

A
Complete Collection^{c †}
OF
STATE-TRIALS,
AND
PROCEEDINGS
UPON
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
FROM
The Reign of King RICHARD II.
TO
The Reign of King GEORGE II.

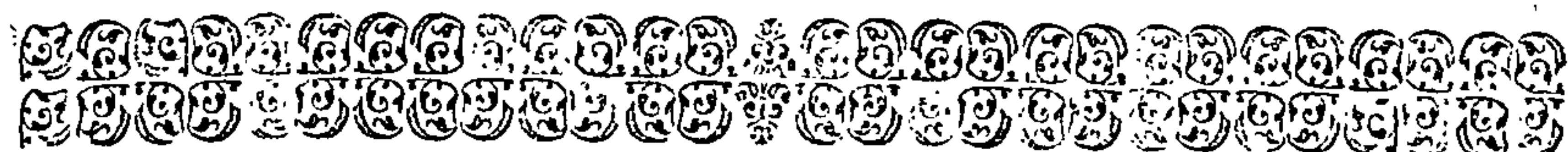
The SIXTH VOLUME.

With Two Alphabetical Tables to the Whole.

The THIRD EDITION, *with* ADDITIONS.

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Printed in the Year M.DCC.XLII.



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This Day is published,

The SEVENTH and EIGHTH VOLUMES in Folio (to complete the STATE-TRIALS in Six Volumes,) of

A COLLECTION OF STATE-TRIALS, And PROCEEDINGS upon High-Treason, and other Crimes and Misdemeanours, from the Reign of King Edward VI.

Containing among many others (chiefly printed from Manuscripts) the following ones ;

1. Proceedings in Parliament against Sir *Thomas Seymour*, Knt. Lord *Sudley*, for High-Treason, 2 & 3 *Ed.* 6.
2. Proceedings in Parliament against *Edward Duke of Somerset*, for Misdemeanours and High-Treason, 3 & 4 *Ed.* 6.
3. Proceedings against *Edward Duke of Somerset*, for High-Treason and Felony, 5 *Ed.* 6.
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4. The Arraignment and Trial of Mr. *Davison*, in the Star-chamber, for Misprision and Contempt, in sending down the Warrant to behead the Queen of *Scots*, 30 *Eliz.* From a MS. in *Gaius College Cambridge*.
5. The Arraignment and Judgment of Captain *Thomas Lee*, at the *Old-Bailey*, for High-Treason, 43 *Eliz.* From a MS. in the *Temple Library*.
6. The Trial of Sir *Christopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, Sir *Gilly Merrick*, and *Henry Cuffe*, at *Westminster*, for High-Treason, 43 *Eliz.* From a MS. of *Peter Le Neve*, Esq; late *Norroy King at Arms*.
7. The Case between Sir *Francis Goodwin* and Sir *John Fortescue*, in the Reign of King *James I.* as it stands upon the Journal of the House of Commons. First Printed, 1704, by Order of the House of Commons.
8. The Arraignment and Confession of the Lord *Sanguire*, at the King's-Bench-Bar, for the Murder of *John Turner*, a Fencing-Master; with his Lordship's remarkable Speech; the Speeches of Sir *Francis Bacon*, and Mr. Justice *Yelverton*; with Lord Chief-Justice *Coke's* Opinion upon it. From a MS. in the *Temple Library*.
9. Proceedings against Mr. *Wraynham*, for slandering the Lord-Chancellor *Bacon* of Injustice, 16 *Jac.* 1.
10. Proceedings on the *Habeas Corpus*, brought by Sir *Thomas Darnel*, Sir *John Corbet*, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden*, at the King's Bench, *Westminster*; with the Speeches of those great Lawyers, Serjeant *Brampton*, Attorney-General *Heath*, Mr. *Noye*, Mr. *Selden*, Mr. *Calthorpe*, Sir *Edward Coke*, and others; with the Opinions of the Lord-Chief-Justice *Hyde*, Judge *Dodderidge*, *Jones*, and *Whitlock*. Chiefly from a MS.
11. Proceedings against *William Stroud*, *Walter Long*, and *John Selden*, Esqs; and others, on an *Habeas Corpus*; being committed for stirring up Sedition, and Contempt of the Government, 5 *Car.* 1. with the Arguments of Council at large.
12. Proceedings against Sir *John Elliot*, *Denzill Holles*, and *Benjamin Valentine*, for Speeches in Parliament, 5 *Car.* 1. with the Judgment of the Court of King's-Bench, and the Reversal of that Judgment in Parliament, *Temp.* *Car.* 2.
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15. The Trial of Colonel *Eusebius Andrew* (a Barrister of *Grays-Inn*) before the High Court of Justice, 1650, for High-Treason.
16. The Trial of *Richard Faulconer*, for Perjury, at the King's-Bench, 5 *Car.* 2.
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21. Proceedings in the House of Commons, on an Appeal being brought in the House of Lords by Dr. *Shirley*, against Sir *John Fagg*, and others, their Members, 27 *Car.* 2.
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24. Proceedings in Parliament upon the Case of *Jay* and *Topham*; and the Defence made by Sir *Francis Pemberton*, and Sir *Thomas Jones*, for their Judgment given therein, 1 *Will. & Mar.*
25. Proceedings before the Lords on the Bill to dissolve the Marriage of the Duke and Dutchess of *Norfolk*, 3 *Will. & Mar.*
26. The Trial between *Henry Duke of Norfolk*, Plaintiff, and *John Germaine* Esq; Defendant, at the King's-Bench, *Westm.* 4 *Will. & Mar.* relating to the Divorce.
27. The Proceedings against the Bishop of *Rechester*, in relation to a Plot to restore K. *James*, 4 *Will. & Mar.*
28. Proceedings against *Charles Knawles*, Esq; commonly called Earl of *Banbury*, for the Murder of *Philip Lawson*, Gent. 4 & 5 *Will. & Mar.*
29. The Trial of *William Anderton*, Printer, at the *Old-Bailey*, for High-Treason, 5 *Will. & Mar.*
30. The Proceedings in the House of Commons upon the Complaint of Sir *John Packington*, against the Bishop of *Worcester*, 2 *Ann.*
31. The Proceedings in the House of Commons, House of Peers, and Court of Queen's-Bench, in the great Case of *Ashby* and *White*; containing all the Arguments and Speeches at large.
N.B. These Proceedings were never before collected together; the *Oleava Volume* formerly printed, not containing Half of the Proceedings relating to the *Aylesbury Men*.
32. The Trial of *Daniel Denew*, *John Merriam*, and *Richard Britton*, Gentleman, for an Assault and Conspiracy with an Intent to wound, beat, &c. *William Colepeper*, Esq; before Judge *Holt*, 2 & 3 *Ann. R.*
33. The Trial of *Daniel Dammaree*, a Waterman, for High-Treason, in levying War against the Queen, under Pretence of pulling down Meeting-Houses, 9 *Ann.*
34. The Trial of *Francis Willis*, a Footman, for High-Treason, in levying War, &c. 9 *Ann.*
35. The Trial of *George Purchase*, for High-Treason, in levying War, 9 *Ann.*
These three Trials were before the Lord-Chief-Justice *Parker*, and are the only Trials printed during the Time his Lordship was Chief-Justice. To which is added the Special Verdict on *Purchase*, as drawn up for the Consideration of the Judges, and the Arguments upon it.
36. The Trial of *Edward Arnold*, for Felony, in maliciously and wilfully shooting at and wounding the Lord *Onslow*, on the Black-Act; before Judge *Tracy*.

With An APPENDIX, containing Records, Arguments in Law, Speeches, &c. relating to the Trials and Proceedings in Six Volumes in Folio,

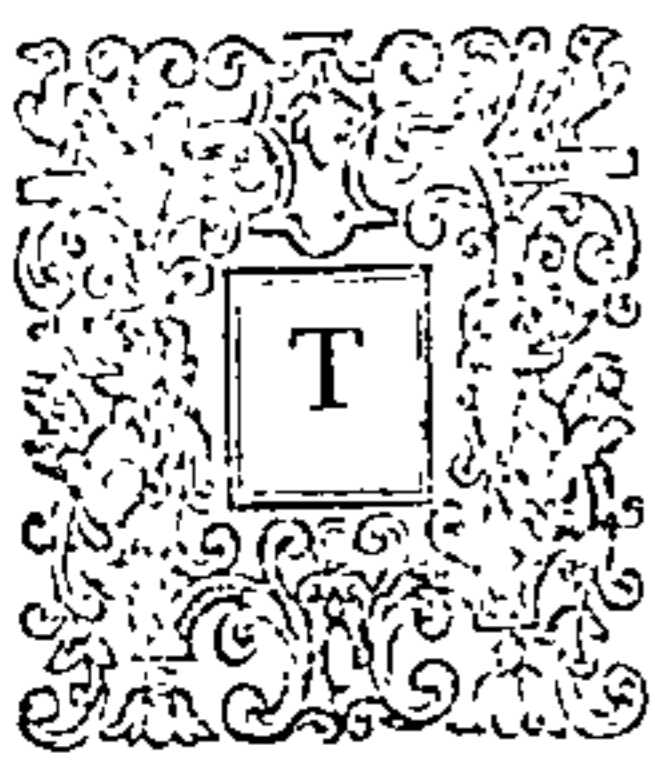
Printed for THOMAS WOTTON, at the Queen's-Head and Three Daggers against St. Dunstan's Church in Fleet-street.



A Complete
COLLECTION
OF
TRIALS, &c.

CLXXXV.

Proceedings in PARLIAMENT against James Earl of Derwentwater, William Lord Widdrington, William Earl of Mordaunt, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn, upon an Impeachment for High-Treason, Febr. 9. 1715. 2 GEO. I.



THE above-named Lords having excited a Rebellion, and levied War against his Majesty, and being taken Prisoners, whilst in actual Hostilities, the Parliament at that time sitting, it was moved in the House of Commons, *January 9.* that they should not be left to the ordinary method of Prosecutions, but be proceeded against by way of Impeachment: Upon which Occasion Mr. *Lechmere* spake as follows,

After the general Assurances this House has given to his Majesty, one Moment ought not to be lost without taking some effectual Step towards making them good. The first and great Concern is to put an End to this *Rebellion*, not only to quiet the present Commotions, but to extinguish the very possibility of their being renewed: For these Ends every Gentleman will agree to strengthen the Hands of the King, in such manner as will enable him speedily and effectually to complete this Work: You will do this with absolute Cheerfulness, from the certain Knowledge and Expe-

rience we have had of the Wisdom and Justice of his Majesty, who will make no other Use of any Confidence his Parliament shall repose in him, than to promote the common Welfare of his People; and whatever extraordinary Assistance the present Juncture of Affairs shall require, will be continu'd no longer than the public Necessity calls for. The next useful and necessary Step is the *National Justice*, which is incumbent on this House, in Duty to the King, as well as in Justice to the People; and as ungrateful and disagreeable a Part as this must be, yet when the Design of the Enemy is become so desperate and so avowed, as to strike at the Crown upon the King's Head, and to involve the Nation in the Calamities of a *Civil War*, the House cannot exert themselves too early, nor with too much Vigour; and as the House shall acquit themselves on this Occasion, I dare promise myself the Effect will be answerable. The Spirit which shall be shewn in this Instance, will animate the Friends of the Government both at Home and Abroad; and the Terror it must strike on our Enemies, will be equal at least, and contribute as much to the Common Safety, as any other Preparation that has or can be made. I wish I could say or think that this

Rebellion is the Project of those only, who appear'd to head it; or that it is the Result of the weak or rash Counsels of those who publicly avow it; I wish I could say, that it is the Work of *Papists* only, or of those few *Protestants*, who are wicked or weak enough openly to join in it. I wish I could say, that it was a *Plot* but of Yesterday, and that it has taken no deeper Root, than ordinary Appearance will lead to suspect: But I think it plain, that it is the Effect of many Years Labour, of the joint and united Labour of great Numbers both *Protestants* and *Papists*, the plain and necessary Consequence of the Measures which have been carrying on for some Years last: To frame a right Judgment of the Nature of this Rebellion, I think it necessary for us to look back and consider, the natural Tendency of the Public Proceedings of late Years, and the Connection they bear with the present unfortunate State of Things; when Men in sacred Functions suffer'd themselves to become *State Instruments*, and the great Merit of such Men was under the Pretence of Asserting the Doctrines of the Church of *England*, to condemn the Revolution, I could never understand any other Design or Tendency from those Practices, than to undermine the Foundation of the Protestant Succession. I remember 'twas said upon a very solemn Occasion, by a very honourable Gentleman, *That the condemning the late happy Revolution, could have no other Meaning than to make way for another.* However wicked and dangerous these Practices were, they made too great an Impression, and contributed a great deal to the present Calamity; for as the Designs of the Enemy grew more avow'd, State Principles of another Kind were advanc'd, which still conduced to the same End. 'Twas well known what Industry was used to inculcate the Notions of *Hereditary Right* to the Crown, in Opposition to the Settlement which had been made of it in the House of *Hanover* by the Authority of Parliament, and with no other View than to weaken that Settlement; Every one remembers what extraordinary Pains were taken to poison the People with this dangerous Notion; and that those who made the best Court to Men in Power, were such who espoused this Opinion in the most notorious manner. I cannot forget with what Tenderness a certain Divine* of the Church of *England* was treated below Stairs, whilst under Prosecution, for the most impudent^a Libel that ever was published against any Government, that had either Will or Power to maintain it self. I think the Punishment that was inflict'd on that Gentleman light enough, but I cannot avoid taking Notice of a remarkable Passage, which then alarm'd every thinking Man, and will, one time or other, deserve the Consideration of this House, viz. The Order from the Government, countersign'd by a Secretary of State, to the Judges of the *Queen's-Bench*, after the Judgment pass'd, to supersede the ignominious Part of the Punishment, by Reason of the *Sacred Function* of the Criminal: By which the most *unexampled and dangerous Distinction* was introduced; and which Proceeding could bear no other Construction, than as a License and Protection, even from the Government, to Men in Holy Orders, to propogate that *destructive Position* with Impunity; and the Character of the Person, which ought in Justice to have ag-

gravated his Guilt and heighten'd the Punishment, became his Indemnity against the Reproach of it, even by the Authority of the Government it self. I remember very well in what Manner every Thing of that Nature was treated in *Westminster-Hall*; what Severities were exercis'd against those Persons who had Courage enough to assert the Interest of their Country, and of the Protestant Succession, at the same Time that the *Patrons* of *Hereditary Right* enjoy'd all *Indulgences*. I mention these Things on no Uncertainties, having been an Eye-witness of them my self, and it having fallen to my Share to bear some Part in them: This was one of the most successful Parts of the Scheme of those who had fix'd their Eyes on the Pretender: The House need not be told how far it has operated, to the Prejudice of the Protestant Succession. I could give many other Instances of this Kind, all which promoted the same End: The gross Distinctions that were coin'd to elude the Oaths that had been made for the Security of the Government: The Endeavours that were used to possess the People with *false Fears of the Danger of the Church*; and the little Care that was taken, to say no worse of it, to instill into the Youth of the Kingdom, such Principles as were consistent with the true Interest either of *Church* or *State*. I look upon these Things to be *the Foundation of the Scheme* that is now, by this *Rebellion*, carrying on into Execution; and I own that In this Respect the Authors of it were *wise in their Generation*, for by these Arts the very *Principle* on which the Protestant Succession is founded, was *spoken*; and tho' the Methods of doing it were base and vile, yet the Dissatisfaction and Uneasiness that was created by them *in the Minds of the People, made Way for the Change* that was *desired*. I must crave leave to put you in Mind of other Parts of this *Scheme* that were carrying on at the same Time. The Enemies to the present Government judging aright for their own Purpose, by all Methods to attack the Consciences of the People, as to the *Legality* and *Justice* of the Settlement of the Crown in the House of *Hanover*, thought it necessary at the same Time to disable as far as they could, those Persons who had been most remarkable for their Services in the Support of it: The great Effort was made at that great^b Man, who is not only the Honour and Ornament of his Country, but the Glory of the Age he lives in. I think I shall not be suspected of Flattery at this Time, nor, I believe, at any Time, with Respect to that Great Man. Many who now hear me, remember the Part I took in Vindication of that Great Man, whilst his Character was under Debate in this House. I cannot forget the Rage and Inveteracy with which he was pursued; nor how much Strefs was laid upon obtaining the Censures of Parliament upon him: The Aspersions then thrown upon him, did not hurt that Great Man; and whatever Endeavours may at any Time be used to lessen him, will hurt none but those that shall promote them: But yet those vain Endeavours were a very useful Part of the *Scheme* then carrying on. 'Twas a necessary Step for those Men to put him out of the Way, whose very *Name* and *Appearance*, at that Time, would have been sufficient to raise Armies in Favour of the Protestant Succession and the Liberties of his

* Mr. Bedford.

^a *The Hereditary Right asserted, &c.*^b *The Duke of Marlborough.*

Country: But I cannot but observe, That as serviceable as it was for the Measures of those Men to wound his Character, it is now a Reproach to the Kingdom, that those *groundless Aspersions*, which have been cast upon him, should remain upon the Journals of Parliament. Another great Lord fell under the Violence of those Times, (I mean the Lord who was Minister in the *Low-Countries*, and was chiefly instrumental in procuring the *Treaty of Barrier and Succession*) whose Prosecution was attended with uncommon Fury. My self had some Share in justifying that Great Man in this House, when he was voted an *Enemy to his Country*. I observed at that Time, and the Event has made it evident, that the *Barrier* was but the *Pretext*, and that the great Services he had done to the *Protestant Succession* was the *true Provocation*, which drew that Rage upon him. Two other honourable Gentlemen, now sitting for me, felt the Severity of those Times: They distinguished themselves by their Zeal and Fidelity to the true Interest of their Country, and were so considerable to escape the Malice of some other Views. Those Proceedings, I am certain, however the Design of them might appear while they were transacting, have been sufficiently explain'd by what has follow'd. The Name of that General, for whose immediate Service the Great Man first mentioned was blemish'd, and for whom there was Vanity enough to make him his Rival, is now become the *Reproach* of his Family and Country; he avows the Service of the *Preterder*, and e'er long we may hear of him at the Head of an Expedition for establishing *Papery and Arbitrary Power*. The Secretary of State who distinguished himself in the Pursuit of the other great Lord, has sufficiently explain'd his Designs to the whole World; and the next Tidings that we may expect from abroad is, that he has taken upon him the Character of a Minister to the *Preterder*. I look upon this (namely the disabling the great Assertors of the Protestant Interest) to be a second, and no small Part of the Scheme; and while these Things were carrying on, their little Engines and Tools were carrying on their Work below-stairs. Every Man who favour'd the *Hanoverian* Succession was to be worried, and all open and scandalous Assertors of contrary Principles were treated with all the Care and Tenderness of Friends. Charters of Corporations were attack'd in a more unprecedented and dangerous manner than in any former Times, when Practices of that kind were most justly complain'd of; and no Stone was left unturn'd, to strengthen themselves in that Respect. I will not now trouble you any more upon that Head, having some Thoughts e'er long to present you with a small Collection of Things of that kind for your serious Consideration. The *Master Strokes* of this grand Scheme are yet behind: The surest Way to destroy the Government has been always thought to be by its own Hands; that is, by the Authority and Power of Parliament. For this Purpose, a *Confederacy*, by which the Liberties of *Europe* had been so long sustained against the Power of *France*, was broke to Pieces, by Votes that were obtained in this House, in the most extraordinary Manner. The Honour of the Nation, the Ballance of Power, and the Protestant Interest in *Europe*, were effectually given up in

the Negotiations and Conclusion of the Peace, by which *France* was restored to its ancient and formidable State: And every Body remembers how near we were by the same Influences, to have given up the whole Trade of the Nation to the Interest of the *French* King, who after that had no suitable Return left for him to make for such Services, but to bestow upon us a *Preterder* bred up in his own Faith, and in his own Politics. Nothing could have obstructed this, but the many miraculous Providences that immediately followed, when his Power throughout *Europe* was uncontestable; and, by the Measures that had been taken, the Protestant Succession had scarce a Friend left in the World. The *King's* Accession to the Throne, accompanied by so many providential Circumstances, as it disappointed the immediate Execution of the Scheme, so it quieted the Spirit, of those Men for some Time. If we could make a right Judgment of the present Rebellion, we must compare the Steps that immediately preceded, with those which were taken in the last Reign, when the Hope was to have brought about the same End without a Stroke. The same Endeavours soon appear'd to propagate the same Principles both in Church and State: And those Endeavours, tho' at first not so open, were yet as restless to create Dissatisfaction against his Majesty's Government, as they had been before to prevent its taking Place. As the Encouragement grew stronger, *Tumults* and *Riots* were universally fomented; and 'tis well known from what Quarter they rose, and against whom they were levelled: But yet no one Instance has been assign'd throughout his Administration, that could offend or provoke any but a *Jacobite* Spirit. His Majesty has done more for the Honour of the *Church*, and the true Interest of his Kingdom, than any of his Predecessors in three times the Number of Years. His *Personal* Virtues, and the *Wisdom* and *Steadiness* of his Government, have retrieved the Honour and Reputation of his Kingdoms, which had been so shamefully lost: His *Weight* and *Influence* abroad, and the *Credit* he has obtained in all the known Parts of the World, has already procured the Settlement of the Matters in Difference between the two chief Powers of *Europe*, from whom alone we can expect Assistance in Times of Danger. No single Instance can be assign'd of Hardship or Oppression to any one of his Subjects, or that can give a just Reason of Dissatisfaction; but on the contrary, those who have shewn the greatest *Affection* to his Government, have received the kindest Invitations, and enjoy'd the highest Indulgencies from him. If any *Errors* may have been committed in any Parts of the Administration, during the present Disorders, every honest Man ought to judge of them by this one Rule, that is, the plain Design for which all Measures are calculated, which every Body must admit to be, the *Preservation of the Protestant Succession*: All Incidents of such an Administration, ought to be covered or justified by the Interest that shall appear to be carrying on throughout the whole; by the same Rule of Justice, when the Destruction of the Common Interest was the plain Intention of the late Administration, the greatest Weight ought to be laid on every little Circumstance that attended, in order to obtain a *public Satisfaction*: By taking in all these

^c The Lord Viscount Townshend

^d The late Lord Viscount Bolingbroke.

^e Mr. Stanhope and Mr. Walpole.

^f Westminster-Hall.

^g The late Duke of Ormond.

Considerations, I think we shall make a full and right Judgment of the Nature of this Rebellion ; from whence it took its Rise ; how deep it has taken Root ; to what Influences it is owing, and how far it extends. The Part the Lord *Derwentwater*, and others, have taken in it, are to be considered as the first Symptoms of that general Disorder, for which so much Foundation was laid ; for which Reason I think, that we cannot consider this otherwise than as the Cause of the Nation, in the strongest manner. In Justice to the King, as well as to the People, we ought to take this into our own Hands, and not to entrust the Prosecution of it with any Body but our selves. Every Body knows to what Hazards Prosecutions in the ordinary Course of Justice are liable, though they are never so well concerted by those, whose Business it is to carry them on ; but how sure soever the Success may be, in a Case so notorious as this, yet it is obvious to every Body, of what different Weight and Influence the Prosecutions of Parliament are from those in the ordinary Forms. I own I am surprized, that any Measures have been taken of that kind, against the Peers who have been taken in open Rebellion, during the sitting of a Parliament which has shewn so much Zeal, and has contributed so much to the Preservation of the Government, especially at a time when the Crown on the King's Head is fighting for. I very well know, that tho' the House of Commons Right of Impeaching Criminals is unlimited, yet they will exercise that Power by the Rules of Wisdom and Discretion, and not engage in trivial Matters, but in such only where the Offenders are not within the reach of the Ordinary Justice ; or the Nature of their Crimes such, as are not fit to be meddled with by the Ordinary Jurisdictions : The Case of the Lords taken in Rebellion is indeed notorious, and of which the Proof will be easy, but tho' not from the Difficulty of the Prosecution, yet from the Weight and Consequence of it, I think I need say little more to convince you, and make it our Prosecution, by which we engage every Commoner in Great-Britain, as an immediate Party, against those who have carried a War into the Bowels of the Kingdom. No Instance ever has risen in the English History, where our Ancestors have permitted a Prosecution against the chief Actors, to be carried any where but in full Parliament. The five Popish Lords were pursued by the loud Voice and Weight of the Commons of England : And tho' at that time the Nation was in Peace, they would not permit the Fate of those Prosecutions to depend on the Care or Skill of those who are versed in the ordinary Forms of Justice, and their Success was answerable. I own my Desire upon all Occasions to raise the Honour and Authority of Parliaments, which I think the greatest Support of the Honour and the Prerogatives of the Crown. For which Reason, I take this Occasion to speak more fully to the Nature of Impeachments, and the rather, because I apprehend some Gentlemen have mistaken Notions concerning them. The Power of Impeachments is the most valuable and useful Privilege that belongs to the Body of the Commons, at least, equal to that of giving Money, which belongs solely to them. Gentlemen need not be apprehensive of any Intricacies in those Proceedings, especially at a Time and upon an Occasion, when there is no Doubt of the Concurrence of both Houses. Impeachments are in themselves more plain, regular, and dis-

tangled, than any other Forms of Justice : They are particularly excepted out of the late Statute of Treasons, which has very much fetter'd the ordinary Course of Proceedings. Impeachments were never made difficult, but when they were carried on against the Inclination of the Crown, or at a Time when there was no good Understanding between the two Houses ; when little Occasions might be sought to raise Disputes, and interrupt them ; or else when they are undertaken before they are well considered, which cannot be the present Case. There is another Reason, which upon this Occasion should determine Gentlemen into this Method ; I mean the Consequences of the Judgment that shall be obtained against these Lords : 'Tis my clear Opinion, and what I think I can maintain, That no Pardon under the Great Seal can discharge a Judgment obtain'd upon the Impeachment of the Commons : This Opinion has been strenuously asserted in this House in former Reigns ; and I think it not weakened by the Declaration in the Act of Settlement of the Crown upon the House of Hanover. I have heard of a very late Distinction that has been coin'd without Doors, to avoid this Opinion, viz. That the Pardon is not pleadable in bar of the Impeachment, to prevent the Commons from examining into the Offence ; but that it is pleadable after Judgment, and in bar of Execution. Whenever that Question shall come properly before you, I will undertake to shew the Idleness and Absurdity of that Distinction : If that Distinction be framed to make Court to the Prerogative, I think it the most false and destructive Piece of Flattery of the kind that ever has been raised. It is the greatest Taste, Security, and Support of the Crown, in my Opinion, instead of any Diminution of it, that no such Power shall be lodg'd there, to be exercised on any Occasion, to prevent the Possibility of the Crown's being wrought upon by any Influences to defeat the Judgment given in full Parliament, with the Concurrence of both Houses, against the highest Offenders, which must inevitably create the greatest Jealousy, and cause the highest Dissensions between the Crown and the People : For this Reason, I take it to be the greatest Advantage to the Crown, that the Constitution of the Kingdom has not, as I think, invested it with any such Power : And on t'other side, it will clearly appear, that such a Power is utterly inconsistent with the fundamental Rights of Parliament. I own I am surprized to hear, that any such Distinction should be started at this time : But if the Law be, as I apprehend it is, it is the strongest Reason for the Commons to interpose in this Prosecution to defend the Crown from the many Impertinencies to which it will be subject, in the ordinary Course of Justice : The Weight of this Prosecution, and the Consequences of it, will be borne by the Commons, as it ought to be in a Case so National as this. If Gentlemen want any other Motives, to induce them to make this Prosecution their own, I have a Paper in my Hand which will fire the Thoughts of every Gentleman here, it is the Pretender's Declaration, which no Body can read without the utmost Indignation ; considering the personal Indignities which are therein cast upon the best of Princes, whose Title to the Crown we are bound by all the Ties of Duty, Affection, and Interest to maintain. We can do no less than resent this so far, as to make our selves the Prosecutors of those who avow this Cause of the Pretender, and set themselves at the Head of Armies, in

in the Heart of the King's Dominions. In this Paper we shall see how we are treated ourselves: *We are represented as the most illegal and infamous Assembly of Men that ever met together.* These Considerations ought, in Justice, to animate and invigorate our Proceedings in every Respect, till the *Preterity and Insolence of the Enemy are entirely subdued*: I do not think that the Proceedings of this House ought in any Case to be governed by *Vindictive Considerations*, but by such Circumstances only as from their real Weight and Consequence call for the Interposition of the Commons. I am sensible that the Commons have a great Work upon their Hands, from other *Impeachments*, which they have thought fit to enter upon, and which are still depending; I know also what Situation these *Impeachments* are in; and hope they will be resumed and carried on, in due Season, with the same Vigour with which they were undertaken. I likewise believe, that the Nation *expects*, that our Enquiries upon this Head shall be extended and appear to be *impartial*, it not being possible, that a greater Dishonour can be brought, or an heavier Imputation cast upon our Proceedings, than that of Partiality, which cannot fail to sink our Credit, and to prevent all the good Effects that are hoped and expected from them: However, every Gentleman will agree with me, that the present Situation and Conjunction of Affairs make it necessary to give the Preference to those Lords who have been taken in open Rebellion. And therefore I now *Impeach James Earl of Derwentwater of High-Treason*; which *Impeachment* I undertake to make good.

The Consequence of this Speech was, that the House came to a Resolution to impeach *James Earl of Derwentwater of High-Treason*. Upon the like Motions they resolved the same with regard to *William Lord Widdrington, William Earl of Northdale, George Earl of Winton, Robert Earl of Carnwath, William Viscount Kenmare, William Lord Nairn*; accordingly they were impeached at the Bar of the House of Lords, and the same Night the Articles of Impeachment were carried up to the Lords; and the next Day the impeached Lords were brought to the Bar of the House, and charged with the said Articles, and ordered to put in their Answer by the 16th, and that not only Counsel, but any other Persons, whom they should name, should have Liberty to assist them. They had afterwards Leave till the 19th to put in their Answers, when they severally pleaded *Guilty* (except the Earl of *Winton*, who had further Time allowed him) and the 9th of *Feb.* was appointed to pass Sentence on them.

On *Thursday Feb.* the 9th, about one of the Clock, the Lords came from their own House into the Court erected in *Westminster-hall*, to pass Sentence upon *James Earl of Derwentwater, William Lord Widdrington, William Earl of Northdale, Robert Earl of Carnwath, William Viscount Kenmare*, and *William Lord Nairn*, in the Manner following.

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerk's Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commission to the Lord High-Steward.

The Masters in Chancery, two and two,
Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeomen Ushers of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purse-Bearer.

Then Garter King at Arms; and the Gentleman-Usher of the Black Rod, carrying the White Staff before the Lord High-Steward.

The Lord High-Steward *William Lord Cowper*, alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack.

