

same that was given by him for examining Mr. Bennet, and your Lordships then over-ruled it. It is only by a side Wind asking a Question of a Witness, the Answer whereto will unavoidably charge him with a Crime: He cannot answer without charging himself. This lord hath laid a Trap for the Witness to accuse himself. He says he may answer that he knows nothing of any money given by any master but himself; which is directly saying that he himself hath given money. We hope therefore this Question shall not be asked; and we insist upon the Objection.

Mr. Palmer. In Duty to the House of Commons, I think my self obliged to take Notice of the strange Behaviour of this lord in this Instance. According to your lordships own Rule, tho' he sits within the Bar, yet he is not a Judge; and therefore I must beg for myself, in the Names of the managers, and in the Names of all the Commons of Great Britain, that no such Language or Behaviour be again used; if it should, we cannot bear it, but must retire.

Earl of Macclesfield. My lords, I desire the general Question that I have proposed may be asked; I do not know what is your lordships Pleasure; I think I have a Right to have it answered.

Mr. Plummer. I object to the Lord's going on. The Lord hath answered; we have replied; and I insist upon it he hath not a Right to speak any more.

Duke of Argyle. I hope they will withdraw.

*Ordered to withdraw.*

*Then the Managers and Counsel withdrew, and being called in again, and returned;*

Lord Chief Just. King. Mr. Serjeant Probyn, the Question proposed by the noble Earl to Mr. Meller was, Whether he knew of any money paid to the Great Seal by any master on his Admission; and Mr. Meller insisting that he had been a late master in Chancery, and was not obliged to answer the Question, because it might tend to accuse himself; the lords upon Debate are of Opinion, that he is not bound to answer that Question.

Mr. Serj. Probyn. My lords, then we desire he may be asked, whether he knows of any Sum of money paid by any other Person, except himself, upon the Admission of any master?

Mr. Com. Serj. I would not presume to ask any Question that is improper, I understand your lordships Resolution to be, that we are not to ask the general Question of Mr. Meller, because it might affect himself; this Question, we think, will not; Whether he knows of any Sum of money given upon the Admission of any other master?

Mr. Serj. Pengelly. My Lords, we submit it, whether this Question differs at all in Consequence; tho' it be not in the same Words, yet it is to the same Effect: It is in other Words to ask the same Question over again. We hope they will not give your lordships this Trouble.

Mr. Lutwyche. My lords, the Question implies that he gave money himself.

Lord Lechmere. If the Counsel would explain themselves more particularly, name the master, the Person who received it, or any other particular Fact; then it will appear whether that be a proper Question.

Mr. Serj. Probyn. My lords, we humbly apprehend, that we are at liberty to ask this Question in the Form proposed, otherwise we shall in a great measure be precluded from the just Defence of the Noble Earl. We could not presume to ask these Witnesses beforehand, who were the Persons

that gave, or the particular Persons that received; but as these Persons have been in the Office, and must know the Nature of admitting the Masters in Chancery; we hope they will explain it in their Evidence, and name the particular Persons, who either gave, or received Money upon that Occasion. We are not proper to ask more particularly.

Mr. Com. Serj. My lords, I shall be very loth to give any Distaste to this Honourable House; therefore I beg Leave to know, whether or no we have Liberty to ask this Question, and whether your lordships Resolution extends to it? I humbly take it, we are at Liberty to ask the Question, and the Witness is not obliged to answer, if he apprehends that as the Question is formed he cannot answer without an Inconvenience to himself. I would not willingly ask any Question that I thought the House would think improper.

Lord Trevor. If the noble Lord insists upon this Question, it is proper that he should name some Person, concerning whom he would ask; otherwise, it is indirectly to overthrow your lordships Resolution.

Earl of Macclesfield. My lords, I am very unfortunate in this Matter. I would ask him the Question in such a Manner, as should not carry any the least Imputation on him: but if I should first name one Master, and afterwards another, in so great a number of Masters, it would be tedious; I only ask in short, what he knows of any Money taken by the great Seal for, or on the Admission of other Masters? I don't ask him concerning himself, but only concerning other Masters; Whether he knows any thing of the Transactions of other Masters Admission besides his own? I hope your lordships will think this may be asked, with this Explanation and Declaration, that it don't extend to any thing relating to himself; but only whether he knows any thing concerning any Money paid by any other Persons? and to name them particularly.

