiency: Now is it not proper for us to ask the particular Circumstances, to find out the Truth, whether he is so or not. Therefore I beg leave to ask one Question, not waving the other, whether he hath assigned over all his Debts that he could, to make good his Deficiency?

Mr. Conway. I have assigned over all my real Estate.

Mr. Lutwyche. Whether he hath assigned over this 2600*l.* due to him?

Mr. Conway. That is applied.

Mr. Lutwyche. Applied, How?

Mr. Conway. Applied amongst my Causes.

Mr. Lutwyche. Did he lend a Nobleman a Sum of money, and apply it to a Cause?

Mr. Conway. That Sum of money you are pleased to enquire after, I applied to a Cause.

Mr. Onslow. He said he lent a Sum of Money, &c. I desire he may be asked, who this 2600*l.* was lent to?

Mr. Conway. I was applied to by a Nobleman to lend him the Sum of 2600*l.*

Mr. Onslow. By whom was you applied to?

Mr. Conway. By my Lord Bulkeley, and accordingly it was advanced to him, and it is since applied in a Cause.

Mr. Onslow. Applied, How?

Mr. Conway. Applied in a Cause, with the Approbation of the Parties.

Mr. Onslow. Hath it been repaid?

Mr. Conway. No, It is applied in a Cause of a Suitor, and now it remains as Security.

Earl of Abingdon. I am so nearly related to that Noble Lord that is mentioned, that I must do that Justice, as to put Mr. Conway in mind, as I did Mr. Hiccocks before, That if any Question is ask'd him, which may personally subject him to any Penalty, or, as he hath the Bar Gown, may concern his Client, he ought to be left to his Discretion, whether he will or will not answer.

Lord Lechmere. A Person is not obliged to answer any thing that may criminally affect him; but where the Enquiry is after a Debt, in order to explain his Oath as to his Sufficiency, which is the matter of Debate, surely that is material, and ought to be answered to; and I desire to be informed, whether this 2600*l.* which he said was lent this noble Lord out of the Suitors money, was repaid to him by my Lord Bulkeley, and when?

Mr. Conway. It is not repaid. It is applied in a Cause; the parties have approved of it as a Security.

Lord Lechmere. When was this money in the Hands of my Lord Bulkeley applied to the Benefit of any Suitor, and by what Order or Authority?

Mr. Conway. It is some Time since, some months ago, five or six months ago.

Lord Lechmere. Was this by any Order of the Court of Chancery?

Mr. Conway. No, my Lords, by the Approbation of the Parties.

E. of Macclesfield. My Lords, if you please to give me leave, I would suggest something, that possibly may help towards the better understanding him. If my Guess be right, this relates to his Post-Accompt. He hath said his Charge is 13,000*l.* And he hath said, he could discharge 2000*l.* or more, of that Ballance by a Post-Accompt; Now I apprehend this he is speaking of now, is that Article of the Post-Accompt. I don't know, if I guess his meaning right, but I desire he may inform your lordships, in case it be otherwise.

Lord Lechmere. It may be for your Information to know who are the Persons to whom this is applied; that it may be known whether it is in the Post Accompt or not?

Mr. Onslow. My Lords, We desire first to know, what Security my Lord Bulkeley gave?

Mr. Conway. He gave a Bond and Judgment.

Mr. Onslow. Who is it you have applied the Security to?

Mr. Conway. It is in the Cause of *Faulconberg* contra *Faulconberg*.

Mr. Onslow. Do you reckon this Part of the 13,000*l.* now deficient?

Mr. Conway. No, I do not reckon it in that Sum.

Mr. Onslow. Your Lordships will please to recollect, that his Deficiency is 13,000*l.* We ask him how that Deficiency came; he hath given Your Lordships an Account of 10,000 odd hundred Pounds; and first said the Residue was in the Hands of his Acquaintance, and named 2600*l.* money of the Suitors to be in the Hands of my Lord Bulkeley; now he saith this last Sum is not Part of the 13,000*l.* Therefore now I would ask, how the Remainder of his Deficient money was applied, or how the Debt happened?

Mr. Conway. If my Lords will please to give me leave to explain it; As to the Remainder of the 13,000*l.* you have been pleased to reckon 10,000 odd hundred Pounds to be made out; then there is 2100*l.* odd money I have laid out in land, which I have since conveyed, which makes 12,000 odd hundred Pounds; and the rest I have in Bonds and Notes, which I have to make up the Residue.

Mr. *Lutwyche*. I desire he may be asked, whether he hath those Notes, and they are ready? I desire to know, whether they have not been paid into Court to make up his Deficiency?

Mr. *Conway*. No I humbly hope to have it allowed me on my Post Accompt, being applied in the foresaid Cause with Approbation of the Parties.

Mr. *Onslow*. We have done with him; and leave him to Your Lordships Observation.

Mr. *Thompson* called.

Mr. *Serj. Pengelly*. My Lords, we beg leave, that Mr. *Thompson* may give Your Lordships an Account, upon the Inspection and Examination of those Accompts, how much the Deficiency of the several masters amounted to?

Mr. *Thompson*. So much as the several masters stood charged with by their own Accompts, and did not lock up or produce proper Securities for, I account a Deficiency; and by this Rule, I have collected the Deficiencies of the several masters, from the Reports made to the Committee of Council.

Mr. *John Bennet's* Deficiency amounts to *L.* 17,541: 15: 10.

Mr. *Conway's* Deficiency in his Cash only amounts to *L.* 10,039: 4: 4½, but Mr. *Conway*, while his Accompts were under Examination, sold 2000*l.* South Sea Annuity, and 3500*l.* South Sea Stock; and of the money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than *L.* 2593: 9: 3. so that his Deficiency is increased by the Sum of *L.* 3550, somewhat more or less, according to the Price he sold at.

Mr. *Serj. Probyn*. Was what he sold, part of the Suitors Security?

Mr. *Thompson*. Yes,—Mr. *Kynaston's* Deficiency amounts to *L.* 26,908: 11: 3½.

Mr. *Thomas Bennet's* Deficiency amounts to 9075*l.*

The Total of the Deficiency of the present masters is *L.* 67,114: 11: 5¾.

The Charge that remained upon Mr. *Borret's* Office, amounted to *L.* 56,050: 10: 1½. But Mr. *Bennet* and Mr. *Godfrey*, the masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left, would produce 44,000*l.* and upwards; so that I compute the Deficiency of Mr. *Borret's* Office at *L.* 12,050: 10: 1½.

The Total Charge upon Mr. *Dormer's* Office, when he resigned to Mr. *Edwards*, amounted to *L.* 49,604: 11: 11; but Mr. *Edwards* has paid in Discharge of that Sum, the Sum of *L.* 23,725: 15: 9½. so that the Deficiency of Mr. *Dormer's* Office amounts to *L.* 25,878: 16: 1½.

Mr. *Serj. Pengelly*. Whether in that is Mr. *Wilson's* and Mr. *Poulter's* Security included in *Dormer's* Accompt?

Mr. *Thompson*. Mr. *Dormer's* Deficiency I take to be *L.* 25,878: 16: 5½; and the whole Deficiency I take to be *L.* 105,043: 17: 8¼. And if any Securities or Sums of money belonging to the Suitors are omitted in the masters Accompts, such Securities and Sums are not included in this Estimate.

E. of *Macclesfield*. Have you had before you the Administrator, either of Mr. *Borret* or Mr. *Dormer*?

Mr. *Thompson*. No, my Lord.

Mr. *Serj. Pengelly*. My Lords, we shall beg leave to call one Witness to give your Lordships an Accompt of another Deficiency of 2000*l.* upon Mr. *Conway*, which is not charged in his Accompt. We desire that Mr. *Sanderfon* may be called.

Mr. *Sanderfon* sworn.

Mr. *Lutwyche*. We desire, that Mr. *Sanderfon* may give Your Lordships an Accompt of any money in Mr. *Conway's* Hands, and how much it is, that is not brought to Accompt?

Mr. *Sanderfon*. My Lords, I was concerned as a

Solicitor in a Cause in Chancery, between Sir *Erasmus Norris* and *Alexander Norris*; soon after the Accompts were brought into the Register's Office, I went to look and see if Mr. *Conway* had charged himself with a Sum of money paid in, in that Cause. I found by his Accompt, that it was not charged. I had drawn up the Accompt, and given a Copy of it to Mr. *Conway*, which he did not deny, but he said, there was not so much by 1 or 200*l.* Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omission not to mention the Cause or Sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him, why he did not insert, how much it was as he thought it? He said, because he would pay in all.

Mr. *Serj. Probyn*. We desire he may be asked, how much the whole money in that Cause was?

Mr. *Sanderfon*. *L.* 2274: 8: 11. besides Interest from Lady Day last was Twelve-month.

Mr. *Sol. Gen.* My Lords, this is the Sum of the Account we had to lay before Your Lordships of the Deficiencies, notwithstanding the masters represented themselves as able to pay the whole. We would not represent it to Your Lordships, that this will certainly be the Loss, because some of the masters have given Security for some Part; tho' we apprehend the Security given will not be sufficient for half.

E. of *Macclesfield*. I desire to ask Mr. *Thompson*, whether this Charge he makes upon Mr. *Borret's* Office be a Charge taken from the Office, or only an Account taken from Mr. *Meller*?

Mr. *Thompson*. This Charge was taken from the Vouchers, which Mr. *Meller* produced.

E. of *Macclesfield*. Are there any Payments allowed, made by Mr. *Borret* in his Life time?

Mr. *Thompson*. A great many.

E. of *Macclesfield*. Who gave you an Account of that?

Mr. *Thompson*. Mr. *Meller*, my Lord.

E. of *Macclesfield*. But I speak of the money paid by Mr. *Borret* himself, not what Mr. *Meller* paid. Have you any Account what Mr. *Borret* paid out himself?

Mr. *Thompson*. The Account we had of this, was from one Mr. *Parker*, as I think his Name was, who was Clerk to Mr. *Borret*. He produced several Receipts for Sums paid: And the masters in Chancery, who had the Care of Mr. *Borret's* Effects, allowed the Books and Papers produced by Mr. *Parker*, to be the Books and Papers belonging to Mr. *Borret's* Office.

E. of *Macclesfield*. As to the Effects belonging to Mr. *Borret*, who gave you the Account of them?

Mr. *Thompson*. Mr. *Bennet*, and Mr. *Godfrey*.

E. of *Macclesfield*. Do you know who is Administrator to Mr. *Borret*?

Mr. *Thompson*. I have heard that Mr. *Paxton* is.

Mr. *Nicholas Paxton*. Yes, my Lords, I took out Administration to Mr. *Borret*, about the middle of April last.

Lord *Lechmere*. I desire to ask Mr. *Thompson* whether the Computation he hath made of the several Deficiencies, amounting to an hundred and five thousand Pounds, is taken from the Voluntary Accompts of the masters delivered in, or whether any of the Suitors were concerned in those Accompts, or have been Parties to such Computations?

Mr. *Thompson*. From the masters Voluntary Accompts only.

Mr. *Serj. Pengelly*. I beg leave to ask one Question, which arises from the Question, which the Lord within the Bar hath been pleased to ask, whether Mr. *Godfrey* and Mr. *Bennet* were not the masters that appeared, and were employed under the Earl of *Macclesfield* at that Time, and had the Custody of the Effects of Mr. *Borret*?

Mr.

Mr. *Thompson*. Mr. *Bennet* and Mr. *Godfrey* were the Persons that appeared to us to have the Care and Custody of Mr. *Borret's* Effects.

Lord *Lechmere*. As to the Nature of these Deficiencies, I think he says, these Deficiencies arise upon the Cash Ballance. Then I would be glad to know, whether in the Accompts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Ballance arise upon the whole Ballance, or are appropriated to any particular Suitors concerned in those Ballances?

Mr. *Thompson*. No Part of the Cash Ballance is appropriated to any particular Suitor.

Mr. *West*. My Lords, the Commons have now produced a very long, and as they apprehend, a very full and convincing Evidence, in maintenance of the Impeachment by them exhibited against *Thomas* Earl of *Macclesfield*, for high Crimes and Misdemeanors; and I am commanded to acquaint your Lordships, That they do not intend to trouble this House with any further Examination. But, my Lords, the Commons considering the Length and Variety of the several Facts and Circumstances, that have been offer'd, are of Opinion, It may be of Service to that Cause, in which their Zeal for publick Justice has made them to engage, that the whole of what they have insited upon or produc'd, should in such manner, as I am able to obey their Commands, be shortly recapitulated and presented in one View to your Lordships Consideration.

The Charge in general, and the several Articles of it, have been fully open'd by those Gentlemen, who preceded me upon this Occasion. The Witnesses who have been examined, and the other Evidence that has been read, have been fully considered, so far as they relate to those Particulars, that were the immediate Occasion of their being produc'd; I shall not therefore waste Time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole Evidence that has been given: But shall endeavour to reduce this long and various Examination to some general Heads, that may express the Substance of the general Articles, and then remind your Lordships of what I can recollect to have been most materially offer'd in Support of them. To this End, my Lords, I beg leave in the first Place, to observe that strict Union and Connection there is between the Crimes of which this Earl stands charged. Your Lordships cannot but remark, that the Articles mutually support, and almost prove each other; so that if any one be admitted to be proved, it is difficult, if at all possible, to doubt the Truth of the rest.

A wicked and corrupt Design and View to raise and procure to himself excessive and exorbitant Gain and Profit, was the fatal Principle, from which all this Mischief sprung. It was this that prompted the Earl of *Macclesfield* to extort those large Sums of money, which he received from the several Persons, whom he admitted to the Office of masters of the Court of Chancery. The gratifying this Avarice engaged his Lordship to neglect every other Consideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Persons of small Abilities, and every way unqualified for the Discharge of so great a Trust. — This, oblig'd him to connive at, and permit the fraudulent Practice of paying the Excessive Price of their Places, out of the money belonging to the Suitors of the Court. — That again, forc'd him to suffer, or rather to encourage the purchasing masters, to traffick and game with the Estates of the Suitors. — There was no other way, by which these liberal Purchasers, cou'd Reimburse themselves. — And this Circumstance, even after it was apparent the Suitors were likely to lose a great Part of their Effects, reduc'd him to the unhappy

Necessity of refusing to take those measures, that were necessary to prevent that Practice for the Future. And when the fatal Effects of this unbounded Liberty, which he permitted the masters to enjoy, began to appear, then was He compell'd to become a Confederate with the deficient masters, to prevent its being known to the World. — From hence sprung the unequal Composition with *Wilson*: The partial Orders for the Payment of money: The private Contribution, to answer the most pressing Demands: And from hence his own Liberality to *Lockman*. But when all these Methods prov'd ineffectual, and he found the Cries of the Widows and Orphans had reach'd his Majesty, then, my Lords, did the Lord high Chancellor of *Great Britain* combine with these Masters, advise and persuade them to make false Representations of their Circumstances and Accompts, in Order to deceive his Majesty, to frustrate his most gracious Intentions for the Good of his Subjects, and to prevent (what he most fear'd) a parliamentary Inquiry.

These, my Lords, are the malignant Consequences of that Corruption of which the Earl of *Macclesfield* is accus'd; and which the Commons apprehend to be perfectly consistent with the whole Tenor of his Actions, during the Time of his being Chancellor.

The Commons began their Evidence with that Oath, which it was prov'd the Earl had taken, in Consequence of the Statute of the 12 Ric. II. and which was administered in the usual and accustomed manner. I should not have reminded your Lordships of this Circumstance, if it was not for that unaccountable Attempt, to quible away the Sanctity of an Oath, and to represent it as a meer Ceremony and Form, for no other Reason, but because it was read to him in *French*, and when he kiss'd the Bible, his Lordship and the Clerk said nothing to each other. They afterwards gave other Evidence, relating to such Profits as he had made of the Office of Chancellor, which he did not admit in his Answer. But I do not apprehend it necessary to mention them particularly to your Lordships.

The first general Head of Accusation against the Earl, is, That he *Corruptly, Illegally, and Extorsively insisted upon, and received great Sums of Money, for the Admission of several Persons into Offices relating to the Administration and Execution of Justice.*

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his taking 100 Guineas from *T. Bennet* for permitting him to resign his Office of Clerk of the Custodies, and for procuring a new Grant of that Office to *Hugh Hamersley*.

The Commons chose to begin with this Article, not because they thought the Sum taken so considerable, as to have any great Influence upon the Judgment your Lordships may give upon this Occasion; but because the Fact discovers the Man, and fully explains, what manner of Mind he must be endu'd with, who could stoop to an Action so low and sordid. This Article does of it self lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordship in his Answer gives himself a very different Character, and offers to produce a Catalogue of his own Generosities. What Argument there would be in this when produc'd, I cannot comprehend. I will therefore endeavour to save your Lordships that Trouble. I can admit even more than is desired: Instead of being Generous, I will suppose his Lordship (far from the Truth) to have been profuse: Yet still would it prove nothing: For surely, it is not a new Character in History, that even Squanderers should be Rapacious.

To prove the Particulars of this Article, the Resignation of *Bennet* and the new Grant to *Hamersley*, were both

both prov'd. And as to the Payment of the money, Mr. *Cottingham*, who was Secretary to my Lord *Macclesfield*, and who, thro' the whole Course of the Evidence, appears to have been his great Agent and Confident: He owns the Receipt of the hundred Guineas, and swears he paid 'em to the Earl, within a Day or two after he received them. He also owns the Consideration, for which this money was paid, That it was for permitting *Bennet* to surrender his Place. — Were there no Evidence but *Cottingham* alone, the Commons think they have sufficiently prov'd this Fact. But the Evidence of *T. Bennet* puts it beyond Contradiction, and makes it manifest, that the hundred Guineas were in a manner extorted. — He swears soon after he was admitted a Master, he was desirous to part with his Place of Clerk of the Custodies; and to that End apply'd to *Cottingham* for my Lord *Macclesfield's* Favour, and acquaints him with the Person, to whom he desired the new Grant should be made: *Cottingham* upon this speaks to my Lord, and some short time after tells Mr. *Bennet*, that neither my Lord nor himself knew *Hamerfley*. Your Lordships may remember that the Earl by his cross Examination, seem'd to endeavour at some small Triumph upon this Circumstance. My Lords, it is not so wonderful, that *Cottingham* should not speak Truth, there is no giving Evidence to the Tone of the Voice, nor the Air and Manner, in which a Conversation is carry'd on; more especially, if it be considered, that *Cottingham* was a Man who doubtless upon these Occasions would not have known his Father without the mediation of Gold. *Bennet* was surpriz'd at this Speech, as well he might, when *Hamerfley* lived next Door to *Cottingham*. However, *Cottingham* at last explain'd the Mystery, by letting him know, a Present was expected by the Earl, and *Cottingham* himself own'd, he did say the Earl insist'd upon a Present.

Mr. *West* was here interrupted by the Earl of *Macclesfield*, who said that *Cottingham's* Words were not, That he insist'd upon, but that he expected a Present. Upon which Occasion Mr. *Onslow* represented warmly to the Lords, that the Behaviour of the Earl was Irregular, and that the Managers ought not to be broken in upon while they were speaking. And then Mr. *West* went on,

My Lords, It is my Duty to represent the Actions of this Earl in the strongest Light; and the strongest Light is the justest Light. Upon Recollection I do not think the Word I us'd to be of Force equal to the Fact. My lords, The Expectation of a Chancellor communicated by a Secretary to a new made Master, is more than to insist. But be that as it will; *Bennet* in answer to these Expectations, represented the Hardship of being oblig'd to pay Money upon this Occasion, when he had so lately paid a very large Sum to the Chancellor; and by way of Argument told him, that when he came into the Place himself, he paid nothing; and his Brother told him, that lord *Cowper* upon the like Occasion had taken nothing, because as that Noble Earl said, nothing was due. At last, my lord *Macclesfield* and his Secretary, being both inexorable, *Bennet* agreed to pay the one hundred and five Pounds. After this Agreement was made, *Cottingham* acquainted his lord with the Bargain, and then told *Bennet*, that the Earl agreed to it: But withal, that it was a great Favour he would take so small a Sum; and *Cottingham* at the same Time made this very remarkable Declaration, That if Mr. *Bennet*, would bring the hundred Guineas, he need take no farther Trouble, for the Chancellor would apply to the King for leave for him to resign, and would take Care of the other necessary Steps. And accordingly the Bargain was executed in that manner. For Mr. *Bennet* knew so little of the

intermediate Proceedings, that he has told your Lordships he knows not how, or by whom the Warrant came into the Hands of the Clerk of the Patents.

It is difficult not to feel some Indignation rise at the bare relating this meanness! Mean it would have been in any Man: But for a Peer of *Great Britain*, an Earl, Lord Chancellor of the Kingdom, and a Chancellor oblig'd and so dearly bought, to prostitute so many illustrious Characters, in so low a manner as to become a Broker for the Hire of 100 Guineas, is astonishing! But, my Lords, when I consider that this Earl was at the same Time one of the Lords Justices of the Kingdom, in a Commission to execute some of the Functions of Majesty itself, I want Words to express such a Transaction in its proper Colours.

My Lords, I have mentioned the Evidence relating to this Point something the more particularly, because the Proof comes up to the express Words of the Statute of the 12 of Ric. II. and proves, as I apprehend, beyond Contradiction, that the Earl of *Macclesfield* dispos'd of this Place for Gift and Brokeage.

Before I quit this Article, I beg leave to observe to your Lordships, that my Lord *Macclesfield* in his Answer insists upon it to be the Right of the Chancellors to accept Presents; and therefore owns he did in this Case accept a Present. But then he avoids, as he every where else does, the naming any particular Sum that he accepted. I wou'd willingly ask, why this Precaution, if what he did was lawful and right? I wou'd also observe, that there is something strangely equivocal in that Part of his Answer, where he denies he insisted on 100 Guineas, or any other Sum. This Answer both explains his extorsive Method of proceeding and almost demonstrates the Practice of it. For it is very remarkable his Lordship does not deny he insisted upon a Present in General, but only that he did not insist upon any particular Sum.

My Lords, your Lordships will find by the Course of the Evidence, that this Artifice of not naming a particular Sum was not peculiar to this Instance; but my lord *Macclesfield*, whenever a Master's Place, or any other Place was to be sold, carefully avoided fixing the Price by demanding a certain Sum. No, — It was more gainful to set every Thing up to the best Bidder, and resolve never to dispose of any Office, till the sanguine Purchasers, by bidding on each other, were artfully ferew'd up voluntarily to offer a Present, as his lordship gently phrases it, but as the Commons think, they have prov'd the Fact to be, a *Corrupt and Exorbitant Price*, equal to the avaricious Wishes of the Seller.

The next Instance to which the Commons call'd Evidence, was the illegal Sale of several of the Offices of Masters in Chancery. Now, my lords (not to be too minute in mentioning the Evidence) it is manifest from the Oath of Office, which they take, from the Commission granted to the Masters in Conjunction with the Judges, and from the Evidence given by Mr. *Martin*, relating to that subordinate Jurisdiction, which they exercise, That these Offices do relate to the Administration and Execution of Justice.

My lord *Macclesfield*, in his Answer to this Part of the Charge, industriously is silent as to the particular Sums which he received, altho' your lordships will observe, that Payment of the individual Sums charg'd in the Articles has been prov'd by the Persons themselves, who paid the Money. *Kynaston* and *Bennet* are express as to the Payment of 1500 Guineas each; Mr. *Eldon* is positive as to his carrying to the Earl 5000 Guineas in a Dutch Basset; and Mr. *Thurston* swears, he left 5000 Guineas with lady *Macclesfield*. Now my lords, as the Earl insists that it was a known Perquisite of the Great Seal to accept of Presents upon the admit-

ting new Masters; why does he not own the Receipt of the several Sums, with which he is charged? If it was a known and establish'd Perquisite, doubtless the Sum payable would have been as known and establish'd. And this Consideration I apprehend to be the Reason of his lordship's Caution. He cou'd not but feel the Absurdity of his own Argument, and yet I will admit as much as his lordship or his Counsel can desire upon this Occasion. His Predecessors possibly may have accepted small Gratuities from new masters, after their Admission. Therefore *He* may publickly, and without any other Consideration, sell them to the best Bidder for the most he cou'd get. My lords, the Argument wou'd have been just as good, during the Time that it was usual for the Gentlemen at the Bar, to give New Years Gifts to the Chancellor, to prove he might have sold his Favours, and boldly suffer'd no one to plead before him, who wou'd not farm his Practice, and pay the full Price of what it might be worth.

To support this *Imagination* of its being a common Perquisite of the Great Seal, my Lord *Macclesfield* does in his Answer aver, that every one of the masters I have named, did *voluntarily and of their own Accord* send a Present to his Lordship *on Occasion* of their respective Admittances. How far it was a Present the Evidence I shall mention to your Lordships will fully explain. At present, I beg leave to observe the Equivocalness of these last Words, *On Occasion of their several Admittances*. This was not accidental, but calculated on Purpose to make the whole appear like a common and usual Perquisite. As the Words stand in the Answer, the natural Construction is, that these masters *voluntarily* made the usual Present to his Lordship, *after* they were admitted to their Offices: And yet the critical Sense of the Expression does not exclude the Payment of the money, even by way of Bargain, *before* their Admission. For even in that Case, the money may as truly be said to have been paid *on Occasion of their Admittance*. I should not have mentioned this Part of the Answer, if it was the only Instance of his Lordship's deviating from Truth. I should have imagin'd it to be an Oversight, of either his Lordship or his Counsel. But by the Observations, that have been made by the Gentlemen who opened the several Articles; Contradiction, Equivocation, and (I wish I cou'd not say) Untruth shine in every Part, and appear to be the predominant Qualities of the whole. My Lords, I mention this, not only as an Aggravation, but even as a Proof. For what Cause must it be that reduces a Man of the Abilities this Earl is known to possess, and of the Character *He* did once enjoy, to make use of such mean, such contemptible Arts? Arts! Unworthy a great Man; unpractic'd by an innocent Man, and I doubt not, will prove useless to the Guilty.

The Fact upon the Evidence appears to be thus, *Kynaston*, *Bennet*, *Elde* and *Thurston*, all concur in this Circumstance, That they paid their money before they were admitted into their Offices. Mr. *Cottingham* also owns that he received the money of Mr. *Kynaston* and Mr. *Bennet*, and carried up the Basket of Mr. *Elde*, before any of them were sworn. All these Persons likewise agree, and *Cottingham* confirms their Testimony, that they apply'd to him as the proper Person to recommend them to my Lord *Macclesfield*, and to be inform'd of what Sum they must offer, in order to render themselves acceptable to his Lordship. The Evidence of *Kynaston* proves it to be a direct Bargain, for he swears, when he acquainted *Cottingham* of his having agreed with *Rogers* for the Purchase of his Place, that he offer'd but 1000 *l.* as a Present to the Chancellor: Upon which *Cottingham* said, he wou'd not mention to my Lord any Sum under 1500 *l.* and when *Kynaston* agreed

to give that Sum, *Cottingham* again represented that it must be Guineas, upon which the 1500 Guineas were paid.

Mr. *Bennet*, he says, that when he had agreed with Mr. *Hiccocks*, he also applied to *Cottingham* to know what Sum was necessary to be paid the Earl. *Cottingham* agreed that a Present was necessary, but he wou'd not name the Sum. Upon this, after *Bennet* had consulted with his Brother and Mr. *Godfrey*, he again went to *Cottingham*, and offer'd 1000 Guineas; but *Cottingham*, dissatisfy'd with this, shook his Head, and said, *He would not go to the Chancellor with that Sum; a great deal more had been given, and he hoped he would not lower the Price*. *Bennet* however still press'd *Cottingham* to offer the 1000 Guineas, to which *Cottingham* replied, there was *no baggling with the Chancellor; and that if he would not give more, he might be absolutely refused, and lose the Place*. *Bennet*, struck with this Reply, agreed to give the 1500 Guineas, tho' *Cottingham* graciously told him, he need not bring it in money, for Bank Bills would do as well. I cannot help observing, that there was a strange Caution used as to the Payment of this money, altogether inconsistent with the Nature of an establish'd Fee, or regular Perquisite. Mr. *Bennet* sent his Clerk to take out the Bills in a feign'd Name, and for this Reason, because otherwise they could not so easily be parted with. *Cottingham* it seems, was something jealous of a Man, who had the Confidence to persist so long in offering but 1000 Guineas, and therefore the first Word he said to him, when he repair'd to the Chancellor to be sworn in, *Have you brought the Money?* *Bennet* answered like a Man, who perfectly well knew the Family, He should not have ventur'd to have come without it. Upon this the money was paid, the master was sworn, and the whole Bargain fully executed.