The Clerk of the Crown, in the Court of Chancery, standing before the Clerk's Table, with his Face towards the State, having his Majesty's Commission to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, presented the Commission to the Lord High-Steward; after which, and usual Reverences, the same was carried down to the Table: And then Proclamation for Silence was made in this manner.

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

Then the Lord High-Steward stood up, and spoke to the Peers.

Lord High-Steward. His Majesty's Commission is going to be read; your Lordships are desired to attend.

All the Peers uncovered themselves, and they and all others stood up uncovered while the Commission was reading.

GEORGIUS R.

GEORGIUS, Dei Gratia, Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Prædicto & Fideli Consiliario nostro *Wilhelmo Domino Cowper, Cancellario nostro Magnæ Britanniæ, Salutem.* Cum *Jacobus Comes de Derwentwater, Wilhelmus Dominus Widdrington, Wilhelmus Comes de Northdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Wilhelmus Vicecomes Kenmare, & Wilhelmus Dominus Nairn, coram Nobis in presenti Parlamento, per Milites, Cives & Burgenses in Parlamento nostro Assemblat' de alta Proditione per ipsos Jacobum Comitem de Derwentwater, Wilhelmum Dominum Widdrington, Wilhelmum Comitem de Northdale, Georgium Comitem de Winton, Robertum Comitem de Carnwath, Wilhelmum Vicecomitem Kenmare, & Wilhelmum Dominum Nairn, commiss' & perpetrat' in nomine ipsorum Milium, Civium & Burgensium, & nomine omnium Communium Regni nostri Magnæ Britanniæ impetiti & accusati existunt; & ipsi prædicti Jacobus Comes de Derwentwater, Wilhelmus Dominus Widdrington, Wilhelmus Comes de Northdale, Robertus Comes de Carnwath, Wilhelmus Vicecomes Kenmare, & Wilhelmus Dominus Nairn, coram Nobis in presenti Parlamento de Proditione prædicta se esse culpabiles separatim cognoverunt:*

6 185. Proceedings against J. E. of Derwentwater 2 G.I.

Nos considerantes quod Justitia est Virtus excellens & altissimo complacens, Volentesque quod predictus Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, & Willielmus Dominus Nairn, de & pro Proditione unde ipsi ut praefertur impetitur accusati & convicti existunt coram Nobis in presenti Parlamento nostro, secundum Legem & Consuetudinem hujus Regni nostri Magnae Britanniae, & secundum Consuetudinem Parliamenti audiantur, sentententur & judicentur, ceteraque omnia quae in hac parte pertinent debito modo exerceantur & exequantur, ac pro eo quod Proceres & Magnates in presenti Parlamento nostro essentibus Nobis humilime supplicaverunt ut Senescallum Magnae Britanniae pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspessione, & industria vestris plurimum confidentes, Ordinavimus & Constituimus vos ex hac Causa Senescallum Magnae Britanniae ad Officium illud, cum omnibus eidem Officio in hac parte debitis & pertinentibus (hac vice) gerendis occupandis & exercendis. Et ideo vobis Mandamus quod circa praemissa diligenter intendatis, & omnia quae in hac parte ad Officium Senescalli Magnae Britanniae pertinent & requiruntur hac vice faciatis, exercetis, & exequamini cum effectu. In cujus rei Testimonium has Litteras nostras fieri fecimus Patentes, Teste me ipso apud Westm. Nono Die Februarii, Anno Regni nostri Secundo.

Per ipsum Regem propria Manu Signatus

Wrighte.

Serjeant at Arms. God save the King.

Then the Herald and Gentleman Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose, and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of London bring forth your Prisoners to the Bar, according to the Order of the House of Lords to you directed.

Then James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn, were all brought to the Bar by the Deputy Governour of the Tower, having the Ax carried before them by the Gentleman Jaylor, who stood with it on the Left Hand of the Prisoners, with the Edge turned from him. The Prisoners when they approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the House of Peers; which Complement was returned them by his Grace, and the House of Peers.

Lord High-Steward. Read the Articles of Impeachment.

ARTICLES of Impeachment of High-Treason exhibited against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Wintoun, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn.

WHEREAS for many Years last a most wicked Design and Contrivance has been formed and carried on, to subvert the ancient and established Government, and the good Laws of these Kingdoms, to extirpate the true Protestant Religion therein established, and to destroy its Professors; and instead thereof, to introduce and settle Popery and Arbitrary Power; in which unnatural and horrid Conspiracy great Numbers of Persons of different Degrees and Qualities, have concerned themselves and acted; and many Protestants, pretending an uncommon Zeal for the Church of England, have joined themselves with professed Papists, uniting their Endeavours to accomplish and execute the aforesaid wicked and traitorous Designs:

And whereas it pleased Almighty God in his good Providence, and in his great Mercy and Goodness to these Nations, to crown the unwearied Endeavours of his late Majesty King William the Third of ever-glorious Memory, by making him the Instrument to procure the Settlement of the Crown of these Realms in the illustrious House of Hanover, as the only Means under God to preserve our Religion, Laws and Liberties, and to secure the Protestant Interest of Europe; since which happy Establishment the said Conspirators have been indefatigable in their Endeavours to destroy the same, and to make Way for the vain and groundless Hopes of a spurious Impostor and Popish Pretender to the Imperial Crown of these Realms.

And to accomplish these Ends, the most immoral, irreligious and unchristian-like Methods have been taken, but more particularly in the last Years of the Reign of the late Queen Anne, during which Time all imaginable Endeavours were used by the said Conspirators, to prejudice the Minds of the Subjects of this Realm against the Legality and Justice of the said Settlement of the Crown: And for that purpose the Holy Scriptures were wrested, and the most wholesome Doctrines of the Church of England perverted and abused by Men in Holy Orders, in the most public and scandalous Manner, in order to condemn the Justice of the late happy Revolution; and thereby to sap and undermine the Foundation of the said happy Establishment; and the most notorious Instruments of these wicked Purposes were countenanced by particular Marks of public Favour and Distinction; false and dangerous Notions of a sole Hereditary Right to the Imperial Crown of these Realms were propagated and encouraged by Persons in the highest Trust and Employments, contrary to the ancient, undoubted and established Laws of these Kingdoms; jesuitical and scandalous Distinctions were invented and publickly inculcated, to enervate the Force and Obligation of those Oaths which had been

contrived in the plainest and strongest Terms by the Wisdom of Parliament for the Security of the said Establishment; and to conceal their Designs, and thereby the better to enable them to carry on the same, great Numbers of the said Conspirators of all Ranks and Conditions, pretending a Zeal for the Protestant Succession, openly and voluntarily took the said Oaths; groundless Fears of the Danger of the Church of *England* were fomented throughout these Kingdoms, to disorder the Minds of well-disposed Protestants.

By all which and many other such ungodly Practices of the said Conspirators, the most causeless and dangerous Jealousies and Dissatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Protestants were much disquieted.

But nevertheless these dishonest Methods were pursued by the said Conspirators with indefatigable Industry, as the only Means to weaken the Foundations of the said happy Establishment.

And whereas the Dissolution of the late glorious Confederacy against *France*, and the Loss of the Ballance of Power in *Europe*, were further Steps necessary to complete the Designs of the said Conspirators; and the same being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Protestant Succession was thereby brought into the most imminent Danger; and by these and other pernicious Measures, the Destruction so long intended by the said Conspirators, for these poor Nations, seem'd near at Hand.

At which Time, and under which most deplorable Circumstances, it pleas'd Almighty God in his infinite Wisdom to call to himself the late Queen *Anne*, and by a Concurrence of many most wonderful Providences to give a quiet and peaceable Accession to his present most Gracious Majesty to the Throne of his Ancestors, to which he was received with one full Voice and Consent of Tongue and Heart, and the united Joy of every good Subject and good Protestant, as their only lawful and rightful Liege Lord; and altho' from the Moment his Majesty ascended the Throne to this Day, his Reign has been one Series of Wisdom, Justice and Clemency; his Labours constant, unwearied and successful to retrieve the Honour and Reputation of these Nations; to re-establish the Trade and recover the Wealth of his Kingdoms; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderness shewn even to his Popish Subjects, and his constant Care has been to procure the universal Good of his People; nevertheless the said Conspirators have, by the most vile and impious Methods, renewed their Endeavours to throw these Kingdoms into the utmost Confusion, and to entail endless Miseries on us and our Posterities: For these Ends many of the above-mentioned most wicked and dangerous Practices have been repeated with the utmost Industry and Inveteracy, to delude, disorder and corrupt the Minds of his Majesty's good Subjects; the most groundless Jealousies have been fomented against his wise and happy Administration, and in many Parts of his Kingdoms the most unnatural, unexampled Riots and Tumults, by the secret and malicious Endeavours of the said Conspirators, have been procured, stirred

up, and encouraged against his peaceable Protestant Subjects, under false Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and seduce them from their Allegiance, and prepare them for an open Rebellion.

And the said Conspirators having at length resolved to deprive these Nations of the invaluable Blessings which they now enjoy under the wise and gentle Reign of his present most gracious Majesty King *George*, and of the certain Prospect of Happiness which they have for their Posterity, in a Succession of Princes derived from himself; did contrive, confederate, and resolve to put their most malicious, wicked, and traitorous Designs into immediate Execution; for which purpose, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nitbisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, together with *Thomas* Forster, Jun. the Lord *Charles* Murray, *Edward* Howard, *Thomas* Errington, *John* Clevering, *William* Sbaftoe, Sir *Francis* Anderson, *Ralph* Standish, *Richard* Townly, *Thomas* Butler, *Thomas* Walton, *Gabriel* Hasket, *Richard* Gascoigne, and divers other Persons, as false Traitors to his present most sacred Majesty King *George*, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his said Majesty, did, in or about the Months of *September*, *October*, or *November*, 1715. most wickedly, maliciously, falsely and traitorously imagine and compass the Death of his said most sacred Majesty.

And for the accomplishing and executing their said traitorous Purpose, they the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nitbisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, and *William* Lord *Nairn*, did, in or about the said Months, or some of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traitorously agree, confederate, conspire, and resolve, together with many other evil-disposed Persons, to raise, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaster*, and elsewhere within this Kingdom, a most cruel, bloody, and destructive War, against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his Royal State, Crown and Dignity.

And the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nitbisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kenmure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforesaid, in the Counties aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and with them did assemble in a warlike and traitorous Manner, in order to raise Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Instruments, at the Times and Places aforesaid, or some of them, did form and compose, or did assist in the forming and composing an Army of Men, consisting of his Majesty's Liege Subjects, in order to wage War against his said Majesty, for and in behalf and in favour of the said Pretender

tender to the Crown of these Realms; and the said last mentioned Conspirators, their Accomplices and Confederates, at the Time and Times and Places aforesaid, and at divers other Times and Places within this Kingdom, did maliciously and traitorously make, levy, and raise War and Rebellion against his most sacred Majesty, and in a warlike and hostile Manner did march thro' and invade several Parts of this Kingdom, and did unlawfully take and seize the Horses and other the Goods and Chattels of many of the peaceable and good Subjects of his Majesty, and in other Places did take and seize, from his Majesty's faithful Subjects, Guns, and other warlike Instruments, for the carrying on their traitorous Purposes.

And the said last mentioned Conspirators, their Complices and Confederates, during their March and Invasion aforesaid, in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traitorously cause and procure the said Pretender to be proclaimed, in the most public and solemn Manner, as King of these Realms; and in several Places in the Counties aforesaid, or some of them, did unlawfully take and seize from his Majesty's Officers of the Revenue the public Money, for the Use and Service of the said Pretender; and thro' many of the Conspirators are avowed Professors of the Popish Religion, yet the more effectually to cover and disguise their most wicked and traitorous Designs, and to delude his Majesty's Subjects, they did prevail on and procure several Men in Holy Orders, Members of the Church of *England*, and who had before that Time abjured the said Pretender, to accompany, countenance and abet the said most traitorous Enterprize, and in several Places in the Counties aforesaid, where the said Conspirators, their Complices and Confederates then were, to pay for the said Pretender in the public Churches, as King of these Realms.

That the said last mentioned Conspirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth or Thirteenth of *November* aforesaid, traitorously seize and possess themselves of the Town of *Preston* in the County *Palatine* of *Lancaster* against his Majesty, and did then and there in a warlike and hostile Manner levy War, oppose, engage, and fight against his Majesty's Forces; and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects.

All which Treasons and Crimes above-mentioned were contrived, committed, perpetrated, acted and done, by the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmore*, *William Lord Nairn*, and other the Conspirators aforesaid, against our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which Treasons and Crimes, the Knights, Citizens and Burgesses in Parliament assembled, do, in the Name of themselves and of all the Commons of *Great Britain*, impeach the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl*

of *Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmore*, *William Lord Nairn*, and every of them.

And the said Commons by Protestation saving to themselves the Liberty of exhibiting at any time hereafter any other Accusations or Impeachments against the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmore*, and *William Lord Nairn*, or any of them; and also of replying to the Answers which the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmore*, and *William Lord Nairn*, or any of them, shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited according to the Course and Proceedings of Parliament; do pray, that the said *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmore*, and *William Lord Nairn*, be put to answer all and every the Premises: And that such Proceedings, Examinations, Trials and Judgments may be upon them and every of them had and used as shall be agreeable to Law and Justice.

Lord High-Steward. Clerk of the Parliament, read the Record of the Answers and Pleas of the Lords the Prisoners at the Bar to the Impeachments.

Die Jovis 19 Januarii, 1715.

THE Order of the Day being read, for bringing *James Earl of Derwentwater*, *William Lord Widdrington*, *William Earl of Nithisdale*, *George Earl of Wintoun*, *Robert Earl of Carnwath*, *William Viscount Kenmore*, and *William Lord Nairn*, to this House, in order to their putting in their several Answers to the Articles of Impeachment of High-Treason exhibited against them by the House of Commons.

The said Earl of *Derwentwater* was brought to the Bar by the Gentlemen-Usher of the Black-Rod, where he kneeled until the Lord Chancellor directed him to rise; and his Lordship acquainted him with the above-mentioned Order, and demanded of him if he was ready to put in his Answer, which he said he was, and deliver'd the same at the Bar.

Which Answer of the said Earl of *Derwentwater*, was read, and is as follows.

The Answer of James Earl of Derwentwater, to the Articles of Impeachment of High-Treason exhibited against him by the Hon. the Knights, Citizens, and Burgesses of Great Britain in Parliament Assembled.

TO a Charge of so high and heinous a Nature the said Earl cannot Answer without the deepest Concern and Affliction, which becomes more weighty from the Share the Honourable House of Commons have been pleas'd to take in the Accusation: He assures himself however, that Great Assembly doth not engage in the Prosecution of an Offence, so open to Conviction in the ordinary

ordinary Course of Law, with design to intercept that Mercy which the Earl, from the Report of his Majesty's natural Goodness, had reason to expect. It would be a Thought unworthy any Member of that August Body, to imagine he could have the least desire of spilling the Blood of any of his Fellow-Subjects, whom his Majesty's great Wisdom should think a fit Object of his Mercy; the said Earl therefore hopes that his Prosecution is taken out of the common Course of Justice, with Intention, that if in his particular Case there shall appear any Circumstances inducing Favour or Compassion, both your Lordships and the Commons may be Intercessors with his Majesty for Grace towards him; whereby the Exercise of the Royal Mercy, upon which the Earl depended (which amongst all the Virtues of the Crown most endears a Monarch to the Love and Affection of his People) may be extended in such Manner as may demonstrate that Clemency for which his Majesty is so greatly renowned, and not encourage any to offend upon the Presumption of it for the future. The said Earl acknowledges, with a real Sorrow, that at the time in the Articles mentioned he was in Arms, and with others did march through and invade several Parts of this Kingdom; and confesses *he is thereby guilty of the Offence wherewith he is charged in the said Articles.* But if any Offence of that kind was ever attended with Circumstances which might move Compassion, the said Earl hopes he may be intitled to it: He begs Leave to inform your Lordships, That his Temper and Inclination disposed him to live peaceably under his Majesty's Government, and he never had the least Prejudice or Malice against his Person, nor was he ever before concerned in or privy to any Design or Contrivance to subvert or disturb the established Government, the Laws or Religion of this Kingdom; and if any Methods were taken by others to accomplish any of those Ends, he was absolutely a Stranger to them; nor did he now engage in this unhappy Undertaking upon any previous Consent or Contrivance for any such purpose; but being young and unexperienc'd, he rashly, and without any Deliberation, engaged himself to meet at *Plainfield in Northumberland*, on Assurance that many of his Relations and Acquaintance would appear there; that his Undertaking was sudden, appears in that he engaged in it without any previous Preparation of Men, Horses, Arms, or other warlike Accoutrements; and as the said Earl cannot be justly reproached with any cruel, severe, or harsh Action during the Continuance in Arms, so he took the first Opportunity that offered of submitting to the King's Mercy. After the sudden Skirmishes at *Preston*, the said Earl, with others, was solicitous to prevent any farther Destruction of the Lives of his Majesty's Subjects, and instrumental to induce all in Arms to submit themselves to the King, provided they might be secured of their Lives. One of his Majesty's Officers, sent from the General, gave them Encouragement to believe, that the Surrender of themselves would be the ready way to obtain the King's Mercy: In Confidence whereof, when a Cessation was agreed on, the said Earl offer'd himself to become one of the Hostages for them till the next Morning, in which time he received further Assurances from the Officers, that the King was a Prince of known Clemency; that this was a distinguishing part of

his Character, and that the free Surrender to Mercy would be the most proper means to obtain it. The said Earl believes his Majesty's Officers were very sensible, and will be so just as to acknowledge, that it had not been impracticable for many of those at *Preston* to make their way through his Majesty's Forces; but this Attempt must have occasioned the loss of many Lives, and might have been productive of ill Consequences to the Government, which the said Earl was desirous to prevent; and when the time agreed on for the Cessation was near expired, and General *Wills* seem'd uneasy in not having received any Message from those in the Town, the said Earl writ a Letter to exhort them to surrender to the King's Mercy; and at the same time declared to the said General, and other Officers, that whatever happened, he was determin'd to continue with them, and rely entirely on his Majesty's Clemency and Goodness, which he had Encouragement to expect; and in such Circumstances the said Earl cannot distrust your Lordships or the Commons readiness, to use their Mediation for Mercy on his Behalf, which will lay him under the highest Obligations of Duty and Affection to his Majesty, and perpetual Gratitude to both Houses of Parliament.

Derwentwater.

The material Words of which Answer appearing not to be sufficiently express and clear, the Lord Chancellor asked the said Earl if he meant by the said Answer to plead guilty to the High-Treason in the said Articles of Impeachment contain'd.

He said he did, and submitted to the King's Mercy, and humbly desir'd their Lordship's Intercession to his Majesty; and his said Answer and Plea was recorded accordingly.

And he withdrew.

Then the Lord *Widdrington* was brought to the Bar, and having there also kneel'd, was acquainted by the Lord Chancellor with the aforementioned Order, and ask'd the same Question as the Earl of *Derwentwater*; and he likewise delivered in his Answer, which was read as follows:

The Answer of William Lord Widdrington to the Articles of Impeachment of High-Treason exhibited against him by the Honourable Knights, Citizens, and Burgeses of Great-Britain in Parliament assembled.

IT is with inexpressible Concern and Affliction the said Lord appears before this August Assembly charged with Crimes of the most heinous Nature; and though it is natural to Mankind to endeavour to conceal their Guilt, and make use of all manner of Defence, especially in the case of Life, yet as he surrendred himself at *Preston*, intirely relying on his Majesty's Mercy, so he is now resolv'd not to take any Measures which may argue the least Dissidence of that Mercy, or of your Lordship's Goodness; and therefore the said Lord confesses he is guilty of the Treason wherewith he is charged in the said Articles; and after having thus freely acknowledged his Offence, he begs leave to lay his Case before your Lordships, and humbly hopes, when the particular Circumstances are considered, it will not be thought

to merit the most rigorous Punishment, but that both your Lordships, and the Honourable House of Commons, which look upon him as a proper Object of his Majesty's Clemency; and he humbly hopes he may not be thought the less unworthy of Favour, in that he never before offended, nor was at any time privy to, or acquainted with any Design or Contrivance to destroy or disturb the established Government, the Laws or Religion of this Kingdom, but came unawares into this sudden and unpremeditated Action; for although he had met with public Rumours and Reports of intended Invasions from Abroad, and Insurrections at Home, yet he never knew, or any other way heard of any formed Design against the Government, till he was told the Night before of a Meeting intended at *Plumfield* in *Northumberland* on the sixth of *October* last; and being soon after informed, that almost all his Neighbours and Acquaintance had there met in Arms, he took a hasty and inconsiderate Resolution of joining them; nor was he in any sort prepared for such an Undertaking, having only some of his own Family with him, no Arms but his common Fowling-Pieces and wearing Swords, and fewer Horses than he had constantly kept for several Years before; and nothing but the Report of so many of his Friends being engaged could have hurried him on to an Enterprize so unaccountably rash and unjustifiable; and he is willing to hope your Lordships will esteem it some Alleviation of his Crime, that in a Commotion of that Nature there was so little Violation of the Rights and Properties of those who opposed them; for he believes few Instances can be found, where such a Multitude continued so long in Arms without doing greater Acts of Violence and Injustice. The said Lord cannot charge himself with any injurious Acts to the Property of his Fellow-Subjects, and endeavoured to prevent them in others; and hopes it was there owing in some Measure, that there was shewn all along greater Marks of Moderation and Humanity, than is common in such a warlike and hostile Proceeding. The Suddenness of the Attack at *Prison*, without any previous Summons, admitted no time for mediating a Submission before the loss of that Blood which was there unfortunately spilt; but after the Heat and Surprize of the first Action was over, a Cessation of Arms was desired, and upon the mutual Messages which then passed, the Officers sent from the General encouraged them to believe the surrendering themselves would be the ready way to obtain the King's Mercy, and gave them repeated Assurances, that they submitted to a Prince of the greatest Clemency in the World: Upon these Hopes and Assurances they made a general Surrender of themselves to the King; and the said Lord may justly take notice to your Lordships, that as he was the last who took up Arms, so he was the first who procured a Meeting of the chief Persons among them, in order to lay them down; and cannot doubt but your Lordships, and the Honourable House of Commons, will think it equitable to make some Distinction between an obstinate Resistance and an early and humble Submission, whereby the Peace and Tranquillity of this part of his Majesty's Dominions was intirely restored. Nature must have started at yielding themselves up to a certain and ignominious Death, when it must be acknowledged that it was not impracti-

cable for many of them to have escaped; and it was possible so great a Number grown desperate might have obtained further Success, and thereby prevented the so speedy suppressing that Insurrection; but the said Lord, and the rest, having with the utmost Confidence relied on the Assurances of his Majesty's great Clemency, and the hopes of Mercy, which had been given them from the Officers who commanded the Royal Forces, he is encouraged with great Earnestness to implore the Intercession of your Lordships, and the Honourable House of Commons, with his Majesty, for that Mercy on which they wholly depended; and as he doth not know where Mercy was refused to those who so early and with so much Resignation submitted to it, so he humbly hopes your Lordships may be induced to think, that the Exercise of this Divine Virtue by his Majesty towards those who call themselves at his Royal Feet upon the sole Prospect and Expectation of it, will appear no less glorious to his Majesty, and prove no less advantageous to the future Quiet and Tranquillity of his Government, than any Examples of Justice in such a Case can be likely to do: And whatever Marks of Goodness and Favour his Majesty shall vouchsafe to the said Lord, will not fail to engage him by the strongest Tyes of Gratitude, to demonstrate in the future Course of his Life the most constant inviolable Duty to his Majesty, and the most real Esteem and Veneration for your Lordships and the Honourable House of Commons.

Widdrington.

And the said Lord *Widdrington* being asked if he had any thing farther to say, he begg'd to be excused all Imperfections in his said Answer, said he had been indisposed with the Gout in his Stomach, and was not able to employ himself in preparing his Answer till last Night, and finished it but this Morning, and humbly implored their Lordships Intercession to his Majesty for Favour and Mercy; and his Answer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Nithsdale* was brought to the Bar, and having there likewise kneeled, was acquainted with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*, and he also delivered in his Answer, which was read as follows.

The Answer of William Earl of Nithsdale, to the Articles of Impeachment of High-Treason Exhibited against him by the Honourable the Knights, Citizens, and Burgeses of Great-Britain in Parliament Assembled.

IT is with the utmost Confusion the said Earl appears at your Lordship's Bar, under the Weight of an Impeachment by the Commons of *Great Britain* for High-Treason; he humbly begs Leave, in Extenuation of his Crime, to assure your Lordships, that he was always a zealous Asserter of the Liberties of his Country, and never engaged in forming or carrying on any Design to subvert the antient established Government, and the good Laws of this Kingdom; but being Summoned by those entrusted with the Administration of the Government in *Scotland*

land to appear at *Edinburgh*, and being assured if he went thither he should be made close Prisoner, he did not obey the Summons; but in all humble Manner applied for their Indulgence in dispensing with his being committed to Goal, offering to give any Bail for his peaceable and quiet Behaviour; which being refused, and being at that time in so ill a State of Health, that a Confinement in *Edinburgh* Castle would have endangered his Life, he was forced to abscond and kept private till several of the Persons mentioned in the said Impeachment, with many other of his Neighbours, appeared in Arms very near the Place where the said Earl lay concealed; and then he inconsiderately and unfortunately (with four of his Domestics, and no other Person whatsoever) joined them, and proceeded in their Company to the Places in the said Articles of Impeachment mentioned; but he knew nothing of the intended Insurrection till they were actually in Arms. The said Earl is deeply sensible of his great Offence, and not affecting Delay, nor being willing to give your Lordships, or the Honourable House of Commons, any unnecessary Trouble; he does with a Sorrow, equal to his Crime, confess that he is guilty of the Treason in the said Articles of Impeachment contained, and throws himself at his Majesty's Feet, imploring his Royal Mercy; and to incline his Majesty thereto, and induce your Lordships to recommend him as an Object thereof, he begs Leave to inform your Lordships, that when he, and the rest that were with him at *Preston*, had engaged in a Battle, a Cessation of Arms being agreed to, they had Intimations from his Majesty's Officers, that if they submitted, they might expect the King's Mercy; and History abounding with Instances of Conditions stipulated with Generals, even with Rebels, and afterwards agreed to, and confirmed by their Sovereigns, they were prevailed on by such Encouragement, together with the Consideration of his Majesty's known Clemency, to surrender themselves Prisoners, whereby the Lives of great Numbers of his Majesty's good Subjects were saved, which by an obstinate Resistance would inevitably have been destroyed; and therefore he most humbly begs your Lordships would be pleased to represent his Case to his Majesty in the most favourable Manner; not doubting but by your Lordships powerful Intercession, he shall find, that as he performed the Duty of a good Christian, in concurring to prevent the Effusion of Blood; so he acted the Part of a wise Man in relying upon a Mercy so extensive as that of his Majesty: And he presumes, when the Honourable House of Commons are apprized of the Nature of his Case, they will not interpose to prevent him from having a Share in the Benefit of that Mercy.

Nithisdale.

And the said Earl of *Nithisdale* being asked if he had any thing further to say, he said he had nothing but to implore the King's Mercy; and his Answer and Plea was recorded accordingly.

And he withdrew.

Then the Earl of *Carnwath* was brought to the Bar, and having there likewise kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

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He said he had no Answer in Writing, but desired to throw himself on the King's Mercy, and humbly implored their Lordship's Intercession to his Majesty on his behalf; and assured the House, if the same were granted, he should think himself obliged to live under the strictest Tyes of Loyalty to his Majesty; and as to the said Articles, he said he was guilty of the High-Treason contained in the said Articles of Impeachment against him; and the said Plea was recorded accordingly.

And he withdrew.

Then the Viscount *Kennure* was brought to the Bar, and having there kneeled also, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he had no Answer in Writing, but was guilty of the Charge of High-Treason contained in the Articles of Impeachment against him, and begged the House would intercede with his Majesty for Mercy; and his Plea was recorded accordingly.

And he withdrew.

Then the Lord *Nairn* was brought to the Bar, and having there also kneeled, was acquainted by the Lord Chancellor with the forementioned Order, and asked the same Question as the Earl of *Derwentwater*.

He said he threw himself upon the King's Mercy, and begged the Intercession of this House to his Majesty; and as to the Articles of Impeachment exhibited against him, he said he was guilty of the High-Treason contained in the said Articles; and his Plea was recorded accordingly.

Then he delivered in a Petition at the Bar, and the same was read as follows.

To the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.

The humble Petition of William Lord Nairn,

SHEWETH,

THAT your Petitioner was educated, and hath always continued a Protestant, according to the Discipline of the Church of *England*; and though, by reason of some mistaken Principles he unwarily imbib'd in his tender Years, he did not in all respects conform to the late Revolution, lying under the less Necessity, for that he had married an Heirets, in whom all the Right of your Petitioner's Estate is invested; and tho' he never took the Oaths, yet he always peaceably submitted to, and lived quietly under the Government as by Law Established, until the breaking out of this Rebellion, in which your Petitioner was inadvertently involv'd, but not before the Lord *Mar*, and his Adherents, had for a considerable time made themselves Masters of *Pertb* and *Dunkeld*, and thereby surrounded your Petitioner's whole Estate, and came to your Petitioner's House, lying in the middle between those places.

Your Petitioner heartily repents of this rash Undertaking, and solemnly declares he knew nothing

nothing of any previous Consultations, or Conspiracies in Favour of the Pretender, before he actually appeared in Arms; nor knew any thing about crossing the *Forth*, untill the Morning he was sent over under *Macintoch's* Command; and then was so far from approving of that Expedition, that tho' to avoid the Imputation of Cowardice he would hazard his own Person therein, your Petitioner ordered back all his Dependants, and was only attended by his Son, and four Servants, who would not leave him in a Time of Danger, tho' often desired; nor was your Petitioner privy to any Designs of marching into *England*, for having been bred a Seaman, he had no Pretensions to Knowledge in the Land Service.

Your Petitioner being now sensible of his Errors, hath pleaded guilty to the Articles of Impeachment of High-Treason exhibited against him, by the Honourable House of Commons, and thrown himself at his Majesty's Feet; humbly beseeching your Lordships, in Commiseration of the deplorable Circumstances of your Petitioner, and his twelve Children, to recommend him to his Majesty for that Mercy, which at the Time of his Surrender he was made to believe he might reasonably expect.

This will lay your Petitioner and his Posterity under the greatest Obligations of Duty and Gratitude to his Majesty, and bind them for ever to bless your Lordships as the merciful Instruments of procuring such a gracious Deliverance.

And your Petitioner shall ever pray, &c.

N A I R N.

And being asked if he had any thing further to say, he said he had not, and withdrew.