Lord Chief Just. King. You hear the Question.

Mr. Meller. Is it your lordships Pleasure that I should answer to the Question as it is now form'd? My lords, I don't know, or remember, that ever I had a Discourse with any Master about what he gave, or what he was to give, for any Place; except I have heard Dr. Eddisbury say—

Mr. Lutwyche. My lords, we object to this as not being Evidence, but only Hearsay.

Mr. Meller. Except Dr. Eddisbury, I don't know one indeed.

Mr. Serj. Probyn. My lords, we desire that Mr. Lovibond may be called.

Mr. Lovibond called.

Mr. Serj. Probyn. My lords, we hope that Mr. Lovibond, being one of the present masters, and consequently within the Indemnity of the late Act of Parliament, may be examined, as to what happened in his Case: And we desire that he may be asked what Sum of Money was paid to the Great Seal, on his being admitted a master in Chancery?

Mr. Lovibond. My lords, as to that Transaction, it is many Years ago, above twelve Years ago, I will recollect what I know of it to the best of my Remembrance. My lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal; nor did I employ any Body in it. But there was an Acquaintance of mine, a master in Chancery, since deceased, who apprehending it to be for my Service, without my Knowledge transacted it.

Mr. Serj. Probyn. Who was it?

Mr.

Mr. *Lovibond*. Mr. *Browning*, He came to me, and told me, I have settled the whole matter, you must be sworn in this Night, and you must send to Mr. *Cottingham* or Mr. *Appleby*, then Officers under the Great Seal, 700 *l.* in money or Bank Bills. I did send it that Night and was then sworn in.

Mr. *Serj. Pengelly*. My Lords, I desire he may be particular as to the Time: It is necessary he should be certain.

Mr. *Lovibond*. Mr. *Browning* said, he had settled it with the Great Seal, that I should be sworn in that Night; my Lord *Harcourt* was then *Chancellor*.

Mr. *Strange*, My Lords, I desire he may be asked, Whether he was admitted upon a Death or a Surrender?

Mr. *Lovibond*. I was admitted upon a Surrender.

Mr. *Strange*. By whom?

Mr. *Lovibond*. Mr. *Pitt*.

E. of *Strafford*. Before the Witness goes, I desire to ask him how much he gave to Mr. *Pitt* upon his Surrendring?

Mr. *Lovibond*. It was 2000 *l.*

L. *Harcourt*. My Lords, If the Gentleman is not gone, I desire to ask him a Question or two.

Mr. *Lovibond* called again.

L. *Harcourt*. My Lords, I desire he may be asked, Whether he was worth so much Money as to pay 2700 *l.* of his own Money at that Time?

Mr. *Lovibond*. Yes, my Lords, and much more.

L. *Harcourt*. I desire he may be asked, Whether he paid it out of his own Money, or out of the Suitors Money?

Mr. *Lovibond*. I paid it out of my own Money.

L. *Harcourt*. I desire he may be asked, Whether Mr. *Pitt*, at the Time of his Admission, transferred and actually delivered over to him all the money of the Suitors that then was in his Hands?

Mr. *Lovibond*. Mr. *Pitt*, to the best of my Belief, delivered over every Thing that was in his Hands to me.

Mr. *Serj. Probyn*. My Lords, We desire that Mr. *Cottingham* may be called again.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. My Lords, We desire that Mr. *Cottingham* may be asked, whether he knows any thing of any Transaction relating to the Payment of any Sum of money on the Admission of Mr. *Holford*.

Mr. *Cottingham*. My Lords, if I remember right, there was 800 *l.* paid.

Mr. *Serj. Probyn*. How long ago?

Mr. *Cottingham*. It is several Years ago: There was 800 *l.* or 800 Guineas given or paid on his Admission, several Years ago.

Mr. *Serj. Probyn*. To whom?

Mr. *Cottingham*. My Lords, Sir *Richard Holford* desired me to recommend his Son to the noble Lord that then had the Great Seal.