These kind of Bargains were now become so much the Subject of common Discourse, that the Earl thought it necessary to be something more cautious, and even *Cottingham* was not now to be so much in the Secret as formerly. Mr. *Elde* applied to the Chancellor himself, and without any Ceremony offers his Lordship 5000 Guineas for this judicial Office. The Earl, it seems, was not at all offended with this Liberty, but answered with the engaging familiarity of a great Man; *Thee and I must not make Bargains. I will treat thee in a different Manner from others*. My Lord *Macclesfield* was as good as his Word, for upon this *Elde* went to the Secretary, and offer'd him 5000 Guineas, and he reported to his Lord what pass'd: So that *Cottingham* was not dismissed this Service at once; and the matter was so far agreed, that Mr. *Elde* went in a Chair to the Earl's House, with his Basket, in which he swears, he put 5000 Guineas, and delivered it to *Cottingham*, who carried it up to his Lord: But at the same Time he swears, he did not know what was in it. Upon this, *Elde* was introduc'd, and sworn into his Office. Your Lordships will observe that the BASKET was no Part of the Bargain, and therefore the *scrupulous Earl* return'd it back to him Empty.

The last Person examined as to this Point, was Mr. *Thurston*, and He also was treated in a Manner different from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine enough to expect he should have the Place. But, my Lords, before he was recommended, Mr. *Thurston* likewise apply'd to *Cottingham*, and offer'd 5000 Guineas. *Cottingham* said he would report; but he was not trusted to return an answer.—In the mean Time Care was taken by the artful spreading of Rumors, That Mr. *Thurston* should hear the Chancellor intended to

give the Place away to another Person. Alarm'd at this, and seeing all other methods of Recommendation avail'd nothing, he applied to my Lady *Macclesfield*; and after using several Arguments to no purpose, *As that his Name had been printed in the publick News, to be the succeeding Master; That Persons applied to him for the Business of the Office; and that his Reputation and Character depended on his Success;* He at last told her he did not expect to have the Place for nothing, and therefore he left Bills for five thousand Guineas upon the Table, and so retir'd. These he found were the best Arguments, and the best Recommendation; for within two or three Days after he was sworn into the Office. This new Way of Proceeding, deceiv'd even *Cottingham* himself so much, that he even scrupled to take his own Fees. I know not whether I ought to mention any other Particulars; but by the Questions put to the Witnesses, when they were cross examined, it seems as if his Lordship would persuade you, that this was entirely a Transaction between Mr. *Thurston* and my Lady *Macclesfield*, and in which he was in no wise concerned. If your Lordships can believe that the Earl intended really to give away this Place for nothing, the Earl will be fortunate: For Mr. *Thurston* himself own'd, he did not think he should have had the Place, if he had not left the money.

I have repeated this Part of the Evidence more fully to your Lordships, because, as I apprehend, it clearly explains the Earl's artful methods of Extortion, and also proves that in this whole Proceeding, *The Money, instead of being voluntarily given, was unjustly extorted, and that instead of being a Present or usual Perquisite, it was an illegal and corrupt Bargain and Sale of Offices, relating to the Administration and Execution of Justice.*

The last Thing I shall mention to prove this Point is an Evidence, to his Lordship, most unexceptionable. I mean the Earl of *Macclesfield* himself; for my Lords, consider once more his Answer in Relation to this very Point. What Caution! What Equivocation! What Confusion of Mind! That could make him even forget the Time of his own Impeachment. What other Circumstances of Guilt! That during the Course of this Trial have been visible to your Lordships.— Bank Bills taken out in feign'd Names, the Secrecy with which the money was paid, the dead Silence as to the Price agreed: One five thousand Guineas in a Basket; another five thousand Guineas left on a Toilett; and lastly, His own Declaration to the masters almost in a Body; How much they, how much himself might be affected. I submit to your Lordships what Inference is to be drawn from all these Particulars. The Commons are persuaded all flowed from this Principle, That his Lordship, the Masters, the Seller, and the Buyer, were all conscious that the whole Transaction was illegal and corrupt.

Before I quit this Head of the Charge, I must take Notice of that Part of his Lordship's Answer, wherein he hopes that the receiving Presents on such Occasions is not criminal in it self, or by the Common Law of this Realm; and that there is not any Act of Parliament whatsoever, by which the same is made Criminal. I hope his Lordship intends that the Words, *Or by the Common Law of this Realm* should be understood as Explanatory of the Expression, *Criminal in it self*; otherwise it supposes a very strange Distinction. For surely an Action cannot be conceived to be *Criminal in it self*, and at the same Time *not contrary to the Common Law of this Kingdom*. Is it possible for any one to imagine, that Corruption in the Officer is not the necessary Consequence of being obliged to purchase his Place? This is in *Terminis* the Reason of the Statute of *Edw. VI.* Is it possible for any one to imagine, that Oppression of

the Subject must not be added to this Corruption? Or, can the Man, who sells these Places, with no other View than to satisfy his own Avarice, retain his Integrity, and be a severe or competent Check upon the Actions of those Officers, to whom he has sold? And that is the Reason of the Judgment reported by *Moor*, viz. *That the Sale of Offices is Malum in se, and therefore finable.* But when

to what I have now said, I add the Consideration of the Oath enacted by the *Statute 12. Rich. II.* (his Lordship will be pleased to add his own Opinion and Apprehensions) I do not conceive it possible to doubt, but that the *Sale of Offices relating to the Administration of Justice, is criminal in it self, criminal by the common Law, and criminal by Act of Parliament.*

The next Point to which the Commons gave Evidence, is the necessary Consequence of what I last mentioned: I mean the admitting Persons to the Office of masters, who were of mean Substance, and every way unqualified for that Trust. The Evidence given of the Deficiency, now in several of those Offices, is so full and uncontestable, that I shall avoid the Repetition of it, and only just name Mr. *Thompson*, and refer your Lordships to the Report made to the Council, the Orders of the Court of *Chancery*, and the other Papers now upon the Table. Their being deficient at this time is a violent Presumption, and that, in Point of Law, is some Degree of Proof, that they were of small Substance at the time of their Admission. How else is it to be conceiv'd that masters, who have been so short a time in their Offices, should be so much in Arrear? *Kynajier* was admitted but in *August 1721*, and in *1724* there appears a Deficiency of *26,908 l.* *T. Bennet* is admitted but in *June 1723*, and in little more than a Year there is a Deficiency of *16,075 l.* And it is remarkable, that both these masters have sworn, all they were owners of in the World, was not sufficient to have paid the vast Prices they gave for their Offices. Yet these Men were chosen out to be trusted, one with near *50,000 l.* and the other with near *100,000 l.* of the money belonging to the helpless and the miserable. By the skill my Lord *Macclesfield* shew'd the other Day, in endeavouring to prove a Man illegally worth *1000 l.* or *1500 l.* who had own'd himself to be worth nothing; your Lordships may see it was not want of Knowledge how to make an Inquiry, that made his Lordship neglect it. It was because he never once concern'd himself, whether they had Substance or not. The Sum he himself was to receive, *was his only Consideration, and therefore his only Care;* for as Mr. *Bennet* has expressly declared, he never once asked him, either before or after his Admission, any one Question in order to be inform'd of his private Circumstances.

And yet, my Lords, these are the Men, whom his Lordship, as Mr. *Waller* has particularly sworn, thought fit in open Court, and while he was sitting in the sacred Seat of Truth and Justice, to declare *Men of great Fortune, Abilities and Skill, as had ever sat in that Court.* I much more readily concur in the Truth of the other part of his Lordship's Declaration, and proved by the same Witness, *That he had great Satisfaction in the having admitted most of the masters himself.* The Reason Mr. *Waller* gave, in Answer to some quibbling Questions of his Lordship's, for his particularly remembering this remarkable Speech, is clear and convincing to every Man; *That the Astonishment he was struck with at the Hearing, made him to remember it.* And happy would it be for his lordship, was it possible ever to be forgotten!

But what could make the Earl of *Macclesfield* break out into this Panegyrick? A Reason so mean, and at the same time so gross, that I almost wonder even his

Lordship would venture to act upon it in Publick. A Day or two before this happened, a master died, and a new Purchaser was to be invited.

I have just now mentioned the Satisfaction his Lordship had in the Sale of these Offices. The Effect of which was, that the Earl connived at and permitted the unjust Method that was practis'd, for the purchasing masters to pay the Price of their Offices, out of the money belonging to the Suitors of the Court. This Practice the Commons charge to have been notorious, and the Evidence produc'd to your Lordships proves that it was so. *Godfrey, Conway, Kynaston, and Bennet* swore, that this Circumstance induc'd them to become Purchasers; and indeed as to them, the Fact proves it self, even though they had not sworn it to be so. For they have both own'd, they were not able to buy without it; nay, they were so low that even the fifteen hundred Guineas, they paid the Earl himself, was out of the Suitors money. And thus far the Earl of *Macclesfield* himself has own'd in his Answer. But alas! That would prove nothing, if it was not accompanied with a Fact, that cannot be disbelieved; *My Lords, He has repaid the Money!*

After this, I think, I need not repeat the Evidence so minutely as to explain the particular method, in which this Fraud was transacted. The whole seems obviously calculated for no other End or Purpose, than to induce Persons of small Abilities to become Purchasers, by facilitating and making easy the method of Payment. And indeed it was so easy, that I wonder his Lordship did not meet with Persons, who would agree to give one half of the money, for an opportunity of running away with the other. And if they had, I do not see but his Lordship's Defence would have been just as good as it is now. Such a Price might with as much Reason be called a Perquisite, as his condescending to take but five or six thousand Guineas, when no one would give more. It is true my Lord *Macclesfield* does in his Answer say, that he was ignorant of this Practice, But I apprehend his Lordship to be as much mistaken in this, as he has been in other particulars: For, my Lords, it appears by Mr. *Bennet's* Evidence, that he not only knew of this Practice, but endeavour'd to conceal it.

It happened that when this Mr. *Bennet* delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; *Item, In the Hands of Persons of Ability and Honour, 9075 l.* My Lord *Macclesfield*, at sight of this Particular, asks him the Reason of it; Mr. *Bennet* explains it, That as to 1575 l. he meant his Lordship, and as to the Residue, Mr. *Hiccocks*, of whom he bought, had detain'd so much of the Suitors money in his Hands, by way of Payment for his Place, and at the same time he complain'd to his Lordship of the Hardship with which he had been us'd. The Consideration that induc'd him to give so large a Price, was his being immediately to receive a very large Cash; and yet the first time he waited on Mr. *Hiccocks* for that purpose, he could get but 1500 l. and that upon the hard Terms of giving a Receipt for 9000 l. During this Conversation, *Bennet* swears, the Earl said with some Concern, *That his Accounts were made up the worst way in the World, for every Body would now judge, that what he paid for his Office, came out of the Suitors Money, and that what had been so much suspected would be now discovered, and what he himself had taken so much Pains to deny, whenever he was asked the Question.* After this his Lordship and *Bennet* enter into a serious Consultation, how to make up this Affair. The Chancellor bids him go to Mr. *Hiccocks*, to try what he would do. But it seems he could not be brought to do more, than to lend 2000 l. which *Bennet* absolutely refused,

and insisted upon its being given him, or not at all. He reported this to the Earl, who displeas'd at it, said, *Hiccocks* should pay 2000 l. and that he himself would repay the 1575 l. but it should be in such a manner, as that *Bennet* should not know in what manner it was done. Most profound politicks this! *Bennet* afterwards told your Lordships, that he found the Earl intended to trick him out of this money; for several Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordships certainly observ'd, that my Lord *Macclesfield* was very much offended with Mr. *Bennet's* Evidence, and therefore took care to cross examine him most accurately. But that Fatality which constantly attends Guilt, was so strong upon him, that the Answers given by this and almost every other Witness, to the Questions propos'd by the Earl, and his Counsel, evidently, as I apprehend, destroy his own Answer, and confirm our Accusation. But, my Lords, it is not only the Answers of the Witnesses, but even his Lordship's own Questions that afford Evidence against him. For to what part of the Charge am I now speaking? Why to that, wherein he is accus'd of knowing and endeavouring to conceal the Practice of paying the Purchase out of the Suitors money. And what does his Lordship ask! *Did not you at this Meeting tell me, that if Hiccocks would pay 2000 l. you then would make up the rest your self?* By his Lordship's own Confession therefore, *Bennet* was with the Earl upon this Occasion; they did talk upon the Subject, *Bennet* has inform'd your Lordships. *Hiccocks* retaining the Suitors money, was part of the Conversation. Else why should he pay 2000 l.? His Lordship did concert how to make up this Affair, and consequently how to conceal the whole. To this Question of the noble Lord's *Bennet* answers consistently with what he had said before, *That he did not say, if Mr. Hiccocks would pay 2000 l. that then he would stand the rest.* And the Reason he gives is good, *He was not worth the Money.* Your Lordships remember the other part of the Dialogue. I shall only add, that the Earl being angry at this Evidence, asks Mr. *Bennet*, *And how could you, as an honest Man, offer to buy a place, when you were not worth the purchase Money?* I submit to your Lordships, whether it was not as honest for him to buy without Money, as for his Lordship to sell without Right.

I have now stated to your Lordships the Fact, as to this scandalous Practice. And I think it can never be thought reasonable to suppose the Earl of *Macclesfield* only ignorant of what every one else knew: Or that he did not know of what he endeavour'd to conceal. And if it is certainly true, that the Office of Chancellor is an Office of the highest Trust, it is as true, that every wilful Neglect of what is necessary to be done, in order to discharge that Trust, is criminal. It cannot be doubted, but that this Practice was unjust, and fraudulent upon the Suitors of the Court. It cannot be doubted, but that the Earl of *Macclesfield* knew of this Practice. It cannot be doubted but that the Chancellor was the proper Person, because in Fact, he was the only Person, who could, *ex Officio*, either remedy or prevent this Abuse. What ought to be the Consequence of these Premises, the World will learn by your Lordships Judgment.

Hitherto, my Lord's, Avarice, uncorrupted Avarice! has been the only Principle of this Earl. In what follows, your Lordships will perceive Apprehension and Fear begin to mingle in all his Actions; and for this Reason the Bankruptcy of *Dormer* was to be concealed, that the Clamours of the World might be hushed. It has appeared in Proof to your Lordships, that upon *Dormer's* absconding, the Deficiency in his Office amounted

mounted to upwards of 52,000 *l.* for the Account upon the Table, which reduces the Ballance to 49,000 *l.* was made up long after the masters had been obliged to contribute their 500 *l.* each.— When *Dormer* run away, it is natural to imagine, that even this Chancellor should have turned his Thoughts to the Security of the Suitors: Not because it was his Duty so to do, but as Mr. *Dormer* was a master whom he had not had the Satisfaction to admit himself, he might with the more Security have given himself the Show at least, of acting vigorously in relation to his Affairs. By the Evidence that has been given it appears his Lordship's Behaviour was quite the Reverse; my Lord *Macclesfield*, instead of being Sollicitous for the Good of the Suitors, was apprehensive only of the loss that might happen to himself, by sinking the Price of Places, and thereby defeating that gainful Trade he carried on in the Sale of them. But this Thought was attended with another Consideration, that this open Acknowledgement of the Bankruptcy of one master might induce the World to suspect the Abilities of the rest, and as he best knew what Care, what Circumspection he had used upon their Admission, so he was determined to prevent an Incident of that kind. With these Views therefore every Step that was taken was mysterious, and the Deficiency itself with the utmost caution kept secret; so secret, that at last some of the masters themselves, his own masters, for that very Reason, refused to contribute any farther towards it. *It is a bottomless Pit*, says one; *We know not what it is*, says another.

The first Step the Earl took was to direct Mr. *Rogers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer*, for his Return into *England*, assuring him in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignment and Discovery of his Estate and Effects. Upon this *Dormer* returns, and executes an Assignment; but I do not find he was ever examin'd upon Interrogatories, or that any of his Creditors attended, in order to enquire into the Truth of his Discovery. Your Lordships observe, that the Promise of liberty was conditional; but *Dormer*, and the Earl, tho' for very different Reasons, were equally afraid of this Commitment; and therefore his Lordship took Care not to direct any Proceeding, that might lay him under a Necessity of doing it. If there was nothing else in the Case, this Behaviour was sufficiently Gross. But, my Lords, it was still worse; for Mr. *Lightboun* has acquainted your Lordships, that soon after *Dormer*'s Failure, he waited on my Lord *Macclesfield*, and told him, that he suspected the Account given in by *Dormer* was not Fair and Just; and that therefore he ought to be committed for example's sake. This Witness added another Circumstance, that justifies what I have before suggested to your lordships, as the Reason of the Earl's Conduct. He says, that in this Conversation with his lordship he intimated and gave broad Hints of his suspecting the abilities of some of the other masters; he represented that the Year 1720 had been a very fatal Year, and might affect the masters as well as other People; that what had been might be, and several other matters of this Nature. Your Lordships remember the manner in which this evidence was given, there was an air of Probability and Truth, that appeared in it; he own'd indeed, when the Noble Earl ask'd the Question, for fear, I suppose, lest your lordships should want Proof of there having been such a Discourse, that he did not name any master in particular whom he suspected. He did not know how far an action might lie, and if known, it would make him unacceptable to his brethren, and himself might be made uneasy in his Office, and several other Reasons of that kind; and therefore he chose to express himself in gene-

ral Terms. Your lordships will observe that the Earl was very early in this Resolution, some way or other to patch up this affair of *Dormer*'s, so far at least, as to make it last his Time: For Mr. *Kynaston* has informed your lordships, that when he was in Treaty with Mr. *Cottingham*, to be admitted Successor to Mr. *Barret*, he objected this very Deficiency of *Dormer*'s as a Reason why the Chancellor should not insist upon so large a Sum, since the Consequence of it must naturally lessen the Value of the Office. But he made light of it, and said, it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, said he never would have bought the Office, if he had not been assured the Deficiency would have been made good. Here your lordships may also remember, that my lord *Macclesfield*, by cross-examining this Gentleman, laboured to prove, that the masters had actually agreed, in all events, to make good *Dormer*'s effects. Mr. *Edwards* said, *he could not say 'twas actually agreed, he hoped they would, and by Conversation he had had, imagined they were inclined so to do, &c.* Upon this the Earl asked, *From whom then had you those Assurances that it would be done?* His lordship (ever fortunate in his Questions!) I believe was not well satisfied with the answer; for says *Edwards*, *I had them from Cottingham and Godfrey.* Their Names and Qualifications are well known to your lordships.

The next Step that was taken, relates to the Composition of a Debt of 24,046 *l.* due from one *Wilson* a Banker, to the estate of Mr. *Dormer*. This Composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my Lord *Macclesfield* does in his answer say, that it was done in the proper and usual manner: Your lordships will judge of the Truth between us. The Commons, to prove their Averment, have produced the original Instrument of Composition, by which it appears that this Debt of 24,000 *l.* was to be discharged for the Sum of 1463 *l.* in money, and an Assignment of 10,000 *l.* or a proportionable part of what should be recovered of a desperate Debt of 22,600 *l.* due from one *Poulter* (who also is a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus; Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Chancellor that *Wilson* proposed a Composition, but apprehended he had not Power to conclude any such Agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of Petition for that Purpose. *Edwards* followed this Advice, and petitioned. Upon which the Earl referred the matter to Mr. *Hiccocks*, who made his Report, which being annexed to another Petition, the Composition was confirmed. In the Answer which the Earl gave to the second Petition, these Words are inserted, *Of which give Notice forthwith*; To what Purpose these Words were inserted, I cannot comprehend, unless it was to deceive the poor master, who trusted him, into Ruin, by craftily laying a Ground-work for throwing the Blame of the whole upon him, unless he could divine to whom this Notice was to be given. For his Lordship took Care not to give any Directions, as to what Persons, or in what manner it should be done.—During this whole Transaction *Wilson* was never examined upon Interrogatories; No one Creditor ever summoned to attend; the Character of *Poulter* perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened; No Knowledge of *Wilson*'s Affairs, but what he communicated himself; the first Proposal he made was accepted; no Consultation with any other of *Wilson*'s Creditors; and to show how useful that might have been, it has been proved to your lordships, that *Wilson* has paid several of his Creditors their whole Debt.

This

This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtless he imagin'd, that tho' more vigorous measures might secure more money, yet they might at the same Time make the Circumstances of the Court too publick; for, at the same Time his Lordship took abundant Caution to prevent any of these Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of these Facts appears upon any Record or Register whatsoever; the Whole was a private and clandestine Transaction between his Lordship, two or three masters and the Bankrupt himself. Your Lordships have a Certificate from the proper Officers for what I now say, *That none of these Petitions, Reports, or Orders, were ever regularly drawn up, or filed.*

My Lords, this Caution, this Secrecy, this Mystery, is a strange Way of proceeding for Justice and Equity; but, if the contrary be supposed to have been his Intentions, the Whole is of a Piece, natural and consistent.

Permit me, my Lords, once more to observe upon his lordship's Cross-Examinations. And, first, He very nicely examin'd *Edwards*, as to what he had receiv'd by virtue of this Composition; and certainly it receives a wonderful Justification from Mr. *Edwards's* owning that he received in *October* last 1000*l.* The next Point he examin'd to, was his lordship's Diligence in securing *Dormer's* Effects. The Commons brought Evidence to shew, that some of *Dormer's* Estate had been conceal'd, and, for ought I know, it may be true, that one *Goodfellow*, by his lordship's means, did give the Administrator (appointed since his lordship's Dismission) the first Notice of it. The Fact is, that a Parcel of old Hops, 500*l.* the worse for keeping, were not long since sold for the precise Sum of 100 Guineas. To which I shall only say, that I wonder his lordship chose to recal that Sum into your lordships memory.

My lord *Macclesfield* hitherto might possibly meet with the Approbation of those masters, on whom he vouchsafed to smile: Both he and they seem to have considered themselves as in an Interest separate, and quite opposite to that of the Suitors. His View was to keep the Circumstances of the Court secret, and to prevent any Thing that might happen to lessen his Profits in the Sale of Places: *Theirs* was to retain the money of the Court in their Hands, and for that Reason to hush any publick Clamour that might occasion the taking it away. I think I am not mistaken in this Conjecture, because I find his lordship himself was of the same Opinion: For this was the great Artifice and Machine, which his lordship employ'd, to terrify them into a Contribution of 500*l.* each, towards supplying the Deficiency of *Dormer's* Office. To shew how much this Custody of the money was in the masters Thoughts, your lordships will be pleased to remember, that all the masters own'd, that it made a very considerable Article in what they call'd, the Profits of their Places. Mr. *Holford* (on whom the only blemish I know, is the misfortune he has had of being a master) acknowledg'd, in answer to a Question propos'd by a Noble lord, *That he understood it so; for he never propos'd to lock the Money up, but to employ it for his own Use.* In fact, it was what the masters bought, and what the Chancellor sold, or rather, Widows,

Orphans, Lunaticks, the Wards and Suitors of the Court were the wretched unhappy merchandise, in which the Earl of *Macclesfield* thought fit to deal. When *Kynaston* was to buy, he swears that *Cottingham*, or *Rogers*, or both, recommended it to him as being the Senior Office, and therefore the best. And *Cottingham* himself own'd, the first Day of this Trial, that he had acknowledg'd to a Committee of the House of Commons, that he said to Mr. *Kynaston*, *You have purchased a very good Office; for there is a great deal of Money in it.* But, my lords, the Thing proves itself: Consider the Nature of the Office, the attendance and labour that is required; deduct the unlawful Interest made of the Suitors money; how can the honest Fees (even supposing it lawful to sell) be worth 6, 7, 8, or 9000*l.* I leave this for my lord *Macclesfield* to explain, and shall at present take it for granted, that the masters esteem'd the Custody of the money to be part of their Bargain.

That there was, in fact, a Contribution by the masters of 500*l.* each, is evident from the Receipts now upon your lordships Table; and Mr. *Holford* fully explains the method that was taken to draw them into it. He received, soon after the Report of *Dormer's* Bankruptcy, an Order from Mr. *Cottingham* to prepare and bring in his Accounts to the Chancellor; soon after that, it was intimated to him, that a Contribution of 500*l.* was necessary towards supplying the Deficiency of *Dormer*: Upon which he paid his money, and his Accounts (tho' ready, as he swears expressly) were never afterwards called for.

Lightboun was another master, who received Orders to prepare his Accounts; but not paying his money, *Cottingham*, some short Time after *Dormer* broke, ask'd him if he had not heard of the Proposal to contribute 500*l.* *Lightboun* own'd he had: *Cottingham* then said, 'twas necessary to raise some money to go on, and that, if he contributed, possibly the money might be repaid. Still *Lightboun* was inflexible, and said it was a dangerous Step, and he would not pay the money. Upon this Refusal, he inform'd your lordships, that he was look'd upon as a very troublesome Fellow, among the masters, and little Arts were us'd to make him uneasy in his Office: But when this likewise prov'd ineffectual, the Earl himself, at last, condescended to talk with him, and in the beginning of the Year 1722, he was taken into his lordship's Study; and the Earl told him, he was sorry to hear he did not pay; desired him to consider the Consequences, and how dangerous it was, not to take Care of *Dormer's* Affair. Upon this, *Lightboun* still refus'd to pay, saying he did not know how far a Contribution of this Kind might be constru'd to be an Undertaking of the masters to answer one for the other: At the same Time he boldly and honestly represented to the Chancellor, how cautious his lordship ought to be; that this method was no Cure for the mischief; and that as to its being propos'd by the Senior masters, 'twas no Argument to him, and ought to raise some Jealousy in his lordship, since they were visibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of selling their Places at great Rates; and a great deal more to this Purpose; and concluded with a peremptory Refusal to contribute.

However, as the other masters paid their money, the Earl was not discourag'd, but depended upon it that some Time or other (as he told Mr. *Edwards*) he should be able to force Mr. *Lightboun* to comply and therefore, as he thought; he had by this means contriv'd a Fund to answer any Demands upon Mr. *Dormer's* Office, he went on, just as if there had been no Deficiency at all. By the Orders that have been read to your lordships, and by the Evidence of Mr. *Edwards*, who paid the money, it appears that he made several Orders for the Payment of money, without any Regard to that due Proportion all the Suitors of the Court were entitled unto. His lordship in his Answer says, It was not incumbent upon him, *ex officio*, to declare an Average. If it was not his Duty, my Lords, for God's sake, whose Duty was it? This is too gross to be a Sin of Ignorance. A Barrister of but a Term's standing knows, nay, it is obvious to the lowest Capacity, that where several Persons have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the same Foot, and be paid in an equal Proportion. Mr. *Lightboun*, Mr. *Edwards*, both represented to him the Hardship of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, losing his whole Debt. The Reason therefore of this otherwise absurd Proceeding cou'd only be, that the Declaration of an Average wou'd publish that Deficiency to the World, which he had us'd so many Stratagems to conceal.

I cannot conclude this Part of the Evidence, which relates to that Criminal Design the Earl carried on of concealing this Deficiency, and of deceiving the Suitors of the Court, without reminding your lordships of one other Instance of this noble Earl's great Regard for Truth and Veracity. Mr. *Atwood*, who was the Solicitor in the Cause of *Harper and Case*, in which the Deficiency of *Dormer* being mentioned, the Earl took occasion to declare, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This, my Lords, was after he had paid 1000*l.* towards it himself. After what I have said, I shall not attempt to aggravate this Prostitution of the Seat of Justice. But this did not satisfy his lordship: That his Dissimulation might for ever remain upon Record, he thought fit to pronounce an Order, that is now upon your lordships Table, and dated no longer ago than in *December* last; in which he directs the masters to enquire, whether there was any Deficiency in *Dormer's* Office; and whether the Suitors were likely to lose any Part of their Money, or not.

Your lordships know the Contract that was made between the Chancellor and the masters: I therefore shall not waste your Time in mentioning Evidence to prove, that they, who gave such vast Prices for the Custody of the money, did not neglect the Opportunity of employing it for their own Use. The Proof is but too visible: They who are rich, confess it; and they who are poor, dare not deny it: It was the necessary Consequence of his lordship's Extortion; and that put it out of his Power, to take those Measures that were necessary to prevent that Practice. The misfortunes of the *South-Sea* Year were so universal, that surely any Man of even com-

mon Sense would have been upon his Guard: My Lord Macclesfield *knew*, that these masters gam'd with the Suitors money themselves, or for an extravagant Interest lent it to those who did: *He knew* that this was the Occasion of *Dormer's* Deficiency: *He knew* that the other masters had it still in their Power to do the same; therefore he permitted it: He took no measures to prevent it; therefore he encouraged it.