Lord High-Steward. My Lords that are the Prisoners at the Bar, I am to acquaint your Lordships, that upon any Occasion which shall be offered you to speak for yourselves, you are to direct your Speech to the Lords in general; and so is any other Person that shall have Occasion to speak to this Court.

Lord High Steward. *James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, Robert Earl of Carnwath, William Viscount Kenmare, and William Lord Nairn,* You stand impeached of High-Treason by the Commons of *Great Britain* in Parliament assembled; which Treason is contained in the Articles that have been lately read; to this you have severally pleaded guilty, and are thereby convicted. What say you, *James Earl of Derwentwater*, why Judgment should not pass upon you according to Law?

Earl of Derwentwater. I Only humbly beg leave of my Noble Peers to repeat a few Circumstances mentioned in my Answer to the Articles of Impeachment exhibited against me by the Honourable House of Commons.

But the Terrors of your Lordships just Sentence, which at once deprive me of my Life and Estate, and compleat the Misfortunes of my Wife and innocent Children, are so heavy upon my Mind, together with my Unexperience, that I am scarce able to alledge what may extenuate my Offence, if any thing can do it. I have confessed myself guilty; but, my Lords, that Guilt was rashly incurred without any Premeditation,

as I hope your Lordships will be convinced by one Particular: I beg leave to observe, I was wholly unprovided with Men, Horses, Arms, and other Necessaries, which in my Situation I could not have wanted, had I been privy to any formed Design: As my Offence was sudden, so my Submission was early; when his Majesty's Generals thought fit to demand Hostages for securing the Terms of the Cession, I voluntarily offered myself, without which the Cession might possibly have proved ineffectual: And whilst I continued Hostage, the great Character of his Majesty's Clemency, and the repeated Encouragement I had to hope for Mercy, by surrendering to it, soon determined me; and I accordingly declared my Resolution to remain with his Majesty's Forces, and from that Time submitted myself to his Goodness, on which I still entirely depend. I humbly hope to obtain the Mediation of your Lordships, and of the Honourable House of Commons, in my behalf; solemnly protesting my future Conduct shall shew me not altogether unworthy your generous Compassion for my Life, which is all I can beg of his Majesty.

Lord High-Steward. My Lord *Derwentwater*, your Lordship's Voice hath not been perfectly heard to this End of the Court, therefore I ask you whether you have pleaded any thing in Arrest of Judgment?

Lord Derwentwater. No, my Lords.

Lord High-Steward. Lord *Widdrington*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord Widdrington. MY Lords I have abandoned all manner of Defence ever since I first surrender'd myself to his Majesty's Royal Clemency, and only now beg leave to repeat to your Lordships some Circumstances of my unhappy Case, which I have already set forth in my Answer.

Your Lordships see before you an unfortunate Man, who after leading a private and retired Life for many Years, has by one rash and inconsiderate Action, exposed himself and his Family to the greatest Calamities and Misery, and is now upon the Point of receiving the severest Sentence directed by any of our *English* Laws.

I do protest to your Lordships, that I was never privy to any concerted Measures against his Majesty's Royal Person, or the established Government: As to the Insurrection in *Northumberland*, I only heard of it accidentally the Night before it happen'd, and being soon after informed that all my Neighbours and Acquaintance had met in Arms, a crowd of confused and mistaken Notions hurried me at once into a precipitate Resolution of joining them; a Resolution, which, I must own, I could never since calmly reflect upon without part of that Confusion I find myself under in the public Acknowledgment of so much Rashness and Folly. After thus plunging out of my Depth, as unprepared for such an Enterprize as the Action was unpremeditated, I cannot, for my own Particular, upon the strictest Recollection charge myself with any Violation of the Properties of my Fellow-Subjects: But on the contrary, I always endeavoured to encourage Humanity and Moderation during the whole course

course of our miserable Expedition; and in order to make the best Atonement in my Power for the great Fault I had been guilty of, I can justly say, that I was in no small Degree instrumental in procuring a general Submission to his Majesty. But, my Lords, however willing or desirous, either I or any others might be to put a speedy End to those unfortunate Troubles; Self-preservation, the first and most powerful Law of Nature, would have render'd the Proposal vain and fruitless, had not the Officers who commanded the Royal Forces given us Hopes of Mercy, and assured us we submitted to a Prince of the greatest Clemency in the World. These Hopes, and this Assurance, answered the strongest Objections, overcame all remaining Difficulties, and gave the finishing Stroke to a general Surrender, whereby the further Effusion of *British* Blood was prevented, and a perfect Tranquillity restored to these Parts of his Majesty's Dominions.

My Lords, as this my first Attempt was rash and unpremeditated, as I always used and promoted Moderation and Humanity towards my Fellow-Subjects, and as I did not obstinately persist in my Fault, but was the first who proposed an early Submission to his Majesty, I humbly hope my unhappy Case, and the deplorable Condition of my unfortunate Children, already deprived of their tender Mother, will raise a generous Compassion in your Lordships, and the Honourable House of Commons; and I most earnestly entreat both your Lordships, and that Honourable House, to become Intercessors with his Majesty in my behalf, for that Mercy which I was encouraged to hope for when I first surrendered, and which I have ever since with the utmost Confidence relied on.

I have only to add my most solemn Assurance before this August Assembly, that no future Time shall ever find me wanting in the most inviolable Duty and Gratitude to that merciful Prince who gives me my Life, and restores a Father to five miserable and distressed Orphans; and I shall always retain the highest Esteem and Veneration for your Lordships and the Honourable House of Commons.

Lord High-Steward. Lord *Widdrington*, for greater certainty I ask your Lordship whether you have pleaded any thing in Arrest of Judgment.

Lord Widdrington. No, my Lords, I have not.

Lord High-Steward. *William* Earl of *Nithisdale*, what hath your Lordship to say for yourself why Judgment should not pass upon you according to Law?

Lord Nithisdale. MY Lords, I have confessed myself guilty, relying on his Majesty's Mercy; and I beg leave to assure your Lordships I was never privy to any Plot or Design against his Majesty's Person or Government, and was unprovided with any Necessaries for such a Purpose; but rashly and inconsiderately, with only four of my Servants, joined those who appeared in Arms in my Neighbourhood, and was one of the last who went unto them.

At *Preston*, my Lords, his Majesty's Generals gave great Hopes and Encouragement to believe

that surrendering to his Majesty's Mercy, was the ready Way to obtain it, with repeated Assurances that his Majesty was a Prince of the greatest Clemency.

Upon those Hopes and Assurances I submitted myself, and still entirely depend on his Majesty's Goodness, earnestly beseeching your Lordships and the Honourable House of Commons, to intercede with his Majesty on my behalf.

And I solemnly promise your Lordships I shall, during the Remainder of my Life, pay the utmost Duty and Gratitude to his most gracious Majesty, and the highest Veneration and Respect to your Lordships and the Honourable House of Commons.

Lord High-Steward. I must also ask your Lordship (your Lordship's Voice not reaching thus far) whether you have pleaded any thing in Arrest of Judgment.

Lord Nithisdale. No, my Lords, I have not.

Lord High-Steward. Lord *Carnwath*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord Carnwath. MY Lords, I shall not trouble this Great Assembly with a Repetition of what I said, when formerly before your Lordships and his Majesty's Council.

I hope these Noble Lords entertain that favourable Opinion of my sincere Dealing then, as to believe that want of Experience and Knowledge of the Laws was the great Inducement of engaging me in this fatal and unhappy Undertaking.

The only thing which I can hope or wish for is his Majesty's Mercy; he has the Character of a merciful Prince: Should it please him to think me a proper Object for it (tho' I must confess myself a very unworthy one) all I can say, my Lords, is, that the Remainder of my Life shall convince his Majesty, and all the World, of my true Penitence and Gratitude.

My Lords, I am yet an unworthy Member of this great Body, the Peerage, now expecting your Lordships Judgment as to Life or Death: Should it be for Life, my Demeanour and Carriage for the future will be such, as none of your Lordships shall be ashamed of having shew'd me Compassion; but should it be for Death, God's Will be done; to my last Hour I shall pray for the Nation's and your Lordships Prosperity; having this Comfort in my present Distress, that your Lordships are my Judges at this Tribunal: And yet a greater Comfort have I, that I am soon to appear before a greater, where I can't despair of finding Mercy and Forgiveness for all my Sins.

I beg God Almighty's Pardon for them: I have already ask'd his Majesty's, and I do it now; and I do humbly beg leave, once more, and perhaps the last Occasion that ever I shall have, to desire that your Grace, this noble House, and the Honourable House of Commons of *Great Britain*, who are now here, would intercede with his Majesty for me.

I take my Leave of your Lordships, and wish you all Happiness.

Lord High-Steward. Does your Lordship offer any thing in Arrest of Judgment.

Lord Carnwath. No, my Lords.

Lord High-Steward. Lord *Kenmare*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord Kenmare. MY Lords, I am truly sensible of my Crime, and want Words to express my Repentance. God knows I never had any personal Prejudice against his Majesty, nor was I ever accessory to any previous Design against him. I humbly beg my noble Peers and the Honourable House of Commons to intercede with the King for Mercy to me, that I may live to shew myself the dutifullest of his Subjects, and to be the Means to keep my Wife and four small Children from starving; the Thoughts of which, with my Crime, makes me the most unfortunate of all Gentlemen.

Lord High-Steward. My Lord, your Voice not being heard to this End of the Court, I would know whether in what you have said you have offered any thing in Arrest of Judgment.

Lord Kenmare. No, my Lords.

Lord High-Steward. Lord *Nairn*, what have you to say for yourself why Judgment should not pass upon you according to Law?

Lord Nairn. I Am very sensible how unfit I am to plead my own Cause before your Grace (my Lord High-Steward) and this august Assembly; and therefore, though I could say much to extenuate the Crime for which I stand impeached, yet I chuse rather to lay my whole Strefs upon the King's Mercy, for which he is so renowned, and which I was put in hopes of at the Time of my Surrender. In Consideration whereof, and in Compassion to an afflicted Wife and twelve Children, I still hope, by the Mediation of your Grace, my noble Lords, and the Honourable House of Commons, I may obtain it; solemnly protesting, that in Gratitude for so signal a Deliverance, I will, to the End of my Life, remain a dutiful and obedient Subject to his most gracious and sacred Majesty King *George*.

Lord High-Steward. My Lord, for greater certainty, I ask your Lordship whether you have offered any thing in Arrest of Judgment?

Lord Nairn. No, my Lords.

Serjeant at Arms. O Yes, O Yes, O Yes! Our sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence upon Pain of Imprisonment.

Lord High-Steward. James Earl of *Derwentwater*, William Lord *Widdrington*, William Earl of *Nithisdale*, Robert Earl of *Carnwath*, William Viscount *Kenmare*, William Lord *Nairn*;

You stand impeached, by the Commons of *Great Britain* in Parliament assembled, of High Treason, in traiterously imagining, and compassing the Death of his most sacred Majesty, and in conspiring for that end to levy a bloody and destructive War against his Majesty, in order to depose and murder him; and in levying War ac-

cordingly, and proclaiming a Pretender to his Crown to be King of these Realms.

Which Impeachment, tho' one of your Lordships, in the Introduction to his Plea, supposes to be out of the ordinary and common Course of the Law and Justice, is yet as much a Course of Proceeding according to the Common Law, as any other whatsoever.

If you had been indicted, the Indictment must have been removed and brought before the House of Lords (the Parliament sitting.) In that case you had ('tis true) been accused only by the Grand Jury of one County; in the present, the whole Body of the Commons of *Great Britain*, by their Representatives, are your Accusers.

And this Circumstance is very observable, (to exclude all possible Supposition of Hardship as to the Method of proceeding against you) That however all great Assemblies amongst us are apt to differ on other Points, You were impeached by the unanimous Opinion of the House of Commons (not one contradicting.)

The found themselves, it seems, so much concerned in the Preservation of his most truly sacred Majesty, and the Protestant Succession (the very Life and Soul of these Kingdoms) that they could not omit the first Opportunity of taking their proper Part, in order to so signal and necessary an Act of his Majesty's Justice.

And thus the whole Body Politic of this free Kingdom has in a manner rose up in its own Defence, for the Punishment of those Crimes, which, 'twas rightly apprehended, had a direct Tendency to the everlasting Dissolution of it.

To this Impeachment you have severally pleaded, and acknowledged yourselves guilty of the High-Treason therein contained.

Your Pleas are accompanied with some Variety of Matter, to mitigate your Offences, and to obtain Mercy.

Part of which, as some of the Circumstances said to have attended your Surrender (seeming to be offered rather as Arguments only for Mercy, than any thing in Mitigation of your preceding Guilt) is not proper for me to take Notice of.

But as to the other Part, which is meant to extenuate the Crimes of which you are convicted, it is fit I should take this Occasion to make some Observations to your Lordships upon it; to the end that the Judgment to be given against you may clearly appear to be Just and Righteous, as well as Legal; and that you may not remain under any fatal Error in respect of a greater Judicature, by reflecting with less Horror and Remorse on the Guilt you have contracted than it really deserves.

It is alledged by some of your Lordships, that you engaged in this Rebellion without previous Concert or Deliberation, and without suitable Preparations of Men, Horses and Arms.

If this should be supposed true, on some of your Lordships averring it, I desire you to consider, that as it exempts you from the Circumstance of contriving this Treason, so it very much aggravates your Guilt in that Part you have undoubtedly born in the Execution of it.

For it shews, That your Inclinations to rebel were so well known (which could only be from a continued Series of your Words and Actions) that the Contrivers of that horrid Design depended upon you, and therein judg'd rightly: That your Zeal to engage in this Treason was so strong, as

to carry you into it on the least Warning, and the very first Invitation: That you would not excuse yourselves by Want of Preparation, as you might have done; and that rather than not have a Share in the Rebellion, you would plunge yourselves into it, almost naked and unprovided for such an Enterprize: In short, that your Men, Horses, and Arms were not so well prepared, as they might, and would have been on longer Warning; but your Minds were.

It is alledged also as an Extenuation of your Crime, that no cruel or harsh Action (I suppose is meant no Rapine or Plunder, or worse) has been committed by you.

This may, in Part only be true. But then your Lordships will at the same time consider, that the laying waste a Tract of Land bears but a little Proportion in point of Guilt, compared with that Crime of which you stand convicted; an open Attempt to destroy the best of Kings, to ruin the whole Fabric, and raze the very Foundations of a Government, the best suited of any in the World, to perfect the Happiness, and support the Dignity of human Nature: The former Offence cautes but a Mischief that is soon recovered, and is usually pretty much confined; the latter, had it succeeded, must have brought a lasting and universal Destruction on the whole Kingdom.

Besides, much of this was owing to Accident; your March was so hasty, partly to avoid the King's Troops, and partly from a vain Hope to stir up Insurrections in all the Counties you passed through, that you had not time to spread Devastation, without deviating from your main, and, as I have observed, much worse Design.

Farther, 'tis very surprizing, that any concerned in this Rebellion should lay their ingaging in it on the Government's doing a necessary and usual Act in like cases for its Preservation; the giving Orders to confine such as were most likely to join in that Treason: 'Tis hard to believe that any one should rebel, merely to avoid being restrain'd from rebelling; or that a gentle Confinement would not much better have suited a crazy State of Health, than the Fatigues and Inconveniencies of such long and hasty Marches in the Depth of Winter.

You Lordships rising in Arms therefore, has much more justified the Prudence and Fitness of those Orders, than those Orders will in any wise serve to mitigate your Treason. Alas! happy had it been for all your Lordships had you fallen under so indulgent a Restraint!

When your Lordships shall in good earnest apply yourselves to think impartially on your Case, surely you will not yourselves believe, that it is possible, in the nature of the thing, to be engaged, and continue so long engaged, in such a difficult and laborious Enterprize, through Rashness, Surprize, or Inadvertency: Or that, had the Attack at *Preston* been less sudden, (and consequently the Rebels better prepared to receive it) your Lordships had been reduced the sooner, and with less, if not without any Bloodshed.

No, my Lords; these, and such like, are artful Colourings proceeding from Minds filled with Expectation of continuing in this World; and not from such as are preparing for their Defence before a Tribunal, where the Thoughts of the Heart, and the true Springs and Causes of Actions, must be laid open.

And now, my Lords, having thus removed some false Colours you have used; to assist you yet farther in that necessary Work of thinking on your great Offence as you ought, I proceed to touch upon several Circumstances that seem greatly to aggravate your Crime, and which will deserve your most serious Consideration.

The Divine Virtues ('tis one of your Lordships own Epithets) which all the World as well as your Lordships acknowledge to be in his Majesty, and which you now lay claim to, ought certainly to have withheld your Hands from endeavouring to depose, to destroy, to murder that most Excellent Prince; so the Impeachment speaks, and so the Law construes your Actions; and this is not only true in the Notion of Law, but almost always so in Deed and Reality: 'Tis a trite, but very true Remark, that there are but few Hours between Kings being reduced under the Power of Pretenders to their Crown, and their Graves. Had you succeeded, his Majesty's Case would, I fear, have hardly been an Exception to that general Rule, since 'tis highly improbable, that Flight should have saved any of that Illustrious and Valiant Family.

'Tis a farther Aggravation of your Crime, that his Majesty, whom your Lordships would have dethroned, affected not the Crown by Force, or by the Arts of Ambition, but succeeded peaceably and legally to it; and on the Decease of her late Majesty without Issue, became undoubtedly the next in course of Descent capable of succeeding to the Crown, by the Law and Constitution of this Kingdom; as it stood declared some Years before the Crown was expressly limited to the House of *Hanover*. This Right was acknowledged, and the Descent of the Crown limited or confirmed accordingly, by the whole Legislature in two successive Reigns; and more than once in the later, which your Lordships Accomplices are very far from allowing, would bias the Nation to that Side.

How could it then enter into the Heart of Men, to think that private Persons might with a good Conscience endeavour to subvert such a Settlement, by running to tumultuary Arms; and by intoxicating the dreggs of the People with contradictory Opinions, and groundless Slanders; or that God's Providence would ever prosper such wicked, such ruinous Attempts?

Especially if in the next place it be considered, that the most fertile Inventions on the side of the Rebellion, have not been able to assign the least shadow of a Grievance as the Cause of it: To such poor Shifts have they been reduced on this Head, that for want of better Colours, it has been objected, in a solemn manner, by your Lordships Associates, to his Majesty's Government; that his People do not enjoy the Fruits of Peace as our Neighbours have done since the last War: Thus they first robbed us of our Peace, and then upbraid us that we have it not. 'Tis a monstrous Rebellion that can find no fault with the Government it invades, but what is the Effect of the Rebellion it self.

Your Lordships will likewise do well to consider what an additional Burthen your Treason has made necessary on the People of this Kingdom; who wanted, and were about to enjoy some Respite: To this end, 'tis well known, that all new, or encrease of Taxes, were the last Year carefully avoided

avoided, and his Majesty was contented to have no more Forces than were just sufficient to attend his Person, and shut the Gates of a few Garrisons.

But what his Majesty thus did for the Ease and Quiet of his People, you most ungratefully turn'd to his Disadvantage, by taking Encouragement from thence, to endanger his and his Kingdom's Safety, and to bring Oppression on your Fellow-Subjects.

Your Lordships observe I avoid expatiating on the Miseries of a Civil War, a very large and copious Subject; I shall but barely suggest to you on that Head, that whatever those Calamities may happen to be in the present Case, all who are at any Time or in any Place Partakers in the Rebellion (especially Persons of Figure and Distinction) are in some degree responsible for 'em: And therefore your Lordships must not hold your selves quite clear from the Guilt of those Barbarities which have been lately committed, by such as are engaged in the same Treason with you, and not yet perfectly reduced, in burning the Habitations of their Countrymen, and thereby exposing many Thousands to Cold and Hunger in this rigorous Season.

I must be so just to such of your Lordships, as profess the Religion of the Church of *Rome*, that you had one Temptation, and that a great one, to engage you in this Treason, which the others had not; in that 'twas evident, Success on your Part must for ever have established Popery in this Kingdom, and that probably you could never have again so fair an Opportunity.

But then, good God! how must those Protestants be covered with Confusion, who entered into the same Measures, without so much as capitulating for their Religion (that ever I could find from any Examination I have seen or heard) or so much as requiring, much less obtaining a frail Promise, that it should be preserved, or even tolerated.

It is my Duty to exhort your Lordships thus, to think of the Aggravations as well as the Mitigations (if there be any) of your Offences; and if I could have the least Hopes, that the Prejudices of Habit and Education would not be too strong for the most earnest and charitable Entreaties; I would beg you not to rely any longer on those Directors of your Consciences, by whose Conduct you have, very probably, been led into this miserable Condition; but that your Lordships would be assisted by some of those pious and learned Divines of the Church of *England*, who have constantly bore that infallible Mark of sincere Christians, universal Charity.

And now, my Lords, nothing remains, but that I pronounce upon you, (and sorry I am that it falls to my Lot to do it) that terrible Sentence of the Law, which must be the same that is usually given against the meanest Offender in the like Kind.

The most ignominious and painful Parts of it are usually remitted by the Grace of the Crown to Persons of your Quality; but the Law in this Case being deaf to all Distinctions of Persons, requires I should pronounce, and accordingly it is adjudged by this Court,

“ That you, *James Earl of Derwentwater*,
 “ *William Lord Widdrington*, *William Earl*
 “ *of Nitbisdale*, *Robert Earl of Carnwath*,

* The King being told of this the next Morning, merrily said,

“ *William Viscount Kenmare*, and *William*
 “ *Lord Nairn*, and every of you, return to
 “ the Prison of the *Tower* from whence you
 “ came; from thence you must be drawn
 “ to the Place of Execution; when you
 “ come there, you must be hang'd by the
 “ Neck, but not till you be Dead; for you
 “ must be cut down alive, then your Bowels
 “ must be taken out, and burnt before your
 “ Faces; then your Heads must be sever'd
 “ from your Bodies, and your Bodies di-
 “ vided each into four Quarters; and these
 “ must be at the King's disposal.

And God Almighty be merciful to your Souls!

Serjeants at Arms. O Yes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up uncovered, and declaring there was nothing more to be done by Vertue of the present Commission, broke the Staff, and pronounced it dissolv'd: And then leaving the Chair, came down to the Woolpack, and said, Is it your Lordships Pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

And then the House adjourned to the House above, and the Lords and others returned in the same Order they came down.

After Sentence pass'd great Interest was made on their Behalf for Mercy; insomuch, that the House of Lords presented an Address to the King, *To Reprieve such of them as should deserve his Mercy*; to which the King only answered, *That on this and all other Occasions, he would do what he thought most consistent with the Dignity of his Crown, and the Safety of his People.* However, Lord *Widdrington*, Lord *Carnwath*, and Lord *Nairn* were reprieved, and afterwards pardoned; but the other three, Lord *Derwentwater*, Lord *Nitbisdale*, and Lord *Kenmare*, were ordered for Execution on *Febr. 24.*

The Earl of *Nitbisdale* escap'd the Blow, having found means of getting out of the *Tower* in Disguise, the very Night before the Execution.

Early the next Morning the Scaffold on *Tower-Hill* was surrounded with the Guards, and a little before ten o' th' Clock the Earl of *Derwentwater* and the Lord Viscount *Kenmare*, were carried in an Hackney Coach from the *Tower*, to the *Transport-Office* on *Tower-Hill*, where there was a Room hung with Black for their Reception, and there was a Passage or Gallery rail'd in, which led from thence to the Scaffold, which was also covered with Black.

The Earl of *Derwentwater* was first led to the Scaffold, where having spent some time in praying with a Book, he then address'd himself to the Sheriff, and desired the Liberty to read a Paper, which he had drawn up: This Request being readily granted, he went to the Rails of the Scaffold and read as follows:

BEING in a few Minutes to appear before the Tribunal of God, where, though most unworthy, I hope to find Mercy, which I have not found from Men now in Power, I have endeavored to make my Peace with his Divine Majesty, by most humbly begging Pardon for all the Sins of my Life; and I

It was the best thing a Man in his Condition could have done.

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doubt not of a merciful Forgiveness, thro' the Merits of the Passion and Death of my Saviour Jesus Christ; for which End, I earnestly desire the Prayers of all good Christians.

After this, I am to ask Pardon of those whom I might have scandalized by pleading guilty at my Trial. Such as were permitted to come to me, told me, that having been undeniably in Arms, pleading guilty was but the Consequence of having submitted to Mercy; and many Arguments were us'd to prove there was nothing of moment in so doing; among others the universal Practice of signing Leases, whereof the Preambles run in the Name of the Person in Possession.

But I am sensible that in this I have made bold with my Loyalty, having never owned any other but King James the Third for my rightful and lawful Sovereign; him I had an Inclination to serve from my Infancy, and was mov'd thereto by a natural Love I had to his Person, knowing him to be capable of making his People happy; and though he had been of a different Religion from mine, I should have done for him all that lay in my Power, as my Ancestors have done for his Predecessors, being thereto bound by the Laws of God and Man.

Wherefore, if in this Affair I have acted rashly, it ought not to affect the Innocent; I intended to wrong no Body, but to serve my King and Country, and that without Self-interest; hoping by the Example I gave, to have induc'd others to their Duty; and God, who sees the Secrets of my Heart, knows I speak Truth. Some Means have been propos'd to me for saving my Life, which I look'd upon as inconsistent with Honour and Conscience, and therefore I reject'd them; for, with God's Assistance, I shall prefer any Death, to the doing a base unworthy Action. I only wish now, that the laying down my Life, might contribute to the Service of my King and Country, and the Re-establishment of the ancient and fundamental Constitution of these Kingdoms; without which, no lasting Peace, or true Happiness, can attend them; then I should, indeed, part with Life even with Pleasure: As it is, I can only pray, that these Blessings may be bestow'd upon my dear Country; and since I can do no more, I beseech God to accept of my Life, as a small Sacrifice towards it.

I am a Roman Catholick; I am in perfect Charity with all the World, I thank God for it, even with those of the present Government, who are most

instrumental in my Death. I freely forgive such as ungenerously reported false Things of me; and I hope to be forgiven the Trespasses of my Youth, by the Father of infinite Mercy; into whose Hand I commend my Soul.

J. A. DERWENTWATER.

P. S. If that Prince who now governs, had given me my Life, I should have thought my self obliged never more to have taken up Arms against him.

After the reading this Paper he delivered it to the Sheriff to do with it as he pleas'd. Then turning to the Block he view'd it close, and finding in it a rough Place, which might offend his Neck, he bid the Executioner chip it off. Having prepar'd himself for the Blow by pulling off his Coat and Waistcoat, he lay down to fit his Head to the Block, telling the Executioner that the Sign he should give him was, *Lord Jesu receive my Soul*, and at the third time of repeating it he was to do his Office; which accordingly he did at one Blow.

Immediately after the Earl of Derwentwater was executed as above, the Lord Kenmore was brought to the Scaffold, accompany'd by his Son and some Friends, and attended by two Clergymen of the Church of England, which was the Religion he profess'd. He made no formal Speech, but testify'd his Sorrow for having pleaded guilty. Then laying down his Head on the Block, he rais'd it up again, and still continuing on his Knees, gave the Executioner some Money, and told him, he would give him no Sign, but that when he laid down his Head again, he might perform his Office as he saw good. Then having lifted up his Hands a short time in Prayer, he resolutely laid down his Head, which at two Blows was sever'd from his Body.

After his Execution a Letter was found which he wrote to the Pretender (by the Style of King James) in which he declared, *That he died for his faithful Services to his Majesty, but hoped the Cause he died for would flourish after his Death: And as he suffered for his Service, he hop'd his Majesty would provide for his Wife and Children.*



CLXXXVI. The Trial of George Earl of Wintoun, before the House of Lords, upon an Impeachment for High-Treason, March 15, 16, 19. 1715. 2 GEO. I.

Die Lunæ 9 Januarii, 1715.

THE Earl of Wintoun was impeach'd of High-Treason; and the Articles were brought up against him and read the same Day in the House of Lords: And it was order'd that the said Earl, with the other impeach'd Lords, should be brought to the Bar of the House of Lords the next Day, to hear the said Articles read, and to abide such further Order as the House should think fit to make concerning them.

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Die Martis 10 Januarii, 1715.

The Earl of Wintoun and the other impeach'd Lords were brought to the Bar in the usual Form; then the said Articles of Impeachment were read unto them; after which the Lord Chancellor asked them severally what they had to say thereunto, and acquainted them, that if they had any thing to request of the House this was their proper Time.

Thereupon the Earl of Wintoun acquainted the House he was unprepared, and very ignorant of

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the Form of their Lordships Judicature, and desired he might have a Copy of the said Articles, and such Time to answer as the House should think fit, and that Council might be assign'd to assist him. He was directed to withdraw; and being accordingly withdrawn, the House took his Requests into Consideration, and thereupon

Ordered, That his Lordship should be allowed a Copy of the said Articles of Impeachment, and Time 'till *Saturday* next to put in his Answer thereunto; and that Council should be assign'd him in order to assist him in preparing his Answer, and likewise in his Defence in Matters of Law.

Then his Lordship was called in again, and the Lord Chancellor acquainted him with the said Order, and that the House expected he should name such Council as he desired to have.

To which he answered, that no body was allow'd to come to him, he was a Stranger and unprepared, and desired to be allowed Time to name his Council.

Then his Lordship being again withdrawn,

After some time he was again called in, and the Lord Chancellor, by Order of the House, acquainted him, That the House was pleased, besides Council, to allow him a Solicitor, and to give him leave to name whom he desired to come to him this Evening, or to-morrow Morning, in order to advise him in the naming of Council and Solicitor.

To which purpose the Earl of *Wintoun* named Mr. *Hercot*, a Clergyman, Mr. *Messias*, Major *Sinclair*, and Mr. *George Lesly*, a Lawyer.

And then he again withdrew.

And the Names of the several Persons mentioned by the Earl of *Wintoun*, being read to him,

Ordered, That they have leave to repair to the said Earl at any convenient Hour, any time before the sitting of the House to-morrow, in order to advise him in the naming of Council, and a Solicitor to assist him in his Defence.

Ordered, That the several Lords impeached, or any of them, have Liberty to cause Search to be made, and Copies of Records and Journals to be taken out, in order to their Defence; and that the said Lords shall have Summons issued for such Witnesses as they shall respectively send in the Names of, to be by them made use of at their Trials; which Witnesses shall have the Protection of this House for their safe coming and going, during the Time of the said Trials.

Die Jovis 12 Januarii, 1715.

A Petition of *George Earl of Wintoun* was presented to the House and read, praying that he may have some further Time for nominating Council, and a Solicitor to act for him, and in the mean time to allow his Friends formerly named to have access to him; he having caused Application to be made to Sir *Thomas Poveis*, and Mr. *Mead*, to have appeared for him, but they both excused themselves.

Ordered, That the same Persons before allow'd to go to the Petitioner, have leave to resort to him at any reasonable Time, before Eleven of the Clock to-morrow in the Forenoon, in order to the advising him in naming other Council, instead of those who have refused.