Mr. *Serj. Probyn*. Who was it?

Mr. *Cottingham*. The Lord *Harcourt*. Sir *Richard Holford* was my old Friend and Acquaintance: I accordingly did recommend him;

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Mr. *Holford* came under a good Character to my Lord *Harcourt*; my Lord agreed to admit him, but he first desired to know whether he had any Estate in Possession sufficient to answer the Suitors money? Upon my saying this to Sir *Richard Holford*, Sir *Richard* said, He had none in Possession, but agreed to settle an Estate upon his Son; and to the best of my Remembrance, it was either 800 *l.* or 800 Guineas that was given on his Admission, for the Use of my Lord *Harcourt*.

L. *Lechmere*. To whom was it paid?

Mr. *Cottingham*. I can't say whether it was paid to me, or to Mr. *Appleby*.

Dr. *Sayer*. Who carried the Proposal?

Mr. *Cottingham*. I carried the Proposal. Sir *Richard Holford*, as I told you, being my Friend and Acquaintance, desired me to do it: Accordingly I transacted the whole matter; being an upper Secretary, it was left to me.

Mr. *Lutwyche*. My Lords, I desire to ask this Witness one Question as to this matter. He says, That Mr. *Holford* was recommended as a man of a good Character; I desire to know whether he hath not ever since maintained that good Character?

Mr. *Cottingham*. Yes, he hath made an admirable good matter as ever I knew; and hath executed his Office with as much Honour and Integrity as any matter. I never heard any Complaint against him in my Life.

Mr. *Lutwyche*. Can you recollect who paid the money, Mr. *Holford*, or Sir *Richard Holford*?

Mr. *Cottingham*. Sir *Richard*, I believe: I can't recollect. He was a young man; I presume, Sir *Richard Holford*, his Father, paid the money.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether it was on a Death or Surrender?

Mr. *Cottingham*. As I told you before, It was on a Surrender: Upon the Surrender of Sir *Robert Legard*, If I remember right.

L. *Harcourt*. My lords, If that Witness is not gone, and the Counsel for the Earl, and the managers for the House of Commons have done with him, I desire to ask him, If he can tell whether any Account was taken of the Suitors money by his Predecessor, and whether all the Suitors money was delivered up by Sir *Robert Legard* to Mr. *Holford* at the Time of his Admission?

Mr. *Cottingham*. My lords, I believe it was. But I was not privy to that, I did not transact that matter; I have heard that an Account was made up.

E. of *Strafford*. I would not ask the same Question twice; I think no Body hath asked it already; I desire to know, If he knows of his own Knowledge, what was given to Sir *Robert Legard* for his Surrender?

Mr. *Cottingham*. I know nothing of it.

L. *Harcourt*. My Lords, If I might have your Lordships Indulgence, in order to have this matter a little further explained, I desire Mr. *Holford* himself, or Mr. *Appleby*, or both of them may be called.

Mr. *Holford* called.

L. *Harcourt*. I desire to know of Mr. *Holford*, Whether at the Time of his Admission, when he was sworn master, Sir *Robert Legard* transferred

red and delivered over to him all the Effects of the Suitors?

Mr. *Holford*. He did, my lords,

L. *Harcourt*. I desire to ask him, Whether the money, that it was said he presented to the Great Seal on his Admission, was his Father's money, or his money, or whether it was out of the Suitor's money?

Mr. *Holford*. My Father paid it before any thing was delivered to me.

E. of *Strafford*. I desire to ask the Gentleman this Question, What money he paid to Sir *Robert Legard* on his Admission to his Place?

Mr. *Holford*. My lords, I did not give it myself; I can tell your lordships what I believe was given, and I have some Reason to think I know the Truth; I believe it was 2000 *l*.

Mr. *Serj. Probyn*. My Lords, I desire he may be asked, How long it was after his Admission before these Accompts and Effects were delivered over to him?

Mr. *Holford*. My lords, when I came to my lord *Harcourt* to be sworn in, my lord *Harcourt* had an Account delivered there of what was in Sir *Robert Legard's* Hands: My lord *Harcourt* took the Paper in his Hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in, and a Day or two after the Things were delivered over to me by Sir *Robert Legard*.