But what could engage this Earl (whose Understanding is no wise question'd) after so fatal a Year, thus to risque his own Character; and what perhaps he values more, his own Fortunes not only upon the Understanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, *as the Borrower is to the Lender, so a corrupt Chancellor is the Servant of his confederate Officers.* He durst not put a stop to their Practices (tho' his own Estate was embarked with theirs) lest Resentment and Revenge should make 'em discover the infamous Secrets, with which they were entrusted. How durst he demand Security from those whom he had admitted, knowing they were able to give none? Surely, my lords, no Reason, but such as I have now mention'd, cou'd induce his lordship to neglect (and a long neglect amounts to a Refusal) the obliging these masters to give Security, or else to call them to a strict Account, as to their Cash and Securities, after he had been inform'd by Mr. *Lightboun*, that some even of the masters were to be suspected. But Mr. *Lightboun* this Day went farther; he represented the Danger of trusting Men with such vast Sums: That this Credit had been the Occasion of all the Losses in the Court, and therefore propos'd a Scheme of Security, to prevent any Losses for the future. The Chancellor did not absolutely reject this Proposal; that was too gross *even for himself*: He therefore desires Mr. *Lightboun* to put it in Writing: 'Tis done; and his lordship most carefully kept it by him for two Years, without taking any notice of it. But, my lords, there is one Circumstance in this Neglect, that in Equity (and surely a Chancellor will not decline to be try'd by that Rule) makes his lordship answerable for a very large Sum in one Case only, without entring into any the other Consequences of his Crime. Mr. *Kynaston*, your lordships remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my lords, this very *Kynaston* did, in the Year 1722, propose to his lordship, to give land, or other Security, for the Effects with which he was entrusted. I know his lordship will object what this Gentleman has before sworn, in relation to his own Circumstances: But what is it to the Suitors, whose Land it is, provided it be pledg'd for their Safety? *What Answer, my Lords, must we give to our Fellow-Subjects, those unhappy People, who are undone, I will not say by Kynaston's and the other masters Deficiency, but his lordship's own wilful Neglect?* I will not take up any more of your lordships Time upon this Head. In what I have already mention'd, it is proved, notwithstanding what the Earl in his Answer says to the contrary, that he knew the masters converted the money of the Suitors to their own Use. And he himself owns, that he did not insist upon any Security from them. In a late Order of his own making, he has recited it not to be usual in the Court of Chancery,

Chancery, for the masters to give Security; and therefore in his Answer covers himself under the Practice of his Predecessors. My Lords, the Reasonableness and Necessity of Security depends upon the Greatness of the Trust committed, and the Qualities of the Persons intrusted. In *Dr. Edisbury's Case*, tho' there was a Stop, yet there was no loss, for his Estate prov'd sufficient to answer all Demands. And therefore his lordship's Argument, in my Apprehension, amounts to this, That because his Predecessors did not insist upon Security from Persons who wanted none, therefore he might justly entrust those who were able to give none.

My Lords, I am come to the last Head of our Charge, and your Lordships will now see the Earl of *Macclesfield* abandon'd to all his Fears! Even Avarice forsakes him! The Dread of a Parliamentary Inquiry sits heavy on his Mind; and I firmly believe, he now repents his having illegally taken this money, because he parts with it to prevent, if possible, that Punishment he most justly deserves for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is now bent how to ward off their coming into Parliament.

The first Instance of this appears in the Case of *Mrs. Chitty*. The Fact is thus: An Order was made for the Payment of 1000*l.* to her, Part of a Sum upwards of 11,000*l.* belonging to her, and which had been paid into the Hands of *Mr. Dormer*. She, it seems, assigns this Order to a very importunate Solicitor, one *Mr. Lockman*, who, as he has told your Lordships, diligently pursu'd the Chancellor from *London* to *Kensington*, from *Kensington* to *Westminster-Hall*, and the Court of *Chancery* itself. He represented to his Lordship the Circumstances he was in; that he had compounded some *South-Sea* Contracts, and absolutely wanted, and insisted upon his money to compleat his agreement, and set himself at Liberty. The Chancellor finding himself so press'd, was at last forc'd to promise him, that he would take care to get the money paid. Upon this he summons a meeting of the masters, in order to persuade them to pay the money, by a Contribution of fifty Pounds each; and in the mean while it had been given out among them, that such a Contribution was expected. *Cottingham* himself, as *Mr. Lightboun* says, told it to him, and at the same time made a fresh Demand of the old Sum of 500*l.* and ask'd him what Answer he would send to the Chancellor? *Lightboun* prudently replies, he would deliver his Answer himself; and in the mean while he applies to the other masters, tells them the ill Consequences of what they had done, and works them all up to a Resolution not to comply with this fresh Demand. He desires 'em not to give the Chancellor false Hopes, but to speak their mind freely. And thus prepared, they all repair to his Lordship's House. I need not upon this Occasion repeat the Names of the Witnesses, for all the masters present concur in giving the same Testimony. His Lordship began the Conference with asking *Mr. Lightboun*, in a very angry Tone and manner, why he did not pay his 500*l.*? Who reply'd, he had often told his lordship the Reason, and that he neither cou'd nor wou'd pay, and was confirm'd in his Resolution, by his having since heard all, or most of his Brethren repent of their Compliance. The Earl, without regarding *Lightboun's* Reason, propos'd the Necessities of the Court

to the other masters, in relation to this 1000*l.* The masters not seeming willing to comply, he us'd many Arguments to persuade 'em to it: He desires 'em to consider the consequences; the occasion presses, and Clamours grow strong; and if this Affair was not taken care of, *Dormer's* Deficiency must break out; and therefore what he propos'd, was the only way to prevent a Parliamentary Inquiry. Upon this *Lightboun* interpos'd, and said, If it was so, he could not help it: That he had rather lose the keeping of the money and Securities, than hold it upon those Terms. The Chancellor reply'd, But that is not the worst: Suppose the House of Commons should in a Committee of Justice resolve, that your Offices relate to the Administration of Justice; that the buying them is contrary to the Statute of *Edward VI.* and therefore forfeited. Consider (says he) tho' it may affect me, as to the Disposal of these Places for the future, yet it will affect you much more in the Loss of your Places; and therefore, upon the whole, desired them to agree to the Contribution. My Lords, the Masters were Proof against his Lordship's Eloquence, and *seriatim* refus'd to comply. Upon which the Earl was struck, and with a vast concern said, Then I will pay it myself. What Guilt, what Fear, must this Noble Earl be sensible of, thus to part with that money he had so sacrific'd his Honour to get! In this manner the Earl parted with his masters, and *Lockman* returns again to the Charge; and at last, meeting the Chancellor in the Room behind the Chancery Court, he got a Promise from him, that *Mr. Cottingham* shou'd pay the 1000*l.* But at the same Time his lordship (I suppose to get rid of so troublesome a Suitor) advis'd him not to engage with the Widow *Chitty*; for if her money in the Court of Chancery was all her Fortune, that Sum was all she was like to have. Soon after this, *Cottingham* paid the money. But it seems he forgot to desire *Lockman* to keep the Secret; so he told it about so much, that *Cottingham* meeting him rebuk'd him for it, saying, *Can't you fare well, but you must cry Roast Meat?* Your Lordships undoubtedly remember, that the Earl endeavoured to shew, by Cross-examining, that he had generously given this 1000*l.* to *Mr. Lockman*, out of meer Charity and Compassion to his miserable Circumstances. *Lockman* reply'd very reasonably, that his Circumstances were not so low as to want his Charity; for he might have discounted the Order; and he did not think it a Favour that he was paid his own.

The Evidence I have now last mention'd to your lordships, even without the Assistance of other Proof, almost maintains the whole Charge. By the Testimony of a Cloud of Witnesses his lordship here confesses the Sale of Offices, and owns that Sale to be illegal: He acknowledges his being acquainted with *Dormer's* Deficiency; and at the same time endeavours to conceal it: He in a manner confesses his own Guilt, pronounces Sentence upon himself, and therefore proposes methods to prevent a Parliamentary Inquiry.

But, my lords, there is still more behind: There is not only a Connection among the Articles, but the Crimes charg'd in 'em rise upon each other. Hitherto his Deceit has extended only to the Subject, but now he attempts the Throne it self. His Majesty graciously directed an Inquiry to be made into the Disorders of the Court of Chancery. His lordship knew that this dutiful House of Commons wou'd not interpose in the Affair, till his Majesty's Commands were obey'd, and therefore he now summons all his Arts and Skill to ward the Blow, and deceive

his

his Majesty into a Belief, that the World had taken a false Alarm; and that the Circumstances of the Masters were much better than they were represented to be: That they were able to answer all Demands; and that consequently the Suitors of the Court were not in any Danger. His Agents are sent among the masters, to encourage them to stand by each other; that they should make a bold stand, and defeat the Designs of their Enemies. He himself becomes their Counsellor, and advises, and (without Inquiry, or Regard to either Truth or Justice) he persuades them to make such a Subscription to their Accounts, as might mislead the Council in any Report they should make to his Majesty.

All his Thoughts, Counsels, and Measures, are now swift and precipitate. Your Lordships have heard Evidence of the several Discourses of *Cottingham* and *Dixon*; the meeting of the masters at Mr. *Edwards's*, and the last Conference with the Chancellor himself; all within two or three Days of each other, and all tending to the same End of deceiving the King, and preventing the Parliament. My Lords, all the masters concur in the meeting at the Chancellor's House; when, it seems, his Lordship, upon considering their several Accounts, declared his Approbation of Mr. *Holford's* Subscription; and without any the least Inquiry into their Abilities and Circumstances, he advis'd them all to make the same Subscription as Mr. *Holford* had done.

Your Lordships have likewise heard it prov'd, that the masters, in order to make a Shew, were advis'd to assist and stand by each other. *Bennet* and *Conway* are both Instances of this Counsel's being put in Practice; and—— But why should I abuse your lordships Patience with particularly recapitulating the Evidence that has been this Day given? I observ'd the Attention with which it was heard, and any Thing I can say, will only weaken that Impression it must naturally have left on your Lordships mind. I shall therefore conclude the Whole with an Observation from the Parliament-Roll of *Henry IV. Complaints and Subsidies belong to the Commons, Judgments belong to the Lords, and Redress is the Glory of the Crown.*

My Lords, The Commons have now discharg'd their Duty; they have declar'd their Grievances, explain'd the Crimes, and produc'd the Offender. They are assur'd the King will of his Fatherly Goodness, grant a just Redress, and apply a proper Remedy; and they doubt not but your Lordships will pronounce a righteous Judgment.

Then the House adjourned to Wednesday next, at Ten of the Clock in the Forenoon.

Wednesday, May 12. The fifth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence; as also another Proclamation, That all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Trial, and they might come forth, in order to make good the Charge.

L. C. J. King. Gentlemen, You that are Counsel for the Earl of *Macclesfield*, may now proceed.

Mr. Serj. Probyn.

May it please your Lordships,

I HAVE the Honour to be Counsel for the Noble Lord within your Bar, the E. of *Macclesfield*, who stands impeach'd for high Crimes and Misdemeanors in the Name of all the Commons of *Great Britain*.

My Lords, When I consider the Importance of this Charge, in respect to the Noble Earl impeach'd, the great Experience and wise Conduct of the several Gentlemen of the House of Commons, who are intrusted to manage the Prosecution, and the great Variety of Arguments they have used to enforce and aggravate their Charge, it is with the utmost Concern that I presume to appear before your Lordships in his Defence; not but that I am well assured of the Truth and Justice, the Strength and Fulness of the Defence which may be made in his behalf, but out of real Consciousness of my own Inability to discharge so great a Trust.

Unequal to it I should have been, had the longest Time been allowed me to prepare myself; but I shall now appear much less capable, having so very little, so few Days Notice of your Lordships Pleasure in appointing me for that Service.

If therefore I shall be so unhappy, as to offer any Thing in this Case less proper, or correct, than might otherwise be expected from me, I hope I shall obtain your lordships greater Indulgence.

The Offences, which are charged to be committed by the Noble Earl impeach'd, are contained in many Articles, no less than twenty one in the whole; but the Gentlemen of the House of Commons have been pleas'd to wave several of them, and, I hope, when your Lordships have heard us, and our Evidence, you will be pleas'd to acquit him of all the rest.

These Articles have been conceived with the greatest Caution, and opened with the greatest Art, heighten'd with every Circumstance that may induce Resentment, and urged against the Noble Earl impeach'd with a particular Zeal, well becoming the great Concern which those Gentlemen always shew for what they apprehend the Publick Service, and the faithful vigorous Discharge of the great Trust reposed in them by the House of Commons.

The impeach'd Earl is pursued back from his late Resignation of the High Office of Lord Chancellor, through every Stage of Publick Life; and, with inquisitive Eyes, they have also view'd and pry'd into even his most private Transactions, so as not even the least Indiscretion has passed unobserved.

Some Actions, which in themselves are truly innocent, and are declared to be so by the constant uniform Practice of all the Great and Honourable Persons that have gone before him, are here represented as highly culpable.

Others, which we humbly apprehend, are not only innocent, but commendable and meritorious, even his personal Acts of Charity, are imputed to him as Crimes.

But in one Respect I must beg leave to congratulate the impeach'd Earl, and think it is his great Felicity, that in this so publick an Examination, so strict and rigid a Scrutiny into his whole Conduct, at least ever since he was first advanced to the Great Seal, there is not one Objection made, one Instance given of Corruption, Partiality, or Oppression, in his own personal Administration of Justice; and therefore, I hope, I may well conclude (since it is admitted by the Prosecutors themselves) that he has deny'd Justice to no Man, he has delay'd Justice to no Man, he has sold Justice to no Man.

The principal Objection that seems to be rely'd on by the learned Managers, and the only one which I humbly apprehend can any Way affect the impeach'd Earl in the present Case, is, that possibly he may have been too easily led into a good Opinion of some Persons, who in the Eye of the World appeared

appeared to be Men of good Substance, and fair Reputation, Persons that were recommended to him by others of undoubted Honour and Credit; that he has admitted these Persons into Offices of great Trust and Profit under him; and they have at length been found not to have deserved the good Opinion, which he at first had been persuaded to entertain of them.

Some of these Officers have been negligent, others unfaithful in the Discharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron.

And, in regard the principal Complaints against the noble Earl are founded upon the Disposition of the Offices of Masters in Chancery, therefore it has been thought necessary (in the Preamble of the Articles exhibited) to represent the Masters in Chancery as Officers of very great Trust, sworn to serve the King and his People, and associated to the Lord Chancellor by particular Commissions, for his Assistance in the due Administration and Execution of Justice.

My Lords, what Use Masters in Chancery might formerly be of, and what Assistance to the Lord Chancellor they might antiently give, I know not; but at present they seem to be of very little Advantage to him in the Determination of Causes in Court.

They sit indeed in Court, at proper Distances, on each side the Chancellor, and sedulously attend his Motions, but never pretend to advise or interpose in Judgment.

They have likewise the Honour to be named in Commissions of Association to the Lord Chancellor; but the whole Body are not always named in such Commissions, but only such particular Persons as his Majesty is pleased to think fit: And this appears from one of the oldest Commissions that has been produced and read before your Lordships, I think it was the Commission granted to *Robert Southwell* and others the 9th of *October*, 4 *Edw. VI.* wherein there were not more than four or five of the Masters named; tho' I believe in the later Commissions their Names are usually all inserted. But what Power or Authority is given them by this Commission? None at all, that they can execute of themselves in the Absence of the Master of the Rolls, or some of the learned Judges named therein; for the Judges and the Master of the Rolls are only included in the *Quorum*.

But, my Lords, Commissions of this Kind are not uncommon: Clerks of Assize, and other Officers, are named in the Commissions of Association to the Judges of Assize, in their respective Circuits, yet act as ministerial Officers only under them.

And I humbly apprehend, that in this Case it has been sufficiently proved before your Lordships, by a Gentleman (that was once a very good Master in Chancery) that they now pretend to exercise no judicial Authority whatsoever.

They examine and state such particular Matters and Facts, as the Court is pleased to refer to them, for its better Information, and which the Court itself has not Time to look into; they settle Accounts depending between the Suitors of the Court; they look into, and take Counsel's Opinions upon Titles of Estates bought and sold by Order of the Court; and they tax Costs.

This seems to be their principal Concern; and yet in this they are not absolute Judges, they deter-

mine nothing finally; for when they have made such Enquiry as the Court directs them, they only certify their Opinions of the several Matters referred to them by way of Report, which Report is not conclusive to the Parties; for either of the Parties that thinks himself aggrieved by such Report, may take Exception to it; and the Court, on hearing such Exception, will controul the Master's Report, and determine as they think Just. And in case the Parties themselves do not controvert the Matter reported, but totally acquiesce and submit to it, yet is not the Master's Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Sanction from the Order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the Reputation of these Offices, in order to make it more penal to have any Present or Compliment made to the Great Seal, upon the Admission or Resignation of the Masters.

Another Observation was made by one of the learned Gentlemen of the House of Commons, in relation to their general Charge, which is this; They charge, that the Earl, in or about *May*, One thousand seven hundred and eighteen, by the great Grace and Favour of his Majesty, was constituted Lord Chancellor, and did thereupon take the usual Oath for the due Execution of that Office, and such other Oaths as have been accustomed; in order, as I conceive, to insinuate that he had acted contrary to, or in Violation of some particular Oath which had been administer'd to him.

The Earl in his Answer admits, That on the fourteenth of *May*, One thousand seven hundred and eighteen, he took the Oath of Office as Chancellor, which is set forth in his Answer; that at the same Time he took the Oaths of Supremacy and Allegiance, but no Oath of Office, except that above set forth.

To this Part of the said Earl's Answer, the learned Managers are pleased to object, That the Oath prescribed by the Statute of *Richard* the Second, had been frequently administer'd to the noble Earl, but that he had forgotten that Oath in his Answer, as well as in his Conduct and Practice.

And to prove this Fact, *Mr. Eyre* (one of the Officers of the Exchequer) was produc'd, on whose Evidence it did appear (as we apprehend the Fact truly is) that when the Honourable Privy Council are annually assembled in the Court of *Exchequer*, to prepare a List of Names of proper Persons to be presented to his Majesty, for his Choice of Sheriffs for the Year ensuing, and the Judges then also attending, one of the Officers of the Court reads over the very Words of the Statute of *Richard* the Second in *French*, and then the Bible is presented to the noble Lords, and others of the Privy Council, and also to the Judges present, which they kiss, and then proceed to the Nomination of the Sheriffs for the several Counties in *England*.

My Lords, I must observe that upon this Occasion no formal Oath is administer'd, in pursuance of this Act of Parliament; nor any Entry or Record made of any Oath taken by all or any of the Persons present.

The Words of the Act of Parliament are, That the Chancellor, Treasurer, and other great Officers therein named, the Justices of the one Bench, and of the other, the Barons of the Exchequer, and others, who shall be called to ordain or make Justices of Peace, Sheriffs, or other Officers therein named, or any other Officers or Ministers of the King, shall be firmly sworn that they shall not ordain, name, or make such Officers for any Gift or Brokage.

This Act of Parliament doth direct an Oath to be administer'd, tho' the precise Form of the Oath is not prescribed.

But the Act of Parliament it self can't be called that Oath which itself directs; nor the reading or hearing that Act of Parliament read, be called the administering or taking that Oath: The Oath must be something distinct from the Act of Parliament which directs it.

Therefore, my Lords, I humbly submit it to your Lordships, that the reading of this Act of Parliament, upon this particular Occasion, is rather used as a particular Exhortation or Admonition to that August Assembly, how they ought to demean themselves in that single Instance of their Duty (the Choice of Sheriffs) than to have an universal Obligation in respect to the Nomination of all other Officers in general.

If this was intended to be administer'd as an Oath of Office, then being once taken by any Person in Office, it need not be taken again, during the same Person's Continuance in the same Office; but this Act of Parliament is annually read over upon the Return of every Election of Sheriffs, and seems to be particularly applicable to that Duty.

Sheriffs are indeed very great Officers, have whole Counties under their Influence and Jurisdiction; and therefore very singular Care ought to be taken in their Nomination.

The Chief Justices and Judges present upon that Occasion, use the same Ceremony of *Kissing the Book*; and if this should be interpreted an Oath, it would be of great Extent, and the Consequence of that must be, that the best Offices should have no Candidates for them; for the latter Part of the Oath, directed by this Act, is, That none, who pursueth by him, or by other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other.

So, if this be consider'd as an Oath, every one of the great Persons that have taken it, must be indispensably obliged not to give any Office to any Person that hath even ask'd, or made Application by himself, or any one in his Behalf, for that or any other Office whatsoever.

If this Construction, which is now contended for, was admitted, a great many Persons might be thought guilty of Perjury, who themselves never apprehended it; and how far the Guilt of this Perjury may be extended, is not easy to determine.

But, my Lords, it is not the noble Earl's Intention to incur the Censure of quibbling himself out of the Obligation of an Oath, or the Letter of an Act of Parliament; we beg leave to insist, that in whatever Light this Transaction is taken, it can't be constru'd to be the taking an Oath within the Intention of the Charge contain'd in the present Articles, which is, That he took the Oath of Office, and such other Oaths as have been of Right accusom'd.

This Charge, my Lords, must be confined to some reasonable Time, wherein these other Oaths charged must be suppos'd to be taken: I apprehend

it can relate to such Oaths only, as the noble Earl took at the same Time, when the general Oath of Office was administer'd to him.

And the Earl, by his Answer, certainly understood it in this Sense; otherwise, to make a complete Answer to so general a Charge, he must have been under a Necessity, to have set forth all the Oaths which he hath taken in his whole Life-time; at least, since his first Oath as Chancellor.

He took the Oath of Office as Chancellor the fourteenth of *May*, One thousand seven hundred and eighteen; this Proceeding in the *Exchequer* is proved to be in *November* following: Who would understand that this Charge intended to couple two Transactions together, that in themselves were so distinct and remote?

Having thus endeavoured to remove these Objections, which seem to be no Part of the Charge, but only used as introductory to it, I shall now proceed to the Charge itself.

The first and general Charge is, That the said Earl, not regarding the Obligation of his Oath, or the Duty of his Office, but, entertaining wicked and corrupt Designs and Views to procure himself exorbitant Profit, by divers unjust and oppressive Practices, whilst he continued in the Office of Chancellor, did illegally, corruptly, and extorsively, take and receive to his own private Use great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

This is insisted on by the Gentleman, who first spoke, as an offence of the deepest Dye, which strikes at the very Root and Foundation of all Civil Government; and to render it more odious, it is introduced as an Act of the highest Ingratitude to his Majesty, as well as injurious and oppressive to his Subjects. To demonstrate this, it is represented, that upon the said Earl's being appointed Lord Chancellor, in *May*, One thousand seven hundred and eighteen, his Majesty was pleased, of his Grace and Bounty, to bestow upon him the Sum of fourteen thousand Pounds in Money, and to grant him several other yearly Pensions and Payments, which another Gentleman (in observing the Evidence given on this Head) was pleased to say, did, together with the usual Salary, Fees, and Profits, belonging to the Office, amount unto near ten thousand Pounds *per Ann.* and this was strongly urg'd as enough to satiate the Appetite of the most Avaricious, and prevent any illegal and corrupt Extortions of other Sums from his Majesty's Subjects.

To this, my Lords, we hope your Lordships will think the noble Earl has put in a very plain and satisfactory Answer.

That he had, for several Years before his Advancement to the Great Seal, the Honour of serving his Majesty in the Office of Chief Justice of the Court of *King's-Bench*; and as a Reward for good and faithful Services in that high Office, his Majesty, out of his Royal Grace and Favour, upon the 10th of *March*, One thousand seven hundred and fifteen, was pleased to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him a Pension of twelve hundred Pounds *per Annum*, and to declare his Royal Intentions of giving the said Earl's eldest Son an Office of considerable Profit, when Opportunity should offer.

That in *May*, One thousand seven hundred and eighteen, his Majesty was pleased to appoint him Lord Chancellor; on the 14th of the said Month of

of May, he took the usual Oath of Office, and at the same Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office as Lord Chancellor, he enjoy'd the usual Salary, Fees, and Perquisites, which Mr. *Pynsent* (who was called as a Witness to this Particular) proved to be about eleven or twelve hundred Pounds *per Annum*.

That his Majesty also granted to him the Salary of four thousand Pounds *per Annum*, during his Continuance in that Office; which was not particular in his Case, but constantly granted to, and enjoyed by all his Predecessors.

That to this, his Majesty was further pleased to sign a Warrant to him for fourteen thousand Pounds, as mention'd in the Articles; whereof two thousand Pounds was the usual Allowance to other Lord Chancellors, or Keepers, towards the Expences in entering upon the Office; and the rest was his Majesty's Royal Munificence, and received as such.

The Noble Earl likewise admits, that his Majesty was also pleased to grant his only Son, then going to travel, a yearly Pension of twelve hundred Pounds, determinable upon his Majesty's granting him one of the Offices of Teller of the *Exchequer* for Life; which was accordingly granted, and he came into the Possession of it, in One thousand seven hundred and nineteen, whereby that Pension determined; so that the yearly Payments to his Lordship were but six thousand four hundred Pounds *per Annum*, besides the Pension of twelve hundred Pounds to his Son, which soon after determined, upon his coming into Possession of his present Office.

This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly presume, this can't be thought excessive, considering the great Fatigues, Difficulties, and Expences, that necessarily attend the Execution of this high Office: Perhaps other Offices might be found, that are less difficult in the Execution, and yet superior in Profit.

But, my Lords, the Objection does not seem to turn that way; but rather, that this Noble Lord, not contented with these several Instances of Royal Grace and Bounty, illegally, corruptly, and extorsively took and received other great Sums from other Persons to his own Use.

This the Noble Earl expressly denies, and says, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Design or View, or even a wish, to raise to himself any exorbitant Gain or Profit, much less to extort Money by any unjust or oppressive Methods whatsoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greatest Trouble and Surprize; he never suspected a Crime of this Sort, so contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to shew that this is without any Foundation of Truth, the present Circumstances of his Family and Fortune (when laid before your Lordships) will abundantly demonstrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, he is represented.

As he has received large Bounties from his Majesty, he has been abundantly liberal to Persons that were proper Objects of Charity; and his Purse has been always open to succour and relieve the Distressed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and extorsively take and receive to his own private Use great Sums of money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Instances given of this corrupt taking of money refer to the several Sums mentioned in the five Articles, which the Gentlemen of the House of Commons were pleased first to enter upon, and which relate to the several Sums of money received from the four masters in Chancery, mentioned in the fifth, sixth, seventh, and eighth Articles, and the Clerk of the Custodies mentioned in the ninth.

If the Charge contained in these several Articles be a Crime, it must appear to be so in its own Nature; to be an Offence at Common Law; or made such by some Act of Parliament. I submit it to your Lordships that taking a Present, or taking money from Persons upon their Recommendations or Nominations into Offices, though they do concern the Administration or Execution of Justice, is not a Crime in its own Nature; it is no Act of Immorality; it is no Act of Injustice to any Man; for no Person has any particular Right to these Offices, but his Advancement must be owing to the Favour or Friendship of him, who has the Right and Power of Nomination: And if the Office itself be valuable, so is the Right of Nomination to it, and may be esteemed as Part of the Estate of that Person to whom it belongs. And if we consider it in this Light, I think it can't be denied but that every Man has a natural Right to dispose of his own Estate or Interest, his own Friendship or Favour, upon what Consideration he pleases: It is his own, and therefore he has a Right to make any just and legal Advantage of it.

From hence, my Lords, I would beg leave to infer that the taking a Gratuity or Sum of Money from any Person, upon his Nomination to one of these Offices, is not criminal in it self, if simply considered, and distinct from the Good or Evil Consequences that possibly may attend it.

And, in the next Place, I humbly submit it to your Lordships, that it is not a necessary Consequence, that every one that buys an Office, must and will behave himself either unfaithfully or corruptly in it. Instances may be given, and those very antient ones, of Offices of Justice, Offices of the highest Character in the Administration of Justice, that have been purchased, and purchased from the Crown.

In Mr. *Madox's* History of the *Exchequer*, Page 43. we find that *Richard Fitz-Allured*, in the Time of King *Stephen*, fined fifteen Marks of Silver, that he might sit with *Ralph Bassett* to hold the King's Pleas; and in Page 743. of this Book it appears, that *Ralph Bassett* was the King's Justicier. Here we see one of the Justices of the *King's Bench* purchasing his Office for fifteen Marks in Silver.