Whereas by Order of this House on *Tuesday* last, the Lords impeached were to put in their respective Answers to the Articles of Impeach-

ment of High-Treason exhibited against them by the House of Commons on *Saturday* last: The House being this Day moved at the Request of the Earl of *Derwentwater* and Lord *Widdrington*, to grant them further Time to put in their Answers to the said Articles of Impeachment: It is Ordered, that all the said Lords have hereby further Time allowed to put in their respective Answers to the said Articles till *Monday* next at one of the Clock.

Die Lunæ 16 Januarii, 1715.

Whereas by Order of this House on *Thursday* last, the Lords impeached were allowed Time to put in their Answers till this Day to the Articles of Impeachment exhibited against them, the House being this Day, moved in regard the Council assign'd some of the said Lords refused to be concerned for them, that *Thursday* next may be appointed peremptorily for them to put in their several Answers to the said Articles: It is Ordered, That the several Lords do peremptorily put in their several Answers, to the said Articles on *Thursday* next at One of the Clock; and that the Lieutenant of his Majesty's Tower of *London* do bring to this House, on that Day, by that Time, the said several Lords for the Purposes aforesaid; and that Notice be forthwith given them of this Order.

Die Jovis 19 Januarii, 1715.

The Earl of *Wintoun* was brought to the Bar, by the Gentleman-Usher of the Black Rod, where he kneeled until the Lord Chancellor directed him to rise, and his Lordship acquainted him with the above-mentioned Order, and demanded of him if he was ready to put in his Answer.

He said he had a Petition to present to the House: He was an entire Stranger to the Nature of their Lordships Proceedings, and desired his Petition might be read; and the same was read as follows.

*To the Right Honourable the Lords
Spiritual and Temporal in Parlia-
ment Assembled.*

The Humble Petition of *George Earl of
Wintoun*,

Humbly Sheweth,

THAT on *Thursday* last I having applied to your Lordships, representing how I had caus'd Application to be made to two Lawyers, to act as Council for me, in the Impeachment exhibited before your Lordships against me by the Honourable House of Commons, and that they both declin'd to meddle, for Reasons then given; your Lordships were pleased to allow me some more Time for nominating of Council, and Solicitors, and this Day for giving in my Answers; but by Reason of my close Confinement, and that your Lordships Order for allowing some Persons to have access to me, expired on *Friday* last at Eleven Forenoon; I have had no Opportunity of naming other Council and Solicitors; nor can I have the Assistance of any, 'till they are appointed by your Lordships and they allow'd access to me.

That

That your Petitioner has several Specialities and Matters of great Moment, which he conceives necessary to be a Part of his Answers, and which cannot be drawn into Form, without the Assistance of his Council and Solicitors.

Forasmuch therefore as this Affair is to me of the greatest Importance ; may it please your Lordships to assign Sir *Constantine Phipps*, and Mr. *Peer Williams*, to be Council, and *Charles Menzies*, and Mr. *James Leslie*, to be my Solicitors ; and to order that they may have access to me from Time to Time during my Trial ; as also that your Lordships would be pleased to allow Mr. *George Hercot*, a Minister of the Church of *England*, to have access to me from Time to Time, seeing I am confined in a Room alone.

And your Petitioner shall ever pray, &c.

WINTOUN.

The said Earl of *Wintoun* was directed to withdraw ; and being withdrawn accordingly,

The Order made on *Thursday* last upon his Petition was read, as also the several Orders made on *Monday* last.

Ordered, That the Council mentioned in the said Petition be assigned him, and that either of the said Solicitors be likewise assigned, and that he have Time to put in his Answer to the said Articles till *Monday* next. And that the Clergyman mentioned in his Petition, being his Relation, may have access to him, provided he will stay in Custody with him during his Confinement.

Then the Earl of *Wintoun* was again called in, and the Lord Chancellor acquainted him, that the House had considered his Petition, and assign'd him the Council he desir'd ; and would assign him either of the two Solicitors he should chuse ; and that the Clergyman above-mentioned might come to him upon the Condition before expressed. Then the said Earl of *Wintoun* naming Mr. *Menzies*, the House accordingly assigned him for his Solicitor, and Ordered, that the said Council and Solicitor may have access to him from Time to Time at all reasonable Hours ; and he withdrew.

Die Sabbati 21 Januarii, 1715.

A Petition of *George Earl of Wintoun* was presented to the House and read, praying that their Lordships would allow him such further Time for putting in his Answer, as their Lordships shall think fit.

Ordered, That the said Petition be rejected.

Die Lunæ 23 Januarii, 1715.

The Earl of *Wintoun* being brought to the House according to Order by the Lieutenant of the Tower, the Gentleman-Usher was commanded to bring him to the Bar, where he kneel'd until he was directed by the Lord Chancellor to rise ; and his Lordship acquainted him that this was the peremptory Day appointed by the House for his putting in his Answer to the Articles of Impeachment exhibited against him by the House of Commons, and asked him if he was ready to put in his Answer.

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He thereupon made some Excuses, and desired further Time for that purpose ;

And was directed to withdraw.

Ordered, That the Earl of *Wintoun* be called in, and acquainted, that this House, upon considering his Petition on *Saturday* last, for further Time to put in his Answer to the Articles of Impeachment exhibited against him, did reject his said Petition ; and having indulged him more than any of the Lords impeached, are still of Opinion (this being the peremptory Day for putting in his Answer) to allow him no further Time, and that the Consequence of his refusing to plead which will ensue in Law is, that Judgment will be awarded against him, as if he had pleaded guilty. Then,

He was accordingly called in, and the Lord Chancellor acquainted him with the said Matter.

He thereupon delivered in at the Bar his Answer fairly engrossed on Parchment, which was read.

Die Sabbati 28 Januarii, 1715.

The Commons replied to the Answer of the Earl of *Wintoun*.

Die Mercurii 8 Februarii, 1715.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, that *Thursday* the sixteenth Day of this instant *February* be, and is hereby appointed for the Trial of *George Earl of Wintoun* at the Bar of this House in *Westminster-Hall*, upon the Impeachment of High-Treason exhibited against him by the House of Commons.

Die Veneris 10 Februarii, 1715.

Upon reading the Petition of *George Earl of Wintoun*, setting forth, that he had a Petition in the House on *Wednesday* last, when their Lordships appointed *Thursday* next for the Petitioner's Trial, desiring that Consideration might be had to the distance of the Place, and the Season of the Year, for bringing up of his Witnesses, both Men and Women, from *Scotland*, and other Parts ; but the Noble Peer who promised, and would have moved the said Petition, not being present at the Time of making the Motion for appointing a Day of Trial, the said Petition was not presented in Form, which occasioned the Appointment of so short a Time, wherein it is altogether impossible to prepare any thing in order for the said Trial : And praying that this House will grant an Order to compel the several Witnesses following (*viz.*) *John Gordon*, *George Trotter*, *George Hogg*, *John Stewart*, all Servitors to the Earl of *Wintoun*, — *Beaton*, Wife to Mr. *David Nicholson* in *Tranent*, *Adam Purvis*, Clerk of the Episcopal Meeting-House in *Tranent*, *Christopher Seton* in *Port-Seton*, Lieutenant-General — *Wills*, — *Forster*, Esq; — *Miller*, Esq; Capt. *Alexander Stretton*, — *Mackintosh* of *Bordlin*, — *Aenslie*, and — *Todd*, Bailiffs of *Musselbrough*, and the School-master of *Isberan*, to appear before this House at the Trial, to give Evidence on behalf of the Petitioner ; and to allow such Time for their coming hither, as, in regard to the Distance of the Place, and the Season of the Year, and the Importance of the

Affair, their Lordships, in their great Wisdom and Justice shall think reasonable: It is Ordered, That the Time appointed for the Trial of the Petitioner in *Westminster-Hall* be, and is hereby, enlarged to *Thursday* the eighth Day of *March* next: And that the several Persons afore-named be, and are hereby required to attend this House on *Thursday* the said eighth Day of *March*, as Witnesses on behalf of the Petitioner, except such of the said Persons as are now Prisoners for High-Treason; and that they shall have the Protection of this House for their safe coming and going, during the Time of the said Trial.

Die Lunæ 5 Martii, 1715.

Upon reading the Petition of *George Earl of Wintoun*, setting forth, that his Agents have used all Diligence possible in serving the Order of this House for the Attendance of his Witnesses; and now they are all on their Way hither, part by Sea and part by Land: And that the Nature of his Defence is such, that if the Witnesses were arrived, as none of them are, the Time would be too short to prepare his Briefs, and instruct his Council; and praying that the Time appointed for his said Trial, may be enlarged for such Time as their Lordships, in their great Justice and Wisdom, shall think proper, in a Case of so great Consequence: It is ordered, that the Time appointed for the Petitioner's Trial be, and is hereby enlarged till *Thursday* the fifteenth Day of this instant *March*, at ten of the Clock in the Forenoon.

Die Lunæ 12 Martii, 1715.

A Petition of *George Earl of Wintoun* was presented to the House and read, setting forth, that his Agents have used all possible Diligence in getting his Witnesses hither, and several of them are lately arrived, but four of the most material of them, though they all be on their Way hither, are not yet come up, some of them being lame and others very infirm, so that they are not able to travel so quickly; and praying, that the Time appointed for his Trial may be enlarged for such Time as their Lordships, in their great Justice and Wisdom, shall think proper, in a Case of so great Concern.

And after Debate thereupon, and reading the Orders made in relation to the said Trial, *Charles Menzies*, the Petitioner's Solicitor, was called in and examined upon Oath at the Bar, touching the Allegations of the said Petition; and failing to make good the same;

And being withdrawn,

It was moved to reject the Petition.

And the Question being put whether the said Petition shall be rejected, it was resolved in the Affirmative.

Die Martis 13 Martii, 1715.

Several Orders were made for preserving the Peace, and touching the Course of Proceeding, to, and at the ensuing Trial; and among them,

Ordered, That the Council assigned the said Earl of *Wintoun* may be present when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any such shall arise.

Die Mercurii 14 Martii, 1715.

Upon reading the Petition of *George Earl of Wintoun*, praying that this House will be pleased

to assign, and add Mr. *Kettleby*, and Dr. *Straban* to his Council formerly named, and that they may have access to him during his Confinement: It is Ordered, that the Council above-mentioned be assigned the Petitioner, to be heard to Matters of Law, but not to Matters of Fact, so as not to put off the Petitioner's Trial, and that they, or either of them have access to the Petitioner from Time to Time, at all seasonable Times.

A Motion being made, that the following Persons, whose Names were contained in a List exhibited at the same Time, on behalf of the Earl of *Wintoun*, might be summoned as Witnesses for the said Earl at his Trial; being then, as alledg'd, in or near the City of *London*.

Ordered, By the Lords Spiritual and Temporal in Parliament assembled, that *John Gordon* of *Kirkhill*, *Alexander Nesbet* Writer in *Edinburgh*, *William Knox*, *Thomas Baine*, *John Wattedene*, all three of *Seaton*, *Mrs. Magdalen Corbie* of *Cannongate*, *Agnes Duncan* of *Seaton*, Dr. *Lidderdale* a Physician, Dr. *Cockburne* a Divine, Dr. *John Inglis*, Major *Sinclair*, *George Trotter*, and *George Hogg* of *Seaton*, be and are hereby required to attend this House in *Westminster-Hall*, to-morrow at ten of the Clock in the Forenoon, in order to be examined as Witnesses, on the behalf of *George Earl of Wintoun* at his Trial.

The House being informed that the Earl of *Wintoun* desired that General *Carpenter* might be examined as a Witness at his Trial:

The said General *Carpenter* being a Member of the House of Commons;

A Message was sent to that House by Mr. *Helford* and Mr. *Loxibond*, to acquaint them, that the Lords do desire that they will give leave to the said General *Carpenter* to be examined at the said Earl's Trial.

Ordered, That the Witnesses which shall be produced by the Earl of *Wintoun* to be examined in his Defence, shall be examined upon Oath, which Oath to be administer'd to the Witnesses on both Sides at the said Trial shall be this:

The Evidence which you shall give in this Trial, concerning George Earl of Wintoun, Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God, and the Contents of this Book.

Die Jovis 15 Martii, 1715.

The Messengers sent Yesterday to the House of Commons return Answer, That the Commons have given leave to General *Carpenter* to be examined as a Witness at the Trial of *George Earl of Wintoun*.

The House was then adjourned to *Westminster-Hall*.

Begun in *Westminster-Hall* on *Thursday*, *March* 15, 1715-16.

The first Day.

ABOUT one of the Clock, the Lords came from their own House into the Court erected in *Westminster-Hall*, in the manner following.

The Lord High-Steward's Gentlemen Attendants, two and two.

The Clerks Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery; the Clerk of the Parliament bearing the King's Commission to the Lord High-Steward.

The Master in Chancery, two and two.

Then the Judges.

The Peers Eldest Sons, and Peers Minors, two and two.

Four Serjeants at Arms with their Maces, two and two.

The Yeomen Ushers of the House.

Then the Peers, two and two, beginning with the youngest Barons.

Then four Serjeants at Arms with their Maces.

The Serjeant at Arms attending the Great-Seal, and Purse-Bearer.

Then Garter King at Arms; and the Gentleman-Usher of the Black Rod, carrying the White Staff before the Lord High-Steward.

William Lord Cowper. The Lord High-Steward alone, his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack.

The Clerk of the Crown, in the Court of Chancery, standing before the Clerk's Table, with his Face towards the State, having his Majesty's Commission to the Lord High-Steward in his Hand, made three Reverences towards the Lord High-Steward; and, on his Knee, presented the Commission to the Lord High-Steward; after which, and usual Reverences, the same was carried down to the Table: And then Proclamation for Silence was made in this manner:

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

Then the Lord High-Steward stood up, and spoke to the Peers.

Lord High-Steward. His Majesty's Commission is going to be read; your Lordships are desired to attend.

All the Peers uncovered themselves, and they and all others stood up uncovered while the Commission was reading.

GEORGIUS R.

GEOGIUS, Dei Gratia, Magnæ Britannicæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Prædilecto & Fideli Consiliario nostro Willielmo Domino Cowper, Cancellario nostro Magnæ Britannicæ, Salutem. Cum Georgius Comes de Winton, cum aliis, coram Nobis in præfenti Parlamento, per Milites, Cives & Burgenses in Parlamento nostro Assesblat' de alta Proditione per ipsum Georgium Comitem de Winton, & ab' commiss' & perpetrat' in nomine ipsorum Militum, Civium & Burgensium, & nomine omnium Communium Regni nostri Magnæ Britannicæ impetit' & accusat' existit. Nos considerantes quod Justitia est Virtus excellens & Altissimo complacens, Volentesque quod prædict' Georgius Comes de Winton, de & pro Proditione unde ipse ut præfertur impetit' & accusat' existit coram Nobis in præfenti Parlamento nostro, secundum Leg' & Consuetudinem hujus Regni nostri Magnæ Britannicæ, & secundum Consuetudinem Parlamenti audiatur,

sententietur & adjudicetur, cæteroque omnia quæ in hac parte pertinent debito modo exerceantur & exequantur, ac pro eo quod Proceres & Magnates in præfenti Parlamento nostro assenblat' Nobis humilime supplicaverunt ut Senescallum Magnæ Britannicæ pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspectione, & industria vestris plurimum confidentes, Ordinavimus & Constituimus vox ex hac Causa Senescallum Magnæ Britannicæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' & pertinen' (hac vice) gerend' occupand' & exercend'. Et ideo vobis Mandamus quod circa præmissa diligenter intendatis, & omnia quæ in hac parte ad Officium Senescalli Magnæ Britannicæ pertinent & requiruntur hac vice faciatis, exerceatis, & exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste meipso apud Westm' Decimo Quinto Die.

Per ipsum Regem propria Manu Signat'

Wrighte.

Serjeant at Arms. God save the King.

Then the Herald and Gentleman Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace; and then his Grace, attended by the Herald, Black Rod and Seal-Bearer (making his proper Reverences towards the Throne) removed from the Wool-Pack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that purpose, and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Seal-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of London, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

Then George Earl of Winton was brought to the Bar by the Deputy Governour of the Tower, having the Ax carried before him by the Gentleman Jaylor, who stood with it on the Left Hand of the Prisoner, with the Edge turned from him. The Prisoner when he approached the Bar (after kneeling) bowed to his Grace the Lord High-Steward, and to the House of Peers; which Compliment was returned him by his Grace, and the House of Peers.

And Proclamation being again made for keeping Silence,

The Lord High-Steward spake to the Prisoner as follows.

George Earl of Winton, you are brought to the Bar of this August Judicature, in order to a fair and impartial Trial, on the Impeachment of High-Treason exhibited against you by the Commons of Great-Britain in Parliament assembled; to which you have answered, and pleaded Not Guilty: Thereupon the Commons have replied, and undertaken to prove you guilty of the High-Treason whereof you stand impeached.

Under

Under this heavy Charge (of which your Lordship has long since had a Copy, and which you will now hear read again) nothing can be a greater Support to your Mind (especially if not conscious of Guilt) than to consider, that you are about to be tried by your Peers; not any select Number of them, but by their whole Body assembled in Parliament, and indifferently summoned to attend this Trial.

Hence your Lordship may be assured, that Justice will be administer'd to you, attended not only with that common Degree of Compassion which Humanity itself derives to Persons in your Condition, but also with that extraordinary Concern for you, which naturally flows from a Parity of Circumstances common to yourself, and to them who judge you, (those Bonds, the weighty Accusation laid upon you, with its Consequences, almost only excepted.)

On the other hand, you must not hope, that if you shall be clearly prov'd guilty, their Lordships, being under the strongest Obligation to do Right that can be laid on noble Minds, I mean that of their Honour, will not break through all the Difficulties unmerited Pity may put in their way, to do perfect Justice upon you, however miserable that must render your Condition.

Your Lordship will not be interrupted while you are making your Defence in a proper manner; and therefore you will also attend with Patience to what shall be said by the Managers of the House of Commons, or given in Evidence against you.

When any of the Witnesses produced against you by the Gentlemen of the House of Commons are thoroughly examined by them, your Lordship will have Liberty to cross-examine every Witness before another is called.

But the Council assigned you are not to cross-examine any Witnesses, nor to give you any Assistance public or private, while Matter of Fact only is in Question; but if any Matter of Law arise during the Course of your Trial, they may speak to it in your Lordship's Behalf: And to that End they are permitted to be within hearing, that they may be the more ready and able to serve your Lordship on such Occasion.

Your Lordship is the first that on an Impeachment for High-Treason will have had the Benefit of a good Law made in the first Year of the late Queen (since the Revolution;) whereby in all Trials for High-Treason, as well as other capital Offences mentioned in the Act, the Witnesses produced on the Part of the Prisoner are to be examined on their Oaths: So that your Witnesses will become entitled, in Respect of the Obligation under which they give their Testimony, to the same Degree of Credit as the Witnesses produced against you will be.

I take it for granted, that if your Lordship desires it, you will be allowed the Use of Pen, Ink, and Paper, to take Notes in order to your Defence: And I doubt not but if during the Trial you are observed to omit any just Advantage which the Law allows you, I shall not only be excused, but approved, if I put you in mind of it.

I am also commanded to acquaint your Lordship, that when you have Occasion to speak, you are to address yourself to the Lords in general, and not to any Lord in particular; as all others who shall have Occasion to speak in this Trial will likewise take notice they are to do.

The Lord High-Steward having done, commanded the Articles of Impeachment, and the Earl of *Wintoun's* Answer therunto, as also the Replication of the Commons to the said Answer, to be read; and the same were read accordingly, as follows.

ARTICLES of Impeachment of High-Treason exhibited against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Wintoun, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn.

WHEREAS for many Years last a most wicked Design and Contrivance has been formed and carried on, to subvert the antient and established Government, and the good Laws of these Kingdoms, to extirpate the true Protestant Religion therein established, and to destroy its Professors; and instead thereof, to introduce and settle Popery and Arbitrary Power; in which unnatural and horrid Conspiracy great Numbers of Persons of different Degrees and Qualities have concerned themselves and acted; and many Protestants, pretending an uncommon Zeal for the Church of *England*, have joined themselves with professed Papists, uniting their Endeavours to accomplish and execute the aforesaid wicked and traitorous Designs.

And whereas it pleased Almighty God in his good Providence, and in his great Mercy and Goodness to these Nations, to crown the unwearied Endeavours of his late Majesty King *William* the Third of ever-glorious Memory, by making him the Instrument to procure the Settlement of the Crown of these Realms in the illustrious House of *Hanover*, as the only Means under God to preserve our Religion, Laws and Liberties, and to secure the Protestant Interest of *Europe*; since which happy Establishment the said Conspirators have been indefatigable in their Endeavours to destroy the same, and to make Way for the vain and groundless Hopes of a spurious Impostor and Popish Pretender to the Imperial Crown of these Realms.

And to accomplish these Ends, the most immoral, irreligious and unchristian-like Methods have been taken, but more particularly in the late Years of the Reign of the late Queen *Ann*, during which Time all imaginable Endeavours were used by the said Conspirators to prejudice the Minds of the Subjects of this Realm against the Legality and Justice of the said Settlement of the Crown: And for that purpose the Holy Scriptures were wrested, and the most wholesome Doctrines of the Church of *England* perverted and abused by Men in Holy Orders, in the most public and scandalous Manner, in order to condemn the Justice of the late happy Revolution; and thereby to sap and undermine the Foundation of the said happy Establishment; and the most notorious Instruments of these wicked Purposes were countenanced by particular Marks of public Favour and Distinction; false and dangerous Notions of a sole Hereditary Right to the Imperial Crown of these Realms were propagated and encouraged by Persons in the highest Trust and Employments, contrary to the ancient un-

doubted

doubted and established Laws of these Kingdoms ; jesuitical and scandalous Distinctions were invented and publicly inculcated, to enervate the Force and Obligation of those Oaths which had been contrived in the plainest and strongest Terms by the Wisdom of Parliament for the Security of the said Establishment ; and to conceal their Designs, and thereby the better to enable them to carry on the same, great Numbers of the said Conspirators of all Ranks and Conditions, pretending a Zeal for the Protestant Succession, openly and voluntarily took the said Oaths ; groundless Fears of the Danger of the Church of *England* were fomented throughout these Kingdoms, to disorder the Minds of well-disposed Protestants.

By all which and many other such ungodly Practices of the said Conspirators, the most cruel and dangerous Jealousies and Dissatisfactions were created in the Minds of the good People of this Kingdom, and great Numbers of well-meaning, but deluded Protestants were much disquieted.

But nevertheless these dishonest Methods were pursued by the said Conspirators with indefatigable Industry, as the only Means to weaken the Foundations of the said happy Establishment.

And whereas the Dissolution of the late glorious Confederacy against *France*, and the Loss of the Balance of Power in *Europe*, were further Steps necessary to compleat the Designs of the said Conspirators ; and the same being effected by the late ignominious Peace with *France*, the *French* King was render'd formidable, and the Protestant Succession was thereby brought into the most imminent Danger ; and by these and other pernicious Measures, the Destruction so long intended by the said Conspirators, for these poor Nations, seem'd near at Hand.

At which Time, and under which most deplorable Circumstances, it pleas'd Almighty God in his infinite Wisdom to call to himself the late Queen *Ann*, and by a Concurrence of many most wonderful Providences to give a quiet and peaceable Accession to his present most Gracious Majesty to the Throne of his Ancestors, to which he was received with one full Voice and Consent of Tongue and Heart, and the united Joy of every good Subject and good Protestant, as their only lawful and rightful Liege Lord ; and altho' from the Moment his Majesty ascended the Throne to this Day, his Reign has been one Series of Wisdom, Justice and Clemency ; his Labours constant, unwearied and successful to retrieve the Honour and Reputation of these Nations ; to re-establish the Trade and recover the Wealth of his Kingdoms ; and although all imaginable Encouragement has been given to the Church of *England*, and all Tenderness shewn even to his Popish Subjects, and his constant Care has been to procure the universal Good of his People ; nevertheless the said Conspirators have, by the most vile and impious Methods, renewed their Endeavours to throw these Kingdoms into the utmost Confusion, and to entail endless Miseries on us and our Posterities : For these Ends many of the abovementioned most wicked and dangerous Practices have been repeated with the utmost Industry and Inveteracy, to delude, disorder and corrupt the Minds of his Majesty's good Subjects ; the most groundless Jealousies have been fomented against his wise and happy Admi-

nistration, and in many Parts of his Kingdoms the most unnatural, unexampled Riots and Tumults, by the secret and malicious Endeavours of the said Conspirators, have been procured, stirred up, and encouraged against his peaceable Protestant Subjects, under false Pretences of Zeal for the Church of *England*, and thereby more effectually to delude his good Subjects, and seduce them from their Allegiance, and prepare them for an open Rebellion.

And the said Conspirators having at length resolved to deprive these Nations of the invaluable Blessings which they now enjoy under the wise and gentle Reign of his present most gracious Majesty King *George*, and of the certain Prospect of Happiness which they have for their Prosperity, in a Succession of Princes derived from himself ; did contrive, confederate, and resolve to put their most malicious, wicked, and traiterous Designs into immediate Execution ; for which purpose, *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, and *William* Lord *Nairn*, together with *Thomas* Forster, Jun. the Lord *Charles* Murray, *Edward* Howard, *Thomas* Errington, *John* Cleaving, *William* Shafree, Sir *Francis* Aunerton, *Ralph* Standish, *Richard* Townly, *Thomas* Butler, *Thomas* Walton, *Gabriel* Hejket, *Richard* G. Jeigne, and divers other Persons, as false Traitors to his present most sacred Majesty King *George*, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they as good and faithful Subjects owed to his said Majesty, did, in or about the Months of *September*, *October*, or *November*, 1715, most wickedly, maliciously, falsely and traiterously imagine and compass the Death of his said most sacred Majesty.

And for the accomplishing and executing their said traiterous Purpose, they the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, and *William* Lord *Nairn*, did, in or about the said Months, or some of them, and at divers other Times, and in divers Places within this Kingdom, wickedly and traiterously agree, confederate, conspire, and resolve, together with many other evil-disposed Persons, to raise, excite, and levy within the Counties of *Teviotdale*, *Northumberland*, *Cumberland*, and the County *Palatine* of *Lancaster*, and elsewhere within this Kingdom, a most cruel, bloody and destructive War, against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his Royal State, Crown and Dignity.

And the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Winton*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, *William* Lord *Nairn*, their Accomplices and Confederates, in or about the Months aforesaid, in the Counties aforesaid, or some of them, did gather together great Numbers of his Majesty's Subjects, and with them did assemble in a warlike and traiterous Manner, in order to raise Tumults and Rebellion within this Kingdom, and having procured great Quantities of Arms, Ammunition and warlike Instruments, at the Times and Places aforesaid, or some of them, did form and compose, or did

assist

assist in the forming and composing an Army of Men, consisting of his Majesty's Liege Subjects, in order to wage War against his said Majesty, for and in behalf and in favour of the said Pretender to the Crown of these Realms; and the said last mentioned Conspirators, their Accomplices and Confederates, at the Time and Times and Places aforesaid; and at divers other Times and Places within this Kingdom, did maliciously and traiterously make, levy, and raise War and Rebellion against his most sacred Majesty; and in a warlike and hostile Manner did march thro' and invade several Parts of this Kingdom; and did unlawfully take and seize the Horses and other the Goods and Chattels of many of the peaceable and good Subjects of his Majesty, and in other Places did take and seize, from his Majesty's faithful Subjects, Guns, and other warlike Instruments, for their carrying on their traiterous Purposes.

And the said last mentioned Conspirators, their Complices and Confederates, during their March and Invasion aforesaid, in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed in the most public and solemn Manner, as King of these Realms; and in several Places in the Counties aforesaid, or some of them, did unlawfully take and seize from his Majesty's Officers of the Revenue the public Money, for the Use and Service of the said Pretender; and though many of the Conspirators are avowed Professors of the Popish Religion, yet the more effectually to cover and disguise their most wicked and traiterous Designs, and to delude his Majesty's Subjects, they did prevail on and secure several Men in Holy Orders, Ministers of the Church of *England*, and who had before that Time abjured the said Pretender, to accompany, countenance and abet the said most traiterous Enterprize; and in several Places in the Counties aforesaid, where the said Conspirators, their Complices and Confederates then were, to pray for the said Pretender in the public Churches, as King of these Realms.

That the said last mentioned Conspirators, their Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforesaid, traiterously seize and possess themselves of the Town of *Preston* in the County *Palatine* of *Lancaster* against his Majesty, and did then and there in a warlike and hostile Manner levy War, oppose, engage, and fight against his Majesty's Forces; and did then and there cause and procure a miserable and horrid Slaughter and Murther of many of his Majesty's faithful Subjects.

All which Treasons and Crimes abovementioned were contrived, committed, perpetrated, acted and done, by the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, *William* Lord *Nairn*, and other the Conspirators aforesaid, against our Sovereign Lord the King, his Crown and Dignity; and contrary to the Duty of their Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which Treasons and Crimes, the Knights, Citizens and Burgeesses in Parliament assembled,

do, in the Name of themselves and of all the Commons of *Great Britain*, impeach the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, *William* Lord *Nairn*, and every of them.

And the said Commons by Protestation saving to themselves the Liberty of exhibiting at any time hereafter any other Accusations or Impeachments against the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, and *William* Lord *Nairn*, or any of them; and also of replying to the Answers which the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, and *William* Lord *Nairn*, or any of them, shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited according to the Course and Proceedings of Parliament; and do pray, that the said *James* Earl of *Derwentwater*, *William* Lord *Widdrington*, *William* Earl of *Nithisdale*, *George* Earl of *Wintoun*, *Robert* Earl of *Carnwath*, *William* Viscount *Kennure*, and *William* Lord *Nairn*, be put to answer all and every the Premises: And that such Proceedings, Examinations, Trials, and Judgments may be upon them and every of them had and used as shall be agreeable to Law and Justice.

The Answer of George Earl of Wintoun, to the Articles of Impeachment exhibited against him by the Honourable House of Commons, for High-Treason and other High Crimes and Misdemeanours.