Mr. *John Bennet* called.

Mr. *Serj. Probyn*. I desire he may be asked, What money was paid by him to the Great Seal on his Admission?

Mr. *Bennet*. I gave Mr. *Woodford*, the Secretary of the Great Seal at that Time, 500 *l*. I don't know that it was given to the Great Seal; I gave it with that Design.

Mr. *Serj. Probyn*. When was it?

Mr. *J. Bennet*. About two or three Days before I was admitted.

Mr. *Serj. Probyn*. When?

Mr. *J. Bennet*. It was in *March*, 1716.

Mr. *Serj. Probyn*. Who was Chancellor then?

Mr. *J. Bennet*. My Lord *Cowper* was Chancellor.

Mr. *Serj. Probyn*. Whether was it paid before his Admission?

Mr. *J. Bennet*. It was paid before my Admission.

Mr. *Com. Serj.* I desire he would inform your lordships, whether he came in upon a Surrender or a Death?

Mr. *J. Bennet*. It was upon a Surrender.

L. *Ch. J. King*. Upon the Surrender of whom?

Mr. *J. Bennet*. Of Mr. *Medlicot*.

L. *Batburst*. I desire he may be asked, whether he paid it out of his own money?

Mr. *J. Bennet*. It was my own money.

L. *Batburst*. I desire he may be asked, whether he had any Account of what was in the former master's Hands, and when delivered over to him?

Mr. *J. Bennet*. The Effects were all deliver'd over to me in a Week's Time, except some very small matters.

L. *Batburst*. What was the money that was given to your Predecessor?

Mr. *J. Bennet*. 3000 *l*.

L. *Batburst*. Was that paid out of the Suitors money, or out of your own?

Mr. *J. Bennet*. It was paid out of my own money.

Sir *Thomas Gery* called.

Mr. *Com. Serj.* My lords, The Question that I shall propose to Sir *Thomas Gery*, is under the Apprehension that I mentioned before, that we are at liberty within the meaning of your Lordships Resolution to propose it, he being at liberty to answer or not to answer, if the Question carry any Imputation upon him. I would not ask a Question that is improper: I desire that Sir *Thomas Gery* will inform your lordships what he knows has been paid to the Great Seal, upon the Admission of a master in Chancery?

Sir *Tho. Gery*. My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Mr. *Serj. Probyn*. I desire he may answer the Question, Whether he hath known any Sum of money paid to the Use of the Great Seal, or of my Lord-Keeper or Lord-Chancellor, upon the Admission of any master?

Sir *Thomas Gery*. I can't tell how that may affect me; I refer that to your Lordships. I think I am not bound to answer.

E. of *Macclesfield*. I think he said, He doth not know of any money paid to a lord Chancellor. Doth he intend to include Lord-Keeper?

Sir *Thomas Gery*. Neither Lord-Keeper, nor Lord-Chancellor.

E. of *Macclesfield*. It may be, not into the Hands of a Lord-Chancellor or Lord-Keeper. I desire he may be asked, If he hath not known it paid to the Use of the Lord-Chancellor, or Lord-Keeper?

Sir *Tho. Gery*. That, I hope, I shall not be obliged to answer. I submit that to your Lordships.

Mr. *Serj. Probyn*. If the Gentleman is not pleased to give a more particular Answer, we must submit.

L. *Harcourt*. I desire to ask this Witness one Question, which will not draw him into any Inconvenience, whether ever he was required in any Lord-Chancellor's or Lord-Keeper's Time, to make up an Account of the Suitors Money, and whether ever he did so?

Sir *Tho. Gery*. Yes, I did it three several Times; once in my lord *Cowper's* Time; and when the noble Lord that asks me the Question was in that place, I did the like; and I did it again when my lord *Cowper* was Chancellor. At all those Times I gave a particular Account of the Sums of money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

E. of *Strafford*. He says twice in my lord *Cowper's* Time: I take it, he means both the Times that my Lord *Cowper* was Chancellor?

Sir *Thomas Gery*. Yes, my lords; and the same in my lord *Harcourt's* Time.