And

And in the same Page of the said Book it appears, that in the seventh Year of King *John*, *Walter de Gray* gave the King five thousand Marks *pro habenda Cancellaria Domini Regis tota vita sua, & pro habenda inde Charta Domini Regis.*

These, my Lords, are great Instances what the antient Usage was, in purchasing even the highest Offices of Justice.

Inferior Offices were doubtless disposed of in the same manner; and if this had been thought Criminal, we should have had some Instances in our Law Books, wherein they would have appeared to have been adjudged so.

I beg your Lordships leave to consider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of *Edward VI.* which has been taken Notice of by some of the learned Managers.

By the 5th and 6th of *Edw. VI. c. 16.* it is Enacted, *That if any Person or Persons shall at any Time thereafter bargain and sell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which shall in any wise touch or concern the Administration of Publick Justice; All and every such Person and Persons that shall so bargain and sell, or take any Money, Fee, or Reward, for such Office or Offices, shall not only lose his Right, Interest and Estate in such Office or Offices, but also every Person and Persons that shall give or pay any Sum of Money, Reward, or Fee, shall be adjudged a disabled Person in the Law, to have, occupy, and enjoy the said Office or Offices.*

This is the Purport of this Act of Parliament, so far as it relates to the Offence charged in these Articles; and I apprehend it cannot be extended to the present Case.

Here are no prohibitory Words that Persons shall not bargain and sell Offices, nor any Words declaratory that they could not do so before, by Common Law.

And all Penal Laws are to be construed favourably for the Benefit of the Subject, and not extended beyond the Letter.

But on the contrary, by the many Provisoes after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and sold without Offence; and many Offices are authorized and intended by the express Provisoes of this Act, to continue to be bought and sold for the future.

For by the first Proviso in this Act, it is declared not to extend to any Office of Inheritance; which is an express Declaration that Offices of Inheritance were to be bought and sold even after the Act should take place.

The second Proviso I apprehend is stronger to our Purpose; for by that it is declared, That this Act shall not extend to any Contract made or agreed before the first of *March* then next, but all such Bargains and Contracts to be good, as if the Act had never been made.

And, my Lords, there is yet a further Proviso, That this Act, or any Thing therein contained, shall not extend, or be prejudicial, or hurtful to any of the chief Justices of the King's Courts, commonly called the King's Bench and

Common Pleas, or to any of the Justices of Assize, as now be, or hereafter shall be, but that they and every of them may do in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithstanding.

What is that which these great Officers of Justice might have done before the making this Act? They might have given, granted, bargained, or sold, the respective Offices under them, in such manner as they thought fit; and by this Proviso they may continue do so still.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that shall buy or sell Offices, not contained in any of the subsequent Provisoes; that is, the Contract made between the Buyer and Seller is declared void: The Party selling loses his Estate and Interest in the Office; and the Party buying is render'd incapable to hold and enjoy it.

In *Castle's Case, Cro. Jac. 644.* it was adjudged, That when a Statute appoints a Penalty for the doing a Thing, which was no Offence before, and appoints how it shall be recovered, it shall be punished by that means, and no other.

Therefore, my Lords, in the present Case, supposing that the Presents proved to be sometimes made to the impeached Earl, upon the Nomination of Masters in Chancery, can be interpreted a selling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Punishment than what the Act it self directs; and this the Noble Earl has already suffered by his Loss of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only of forfeiting the Nomination to the Office for the future; and no other Penalty or Punishment ought to be inflicted by virtue of this Act of Parliament; and consequently the Offence, as now charged against the Noble Earl, and the Facts, as proved before your Lordships, cannot subject him to any Punishment or Judgment, that can be prayed in this Prosecution, upon the present Articles of Impeachment.

But my Lords, there is another Answer, which the Noble Earl has been pleased to make to this Part of the Charge against him, and which I hope your Lordships will have great regard to.

It is the Example of the many great and learned Persons, who have executed this high Office before him.

The Precedent is too antient, for us to discover when it was first made; and I humbly submit it to your Lordships, that the immemorial constant Usage and Practice of it in all Ages since, will sufficiently establish the Reasonableness and Justice of the Precedent.

The same Objection, which is now made against the Noble Earl impeached, in this particular Instance, might undoubtedly have been insisted upon against every one of his Predecessors.

And

And I doubt not but we shall be able to prove, that these Officers have made Presents to the Great Seal, as frequently and constantly as the several Vacancies have been supplied.

This noble Lord has only followed the Example of his Predecessors; he has trodden in their Steps: And I must beg leave to say, There must be something peculiar in his Case, if the same Paths, which led them to Honour and Immortality, shall betray him to Infamy and Disgrace.

This Objection, my Lords, some of the learned Managers of the House of Commons were well aware of; and therefore they have endeavour'd to distinguish the present from the preceding Cases.

They admit it to be true, that small Sums have been formerly given to, and accepted by former Chancellors, upon Admissions into these Offices, by way of Compliment or Present, and this without a Crime: But then they urge, that the Sums now complain'd of are exorbitant; they are bargain'd, haggled for, and given unwillingly by the Purchaser; and that there is a great difference between a Present given, and a Price bargain'd for and paid.

My Lords, I can't deny but that this Distinction is just: A Present implies a voluntary Gift of something less than the Value of the Thing given, or promised, for which that Present is to be made; a Price, the full Value of the Thing contracted for.

And I think the Earl's present Case is exactly within this Distinction, and justifies the Earl's Answer in this respect.

The Present which Mr. *Kynaston* made to the Earl, upon his Admission, was One thousand five hundred and seventy five Pounds. The Price he paid Mr. *Rogers* for the Purchase of his Office, was no less than six thousand Pounds.

The Present which Mr. *Thomas Bennet* made to the said Earl, upon his Admission, was One thousand five hundred and seventy five Pounds. The Price he paid Mr. *Hiccocks* for the Purchase of his Office, was seven thousand five hundred Pounds.

Mr. *Elde*, upon his Admission into the Office, upon the Death of Mr. *Felloves* (the former Master) made a Present to the late Chancellor, of five thousand two hundred Pounds. But when his Lordship consider'd the Greatness of the Sum, he returned him all but eighteen hundred Pounds: When at the same time Mr. *Lucas* offered six thousand Pounds for the same Office.

Mr. *Thurston* has also proved, that he left Bank-Notes to the amount of five thousand two hundred and fifty Pounds, sealed up in a Letter at the Earl's House, before his Admission, upon Mr. *Borrel's* Death. But when the Lady, to whom the Letter was directed, discovered how great the Sum was, she, without any Application made to her for that Purpose, returned all but two thousand Pounds.

And this, my Lords, was done before the Seal, before *Michaelmas*-Term last, before the Masters were ordered by the Privy-Council to give in their Accounts; and when the present Prosecution was not in any sort apprehended: And it is likewise proved, That Mr. *Lucas*, upon this Occasion, renewed his Offer of Six thousand Pounds for the Office; and Mr. *Thurston* was admitted for a less Sum of Money.

These, my Lords, we humbly hope and insist, are not Instances of a corrupt Mind, an avaricious, rapacious Temper, such as some of the Gentlemen Managers have been pleas'd to represent them. On the contrary, we humbly hope, that upon the Evidence already given, it plainly ap-

pears, that these Payments were not Sums of Money extorted and unwillingly paid by the Gentlemen; who were admitted into the several Offices that have been mentioned, but Presents voluntarily made, and pres'd upon the Earl impeach'd, with such Application and Earnestness that shews, that at the Time they were offered, the Persons offering thought they were not equal to the Value of the Favour they expected. And their Importance was so great, that Mr. *Thomas Bennet* one of the present Masters, that has been so often examined, would endure no delay, but impatiently pres'd to be sworn into his Office, at a time when the late Chancellor was sick, and by his Physician thought to be dying. This may rather be said to be extorting a Favour from the impeached Earl, than Money from Mr. *Bennet*, ev'n upon his own Evidence.

My Lords, We do humbly insist, That as the noble Earl within your Bar was not conscious of any Crime in accepting these Presents, so he is justified in so doing, by the Example of many successions of great and learned Men, who have done the same in the like Case. And should this now be adjudged Criminal, what Numbers of very good and just Men must be involved in the Imputation of this Guilt? It must necessarily spread an universal Cloud of Infamy and Reproach over the Ashes of many just and upright Sages of the Law, whose Memories have hitherto been preserved as venerable and sacred; Men who despised Riches, and abhorred the remotest appearance of Bribery, and never were, nor were suspected to be Corrupt: yet these Men thought it a just Duty, owing to themselves and Successors, to adhere to the known and just Rights, the ancient established Fees and Perquisites of their Offices; and believ'd it as justly due to them, as the Salaries which were annexed to their said Offices.

My Lords, We shall beg Leave to shew that this has been the ancient Usage and constant Practice of all Ages; and that the several great Persons, who successively have presided in the greatest Courts of Law and Equity, from the earliest Times to the present, have disposed of the several Offices in their Gift, as they became vacant, for Money.

Frequent Instances of this kind will be produced before your Lordships, in our Evidence.

My Lords, I would not be understood to mention this, so as to insist that the Actions or Examples of the greatest Persons will alter the Nature of Good and Evil, or give a Sanction to any Action that in itself is really Criminal; but only as an Argument (and I apprehend it a very strong one) to prove, that it was the concurrent Opinion of all those Great Persons that have taken Presents, upon their Disposition of Offices, that it was not criminal to do so.

The Opinion and Judgment of so many learned Persons must have very great Weight in a Case of this Nature: And if in strictness it can't be said to justify the Action, it will certainly very much Ex-tenuate the Guilt.

In the next place, the Gentlemen are pleas'd to proceed to shew, That Masters in Chancery, being, as before represented, very great Officers in that Court; the noble Earl within the Bar, for his own corrupt Gain, has admitted Persons into that Office, that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for such Prices.

This, my Lords, is urged as the greatest Inconvenience, That Men who have no Substance of their own, should be trusted with such large Sums of other Persons Money.

It is insisted, That honesty, Probity, and good Substance, are absolutely necessary for the Suitors Security; yet Inferior Persons have been put in by his Lordship, who had little or no Substance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors Money; and that this was known, connived at, and encouraged by the noble Lord that then presided in the Court of Chancery. This therefore could only be with a view to enhance the Price of those Places: For what would not People hazard, who had nothing of their own to lose? If any Profit could be made, it was their own; if any Loss, the Suitors; for no Security was given to answer the Effects in their Hands.

My Lords, It must be confess'd, that this way of Arguing has a very popular Appearance, and finds an easy Access to every Ear.

The Court of *Chancery* must be admitted to be the greatest Court of Justice in the Kingdom: And it must be also admitted, That the Business of that Court has of late Years increased, in Proportion, more than any other Court; and consequently, much greater Sums of Money are now deposited in the Hands of the Masters of that Court, than formerly.

This may possibly make it to be wished, that some better Method might be found out, for the Suitors Security, than has been formerly used.

But in what Manner this Reformation is to be made, is beyond the Power, or at least the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one presiding Judge to vary it: If any ill Consequence to the Suitors attended such an Alteration, he that made the Alteration would certainly be answerable for the Consequences of it; for every Suitor will then say, Why was the ancient Practice vary'd? He that made the Alteration, surely did it for his own Advantage; and then every Argument that in the present Case is only colourably made use of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts against Precedents, against ancient, concurrent, uniform Precedents and Practices, is without Excuse, and justly to be suspected of some particular View, in the Language of the present *Articles*.

The Earl of *Macclesfield*, when he was first intrusted with the great Seal, found the Suitors Money in the Custody and Care of the Persons who were then Masters of the Court, and without any Security given or demanded for it.

He consider'd, that his Predecessors were a Succession of Great and Honourable Persons, of equal if not greater Sagacity and Learning, Probity and Experience, than any that ever had fate in any Court; they found the Masters in possession of the Suitors Money upon the same Establishment, and they left them so.

Was it proper or prudent for him to oppose his single Opinion to the united Judgment of so many wise and great Men that had gone before him? surely, no. Inconveniencies had been seen before, and Deficiencies had happened, and those

Deficiencies had been supply'd by a voluntary Contribution of the other Masters then in Being. Why was not Security then demanded? and why not all the other Masters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, possible to be done, at least upon the single Authority of one Lord Chancellor. And that therefore is a good Excuse for the Omission or Neglect in that Particular, in the present Case.

But, my Lords, It is now objected, That as the Sums of Money in the Masters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Masters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Persons to be admitted Masters, upon Vacancies and Resignations. And therefore another part of the Charge against the Honourable Earl impeach'd, is, That he appointed Persons to be Masters of the Court, that were not proper or sufficient either in Substance, Knowledge, or Probity.

These are said to be all essential Requisites in the Character of every good Master; but grossly neglected in the present Case: And a Reason is given, or (if I may presume to say) rather invented, in the present Case, that it was the Advantage of the Earl impeach'd, to put in such unqualified Persons; because such Persons would be drawn in, to give larger Prices for their Places, and consequently it redounded to the Earl's Advantage.

My Lords, I must beg Leave to observe, that in the Evidence that has been given, there has not been any one Instance proved (or at least, that I can recollect) that any of these Masters were really Insufficient in any of the Particulars objected to, at the Time of their respective Admissions into their several Offices; or at least that the noble Earl impeached, then knew that they were Insufficient, or had any reason to suspect it: They were all Gentlemen of good Families, well Educated; each of them a Barrister at Law (which, I submit to your Lordships, is not the least expensive Education) and had all visible Fortunes, and appeared as Persons in very plentiful Circumstances.

Even Mr. *Conway* and Mr. *Thomas Bennet* (who are the Persons intimated to be the least qualified in Point of Fortune and Substance) had at that time very good Estates in their Possessions; Mr. *Bennet* had then also a very valuable Office, Clerk of the Custodies; had married a Lady of considerable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir *John Bennet*, tho' a younger Son; and the whole Family then seemed to be in a very prosperous Condition. Mr. *Thomas Bennet* has proved to your Lordships, that he was worth twenty thousand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever informed of any Incumbrances upon his Estate (tho' now, he says, there are great ones) or that his Circumstances were less at the Time of his Admission, than in the Year 1720. Surely then the late Lord Chancellor had at that time no reason to suspect his being unqualified in Point of Substance.

Mr. *Conway* had also then a very good visible Estate in Land, an Estate of Four or Five hundred Pounds a Year; had been Receiver-General of several Counties in *Wales*, had discharged his Office punctually, and produc'd his *Quietus* to the Lord Chancellor, before Admission.

Mr. *Kynaston* had, at the time of his Admission, an Estate of Four hundred Pounds a Year in land, Timber of very considerable Value, and a Personal Estate of two or three thousand Pounds; and moreover, was a Gentleman of a very good Family and unblemished in his Character.

Mr. *Thurston*, I think, the Gentlemen of the House of Commons don't object to in any respect. None of their Reputations, in respect of their Probity, have been called in question, 'till their late Misfortunes: And as to their other Personal Endowments, their good Sense and Judgment, I need only refer to your Lordships own Observations, upon their several Examinations in the present Trial.

But, my Lords, great Strefs seems to be laid upon the Masters paying for their Offices out of the Suitors Money; or replacing the Money so paid out of the Suitors Money.

Suppose that was the Practice amongst the Masters; does it appear to your Lordships, that the impeached Earl had any Notice, or the least Information given him of this Practice? Or if he had known it, how could he possibly have prevented it? Certainly, no other way, than by ordering all the Money immediately out of their Hands. And then another Difficulty would have occurred, how that Money should have been disposed of. Publick Societies would not submit to be under the immediate Direction of the Court of Chancery; and no private Person could be trusted with so great a Sum, or give Security for it.

The Masters of the Court are in nature of Cashiers; they subsist upon Trust and Credit; and no Security can be expected to answer the Quantity of Cash in their Hands, more than in the Case of a common Banker. People will trust Men in Credit with the Custody of a Thousand Pounds; when if they propos'd to borrow an Hundred Pounds on Security, would scruple to let them have it. But the Objection is carried yet farther: It is said, if Security could not be expected, why were not their Books inspected, upon one's transferring to another, and Schedules taken of their Effects?

To this it must be answered, That the Lord Chancellor has not Leisure to attend this Duty Personally. And what other Person can be appointed more fit to be trusted (as an Inspector of the going-out Master's Accounts) than his Successor, who is to stand charged with all the Money and Securities, and the whole Effects transferred?

Can any Obligation incline a Man more strongly to Care and Exactness in Business, than private Interest? And his own private Interest will oblige him not to make himself accountable for more than he actually receives, and has transferred to him. And when the succeeding Master has examined the Effects of his Predecessor, by proper Schedules approved of by himself, they are then transferred to him by a General Order of the Court, and he becomes accountable for what is so transferred.

This, my Lords, we humbly submit, has been the ancient Usage and Practice of the Court in these Cases; and that the same Method was used

by the present Earl Impeached, the same Care taken, as had been formerly in the like Cases by any of his predecessors.

But, my Lords, I would beg leave to submit it, That supposing it to be possible that greater Care might have been taken by the late Lord Chancellor, in inspecting the Schedules and Transfer of the Effects of Masters to their Successors; Does it appear that the Suitors of the Court have been any way injured or prejudiced by that pretended Neglect? Or would the greatest Care, the greatest Exactness in this Particular, have given the Suitors any greater Advantage or Security? Certainly, not at all: For let the Effects of the preceding Master be never so carefully and justly Examined and Scheduled, and after that transferred, and actually delivered to the succeeding Master; has not the new Master to whom these Effects are thus carefully and justly delivered, the same power over them, to manage and dispose at his pleasure, as he would have had, in case such Transfers had been made with less Caution and Exactness, as in the present Case?

If any corrupt agreement had been made by any new Master, upon coming into his Office, and previous to this Transfer, to have repaid or replaced any Sum of Money, before borrowed by him, either for the purchase of his Office, or any other Occasion; could not he have complied with this, and paid it out of the Suitors Money or Effects, the very next Moment after they were transferred to him? And would the previous Care and Caution in any degree obstruct or prevent his so doing? I apprehend, not at all; for as soon as the Master is in possession of the whole Money and Effects, he may return any part that he pleases to his predecessor, by virtue of an Agreement before made for that purpose; which would be as much to the prejudice of the Suitors, as if what was so returned to the predecessor, after a Transfer made, had been retained in the first Instance by the predecessor, and never actually delivered over to his Successor.

Therefore, my Lords, this Security, as projected, is but Imaginary; and gives the Suitor no greater Advantage than he had before; and consequently this ought to be no Ingredient of Complaint against the Impeached Earl.

But, in the next place, it is strongly urged, that tho' the Noble Earl during his High Offices, might not have Leisure to attend little Occurrences, or regard small Neglects; yet the Going-off of Mr. *Dormer* should have awaken'd him; some Care should, upon that Accident, have been taken. If what had passed before was only Supineness, this was a wilful Neglect; and not enquiring into the State of his Affairs, and securing his person and Effects for the Suitors, was concurring in Defrauding the Suitors.

My Lords, this was indeed a remarkable Occurrence: The Going-off of Mr. *Dormer* was unforeseen, and unsuspected: His person was withdrawn, and out of the power of the Court; but all imaginable Care was taken to secure his Effects.

The two Senior masters immediately were directed to enquire into his Effects, secure his Chambers, and put a stop to all transfers in his Office. What more possibly could be done in this Emergency, his person being out of the power of the Court?

A proposal is made on his Behalf, That if the then Chancellor would engage that his Liberty should be secured to him, he would return, and discover

discover and assist to get in his Effects. This is thought reasonable, and for the Suitors Benefit, and accordingly complied with; and thereupon the unhappy Man returns, and not only makes the best Discovery of his Effects, but delivers all in his power, for the Benefit of the Suitors. Could any thing be more Advantageous to the Suitors, or contribute more to their Interest than this?

The Impeached Earl had indeed promised his person should not be imprison'd; and it would have been the highest breach of Faith to have departed from it. Had not that promise been made, Mr. *Dormer* had not return'd, nor any Discovery been made by him; but by this means they had the Benefit of the best Discovery that could be had, and the best Assistance the Noble Earl could give them. He never deny'd or discouraged any Application that was made by or for the Interest of the Suitors in that respect, nor endeavour'd to conceal the true State of his Effects, and the Condition of his Office. And as to the Expressions insisted on to delude the Suitors, by saying, as has been objected, That Mr. *Dormer* was only gone to take the Air, and would soon return; tho' these Expressions have been much insisted on, in the Arguments against the Impeached Earl, I do not remember that they have been mentioned in the Evidence.

And, my Lords, to shew that the Impeached Earl did all that was in his power to render what Assistance he could give the Suitors; when a new Master was to be appointed; he left the Disposition of the Office to the Direction of the other masters: And Mr. *Edwards* gave no less than Five thousand Pounds for that Office of Mr. *Dormer's*, which was wholly apply'd towards the making up his Deficiency. By this Enquiry, *Dormer's* Real estate was secured to the Suitors; and it was expected by the Earl himself, and by Mr. *Edwards* who succeeded Mr. *Dormer*, that the rest of his Deficiency, which was then uncertain, would have been supplied by the other Masters, provided they could be continued in their Offices upon the old Establishment.

It may not be improper to observe further in this Case, That Mr. *Dormer's* Deficiency does not appear to have happen'd through any Extravagance of his own, or by his misapplication of the publick Money: He employ'd Mr. *Wilson*, then a person in good Credit, as his Banker, and entrusted him with his Cash. *Wilson* had Dealings with *Poulter* in the fatal Year 1720. *Wilson* was reduced, and stopped payment; his Debt to Mr. *Dormer* was then Twenty four thousand and forty six pounds; this, Mr. *Dormer* assigns to Mr. *Edwards* his Successor in the Office; it was all that Mr. *Dormer* had, all therefore that he could restore, and more than could be got in: For Mr. *Edwards* applying for this Money, found Mr. *Wilson* not able to pay the whole Debt, and thereupon a proposal is made of a Composition.

The Masters considering this, thought proper to petition the Lord Chancellor, that it might be referred to the Senior Master, Mr. *Hiccocks*, to examine and report, Whether it was for the Benefit of the Persons entitled, that a Composition should be accepted.

The Master to whom this Question was referred, Reports it Reasonable; and an Order is made, upon a second Petition preferred, That the Composition should be accepted.

This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be desired on the Earl's part; no Evidence of any Design or Endeavour to conceal the Deficiency: All or most of the Masters consulted upon this Composition, and consented to it: And as for those that were not Parties to it, they are not bound by it.

But it is objected, That this Transaction was Private and Clandestine between the Masters and the then Chancellor; not carried on in the usual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

My Lords, we hope this cannot affect the Noble Lord within the Bar; it is the Duty of the Chancellor to pronounce Orders in Court; but it is the Care and Duty of the Solicitors or Clerks in Court to see them Drawn up, Entred and Registered, in proper Time and Form.

The Substance of the Order is pronounced by the Court: The Form is the Act of the Register; and the Chancellor can't have Leisure to attend the Entries of all his Officers.

Fourteen hundred Pounds was paid in upon this Composition; One thousand Pounds has been brought in since, out of *Poulter's* Effects: so much has been secured at all Events by this Composition, and the Suitors have received the Benefit of it. Have the Gentlemen on the other Side shewn, that without this Composition, any thing could have been secured to the Creditors in General, or that any other Creditor has obtained more advantageous Terms? It was said indeed that other Creditors had received their full Demands: But I submit to your Lordships, that no Proof has been made thereof, only an uncertain Hear-say of small Sums sent, to give him new Credit after his first Absconding. But when the Composition was made, a good Debt was subsisting to *Wilson* from *Poulter*, and Judgment obtained against him, and he committed to the *King's-Bench* Prison in Execution. The Marshal suffers him to Escape: thereupon an Action is brought, and Judgment obtained against the Marshal, for his Escape; and at length the Marshal is run out of the Kingdom, to avoid making a proper Satisfaction.

What a Series of evil Accidents concur to increase this Misfortune, and prevent the just Design of the Earl to do the Suitors all the Justice in his Power! But to whom has he been Defective, if all prudential Steps have been taken? It is hard that he should answer for the Consequence, that he could not, it was not in his Power to prevent.

But, my Lords, in the 15th Article, it is objected to the Impeached Earl, That to carry on his unjust Purposes, in Concealing *Dormer's* Deficiency, in February one thousand seven hundred and twenty, he ordered the masters to bring in their Accounts of their Cash, Effects, and Securities; not with a real design to Examine the Accounts, and secure their Effects, but to terrify them into a Contribution; and threatned that the Cash should be taken out of their Hands, if they did not comply; by which means he got nine of the said masters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no farther proceedings were had upon their Accounts.

My Lords, One would have thought that these Proceedings, which so plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice. In

In *February* 1720, the late Lord Chancellor (finding Mr. *Dormer's* Deficiency like to be greater than at first it was apprehended) was willing to look into the State of the Accounts of the other Masters, to guard against the like Misfortune; and at the same time proposes to them to advance Money to help to pay Mr. *Dormer's* Deficiency. Five hundred Pounds a piece is raised by nine of them, and applied accordingly; the last of these five hundred Pounds paid in *August* 1721. And upon the 7th of *November* 1721 a second Letter is written to hasten these Accounts, and every Argument used that could be thought likely to induce them to it: But the Labour proved too difficult, and the Pursuit was forced to be given over 'till a more convenient Time and Opportunity should present. What was done in this Instance also, I beg leave to say likewise, was following the Example of another Great Man, in the Method he took in the Case of Dr. *Eddisbury*, and that has some Circumstances less favourable than the present: Dr. *Eddisbury* was always in Town, or at least within the Reach or Power of the Court, and yet his Person was not secured for many Years after his first Failure.

Upon the 29th of *January*, 7 *Annæ*, there is an Order entered in his Case, (the only one we can find on the File) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Masters: It recites, That Dr. *Eddisbury* had several Sums and Securities for Money in his Hands, and that several Orders had been made for Money out of his Hands; which were not complied with; and that he declared himself not able to pay; and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the several Masters, and deliver in to the said Masters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had several Orders made upon him for Money to be paid, not in Average, for some Time, and those Orders not complied with; and that he had not given full Examination, and had Prevaricated with the Court; yet the last Extremity, the Committing his Person, and ordering Payment in an Average, was not thought of, 'till it was certainly known, and he had actually confessed, that he had not Assets to pay the Whole.

In the present Case, Mr. *Dormer* was examin'd; discover'd his Estate, assigned the Whole in Trust for the Suitors, but died before the Enquiry could be perfected.

In Dr. *Eddisbury's* Case the other Masters contribute at first to supply his Deficiency, as they have did in the Case of Mr. *Dormer*: And this without doubt was so done, in hopes that his Effects, when fully discovered, would in time prove sufficient to answer all, or much the greatest part of the Suitors Demands: And thus far both Cases are parallel, and Orders made for Payments to the respective Suitors in general, as they applied for them. And no Average was directed in the Case of Dr. *Eddisbury*, 'till it appeared even by his own Confession, that his Assets were not sufficient to make good the Suitors whole Demand: And when the *quantum* of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the present Case: But that could not possibly be done 'till the Value of Mr. *Dormer's* Effects could be known

and ascertained, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before mentioned, it has not been possible to effect: And therefore, the not directing Payments in an Average, can't be reasonably objected to the present impeached Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of the Court, without any Prospect or Possibility of Advantage to himself. His Design was, to procure every Suitor full Satisfaction for his Demand: And if nothing had happened to interrupt so just a Design, 'tis possible that his great Zeal for the publick Good, and his indefatigable Industry, might in due time have had their desired Effect.

But greater Powers have now interposed, and this Difficulty being found to exceed the single Authority of a Chancellor, may be thought to deserve the greater Power, Care, and Wisdom of the Legislature.

My Lords, What afterwards happened in the Case of Mrs. *Chitty*, is in part answered, in what has been observ'd upon the last *Article*; and I humbly apprehend, that a plain Narrative of that Fact, will be a sufficient Answer to the Objection that has been made in this respect. The Earl of *Macclesfield* having no certain Account what Cash of Mr. *Dormer's* remain'd in his Successor Mr. *Edwards's* Hands, made Orders for payment of Sums of Money, from time to time, as Application was made in Court; and particularly to pay Mrs. *Chitty* One thousand pounds, part of eleven thousand pounds of her Money which had been brought into Court in Mr. *Dormer's* time. Mrs. *Chitty* assigns this to Mr. *Lockman*. Mr. *Lockman* applies to Mr. *Edwards*, the present Master, for payment, and is there disappointed of his Money: Then he applies to the Lord Chancellor, and represents the pressing Necessities they laboured under, That the payment of one thousand pounds to him at that Juncture of Time, would be of greater Service to him than the whole Money could be at any future Day: That this Sum of Money, if immediately advanced, would make his Creditors easy; and without it, he must inevitably be thrown into a Goal.