THE said Earl saving to himself all Benefits of Exception to the Incertainties and Infirmities in the said Articles of Impeachment contained, and also all Advantages and Privileges belonging to him as a Peer of *Great Britain*, for Answer to the said Articles says, That he cannot but esteem it the greatest Addition to his Afflictions, to fall under the Displeasure of the Honourable House of Commons: Yet as his Innocence under these Misfortunes is his Support, so he hopes it will be his Security. He being taken with Persons that were in Arms against the Government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same Impeachment; but when it shall appear how much the Circumstances of his Case differ from others, he does not doubt but your Lordships great Justice will distinguish him in Judgment; and that it will be as pleasing to that Honourable Body, who are his Accusers, to have an innocent Man acquitted, as one that is guilty condemned. He begs leave to take notice, that he is descended from a very ancient, noble Family, in whose Blood the Screams of Loyalty were always pure, never corrupted or polluted with Treason or Sedition; and he never degenerated so much from his Loyal Ancestors, as to form or carry on any Design to subvert or alter the Constitution of these Kingdoms, but for the Preservation of it was upon all Occasions ready to sacrifice his Fortune, and even his Life: He

was so cautious to avoid giving occasion to be suspected by the Government, that about eight Years ago, upon his Return from his Travels, he withdrew from all Conversation, and confined himself to his House, never corresponded by Letter with any Person whatsoever; yet to his great Misfortune, he could not be quiet or safe in his closest Retirement; for many Persons, both Officers and others of the Militia of the Shire of *Lothian*, under the specious Pretence of serving the Government, but in reality actuated by private Pique and Revenge, several times, contrary to Law, forcibly entred by Night into his Dwelling-house, called *Seaton* Palace, rifled it, turned his Servants out of Doors, and carried away the Provisions of his Family. The most Sacred Places did not escape their Fury and Resentment, they broke into his Chapel, defaced the Monuments of his Ancestors, took up the Stones of their Sepulchres, thrust Irons through their Bodies, and treated them in a most barbarous, inhuman and unchristian-like manner; Cannon and Mortars were brought to demolish his House, and several Troops of Dragoons having gotten the Possession thereof, some of them kept Guard there, and when they left it, many of the Militia enter'd, and kept Possession thereof till they were driven from thence by the Highlanders, by whom he was likewise very ill treated, he being the only Person that was plunder'd by them. By these and many other Severities, the said Earl was forced to leave his House, and seek for Shelter among his Tenants and Neighbours, where he was pursued from House to House, and at last very unfortunately driven into the Company of some of the Gentlemen named in the Impeachment. He presumes to affirm to your Lordships, that he did not join them with a traitorous, or rebellious Design, but only with an Intention to preserve himself from being insulted and assassinated; for he had been once before taken up without any Warrant or Authority, and having got from the Persons in whose Custody he was, they threatned, if they could retake him, to murder him; and had before imbrued their Hands in the Blood of the Son of a neighbouring Gentleman. He never intended to have left his own Country; and when some Gentlemen mentioned coming into *England*, he oppos'd it; he was far from assisting or encouraging them in their Undertakings; he was not admitted into their Secrets, nor informed of their Designs, and was so much a Stranger to their Proceedings, that when they marched towards *Northumberland*, he was told they were going along the Skirts of the Hills in *Scotland* to avoid General *Carpenter*; but afterwards discovered they were in *England* when it was too late, and to return alone into *Scotland* was too hazardous, which he did not attempt, because he had reason to believe they would soon go back to *Scotland*.

Although he was constrain'd to keep the other Lords and Gentlemen Company, yet he never joined with them in any act of Hostility, nor assisted in taking any of the public Money, or in seizing any Guns or other warlike Instruments, or countenanced or abetted them therein. He did not at *Preson* or elsewhere fire a Pistol, offer Violence to any Person whatsoever, or in any other manner fight against, or resist his Majesty's Forces, but with the rest surrendered himself to General *Wills*. The Honour of a Peer is more

valuable than Life it self, and therefore he ought to be so much the more cautious that it be not stained with the least Imputation of Guilt. The said Earl knows his Innocence, and hopes your Lordships will excuse him, if in Justice to himself, and for the Preservation of his Honour, he does not take upon him the Guilt of Crimes, the very Thoughts of which were always Strangers to his Breast: And therefore, in Answer to the Impeachment, he says, that he is Not Guilty of the Treason and other the Crimes and Misdemeanors mentioned in the said Articles, or any of them, in Manner and Form as is therein alledged; and for his Trial puts himself on your Lordships, who are his Peers, and begs your Lordships to believe that his Answer proceeds from the Sense he has of the Truth of it, and not from Obstinacy or any Inclination to give your Lordships and the Honourable House of Commons any unnecessary Trouble, or from the least Doubt or Mistrust of his Majesty's Clemency. But if upon his Trial it shall appear, that he hath committed any Act which in the Rigour of the Law may be construed to amount to the Crime of High-Treason, he hopes the Innocence of his Heart, and his Ignorance in the Law will, by the Power of your Lordships Intercession, render him an Object of his Majesty's Mercy, which he and the rest at the Time of surrendering themselves were encouraged by his Majesty's Officers to depend upon. The said Earl submits his Case thus circumstanced to your Lordships great Wisdom and Judgment, and humbly prays your Lordships favourable Interpretation thereof, not doubting but to make his Innocence appear to your Lordships Satisfaction.

WINTOUN.

The Reply of the House of Commons to the Answer of George Earl of Wintoun.

A Message was brought from the House of Commons by Mr. *Hampden* and others, to acquaint this House, that they have considered the Answer of *George Earl of Wintoun* to the Impeachment exhibited against him by the Knights, Citizens, and Burgesses assembled in Parliament, and do aver their Charge against the said *George Earl of Wintoun* for High-Treason to be true, and that the said Earl of *Wintoun* is guilty of the High-Treason in such manner as he stands impeached; and that the Commons will be ready to prove their Charge against him at such convenient time as shall be appointed for that purpose.

Lord High-Steward. The Distance of this Place from the Bar is so very great, that I am obliged to ask your Lordships Leave that I come down to the Table.

Lords. Ay, ay.

Which being done accordingly,

The *Lord High-Steward* said, Gentlemen of the House of Commons, you will be pleased now to proceed.

Mr. Hampden. MY Lords, we appear in this Place in behalf of all the Commons of *Great Britain*, to make good the Impachment of High-Treason against the Prisoner at the Bar *George Earl of Wintoun*.

The Commons in Parliament assembled being justly alarmed with the Dangers to which this Nation has been exposed by the late unnatural Rebellion, have found it incumbent on them to enquire into the Authors and Promoters of so fatal and pernicious an Attempt, which was no less than to deprive these Nations of the invaluable Blessings which they enjoy under the wise and gentle Reign of his most sacred Majesty King *George*.

The indispensable Duty which the Commons owe to his Majesty, and to those they represent, engage them to appear in the Cause of their Country, by examining into the Rise and Progress of the said late traiterous Enterprize, contrived and carried on with an Intent to depose and murder his said Majesty, and to set up a Popish Pretender to the Crown of these Realms, and in consequence, to change the Constitution of this Nation, and to introduce a slavish and arbitrary Government.

The Earl of *Wintoun* appearing to the Commons to have been deeply engaged in the late Rebellion, their Zeal and Affection, and their Concern for the Safety of the Nation, and the Protestant Succession, and the Liberties of the People, have rendered it necessary for them to bring to your Lordships Bar this Offender, against whom they have, in the Name of themselves, and of all the Commons of *Great-Britain*, exhibited Articles of Impeachment of High-Treason, setting forth and charging,

That the Earl of *Wintoun* (with his Associates named in the Articles and divers others) contrary to his Allegiance, did traiterously conspire and imagine the Death of his most Sacred Majesty; and in Aid of such Treason, did in the Months of *September, October, or November 1715*, resolve to levy in several Parts of *Scotland* and *England* a most destructive War against his Majesty.

That his Lordship, with other his Confederates, did assemble in a warlike manner, and procur'd Arms, Ammunition, and warlike Instruments, and did compose an Army to wage War against his Majesty, and did March thro' and invade several Parts of this Kingdom, and unlawfully seiz'd his Majesty's Treasure for the Service of the Pretender, and took away the Horses and other Goods of many of his Majesty's peaceable Subjects.

And that during the said March and Invasion, the Earl of *Wintoun*, with other Rebels, did, in open Defiance of his Majesty's undoubted Title to the Crown of these Realms, frequently cause the Pretender to be proclaimed in a public and solemn manner as King of these Realms.

That the more effectually to disguise these wicked Intentions, and to delude his Majesty's Subjects, the said Earl, with other Rebels, did prevail on several Ministers of the Church of *England*, and who had abjur'd the Pretender, to pray for the Pretender in several public Churches as King of these Realms.

And that the said Earl, his Associates, and Accomplices, did in *November* last, traiterously possess themselves of the Town of *Preston* in the County-Palatine of *Lancaster*, and did levy War and fight against his Majesty's Forces, and procur'd a miserable Slaughter and Murder of many of his Majesty's good and faithful Subjects.

My Lords, the Earl of *Wintoun* has, in his Plea to the said Impeachment, thought fit to deny part

of this great and heavy Charge; and in Answer to other Parts of it, he suggests to your Lordships to the Effect following;

That being taken with Persons that were in Arms against the Government, he might be presum'd to be equally guilty with them; but that when your Lordships shall consider the Circumstances of his Case, he doubts not of finding a Distinction from others in your Judgment.

He acquaints your Lordships with the Loyalty of his Ancestors, from whose Character, he says, he is not so much degenerated, as to form or carry on a Design against the Constitution of these Kingdoms.

That to avoid being suspected by the Government, he withdrew himself some Years ago from all Conversation, and retir'd to his own House; but that several of the Militia of the Shire of *Lothian*, under pretence of serving the Government, did, contrary to Law, forcibly enter his Lordship's House, which they riss'd, and committed several other Disorders there.

That afterwards Cannon and Mortars were brought to demolish his House, and several Troops of Dragoons took Possession of it; and upon their leaving it, the Militia came and kept Possession of his House till they were driven thence by the Highlanders, by whom he was also very ill treated.

That by these Severities, and afterwards not being suffered to live quietly among his Tenants, where he had retir'd for Shelter, he was driven into the Company of some of the Gentlemen named in the Impeachment; but affirms to your Lordships, that it was with an Intent to preserve himself from being assassinated.

That he oppos'd the Proposition of coming into *England*, and was not acquainted with the Designs of the other Gentlemen with him; and was surpriz'd when he found himself in *England*, but declin'd going back, because he believ'd they would soon return to *Scotland*.

That he did not assist in taking any of the public Money, or in seizing any warlike Instruments.

That he did not at *Preston*, or elsewhere, fire a Pistol, offer Violence to any Person, or fight against his Majesty's Forces, but surrender'd himself to the King's General.

And as an Inducement for such Surrender, his Lordship says, that he, and the rest with him, were at that time encouraged by his Majesty's Officers to depend on his Majesty's Mercy.

My Lords, notwithstanding what is contain'd in the Earl of *Wintoun's* Plea to the Impeachment of the Commons, and the specious Explanation which his Lordship has given to such Proceedings of his, as were a Foundation to the Commons to include his Lordship in the Articles against the other Lords mentioned therein; we make no question but we shall shew the Fallacy and Insufficiency of the said Plea to our Charge against him, and make it appear, that no less is contain'd in our Accusation against his Lordship, than what the Law in every Man's Breast, the Light of Nature, and the Rules of Society disapprove of, and condemn.

We shall in the Course of our Evidence prove to your Lordships, that the Earl of *Wintoun* joined early with the Rebels in *Scotland* in the beginning of this Enterprize; and that the Disorders mentioned in his Plea to have been committed

mitted at his House, and which he alledges as the Ground of his leaving it, and seeking Shelter among the Rebels, were not the true Cause of his joining them, since his Lordship had left his House before the Highlanders came to it.

This Noble Peer was too great a Person to act an ordinary Part in this Rebellion. He openly engag'd in it, and not only appeared in Person, but led on, and encouraged his Associates in it; some of which, through the Blessing of God on his Majesty's Arms, are now in the Hands of Justice, and others have suffer'd for the same Treason.

We shall prove to your Lordships, that the Earl of *Winton* form'd a Troop of Horse, which he maintain'd at his own Charge.

That he afterwards commanded a Squadron of Horse, and that he continued his Command thereof in the several Marches to *Preston*, and until the Surrender of that Place to the King's Forces.

That during the several Marches of the Rebels, the Earl of *Winton* was with them on Horseback, arm'd with a Sword and a Case of Pistols; and that he never shew'd any Uneasiness, but always appear'd as forward as any one; and that at the Action at *Preston* his Lordship was assisting, and very active among the Rebels.

That at several Places in *Scotland* and *England*, his Lordship, and other Rebels, caus'd the Pretender to be proclaimed King of these Realms, and that his Lordship was present at such Proclamations.

That his Lordship, and other Rebels, did in several Places cause his Majesty's Treasure to be seiz'd, for the Service of the Pretender; and did in several Places prevail on Ministers of the Church of *England*, and who had abjur'd the Pretender, to pray for him in the public Churches, as King of said Realms.

That when the Rebels surrender'd themselves at *Preston* to the King's Forces, they were far from receiving any Assurances of Mercy from his Majesty's Officers; but were acquainted by the said Officers, that his Lordship, and others taken with him, had no Reason to expect Mercy, since they were taken in open Rebellion against his Majesty.

My Lords, the Commons, who are ever vigilant for the Safety of his Majesty, and for the Preservation of the Liberties of the People, cannot answer it to God or their Country, if they should neglect to exert themselves, in bringing to exemplary Justice the open and declared Instruments of this Rebellion; and it is a Satisfaction to the Commons, that in the Course of their Interposition, to rescue the Nation from the fatal Consequences of the late unprovok'd Rebellion, whatever Misrepresentations other Prosecutions may have been formerly liable to, the Notoriety of this Rebellion has been so evident, that the most malicious of our Enemies want Confidence to deny it.

We are not surpriz'd, that Papists should be engag'd in this Rebellion, tho' the most unnatural and unexampled in its Circumstances, by being void of the least Pretext of Provocation, since they maintain it lawful to kill a Heretic King, and such they term his present Majesty, and 'tis declar'd by them, that such a Piece of

Service is not only lawful, but pious, and agreeable to God.

But how Protestants could be possessed with such a Spirit of Infatuation, and to such a Degree be deluded, as to believe the most secure and effectual Way to protect the Church, was to have Recourse to a Popish Prince, to rescue it from the Danger they imagined it liable to, from the Protestant Succession taking place: And how it could enter into the Hearts of Protestants to be fir'd with such an ill-directed Zeal, as to act in conjunction with avow'd Enemies of their Religion and Liberties, is not to be accounted for; unless such unnatural and destructive Attempts are some of the necessary Consequences of the late Male-Administration.

No less was to be the Sacrifice, than of his Majesty, and his Royal Family, (a Succession of Princes appointed by Divine Providence to be the Guardians of the Protestant Interest in *Europe*) and of our present happy Constitution, to appease the Fury of Papists and Protestants associated in this Rebellion, and who envied us the Blessings we enjoy'd by the uninterrupted Exercise of our Religious and civil Rights and Privileges.

Had this Rebellion taken place, this Nation, the Glory of the Reformation, the most substantial Bulwark against Popery, and that had at the happy Revolution, under the Influences of King *William* the Third, of immortal Memory, triumph'd over the arbitrary Designs of our Enemies to subvert our Constitution, was to fall a Victim to Bigotry, Superstition and Slavery, the pernicious and necessary Consequences of introducing a Religion, void of natural Sense and natural Conscience.

If an Attempt to subvert the Government, to destroy the King, and set up a Popish Pretender: if marching in an hostile Manner: if carrying on a destructive War in the Bowels of the Nation, are only Acts of Surprize and Inadvertancy, any Rebellion may be palliated over and excus'd; since scarce any Circumstances can be added in Aggravation of that, which has lately been rais'd and carried in this Kingdom.

My Lords, I have acquainted your Lordships with the necessary Occasion of this Prosecution: I have endeavour'd in the most impartial Manner to discharge the Trust repos'd in me, by opening the Nature of the Charge against the Earl at the Bar. I have likewise stated to your Lordships the Substance of his Plea to the Impeachment of the Commons. I have given your Lordships a general View of the Evidence which we shall produce, to make good our Charge, and to shew the Invalidity of the said Plea; and from the Malignity of the late rebellious and traitorous Enterprize, and its fatal Tendency, I have represented the Necessity the Commons were under of applying to your Lordships for National Justice. I am not insensible how deficient I have been, in not setting a Matter of this Importance in the most advantageous Light; but I make no doubt, but that what is wanting in me, will be supplied by the Abilities of others that follow, and that your Lordships will find no Defect in their Discharge of the Parts they have taken in this Prosecution, whatever you may have found in the Opening of the Charge, and in that Part which has come to my Share.

Sir Joseph Jekyll. I Have the Command of the House of Commons upon me, to bear a Part in the Prosecution of their Impeachment against this Lord at the Bar.

And that which is assigned to me, is first to observe to your Lordships the Nature of the Charge; and in the next Place, to take notice of the Defence made to that Charge; and lastly, to give your Lordships a general View of the Evidence which the Commons will produce to maintain their Accusation.

And this I shall do with all the Plainness I am capable of, without attempting so vain and wicked a Thing, as to impose upon your Lordships, or divert you from the true Merits of this Cause.

My Lords, The Charge exhibited against this Lord, is a Charge of High-Treason; High-Treason at the Common Law, as declared by the Statute of the 25th of King *Edward* III. And there are two Species of High-Treason mention'd in that Statute, which the Commons have taken notice of in their Articles of Impeachment. The First is compassing and imagining the Death of the King; the Second is levying War against his Majesty.

My Lords, The Overt-Acts that are set down in the Articles, I think, may be reduced to these Heads: First, a Conspiracy of the Earl of *Wintoun*, with other Lords and Gentlemen his Accomplices, to levy War with an Intent to depose the King; and a Conspiracy to levy such a War hath been held a sufficient Overt-Act of compassing and imagining the Death of the King.

My Lords, The next Overt-Act is, his Lordship's joining with his Accomplices in proclaiming the Pretender, which is endeavouring to set up another Prince in the Room of his Majesty; and I believe it will not be doubted, but that is likewise an Overt-Act of the same Species of Treason. And if there wanted another Overt-Act, the levying War against the King with an Intent to depose him (which is likewise mention'd in the Articles, as a distinct Species of Treason) may serve for an Overt-Act of the other Species of compassing and imagining the King's Death; for tho' it is reckon'd in the Statute as a distinct Treason; yet it doth not thereby cease to be of the Nature of an Overt-Act of compassing and imagining the King's Death which it was antecedent to, its being declar'd a distinct Species; and this Point is likewise supported by Authorities, and many Attainders have been upon it.

My Lords, The second Species of High-Treason I charge upon this Lord, is that of levying War against the King; and the Overt-Acts mentioned are, the forming an Army, marching in an hostile Manner, seizing a Town, the Town of *Preston*, engaging and fighting with the King's Forces.

My Lords, Perhaps it was not necessary to have alledged any of these Overt-Acts of levying War against the King, because levying War itself being an Act, it supercedes the Necessity of instancing particular Acts of Hostility. But to avoid all Cavals, these particular Acts are likewise alledged in the Commons Impeachment.

My Lords, I find another Crime charged upon this Lord who stands at the Bar, and that is Murder, the Murder of many of the King's faithful Subjects. And although this Crime is not mentioned in the Title of the Articles, and there was

a good Reason for not doing it, since it is swallow'd up in the High-Treason, the greater Crime in the Eye and Estimation of the Law, yet it doth not thereby lose its moral Existence or real Guilt; but on the contrary, by accompanying the other Crime of High-Treason, is aggravated, and shews with what Mischief his Heart may be filled, who at the same time he is murdering his Fellow-Subjects, is meditating the Destruction of his Prince, and the Overthrow of his Country's Liberty.

My Lords, this is the Nature of the Charge against my Lord. In the next Place I shall take notice of that which occurs to me to be material in his Lordship's Defence, or the Answer he hath put in to this Charge.

My Lords, he hath pleaded generally Not Guilty; but not wholly relying on that general Plea, he hath in his Answer added a particular Specification of his Case. He begins in his Answer, by taking notice and admitting, That *he being taken with Persons that were in Arms against the Government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same Impeachment.* He goes on to acquaint your Lordships with what severe and barbarous Usage he met with at his Dwelling-House, which he says forced him from his House. He tells your Lordships at last, he was *very unfortunately driven into th' Company of some of the Gentlemen named in the Impeachment; but he presumes to affirm to your Lordships, that he did not join them with a traitorous or rebellious Design, but only with an Intention to preserve himself from being insulted and assassinated;* then he says, *Altho' he was constrain'd to keep the other Lords and Gentlemen Company, yet he never joined them in any Act of Hostility.* But yet he is still under some Diffidence of his Case, therefore your Lordships will find at the Close of his Answer he says, *But if upon his Trial it shall appear that he hath committed any Act, which in the Rigour of the Law may be construed to amount to the Crime of High-Treason, he hopes the Innocence of his Heart, and his Ignorance in the Law, will, by your Lordships Intercession, render him an Object of his Majesty's Mercy, which he and the rest, at the Time of surrendering themselves, were encouraged by his Majesty's Officers to depend upon.*

My Lords, this special Case which my Lord hath made in his Answer, is not at all like the Case in my Lord Chief Justice *Coke's* Third Institutes, Fol. 10. upon an Impeachment of High-Treason. Several Persons were found to join with Sir *John Oldcastle* and others (who were in open Rebellion) *pro timore Mortis, & quam cito potuerunt recesserunt*, and thereupon they were acquitted; but here my Lord doth not pretend that any Force was upon him, when he went in and joined the Rebels. I may therefore presume to say this Lord's Defence is a weak and doubtful one, but far be it from the Commons to desire to convict his Lordship of the High-Treason charged upon him by an Infirmity in his Defence, or by any Means whatever, but by the Strength and Clearness of the Evidence they shall produce to your Lordships, and for that I shall trouble your Lordships but a very little with representing to you the general View of the Evidence that we shall produce, and it is this: This Lord thought fit to go in and join the Rebels, not alone, but accompanied with fourteen of his own Servants; when he was there, he formed a Troop, consisting of his own Servants, and others; he paid the Troop,

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commanded a Squadron of the Rebels Horse in their March; assisted at the several Proclamations of the Pretender; when there was an Alarm given of the coming of the King's Forces, he got on Horse-back in order to oppose and fight them; and he was in Arms and active with the Rebels in the Action at *Preston*; and we shall shew your Lordships that at the Surrender there no Promise was made, no Expectation of Mercy was raised by any of the King's Officers in the Mind of this Lord, or of any of his Accomplices.

My Lords, though this be not material to the Issue now joined before your Lordships, yet it being put into my Lord's Answer, and being necessary for the Vindication of public Justice, we shall shew plainly there was not the least Encouragement or Intimation of that kind given.

My Lords, the Evidence will be more largely and particularly taken notice of, by the Gentleman who is to come after me; and I am sure my Defects will be amply made up, by what he will offer to your Lordships.

But I can't sit down without taking notice, that if this heavy Accusation be prov'd against the Lord at the Bar, it is a strange Notion of Loyalty, so much boasted of in my Lord's Answer, which he hath been pleased to entertain.

My Lords, there is not a nobler or more useful Principle belonging to a *British* Subject, than true Loyalty: Loyalty is a faithful and dutiful Obedience to the King, under the Sanction and Direction of the Law. If therefore his Lordship hath contracted the Guilt of this high Offence against the Law, which is charged upon him, he hath offended against this Principle: And this I will say in general, whoever they be who cast the Law out of the Idea of Loyalty, they loosen the Bands of Allegiance; for it is the Law that binds upon the Conscience of the Subject the Faith and Allegiance he owes to his Sovereign, as it doth upon the Conscience of the Sovereign, that Justice and Protection he affords to his Subjects.

Mr. Attorney-General. MY Lords, the Charges mentioned in the Articles of Impeachment exhibited by the Commons of *Great-Britain* against the Earl of *Wintoun*, the Prisoner at the Bar, and the Nature of his Crimes, having been fully open'd by *Mr. Hampden* and *Sir Joseph Jekyll*; what remains for my Part is to give your Lordships an Account of the Nature of the Evidence we shall produce to your Lordships against the Prisoner, to prove him guilty of the High-Treason for which he stands impeached. He is charged with two Species of Treason, mentioned in the Statute of the 25 *Edw. III. viz. First*, compassing and imagining the Death of our sovereign Lord the King, whom God long preserve. *Secondly*, levying War against the King within this Realm.

The Evidence that will be a Proof of the latter Treason, will also prove the first: For levying War to depose the King, is an Overt-Act of conspiring the Death of the King, and hath always been so adjudged.

I shall briefly, and with as much Clearness and Truth as I can, state the Evidence against the Prisoner, as it will appear by the Witnesses we shall produce, without aggravating any thing which I do not think proper or necessary, your Lordships being Judges of the Fact, and of the Law arising thereupon. I shall only make this

Observation on the Preamble to the Earl's Plea, that it directly contradicts his Plea of Not Guilty; and that if what he alledges be taken as true, he therein owns himself to be guilty, though from thence he concludes, that he is not guilty.

In *September* last, the late Earl of *Mar* in *Pertshire*, and in the beginning of *October*, *Mr. Forster* with some of the attainted Lords in *Northumberland*, with a great Number of armed Men, raised a Rebellion in Favour of the Pretender, and proclaimed him King of these Realms, and set up his Standard.

About the seventh or eighth Day of *October* last, the Earl of *Wintoun* left his Seat at *Seaton* in the County of *Lothian*, armed with a broad Sword and Pistols, and carry'd with him fourteen or fifteen of his Servants well mounted, and so armed; about the tenth Day of *October* joined the Earl of *Carnwath* and the Lord Viscount *Kenmure* at *Moffett* in the County of *Annamdale*, and there they formed a little Army, which was commanded by Lord *Kenmure* till they joined *Forster*.

The Lord *Wintoun* formed a Troop with his own Servants and others, and it was called his Troop, and he paid his own Servants eighteen Pence or two Shillings a Day, and he commanded from that Time a Squadron of Horse, till he and the others surrendered to the King's Forces at *Preston*.

About the fourteenth or fifteenth Day of *October*, the Earl of *Wintoun* and the rest of the Rebels marched from *Moffett*, in a hostile Manner, with Trumpets and a Standard to *Lochnaber*. There the Pretender was proclaimed King of *Scotland, England, &c.* and the Earl of *Wintoun* attended, and joined in the Proclamation, with his Sword drawn. Thence the Rebels marched to

<i>Auchterfechen,</i>	<i>Jedburg,</i>
<i>Langholm,</i>	<i>Rodberry,</i>
<i>Hawick,</i>	<i>Wooler,</i>

where, about the twentieth Day of *October*, *Forster* and his Rebels, being about five hundred, joined the Lord *Wintoun* and the other Scots, being three Troops of Horse.

From *Wooler* they all marched to *Kelfoe* in *Tiviotdale*, where the Highland Foot, commanded by *Mackintosh*, joined them. There, at the Cross, the Pretender was again proclaimed King, with Sound of Trumpet and Colours flying, the Lord *Wintoun* and the rest assisting.

On the seventeenth Day of *October* they marched back to *Jedburg*, and there were alarmed with an Account that the King's Forces were near; on which they mounted, and marched out of Town, and drew up, the Earl of *Wintoun* being very active; but the Forces advancing being discovered to be part of the Rebels, they returned to *Jedburg*; and on the twenty-ninth Day of *October* they marched to *Hawick*.

Here Cockades were made of blue and white Ribbons for the Scots Rebels, to distinguish them from the *English*, who had red and white, and the Earl of *Wintoun* wore one, and gave others to his Men.

On the thirtieth Day of *October*, from *Hawick* they marched to *Langholm*: Here, on the thirty-first Day of *October*, about five or six Hundred of the Highland Foot left them, and went back; and they would not suffer any Person to come to them, to persuade them to return, but the Earl of *Wintoun*; and he went to persuade them, but could not prevail, and he returned, and declared

it was not his Fault that they went away ; and he after very much promoted the Rebels coming into *England*.

Here the Earl might have safely left the Rebels, if he had thought fit, without Hazard ; and he had not gone alone, as in his Preamble he alledges.

From *Langholm* the Rebels marched to *Langtown* in *Cumberland* ; and on the first Day of *November* to *Brampton* ; on the Second to *Perrith* ; on the Third to *Appleby* ; on the Fifth to *Kendall* ; and on the Sixth to *Kirby-Lonsdale*.

At all these Places the Pretender was proclaimed King, the Earl of *Wintoun* assisting.

On the Seventh Day of *November* they marched from *Kirby-Lonsdale* to *Lancaster*, into which the Rebels marched with their Swords drawn, particularly the Earl of *Wintoun* ; and here they again proclaimed the Pretender King, Lord *Wintoun* assisting in the Circle.

Here the Rebels seized Arms, and some pieces of Cannon.

From *Lancaster* the Horse of the Rebels marched on the Ninth Day of *November* to *Preston*, the Foot halted at *Garstang*, and came to *Preston* the Tenth.

In the Way to *Preston* the Rebels were joined with about Fifteen Hundred Men, most part being of the County of *Lancaster*.

And at *Preston* the Pretender was again proclaimed at the Cross.

During this March, at several Places, particularly at *Duns*, *Brampton* and *Appleby*, the public Revenue of the King was collected by the Rebels, and Coffers raised on the King's Subjects.

They marched with Drums, Trumpets and Colours ; and, where they could, took Prisoners such as appeared for his Majesty.

They caused the Pretender to be pray'd for, as King, in the Churches in *Lancaster*, and other places in their March.

Their constant Health was the Pretender's, by the Name of King *James*, and Success to their Cause.

During the whole March the Earl of *Wintoun* never shewed any Uneasiness or Backwardness, but always appeared as forward and active as any of the Rebels.

Mr. *Calderswood*, their Quarter-Master quartered the Scots in all Places ; and the best, next to the Lord *Kennure's*, he provided for the Earl of *Wintoun*, who used to complain, if good Quarters were not provided for him.

The next Part of our Evidence will be to shew what happened at *Preston*, of which the Rebels had taken Possession the Tenth Day of *November*.

On *Saturday* the Twelfth Day of *November*, about One in the Afternoon, General *Wills* with the King's Forces invested the Town, and attacked it that Day and on *Sunday*, and the Rebels defended it, and had made a Barrier at the entering of the Town, and planted the Foot in several Lanes and Streets for their Defence, and had the Cannon with them which they seized at *Lancaster*.

The Earl of *Wintoun* during the Attack was with the other Lords, at the Head of two hundred Men, drawn up in the Market-Place ; he had his Sword, a Pistol in one Hand, and another in his Breast ; during that Attack, several of his Majesty's Officers and Soldiers were killed.

On *Sunday*, about Ten in the Morning, Ge-

neral *Carpenter* came also to *Preston*, with the King's Forces under his Command. Thereupon the Rebels finding themselves to be surrounded, about Three in the Afternoon sent out Colonel *Oxborough* to the Generals, to know what Terms would be granted to them if they would surrender ; the Generals gave this Answer, That no Terms would be granted to them, but that they must surrender at Discretion.