L. *Harcourt*. I desire he may be asked, whether all the rest of the masters did so as well as himself?

Sir *Thomas Gery*. I believe they did; I have heard them all declare so.

Mr. *Serj. Probyn*. My Lords, we have now called all the living Witnesses that are willing or compell-

compellable to speak to this Article. We have a great many other Witnesses that would speak to this, as a constant Usage time out of mind: But we apprehend it to be against your lordships Resolution to call and examine any Witnesses but to what they can speak of their own Knowledge, and them we have produced. We shall now beg leave to proceed to prove, That the Offices in the Court of Chancery are increased in their Value beyond what they were formerly, that not only these, but all other Offices, as they have increased in Value, have increased in the Price; all Offices have risen in Value, and the Price given in this Instance, is no more than in Proportion to the Prices given for others.

Mr. Com. Serj. We apprehend, my Lords, it is so notorious, that all Sorts of Offices have risen in their Value, that a very small Evidence will be sufficient. We have a great many Witnesses to this Purpose, we will only call some few. We desire Mr. Steele may be called.

Mr. Steele sworn.

Mr. Serj. Pengelly. My Lords, We desire to know before they proceed, Whether they design to ask as to those Offices your Lordships gave them Direction last Night not to ask to. Your Lordships gave them Directions not to ask any Questions, but to the particular Offices mentioned in the Articles; this is a Piece of Dexterity to elude that Resolution.

Mr. Lutwyche. My lords, I submit it to your lordships, Whether this Attempt is not directly the same as that which was over-ruled Yesterday. If the Witness is to give an Account whether the Price of the Curfitor's Office, or other Offices have risen, they must then shew that they were sold; which is the very Question your lordships determined they should not ask to.

Mr. Serj. Probyn. My Lords, We were then directed by your lordships not to prove any money was paid to the Great Seal for any other Offices, but those particularly mentioned in the Articles. We don't pretend now to ask as to the Payment of money to the Great Seal, but only whether Offices in General have not much advanced in their Prices?

Mr. Serj. Pengelly. My lords, It is extraordinary Usage to tell us of Offices in General; there are private Offices, there are Offices in other Courts in *Westminster-Hall*. We apprehend your lordships Determination is so strong against what is now attempted, that they would not urge it, unless they thought that the managers had forgot every Thing that happened.

Mr. Com. Serj. My lords, The Question we ask is, as to Employments in General, Offices in the Law, or any other Offices; we desire to inform your lordships in General, that the Value of all Employments, not of the Law only, hath risen.

E. of *Macclesfield*. I will inform your lordships how the matter is. I believe this Gentleman is not intended to be asked what Offices belonging to the Great Seal are Worth, but what Difference there is in the Value of other Offices, to what they were heretofore; particularly how the Prices of the Seats in the Six Clerks Office are increased; that they were

once at such a Rate, and what they are now; that is the matter, as I take it.

Mr. Lutwyche. My lords, I apprehend the Direction was given to the noble lord, not to ask concerning the Sale of any Office but what was in the Articles, and the managers had given Evidence to. Now to ask the Difference or Increase of the Prices of a Clerk in Chancery's Place, is, we apprehend, to ask to the very Thing that your lordships have over-ruled already.

E. of *Macclesfield*. My Lords, this is not like the Curfitors-Office, which is in the Disposition of the Great Seal; your lordships Resolution was, That the Witnesses were not to answer as to their giving money to the Great Seal. The Evidence we are now upon, is an Inquiry that relates not to any money given to the Great Seal, but what those Persons paid to one another for an Office that doth not belong to the Great Seal.

Mr. Onslow. At the End of your lordships Resolution Yesterday, the Reason given why they ought not to be let into the Examination as to the Offices then in Question, was, because no Evidence had been given thereto by the managers, and it was not charged nor mentioned in the Articles, altho' the noble lord did insist that he should be let into that Examination, because in the Preamble of his Answer, he had taken Notice of those Offices. This Case is stronger, because the Offices now desired to be examined into, are neither in the Articles nor Answer, nor hath any Evidence been given to them; and therefore we hope he shall not be let into this Examination.