This, my Lords, we shall be able to make out in proof (tho' Mr. *Lockman*, upon his Examination, deny'd it,) and the late Chancellor, out of pure Compassion and Charity to this Gentleman, and believing his Circumstances to be as he represented them, pays him the Money out of his own pocket; and at the same time, or soon after, told him, that he must expect no more from him, but must wait 'till Mr. *Dormer's* Effects could be got in, or the Money could be advanced some other way.

What Objection can be reasonably made to this part of the impeached Earl's Conduct? To deliver a Suitor in Distress; to extend a Charitable Arm to rescue him from the very Gates of a prison just opening to receive him. If this be a Crime, and to be objected to him by the very person who now enjoys his Liberty, as the Gift of this noble Lord's generous but undeserved Bounty; I must not pretend to say that he has many Virtues.

On the contrary, I hope it will abundantly appear to your Lordships, even from this Instance, and from the whole Series of this noble Lord's Conduct, that he firmly believ'd that all the Suitors of the Court would, in due time, be made

easy, and their whole Demands be made good to them. And had the whole Body of the Masters as cheerfully concurred in this good Design, and contributed as generously to support the Honour of the Court, and themselves, 'tis more than probable that the Suitors would not long have had any just Occasion of Complaining, nor your Lordships the Trouble of this Prosecution.

It was for this End, that the Masters were so often called upon to make a reasonable Contribution, and all Arguments made use of that would either persuade or terrify them into a Compliance, in making the Suitors easy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Most of the Masters, I think all but one, were convinced that this was a reasonable and just Proposal, and express'd a Readiness to come into it; and 'twas for this Purpose, that they were bid to consider of the Consequences of forfeiting their Offices, and of a Complaint in Parliament.

And for whose Benefit were these Arguments thus made and pressed upon the Masters? Who could profit by their Compliance, or suffer by their Refusal? Not the Chancellor himself: He had no other Interest to serve, no Inclination to gratify, but a just Zeal for the publick Good, and a generous Concern for the great Loss that was like to happen to the Suitors of the Court, without his vigorous Interposition and Assistance.

This, my Lords, I humbly hope, appears to be the sole and just Principle upon which this Noble Lord has founded all his Designs and Actions, to restore the Credit of the Court, which had been greatly injured by other Mens ill Conduct; to procure the Suitors in general the best Satisfaction that could be obtained; not partially preferring one to another, but endeavouring to do every Suitor full and equal Justice, in order, as their Complaints were brought before him.

As to the Expressions proved to be made use of by the impeached Earl, in the Case of *Harper*; surely they can have little weight.

Can it be imagined, that after so many Transactions had happened in the Court of *Chancery*, in relation to Mr. *Dormer's* Misfortunes, and the great Losses that were like to happen to the Suitors thereby, the then Chancellor himself should be the only Person that had never heard of it; and even after such time as he had been endeavouring to find out Means to remedy so great an Evil? Could any Man of less Sagacity than he must be allowed to have, conceive that he could be credited, even in the Court wherein he presided, in saying (as it is now represented) That he was a perfect Stranger to the Affair of Mr. *Dormer*; that he had heard nothing of it, but as idle News, a flying Report, that might be true or false? No, my Lords, that certainly could not be his Intention, in speaking the Words that are said to be uttered by him on this Occasion.

But when a Purchaser under the Decree of the Court, that had paid his Money in to the Master, and required his conveyances to be executed, could not procure the Parties interested to execute, without actual Payment of the Purchase-Money to them at the Time of the Execution, and that Money was sunk in Mr. *Dormer's* Hands; this first brought the Deficiency of Mr. *Dormer* in Judgment before his Lordship; and it was the first time it came regularly before him in Judg-

ment. Upon this he declared, That then it was a proper Time for him to make a strict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Persons about the Town, or upon any private Conversation or Information that he might have received, and possibly might have the Expression of common Talkers of News; but now that it came judicially before him, he would thoroughly examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we shall prove to be the Occasion and Manner of the speaking these Words, by Persons that were then present in Court; and this happened but in *December* last was Twelve-month; and accordingly it was ordered to be put under the immediate Examination of Mr. *Edwards*, who succeeded Mr. *Dormer* in the Office, and who must therefore be admitted to be the most proper Person to perfect that Enquiry, and also because he was the most concerned in the Consequences of it: But Time has been wanting to proceed as far as he intended in that necessary Work.

My Lords, Tho' by this time, it can't be pretended but the late Chancellor, as well as every other Person belonging to the Law, must know of Mr. *Dormer's* Deficiency; yet I believe, that none had then discovered, or even imagined how great it was; and that even his Lordship, and most other Persons, were persuaded, that whatever should appear to be wanting in his own Effects, would be supplied by the other Masters; or some other Method would be found out to prevent any real Loss to the Suitors; and in virtue of this Persuasion, Orders were made for Payment of Money to the Suitors, as they apply'd for it, without directing an Average.

This is exclaimed against, as contrary to all Equity; some to have all, and others to lose all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when these Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dormer's* Effects would at all Events prove Deficient, and that no way had been foreseen, whereby that Deficiency could have been supplied; I must admit this Objection would have been very strong: And in that Case, to have order'd full Payment to those Suitors who first applied, and left nothing for those that came after, would have been a manifest Partiality.

But this is not the present Case. When the Court ordered the first Payments to be made, it does not appear in Proof (as I humbly apprehend) that there would at last be any certain Deficiency in Mr. *Dormer's* Effects, or at least no pretence of judging how great that Deficiency was like to be. And consequently, the Payment of the whole Demand to the Suitors that first applied, does not necessarily infer that there would be any Loss to those which came after. His Effects, upon further Enquiry, might possibly come out to be more than were at first discovered; they might prove sufficient to answer all Demands: Or in case the Deficiency was not very great, a moderate Contribution from the other Masters, or, it may be, a reasonable Addition intended to be made to that by the Chancellor himself, would have supplied that

that Defect. And that this was really intended, I apprehend that the Evidence already given does abundantly demonstrate.

Another Objection has been made; That very great Sums of Money have been deposited in the Masters Hands, without any Security; and that some proposals have been made to the Noble Earl, for securing in some measure those great Sums, and preventing the Masters having too great Power over so great a Cash.

Mr. *Lighbourn*, one of the present Masters, first mentioned the Proposal; He had before communicated it to Mr. *Holford*. The Chancellor received it kindly, desir'd him to reduce it into Writing; took Time to consider of it, and frequently talked with him about it; always shewed an earnest Desire that this might be done, but thought the proposed Scheme not effectual. Many Consultations were had upon this proposal; at last he summons all the Masters of the Court, the Registers, the Usher, and other Officers of the Court; obtains the Favour of the Master of the *Rolls* to join with him and them in the general Consultation; and every one expected some effectual Resolution would have been made, upon this grand Affair.

But the Master of the *Rolls* then taking notice that there were other things in the Court that required a Reformation, as well as this; and taking notice that the masters in *Chancery* had lately assumed to themselves a Power of Judicature in the Court, in opposition to him; insisted, That this pretended Power of Judicature in the masters should be given up by them, before he would enter into the Debate of the other Question.

Mr. *Lighbourn*, upon whose original proposal this great Assembly was convened, was the first, if not the only Person that opposed the relinquishing this new-assumed power, tho' he knew the Consequence would be the Destruction of the other proposition which himself had made.

He preferred the Affectation of this Power of Judicature in his Office, more than the Interest of all the Suitors; and upon this, the great Expectation of this solemn meeting was disappointed, and nothing done.

What could a Lord Chancellor do more, that has the Honour of the Court and Interest of the Suitors the most at Heart?

Mr. *Lighbourn* himself tells your Lordships, that after this last Attempt proved unsuccessful, he began to think there was but one single Lord in the World that had sufficient Spirit to undertake it.

But during all this time, nothing had happened to give the late Chancellor any just Jealousy or Suspicion of the Deficiency of any of the other Masters. They are proved to have often declared they were Sufficient; nay, they have themselves sworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl Impeached, sincerely thought they were so; and therefore when their Accounts were brought to him, in order to be laid before the Council, in Obedience to His Majesty's gracious Commands, he did all that was in his power or Capacity to forward that good Design, and make it successful: He ordered the Masters to speed their Accounts: And when they were brought before him, he observing that the Senior Master had under-written his Account in a full, and plain, and more direct Manner than the other masters had done, he told them, He liked the Form which Mr. *Holford* the

Senior Master had used, and thought it a proper precedent for the rest. They all complied, without Hesitation or Objection; no one pretended they had not sufficient then in their Hands to make good their Balance; and accordingly subscribed to it, That they were able and willing to make good their respective Balances; or to the like Effect.

Can it be imagined, that this so fair and candid a Transaction, intended for the Satisfaction of the Council, and the good Security of the Suitors, can by any means be interpreted an Imposition upon His Majesty, by the late Chancellor? It was for His Majesty's Service that the Accounts should be laid fully and truly before him in Council; and it must likewise be a great Satisfaction to His Majesty, to find that his Subjects money in the masters Hands was secure, by seeing their Acknowledgment, under their Hands, that they were able.

The late Chancellor knew no more than any of the rest of the Honourable Privy-Council, or His Majesty himself, that this Declaration was false; and therefore it was equally an Imposition upon Him and Them; but no Fraud, no Crime in the Chancellor himself; which is the Objection now made against him. And indeed, many of the masters which have been now examined before your Lordships, have, upon their Evidence, Declared, That the Subscriptions thus made to their Accounts, were true, and that in Fact they have given good and effectual Securities to answer the respective Balances of their Accounts.

How hard a Work this Regulation of this great Abuse in the Court of *Chancery* was, the late Experience has shewn; and a total Reformation of it hereafter, would have proved more difficult, without the prudent and cautious Preparation, which the Noble Earl within the Bar has made for it, and which in due time he might have been able to effect.

Thus my Lords, I have endeavoured (but very imperfectly, I am sensible, and confusedly) to offer what occurs to me in the Impeached Earl's Behalf. I ask your Lordships Pardon, and His, for taking up so much of your Time so unprofitably. What Omissions I have made, I doubt not, will be supplied by the several learned Gentlemen that are to speak after me.

I have this very great Satisfaction, that before your Lordships, the Merits of this, or any other Cause, will not suffer through the Incapacity of the Advocate on the one side, nor the Solemnity of the Prosecution on the other. When Facts are proved before your Lordships, no Observations can be equally Instructing as your Own. And upon the Evidence given, your Lordships will undoubtedly form a Just Judgment: A Judgment, I humbly presume to hope, That the Impeached Earl is Not Guilty of any of the Articles exhibited against him.

Dr. *Sayer*. My Lords, I am likewise of Counsel for the Noble Earl Impeached.

I am afraid it may seem somewhat improper, that I should engage in a proceeding of so much Difficulty, foreign to the profession in which I am bred: But as the very great Obligations I have to the Earl, prevail on me so far to forget my own Unfitness, I hope they will, on your Lordships, to excuse it.

The Articles exhibited by the Honourable the House of Commons, charge him with *Corruption*

tion and Extortion, in the most odious Manner; and the learned Managers have heigten'd every Circumstance with the greatest Art and Eloquence; every ill Turn which his Actions, his Words, his very Omissions could be imagined capable to receive, hath been given; Suspicions and Jealousies have been rais'd; and every Consideration forgot, which could interpret them in his Favour.

This my Lords, was their Duty, as Managers; and tho', by some, undertaken with Reluctance; yet, I may venture to say, it has been perform'd by all with great Success and Reputation.

But however unanswerable their Eloquence may be, we hope to be able to defend the Earl against the Facts they have alledged; and shew, That they were either not done, or done with Innocence and Honour. Against *meer Imaginations*, nothing can secure him, but your Lordships Candour and Justice.

The words *Orphans*, and *Widows*, and *Lunatics*, have been employ'd to raise Tenderness and Compassion, and arm your Lordships against every Argument which we can offer. Well was it commanded by the *Jewish Law*, *Not to respect the Person of the Poor, in his Cause*; knowing the Disposition of Human Nature, and the Necessity of guarding against this generous Weakness. This Caution ought particularly to be remembered by *Englishmen*, who are allow'd to be more subject to an Excess of it, than those of any other Nation.

The learned Managers have very rightly observ'd, how much your Lordships *Honour* is concern'd in this Prosecution. My Lords, It was with the greatest Satisfaction I heard them say it; for I am by it induced to think, that notwithstanding the Zeal which has been express'd, they will be much pleas'd to find *every Member* of your Lordships Body *Innocent*.

It appears from the Answer, and needs no Proof, That the Noble Earl was once *Lord Chief Justice of the King's-Bench*: And his Conduct in that great Station, will, I hope, be some Defence.

I may appeal to those Gentlemen who are now Managers against him, whether they have not applauded him with Warmth? whether they have not commended his *Zeal* and *Intrepidity* in the Cause of *Liberty* and *our Country*? his *steady Adherence to the Protestant Succession*? his *uninfluenced Behaviour*? My Lords, I would ask, whether then they did not praise and love him? whether they did not esteem his being placed in that High Station (which he executed with Honour) their *Comfort*, their *Security*.

My Lords, I beg pardon for replacing those Times before your Thoughts, or for desiring any to consider, how an Accusation against him, supported by *meer Refinements*, would at that time have been regarded. My Lords, his *experienc'd Merit* would then have silenc'd every Objection.

If there wanted any Evidence of the High Character he bore while in that Station, we might appeal to the *great Rewards* His Majesty has bestow'd upon him: *Those very Graces* which have been *exaggerated* against him, are the noblest Testimony in his Favour. His Majesty thought him worthy of the *Great Seal*, because he had found him *faithful* in his *other Trusts*. His Majesty approved him, because his Subjects had:

It was for their Sakes (the constant Motive of his Choice) that he appointed him Lord Chancellor.

This once was the Earl's Character; this once his Merit. These were, nay, are still our Obligations to him. My lords, *experienc'd Worth* has a Right to greater *Confidence* and *Credit*: This is a Rule of Evidence, and of common Justice; and unless the most convincing Proofs are offered, your Lordships never can believe, that one who has done so greatly Well, can do so Basely as is suggested by the Charge.

But supposing, upon *so very strict* an Enquiry into the Conduct of any Great Man, *something amiss* was found (for the Greatest are but Men, and must have Failings) yet is former Merit not quite to be forgot. *Publick Services* are thought just Reasons for *Remission* of the highest past Offences, though done perhaps *merely* with a *View* of obtaining it: And shall those done upon a more generous Principle, arising from an *honest disinterested Heart*, deserve a less Regard?

But my lords, that I may have the better Opportunity of observing, on the Evidence brought for the Commons, as well as on the Arguments offered, I shall beg leave to follow the learned managers in the method they took themselves.

The Foundation of their Charge, is, The *disfranchising of several Offices for considerable Sums of Money*. This is the *Corruption*! This the *Extortion*! And to aggravate the Guilt of this, and raise your Lordships Indignation, the Preamble sets forth, "That in or about *May 1718*, the Earl "was appointed Lord Chancellor of *Great Britain*, and did thereupon take the usual Oath "for the due Execution of that High Office, and "such other Oaths as have been accustomed." And the subsequent Articles proceed to charge his lordship *with Breach and Violation of his Oath, as Lord Chancellor*. The learned Gentlemen who had the Conduct of the Evidence, justly sensible of the Expectation they had raised by this Aggravation, did *attempt* a Proof.

The Earl, in his Answer, had set forth at large, the Oath he took *as Lord Chancellor, when first appointed*; and had insisted, that he took *no other Oath of Office*. Was this the Oath the Earl had thus broke and violated? No, it was *not this*; but *one, which, by the Articles, he is no where charged with ever having taken*. Upon the Choice of *Sheriffs*, it seems, the 12th of *Ric. II.* is annually, in *Old French*, read over by the Clerk; and all present at the Council kiss the Bible. It is this Transaction with which they would affect the Earl. But, my Lords, it is notorious, that the Statute is so far grown obsolete, that in no other Instance besides this of *Sheriffs*, is it at present taken notice of. And as the Oath upon this Occasion must be absolutely *confin'd* to the *Choice* of them; so is it evident, that the Statute it self never did nor was intended to reach Officers of the nature with these in question; as I shall further observe. And indeed, with the Oath directed, the Statute is so extremely rigid, that I must own, for my part, I do not see any Service it can do Society, in its full Extent. It may perhaps afford some *Protection* to a *First Minister*, in laying him under the Obligation of an Oath, to put none into any Office who shall *pursue* or *solicit* by *himself* or by *other*.

However,

However, I can't help thinking that the learned Manager had but very small pretence for the Reflection he was pleased to make, in saying, that the Earl seemed to have forgot this Oath not only in his answers, but in his conduct; when it appears that he himself had forgot how he had charged it in his Articles. If he will cast his eye back upon them, he will find that the Preamble makes mention of no Oaths, but what were taken by the Earl upon his Majesty's Appointment of him to the Seal; and the Articles charge him only with Violation of his Oath, as Lord Chancellor.

Having justified the Earl's Memory in this Point, I proceed to justify his Conduct in others; and I hope the Defence he has made by his Answer will have its Weight with your Lordships. The Earl has insisted, "That the making Presents has been long used and practised in the Time of his Predecessors; That such presents have been reckon'd amongst the antient and known Perquisites of the Great Seal; that the making and accepting them has been Notorious to all the World, and never before looked upon as Criminal, or complained of as such." My Lords, this (as far as Proof is requisite) We shall make fully appear by great Numbers of Witnesses, who are able to speak to both the Opinion and Practice of the Earl's PREDECESSORS. To this it has indeed been said, that the Earl may be Guilty, tho' his Predecessors have escaped unscathed or unpunished. My Lords, the Examples we have followed are too Worthy to lead us into Guilt: But, my Lords, if the Earl has only done what they have done, and received what they esteemed an honest Perquisite; was the Practice in it self not quite so regular at first, yet, *Sunt tolerabilia, quæ consuetudo comprobant*—Usage (of antient) has so great Authority, that it makes the Common Law of England; and tho' with us it cannot repeal a Statute, or destroy its Force, which it does in other Countries, yet, my Lords, there is an Equity to be observed; and Reason as well as Humanity must inform your Lordships, that no Man ought to be treated with the utmost Severity, which an old Statute may direct; when great Examples may have led him to the Action, and a long Connivance of his Predecessors provided him Security from Censure.

But the Earl's Defence stops not here; he says, "He humbly hopes that the giving or receiving Presents on such Occasions is not Criminal in it self, or by the Common Law, and that there is not any Act of Parliament whatsoever, by which the same is made Criminal, or subject to any Punishment." To this the learned Gentlemen have given but very general Answers. Some have by Rhetoric, instead of Reason, endeavoured to persuade your Lordships, that the Act it self is highly Just, and that the Corruption in selling Offices is greater and far more dangerous to Society, than even selling Justice it self: Others have talked of Common Law, and Statutes, but have produced none, except those of 12th of Rich. II. and V. and 6 of Edw. VI. and a few Inferences drawn from them, which I shall speak more largely to immediately: And as the Learning and Experience of those Gentlemen are too great for any Law to escape their Observation, as is their Honour to reserve any for their Reply, I shall take it for granted, that since no other has been mentioned, there is no other.

My Lords, the Writers upon the Law of Na-

ture have properly distinguished between selling Justice and Offices concerning the Administration of Justice: and not as the learned Managers have done. With them the selling Justice is absolutely forbid, is absolutely Corrupt and Immoral. The selling Offices is Matter of meer Policy, varied in different Governments, prohibited in some, allowed in others.

Among the Romans the Law in this Particular fluctuated and changed, and tho' the Sale of Offices was generally forbid, yet it received great Alterations, as the Emperors or the People were disposed: When Elections of the Magistrates were Popular, the *Suffragia*, or Votes of the People were bought and sold; but as this Practice produced frequent Riots and Disorders, frequent Laws were made to restrain it, which are still extant, and part of the Body of the Civil Law: However, all proving unsuccessful, the Emperors took occasion from it to usurp upon the People, and name the Magistrates themselves: This Translation of Authority carried the Benefit to Courtiers, and other Men of Power, who took a sort of Brokage for their Interest. *Theodosius*, the Emperor, so far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promised for Procurement of any Place. In process of Time the Emperors themselves participated and took a Share of this Advantage, which introduced a distinction of *Suffragium Dominicum*, and *privatum*. *Suffragium privatum, quod Julicis dabatur*; and *Dominicum, quod Imperialibus rationibus inferebatur*. This Distinction, as well as the Practice, is very Evident from the two Novels of Justinian, which were intended absolutely to prevent for the future all Sale of Offices. In Novel 161. it is said, *Ejusmodi Dominica suffragia magnum reddebant pecuniarum cumulum*; and in Novel 8. that by the Prohibition, *Questus immodicus imminuitur imperio*.

It is well known that in France, the Laws have varied in like manner. Sometimes the Sale of Offices was permitted, sometimes forbid; but at present, and for this last Century, it has been so far encouraged, that Officers retain the Right of Resignation even in Succession, and transmit it to their Heirs, in case they have paid the Annual Tax or Duty within the Year.

I mention this to shew what the Opinion has been of other Governments; that they have not esteemed this Practice so highly Criminal, or unreasonable; and as they have not, so neither have we: For notwithstanding what has been urged with so much Ingenuity; (according to my poor Apprehension) that very Statute of Edw. VI. so much insisted on, is the strongest Proof which can be given, not only that in particular instances the Sale of Offices is now permitted, but that it was in general before that Statute, by the Common Law of England. This Statute in Sect. 3d. enacts, that "All Bargains, Sales, Promises, &c. shall be void." And yet by Sect. 6th, it makes Provision, that "It shall not extend to any Bargain, Sale, Gift, Grant, &c. concluded and agreed before the First Day of March next coming, but that the same Bargain and Sale so concluded and agreed, shall always remain, continue, and be in such force, strength, and effect, as if this Act had never been had or made." If Bargains and Sales, agreed before the First of March, are to continue in such Force, &c. as if this Act had never been made, the Consequence to me seems certain,

tain, that *those Bargains and Sales had Force*, and that they were before *Effectual and Legal*; for otherwise the Provision would be absurd and ridiculous.

The 7th Section of this Statute still goes further, and makes a perpetual Provision, that “*This Act, or any thing therein contained, shall not in any wise extend, or be prejudicial or hurtful to any of the Chief Justices of the King’s Courts, commonly called the King’s Bench, or Common Pleas, or to any of the Justices of the Assize that now be, or hereafter shall be; but that they, and every of them, may do in every Behalf, touching or concerning any Office, or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act.*”

If this Statute be *Explanatory* of what the Common Law was before, and as such it was insisted on, it is certainly impossible to doubt, but that by the *Common Law* the *Sale of Offices* was allowed: “*the Chief Justices, &c. may (TOUCHING THEIR OFFICES) do as they might have done before.*” This Act is to prevent the *Sale of Offices*, and yet *not of their Offices*: They had been used to *bargain*, and *sell* them, and still may do it, for this Act is not to be in any wise *prejudicial*, or *hurtful*, to any of them. This is the plain Sense, this the very Language of the Provision.

But I humbly conceive that this Provision is not only an Evidence of what the *Common Law* itself was, but that the *Act of Rich. II.* (of which I before made mention) could never be intended to reach *Offices of this Nature*; for as the *Act of Rich. II.* directs an Oath, which the *Chief Justices, &c.* are expressly required to take, can it be imagined without the greatest Extravagance of Fancy, that the Legislature should be so very forgetful, as to guard and secure to them a *Privilege*, which they could never exercise without the highest *Perjury*?

This, my Lords, is the only Statute, which, as I apprehend, any way concerns the Charge brought against the Noble Earl: But does this Statute make the *Sale of Offices* Criminal? Does it direct a *Punishment*, or even by any general Clause forbid the Practice of it? ’Tis true the *Bargains* are hereby made void, the Person who *sells*, does lose his *Right of Nomination*, and he who *gives* or *pays*, is to be adjudged *disable* in Law to have the Office. My Lords, these are the *Discouragements*, which the Legislature then thought proper to lay such *Bargains* under, these the *only Penalties*: If the Earl has by his Conduct done what this Statute disapproves; if he has bargained and sold Offices, which your Lordships judge within the Statute, and the constant Usage of his Predecessors will not give *Protection*, the Statute points out your Lordships Justice. But, my Lords, this unfortunate Great Man, we think, has already more than satisfied this Law, he has resigned the Seal, and yet stands *Impeached* before your Lordships.

Offences are to be judged of by the *Penalties* and *Punishments* the Legislature has annexed; for in determining the Penalties, it determined the Sense it had of the Offence: When Penal Laws are made, it must always be supposed, that a Consideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Punishment directed was esteemed adequate and just: By this rate it is easy to guess

what the Legislature thought of the Offence of selling Offices. And, indeed, it would have been (if I may use the Expression) unbecoming the Legislature to have inflicted severer Penalties, while by the same Law it permitted the first Judges in the Nation to do what it seemed to condemn in others.

When a Law is once past, the Transgressor of it is subject only to what that Law directs; to inflict a greater Punishment, would be detesting Law, and acting arbitrarily. This Observation will hold in every Instance, in Matters of Common Justice, as well as Publick Policy: To forbid to *Rob*, or *Murder*, is only to enforce what was always Law; to forbid to *sell Offices*, is to lay a *Political Restraint* on Acts indifferent. And yet in the former Case, to punish the Offender beyond the Law, would be unjust and arbitrary. Are Prohibitions merely *Political* more Sacred? Or is a *Trespass* against them more severely to be treated, than one against the Law of Nature, the Law of God? No, Your Lordships (I say it with Submission) are the Supreme Judges of the Nation; as such, the Supreme Judges of the Law; for by the Laws your Lordships always judge: It is the peculiar Blessing of our Nation, to have known certain Laws, to be the Guide of our Actions, and the Measure of our Punishments; to secure to us this Blessing has been the Labour and the Glory of our Ancestors. For the Sake of this, the REVOLUTION is beloved; and for a steady Adherence to this Sacred Rule, his MAJESTY is esteemed the Joy, the Safety, the Liberty of his People.

I beg Pardon for dwelling so long upon this Subject; but the Honourable Gentlemen of the House of Commons having made the *Sale of Offices* the Foundation of their whole CHARGE, I thought it of some Consequence to prove to your Lordships, that it is no ways Criminal in itself: And, my Lords, if it be not Criminal, Where is the Corruption? Where the Extortion? Is it in the Manner of receiving Presents? How that was, the Learned Serjeant of Counsel with me has already given your Lordships an Account: An Account, which we hope does sufficiently justify the Earl against the Imputation of *Haggling*, or of *screeving up the Candidates* to what they gave. But as these several Articles will be more fully spoke to, when we come to produce our Evidence, I shall pass them over with an Observation of two. If the Earl had so great a Thirst for Gain, and was so resolutely bent to amass such excessive Sums of Money, it is to me very strange, that whenever his Opportunity offered, and he had the free and full Disposal of an Office upon a Vacancy by Death, he should always receive a much less Sum, than what from the very face of the Articles themselves appears constantly to have been paid by the Master. Had the Earl put the Office up to Auction, or even *injured* on a Price, Is it probable that he should not be able to obtain one at great?

However, as I pass, I can’t help taking notice of the Circumstance with which the Article of Mr. Thurston’s admission is introduced, “*The Borrower died insolvent, greatly indebted to the Sellers, and the said Earl did, without securing a just Satisfaction, sell him.*” Your Lordships must have observed, that the Earl is not so much as charged here with a knowledge of this insolvency; and, my Lords, knowledge only can create the guilt. If the Earl did not know it, can your Lordships censure him? If it be asked

asked why he did not? Mr. *Godfrey*, who was produced and examined by the managers, has already given a full Answer: Mr. *Godfrey* was most intimate with the Affairs of *Borret*, and as such was directed by the Earl to inspect them; he has deposed, that he told the Earl, he thought *there would be no deficiency in his Office*, this (your Lordships may remember) he said was his *own* sincere Opinion, and he gave good Reasons for it. Mr. *Borret* had a very good Income, reputed 400 *l. per An.* besides his Place; he had lately married a Wife of Fortune; his Family lived with his Father-in-law; and he himself a man of no Expence: My Lords, Mr. *Godfrey* told you, he was so fully in this Opinion, that when Mr. *Green*, the deceased's Uncle, made a demand of a debt, he was *greatly surpris'd, not imagining that he had owed one single farthing*. Whence this deficiency (if there is any) none can tell: But, my Lords, that fatal Year of 1720 is not so long past, as to leave us quite without conjecture; a Year, my Lords, when the *Contagion* was so virulent, that scarce any *Virtue* was left *uninfected*; and those who sunk under it, remarkably deserve our Pity, as sad Instances of human Frailty: *To this Year*, the masters owe their whole *Distress*, and to them the Earl, tho' innocent, *this aggravated Charge*: But, my Lords, supposing a *Deficiency in this Office*, and known too by the Earl himself, what *Satisfaction* to the Suitors was from him expected? What could he possibly secure? There is but *one Method*: which, I hope, he will not, by the *Managers*, be thought *criminal in not taking*, since it is *that*, which *they themselves* condemn as *illegal and corrupt*.