Soon after the Rebels sent out Captain *Darziel*, to desire time till Seven a Clock on *Monday* Morning, to consider whether they should surrender at Discretion. Upon which General *Carpenter* sent Colonel *Churchill*, and General *Wills* Colonel *Cotton*, into the Town, to acquaint the Rebels that the Time desired should be allowed them, provided they sent out immediately an *English* Lord, and one of the *Mackintoshes*, as Hostages, that none within the Town should attempt to Escape, or make any Works for their Defence.

Colonel *Churchill* and Colonel *Cotton* went into the Town, and there met the Earl of *Wintoun* and the other Lords, and Mr. *Forsler*, and told them their Message : All the Lords treated with them about the surrendering the Town, and severally gave their Words, that if Time might be allowed them till next Morning to surrender, they would use their Endeavours that none should make their Escape, and that they would not throw up any new Works for their Defence. Which Terms were agreed to, and the Earl of *Derwentwater* and Colonel *Mackintosh* were delivered to them, and brought to the Generals as Hostages, and staid all Night ; and in the Morning early the Rebels agreed to surrender at Discretion ; and the Lord *Forsler* took Possession of the Town, where he found the Earl of *Wintoun* in Arms, and he surrendered himself to the Lord *Forsler*, and delivered to him two Cases of Pistols ; and being in Custody, complained of the little Regard Mr. *Forsler* had shewed to a Man of his Quality, and said all the Respect that he had shewed him, was to give him the Post of Honour when there was any Danger.

The Generals *Carpenter* and *Wills* never offered any other Terms than that the Rebels should surrender at Discretion, never promised them Mercy, or that they would even intercede for Mercy for them ; nor gave the Colonels, sent into the Town, any Orders to offer Mercy ; nor did they : All the Encouragement they gave them to surrender at Discretion, was, that if they did so, they should not be immediately put to the Sword by the Soldiers ; and denied to promise, even to recommend them to the King's Mercy.

This is the Substance of the Evidence we shall lay before your Lordships, and the Order we shall give it in ; and if what I have opened be proved, as I believe it will, or I would not have mentioned it, I apprehend it will fully prove the Charge against the Noble Lord, and shew how vain the Allegations in the Preamble to his Plea are.

I beg leave to say one thing more. The Noble Lord alledges, in the Preamble to his Plea, that he never shot off a Pistol : Certainly that is not material ; for assembling and marching in a Hostile manner for a public Purpose, and opposing the King's Forces, is levying a War, although the Lord accused never shot off a Pistol.

We

We will call our Witnesses, and begin with *William Calderwood*, who was Quarter-Master the whole time with Lord *Wintoun*.

Sir J. Fekyll. My Lords, we desire that *William Calderwood* may be sworn.

L. H. Steward. Is it *William Calderwood* you call?

Sir J. Fekyll. My Lords, we desire *William Calderwood* may be sworn.

And he was sworn by the Clerk accordingly.

Sir J. Fekyll. Mr. *Calderwood*, pray acquaint my Lords with what you know concerning this Rebellion, or any Part that the Noble Lord at the Bar had in it; tell the Story according to your own Method.

L. H. Steward. Do you hear what Question is asked? You are upon your Oath; give an Account of what you know of the late Rebellion, and what Part the Noble Lord at the Bar had in it.

Calderwood. Upon the Eleventh of *October* I went, with about Seventy Horse, to join my Lord *Carruth*, my Lord *Wintoun*, and my Lord *Kenmure* at *Moffett*; where the Pretender was proclaimed.

Attorney-General. We desire that he may acquaint your Lordships, what Number of Men they had at *Moffett*.

Calderwood. One Hundred and Fifty.

Att. Gen. What Number of Men?

Calderwood. One Hundred and Fifty.

Att. Gen. Was the Prisoner at the Bar amongst them? and did he bring in any with him?

Calderwood. Yes.

Att. Gen. About what time did he come in?

Calderwood. Towards the Evening of the Eleventh Day.

Att. Gen. What Day?

Calderwood. The Eleventh.

Sir J. Fekyll. What Number did the Lord *Wintoun* bring with him?

Calderwood. About Fourteen.

L. H. Steward. You speak of the Prisoner at the Bar; he came in with Fourteen Men?

Calderwood. Yes, my Lord.

Att. Gen. Were they all armed; or how many were armed?

Calderwood. I don't know whether all were, but the most part of them were, with Sword and Pistol.

L. H. Steward. You have said at what Place they were, but your Voice did not reach hither; at what Place?

Calderwood. At *Moffett*.

Sir J. Fekyll. When my Lord at the Bar joined the Rebels, what did they do? Go on, and tell your Story.

Calderwood. They went to *Lochnaben*.

Sir J. Fekyll. When did the Lord at the Bar join them there?

Calderwood. The next Day.

Att. Gen. What was done there?

Calderwood. The Pretender was proclaimed there next Day.

Att. Gen. Was the Noble Lord at the Bar assisting at the proclaiming of him?

Calderwood. Yes, he was.

Att. Gen. In what manner did he assist?

Calderwood. With his Sword drawn on Horseback.

L. H. Steward. Who did assist at the Proclamation with a drawn Sword?

Calderwood. The Earl of *Wintoun*.

Att. Gen. Whence did you march from thence?

Calderwood. To *Auchteltschen*.

Att. Gen. Whither did you march from thence?

Calderwood. To *Langholm*.

Sir J. Fekyll. And whither then?

Calderwood. To *Hawick*.

Att. Gen. Go on.

Calderwood. The Pretender was proclaimed there.

Sir J. Fekyll. Was the Lord *Wintoun* present at the Proclamation?

Calderwood. Yes.

Sir J. Fekyll. Whence did you go from thence?

Calderwood. To *Fedburg*.

L. H. Steward. Was the Pretender proclaimed there?

Calderwood. Yes.

Sir J. Fekyll. Who were present?

Calderwood. The Earl of *Wintoun*, *Carruth*, and all the Lords.

Att. Gen. Where did you march then?

Calderwood. To *Rodberry*.

Att. Gen. What happened there?

Calderwood. We were join'd by General *Forster*.

Att. Gen. How long did you stay there?

Calderwood. Two Nights.

Att. Gen. Was the Pretender proclaimed at *Rodberry*?

Calderwood. No.

Att. Gen. What Place did you go next to?

Calderwood. To *Wooler*.

Att. Gen. Whither from thence?

Calderwood. To *Kelsoe*; where we were join'd by the Highland Foot.

Sir J. Fekyll. What Foot do you mean?

Calderwood. The Highlanders.

Sir J. Fekyll. Who commanded them?

Calderwood. Brigadier *Mackintosh*.

Sir J. Fekyll. From *Kelsoe* whither did you go?

Calderwood. Back again to *Fedburg*.

Sir J. Fekyll. Whether from *Fedburg*?

Calderwood. To *Hawick*.

Att. Gen. What happened at either of these Places?

Calderwood. Nothing.

Sir J. Fekyll. At *Hawick*; did nothing happen there?

Calderwood. No.

Att. Gen. Was the Pretender proclaimed at *Hawick* at either of the Times?

Calderwood. Yes, the first time, but not the second.

Att. Gen. Who were present?

Calderwood. All the Lords.

Att. Gen. Name them — Was the Prisoner at the Bar there?

Calderwood. Yes.

Sir J. Fekyll. From *Hawick*, the second time, to what Place did you go?

Calderwood. To *Langholm*.

Att. Gen. What happened at *Langholm*?

Calderwood. Five or Six Hundred of the Highland Foot went from us.

Att. Gen. Was there any Endeavours used to bring those Five Hundred Highlanders back again?

Calderwood. I don't know of any.

Sir J. Fekyll. Who went to them? Did any of those that were in Arms go to them?

Calderwood. I was not there when they went off.

Att. Gen.

Att. Gen. Did the Noble Lord attempt to go with them, the Prisoner at the Bar?

Calderwood. No; at *Jedburgh* the Earl of *Wintoun* went up to them, to make them come back; where the Foot designed to go, and the Horse were drawn up; and they would have no Body come to them but the Prisoner.

L. H. Steward. I do not hear you, What do you say?

Calderwood. At *Jedburgh* the Earl of *Wintoun* went to them.

Att. Gen. Did he declare any thing after his Return, about their going off, or their not returning?

Calderwood. No, not at *Jedburgh*.

Att. Gen. Any where else?

Calderwood. I heard him at *Langtown* say, it was not his Fault they were gone off.

Att. Gen. Pray, might not my Lord *Wintoun* have gone off with them, if he would?

Calderwood. Yes, he might.

Att. Gen. From *Langtown* whither did you go?

Calderwood. To *Brimpton*.

Att. Gen. Whither next?

Calderwood. To *Penrith*.

Att. Gen. Whither next?

Calderwood. To *Appleby*.

Att. Gen. Whither next?

Calderwood. To *Kendall*.

Att. Gen. Whither next?

Calderwood. To *Kirby-Lonsdale*.

Att. Gen. What happened there?

Calderwood. The Pretender was proclaimed at the two last Places.

Sir J. Jekyll. Who was there?

Calderwood. I saw him there?

Sir J. Jekyll. Who?

Calderwood. The Earl of *Wintoun* at *Kirby-Lonsdale*.

Sir J. Jekyll. Whither did you go from thence?

Calderwood. To *Lancaster*.

Sir J. Jekyll. Was the Pretender proclaimed there?

Calderwood. Yes.

Sir J. Jekyll. Who were present?

Calderwood. Earl of *Wintoun*, *Kenmore*, *Carnwath*, *Nithisdale*.

Sir J. Jekyll. How did they enter the Town of *Lancaster*?

Calderwood. Sword in Hand.

Att. Gen. Was there any Arms or any Guns seized?

Calderwood. Yes, six Cannon were seized?

Att. Gen. From whence did they take them?

Calderwood. From a Ship.

Att. Gen. Speak up, and tell my Lords.

Calderwood. They seized six Guns.

Att. Gen. Whence did they take them?

Calderwood. From a Ship.

Att. Gen. What became of them?

Calderwood. They carried them to *Preston*, and mounted them there.

Att. Gen. What time came you to *Preston* from *Lancaster*?

Calderwood. What time? we staid two Nights at *Lancaster*.

Mr. Cowper. Sir, I desire to ask you a Question— Whether you was at Church at *Lancaster*?

Calderwood. Yes.

Mr. Cowper. Who was prayed for there?

Calderwood. The Pretender as King of *England*.

Sir J. Jekyll. Who was at Church? Was it the Parish Church?

Calderwood. Yes, the Parish Church.

Sir J. Jekyll. Who was present at Church?

Calderwood. I don't remember.

Mr. Cowper. From *Lancaster* whither did you go then?

Calderwood. We went to *Preston*.

Mr. Cowper. What Day did you arrive at *Preston*?

Calderwood. The Ninth or Tenth Day of *November*.

Mr. Cowper. Did the Horse and Foot arrive the same Day?

Calderwood. No, the Horse came in one Day, and the Foot another.

Mr. Cowper. How long after the Horse did the Foot come?

Calderwood. The next Day; then the Pretender was proclaimed. The Horse came in on a *Wednesday*, the Foot on *Thursday*.

Att. Gen. Had you any Distinction between the *Scots* and *English*, by Cockades?

Calderwood. Yes.

Att. Gen. What was the Distinction?

Calderwood. The *Scots* had Blue and White, and the *English* had Red and White.

Att. Gen. Did the noble Lord meddle with any Cockade?

Calderwood. Yes, he had one at *Hawick*.

Att. Gen. Did he distribute them?

Calderwood. Yes, he delivered them from my Hands.

L. H. Steward. Who do you speak of? Raise your Voice.

Calderwood. I say, my Lord, the Earl of *Wintoun* had a Cockade at *Hawick*, and took several of them from my Hands, and gave them away as he thought fit.

Sir J. Jekyll. You saw the Earl of *Wintoun* at *Preston* when the King's Forces came thither; do you remember what passed afterwards?

Calderwood. My Lord, I saw him, he had Sword and Pistols; he was a Foot by the Church-yard.

Att. Gen. As you came along to *Preston*, acquaint my Lords whether you know any think of the public Revenues being collected?

Sir J. Jekyll. Before that, when my Lord was on Foot with Sword and Pistols going towards the Church-yard, was there any Forces drawn up there?

Calderwood. Yes, both Horse and Foot were drawn up in the Church-yard.

Sir J. Jekyll. While my Lord was in Company, and in this March, was there any Troop formed?

Calderwood. Yes, there was a Troop.

Sir J. Jekyll. Who had any of those Troops?

Calderwood. My Lord *Wintoun* had the Part.

Sir J. Jekyll. Of whom did his Troop consist?

Calderwood. It consisted partly of Gentlemen, and partly of his own Servants.

Sir J. Jekyll. By whom were they paid?

Calderwood. By my Lord *Wintoun*.

Sir J. Jekyll. How much a Day?

Calderwood. Two Shillings a Day.

Sir J. Jekyll. In what manner was the Troop accoutred?

Calderwood. Very well, with Swords and Pistols.

Att. Gen.

Att. Gen. Did my Lord's Servants retain his Livery in the Army?

Calderwood. He had five in Liveries.

Att. Gen. What were the rest?

Calderwood. Domestic Gentlemen.

Att. Gen. Did my Lord command only that, or any other Body?

Calderwood. He commanded a Squadron.

Sir J. Jekyll. In your Passage, did my Lord discover any Uneasiness, or seek for any Opportunity of leaving them?

Calderwood. He never did that I know of.

Sir J. Jekyll. I think you quarter'd him, did he complain of his Quarters at any time?

Calderwood. He order'd me to give him good Quarters.

Sir J. Jekyll. And accordingly you did for him?

Calderwood. Yes.

Att. Gen. We will go on. What happened at *Preston*? What time did the King's Forces come there?

Calderwood. We came on *Wednesday*, they came on *Saturday*.

Att. Gen. Tell my Lords what happen'd after the King's Troops came to Town.

Calderwood. We defended the Town two Nights.

Att. Gen. When did they surrender?

Calderwood. They surrender'd on *Monday*.

Att. Gen. What past before? Did the King's Troops attack it, and demand a Surrender?

Calderwood. Yes, and we defended it.

Sir J. Jekyll. Was there any Provision made to secure the Town? Acquaint my Lords how it was defended.

Calderwood. We barricado'd it in every Street.

Sir J. Jekyll. After what manner? how?

Calderwood. We had two Cannon in every Street.

Att. Gen. During the Time the King's Troops were at the Town, what Share did my Lord *Wintoun* bear in the Defence of it? where was he?

Calderwood. I saw him go towards the Church-yard;

Att. Gen. Was there a Body of Men with him in the Church-yard?

Calderwood. Yes, there was.

Sir J. Jekyll. When my Lord joined the Men, and in his March, was there any levying of Money.

Calderwood. They raised Taxes as they called it, a Cess.

Sir J. Jekyll. We have done with this Witness; if my Lord hath a Mind to ask him any Questions, he is at Liberty to do it.

L. H. Steward. My Lord, if you have any Question to ask, propose it, and it shall be asked.

L. Wintoun. I can't examine him, I desire my Council may examine him.

L. H. Steward. I told your Lordship your Council are not to assist your Lordship in cross-examining the Witnesses; you have a Liberty of cross-examining them yourself, by proposing your Questions, and they will be ask'd by the Court.

L. Wintoun. I never examined a Witness in my Life, I desire my Council may do it for me.

L. H. Steward. Have you any Questions?

L. Wintoun. My Lord, I hope you will allow my Council to speak for me.

L. H. Steward. Have you any Question you desire to be ask'd, and it shall be ask'd?

L. Wintoun. I desire my Council may ask for me; it is very hard to have none to speak for me, and there are twenty against me.

Proclamation for Silence as usual.

L. H. Steward. My Lord *Wintoun*, I hope now you will be better heard. If you have any Question to ask this Witness, if your Lordship propounds it, it shall be ask'd him.

L. Wintoun. My Lord, allow my Council to speak for me, I have but two.

L. H. Steward. My Lord, I have acquainted you, (but apprehend you did not hear me) that the Law of the Land doth not allow it.

Sir J. Jekyll. My Lords, if my Lord at the Bar doth not think fit to ask this Witness any Questions, nor your Lordships, we must call another Witness.

L. H. Steward to Calderwood the Witness. Direct your Answer this way. You have mention'd several Proclamations of the Pretender, was there any at which my Lord, the Prisoner at the Bar, was not present?

Calderwood. I did not see him at the Proclamation at *Preston*.

L. H. Steward. At how many other Places did you see him?

Calderwood. I saw him at *Wooler*, *Jedburg*, *Kelsce*, and *Kirby-Lonsdale*, and *Lancaster*, where the Pretender was proclaimed.

L. H. Steward. Did he join in causing him to be proclaim'd, or did he seem to dislike it?

Calderwood. No, my Lord, he was always among the rest.

Att. Gen. With your Lordship's Favour, the next Witness is *James Lindsey*, we desire he may be sworn.

L. Wintoun. My Council are present, pray allow my Council to speak for me, I am not used to speak in such Assemblies.

Lindsey was sworn accordingly.

L. H. Steward. Who do you call next, Gentlemen?

Att. Gen. *James Lindsey* is sworn, we desire he may give your Lordship's an Account, whether he was at any time at *Moffett*, when the Pretender was proclaim'd, and what Share my Lord *Wintoun* had in it? ——— I believe it will be better to have something for the Witnesses to stand upon; — stay a little, till something is brought to stand upon.

A Chair was brought to stand upon.

Sir J. Jekyll. Was you at *Moffett*?

Lindsey. Yes.

Sir J. Jekyll. What past there, and who was at that Place?

L. H. Steward. Keep your Face, and direct your Answer this way; tho' the Gentlemen on the left Hand ask you Questions, keep your Face this way.

Lindsey. I saw several Gentlemen.

Sir J. Jekyll. But did you see my Lord *Wintoun* there?

Lindsey. First I saw him there; the second time at *Jedburg*, the third time at *Kendall*, and the last at *Preston*.

Sir J. Jekyll. You saw him at these Places you have mention'd, what happened at either of these Places?

Lindsey. The first time I saw him, he was riding on a grey Horse, mounted with Sword and Pistol; the second time, sitting with the Guard; and at *Kendall* on Horseback, when he came out of Town, I saw him riding on Horseback; and at *Preston*, I saw him riding at the Market-Place, with other Gentlemen along with him.

Sir J. Fekyll. Was there any Proclamation made at any of these Places?

Lindsey. Yes, there was a Proclamation at *Jedburg*, they told me they proclaim'd the Pretender.

Sir J. Fekyll. Did you hear the Proclamation?

Lindsey. I heard the Voice, but not the Words pronounced.

Sir J. Fekyll. Who assisted at it?

Lindsey. A great many Gentlemen on Horseback.

Sir J. Fekyll. Was the Prisoner at the Bar there?

Lindsey. I did not see him.

Sir J. Fekyll. Was the Prisoner at the Bar at *Lancaster*?

Lindsey. I do not know, I was not there.

Sir J. Fekyll. Was he at *Preston*?

Lindsey. Yes, he was there.

Sir J. Fekyll. Was you present when they proclaimed the Pretender there?

Lindsey. I was standing at a great distance, but did not hear it, but saw the Army.

Sir J. Fekyll. From those Places when you marched, in what manner did you march? In Squadrons?

Lindsey. Yes, in Squadrons?

Sir J. Fekyll. Did the noble Lord at the Bar command a Squadron?

Lindsey. I did not know what his Lordship's Command was, he rode at the Head of the first Squadron.

Att. Gen. Did he march along with the Forces?

Lindsey. I had very seldom Occasion to see his Lordship. I believe he did.

Sir J. Fekyll. Do you know any thing of raising Money.

Lindsey. I heard talk of it only.

Sir J. Fekyll. What Troops were with the Rebels?

Lindsey. I can't tell how many.

Sir J. Fekyll. Do you remember any one Troop?

Lindsey. Yes, there was *Lockbart's*.

Sir J. Fekyll. Any beside?

Lindsey. There was one went by the Name of my Lord *Wintoun's*, but I knew it not.

Att. Gen. Who was there in that Troop of *Lockbart's*?

Lindsey. Several Gentlemen.

Att. Gen. Was there any but Gentlemen?

Lindsey. Some private Men and Servants.

Att. Gen. Whose Servants?

Lindsey. The Captain's, Mr. *Lockbart* had two or three himself.

Att. Gen. Was there any other Servants?

Lindsey. No, I don't think there was any other.

Att. Gen. Did you know the Troop called my Lord *Wintoun's*?

Lindsey. I did not know it, there was one called his.

Att. Gen. Was there any Servants in it?

Lindsey. There were Servants in that Company.

Sir J. Fekyll. Were they armed with Sword and Pistol?

Lindsey. Yes.

Sir J. Fekyll. Was you at *Preston* when the King's Forces invested it?

Lindsey. Yes.

Sir J. Fekyll. How did the Prisoner behave himself?

Lindsey. I cannot tell.

Sir J. Fekyll. My Lords, we have done with our Examination of this Witness.

L. H. Steward. My Lord *Wintoun*, if you would ask this Witness any Question, propose it, and it shall be asked.

After a considerable Pause,

Att. Gen. Our next Witness is *Elias Cammeron*, we desire he may be sworn.

He was sworn accordingly.

Mr. Cowper. My Lords, we desire he may be asked whether he was in the Rebels Army.

L. H. Steward. You hear the Question; direct your answer this way.

Cammeron. Yes, I was there.

Mr. Cowper. Under whose Command?

Cammeron. Under the Command of Captain *Mackcleane*.

Mr. Cowper. And in whose Regiment?

L. H. Steward. Turn your Face this way, that your Voice may be heard.

Cammeron. My Lord *Charles Murray's* Regiment.

L. H. Steward. Whose Command was you under?

Cammeron. Under Captain *Mackcleane*.

Sir J. Fekyll. In whose Regiment?

Cammeron. In my Lord *Charles Murray's* Regiment.

Sir J. Fekyll. Will you give a general Account of what you know from the first time you came into the Army of the Rebels?

Cammeron. I joined them at *Moffett*, and then we proceeded to a Place called *Lockmaben*; and then we march'd to *Duns*, from thence to *Kelfoe*; within two Miles of *Kelfoe* we met the Horse. Then we went from *Kelfoe* to *Jedburg*, I saw my Lord *Wintoun* there; the next Day we rested. Then we marched, from *Langtown* to *Brampton*; from *Brampton* to *Penrith*; from *Penrith* to *Kirby-Lonsdale*; and from *Kirby-Lonsdale* to *Lancaster*; where I saw my Lord *Wintoun* at the Head of his Horse with a Trumpet sounding before him; I saw them march; we staid a Day at *Lancaster*, and the Horse went into *Preston* the next Day; either *Wednesday* or *Thursday* I saw my Lord *Wintoun*, and after the King's Forces were come I saw my Lord *Wintoun* with other Lords.

Mr. Cowper. You have mentioned proclaiming the Pretender at one or two Towns, pray give an Account at how many Places you observed that he was proclaimed?

Cammeron. I heard him proclaimed at *Duns*, at *Kelfoe*, and at *Lancaster*.

Mr. Cowper. I desire to know if at any of these Places you observed the Prisoner, my Lord *Wintoun*?

Cammeron. At *Lancaster* I did observe him to go into the Ring when they were going to proclaim him, but at the Time of the Proclamation I did not see him, being in the outward Part of the Ring.

Att. Gen. Please to acquaint my Lords, whether in your March you took any Prisoners.

Cammeron. When we were near *Penrith*, we took a great many Prisoners. I did not see them taken.

Att. Gen. Was the Prisoner at the Bar with you in that March?

Cammeron. I can't really determine. I saw him there.

Att. Gen. Where did you see him first?

Cammeron. At *Kelfoe*, when the Foot join'd us.

Att. Gen. Where did you take the Prisoners?

Cammeron. At *Penrith*.

Att. Gen. Did the noble Lord at the Bar ever leave you after he joined you?

Cammeron. I heard he was not for coming into *England*. I only heard this by Report.

Sir J. Jekyll. Was you at *Seaton House*?

Cammeron. Yes.

Sir J. Jekyll. Was my Lord *Wintoun* there?

Cammeron. No, only Brigadier *Mackintosh* and the Foot.

Sir J. Jekyll. What Time did they come to *Seaton House*?

Cammeron. On *Saturday* to my best Remembrance, they were at *Seaton House*; then the Duke of *Argyle* returned back, and that Night about six or seven o'Clock we retreated to *Seaton House*, and staid there *Sunday*, *Monday*, and *Tuesday*.

Att. Gen. At the Time the Highlanders came to *Seaton House*, was this Lord there?

Cammeron. No, I do not know that he was.

Att. Gen. Do you know any thing of the public Revenues being gathered at *Duns*, *Brampton*, and *Appleby*?

Cammeron. Yes.

Att. Gen. Did they give any Receipts?

Cammeron. Yes, they gave Receipts. I saw one which was to this Effect: After the Year and Date, then, Received such a Sum of Money as Excise-Duty, due from such a Person to such a Person.

Att. Gen. During the Time the King's Forces attack'd *Preston*, what did you observe my Lord *Wintoun* do?

Cammeron. What I observed of my Lord *Wintoun*, was this: I was there by the Church-yard, there I saw my Lord *Wintoun* in the Church-yard, with my Lord *Kenmore* and *Derwentwater* at the Time of the Action, but I did not see him in the Action, and whether he had Pistols or not I can't be positive.

Att. Gen. Was there any Persons at the Market-Place?

Cammeron. I was not at the Market-Place.

Att. Gen. You was at the Church-yard?

Cammeron. Yes.

Sir J. Jekyll. When you observed my Lord *Wintoun*, what did you see him do?

Cammeron. I observed nothing, but he was like the rest, riding to and fro with the rest.

Sir J. Jekyll. Did you see him assisting at the Proclamation of the Pretender at *Preston*?

Cammeron. I saw him go into the Ring with the rest, but I did not see him at the time of the Proclamation.

L. H. Steward. I believe in this Narration his Voice did not reach this End of the Court; therefore if he hath said any thing proper to be taken notice of, you will do well to have it over again.

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Att. Gen. We ask him whether he knew the noble Lord to be at any of those Places assisting at proclaiming the Pretender?

Cammeron. I did not observe him but at *Lancaster*.

Att. Gen. What happened there?

Cammeron. They proclaimed the Pretender there, and I saw him go into the Ring.

Att. Gen. But did you not observe him at the time of proclaiming the Pretender?

Cammeron. I saw him go into the Market-Place with the rest;

L. H. Steward. You saw him go in when the rest went in to proclaim the Pretender?

Cammeron. Yes;

Att. Gen. Did he then ride at the Head of the Scots Horse?

Cammeron. Yes; he rid at the Head of some Horse, and a Trumpet sounding before him.

Att. Gen. Was that the Time when the Pretender was proclaimed at *Lancaster*?

Cammeron. Yes.

Att. Gen. Whether had my Lord his Sword by his Side, or had he it drawn?

Cammeron. Really I cannot be positive to that.

L. H. Steward. My Lord *Wintoun*, will you ask this Witness any Question?

L. Wintoun. My Lords, I be not prepared; so I hope your Lordships will do me Justice; I was not prepared for my Trial; I did not think it would come on so soon, my material Witnesses not being come up, and therefore I hope you will do me Justice, and not make use of *Cowper-Law*, as we used to say in our Country, hang a Man first, and then judge him.

L. H. Steward. Did you hear? My Lord *Wintoun*, please to speak it again.

L. Wintoun. I said that I was not prepared for my Trial; I did not think it would come on so soon. Some Gentlemen are just come up; please your Lordships to let me know what they say, that I may be the better able to make my Defence.

L. H. Steward. If your Lordship will ask this Witness any Question, now is your Time; but if what you are saying is your Defence, you should reserve that till the Commons have done.

Robert Patten is called and sworn.

Proclamation made for Silence as usual.

Sir W. Thomson. With your Lordships Permission I beg leave to ask this Witness, whether at any time he was in Company with these Rebels, and when he first joined them?

Patten. I join'd them on the 20th of *October*, at *Wooler*.

Sir W. Thomson. Pray Sir will you give an Account what past from that Time you join'd them till they were taken.

Patten. I remember from *Wooler* we march'd to *Kelfoe*.

Sir W. Thomson. Did you see my Lord *Wintoun* at *Wooler*?

Patten. I can't say I did.

Sir W. Thomson. Did you see him at *Kelfoe*?

Patten. I saw him when the Proclamation was there.

Sir W. Thomson. What Proclamation?

Patten. To proclaim the Pretender.

Sir W. Thomson. Was my Lord *Wintoun* present?

Patten. Yes.

Sir W. Thomson. In what Manner?

Patten. He appear'd among the rest of the Gentlemen.

Sir W. Thomson. Was he armed?

Patten. Only his Sword, that I saw.

Sir W. Thomson. Pray what pass'd afterwards?

Patten. We came to *Kelfoe*, and from thence we went to *Fedburg*.

Sir W. Thomson. Where did you go?

Patten. To *Fedburg*.

Sir W. Thomson. What pass'd there?

Patten. After they came to *Fedburg* they were alarmed by a Party, they thought of the King's Forces, but it happened to be some of their own Party.

Sir W. Thomson. What happened on that Occasion?

Patten. I saw the Lords, and among the rest my Lord *Wintoun*, at the Head of some Horsemen there drawn up.

Sir W. Thomson. In what Manner?

Patten. The Earl of *Wintoun* was drawn up with his Men, and the *Scots* Lords with their Men.

Sir W. Thomson. With what Intent?

Patten. They apprehended General *Carpenter* with the King's Forces was coming to attack them.

Sir W. Thomson. You say my Lord *Wintoun* marched out at the Head of some Horsemen?

Patten. I can't say I saw him march out, but I saw him at the Head of some Horse.

Sir W. Thomson. What happened afterwards?

Patten. They returned to *Fedburg* and staid all Day, and the next Day they marched to *Hawick*.

Sir W. Thomson. What happen'd at *Hawick*?

Patten. At Midnight we were again alarmed with a Party.

Sir W. Thomson. What happen'd upon that?

Patten. I saw my Lord *Wintoun* in the Street.

Sir W. Thomson. Was there any Preparation made for Defence.

Patten. Yes they were going out to defend themselves.

Sir W. Thomson. You saw my Lord *Wintoun* there?

Patten. Yes.

Sir W. Thomson. In what manner?

Patten. He had his Sword by his Side.

Sir W. Thomson. When you went from that Place, whither did you go then?

Patten. We went to *Langholm*.

Sir W. Thomson. What pass'd there?

Patten. We continued there till next Morning, when we consulted whether to march for *England* or for *Scotland*; a Party of Horse went for *Dunfreife*. The Highlanders, a great Part of them went off there, and would not march for *England*.

Sir W. Thomson. Was my Lord *Wintoun* with them at their going off?

Patten. I saw my Lord *Wintoun* go off, and come up again: I spoke to my Lord upon that account.

Sir W. Thomson. What did his Lordship say?