Mr. Com. Serj. We humbly hope your lordships will permit us to enquire whether the Business of those Offices in the Court of Chancery is not greatly increased, and whether the Value of the Offices be not increased with it?

Mr. Serj. Probyn. Notwithstanding your lordships Direction in the former Question, we submit whether we may not be permitted to ask this Question, Whether the Offices in the Court of Chancery are not increased in Value much beyond what they were Seven Years ago?

Mr. Serj. Pengelly. My lords, That is the very Question that we object to.

E. of *Macclesfield*. What I before offered was, that there had been a Usage to make Presents to the Great Seal; I apprehend your lordships over-ruled it as to the Curfitors Office, because there was no need of an Excuse as to that Office, as there is no mention made of it in the Articles, nor any Proof offered against me. This is not of any Payment to the Great Seal, but goes by way of Excuse as to the Sums, to shew the increase or Difference of the Prices of Offices in General. It is notorious that money now carries a less Interest, and that the Price of all Offices is increased. I don't know whether the Gentlemen will deny it. If they do not, I will not trouble your lordships any farther about it.

Mr. Serj. Pengelly. We have no Occasion either to confess or deny any thing that is not before your lordships in Judgment. Therefore, if they expect any Answer, we give this, That it is not before your lordships in Judgment.

Mr.

Mr. *Lutwyche*. I apprehend the Reason of your lordships Resolution Yesterday, was, That there was no Charge in the Articles concerning those Offices; the same Reason equally holds to what they are asking now in relation to Clerks in Chancery.

Mr. *Plummer*. My lords, I should be extreme sorry to make any Objection to any Evidence that is material: But, if he is pleased to examine this Gentleman how far by the Increase of Business the Value of any Office is risen, that must be of the Annual legal Value, and not according to the liberties he left to his Masters.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he doth not know that the Prices of Offices are greater now than they were formerly?

Mr. *Serj. Pengelly*. My lords, we don't understand they have any such Permission to ask that Question. To repeat the same Thing over and over again, we apprehend they think we are asleep.

E. of *Macclesfield*. Your lordships seem not to be of Opinion that this Question should be asked; therefore to save your lordships time, I will wave the Question.

Mr. *Goldesbrough* sworn.

Mr. *Serj. Probyn*. We will proceed in the next Place, in Confirmation of that Part of the Answer to this Article, That two Sums of money, mentioned to be paid to my lord *Macclesfield* by Mr. *Kynaston* and Mr. *Bennet*, were both paid back into the Court of Chancery. We desire Mr. *Goldesbrough* may be asked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my lord *Macclesfield* into the Court of Chancery.

Lord *Lechmere*. My lords, I beg pardon. I think the Question that the noble Earl hath waved, if I mistook not, was about the Rise and Increase of Value of the Offices in Chancery. Now, notwithstanding the noble lord hath waved it, yet it may be proper for your lordships Consideration, whether he should not have liberty to ask it, if he thinks fit.

E. of *Strafford*. I think what the noble lord hath said is considerable, and it may be proper for our Judgment.

Ld. *Vif. Townsend*. I move that they may withdraw.

Ld. *Lechmere*. It may be proper to have the Question repeated again. I therefore desire that the Counsel for the Earl would repeat the Question again that they would have asked of Mr. *Steele*.

Mr. *Serj. Probyn*. My lords, The Question is, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office, particularly, are increased now more than antiently they were.

*Thereupon the Managers and Counsel withdrew, and being returned,*

Lord *Chief Just. King*. Mr. *Serjeant Probyn*, the Lords have considered the Question on which you withdrew. Their lordships are of Opinion, That you are at liberty to ask the Question, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office par-

ticularly, be increased now more than heretofore they were?

Mr. *Steele*. My lords, I came to be a Clerk in the Chancery Office in the Year 1687. I served my Clerkship in the Office; and in that Year, and for several Years afterwards, I know that waiting Clerks Places were bought at 50 Guineas, or less, and after I was out of my Clerkship, I was offered a waiting Clerk's Place in the Office for 50 Guineas. They are not sworn, nor have Power to take a Clerk; and since that Time I have known them sold for 3, 4, and 500*l.* My master was a sworn Clerk, and he sold his sworn Clerk's Place for 230*l.* It was a Clerk at the Seat; and by the Custom of the Office, he that hath one Clerk cannot take another till the first Clerk be provided for; but I having a Proposal to go into a Seat of greater Business, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwise he would not have given so much. Since that Time I have known a sworn Clerk's Place sold for 800*l.* Particularly I transacted a Sale upon a Brother-in-Law's Account; I contracted for 500*l.* and then there was a Clerk upon the Seat that had not served half his Clerkship out.