It may be expected, that I should shew some Regard to the 9th Article: But as it is that which the learned Gentlemen made choice of to begin with, I apprehend *greater Difficulties* than I see; and therefore shall leave the Consideration of it to those, who are much more able to surmount them than myself: But I must ask Pardon, that I can't reach a Distinction on which great Strefs has been laid: It has been observed by more than one, that in this Case, the money was paid for the *resignation*, and not for the *admission*. Is there any real Difference, whether the *Buyer* or the *Seller* pays the *Compliment*? Must it not be supposed that it was considered in the Bargain, and part of it? Or is it imagined that a greater Hardship was in this Case done Mr. *Thomas Bennet*, by a seeming *Obstruction* of his Inclination to part with an Office, when in fact the Earl could not hinder his resigning it? For notwithstanding the Observation made by a learned Gentleman, that the *Lord Chancellor* was the *King's Officer*, and therefore a *Resignation to the Crown* was the same as to him; yet am I from his very great Abilities persuaded to believe, that he is not so entirely a stranger to the *Thought* of that *high Office*, as not to be able to distinguish the *Crown* from the *Seal*, and to know that in many Instances of *Patronage* they are *different*: The *Lord Chancellor* being the *King's Officer*, a *Resignation to him* may in some Cases be equivalent in Law to one made to the *Crown* itself, but never *è contrario*. As to this particular Office, and indeed to many others of the like Nature, we shall make it fully appear, that tho' the *Officer* himself is in the *Nomination* of the *Crown*, yet has he always been under the *Recommendation* of the *Seal*, and has as constantly paid *Acknowledgment* to the *Lord Chancellor*.

Upon these Charges are built the whole of the following Articles: Every Expression, every Action which could bear an ambiguity, has been collected to form a Crime. The Earl has *received money for his Offices*, his *Aim* is therefore *Gain by Sale of Offices*, an easy Inference; and whatever is after *said or done*, or *vice versa*, is at first *Suspicion*, and then an *Evidence* against him.

But, my Lords, before I proceed to try Particulars upon this Head, I must beg your Lordships Patience to compute in general the very small Advantage the Noble Earl could propose by the *Scheme*, the learned Gentlemen have *projected* for him: The *Office* of Lord Chancellor is *precarious*, and only *during Pleasure*: The *King*, for his Subjects Welfare, *jealous* of every Minister, and *ready to remove* the greatest Favourite upon the very first Offence; and upon this Contingency, what would the *Chance* of disposing of a Master's Place be worth? A very trifle, I may boldly say, not so much as what he has *refused* the Opportunity of *gaining upon every compleat vacancy* he has disposed of. And can your Lordships suspect a Character *once so dear*, once allowed *so worthy*, of doing such little Things, I should say, such base Things, for *no Advantage*, and yet to promote *this illegal and corrupt Gain on which his Heart was eagerly set*? The noble Earl is further charged "*with having admitted several Persons to the Offices of Masters, who were at the Time of small Substance and Abi-*"
 lity:" Against this there lay an obvious Objection; Why Persons of small Substance? When the Earl *might have*, and indeed *always had*, when of his own Choice, others of *Sufficiency*. Wherefore, to make their Charge consistent, a *fraudulent* method is supposed to be introduced, of *paying for their Places out of the Effects of the Court*; a Method best suited to such Persons: But your Lordships Justice must have led you to observe, that they *no where* so much as *insinuate*, that the Earl *knew* them to have been as charged: They were sensible of the proper Caution he had taken, and (as it will appear in Evidence) that not only previous Inquiries were always made, and *none* admitted, who came not *well recommended*, or *personally known* to the Earl himself; but that when several Candidates have offered, his Lordship has been so unmindful of the *little Views*, he is supposed ever to have acted with, that he has *constantly preferr'd* him he thought the *worthiest*, tho' the *present* to the Earl was far *less* than what others gave him Expectation of. This surely, my Lords, will be enough to *vindicate* his Care; and tho' it should appear, that he was *deceived* in any *single Instance*; nay, tho' *the Man himself* should be the *Evidence* of his own *Deceit and Fraud*, yet I hope, my Lords, *such Person* will have his full Compliment of Credit, if he is *believed* in the Character he gives of *himself*. But to make some excuse for the Earl's *good Opinion* of this Mr. *Thomas Bennet*, and his *Circumstances*, I must observe, that it is Evident from his *own Account* which lies upon the Table, that *when he was admitted*, he had an *Estate* of between 5 and 600 *l. per An.* he had besides an *Office* for Life of 250 *l. per An.* he kept his *Coach*, and then lived in *Reputation*: However, I must confess, that in further Proof of his *great Integrity*, this Gentleman has deposed, that *Part* of his Estate was then *Mortgaged* for more than it was worth. I should upon this

this Occasion put your Lordships in mind of what happened upon this Gentleman's *Confrontation*, because he has been *singular* in his Evidence on more Facts than *one*; but we shall take another Opportunity of displaying this *Worthy Person's Veracity*, that your Lordships may know *how much Regard* to pay to *him*, by seeing *how little Regard* he has for *Truth*.

As to the *Schedules*, the Neglect of which is made so *Criminal*, it would be enough to say, that the taking them could not prevent the *Fraud* complained of; for what would be the Difference in *deducting* the *Sum agreed on for the Purchase upon the transfer*, or *repaying it the minute after*? And if the new Master is *really able and sufficient*, where is the *Injustice* done in either Case? But we submit whether such Schedules must not be made between master and master: For without them their Accounts cannot be settled; and as it is for the *Interest* of him who *succeeds*, so is it for the *Security* of the other who *resigns*. But supposing the Practice to have been as charged, and their *Transfers* were not *complete*, the only Consequence I see is, that *both* masters are *bound*, and the Suitors have by it a *double Security*. It has happened so in the Cases of both Mr. *Hiccocks* and Mr. *Rogers*; they imprudently *retaining* the Effects of the Court, for the Sale of their Offices, have thought it proper to petition the Lords Commissioners to *repay* the money: So that some good Fortune has attended this Practice, ill as it is, the Suitors have by it got so much money more, than what otherwise they would have had.

My Lords, when *Dormer's* Affair (tho' sufficiently unfortunate) is considered by your Lordships, I hope that the noble Earl will not be thought to have acted otherwise than as *became* his Character: Upon the first notice of the misfortune, the Earl took all possible Care both to *save the Effects*, and *secure the Office*; he sent the two senior masters to *search his Chambers*, and to *stop the Transfers* of all Stock, which stood in his Name, in any of the publick Companies. My Lords, had the Earl had that *Eye on Gain*, had he had that *Apprehension of Discovery*, which is represented, he would scarce have taken *this last Step*, which must and did make a *Suspicion* of the Office publick: When Mr. *Dormer* was returned, and upon *such Terms* as the Managers themselves can't say were unreasonable to grant to one, whose Person was out of reach, and whose Effects and Accounts were in the greatest Confusion: His Liberty was all he asked, and that upon Condition only of a *full discovery* and a *fair Assignment* of all he had. I say, my Lords, when Mr. *Dormer* was returned upon these Terms, which we hope he has honestly performed, his Office was sold, and every Thing done, *not to conceal*, but to *supply* the *Deficiencies*. I would not enter too minutely into the *Composition* with Mr. *Wilson*: It will, I conceive, be a full and satisfactory Answer to the Charge, to observe that as the Suitors were not *Parties* to it, they can no ways be *injured* by it. If the *Composition* be *precarious, trifling, and unjust*, the Suitors are still at *Liberty* to proceed: If *more* could be had, they still may have more; but till *more* is *recovered*, it must be admitted that the *little*, which is *gained*, is *owing* to the *Composition*. Had the Suitors been *Parties*, the Order so much com-

plained of for its Irregularity would not have been made *without a Notice*; but as Mr. *Wilson*, whose particular Interest it was to have them Parties, did not desire it, we apprehend the Order to be in the *usual manner*. My Lords, the masters (as is in Evidence) having in some measure *engaged themselves* to make good the Deficiencies, if any should happen, the Earl could have no reason to doubt the Justice of the *Proposal* of Mr. *Wilson*, after Mr. *Hiccocks* had reported it, and Mr. *Edwards*, the Successor in the Office, had *prayed* the Earl to *order him to accept it*.

It seems, my Lords, a very forced and unkind Construction, which the Articles put upon the *Accounts* his Lordship had *required* of the masters; but the worthiest Behaviour may be thus misconstrued. The matters themselves had *made the Proposal of contributing*, and it will appear that they all (except Mr. *Lightboun*) did pay their Money *voluntarily*. What occasion then for such Methods as are suggested to *terrify and oblige them to this Contribution*? Is it in Proof that the requiring the Accounts did *influence one single master*? No, my Lords, but, on the contrary, you will find that the *Payment* by the masters did not prevail on his Lordship to desist; for it will be in Evidence, that the Earl *still persevered*, and that by the Earl's direction a *Letter* was wrote to the masters, *after* the several *Payments* were made, complaining of their Delay, and requiring their Accounts. The Earl, indeed, upon Representations, did afterwards think the method *impracticable*, which he is the better justified in saying, because the very *same method* has been *since* found so by the *Honourable Committee for inspecting their Accounts*, and departed from *as such*.

Upon this Subject of *Dormer's* Deficiency, I must beg leave to remind you of what Mr. *Edwards* told your Lordships. He said, "*That they were all of Opinion, that the Deficiency would be made up; and unless he had believed it, he would not have entered into the Office.*" If Mr. *Edwards*, who was so much concerned, was in this Persuasion, why might not the Earl too with Innocence? And, my Lords, this Persuasion, this Expectation, is, I humbly conceive, a very satisfactory Reason, why the Earl, had he been obliged to have declared an *Average ex officio*, in common Cases, might be excused the doing it *in this*.

As to the Cases of *Chitty* and *Harper*, when the Circumstances which attend them, are laid before your Lordships, the Inferences drawn from each will appear equally unreasonable: For the Earl can no more be supposed to have intended a *Concealment* of *Dormer's* Deficiencies by the Order he made, *after* he had expressly mentioned in *open Court* the *several accidents*, by which they had happened, than he could by the *Payment* of 1000*l.* to Mr. *Lockman*, when he told him, *that it would be the last Payment Mrs. Chitty was likely to receive, the residue being in great danger from Dormer's Deficiency*. But when we prove to you the very great distress Mr. *Lockman* represented himself to be in, your Lordships will be convinced that the money was by the Earl advanced from *no other motive*, than a *generous and compassionate Regard to him*: This at *that time* was Mr. *Lockman's own Sense* of it; this he has *often since acknowledged*, tho' upon his Examination he was pleased to claim it as *his Right*, and *even no Obligation*.

I think

I think it will be (I should say, it is already) very full in Proof, that the Earl desired a *thorough Reformation of his Court*; and tho' Difficulties have obstructed it, yet surely, my Lords, it can't be imputed to any omission of his, in the light the Charge would place it. There were *Difficulties*, not only with Regard to the *Masters and their Accounts*, but to their *Jurisdiction and Privileges*: *Difficulties* of such a nature, that one of the Witnesses thought they required the *greatest Resolution* to surmount them. If the noble Earl had not a *Resolution quite sufficient*, it might perhaps be his misfortune, but surely not his Fault. But what *Proposals of Security* the Masters could possibly make, which they esteemed *useful or convenient to themselves*, and the *Earl* should *refuse*, I can't conceive. I imagined from the *Scheme* on which the Charge is founded, that *their Interest* had been the *same*, had been *one*, and what served *their* purpose must have served *the Earl's*; and yet now we are told the contrary.

How the learned Gentlemen have made out the several *Deficiencies*, must be considered, when we are upon their Evidence to that Article: I will only observe, that no *permission* or *encouragement* of the Earl's has been proved, by which they are *increased*; that no *Money* has been *compelled* into court, by any *Order* he has ever *made*, to *advance* their Offices, nor any *Countenance* given by *him* to any one *ill Practice*.

How far the Earl is guilty of *obstructing the inquiry his Majesty had directed*, or how far he was instrumental in *deceiving the Council Board*, we submit upon their own Evidence: It appears, that at the meeting at Mr. *Edwards's* House, *all of them declared* they were *able* to answer their several *Ballances*; and when the *Subscriptions* were *Signed*, they were *believed* to be as they had declared themselves: If they were, where was the *Fraud* in the *Proposal to assist each other*? Or how could it be understood to *make a false Appearance* with *Propriety of Language*, or *common Justice*? But it is remarkable, that this *Advice*, however fair and honest, was not given by the *Earl*, but by Mr. *Cottingham*, and without his *privity* or *knowledge*, and *occasionally* in *Conversation* with the *Masters*: And as to the *Subscription*, which they *added*; did the Earl use any *Arguments* to persuade them to it? Did he *press* them, or even *desire* them to *Sign* it? No, they themselves confess, that *he* but *barely recommended it*, as being *what their senior Master had made*, and *better in Form than some others*, which were then *produced*. He used no *Arguments*, he *prest* them not; and they, *honest Men* (as they themselves have deposed before your lordships) made no *Scruple* or *Objection* to it. I beg *Pardon*: I should do *Justice* to Mr. *Thomas Bennet*, who I think had *his Scruple* to the *Word Demonstration*. So that if *false Representations* have been made, they who have *made* them are the *guilty*; they have *deceived* the *Council-Board*, and *not the Earl*; the *Action* was their own, free and *unsolicited*.

But, my Lords, not to detain your Lordships longer; one of the learned Managers seemed sensible of the force of *one* Evidence we have

to offer in *Vindication* of the Earl from the Charge of *Avarice*; and therefore, without denying a *publick Fact*, he was pleased by his *Eloquence* to try whether he could not bring *Charity itself* under suspicion: Whether he could not *confound* the difference between the *most worthy Generosity*, and the *Luxury and Debauchery*, and the *Riots* of a *CATILINE*! What innocence is *secure* against the *Power* of *such* *Eloquence*? My Lords, had he not thought *this* a *Defence* against the *very Foundation* of the whole Charge, he would not have *surprised* us with such an Answer: He well knew that the Earl could have *Orphans* and *Widows*, the *poorer Clergy*, and the *Youth of the University*, to appear and acknowledge their *Obligations* to him: *Obligations* made *greater* by being *unasked*; I cannot say *unexpected*, because every Object in distress within his Knowledge, had Reason to expect Relief. I would ask the learned Gentleman, whether *Expences* of *this kind* were part of *CATILINE's* *Profuseness*?

This, my Lords, will be an Answer to their oft repeated *Imputations*, and must clear the Earl from all *suspicion* of ever having acted from such *sordid motives*, or from any *thirst* or *impotence of Gain*. Is it likely that he should *incourage* the *biggest Villany* to raise a *Sum*, and then *apply* it to *relieve the Poor* and the *Distress*? Is it credible, at the same time, that *Virtue* and *Baseness* should thus *jointly* govern him? Hard indeed is the *Condition* of the Earl, when *his very Virtues*, when *his most commendable Actions*, are turned to his *Disgrace and Injury*! But under all, it is a great Satisfaction to him, that your lordships are his *Judges*; and he submits his whole *Conduct* to your *Justice*.

Mr. *Lingard*, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occasion, have so fully opened the Nature of the noble Earl's defence in general, that I shall not presume to take up any more of your lordships Time, by following them in that Method; but shall confine myself to the 5th, 6th, 7th, 8th, and 9th Articles; and shall beg leave to inform your lordships what we have to lay before you, in relation to the Matters contained in those Articles. But before I proceed, I shall beg your lordships Permission to go out of those Articles, so far as shortly to observe, that in the Preamble to the Articles of *Impeachment*, where the several Favours and Advantages, which the noble Earl at the Bar received from the Crown, are enumerated, those which were the peculiar Marks of his Majesty's Royal Bounty to him, and those which were the ordinary Benefits and Allowances, which the Earl enjoyed in common with his Predecessors in that Office, are so blended together, and set in such a light, that at least it gives an occasion to mistake some of the latter Sort, for those of the former; if it does not amount to an *Insinuation* to that Purpose, in order to enhance the particular Advantages which the noble Earl has received, above what they really were.

My Lords, I should be injurious to that noble Lord, who is possessed with Sentiments of the deepest Gratitude to his Majesty, should I endeavour to lessen the Instances of his Royal Munificence towards him: And I purposely omit mentioning any thing of the noble Earl's Merit upon this Occasion (tho' I humbly apprehend that I should be thought very excusable in so doing) because I am sensible, that he chooses to owe every thing purely to his Majesty's goodness: Yet as he has (very properly as we humbly apprehend) in his Answer, set one of those Matters in its true Light; by informing your Lordships that the Annual allowance of 4000 *l. per Ann.* mentioned in the Preamble to the Articles, and which he admits to have been granted to him, during the Time he should continue Lord Chancellor, is no way particular in his Case; but that the same has, for many Years past, been constantly granted to, and enjoyed by his Predecessors; give me leave, my Lords, for a Proof of what is so insisted on, to refer your Lordships to what appears upon your own Journal, in the Case of the Lord *Somers*, upon the Impeachment exhibited against him by the House of Commons, for high Crimes and Misdemeanors; where, in the Introduction of the Charge in the 8th Article, this Appointment of 4000 *l. per Ann.* to him is alledged in Aggravation of that Charge against him. His Lordship, by his Answer thereto, admits, that during his Custody of the great Seal, he did receive the Profits and Perquisites thereto belonging, which before his Time were become very inconsiderable; and that he did also receive an Annual allowance from his then Majesty, of 4000 *l. per Ann.* being the like Pension that had been allowed to several of his Predecessors. This, we humbly apprehend, plainly shews both that this allowance has been usual, and likewise the Reason of making such allowance; which is the inconsiderableness of the ordinary Profits and Perquisites belonging to that high Station.

I shall now proceed to the Articles I proposed to speak to; in which the Matter, which is charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extorsively, insist upon, take and receive, the several Sums of Money therein respectively mentioned, for the admitting the several Persons named in the 5th, 6th, 7th, and 8th Articles, to be Masters of the Court of *Chancery*; with a small variation in the 8th Article, by way of Aggravation, that there was a deficiency in that Office; which is there taken notice of: And for permitting *Thomas Bennet*, as it is alledged in the 9th Article, to resign his Office of Clerk of the Custodies; which is agreed to be a Charge much of the same Nature with that in the four preceding Articles; and is alledged to be against the good and wholesome Laws and Statutes of this Realm.

It has been strongly insisted on, by the Gentlemen appointed to manage this Prosecution, that this is a Matter which is *Malum in se*, and consequently a Crime at Common Law, as well as expressly against the Statute of 12. *Rich. II.* and 6th of *Edw. VI.* and no Means,

that could be thought of, have been wanting to represent it under all the most aggravating Circumstances, and in the most odious and frightful Appearance, that the blackest Colours could give it.

My Lords, The Earl, by his Answer, denies that he did at any time insist upon the Sum of 105 *l.* or any other Sum of Money, to permit or accept of the Resignation of *Thomas Bennet*, mentioned in the 9th Article; or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum of Money on that Account: Which is a denial of that, which is properly the Charge in that Article: He does indeed admit, that he did receive a Present from *Thomas Bennet*, under the Circumstances mentioned in the Answer to that Article; and likewise that he accepted the Presents, which were freely and voluntarily sent to him, by the several Persons mentioned in the four preceding Articles; in two of which Instances, all, and in the other two, great part of what he so received, has been returned. But his Lordship very rightly (as we humbly apprehend) insists upon it in general, that the acceptance of Presents upon such Occasions has been long used and practised by his Predecessors; and that they have been reckoned as the antient and known Perquisites of the said Office: That it is not Criminal in itself, or by the Common Law, or against any Statute of this Realm; or subject to any Judgment, which can be prayed in this Prosecution.

The Gentlemen of the House of Commons, my Lords, in order to support what they have insisted upon, and to make it appear that such an Acceptance of Presents is Criminal, have caused the Statute of 12 *Richard II.* to be read to your Lordships; and have produced Mr. *Ayres*, to give an Account of the Ceremony, which is annually practised upon the Occasion of Nominating of Sheriffs.

I won't presume to act the Casuist, or trouble your Lordships with any Niceties, by questioning, whether what passes upon that Occasion ought to be esteemed an Oath or no; but, my Lords, I hope I may venture to say, that it is very plain, is no Oath of Office in general, for this Reason, because if it had been so, the once taking it had been sufficient; and there would have been no occasion of repeating it Annually, in the slight cursory manner Mr. *Ayres* has given an Account of, upon one particular occasion; which likewise shews, that what is then done, is confined to that matter only, which is then transacting, and not intended to be generally obligatory in other Things.

If the accepting of Presents, upon occasion of recommending, or admitting Officers to Places, had been understood to be Criminal, in the Eye of the Common Law, or against the Statute of 12 *Rich. II.* no doubt, but in so great a length of Time, Precedents might have been produced, where Persons had been censured, or punished, for a Practice, which has been represented to your lordships as the most vile, and pernicious Sort of Bribery and Corrup-

Corruption; and yet, notwithstanding the many marks of the Severity of the Government against Bribery and Corruption, which have been taken Notice of, the Gentlemen of the House of Commons have been pleased to acknowledge, that there is no Precedent, no Judgment to establish and warrant what they assert to be Law in this Point.

My Lords, I beg leave to say, that a stronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reasoning in our Law, and, I conceive, consonant to the general reason of Mankind; That where a Thing never has been done, it is to be supposed there is no Ground or Foundation for the doing it. Nor can this Way of Reasoning be avoided, but by supposing that there never have been any Instances of this Nature before, or those so rare, and private, that the Government had no Opportunity of taking notice of them: A Supposition, my Lords, so extraordinary, that there is hardly room to admit of it: And therefore, when we shall, with your Lordships Permission, lay before you, Instances of this Thing having been frequently and openly done; it will not be so much in order to prove the contrary of such a Supposition, as to give an opportunity to your Lordships, and to intreat you to reflect on the great Abilities, and unquestionable Integrity of those excellent Persons, who have acted in the same Manner; the Notoriety and Openness with which this has been transacted, and the perfect Silence of the grand Inquisitors of the Nation, and the whole Legislature in Regard thereto: And then to consider, the Clearness and force of such a Comment upon the Law, both from the Actions of those, whose Characters will not allow of a Suspicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of those, who should and would, no doubt of it, have taken severe Notice of it, if it had been thought to have been so.

But suppose, after all that has been said, that this was still a doubtful Point, would it not, my Lords? be extremely hard to rouse up an old antiquated Law, which for so many Centuries has quietly slept, without exerting it self, without fixing any mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending such a Practice; a Practice that has been owned and countenanced by such great and unexceptionable men, and objected to by none; and which from thence, might well receive the Appearance of being fair and innocent: Would it not, I say, my Lords, be very hard, without some previous Notice of the Danger, to put this Law in Execution, to unsheath this rusty Sword, to wound this Noble Earl with? We hope your Lordships would think so, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any Doubt remaining with your Lordships, as to the legality of the Earl's Behaviour in this Point, that the Statute of 6th. of *Edw. VI.* will clear it up beyond question; and that it will manifestly appear by that Statute, that accepting of Presents is neither *Malum in se*, against the

Common Law, or the Statute of *Rich. II.* and that this Statute of *Edw. VI.* must be looked upon as a declarative Law in those Points, or otherwise, it must be allowed (which none sure will suppose) that the Legislature of this Kingdom has made a Provision to sanctify a moral Evil; (for that is the Import of *Malum in se*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the most pernicious Tendency and Consequence, if the Representation made of it by the Gentlemen of the House of Commons is to be regarded.

My Lords, I shall pass by the fourth Paragraph of that Statute, whereby it is provided, that the said Act should not extend to Offices of Inheritance; tho', I presume, the Largeness of the Estate can hardly be thought to alter the moral Nature of the Action. By the 6th Paragraph, there is a Saving for all Bargains, Sales, Promises, and Agreements, of or for any Office, made before the first of *March*; and such Bargains, Sales, and Contracts, are exempted out of the force of that Act. Your Lordships will be pleased to observe, This Session of Parliament began the 23d. of *January*; so that this saving Clause makes a Provision for Futurity. My Lords, this would be to establish Iniquity by a law, if the accepting a Present on Occasion of admitting a Person into an Office, was immoral and criminal, as has been asserted. But if it were so, and likewise against the Statute of 12 *Rich. II.* and contrary to the supposed Oath, taken in pursuance of that Statute; what, my Lords, must be thought of the last Paragraph, which provides, that the Act should not extend to the Chief Justices, or Justices of Assize, that then were, or thereafter should be? These all Annually take the same Oath (if it is to pass as such) upon the same Occasion of nominating of Sheriffs, as Mr. *Ayres* has informed your Lordships; and are consequently, by Virtue thereof, under the same Obligation in this respect, as a Lord Chancellor: And can your Lordships suppose that so many Reverend and Learned Persons, who, from their known Duty of Attendance, must be presumed to be present in your Lordships House, whilst this Law was there under Consideration, would have forborn informing their then Lordships, how contradictory those Parts of this Statute were to the Common Law, and the Statutes of this Realm, especially that of *Richard II.* Can it possibly be conceived, that the whole Legislature would pass a Law, not only to allow, in several Instances, the Practice of what was so contrary to the Law of Reason, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath prescribed by Statute, and Annually repeated? And that no Body should ever scruple the doing so, or discover the Illegality of this Practice, but upon this unfortunate Occasion? And yet, my Lords, monstrous as these Suppositions are, they must (as I humbly conceive) be allowed of, or it must be granted that such Acceptance of Presents is not *Malum in se*, or contrary to the Statute of *Richard II.*

II. And I hope it is plain, that this Statute of *Edward VI.* is in effect a declarative law in those Points.

My Lords, The Gentlemen of the House of Commons seemed sensible of these Difficulties; and therefore they have with great Industry, endeavoured to distinguish what the Earl has done, from the common and ordinary way of accepting of Presents, upon such Occasions. They have told your Lordships, that his method was Haggling and Extorsive; and have given it abundance of other hard Names: They have, to confirm it, informed your Lordships, that the Prices lately given, have been higher than those formerly accepted upon the like Occasions: Tho' they have not condescended to attempt the Proof of it.

My Lords, As the manner of the Earl's taking of Presents will depend in a great measure upon the Evidence, which has been offered to your Lordships, upon these Articles; I shall beg leave to take some short Notice of it. As to the 9th Article, *Mr. Thomas Bennet* has been pleased to inform your Lordships, that he did desire to have the Earl's Recommendation of *Mr. Hamersly*, to succeed him as Clerk of the Custodies; and that being told at the second meeting with *Mr. Cottingham*, that a Present would be expected, he said it was a very hard and unreasonable Thing to expect a Present from him, who had so lately paid a large Sum, upon his being admitted into his other Office: But upon its being insisted on, that 100 Guineas should be paid, he was forced to comply therewith, and agree to pay it.

My Lords, I humbly insist upon it, that if an entire Credit were to be given to what *Mr. Bennet* has said upon this Occasion, it would not amount to a Proof of the Charge contained in this Article: The Corruption and Extortion therein complained of, being restrained to the Consideration of permitting and accepting the surrender of the Office there mentioned; all the other Parts of that Article being only introductory to, or in Aggravation of that supposed Offence. But *Mr. Bennet* has not mentioned to your Lordships one Syllable of the Earl's having refused to permit or accept a surrender of that Office, or of his having received any Sum of money in Consideration of his permitting or accepting *Mr. Bennet's* Surrender thereof.

But, my Lords, we must beg leave to submit it to your Lordships Consideration, what Credit is to be given to *Mr. Bennet's* Evidence, so far as it does go, for this Purpose. The Gentlemen of the House of Commons have thought fit to call *Mr. Cottingham*, as a Witness to this Article; who owns that in his first Discourse with *Mr. Bennet* upon this Occasion, he told him, he believed a Present would be expected to the Great Seal, and that *Mr. Bennet* freely offered 100 Guineas, before *Mr. Cottingham* spoke to the Earl about that Affair. He expressly contradicts *Mr. Bennet* in what he said of *Mr. Cottingham's* insisting upon 100 Guineas, and *Mr. Bennet's* Agreement to give that Sum at the second meeting, *Mr. Cottingham* swearing, that the offer of 100 Guineas was voluntary on

Mr. Bennet's Part; and that it was at their first meeting. There are several other Contradictions in their Evidence; but I shall only take Notice of that, where *Mr. Bennet* pretends, that *Mr. Cottingham* asserted he did not know *Mr. Hamersly*, his next door Neighbour. This *Mr. Cottingham* denies, and *Mr. Bennet* is forced in some measure to retract what he had so positively sworn; and comes down to a Belief only, that *Mr. Cottingham* said so, but will not be positive.