Patten. Nothing material, but asked me if I knew the Country.

Sir W. Thomson. When the Foot went off at *Langholm*, did my Lord go to them?

Patten. I saw him go up to them, and make a Halt.

Sir W. Thomson. But he came back again?

Patten. Yes.

Sir W. Thomson. At that time, if my Lord had had any Inclination to it, whether might he not have gone off?

Patten. Yes: I can't tell my Lord's Inclination, but any Body might have gone off, there was no Restraint upon him.

Sir W. Thomson. Whither did you march from *Langholm*?

Patten. To *Langtown*.

Sir W. Thomson. Did any thing happen at *Langtown*?

Patten. We march'd through.

Sir W. Thomson. Whither did you go then?

Patten. To *Brampton*.

Sir W. Thomson. Whither from thence?

Patten. To *Penritb*.

Sir W. Thomson. What happened there?

Patten. There was the *Posse Comitatus*, whether that *Posse Comitatus* were the Militia I can't tell; they were got together, and upon our advancing they dispers'd themselves.

Sir W. Thomson. Where was my Lord *Wintoun* then?

Patten. I saw him among the *Scots* Lords there after his usual manner, on Horseback, with Sword and Pistols.

Sir W. Thomson. Was his Sword drawn?

Patten. No.

Sir W. Thomson. Whither did they go then?

Patten. They went to *Appleby*.

Sir W. Thomson. What pass'd at *Appleby*?

Patten. They went from *Appleby* to *Kendall*.

Sir W. Thomson. What happened there?

Patten. A Proclamation was read, as at most of the Towns.

Sir W. Thomson. Did you see my Lord *Wintoun* at any of those Proclamations?

Patten. No, I did not.

Sir W. Thomson. Where did you go then?

Patten. To *Kirby-Lonsdale*.

Sir W. Thomson. Did any thing happen remarkable there?

Patten. I dined with the *Scots* Lords at *Kirby*.

Sir W. Thomson. What happen'd there? and what Healths were drank there?

Patten. The Pretender's Health, and Success to our Cause, that was the usual Health.

Sir W. Thomson. Was my Lord *Wintoun* there?

Patten. Yes, there was my Lord *Kennure*, *Carnwath*, and the other Lords.

Sir W. Thomson. Did he drink the Health among the rest?

Patten. All the Table did.

Sir W. Thomson. From thence whither did you go?

Patten. To *Lancaster*.

Sir J. Jekyll. At the Place where you drank Healths, was there any other remarkable Health?

Patten. The usual Health was good Success to the Cause in Hand.

L. H. Steward. Who drank that Health?

Patten. All the Company.

L. H. Steward. Who was in Company? was the Prisoner at the Bar in Company?

Patten. Yes, he was.

Sir W. Thomson. When you came to *Lancaster*, in what manner did you enter that Town?

Patten. We entered that Town more regularly than any other we had marched through.

Sir W. Thomson. After what manner?

Patten. They march'd into the Town with their Swords drawn, and the Highlanders were drawn round

round the Cross; the Gentlemen marched into the Town on Horseback; the Pretender was proclaimed there.

Sir W. Thomson. You was by when the Pretender was proclaimed?

Patten. Yes.

Sir W. Thomson. Was my Lord *Wintoun* there?

Patten. I can't say I saw him there: I saw him in the Town at the head of some Horse with his Sword drawn.

Sir W. Thomson. Was there any Cannon seized at *Lancaster*?

Patten. Some Pieces of Cannon were seized.

Sir W. Thomson. What did you do with the Cannon?

Patten. We carried them with us to *Preston*.

Sir W. Thomson. When there were Prayers in the Parish Church at *Lancaster*, who was prayed for?

Patten. The Pretender.

Sir W. Thomson. Do you know who were present?

Patten. A great many.

Sir W. Thomson. Was the Lord *Wintoun* there?

Patten. I can't tell.

Sir W. Thomson. Did you observe at any time any Force or Compulsion used to detain my Lord *Wintoun*?

Patten. No, none at all.

Sir W. Thomson. Did he shew any Uneasiness, or any Backwardness to go with them?

Patten. I can't be Judge of my Lord's Uneasiness, it did not appear so.

Sir W. Thomson. By whose Direction was the Prayer for the Pretender?

Patten. By Order of Mr. *Forster*.

Sir W. Thomson. My Lords, we have done with this Witness.

L. H. Steward. My Lord *Wintoun*, will you please to ask this Witness any Question?

L. Wintoun. No.

Att. Gen. My Lords, we desire to call my Lord *Forrester*.

Then a Chair was placed for Lord *Forrester* near the Clerks Table.

And the Oath was administered to him by the Lord High Steward.

Sir J. Jekyll. My Lords, we beg leave to ask this Noble Lord a Question or two: Was your Lordship at *Preston*?

L. Forrester. Yes, my Lords.

L. H. Steward. Your Lordship will please to raise your Voice.

L. Forrester. I was there with the King's Troops, and had the Honour to command Brigadier *Preston's* Regiment. We came before *Preston* on *Saturday* the 12th of *November*.

Att. Gen. Will your Lordship acquaint my Lords what pass'd at *Preston* when you was there? whether you was by at *Preston* when the King's Forces attacked it, and whether it was defended by the Rebels, and what else pass'd there?

L. Forrester. I was there, and commanded one of the Attacks under Brigadier *Honywood*.

Att. Gen. Was the Town defended by the Rebels, and were any of the King's Officers and Soldiers killed?

L. Forrester. Yes, a great many.

Att. Gen. Please to give an Account what Number.

L. Forrester. We lost a great many.

Att. Gen. Can you guess the Number?

L. Forrester. No, I can't exactly tell: A good many; we had 'twixt sixty and seventy of the Regiment I had the Honour to command killed and wounded.

Att. Gen. How many were killed?

L. Forrester. About thirty were killed dead on the Spot.

Att. Gen. How long did that Attack last, before they desired to capitulate?

L. Forrester. From *Saturday* till *Sunday* Morning between one and two o'Clock.

Sir J. Jekyll. I think your Lordship had a command to take Possession of the Town?

L. Forrester. Yes; I took Possession of the Church-yard *Monday* Morning about six o'Clock.

Sir J. Jekyll. Will you please to give an Account of what you know of the Noble Lord at the Bar when the Town surrendered.

L. Forrester. The Town surrender'd at six a Clock in the Morning; I came into the Church-yard and took Possession of it; then I went to the *Mitre Tavern*, where that Lord and the rest of the Lords were; I disarm'd them.

Att. Gen. What Arms did my Lord *Wintoun* deliver up at that time?

L. Forrester. Two Cases of Pistols.

Sir J. Jekyll. If my Lord hath a mind to ask any Question of the Noble Lord that hath been examined, we desire he may do it.

L. H. Steward. My Lord *Wintoun*, will you be pleased to ask this Noble Lord any Question concerning this matter at *Preston*?

L. Wintoun. I had no Arms: Please to ask him whether I had Sword or Pistol in my Hand?

L. H. Steward. Take my Lord's Question in Writing.

Then the Clerk went and took it.

Question. Whether the Arms your Lordship mentioned to have been delivered to you, whether he had the Arms then about him, or his Lordship did not say they were in the Stable?

L. Forrester. He brought the Arms to me himself, and gave them me out of his own Hands.

L. H. Steward. My Lord says you brought the Arms to him your self, and gave them him out of your own Hands.

L. Forrester. I got so many of them that I should not have made any Distinction of his from the rest, but that I remember he gave me his Arms out of his own Hands, and desired me to give them to my Lord *Kimmergem*.

L. H. Steward. You desired my Lord *Forrester* to give them my Lord *Kimmergem*.

L. H. Steward. Another Question proposed is, Whether my Lord *Wintoun* did not give Orders to his Servant to bring the Arms out of the Stable, and to give them my Lord *Kimmergem*?

L. Forrester. I believe he did bring them out of the Stable.

L. H. Steward. My Lord believes you did bring them out of the Stable.

L. Wintoun. I desire he may be asked whether I had a Sword about me?

L. H. Steward. My Lord *Forrester*, the Question is, Whether your Lordship found a Sword about my Lord *Wintoun*?

L. Forrester. I did not see any Sword that he had; he had a great Coat on, and might have had a Sword under that, but I saw none.

L. H. Steward. My Lord *Forrester*, did the Prisoner at the Bar deliver himself and his Arms to your Lordship as one of those in the Surrender?

L. For.

L. Forrester. I took it so.

Sir J. Jekyll. We beg leave to call General *Carpenter*, and desire he may be sworn in his Place, and give your Lordships his Evidence.

General *Carpenter* was sworn in his Place.

Proclamation for Silence as usual.

Sir J. Jekyll. Mr. *Carpenter*, please to give my Lords an Account when you came to *Preston*, and what happened there.

Gen. Carpenter. I came to *Preston* on *Sunday* the 13th of *November* last: The Troops under *Mr. Wills* had been there the Afternoon before. I got there about Ten a Clock on *Sunday* Morning, with Three Regiments of Dragoons; and there had been no Intercourse nor Message passed before I came.

Att. Gen. Please to inform my Lords what passed there after you came to *Preston*.

Gen. Carpenter. After I came, the Rebels sent out to know what Terms they might expect, and were answered none but at Discretion. They soon after sent out one Captain *Dalziel*, to desire a Cessation till next Morning; upon which I sent in Colonel *Churchill* to tell them, I agreed to a Cessation, provided they sent out an *English* Lord and a *Scots* Lord as Hostages: I nam'd my Lord *Derwentwater* and my Lord *Kennure*. Captain *Dalziel* said he thought my Lord *Kennure* would not come out. I named then Brigadier *Mackintosh*: He also thought he would not come out. I was unwilling to make great Difficulties, it growing towards Night; and said either of the *Mackintosh's* and an *English* Lord: And he brought out my Lord *Derwentwater* and Colonel *Mackintosh* as Hostages, that they should make no Attempt to escape, nor any Works for Defence in the Town.

Att. Gen. Pray, Sir, acquaint my Lords who you sent in with Colonel *Churchill*.

Gen. Carpenter. Colonel *Cotton*.

Att. Gen. When did they agree to the Surrender of the Place?

Gen. Carpenter. Not till the next Morning. The Hostages were, that none should attempt to escape, nor any Defences should be made in the Town till the next Morning, at which time they would determine whether they would surrender or not.

Att. Gen. I desire you to acquaint my Lords, whether these were all the Terms offered, or whether there was any Hopes of Mercy given them?

Gen. Carpenter. I gave them none at all my self, and it is very unlikely any Body else should: I commanded in Chief his Majesty's Forces there: No Body ought to have done it; and if any Officer whatsoever took upon him so to do without my Order or Leave, it was very unanswerable by the Rules and Discipline of War; and what he cannot answer: I hope no Body did: I am sure I gave no such Directions: Colonel *Churchill* can acquaint your Lordships whether I directed him to mention any other Conditions to them than at Discretion.

Sir J. Jekyll. Did you hear any other Officer give them any Hope or Expectation of Mercy?

Gen. Carpenter. No, I did not.

Sir J. Jekyll. If my Lord *Wintoun* hath any Questions to ask this honourable Person, he may do it.

L. H. Steward. My Lord *Wintoun*, now is your Time if you'll ask any Question of General *Carpenter*.

L. Wintoun. Whether I was concern'd in making any

L. H. Steward. I don't hear the Question— Then the Clerk was sent down to take it in Writing.

And the Question being brought up to the Lord High-Steward by the Clerk.

L. H. Steward. The Question my Lord asks is, Whether he was concerned in making any Capitulation, or knew any thing about it?

Gen. Carpenter. Not that I know of; it is impossible for me to know, except by Hearsay: He was not the Person treated with, I treated with my Lord *Derwentwater* and one of the *Mackintosh's*, so that I know nothing of his being concerned in any manner of Treaty.

L. H. Steward. You hear the Answer.

Sir J. Jekyll. We beg leave to call General *Wills*.

L. Wintoun. I desire to ask my Lord *Forrester* a Question.

L. H. Steward. My Lord *Wintoun* desires to propose a Question to my Lord *Forrester*.

Sir J. Jekyll. Though that be out of Method, yet don't oppose it.

L. H. Steward. Bring up the Question. My Lord, the Question my Lord *Wintoun* proposes is, Whether he had any Sword or Arms when he first saw your Lordship at *Preston*?

L. Forrester. I don't remember I had a Sword from him; I can't tell whether he had a Sword about him, for he had a great Coat on; but I remember I took none from him, I had only the two Cases of Pistols which he gave me.

L. H. Steward. He could not tell whether you had a Sword about you, you had a great Coat that he could not well see; but he remembers he took none from you, only the two Cases of Pistols which you gave him.

L. H. Steward. Who do you call next?

Sir J. Jekyll. My Lords, we desire that General *Wills* may be sworn.

He was sworn accordingly.

Sir J. Jekyll. Mr. *Wills*, pray give my Lords an Account when you came before the Town of *Preston*, and what happened there.

Gen. Wills. My Lords, I had the Honour to command the King's Troops that attack'd the Rebels at *Preston*; I came before that Town the 12th of *November* last about One o'Clock, and ordered two Attacks upon the Town; that Attack which leads two *Wigan* was commanded by Brigadier *Honywood*, who beat the Rebels from their first Barricade, and took Possession of some of the Houses in the Town; the other Attack which leads to *Leicester* was commanded by Brigadier *Dormer*, who lodg'd his Troops nigh the Barricade of the Rebels. The next Day, about Two o'Clock, Mr. *Forster* sent out one Mr. *Oxborough*, an *Irishman*, offering to lay down their Arms and submit themselves, and hoped that I wou'd recommend them to the King for Mercy; which I refused, and told them I would not treat with Rebels, for that they had killed several of the King's Subjects, and that they must expect to undergo the same Fate; upon which he said, that as I was an Officer, and a Man of Honour, he hoped I wou'd shew Mercy to People who were willing to submit: Upon which I told them all I would do for them was, that if they laid down their Arms, and submitted Prisoners at Discretion, I would prevent the Soldiers from cutting them to pieces till I had further Orders, and that I would give them but one Hour to consider of it; and

and sent him back again into the Town to acquaint *Forster* of it; before the Hour was expired they sent out Mr. *Dalziel*, Brother to the Earl of *Carnwath*, and he wanted Terms for the *Scots*. My Answer was, that I would not treat with Rebels, nor give them any other Terms than what I had before offered them: Upon which it was desired that I would grant further Time till Seven o'Clock next Day, to consult the best Method of delivering themselves up. I agreed to grant them the Time desired, provided that they threw up no new Intrenchments in the Streets, nor suffered any of their People to escape, and that they sent out the chief of the *English* and *Scots* as Hostages for the Performance; and I sent in Colonel *Cotton* to bring them out, who brought out the Earl of *Derwentwater* and Mr. *Mackintosh*. The next Day about Seven o'Clock Mr. *Forster* sent out to let me know, that they were willing to give themselves up Prisoners at Discretion, as I had demanded. Mr. *Mackintosh* being by when the Message was brought, said he could not answer that the *Scots* would surrender in that manner; for that the *Scots* were People of desperate Fortunes, and that he had been a Soldier himself, and knew what it was to be a Prisoner at Discretion; upon which I said, go back to your People again, and I will attack the Town, and the Consequence will be, I will not spare one Man of you. *Mackintosh* went back, but came running out immediately again, and said, that the Lord *Kennmore*, and the rest of the Noblemen, with his Brother, would surrender in like manner with the *English*.

Sir *J. Jekyll*. When the Attack was made by the King's Forces, whether any, and how many were killed?

Gen. *Wills*. I believe between sixty and seventy but few of the Horse; there were killed and wounded about a hundred and thirty.

Att. Gen. If you please to acquaint my Lords, whether any of the Rebels came and treated with you, or if you gave them any Encouragement to hope for Mercy.

Gen. *Wills*. All the Terms I gave them was, that I would save their Lives from the Soldiers 'till further Orders, if they surrender'd at Discretion: I desire to explain the Meaning of surrendering at Discretion, which is, then it is in our Power to cut them all to pieces; but I would give them their Lives 'till further Orders; for I could have cut them to pieces immediately after they are made Prisoners at Discretion, by the Rules of War; and if they did not comply I would renew the Attack, and not spare a Man.

L. H. Steward. You told them that if they did not comply, you would renew the Assault?

Gen. *Wills*. Yes, and not spare a Man of them.

Sir *J. Jekyll*. Did you give your Officers any Directions to give any other Terms?

Gen. *Wills*. No, I did not.

L. H. Steward. Then you gave no Directions to any other Officer to give other Terms than you yourself had offer'd?

Gen. *Wills*. No, I did not.

Mr. *Cocoper*. Was there any other but these two, Colonel *Churchill* and Colonel *Cotton* sent in by you, or by General *Carpenter*?

Gen. *Wills*. Yes, Colonel *Nassau*, to bid our own People forbear firing.

Mr. *Cocoper*. Had Colonel *Nassau* any Authority to treat?

Gen. *Wills*. No, he went in only to bid our Troops to forbear firing, and order Colonel *Cotton* to come out with the Hostages.

Sir *J. Jekyll*. You say the Rebels desired you to recommend them to the King's Mercy? who made that Proposition?

Gen. *Wills*. One *Oxborough*.

Sir *J. Jekyll*. Had you any other Proposition by any other?

Gen. *Wills*. Mr. *Dalziel*, Brother to my Lord *Carnwath*, for the *Scots*. I refused him likewise, and told him I wou'd treat with no Rebels, nor give them any Quarter.

Sir *J. Jekyll*. If my Lord at the Bar will ask this honourable Gentleman any Question, now is the Time.

L. H. Steward. My Lord *Wintoun*, the Clerk is sent down to you again; if you have any Question he will take it.

The Clerk return'd with the Question to my Lord High-Steward.

L. H. Steward. The Question my Lord proposes to General *Wills* is, whether you, General *Wills*, gave any Summons to surrender before you made the first Attack; or if you did not make the Attack without any Summons at all?

Gen. *Wills*. When I was viewing the Town they shot two of my Dragoons, and I did not summons them.

Another Question taken by the Clerk and brought up.

L. H. Steward. Another Question my Lord desires to be ask'd is, whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preston*, provided they surrender'd at Discretion?

Gen. *Wills*. Before ever I had drawn up the Troop—

L. H. Steward. The Question is, whether you offer'd to prevent the Forces from falling upon the Gentlemen at *Preston*, provided they surrender'd at Discretion?

Gen. *Wills*. Yes, my Lords, I did hinder the Troops from falling upon them after they offered to surrender.

Another Question brought up by the Clerk.

L. H. Steward. General *Wills*, my Lord desires you may be asked what you know, or have been informed of his Lordship's being against coming to *England*; or of my Lord's being against fighting with any of yours, or General *Carpenter's* Troops?

Gen. *Wills*. I never knew my Lord *Wintoun*, nor saw him till four Days after he was taken at *Preston*, so that I can say nothing to that I don't know any thing of.

L. *Wintoun*. I desire General *Carpenter* may be ask'd the same Question.

L. H. Steward. Do you know any thing, or have heard that my Lord *Wintoun* was against coming into *England*, or fighting the King's Forces?

Gen. *Carpenter*. My Lords, I heard that at *Fedburg* they held a Council of War, the chief Officers, &c. this is only Hearsay, I speak not of my own Knowledge.

Sir *J. Jekyll*. For the sake of Evidence it is incumbent on us to desire that my Lord confines himself to ask the General what he knows, and not to what he heard said.

Att. Gen. We have two Witnesses more, the Colonels that were sent into the Town by the two Generals, Colonel *Churchill* and Colonel *Cotton*.

Colonel

Colonel *Churchill* was sworn.

Mr. *Cowper*. The Question proposed is, whether you was sent into *Preston*, and by whom?

Col. *Churchill*. I came up to *Preston* on Sunday Morning, under General *Carpenter's* Command, about Ten o'Clock; about One they sent out to capitulate; about Five I was sent in by General *Carpenter*, their Request being, that they might have Time till next Day to consider whether they should surrender or not. My Directions were, they should have that, upon Condition they sent out Hostages that none of them should attempt to escape, and that no Defence should be made in the Town. The People nam'd to me by General *Carpenter* were my Lord *Derwentwater* or my Lord *Widdrington*, and my Lord *Kennure* or *Mackintosh* was mention'd for the *Scots*. I directed them to send the Hostages to me. They could not find my Lord *Derwentwater* nor *Widdrington*, and *Mackintosh* was gone to Bed. A little before eight I went with them, and told them the Terms I was to deliver to them, that they were to throw up no Works to fortify themselves, and should answer for the People, that none of them should escape. My Lord *Derwentwater* and *Mackintosh* went out with me: I carried them to the two Generals there, and at Seven o'Clock next Morning they surrender'd themselves.

Mr. *Cowper*. Please to give me leave to ask you, whether you had any Commission from the General that sent you into the Town, or whether you of yourself, without such Commission, gave them any Hopes of Mercy?

Col. *Churchill*. I had not any Power to do it, and was so far from doing it, that I don't remember a single Syllable was mention'd either on our Side or theirs about it.

Mr. *Cowper*. Did you at any other Time hear any other Officers give them such Assurance?

Col. *Churchill*. I never heard a single Word like it.

Att. Gen. Who did you treat with?

Col. *Churchill*. The Body I treated with carried me to Mr. *Forster*, and then to my Lord *Kennure*. I deliver'd my Message to Mr. *Forster*. I did not know any *Scots* Lord but *Kennure*.

Att. Gen. Who was present besides my Lord *Kennure*?

Col. *Churchill*. I saw a great many, but I did not know particularly any.

Att. Gen. The next is Colonel *Cotton*, who was sent in by General *Wills*. We desire Colonel *Cotton* may be sworn.

He was sworn accordingly.

Att. Gen. We desire to ask Colonel *Cotton*, whether he was sent into *Preston* by General *Wills*, and what Instructions were given him when he went in?

Col. *Cotton*. I was sent into the Town by General *Wills* at their Desire, they having Terms to offer: I told them we could give them none; they urged they had Disputes amongst the *Scots* and *English*, and desired till the next Morning to reconcile them. General *Wills* sent me again into the Town, to allow them that time, provided that the Lords would give their Words that they would throw up no Works for their Defence from that time, and do their utmost that none of their People shou'd make their Escape; and the Lords did give their Words; and the Lord at the Bar was present.

Att. Gen. I desire you would acquaint my Lords

upon what Terms they surrender'd.

Col. *Cotton*. I had no Power from Mr. *Wills* to promise them any Terms, nor I did not.

Sir *J. Jekyll*. Did you acquaint them you had no Power to offer them any Terms?

Col. *Cotton*. I did.

Att. Gen. Who did you acquaint?

Col. *Cotton*. All the Lords, and the People that had any Influence over the common Men.

Sir *J. Jekyll*. Was the Noble Lord at the Bar amongst them?

Col. *Cotton*. He was.

Sir *J. Jekyll*. Was there any Overtures made of obtaining the King's Mercy?

Col. *Cotton*. I had no such Order from Mr. *Wills*, and I did not offer it neither directly or indirectly.

Att. Gen. My Lords, I think it hath been desired to call Brigadier *Munden*, who speaks only as to the Attack; and I think, my Lords, if this Evidence need to be corroborated, we shall desire to call another Evidence who was with General *Wills* all the Time the Overtures pass'd?

Sir *J. Jekyll*. My Lords, if the Lord at the Bar hath any Question to ask Colonel *Cotton*, we desire he may be indulged.

L. Wintoun. I would know whether they did not take Prisoners and kill them, notwithstanding the Capitulation?

L. H. Steward. The Question my Lord desires may be asked is, whether you did not take Prisoners and kill them, notwithstanding the Capitulation?

Col. *Cotton*. My Lords, upon my coming out of the Town, though the Lords had engaged to prevent any of their People making their Escape, we were alarm'd with an Account that several were attempting it, and about six of those who were endeavouring to escape were cut to Pieces. Upon this Breach of their Parole Colonel *Churchill* and my self were sent in to demand Hostages, and brought out Lord *Derwentwater* and Mr. *Mackintosh*.

Att. Gen. We desire Brigadier *Munden* may be Sworn.

He was accordingly call'd and Sworn.

Att. Gen. We desire Brigadier *Munden* may be asked whether he was sent with these two Colonels into the Town, and what Directions were given them.

L. H. Steward. You hear the Question, please to give your Answer.

Brigadier *Munden*. I humbly apprehend I am called to give some Account of the Attack at *Preston*, which I will do in as few Words as I can. I am first to tell your Lordships, after the Rebels demanded an Audience of General *Wills*, their first Demand was for Terms: The Answer they received was, that General *Wills* would not treat with Rebels, but if they surrendered as Prisoners at Discretion, they should have their Lives spared 'till his Majesty's Pleasure was known. They asked if those were the only Terms; it was answered yes. Afterwards this Gentleman went into the Town, who had an Hour's time allowed him to consider of it. I remember his insisting upon Terms, but all the Answer Mr. *Wills* gave them was, if he had Inclination, he had no Power to give them any, otherwise than saving their Lives till his Majesty's Pleasure was further known. If they expected other Terms, they might return into the Town immediately, and he would attack them and cut them to Pieces.

After

After this the Gentleman went into the Town, my Lord *Derwentwater* and Mr. *Mackintosh* came out to us. Mr. *Mackintosh* and my Lord *Derwentwater* and I heard them frequently repeat their Request to the General for Terms, and I heard *Mackintosh* give a particular Account of the Bravery and Hardiness of their Troops. Mr. *Wills* told him he might have proved and tried them if he had pleased, and then it would have been seen whether the King's Troops, or a parcel of Rebels would have acted the braver Part. Mr. *Wills* received them with the utmost Detestation and Contempt, and gave them no hope of Mercy either directly or indirectly.

Att. Gen. Did you ever hear any other of the Officers offer them any other Terms?

Brig. Munden. No, I did not hear any. I heard the Instructions that were given to Colonel *Cotton* by General *Wills*, and when Mr. *Cotton* came out of the Town the third time, which was when he went to take their Parole of Honour.

Sir J. Jekyll. Did my Lord *Wintoun* come to give his Parole?

Brig. Munden. When Colonel *Cotton* came out, I very well remember he said he had received his Parole of Honour among the rest.

Sir J. Jekyll. If my Lord at the Bar hath any mind to ask this honourable Person, Brigadier *Munden*, any further Questions, we have done with him.

L. H. Steward. My Lord *Wintoun*, do you ask this Witness any Question?

L. Wintoun. No.

Sir J. Jekyll. We that are entrusted by the House of Commons have no more Evidence to offer to your Lordships.

L. H. Steward. My Lord *Wintoun*, the Gentlemen of the House of Commons have done with the Evidence they proposed to call against you; therefore it is your Lordship's time to open what Evidence you have, or if you have made any Observations on the Evidence given against you, to deliver them, or to call your own Witnesses—Take your own Method.

Proclamation was made for Silence as usual; and after some Pause,

L. H. Steward. My Lord *Wintoun*, I acquainted your Lordship that the Gentlemen of the House of Commons who manage the Evidence to support the Impeachment, have done with giving their Evidence; they design to give no more against you; therefore this is the time that is proper for your Lordship to make your Defence; you are to do it in your own Method, either by calling your Witnesses, or making such Observations in your Defence as you think proper.

L. Wintoun. Please to allow me some time, for my Witnesses are not yet come. I have used all possible Endeavours to get them, please to allow me till this Day Month 'till they come up. It will signify nothing to examine any Witnesses after I am dead. I never saw my Council but once, that they might instruct me what I have to say. My Lords, I am informed they will be here some time next Week.

L. H. Steward. What your Lordship said is not heard.

L. Wintoun. I said I never spoke to any of my Council, and that but once I have sent to my Council; I never saw them.

Proclamation for Silence was made as usual.

L. H. Steward. My Lord offer what you have

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to say now, while the Court is in Silence.

L. Wintoun. My Lords, the most material of my Witnesses are not come up, they will be here some time next Week; I have not talk'd to my Council.

L. H. Steward. Your most material Witnesses are upon the Road, you desire some time till they come up; the effect of your Petition to the House of Lords, that is what you offer again?

L. Wintoun. Yes, my Lords.

Att. Gen. We think it our Duty to acquaint your Lordships, that what that noble Lord insists upon now is out of Time. If he had any Reasons to offer to defer the Trial, he knew the proper Time and Place. Our Duty is to let your Lordships know, that when the Evidence for the Prosecution is given, the Prisoner is not to have time to delay the Proceedings, not any longer time. He ought to have applied before. We must submit it to your Lordships.

Mr. Cooper. This Request of his Lordship, the Prisoner at the Bar, seems to concern the Methods of Justice, and is, we think, of great Consequence with respect to the Commons. My Lords, we should have been very far from pressing to bring on his Lordship's Trial sooner than might have been thought consistent with the Rules of Justice: But when we consider the Time your Lordships have allowed him upon several Applications he has made to your Lordships for that purpose; when we all know he has had Notice ever since he was seized and made Prisoner at *Prifson*, that a Defence would be necessary, and that it concerned him to provide for it, when we reflect how long it is since the Commons exhibited their Impeachment against him, it's surprizing after all to find his Lordship alledge, that he hath not had Time to bring up his Witnesses. With what View his Lordship is advised to make this Defence may be easily explained: It is, my Lords, to move the Compassion of the People, and, I fear, to traduce the Justice of your Lordships Proceedings. Surely it must be confessed, that he hath had more than Time sufficient, more than any one in the like Circumstances hath been allowed by your Lordships great Indulgence; and yet at last to have nothing to offer, but that his Witnesses are not come, without attempting to produce one single Witness to prove that he has, or expects any one Witness to appear for him.

My Lords, the stated Rules of Proceeding in Trials of this Nature ought to be ever sacred; and I don't know that any one Prisoner hath a Right to be indulged in Methods unknown to the Constitution.

My Lords, I believe when a Prisoner impeached by the Commons puts himself upon his Defence, and is brought upon his Trial, there ought to be no Interruption or Delay whatsoever. Sure I am, it is inconsistent with the Proceedings of all other Courts of Justice.

Your Lordships, as we are informed, lately denied the Prisoner any farther Time; and if it was then thought not proper to be granted, certainly now he hath put himself upon his Trial, and stands upon his Defence at your Lordships Bar, he shall not be indulged to making the same Request.

My Lords, whatever Compassion we may have for this unhappy Lord, yet the Commons, when they reflect that the Methods and Forms of Justice

are essential to Justice it self, they then think themselves obliged to oppose a new Attempt, and hope the Trial shall proceed.

L. Wintoun. My Witnesses are not come up. They will be up about *Monday* or *Tuesday* next. I have had no longer time than since the 10th of *February* last to bring up my Witnesses, when it was very bad travelling.

A Motion was made to adjourn.