Mr. *Serj. Probyn*. What Sum of money had they upon taking a Clerk at that Time, and what now?

Mr. *Steele*. I did treat in order to put my Brother-in-Law Clerk to one Mr. *Atkinson*, in the Office.

Mr. *Serj. Probyn*. What Time was that?

Mr. *Steele*. To the best of my Remembrance it was in 1703, or 1704, and he had 100 Guineas. Since that Time my Brother-in-Law, while he was there, had 300*l.* or 300 Guineas with a Clerk.

Mr. *Com. Serj.* I desire he may explain to your lordships what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele*. By the Custom of the Office, he that is put a Clerk, must be provided for before his master can take another. The master so taking him, cannot take another Clerk, till he is provided for by a sworn Clerk's Place, or a waiting Clerk's Place.

Mr. *Lutwyche*. If the Counsel have done, I desire to ask one Question, that is, The Gentleman says, he came into the Office in the Year 1687. I desire to know how many Clerks there were at that Time?

Mr. *Steele*. There were at that Time but 60 sworn Clerks; there was an Addition made, to the best of my remembrance, in my lord *Jefferys's* Time; Sir *John Trevor* was then master of the Rolls, I think there was an Addition of thirty.

Mr. *Lutwyche*. I desire to know whether they are not reduced from 90 to 60 again?

Mr. *Steele*. They are not at present yet reduced.

Mr. *Lutwyche*. Whether they are not intended to be reduced?

Mr. *Steele*. If any one dies without surrendering his Office, they don't fill up the Place of that Person with another; but any one may surrender.

Mr. *Lutwyche*. How many are there now?

Mr. *Steele*. I have been told there are about 12 or 13 less than 90: They are to be reduced

duced from 90 till they come to the ancient Number of 60; and they are reduced as they die without surrendring.

Mr. *Lutwyche*. We don't expect you to give an exact Account; How many may there be?

Mr. *Steele*. I can't take upon me to say how many; but, as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be mistaken, I am not certain; but there are several Gentlemen here, who can give an exact Account.

Mr. *Lutwyche*. I desire to know whether the Offices are not a great deal better, by there being fewer of them?

Mr. *Steele*. Certainly, I believe that is pretty natural; the fewer the Offices are the better; but the Offices are not so good as they were when I came Clerk. They have reduced several Profits belonging to them since I came out of the Office, by the Act of Parliament made *For the Amendment of the Law*.

Mr. *Lutwyche*. You say they are sold for more than formerly they sold for; I desire to know whether some of those Clerks, whose Predecessors have had good Business belonging to the Office, have not made that Seat sell better?

Mr. *Steele*. Certainly it doth; if the Person surrendring had good Business, that Seat will sell for more than a Seat of less Business.

Mr. *Common Serj*. I desire that he will inform your Lordships, when it was in point of Time that these Offices sold at so low a Rate?

Mr. *Steele*. It was in the Year 1694 that the Gentleman to whom I was Clerk surrendred his Seat.

Mr. *Common Serj*. And when was it you knew 50 Guineas paid for the Place of a waiting Clerk?

Mr. *Steele*. The 50 Guineas I speak of for a Waiting Clerk's Place, was in the Year 87, or thereabouts.

Mr. *Common Serj*. Whether was that before the Increase of the additional Number of Clerks?

Mr. *Steele*. Much about the Time that the Additional Number of Clerks was added.

Mr. *Common Serj*. I desire he would inform your Lordships, whether the Prices began to rise before any Reduction was made?

Mr. *Steele*. Yes, before the reducing of them.

Mr. *Serj. Probyn*. When was the Reduction of them made?