It is something surprizing, that after they have done *Mr. Cottingham* the Honour to call him as a Witness, and given him a Credit by so doing, Hints should be flung out, that *Mr. Cottingham* knows no body, except where there is Gold in the Case; that Gold is a great clearer of the Eye-sight, and the like Insinuations, to the lessening his Character. But why then did they call him as a Witness? Surely, my Lords, if he is a Person not to be believed, it was not altogether so proper to produce him as a Witness before this August Assembly. But, my Lords, we shall ease them in that matter, by thoroughly establishing *Mr. Cottingham's* Reputation; tho' it is something unusual to support the Reputation of a Witness produced by the other side: And we hope your Lordships will then find no difficulty in determining whether *Mr. Bennet* or *Mr. Cottingham* deserves most to be credited.

In support of the 5th Article, *Mr. Kynaston* is called as a Witness. I shall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the money paid upon his Admittance, and the Circumstances of that Transaction. *Mr. Kynaston* indeed has said, that he would willingly have paid but 1000*l.* upon his Admittance; and accordingly offered that Sum, which *Mr. Cottingham* would not hearken to; and therefore he submitted to pay 1500 Guineas; but he owns at the same time, that he has not a very exact Remembrance of what passed upon this Occasion. *Mr. Baily*, to whom *Mr. Kynaston* refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account, that *Mr. Kynaston*, when he understood that 1500 Guineas was apprehended to be the Present he intended to make, said, that he thought it was only 1500*l.* but mentions nothing of the Offer of 1000*l.* It is very strange, if that had been the Case, that he should not have taken notice of that likewise. But *Mr. Cottingham*, who is again called as a Witness, shews the reason why no notice could be taken of such an Offer; and that is, because there really was none such. He denies that *Mr. Kynaston* offered 1000*l.* and swears that the Sum offered by *Mr. Kynaston*, was 1500 Guineas, and withal declared, that he would acquiesce under what the Earl should think fit in that matter; and informs your Lordships, upon his being interrogated by the Gentlemen of the House of Commons to that Purpose, that he never did acquaint the Earl with what passed upon that occasion till the whole thing was agreed and settled; and that, when he was informed of it, he expressed himself to be well satisfied therewith. Surely, my Lords, here are no extraordinary Endeavours or Artifices used to enhance the Price; no haggling, by first naming one Sum, then another,

ther; but at once the matter is proposed, and at once agreed and concluded.

To prove the 6th Article, my Lords, Mr. *Thomas Bennet*, is called again; and here again the like misfortune happens as before; Mr. *Bennet* differs widely from Mr. *Cottingham*, who is called upon the same side to prove the same Article. Mr. *Bennet* says, that he acquainted Mr. *Cottingham*, that he thought 1000 *l.* was enough to give upon his Admittance, and with his Reasons for such Opinion; but that, however, he was willing to give 1000 Guineas. Mr. *Cottingham* has Sworn that no such Offer was made, that nothing of that Nature passed; but that Mr. *Bennet*, upon being informed what had been done before upon the like occasions, freely offered fifteen hundred Guineas.

My Lords, The very nature of the Thing, upon the Circumstances agreed on all Hands, speaks strongly in favour of Mr. *Cottingham*, and in contradiction to Mr. *Bennet*, as to what is asserted by each of them upon this occasion. Your Lordships observe what condition the Earl is agreed to be in at that time; had Mr. *Bennet* apprehended that he had so very hard terms put upon him, as he would not have your Lordships believe he did: Would he not have stayed some little time, to have seen the effect of so violent a distemper, as a Pleuretic Fever, which his Lordship then laboured under in a very high degree? especially when Mr. *Bennet* appeared at the same time to be in no very good State of Health himself; of which he was reminded by Mr. *Cottingham*; who was so far from acting the rapacious part, in behalf of the Great Seal (which was not in a way to suffer, by the admission of a Person likely to make a new vacancy by Death) that perceiving Mr. *Bennet* to look yellow, and out of order, he desired him to consider what he was going to do, when he took a Place for Life in his Condition. Mr. *Bennet* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was so cautious, as he pretends, as to the Sum he was to give upon his Admittance, and which he then thought to be so unreasonable, hurries on this Affair, under these Circumstances of his own, as well as the Earl's State of Health; and tho' out of order, as he himself owned, presses an extorted Sum of 1500 Guineas, into the Hands of, probably, a dying Chancellor. Will not your Lordships think it more likely, that Mr. *Bennet* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon so easy Terms as were then offered him; rather than that he thought himself to be hardly used upon that Occasion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordships to look upon this Acceptance of Presents, by the Earl in particular, to be extorsive; which is, that the Sums of money given upon these, and the like Occasions, are lately greatly increased. Your Lordships will be pleased to observe upon what has hitherto appeared, that the Sums taken by the Earl upon the Admission of a master into the Room of one deceased, have been constantly less than what the masters, who have resigned, have had as a Consideration for so doing. And it is very easy to account for the late increase of the Sums given upon these Occasions, without any Extortion in the matter. As personal Estates have vastly increased within these few Years, and Settlements, and Provisions for Families, have been made out of the Publick Stocks and Funds, the

Business of the Court of *Chancery* hath increased proportionably; and consequently, People would be more desirous of, and give more money for the Purchase of these Offices, which were improved by such increase of Business. And as the common Interest of money is grown lower, it is natural to suppose, that People would be the more ready to invest their Fortunes in those Things, which were likely to produce a better Income, even in Proportion to the risque that was run upon their Lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, or whatever else may be the Cause of it, it is so plain and notorious that all Places and Offices have of late Years increased in their Value, that it would be mispending your Lordships time to enter into the Proof of it.

My Lords, As to the Admission of Mr. *Elde* into his office, and the Acceptance of a Sum of money upon that occasion, which makes up the Charge contained in the 7th Article; and as to so much of the 8th Article, as relates to the like Transaction with Mr. *Thurston*; there is not the least Colour or pretence from the Evidence, which has been given to support those Charges, to ground a Supposition of Haggling, or driving a Bargain. On the contrary, from that very Evidence it appears, that what was done by Mr. *Elde*, and Mr. *Thurston*, was perfectly free and voluntary; and attended with a good deal of Solitude and Uneasiness in the latter, least his Offers should not be accepted; the Circumstances of which I shall not trouble your Lordships with repeating. And tho' from the Troubles he has since met with in that Office, he has something altered his opinion of it, your Lordships will be guided by what he then thought, and acted. Your Lordships will be pleased to observe from the same Evidence, that great part of the money presented by those Gentlemen, has been returned to them again; and tho' it is some time afterwards before it was done, it was plain, there was a much earlier Intention of doing so. Mr. *Elde* has informed your Lordships, that in *May* following his Admission the Earl intimated to him, that he would return part of the money; And Mr. *Thurston* received several messages, which plainly appeared to be in order to a Return of part of the money which he had given; tho', on occasion of his being out of town, it was some time after before he knew the meaning thereof, or had the money returned.

My Lords, There is one particular Circumstance in the 8th Article, which has taken up a great deal of your Time; that, I mean, of the Deficiency in Mr. *Borret's* office. Why that matter was inserted there, and why it has been so much laboured, and your Lordships troubled with so much Proof about it, I must own myself at a loss to conceive; unless it be allowed and admitted, that the taking of money, upon the Admission of a Person to the office of one of the masters of the Court of *Chancery*, is not purely and simply *Malum in se*, illegal, and contrary to the Statute of *Rich. II.* but that, if it be done to raise money to make good the deficiency in the office, as was done in the Case of Mr. *Edwards*, which your Lordships have upon this occasion heard of, it is right and well. How otherwise can the Deficiency in the office be an Aggravation of the supposed Crime of taking a Present upon the Admittance of a Person into it? Is it unreasonable to admit a new master into an office wherein there is a deficiency? Is it not as necessary to fill up that Vacancy as any other?

Certainly more so, in order to have one, whose Duty obliges him to a more particular Care of the Affairs thereof, which seem more to want it. The Aggravation then of the Fault, or rather the Fault itself, must consist in the not applying the money received, towards the discharge of the deficiency. But how can it be a Fault not to do so, unless there had been an obligation so to have applied it? And how can there be an obligation to make such Application of the money, where there is so strong an obligation, as has been insisted on, not to raise any money at all by such means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakened, at least, what is laid as the Foundation for its being a Crime; and this with little or no Success in the Proof, attempted to be made of this matter; so far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that office.

I won't repeat what Mr. *Godfrey* has said upon this occasion; your Lordships perceive that he and Mr. *John Bennet* were thought the fittest Persons to inspect the Affairs of Mr. *Borret*, after his decease; and were accordingly appointed to do so: And upon having examined Things, as well as they then could, were both of opinion, as Mr. *Godfrey* says, that there was no likelihood that there would be any Deficiency; and with this the Earl was acquainted. Mr. *Bennet* indeed, differs something from Mr. *Godfrey*, as to the Account which he gave of this matter; but not so much, tho' his Account was to be taken, as would answer the purpose for which he was called; the aggravating the Charge in this Article against the noble Earl; who, there is no Room to doubt, would have acted as generously in this Case, as he did in the Case of Mr. *Edwards*, upon his coming into *Dormer's* office, if the Circumstances, as represented to him, had been in any near degree alike.

My Lords, I have thus stated the matter of these several Articles, to the best of my Remembrance, in its true light, as it stands upon the Evidence already given. We shall beg leave to call some Witnesses to prove, that several noble and great Persons have taken Presents upon these occasions; men of excellent Characters; some of whom several of the Gentlemen of the House of Commons have taken such Notice of, that I may safely venture to say, they will concur in the Opinion, that they were Persons of so much Integrity, that they would not have taken such Presents, if they had thought it illegal so to have done; and of so great Abilities, that their Judgment must be of the greatest weight in this Point. We shall further trouble your Lordships to explain the nature of the Payment of 64 *l.* which Mr. *Thomas Bennet* told your Lordships he made, over and above the 100 Guineas, paid by him on Account of the Office of Clerk of the Custodies. He might, no doubt, if he had pleased, have informed your Lordships, that the most part of this 64 *l.* was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33 *s.* came to the Great Seal; and we apprehend that to have done so, would have been more agreeable to the Sincerity, with which a Witness ought to speak, than to have left it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordships will excuse my observing upon this Occasion, the unhappy Circumstances of the noble Earl at the Bar: If he takes a small Sum, as this of the 100 Guineas for Instance, it is poor, pitiful, and a Prostitution of his

Honour; if a larger Sum is taken, he is avaricious, greedy, rapacious, and I don't know what: Tho' your Lordships will observe, the Sums accepted are regulated according to the Nature of the Office, on Account of which they are given. My Lords, his very Care in other Instances is made his Fault, his Actions must be all supposed to be done with corrupt Views; and yet his not Acting is equally blamed; it is Carelessness, and Neglect. This is the Light in which his whole Behaviour has been set before your Lordships, and that with all the Aggravations and Vehemence imaginable. But it is your Lordships, who, in a superior and calmer Station, are to weigh and judge of these matters. It is from you the noble Earl is to expect Judgment; and it is his Happiness, that it is so. And in order thereto, when we have laid this Evidence before your Lordships, together with an Order, which shews the Payment of the monies received from Mr. *Thomas Bennet* and Mr. *Kynaston*, into the Court of *Chancery*; we shall submit the matter of these Articles to your Lordships. And notwithstanding all the severe Things which have been said upon this Occasion, we humbly hope your Lordships will be of Opinion, that the noble Earl at your Lordships Bar, is not guilty of any of the Charges contained in these Articles.

Mr. *Serj. Probyn*. My Lords, we now proceed to call our Witnesses, and to prove the several Facts we have opened; and we beg leave to proceed in the same method as the Gentlemen, who are the Managers for the House of Commons, have done. As they began with the 9th Article, so we in our Evidence shall likewise begin there; and shew that Presents have constantly been made to the Great Seal upon all Admissions into the Office of the Clerk of the Custodies; and that in many other Offices under the Direction of the Great Seal, Presents have been usually made by the respective Officers on their Admissions; and this hath been the known uninterrupted Usage; and every Chancellor hath taken them as customary Presents. We desire, in the first place, that Mr. *Roger Lewis* may be called.

Mr. *Roger Lewis* sworn.

Mr. *Serj. Probyn*. We desire he may be asked, how long he hath been concerned as a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. I have assisted as Clerk of the Custodies of Lunatics and Idiots, for the space of about 35 Years.

Mr. *Serj. Probyn*. I desire he may be asked, who was the first that came into the Office of Clerk of the Custodies in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wynne* was the first that came in after I was Clerk there.

Mr. *Serj. Probyn*. Who succeeded Mr. *Wynne*?

Mr. *Lewis*. Mr. *Roger Thompson*?

Mr. *Serj. Probyn*. I desire he may be asked, whether Mr. *Thompson* be now living or dead?

Mr. *Lewis*. Mr. *Thompson*, as I have been informed, hath been dead about these 9 or 10 Years past.

Mr. *Serj. Probyn*. I desire he may be asked, whether any Present or Compliment was made to the Great Seal on Mr. *Thompson's* Admission?

Mr. *Plummer*. My Lords, I object to the Answering of that question; and desire to know, whether your Lordships will have Evidence against Gentlemen that are dead, who are no way capable of Answering for themselves before your lordships here? If my Lord can shew any Title or Right he had to sell this Place, we are ready to hear him; but to give Evidence against a Person that is dead, and cannot speak for himself; I submit that to your Lordships.

Mr.

Mr. *Lutwyche*. My Lords, this matter is very proper to be objected to now, and it is very necessary for your lordships Determination in the Beginning of this Affair. I see by this Question, and their Opening, what large Compass the Gentlemen have taken, not only as to these Offices, but as to many other Offices for which Presents were given. I take the proper Question before your lordships to be, Whether this be lawful by the laws and Statutes of the Realm? and if that be the Question, I submit it whether it is material to give an Account what other Persons have done? Whether, when a Person is brought upon a Prosecution for an Offence against the Law, it be material for him to say, that other Persons have been guilty of the same Crimes? This is a Question at Law upon the Construction of the Statute; and they say it is necessary for them to give these Instances, to shew the Judgment of those great Persons upon the Act of Parliament; but sure I am, it was never yet attempted to give in Evidence the Actions of other Persons in order to expound a Statute. The Exposition of a Statute must be founded on the Words of the Law, and not on the Actions of other Persons. In all the Experience I have had in cases of Prosecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the law is, what Authorities have been in those Cases, and what the Construction hath been in former Judgments. My lords, this is a matter of great Consideration to your Lordships, not only upon the Account of the Precedent, but also upon the Account of the Time that your Lordships are like to spend, if you are to go through all the Offices of the law, to shew how many great men have accepted Presents. It will take up a great deal of Time, without any Fruit at all. But, my Lords, there are other Considerations which will prove it unreasonable to admit of this Evidence: At present your lordships have under your Consideration the Case of this noble Lord within your Bar; but would they in Defence of him impeach others, not here to defend themselves? Many of them are dead, others are living: Will you try Persons not accused, and without being present to answer for themselves? But, my lords, with respect to ourselves, is it reasonable for us to take upon us the Examination of several Facts, without knowing who the Persons charged are, what the Circumstances of the Case were? Are we to shew the Difference, or state the Circumstances? It is impossible for us to do it. My Lords, this being the Nature of the Case, it is a matter for your lordships Judgment, now in the Beginning, that your lordships may see the Extensiveness of the Evidence they have hinted at, and intend to produce. That which we insist upon is two things, that it is not material, and that there is no manner of Notice for the Persons so charged to make any Defence, or to shew how the Circumstances of the Case were. So, my Lords, we must beg leave to have your lordships Judgment in this matter.

Mr. *Sol. Gen.* My Lords, if the noble lord produceth any one to make out his Innocence, we do not oppose it. But if the noble Lord endeavours to shew what the law is, from the Practice of other People, it is altogether improper. It is impossible that the law can be judged of by the Practice of other People in committing the same Facts. That can't have the Weight of the Opinion of a great Man. The Opinion of a learned Person, not con-

cern'd in the Question, is an Opinion of weight; but the Opinion of a Person concerned in the Question, is not to be look'd upon as of any Authority. If the noble Lord makes use of this kind of Evidence, by way of mitigation, or of lessening his Offence, in that View it can be of no Significancy: Because the Aggravation or Mitigation of the noble Lord's Offence must arise from the particular Circumstances, Manner, and Facts of his Offence. We must submit it therefore to your lordships Consideration, whether this is a proper Inquiry or no.

Mr. *Serj. Probyn*. My Lords, we beg leave to insist upon it, that this is a proper Question, and very material for the noble Earl's Defence. He hath insisted in his Answer, 'That what is objected to him in this Instance, hath been long used and practised in the Time of his Predecessors; and that such Presents have been reckoned among the ancient and known Perquisites of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as such; and that he humbly hopes, that the giving or receiving of a Present on such an Occasion, is neither criminal in itself, nor by the Common Law of this Realm; and that there is not any Act of Parliament, by which the same is subjected to any Punishment or Judgment, which can be prayed in this Prosecution; and the said Earl further hath said, that he thinks himself obliged humbly to lay this before your lordships, not only in his own Defence, but in Vindication of the Honour of so many great and excellent men, who have been his Predecessors in the same Office, and have all along done the same, for which he is now complained of; and also of others, who have been Lord Chief Justices of the King's Bench, and Common-Pleas, Masters of the Rolls, and Judges, who have likewise received Presents in money, upon the Admission of the several Officers under them in the respective Courts of Justice wherein they presided; and who, the said Earl is assured, never apprehended themselves to be guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to support this Part of the noble Earl's Answer.' But, my Lords, it is objected by the Gentlemen that are Managers for the House of Commons, that they are not prepared to enter into this Proof, because they had no Notice that such Evidence would be given: In Answer to which we humbly submit it, that the Answer the noble Lord hath given, that several presiding Officers in the Courts of Law and Equity have always received such Presents, is sufficient Notice to them to be prepared to answer such Evidence as might be offer'd to support this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Cases, we submit it that in this Case it is a material Circumstance. Though the Precedents of great men, (whose Names they are unwilling to hear) who have taken Presents in like Cases, and not thought it criminal, may not controul your Lordships Judgment in this Particular, yet I humbly apprehend that such Instances cannot but have great weight in the Event of this Case. They are material Circumstances, strong Inducements to incline your Lordships to believe, that this noble Lord had

had no avaricious, no corrupt Design, in accepting the common customary Presents that were voluntarily tendred to him. And since it is made so material a Part of his Defence, and that he might well think himself innocent and secure in following the Examples of so many honourable and learned Persons, of which we are prepared to give your lordships many Instances in Evidence; and since they have Notice of it, and that the noble Lord hath insisted upon it in his Answer, we humbly beg your lordships will admit us to give the several Instances in Evidence.

Mr. *Com. Serj.* My Lords, I beg your lordships Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I think there can be no Evidence more proper. If the noble Lord should have the Misfortune to be thought culpable, will he not appear under another View to your lordships, when he hath had the Concurrence of several great Persons, of whose Integrity, Honour, and Knowledge, no Question hath ever been made? If he himself hath introduced this Practice, and set it up by himself, it will then most certainly be an Aggravation; if he hath done no more than others have done, it will be an Extenuation. My Lords, taking it in that light, there is no Reason why this Evidence should not be given. But, I hope your Lordships will further consider of the present Case: Here is a law insisted upon, of several Hundred Years standing, that makes this Criminal: It is owned that there hath been no Determination or Judgment at Law that this is Criminal: Practice, especially in Respect of old Statutes, hath oftentimes been allowed and admitted to explain the Sense and meaning of those Statutes. There are no Records preserved of this, and therefore we are under a Necessity to confine our selves to such Evidence as we can produce of living Witnesses, and therein we apprehend we are proper, as it is Part of the matter in Issue before your lordships. Your lordships are as well to try the Earl's Answer, as the Commons Articles. Another Circumstance they are pleas'd to mention against receiving this Evidence, is, the taking up of your lordships time. Your lordships have had the Goodness and Justice to hear, with great Patience, a very long Evidence, with repeated Observations and Openings of the Articles, in order to prove a noble Peer, one of your own Body, to be Guilty: Can it be supposed that your lordships will not have that Patience, which is due to all People in Favour of Innocence, and when one of your own Body stands impeached? For these Reasons we humbly hope that this Evidence shall be admitted; and that the noble Earl shall have the Benefit of this Explanation, what the Sense of so many great and excellent men hath been of this old and doubtful Statute.

Mr. *Robins.* My Lords, we apprehend your lordships will not be of Opinion, that this will be to defend the present Impeachment, by the Impeaching of others. We lay it down as the Foundation of our acting, that our Predecessors have done the same, notwithstanding this Statute of *Edward* the VIth, and therefore it is a reasonable Inference, that this was not taken to be within the said Statute. We apprehend it cannot reflect upon any that are either Dead or living; and that, as we are in Defence of this noble Lord, we are at liberty to examine Wit-

nesses, to prove that other Persons, his Predecessors, have done the same.

Mr. *Strange.* My Lords, I apprehend we have the same Right to justify our selves by Precedents, as they have to accuse us by Precedents. What the noble Earl's Predecessors in other Instances have done, hath been mentioned by way of Aggravation. The Case of Dr. *Eddisbury* hath been mentioned over and over by the Gentlemen of the House of Commons; and they have aggravated the Offence of the noble Earl, for not following that Precedent; and as they had a Right to aggravate the Earl's Offence, by not following the Precedents of his Predecessors, so we think we have the same Right to shew in other Instances, that we have followed the Examples which have been set us by our Predecessors. But they say, this is against law: Whether that is so, or not, is the Question; and it will be material for the Decision of that Question, to take into your Consideration, what hath been the Opinion of great Men in all Ages, upon this Act of Parliament. Continual Usage, from time to time, even from the making of the Act of Parliament, is the best Exposition of that law. Contemporary Usage, or the Opinion of those, who were at the Time of the making of a law, hath always been esteemed the best Interpretation of that law; and therefore, as we shew the Usage to be conformable to what we now insist upon, I humbly hope it will have a great influence upon your lordships, as to the Exposition to be now put upon this Act of Parliament: It hath been said, This Way of Proceeding tends to accuse great Persons of Honour, &c. some that are dead, and some that are now living; we shall not enter into so nice a Debate: it is sufficient for us that it is proper and necessary Evidence for the Defence of our Client. It is a material Evidence in this Case, whether other Persons have disposed of these Offices, and have incurred any Penalty; if they have done it, I humbly apprehend that no Objection remains against our entering into the Evidence of that Kind. Whatever is your lordships Judgment in Point of law, it is material for your lordships Consideration, whether this noble Lord hath set this on foot of his own Accord, or hath not trod in the Paths of his noble Predecessors? Your lordships will take it into your Consideration, and whatever the Point of law may happen to be, it must be said, that if this noble Lord did err, he erred with his Predecessors.

Earl of *Macclesfield.* My Lords, I would not trouble your lordships, if I did not think it necessary to insist upon your lordships admitting this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble lords, who have been my Predecessors, whether they be now dead or alive, I would undergo any Punishment rather than do it. But I hope it was innocent, both in them and me; and that its being done by Persons of such unblemished Honour, will be one strong Argument of its being so; and, my Lords, I protest their Example was the single Reason with me for doing of it; and if it had not been done before, I would not have done it: This was the true Ground of what I have done. For what these Gentlemen say, my Lords, that this is not material, and that the law must be proved by law Books and Judgments, I thought the common law

Law was common Usage, and that which hath constantly and openly been done without being censured or blamed, cannot be contrary to common Law. If this be not allowed, I am highly obliged to these Gentlemen, that they have not accused me for taking money in many other Instances, relating to my Office; to instance in one only, upon the passing of every Patent there is a small Fee due, and constantly paid to the great Seal; if they had accused me of this, and called it criminal, I know not what to have said to it, unless Usage and Custom had justified it; I claim it as a Right, and unless Usage will prove the Right, I know no other Way. I own this is something different: In that Case, I insist on a particular Sum by Usage: I do not insist in this Case that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of such a Sum as the Party should give: But, say the Gentlemen, this Evidence is to make other Persons Criminal; That is very true, if this be a Crime. These Gentlemen take it for granted; but whether it be a Crime or no, will be for your Lordships final Determination: And I hope your Lordships will not be of Opinion, that it is a Crime. If it should come out to be in your Lordships Judgment a Crime, it will be a great Censure upon my Predecessors, who all, as it is well known by every body, did the same Thing. But if this be understood to be a matter, that is admitted to have been practised, and to need no formal Proof, I had rather let this Examination alone: It is uneasy to me, to enter upon any thing that can draw a Reflection upon any Person: Therefore I submit it to your Lordships.

Mr. Serj. Pengelly. My Lords, The managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unless they are satisfied and convinced that they ought to admit it, it is not to be expected for the managers to do it. It is said, that the Things offered are in Extenuation: That it would be a greater Guilt, if there were not former Examples to justify it: I apprehend for that Reason it is an improper Time to insist upon this now: Because matters of Aggravation or Extenuation must come subsequent to your Lordships Determination on the Articles, and will be the Consideration of your Lordships, when you come to consider of the Judgment that is to be given. I have known by frequent Experience, in Prosecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumstances before the Court, in mitigation of the Punishment: And if, hereafter, this comes to be considered of in this manner, the managers will have an Opportunity, to give a proper Answer thereto. If in this Answer he had insisted on it as an established Fee supported by Custom, and had claimed it as of Right, it had been proper, to have examined Witnesses in Support of that; but when he insists upon it as a matter of Discretion, and

of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give, in Evidence, that which doth not make good the Defence in Answer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniencies. We do not know what may be grafted on such an Admission; therefore we beg Leave to submit it to your Lordships Determination.

Mr. Lutwyche. My Lords, It is said very roundly, That this is an old doubtful Statute, and therefore you ought not to take Notice of it. As to the doubtfulness of it, I believe it is too plain; as to the Obsolescency of it, it is a Statute that is read every Year in the Court of Exchequer. And therefore whatever Doubts may be of this matter at the Common Law, yet this Statute makes it plain. And I desire the Counsel for the Noble Lord to tell us, where any Statute is more plain and positive; and wherein they have shewn the least Doubtfulness in the World, but rather object that it hath gone too far. Doth any Judge, in Point of Evidence, on an Indictment for Breach of a Statute-Law, permit Persons to give Evidence, that others have been guilty of the same Facts, and that therefore it is no Breach of the Law? Suppose this is to be considered as doubtful, on Construction of the Statute, what then is the common ordinary method? It is well known, that the Jury find the Fact specially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this matter is; here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and positive; the Counsel make a Doubt on the Construction of this Statute; it is insisted upon, that other People have done it, and have not been punished; and would such a Thing be ever permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath been a great master of Evidence in his Time, would not have permitted it to be done: They have shewn no Precedent for it: In its own Nature it is unreasonable. Are we to examine into the particular Manner and Circumstances of every particular Case of the several Persons that are now either Dead or Living? It is unreasonable, it is unprecedented, to offer such Evidence; and I hope your Lordships will not admit of it.

Mr. Plummer. My Lords, the Counsel for the noble Lord take that for granted which we deny. The admitting these Witnesses to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take Care of the Reputation, of the noble Lord's Predecessors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament says is so. And that this is a Crime, I beg Leave to remind your Lordships, that he himself declared so to the

masters in Chancery, that they had bought their Places against Law. I take that to be a fair Confession that his Opinion was, that it was a Crime.

Lord *Lechmere*. Before the Counsel withdraw, I would have this Question explained to me by the Counsel of the noble Lord, Whether this Practice be insisted on as a Proof of a Right in the Great Seal to take this as a Perquisite, or whether it be offered as an Extenuation?

Mr. *Serj. Probyn*. My Lords, we insist upon it in both Respects.

Then the Managers and Counsel were order'd to withdraw; and after some Time, being called in again,

Lord *Chief Just. King*. Mr. Serjeant *Probyn*, It is their lordships Judgment that you are at liberty to proceed in your Evidence, as you were going on.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Roger Lewis* may be called again.

Mr. *Lewis* called.

Mr. *Serj. Probyn*. My Lords, I desire this Witness may be asked, how long he hath been a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. About five and thirty Years.