L. H. Steward. My Lord *Wintoun*, your Lordship hath heard the Commons oppose your Request: You have heard the Reasons given for such Opposition. Doth your Lordship, having heard the Reasons, yet insist upon it, or do you withdraw your Request?

L. Wintoun. I insist upon it, my Lords.

Then the House was adjourned to the Chamber of Parliament.

And being returned in about an Hour, and the House resumed, and Proclamation made for Silence, as usual.

L. H. Steward. My Lord *Wintoun*, I am commanded by the Lords to let you know, that they have considered your Request, and that they are of Opinion it is not now consistent with the Rules of Justice to allow you further Time for sending for your Witnesses; therefore you are to proceed in your Defence. I am likewise to acquaint you, that in respect to the lowness of your Voice, the Lords have ordered a fit Person to stand by you (after he is sworn) to report truly to their Lordships what you say during your Trial.

Is it your Lordships Pleasure that one of your Lordships Clerks be appointed to stand by and report to your Lordships?

Lords. Yes, Yes.

A Clerk was sworn to make true Report; but my Lord *Wintoun* began to speak so very low, as scarce any could hear. Whereupon,

Sir J. Jekyll. My Lords, I perceive it is your Lordships Pleasure to indulge the Lord at the Bar, to have a Person sworn to report truly to your Lordships what he shall say in his Defence; but it is not your Lordships Intention that the Lord at the Bar should speak so low, as it is impossible for us or any near him to hear what he says.

L. H. Steward. My Lord *Wintoun*, Speak as loud as you can, so as the Managers may hear; he is only to help your Voice, so as their Lordships may hear.

Clerk from L. Wintoun. I think it very hard, and great Injustice, that I should not be allowed Time to make my own Defence; and that my Witnesses should not come up; and that I should be tyed down to a foolish Form, which I am not accusom'd to, when I am in danger of my Life.

Then the House was adjourned to the Chamber of Parliament.

Friday, March 16. *The Second Day.*

L. H. Steward. THE House is resumed. Do your Lordships give the Judges leave to be cover'd?

Lords. Ay, ay.

Proclamation made for Silence, and another to bring forth the Prisoner, as usual.

The Prisoner brought to the Bar, and kneels.

L. H. Steward. My Lord *Wintoun*, you may

rise.—My Lord *Wintoun*, you may proceed upon your Defence.

The Clerk ordered to report as before.

L. H. Steward. I again remind your Lordship, you are to speak in your Defence as loud as you can; if your Voice is not heard, he is ready to report to the Lords what you say, but you must speak as loud as you can.

Clerk from Lord Wintoun. My Council is ready here to speak for me.

L. H. Steward. My Lord, I would not presume to make an Answer, but that it is known Law; that undoubtedly your Lordship cannot have Council, by the Law of the Land, to speak in your Defence, unless it be to Matter of Law; for the Law supposes every Man sufficient to answer for himself as to Matter of Fact.

Clerk from Lord Wintoun. My Lords, I am not accustomed to speak on such Occasions; therefore I hope your Lordships will allow my Council to speak for me.

L. H. Steward. My Lord, I must acquaint you, that the Law in this Case admits of no Exception, but holds to the general Rule.

Clerk from Lord Wintoun. My Lords, I don't understand the Law; I am perfectly a Stranger to the Customs of the House, therefore hope your Lordships will allow my Council that know them to speak for me.

L. H. Steward to the Clerk. You let your Voice fall.

Clerk from Lord Wintoun. I am not accustomed to the Practice of this House; therefore I desire that your Lordships would please to allow other People to speak for me that understand them.

L. H. Steward. My Lord *Wintoun*, your Council are not to be allowed to speak for you, as to those Things that are Matter of Fact, in an Impeachment of High-Treason, but to what is Matter of Law; and I believe if you ask your own Council they will tell you, as the Law stands they cannot be heard for you here as to Matter of Fact.

Clerk from Lord Wintoun. The Council will inform your Lordships of the Matter of Fact, and they know how better to express it than I do.

L. H. Steward. My Lord *Wintoun*, have you any Witnesses to call in your Defence?

Clerk from Lord Wintoun. I told your Lordships Yesterday, my most material Witnesses were not yet come up.

L. H. Steward. My Lord, I acquainted your Lordship Yesterday, and now would remind you of your own Petition exhibited to the House of Lords, wherein you acknowledge that a great many of your Witnesses were come up; those Witnesses were arrived, you only then pretended Four were not yet come. Doth your Lordship design to make no manner of use of those great Numbers of Witnesses that you admitted were come?

Clerk from Lord Wintoun. Without those they would not be of such an Effect—They would serve for nothing without those Witnesses coming.

L. H. Steward. My Lord *Wintoun*, your Lordship will please to observe the Lords wait with great Patience, to see if your Lordship would be better advised, and go into your Defence.

Clerk from Lord Wintoun. I don't really know, my Lords, what to say for it, for I don't understand the Proceedings of this House. It was always the Custom in any Court where I was, for People to be allowed to speak, or the Council be allowed.

allowed to speak for me, for I am not accustomed to speak any manner of way in my own Defence, therefore I hope you will allow my Council to speak for me. My Council have a Point of Law to speak to; they say so, but I know nothing of it.

L. H. Steward. My Lord *Wintoun*, your Council have had Access to you; and tho' your Lordship can't speak and argue to the Point of Law, can't your Lordship propose what the Question is?

Clerk from L. Wintoun. It is impossible for me to do a thing I don't understand; I don't know what the Point of Law is, no more than a Man that knows nothing about it.

When some laugh'd,

L. Wintoun. I am only speaking in my own Defence; I don't expect to be laugh'd at.

L. H. Steward. I think his Lordship does observe well; I hope every one will forbear that.

L. H. Steward. Won't your Lordship be pleased to name what Matter the Question concerns?

Clerk from L. Wintoun. It will be something about the Trial; no doubt something of what the common People have been speaking about— It is, no doubt, in Answer to the Managers of the House of Commons. I have not seen my Council since I was last here in the House; I have been kept close Prisoner all the time, and no Body come near me; nor had I any Time to speak with any Body, particularly with my Council; so that I have not had Time to be exactly informed of all the Points of Law they have to plead. The Council will tell themselves what Point of Law they have to plead.

L. H. Steward. My Lord *Wintoun*, regularly you should propound your own Question before your Council speak. Before it appears to be a Point of Law, it is not fit for your Council to be heard.

Clerk from L. Wintoun. It is impossible I should direct a Council, I, that don't understand Law: I can't introduce a Point of Law; my Council will speak to the Point of Law.

L. H. Steward. My Lord *Wintoun*, did not you speak to your Council last Night?

Clerk from L. Wintoun. I could not.

L. H. Steward. Why?

Clerk from L. Wintoun. Because it was late when I went from hence; and your Lordships know I am a close Prisoner in the Tower; and was lock'd up and could not see them. I see no Body but the Gaards.

L. H. Steward. Hath not your Lordship several times seen your Council, as often as you required an Order for so doing?

Clerk from L. Wintoun. I never saw my Council but once, before I gave in my Answer.

L. H. Steward. Did you desire to see them often?

Clerk from L. Wintoun. My Lords, my Solicitor spoke to them; and my Witnesses not being come up, it was needless for me to speak to my Council, before that they might know what the Witnesses had to say, and so might draw up the State of the Question. I did not doubt but the Lords would have given me more Time; and therefore I was not so desirous to see my Council, as I would have been, if I thought I should have been so much cramp't in Time.

Mr. Cowper. My Lords, I had the Honour to receive the Commands of the Commons, to re-

ply to his Lordship's Defence, and it was reasonable to expect that the Prisoner, having pleaded Not Guilty to the Impeachment; would have attempted to give some Evidence in support of his Plea; but since it seems to be his Lordship's Resolution not to enter into a Defence, I think it my Duty to say something to your Lordships upon this unexpected Occasion. Such is the Treason; and so full the Evidence to prove it, that I think his Lordship's Behaviour; unaccountable as it is; more to his Purpose than any other could have been. My Lords, I am very unwilling to speak my own private Sentiment of his Lordship's present Conduct; although the Observations I could make arise out of his Lordship's Answer to the Impeachment: Whoever shall read and consider it, will find my Lord *Wintoun* not denying, but confessing the several Overt-Acts of Treason laid to his Charge, and then drawing a false Conclusion, that he is Not Guilty however of the Treason whereof he is accused. He denies that what he did was done with a traitorous Intention, and says very emphatically, that the pure Streams of Loyalty, which have always run in the Blood of his Ancestors, are derived to him uncorrupted; and thus, my Lords, a Popish Pretender being the Object of his Lordship's Loyalty, he thinks he may be guilty of the whole Impeachment without being a Traitor. This is the true state of the Case. It seems to me, his Lordship is determined to maintain his Point; and how far he may think it proper to acknowledge your Lordship's Jurisdiction I know not. My Lords, as to the Impeachment which the Commons with great Justice have exhibited against this Prisoner, your Lordships have observed that the several Treasons therein contained have been fully proved; I am unwilling, in a case so plain, and where no Defence has been, or can be made, to waste your Lordship's Time. Your Lordships have heard, in the course of the Evidence which we have produced, that this Lord departed from his Seat of *Scaton* House with about fourteen of his own Servants free and unconstrained; that he joined others of the Rebels at *Moffett*, at which Place his Lordship was pleased to form a Troop, which from thenceforth was called the Earl of *Wintoun's* Troop. The Prisoner had the Command of it and for fear his Zeal for the Pretender should pass unobserved, his own Servants rid in his own Troop in his own Livery; and I may add, that it appears his Lordship's Troop was paid after the rate of Two Shillings *per diem* each Man, by his Lordship's Order, and with his own Money. From the Town at *Moffett*, which I mentioned, your Lordships had an account of many Marches and Countermarches; his Lordship and the Rebels under him ever where increasing in their Numbers; every where declaring and proclaming the Pretender to his Majesty's Crown, as King of these Realms. And, my Lords, I may venture to say it appears through the whole course of the Evidence, that no one was more zealous and active than the Prisoner. My Lords --

L. Guilford. I am very sorry to interrupt that Gentleman, but I think it proper, before the House of Commons sum up their Evidence, to move your Lordships to adjourn to the House of Lords.

Then the House was adjourned to the Chamber of Parliament; and after about half an Hour returned, and the House was resum'd.

And Proclamation for Silence being made as usual,

L. H. Steward. My Lord *Wintoun*, I am order'd by their Lordships to acquaint you, that they are yet ready to hear any thing that you have to say in your Defence by way of Observation upon what hath been prov'd against you, or alledged against you, or otherwise; they are likewise ready to hear any Witnesses you are pleased to call or produce; but then I am to acquaint your Lordship, that if you neglect this Opportunity now given you, then it is their Lordships Pleasure that I should signify to the Managers of the House of Commons, that they should go on to their Reply; and if such Reply be made, your Lordship hath no further Opportunity to alledge any thing, or to prove any thing. This Notice is ordered by their Lordships to be given you. I am likewise to acquaint you, that it is their Lordships Opinion, as I before told you, that if you have any Question of Law to be spoken by your Council, their Lordships cannot admit any other Form, but that you should propound it to their Lordships yourself.

Clerk from L. Wintoun. I believe my Council, my Lords, have something to say in Answer to what the Managers have said. My Lords, the Gentleman who was present, knows they would not let me know what they had to say.

Clerk. He says I was by when his Council said so.

L. H. Steward. My Lord, if your Lordship hath any Notes or Papers you may help your Memory by them in your Defence.—Read or look upon them.

Clerk from L. Wintoun. I shall read it as I can, and you will excuse it if I don't do it right as I should do.

Lord Wintoun reads, and the Clerk repeats.

The Council have a Point of Law arising from what hath been pass'd in the House, to shew that he is such a Person as is not capable of committing the Treason laid in the Impeachment. I plead Not Guilty, and this alledges the same. I say I am Not Guilty, and the Paper says it will demonstrate I am not.

The Paper read again and repeated as before. The Council have a Point of Law arising from what hath passed in the House, to shew that he is such a Person that is not capable of committing the Treason laid in the Impeachment.

Clerk from L. Wintoun. I don't understand Law, and how should I introduce a Point of Law?

L. H. Steward. My Lord *Wintoun*, if your Lordship doth not proceed to make a Defence, and to call your Witnesses, I have already acquainted you, and I believe I shall be excused for doing it a second Time, that I shall signify to the Managers of the House of Commons to reply, after which your Lordship can't have them examined.

Clerk from L. Wintoun. I heard your Lordship what you said, but I don't understand what is meant by it.

L. H. Steward. They may proceed to say what they think proper touching that Sort of Defence your Lordship is making, to answer what they have already said and proved against your Lordship; after they have said and done this, the Lords won't allow you to speak afterwards.

Clerk from L. Wintoun. The Council desire to be heard, since they have written a Paper, to be

heard on that Paper.

L. H. Steward. The Paper is allowed to help your own Memory, but you must not give in any Paper as written by your Council, nor mention it as such.

Clerk from L. Wintoun. I desire my Council may be heard on the Point of Law contained in what I call the Paper. I desire my Council may be heard to the Point of Law, which I read out of the Paper. I desire my Council may be heard to the Point of Law, which they urge they have to say.

L. H. Steward. My Lord *Wintoun*, you have by the help of a Paper, propounded that which you call a Point of Law. Their Lordships have heard what you have propounded. I don't find any Motion is made to adjourn, to consider whether such a Point is fit for your Council to be heard to, that is, whether it is a Point of Law. If there be any Doubt, you will presently see it by the Effect, by such a Motion as I have mentioned.

After some Pause,

L. H. Steward. If your Lordship doth not proceed, I must intimate to the Managers of the House of Commons that they may reply.

Clerk from L. Wintoun. My Lords, if your Lordships will allow my Council to be heard on the Point of Law I have given in.

L. H. Steward. My Lord, I think I may now presume to tell you, that I humbly apprehend it is no Point of Law which you propose.

Clerk from L. Wintoun. I am not a Judge of a Point of Law, for I don't understand Law, nor never did.

L. H. Steward. My Lord *Wintoun*, the same Matter must not be drawn over and over again. If your Lordship doth not proceed to something proper for your Defence, I must signify immediately to the Managers that they may reply.

Clerk from L. Wintoun. If your Lordships please to hear the Council, they will tell you what it means. The Council dare not speak till they be desired.

L. H. Steward. Gentlemen of the House of Commons, you may reply.

Mr. Cooper. My Lords, I shall avoid, as near as I am able, repeating any Thing I have already said before your Lordships last Adjournment. I was observing that the Behaviour of the Prisoner, my Lord *Wintoun*, throughout all his Conduct, during the whole Progress of the Rebellion, appeared in a quite different Light, to that in which he would now willingly appear: Your Lordships find him, according to the Evidence, at every false Alarm very inquisitive to know the Occasion; having assumed the Command of a Squadron, his Lordship was instantly at his Post, ready to receive and encounter his Majesty's Forces, and the Reverend Mr. *Patten* has done Justice to his Lordships Vigilance and Courage upon this Occasion; but it seems the Alarms were both false: Hence we may observe, that Alarms may be false, and *Dangers may be imaginary*; which Mr. *Patten*, and Men of his Principles would do well to reflect on at leisure. My Lords after great Numbers of Marches and Counter-marches, during which his Majesty's Subjects were plundered, the Public Money seized, and Taxes exacted from the People by Force and Violence. Your Lordships have heard that the Town of *Preston* was seiz'd by this Lord,

and

and the Traitors, his Accomplices. At this Place ensued a terrible Slaughter of his Majesty's faithful Soldiers, Men who deserved a better Fate than to die by the Hands of such perfidious Rebels. But when the usual Bravery of the King's Troops prevailed, and there was nothing left but the undeserved Hope of Mercy, you find the Prisoner amongst the rest surrendering his Arms and his Person to the Discretion of his Majesty's Generals. The Commons cannot, my Lords, but take a particular Satisfaction in one Incident, occasion'd by this Lord's putting himself upon his Trial, which is, that it has administer'd to them a Time and an Opportunity, in the most public Manner before this August Assembly, to vindicate his Majesty's Generals from a malicious Calumny suggested even by this Lord, the Prisoner, in his Answer to the Impeachment, and not only by him, but by the rest of his Accomplices already attainted. It seems not to be accidental, that all the Lords mentioned in the Impeachment should every one of them (false as it appears to be) alledge that they surrender'd, some say upon Promises, but all agree upon Hopes given of Mercy, considering how fully it now appears, that there is not the least Colour or Shadow of Truth to support this Suggestion; it is no uncharitable Reflection to say, that their Lordships, I doubt, to supply the Mischiefs their Arms could not accomplish, were willing to assist their Party, by furnishing them with an Untruth to propagate. With what Zeal and Industry has it been accordingly propagated! I may take the Liberty, I presume, to say, with the Consent of this whole Assembly, that it appears on the Evidence to be utterly false; nay further, that the very Reverse is true, the Rebels would willingly have obtained a Promise, or even a Hope of being recommended, but the Generals rightly told them, Rebels deserved no Mercy, nor would they treat with Rebels of surrendering otherwise than at Discretion. I cannot conclude without touching shortly upon a Question which I observed his Lordship to ask, during the Course of the Evidence; I think it was propos'd to Colonel Cotton, Whether any of *our Men*, as his Lordship was pleas'd to express it, were slain during the Time of the Cessation of Arms at *Preston*? which, in fact, was true; and if it had been answer'd in the Affirmative without Explanation, I believe his Lordship would have been gratified, by furnishing his Friends with another Story to propagate, which, well improved, might have lasted a good while; but when the Witness (who, I presume, discerned the Tendency and Malignancy of the Question) gave his Answer, the Case appears this; The Rebels stipulate and agree (Hostages being deliver'd) that no Works shall be erected in the Town during the Suspension; that no Person then in the Town shall go out of it during the same time; in Breach of which Stipulation and Agreement about six of the Rebels attempt, Sword in Hand, to charge through the King's Troops, in which Attempt they fell, and if the King's Troops had done less they had not done their Duty. My Lords, I thought it not improper to make some few Observations upon the Evidence; not that his Lordship's Defence has made it requisite, but to answer, according to my Power, the End of that Trust which the Commons have been pleas'd to repose in me.

Sir *William Thomson*. My Lords, I should think myself unworthy the Honour of being allowed any Share of your Lordships Time; but as I was entrusted by the Commons to assist the learned Gentleman who spoke last, in a Reply to such Defence as should be made by the Noble Lord at the Bar, although no Evidence has been produced by him, yet I must request your Lordships Patience to make a few Remarks upon the Nature of this Cause, as it stands before your Lordships.

The Answer of the Noble Lord not being supported by Evidence, ought to go for nothing; but since several Matters are alledged in it to mitigate, if not to justify his Proceedings, which are falsified by our Evidence, I beg leave to take some notice of it.

I must agree with the Noble Lord, that "It will be very pleasing to that honourable Assembly who are his Accusers to have an innocent Man acquitted, as well as a guilty one condemned." Nor can I differ with him where he asserts, "That to be taken with Persons in Arms against the Government, is a reasonable Presumption of his Guilt, and a very just Foundation to accuse him with the rest so taken; but that the Circumstances of his Case appear so different from the others, as to require your Lordships distinguishing him in Judgment." I cannot say, that any thing has been offer'd to your Lordships which makes room for such a Distinction.

"This Noble Lord is pleas'd to give an Account of what happened to him about eight Years ago, when he endeavour'd to avoid the Suspicion of the Government; he mentions the ill Usage of the Militia and the King's Troops, and several Transactions, *viz.* rising his Houte, and committing Disorders there, without telling when they happened, or from whom; he is pleas'd to say that he was unfortunately driven into the Company of some of the Persons mentioned in the Impeachment; that he joined them without any Intention to assist their Designs; that he never meant to leave his own Country; that he was ignorant of the Purposes of his Companions; that he was constrained to keep them Company, but never join'd in any Act of Hostility, or countenanced or abetted them therein.

My Lords, the Evidence against this Noble Lord sufficiently explains how far he abetted the Undertakings of his Companions.

It was prov'd to your Lordships, that when he first came to join the Rebels at *Moffett*, he brought fourteen of his Domestic's with him, most of them well armed and accoutred; that he came with them to a Place of Rendezvous, where were assembled the Lord *Kennure*, and about one hundred and fifty Horse; that from the Time he joined them till he was taken, he march'd along with them in a Hostile Manner through all the Towns at the Head of his Troop that he had formed, and which he commanded upon all Occasions; that he had also a Squadron under his Command and Direction, to whom he gave Orders, and was very ready to have dispos'd them to Action, particularly on two Alarms of the King's Troops; that he assist'd several Times at the proclaiming the Pretender by the Rebels in
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the Towns where they passed thro' with his Sword in Hand; that he was with them at those Towns where they seized the public Money, the Cannon, and other warlike Instruments; and when he came to *Preston*, that in the Preparations to resist the King's Troops he was as active as any of the rest; and particularly in the Church-yard, where the Rebels were drawn together in order to that Resistance, he had his Sword and Pistols with him, and was assisting in making the Dispositions for Engagement.

And for the Constraint that is pretended, 'tis plain, that as he came in to the Rebels in the manner I have mentioned without any Force or Compulsion whatever, so he continued all along with them, and gave them the best Assistance he could, and was far from shewing any Backwardness or Uneasiness at their Proceedings through the whole Progress of this Affair. He drank the Pretender's Health, and the other usual Healths among the Rebels, *viz.* Success to their Cause; and if he had not wish'd it, he might have left them whenever he would, if he had an Inclination so to do; he did not want an Opportunity, particularly at *Langholm*, when about five hundred Highlanders went back to *Scotland*; before they went they suffered him to come to them (though they would not any other) that he discoursed them, and came back from them, and declared it was not his Fault that they would not go along with him into *England*. My Lords, whether the whole Tenor of this Proceeding does not manifest the Intentions of this Noble Lord, and whether the Evidence of these Facts does not falsify every Allegation in his Answer, by which he would justify himself, your Lordships will easily determine.

The Noble Lord says further in his Answer, "That if he hath committed any Act which by the Rigour of the Law may be construed High-Treason, he hopes the Innocence of his Heart, and his Ignorance of the Law, will, by your Lordships Intercession, render him an Object of his Majesty's Mercy; which, he says, at the Time of his Surrender, he was encouraged to depend upon by his Majesty's Officers."

As to any Assurances or Encouragement to expect Mercy upon the Surrender, the direct contrary is fully made out, I dare say, to your Lordships entire Satisfaction. And for your Lordships Intercession, that is not the Consideration now before you: The Question is only, whether the Witnesses have proved him guilty of the High-Treason of which he is accused?

I find the noble Lord cannot condescend to own the Facts he is charged with to amount to this Crime: He is pleas'd to say, "That he is descended from a noble Family, in whose Blood the Streams of Loyalty were always pure, never corrupted or polluted with Treason or Sedition; that he never degenerated from his loyal Ancestors, so as to form or carry on any Design to subvert or alter the Constitution of this Kingdom, but that he was always ready to sacrifice his Fortune, and even his Life for its Preservation."

My Lords, I could wish, for the Sake of this unhappy Lord, the Object of your present Consideration, that it were not too evident what Constitution he meant to preserve, and for which he has ventured his Life and Fortune.

All Mankind, who will not shut their Eyes, must see that the Purpose of this Noble Lord and

his Accomplices was to dethrone his most sacred Majesty, our Protestant King, whom God and the Laws have set over us, and in his Stead to set up a Popish Pretender to his Crown, bred up in Superstition, and under the Maxims of Tyranny and Arbitrary Power: The Success of this Design must necessarily have produced a most dreadful Scene of Blood and Confusion; the Life of our most gracious Sovereign, the Lives of all his Royal Family, your Lordships, and those other brave and honest *Britons* who would have stood in the Defence of the Religion, the Laws and Liberties of their Country, must have been sacrificed to the Rage and Fury of Popish Bigotry, and to the insatiable Cruelty of Jesuits and Priests, who, as we are Protestants, are our most implacable Enemies.

Instead of the Happiness we now enjoy under our most excellent Form of Government, where every thing that is dear and valuable to human Nature is protected by the Laws from the least Violence or Invasion whatever, what could this Nation expect from Popery and Arbitrary Power, but endless Miseries and Calamities, and the most abject Slavery?

My Lords, it is a melancholly Reflection, that there should be any, who pretend to the Name of *Britons*, who would engage in so groundless, so unprovok'd, and, most properly called, so unnatural a Rebellion; or that others should be so deluded or corrupted, as by their false and malicious Insinuations, and by their vile Calumnies on the best of Princes, or by their avowed Indifference towards him, to encourage that traitorous Enterprize.

All such Enemies to the Welfare and Prosperity of their Country, ought to reflect, with the utmost Shame and Confusion on the dismal Prospect they were preparing for us by the natural Tendency of their Proceedings: And I cannot but think, that it must add to the Affliction of this unfortunate Lord who stands before this August Judicature, while he reflects on the Assurances given him of generous Compassion as far as is consistent with the Rules of Justice, while he considers of that Humanity and tender Regard expressed towards him by that great and noble Mind, who so justly represented all your Lordships Sentiments, while he observes that Care and Concern shewn to him, that Assistance granted him towards making his Defence, and that his Judges are so many noble Peers, who can never be influenced to condemn the Innocent, and who will be governed only by full Proof and clear Conviction: Sure he must now reproach himself, when he thinks that he was about to subvert those very Laws by which even his Life, who has so transgressed, is thus protected.

My Lords, I am here led to take notice also, that his most gracious Majesty (against whom this unfortunate Lord, with his Associates, have so signally offended) hath been pleas'd to express his mild and gentle Disposition, even to them his most inveterate Enemies. *It was an Uneasiness to him that he could not distinguish the first Years of his Reign by the endearing Marks of Peace and Clemency; it afflicted him that the Calamities of his faithful Subjects should require indispensable Returns of Severity.*

I may presume your Lordships natural Compassion would incline you to the same merciful Dispositions; but the Commons are persuaded that

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your Lordships will have some Regard to the Lives of those many brave and gallant Men, who by the base Methods of the Rebels were murder'd, and expir'd in their Country's Cause; that their Blood demands the Justice of that Country in whose Defence it was spilt; and the Commons are assured that your Lordships must think that the Public Safety also requires your exemplary Justice, more especially on the principal Offenders; and that 'tis the most effectual Method to prevent any future Insurrections or Disturbance of the Public Repose and Tranquillity of the Kingdom, and to render firm and lasting our present happy Establishment.

Sir *J. Fekyll*. My Lords, the Gentlemen of the House of Commons have nothing more to offer to your Lordships, but desire your Lordships Opinion on this Evidence.

Then the House of Lords was adjourned to the Chamber of Parliament; and being returned, the House resumed, and Proclamation made for Silence as usual.

Then the Lord High-Steward being seated on the Chair, placed as before-mentioned, stood up uncovered, and beginning with the youngest Peer, said,

Thomas Lord Parker, what says your Lordship, is *George Earl of Wintoun* Guilty of the High-Treason whereof he stands impeached, or not Guilty?

Then *Thomas Lord Parker* standing up in his Place, and laying his Right Hand on his Breast, said, Guilty upon my Honour.

In like manner, the several Lords after-mentioned, being all that were present, answered as followeth.

Richard Lord Cobham, Guilty upon my Honour.

Henry Lord Carleton, Guilty upon my Honour.

Bennet Lord Harborough, Guilty upon my Honour.

James Lord Saunderson, Guilty upon my Honour.

Robert Lord Bingley, Guilty upon my Honour.

Allen Lord Bathurst, Guilty upon my Honour.

Thomas Lord Mansell, Guilty upon my Honour.

Charles Lord Boyle, Guilty upon my Honour.

Simon Lord Harcourt, Guilty upon my Honour.

John Lord Belhaven, Guilty upon my Honour.

William Lord Ross, Guilty upon my Honour.

John Lord Gower, Guilty upon my Honour.

Maurice Lord Haverham, Guilty upon my Honour.

Henry Lord Herbert, Guilty upon my Honour.

John Lord Ashburnham, Guilty upon my Honour.

Francis Lord Guilford, Guilty upon my Honour.

Richard Lord Lumley, Guilty upon my Honour.

Peregrine Lord Osborn, Guilty upon my Honour.

Charles Lord Cornwallis, Guilty upon my Honour.

John Lord Colepepper, Guilty upon my Honour.

Charles Lord Brace, Guilty upon my Honour.

William Lord Brook, Guilty upon my Honour.

James Lord Compton, Guilty upon my Honour.

William Lord St. John, Guilty upon my Honour.

Thomas Lord Howard, of *Effingham*, Guilty upon my Honour.

Charles Lord Fitzwalter, Guilty upon my Honour.

John Lord Delawar, Guilty upon my Honour.
Peregrine Lord Willoughby, of *Eresby*, Guilty upon my Honour.

Henry Lord Viscount Tadcaster, Guilty upon my Honour.

Henry Lord Viscount Lonsdale, Guilty upon my Honour.

Talbot Lord Viscount Longueville, Guilty upon my Honour.

Charles Lord Viscount Townshend, Guilty upon my Honour.

Lawrence Lord Viscount Say and Seal, Guilty upon my Honour.

George Earl of Hallifax, Guilty upon my Honour.

John Earl of Bristol, Guilty upon my Honour.

Heneage Earl of Aylesford, Guilty upon my Honour.

Charles Earl of Tankerville, Guilty upon my Honour.

Lewis Earl of Rockingham, Guilty upon my Honour.

James Earl of Carnarvon, Guilty upon my Honour.

Thomas Earl of Strossford, Guilty upon my Honour.

Archibald Earl of Ilay, Guilty upon my Honour.

Henry Earl of Deloraine, Guilty upon my Honour.

Hugh Earl of Loudoun, Guilty upon my Honour.

Thomas Earl of Hadington, Guilty upon my Honour.

John Earl of Rothes, Guilty upon my Honour.

Hugh Earl of Cholmondeley, Guilty upon my Honour.

Francis Earl of Godolphin, Guilty upon my Honour.

John Earl Poulet, Guilty upon my Honour.

John Earl of Greenwich, Guilty upon my Honour.

Henry Earl of Grantham, Guilty upon my Honour.

William Earl of Jersey, Guilty upon my Honour.

Edward Earl of Orford, Guilty upon my Honour.

George Earl of Warrington, Guilty upon my Honour.

Richard Earl of Scarborough, Guilty upon my Honour.

Henry Earl of Portland, Guilty upon my Honour.

Robert Earl of Holderness, Guilty upon my Honour.

Henry Earl of Rochester, Guilty upon my Honour.

Daniel Earl of Nottingham, Guilty upon my Honour.

Charles Earl of Radnor, Guilty upon my Honour.

Richard Earl of Burlington, Guilty upon my Honour.

Arthur Earl of Arglesey, Guilty upon my Honour.

Edward Earl of Clarendon, Guilty upon my Honour.

Thomas Earl of Stamford, Guilty upon my Honour.