Mr. *Serj. Probyn*. Who was then in the Office?

Mr. *Lewis*. Mr. *Henry Wynne*.

Mr. *Serj. Probyn*. How long did he continue in that Office?

Mr. *Lewis*. About Twelve months.

Mr. *Serj. Probyn*. Do you know who succeeded him?

Mr. *Lewis*. Mr. *Roger Thompson*.

Mr. *Serj. Probyn*. My lords, I desire he may be asked, whether any Present was made by Mr. *Thompson*, on his Admission into the Office?

Mr. *Lewis*. I do not know of any Present made by Mr. *Thompson*.

Mr. *Serj. Probyn*. By Mr. *Wynne*, or Mr. *Thompson*?

Mr. *Lewis*. No; but Mr. *Wynne* told me—

Mr. *Serj. Probyn*. Is Mr. *Wynne* living or dead?

Mr. *Lewis*. He is dead.

Mr. *Serj. Pengelly*. My lords, we beg leave to object to this: What a particular Person told him is not Evidence, we hope this shall not be admitted.

Mr. *Lutwyche*. They know this was never allowed.

Mr. *Serj. Probyn*. If the man be living, the Objection is good, but now he is dead, we hope it may be allowed.

Mr. *Com. Serj.* The Gentlemen object, that we are not at liberty to ask what hath been declared concerning that matter by a Person that is now dead; we humbly apprehend it is within the Rule of Evidence, and I must appeal to the Memory of your lordships, whether it is not good Part of the Evidence that hath been given by the managers.

Earl of *Macclesfield*. My lords, what we are giving Evidence of, is of a Thing transacted thirty five Years ago; the Parties are

all dead: He is about to give you an Account of what he did, and was said to him at that Time by his master, in his transacting that Affair. If the Person that said it were now alive, to be examined to it himself before your lordships, it would not be Evidence without examining him; but if dead, what he said concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppose this Evidence, which in the Nature of the Thing is all that possibly can be now given.

Mr. *Soll. Gen.* My Lords, I hope this is what your Lordships will not suffer to be done. I never knew the Sayings of a dead man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Usages and Customs; but as for a particular Fact, lying in the Knowledge of a particular Person, by his Death you have lost your Evidence.

Earl of *Macclesfield*. My Lords, if they will insist upon it, we must withdraw.

Mr. *Plummer*. This man here is upon his Oath; but the Evidence that he must give of the Saying of another, must be of a Saying not upon Oath.

Lord *Trevor*. If there be a Difference in Opinion between the noble Lord and the Managers, they must withdraw. But I don't see any Reason to withdraw. I will tell my Opinion, that such an hear-say Evidence is no Evidence.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether he knows any Thing as to the Transaction, of his own Knowledge?

Mr. *Lewis*. I know that Mr. *Wynne*, whether he had surrendered, or was going to surrender, I don't remember, but he told me—

Mr. *Serj. Pengelly*. My Lords, they are going on again in the same Way.

Mr. *Serj. Probyn*. Do you know any Thing of your own Knowledge?

Mr. *Lewis*. I had money in my Hands of Mr. *Wynne*'s. He told me—

Mr. *Serj. Pengelly*. Evidence of this Sort is by your Lordships Judgment not to be permitted.

Mr. *Serj. Probyn*. He informs your Lordships, that he hath known this Office thirty five Years. Now, I desire that he may declare what hath been the Usage on Surrenders and Admittances into this Office of Clerk of the Custodies, whether any Present, or Gratuity, hath been made to the great Seal?

Mr. *Serj. Pengelly*. This is the same Thing again.

Mr. *Soll. Gen.* If Gentlemen put this general Question with no other View but to draw out what your Lordships have determined to be no Evidence, we must oppose it. It is a plain Question, Whether he knows of his own Knowledge that any Money was given? And we desire he may be confined to his own Knowledge.

Earl of *Macclesfield*. The Gentlemen say, that as to matters of Usage, it is usual to enquire what old Men have said and declared. I apprehend this is a matter of Usage we are now

now inquiring after; but if your lordships are of Opinion that this should not be asked, I believe he doth not know any Thing of his own Knowledge of the money being actually paid to the Great Seal.

Mr. *Serj. Probyn*. My lords, we desire that Mr. *William Oaker* may be called.

Mr. *Oaker* sworn.

Mr. *Serj. Probyn*. My lords, we desire that Mr. *Oaker* may be asked whether he knows of any Demand, or Claim, made upon the Admission, or Surrender, of the Clerk of the Custodies, and by whom?

Mr. *Serj. Pengelly*. My lords, this Question is contrived in an odd manner. The Question must arise upon the Fact, not antecedent to the Fact. The Question of any Claim before, should be whether he knows of any money paid, and in what manner.

E. of *Macclesfield*. It is the stronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker*. I don't well understand the Question as it is put, but I remember in my lord *Cowper's* first Time, in the Year 1710, that Office was transferred from Mr. *Thompson* to Mr. *Edwards*; I was then Secretary of the Lunaticks, and I remember I inquired of one or both of those Gentlemen, if any Present was made to my lord on that Occasion, and was answered, that nothing had been usually given in the Case of that Office, and that they had satisfied my Lord thereof. Afterwards, when my Lord *Cowper* had the great Seal again, and I was again Secretary of the Lunaticks, his Lordship was pleased to observe to me, that he had suffered himself to be imposed upon in several matters, when he had the Seal before, and instanced particularly in the Affair of transferring the Office of Clerk of the Custodies; and said he was very well satisfied those Gentlemen had imposed upon him, by assuring him that nothing had usually been given on transferring that Office; for he was well assured there had been Presents on that Occasion, and did not see any Reason why there should not: And his lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind should happen again.

Mr. *Plummer*. My lords, I believe this Gentleman was Servant to my lord *Cowper*, when he was Chancellor last; I desire to know if any Vacancy of this Office happen'd in the last time that he was Chancellor.

Mr. *Oaker*. There was a Vacancy in the last Time. I don't know what Sum of Money was given for it?

Mr. *Plummer*. My lords, I desire this Witness may be asked, if ever he knew that my Lord *Cowper* did take any Thing for the Surrender of this Place?

Mr. *Oaker*. I don't know, I believe he had nothing the first Time, but he thought himself imposed upon in it, and bid me inquire about it. As to the second Time, I never could inform my self what was done in it.

Lord *Lechmere*. I desire he may be asked, Who it was that surrendered this Place of Clerk of the Custodies, and to whom? Name them.

Mr. *Oaker*. The first was Mr. *Thompson*, who surrendered to Mr. *Edwards*, he surrendered to Mr. *John Bennet*, and Mr. *John Bennet* surrendered to Mr. *Thomas Bennet*.

Mr. *Onslow*. My lords, I desire, before Mr. *Oaker* goes, that he may explain himself which of those two Times it was that my Lord *Cowper* said, he was imposed upon?

Mr. *Oaker*. It was the first Time.

Mr. *Onslow*. I desire to know if he took any Thing at either Time?

Mr. *Oaker*. I don't know, otherwise than as I have before declared.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Edward Dupper* may be called.

Mr. *Dupper* sworn.

Mr. *Serj. Probyn*. My lords, I desire that Mr. *Dupper* may be asked, whether he knows of any Sum of money that hath been paid, or received on the Surrender, or Admission, of any Clerk of the Custodies?

Mr. *Dupper*. I did not see any Money paid. I did give my Lord *Macclesfield* an Account that there had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hammersly* was admitted.

Mr. *Serj. Probyn*. From whom had you that Information?

Mr. *Dupper*. My Lords, I don't know how far I may be permitted to name that Person's Name.

Many Lords. Name him.

Earl of *Macclesfield*. Was it from one that had the Custody of the great Seal?

Mr. *Dupper*. Yes, my Lords.

Lord—Who was it from?

Mr. *Dupper*. I had it from my Lord *Harcourt*. My lords, I cannot say I saw the money actually paid; neither can I say, that his lordship received this money. But I was a Servant to my Lord *Harcourt*, and his Lordship kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large hand-writing for his lordship's Use; and I generally made two Copies of each, for fear one should be lost or mislaid when wanted. One of these Copies I kept by me, which I have here; in it is an account of the yearly Profits of that Office, and there is this particular Item, of 250 Guineas received for the Surrender of the Office of Clerk of the Custodies, which I copied from a *Memorandum*, or Account of his lordship's own hand-writing.

Mr. *Serj. Pengelly*. My lords, I don't know what he is going to do. I hope there is very little notice to be taken of what he hath said. A man tells a Story that is a Servant: I hope no Credit will be given to what he says.

Mr. *Com. Serj.* My lords, I desire he may inform your lordships, when it was that he gave an Account to the Earl of *Macclesfield*, that so much money had been paid, and upon what Occasion it was?

Mr. *Serj. Pengelly*. Give an Account! he knows nothing.

Mr. *Com. Serj.* My lords, I hope you will not think it an improper Question. He says, that he gave an Account, I desire to know what he

he give an Account of, and if he knows upon what Occasion it was?

Mr. *Dupper*. My Lords, the Reason of my giving this Account was, There was a Discourse between Mr. *Cottingham*, who was my Lord *Macclesfield's* Secretary, and my self, about the Office of Clerk of the Custodies. Mr. *Cottingham* told me, that Mr. *Bennet* was going to surrender his Place of Clerk of the Custodies: I asked him, to whom? He told me, it was to his Neighbour Mr. *Hamerfly*. I answered, I am very glad to hear it; there will then be a piece of money for my Lord Chancellor. Mr. *Cottingham* said, That is more than I know; was there ever any money paid upon the Transfer of this Office? I said, Yes, I remembered there was, and I never knew any Offices or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Harcourt* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next day I told Mr. *Cottingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Strange*. When Mr. *Hamerfly* was named I desire to know if Mr. *Cottingham* did not at that time call him his Neighbour?

Mr. *Dupper*. I did not know Mr. *Hamerfly* at that time; but Mr. *Cottingham* called him his Neighbour.

Mr. *Plummer*. My Lords, I desire he may be asked, if he told my lord *Macclesfield* of this before Mr. *Bennet* resigned to Mr. *Hamerfly*?

Mr. *Dupper*. Yes, I did my lords.

Mr. *Lutwyche*. My lords I desire to ask him one Question. I think he is pleased to say there is no place under the Great Seal, but what an Acknowledgment is taken for: I desire to know whether he himself hath not a Place given him by that noble Lord for his Life?

Mr. *Dupper*. No, my Lords.

Mr. *Lutwyche*. Had you no Place at all given you?

Mr. *Dupper*. I have the Reversion of a Place, which is not fallen as yet.

Mr. *Lutwyche*. What Place is that?

Mr. *Dupper*. The Sealer's Place.

Mr. *Lutwyche*. Do you enjoy that Place?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Was there any money given for that Place?

Mr. *Dupper*. No, Sir: It is what I had for fifteen Years Service. I was his Clerk, and I acted as his Steward, in Town and Country, a great many Years; and his Lordship was pleased to give me that Reversion as a Reward for the Labour and Pains I took in his Service.

Mr. *Serj. Pengelly*, My lords, I desire he may be asked, how long after it was that he carried this Account to Mr. *Cottingham*, that he speaks of, how long after he had found it?

Mr. *Dupper*. I don't exactly remember: But as near as I can guess, it was the next Day, the first time that I saw him afterwards.

Mr. *Serj. Pengelly*. I desire he may be asked, whether at that time he gave Satisfaction to Mr. *Cottingham*, that it ought to be insisted upon?

Mr. *Dupper*. I told him so much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without money.

Mr. *Lutwyche*. I desire Mr. *Dupper* may acquaint your Lordships what the yearly Value of that Office is, that was given to him?

Mr. *Dupper*. I never was in Possession of it.

Mr. *Lutwyche*. Do you know what is the yearly Value of it?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Can you give no Account of it?

Mr. *Dupper*. No: The man hath been in Possession of it, I believe, these threescore Years, and I believe he will live these threescore Years longer.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Laiton* may be called.

Mr. *Laiton* sworn.

Mr. *Serj. Probyn*. I desire he may be asked, whether he was not formerly a Curfitor?

Mr. *Laiton*. I was a Curfitor almost three and forty Years.

Mr. *Com. Serj.* I desire that he will inform your Lordships, whether any money was paid, either by him, or any other?

Mr. *Serj. Pengelly*. My Lords, we beg leave to understand your Lordships Resolution, whether it extends to allow an Examination as to the selling of any other Offices not contained in the Articles?

Mr. *Serj. Probyn*. My Lords, we shall endeavour to prove that Acknowledgments have been anciently and usually paid upon Admissions into all Offices under the Great Seal. And this is Part of this noble Lord's Defence, That it is usual for the Great Seal to take money for the transferring of those Offices. This Witness was one of the Curfitors in the Court of Chancery; therefore I hope it is proper to give Evidence of money given for those Offices, as being Offices under the Great Seal. Therefore my lords, I desire he may be ask'd, whether he hath known of any money paid to the Great Seal upon the Surrender, or Admission of any Curfitor?

Mr. *Lutwyche*. My lords, I submit it whether it is proper for your lordships to let them into this Evidence. I take it that the immediate Questions before your lordships are only upon two sorts of Offices, one of the Clerk of the Custodies, the other the masters in Chancery. Now whether Your lordships will let them into an Evidence of all the Offices of the Kingdom, which is very extensive, I submit to your lordships Consideration.

Mr. *Plummer*. Your lordships observe, that we have not gone upon the 10th Article, where we have laid that he sold several other Offices: Considering the great Extensiveness of it, and that it would draw this Trial into a great length, we have waved it; and therefore submit it to your lordships Consideration, whether he shall make his Defence to any thing we have not yet given Evidence to.

Earl of *Macclesfield*. This would be to put a great difficulty upon me. The Charge against me being founded upon a Supposition, that the taking

taking money upon admitting Persons into Offices in the Court of Chancery is criminal; part of my Defence is, that the constant practice of my Predecessors shews the general Opinion to be otherwise, and therefore I have by my Answer insisted upon it generally, that not only for the one particular Office of the Clerk of the Custodies, or masters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another not charged, or charged and waved, it will be the same thing. The Argument is the same with respect to the foundation of the Accusation, if in all other Offices, of which Persons now living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reason it may be taken in these. I offer this Evidence, not to shew I am not criminal with respect to the Curstors Offices; their waving that general Article which comprises them, admits it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Curstors, and all the rest, besides the masters in Chancery and Clerk of the Custodies, it is no more so to take it from them: If this Objection be allowed, the Proof, which in its full latitude would be of great Extent, and go to all my Predecessors within 50 or 60 Years, will be confined to a very narrow Compass, when restrain'd to what Account can be given in only two Sorts of Offices, by Persons who saw the money paid, and happen to be still alive. Besides, for strengthening that Argument from other Instances, I have in another Part of my Answer insisted, that other Persons of great Wisdom and Honour, have likewise without Scruple, and without Censure, disposed of other Offices for money; that this hath been constantly practised in the Disposal of all Sorts of Offices in *Weyminster-Hall*, money hath been taken for them all along; this Proof I must be cut off from too, if I am to give Evidence only of what was done in the case of those Offices for which they proceed against me: I hope therefore the Gentlemen will not oppose the going on to make the Proof proposed by my Counsel.

Mr. Serj. Pengelly. My Lords, if it be put in this general manner of all other Courts, and in all other Instances, we apprehend it will be a very extraordinary Examination. A Person is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is beside the Issue, and not before your Lordships. Here is a Charge by the Commons of *Great Britain*, and an Answer and Defence to that, which can go only to those particular Offices charged. Now, to introduce an Evidence of this Nature, is exceeding any Rule or Instance that hath been ever heard of. If they apprehend by proposing and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the Consequence of such an Allowance; and it is to no purpose for the Managers to come prepared to examine to a particular Fact stated between us, when there may be ten thousand things insisted on that are not in Issue.

Lord Viscount *Townshend*. I can't say this is within the Rule your Lordships laid down. If it is insisted upon, the Counsel must withdraw.

E. of *Macclesfield*. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to shew that other Offices have been disposed of by the master of the Rolls, the Chief Justices, and other Judges. This is in my Answer: The Commons had Notice of it; and they have joined Issue upon it. I wonder to hear it said they have not joined Issue, when in the Answer it is insisted upon, and they have replied thereto. This is a Thing that these Gentlemen are very well aware of; it is so general and universal a Thing, that every Body knows of it. I don't know whether it is intended to make any Distinction between this Case, and what is done in other Cases; if they do, I would be glad to hear it; if they do not, then I would beg your Lordships Determination upon it.

Mr. Serj. Pengelly. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Question is in Point of Evidence.

Mr. Soll. Gen. My Lords, I don't apprehend that we have joined Issue on every Thing that the Noble Earl hath thought fit to put in his Answer. The Commons have charged him with several Crimes: He hath answered to those Crimes: The Commons reply, that they are ready to make good their Charge. By this, Issue is joined upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Answer. We insist that he is not to give Evidence of the Sale of any other Offices, but of those that he is particularly charged with. As to the Curstors Office, and other Offices that he is not charged with, we say he is to give no Evidence.

Mr. Lutwyche. My Lords, because it is insisted upon that whatever this Noble Lord hath said in his Answer, we have replied to; I would observe that the very Replication takes Notice of this very Thing, and was one of the Things considered of by the Commons, and therefore the Reply is, "That he hath endeavoured to evade the Enquiries into his own Crimes, by insinuating Facts not material to the matters charged." And therefore, my Lords, we insist that he may not enquire into those matters which we have not charged.

Mr. Com. Serj. I don't know whether I may be at liberty to add, that I humbly apprehend, that what the Gentlemen of the House of Commons now insist upon, is contradicting your Lordships Resolution already taken.

Then the Managers and Counsel were order'd to withdraw, and being afterwards called in again, and returned;

Lord Chief Just. King. Mr. Serj. Probyn, The Lords have resolved, that the Counsel for the Earl of *Macclesfield* be not permitted to give Evidence touching the Sale of the Office of Curstors, for that no Evidence hath been given in Relation thereto, by the Managers for the House of Commons.

Mr. Serj. Probyn. Then if it be your Lordships Pleasure, we beg leave to call one Witness more, in opposition to the evidence given by Mr. *Thomas Bennet*, in Relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Custodies; he gave your Lordships an Account that he had paid the Sum of Sixty four Pounds, (besides the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we shall shew your lordships, that no part

of that Sum of Sixty four Pounds was really paid to the Great Seal, as Mr. *Bennet* seems to insinuate, but was all laid out in the Fees and Expences of passing his Patent through the several Offices that are proper upon that Occasion. And to this End we desire that Mr. *Tench* may be called.

Mr. *Tench* sworn.

Mr. *Serj. Probyn*. My lords, we desire Mr. *Tench* may inform your lordships, if he was employed in taking out the Patent for Mr. *Thomas Bennet*, upon his Surrender of the Clerk of the Custodies?

Mr. *Tench*. My lords, I was employed by Mr. *Thomas Bennet* to sue out the Patent, and I paid the Fees of every Office of passing the Patent, which comes to between 60 and 70 *l*.

Mr. *Serj. Probyn*. We desire he may tell us what Officer he is?

Mr. *Tench*. I am Clerk of the Patents to the Attorney General, and Deputy Clerk of the Patents in Chancery.

Mr. *Com. Serj.* I desire he may be asked, what part of those Fees are paid to the Great Seal?

Mr. *Tench*. There is a Dividend of the money arising from the Patents, of this 1 *l*. 8 *s*. 4 *d*. and 3 *s*. went to the Great Seal.

Mr. *Com. Serj.* I desire he may be asked, whether any more came to the Great Seal out of the 64 *l*. than 1 *l*. 11 *s*. 4 *d*?

Mr. *Tench*. I don't know that there is any more of the Dividend of the Patent. The rest went amongst others for their several Fees at the several Offices.

Mr. *Com. Serj.* I won't trouble your Lordships to ask to whom the rest of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. *Tench*. I don't know that any thing is paid to the Great Seal, upon passing the Patent Office, but the Dividend of 1 *l*. 11 *s*. 4 *d*.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether the Remainder is paid to other Offices?

Mr. *Tench*. Yes, to other Offices, to the Hanaper Office, the Secretary's Office, the Signet and Privy Seal.

Mr. *Serj. Probyn*. My Lords, we shall trouble your Lordships with no further Evidence on this Article: But beg your lordships Favour to begin our Evidence on the 5th, and other Articles.

Mr. *Sandys*. My Lords, I desire he may be asked, where he found the Warrant for passing the Patent at that Time?

Mr. *Tench*. I had the Warrant from the Secretary's Office.

Mr. *Sandys*. I desire he may be asked, if he knows how it came there, and by whose Direction, if he knows who procured it?

Mr. *Tench*. My Lords, I drew a Petition by Mr. *Bennet*'s Direction, to the Secretary of State; upon that the Petition was referred to the Attorney General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. *Sandys*. My Lords, I desire he may be asked, at whose Instance he drew up that Petition?

Mr. *Tench*. I drew it up at Mr. *Thomas Bennet*'s Request.

Mr. *Sandys*. To what Purpose was that Petition?

Mr. *Tench*. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's surrendring, it might be granted to him.

Mr. *Sandys*. It is the last Petition we desire to be informed of, what the Purport of that was; not the Petition of Mr. *John Bennet*, when he surrendered to Mr. *Thomas Bennet*, but the Petition of Mr. *Thomas Bennet*, when he surrendered to Mr. *Hammersly*?

Mr. *Tench*. It was a Petition reciting the Grant to Mr. *Thomas Bennet*, and that he might resign to Mr. *Hammersly*'s Use, who was a Person well affected to his Majesty and the Government.

Mr. *Serj. Probyn*. My Lords, we now proceed to the other Articles, which relate to the Presents made by the masters in Chancery to the Earl of *Macclesfield*.

Upon this the House adjourned to the next Morning Ten a Clock.

Thursday the 13th of May, 1725. *The Sixth Day.*

The Lords being seated in their House, and the two Proclamations being made as on the former Days.

LORD *Chief Just. King*. Mr. *Serj. Probyn*, you may go on with your Evidence.

Mr. *Serj. Probyn*. My Lords, we beg leave to lay before your Lordships some instances, where, upon former Admissions of masters in Chancery, Sums of money have from time to time been taken by the Great Seal. We desire Mr. *Meller* may be called again.

Accordingly Mr. *Meller* appeared.

Mr. *Serj. Probyn*. We desire Mr. *Meller* may be asked, whether he knows of any Sum of money paid to the Great Seal, upon the Admission of a master in Chancery, and what Sum?

Mr. *Meller*. My lords, I humbly apprehend, that the Subjects of *Great Britain* are not compellable in any case to give an Answer to any matter that may be to their Prejudice. I speak it with the

greatest Submission to your Lordships. For my part, I am very unwilling to do any thing that may any ways lessen the Security of the Subject, therefore I humbly hope your Lordships will not compel me to give an Answer to any Question of this Nature. I humbly submit it to your Lordships Judgment.

Earl of *Macclesfield*. My Lords, the Question he is asked is a general Question, whether he knows of any money paid to the Great Seal by any master in Chancery upon his admission. Whether he knows, or doth not know it?

Mr. *Serj. Pengelly*. My Lords, we beg leave to acquaint the House of the Circumstances of Mr. *Meller*, from whence the Objection rises. He was formerly a master, but before the late Act of Parliament he quitted that Office, and hath no Indemnification,

demnification, as the present Masters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Answer to this Question, without subjecting himself to a Penalty, and accusing himself of an Offence against the Law.

Mr. *Lutwyche*. This general Question tends to make him accuse himself, and subject himself to a Penalty.

Earl of *Macclesfield*. My Lords, I would gladly know whether these Gentlemen object to this Question or not; if they object themselves to it, they have a right so to do, and to offer their Reasons, and they must be left to your Lordships Judgment. But they have no Right to instruct a Witness.

Mr. *Lutwyche*. I never endeavoured to instruct any Witness. It is very well known I never attempted any such thing; and that noble Lord knows it. I am now here, not as Counsel, but as one of the Managers for the House of Commons, and by their Command, and so have more Reason to take Notice of this Reflection. We do not instruct Witnesses, this is no such thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lordships Determination upon it. It is not so very long ago, but the noble Lord may remember this very Question was directly asked of Mr. *Bennet*, and then refused; the next Day asked again by a side-wind, whether he knew any, and what Money had been given for the Place? and rejected by your Lordships; and then a Question was asked, How much he knew the Place sold for? and your Lordships likewise refused that: Here now is a Question asked of a Man that hath been a Master in Chancery, and not indemnified by the last Act, whether in Effect he paid any Money for his Office? Your Lordships thought this induced a Penalty, because you thought it necessary to pass an Act of Parliament to indemnify the present Masters; but it is well known it doth not extend to those who were Masters before; and therefore as there is a Penalty annexed to it, he ought not to answer this Question. Besides, for the sake of our Proceedings, it ought not to be answered, and we have a Right thus to interpose, that when your Lordships have refused the same thing in another Man, the same is not to be insisted upon again.

Mr. *Serj. Pengelly*. My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends that he hath a right to controul the Managers in this House, and whether that arises from the Seat he enjoys, your Lordships will consider the Consequences of this Behaviour. When the first Day we were told, that we were working up the Witnesses, and now that we are instructing them, whence could this Lord have this Imagination, but from his own former Practice?

Earl of *Macclesfield*. My lords, as to that Gentleman that thought himself reflected upon, he greatly mistakes me. I did not intend to reflect upon him as going to instruct the Witness in his Evidence; I believe him as far from it as any Man in *England*. I know him to be a Person of too much Honour; and I had not the least Thought when I spoke it, of his instructing a Witness in that Sense. But here a Witness is making some Difficulty in answering a Question, and I thought that that Gentleman who spoke first, was stating that which made the Witness's Objection; which I apprehended did not belong to the Managers to do. That is what I meant by instructing. The Que-

stion that is asked is, Whether he hath known of any Money given to the Great Seal, upon an Admission of a Master in Chancery? Say they, he was a Master in Chancery himself, therefore it may include his giving Money upon his being admitted: But be that so, he may know of other Persons besides himself that gave Money. My Question therefore is general, whether he knows of any Money given to the Great Seal on Admission of a Master in Chancery? The Question your lordships resolved was as to Mr. *Bennet* himself, and confined to his single Office; and had I asked Mr. *Meller* what he had given on his Admission to his own Office, it had been another Matter, and within your lordships Resolution. But the Question that is now ask'd, includes what he knows hath been given by other Masters; therefore he may give an Answer without charging himself. If he answers that he doth not know of any Money given by any other Master except himself; then it will come to the Question the managers would bring it to. In the mean time give me leave to say, that those Gentlemen, by being Managers for the House of Commons, have not a Right of treating Persons in a different manner than what they should do if they were not Managers. That that Gentleman should say, that what I spoke about instructing of Witnesses, ariseth from a Practice of my own, is a language unbecoming the Dignity of your lordships Bar. Is this a Way of treating Mankind? Is this a fit method of carrying on a Prosecution? Is this decent speaking before so august a Judicature as this? What I said of instructing a Witness, imported no faulty way of Instruction.—(After a short Pause) I have used a great deal of Preparation not to be disturbed at any Expressions that fall upon this Occasion. It is a faulty Way of instructing a Witness, to tell him what he shall say; but to tell him he hath a legal Objection to a Question that is asked, I know no Crime in that. My lords, I beg Pardon for taking so much Notice of this Matter; but I insist upon an Answer to this Question, whether he knows of any Money given to the Great Seal, on an Admission of a Master in Chancery? He may answer affirmatively, without at all affecting himself; and I submit, whether he ought not to do it.

Mr. *Plummer*. My lords, if the Counsel for the noble lord have done, I beg leave to reply. The noble lord says, that this Gentleman may possibly answer, and not accuse himself. But if by the Answer he may accuse himself, it is a Reason why he should not answer. The method proposed, that he may say, he doth not know of any but himself, is accusing himself. As for the other Point about instructing Witnesses, it is not our Witness, but his own Witness, who refuses to answer.

Mr. *Onslow*. The Managers cannot but observe the indecent Behaviour of this lord, and his unworthy manner of treating us. What we say here, we are ready to say any where. We do not think the lord at the Bar should be directing the Managers, as if he sat in his Place as Judge: If we do any thing unbecoming, we are subject to your lordships Judgment. We appear not here as common Prosecutors, and are not to be treated as common Counsel by him, as he would have treated Counsel in another Place. We are here Advocates for all the Commons of *Great Britain*, to demand Justice against this Earl; and submit it to your lordships, whether he is to treat us in this unbecoming manner. As for the Question, the very Reason he now gives for asking it, is the same