Mr. *Steele*. I can't tell the exact Time. There was an Order made, that they should not be filled up as they died without Surrender.

Mr. *Serj. Probyn*. I desire he may be asked, Whether there was not a Difference of Price between those Seats which were full or empty of Business, or whether they were all at a *Par*?

Mr. *Steele*. The Price always varied, as there was much or little Business.

Mr. *Serj. Probyn*. But every Seat, whether great or less, had a Rise in Proportion?

Mr. *Steele*. Yes.

Mr. *Cary*. I desire he may be asked, Whether there hath not been an Act of Parliament since the Time he mentions, which hath been Beneficial to the 60 Clerks?

Mr. *Steele*. There was an Act of Parliament, called, *An Act for the Amendment of the Law*; by which the 60 Clerks had the Term Fees instead of the Tenour Bill, which was a

considerable Profit; and to make up that to them, the Fees of the small Writs were given to them, and the Term Fees; but in my Apprehension, the Tenour Bill was a greater Advantage than those Fees that have been given in Lieu of it.

Mr. *Common Serj*. That worthy Gentleman's Question hath occasioned me to desire, that he would inform your lordships, Whether, upon the whole of the Act, the Six Clerks Offices are better or worse?

Mr. *Steele*. In my Opinion, they were better before the Act, than they are now.

Mr. *Serj. Probyn*. My Lords, we have more Witnesses to this purpose; but we apprehend that Mr. *Steele* hath spoken so fully to it, that we shall not trouble your lordships with any others, as to this Matter. The next Witness which we shall beg leave to call, is in relation to the two Sums of 1575 *l.* that were paid into the Court of Chancery by the Noble Earl, for which we did call Mr. *Goldesbrough*.

Dr. *Sayer*. Before your lordships enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Repayment: The learned Managers were right in their Observations, That it was after the Vote for the Impeachment; but it was before the Articles were exhibited. This is mistaken in the Answer, but I am sure the Honourable House of Commons will be so candid as to think it was a Mistake only, and that 'tis impossible it could be with any View of deceiving the World, since both Facts were upon Record; the Earl was so very impatient to have his Answer in, that no Delay might be charged upon him, that I assure your Lordships the Answer was not settled till 3 or 4 a Clock in the Morning of that Day that it was delivered in. In such a Hurry, a Mistake of this Nature, I hope will not be taken amiss, nor be looked upon by the House as designed. My Lords, I thought it my Duty to observe this, before your Lordships entered into this Examination.

Mr. *Goldesbrough* called.

Mr. *Common Serj*. There are two Sums of Money taken Notice of to be given by Mr. *Kynaston* and Mr. *Bennet* to my Lord *Macclesfield*, I desire you would inform my Lords, whether those two Sums were paid back again, and when, and in what Manner?

Mr. *Goldesbrough*. My Lords, the 23d of February last my Lord *Macclesfield* came into Court, and deposited in Bank Notes and Money to the Value of 3000 Guineas. The Lords Commissioners were pleased to direct the investing it in *South-Sea* Annuities, in the Names of Mr. *Helford* and Mr. *Lovibond*, the two Senior Masters of the Court, for the Benefit of the Suitors of the Court.

Mr. *Common Serj*. I think, my Lords, we need not ask whether Mr. *Goldesbrough* be the proper Officer?

Lords. No, no.

Mr. *Common Serj*. I would with Submission ask another Question of Mr. *Goldesbrough*; I would beg leave to inform your Lordships what the Question is. There hath been an Examination on the Part of the Gentlemen of the House of Commons into the Nature of these Offices,

and I hope it will not be improper, Mr. *Goldesbrough* being now at your Lordship's Bar, to ask him as to the manner of the money coming into the masters Hands, whether it be by Compulsion, or at the Instance of the Parties.

Mr. *Serj. Pengelly*. This must appear by the Order. No money is paid in but by Order.

Mr. *Com. Serj.* The Orders are infinite, but Mr. *Goldesbrough* being the Register, may be properly asked, what the Practice and Usage of the Court is in this Instance. It is usual to ask the Officers of the Court, what the Practice and Usage of the Court is. If we should produce 20 Orders, they might object that others are not so; and therefore I beg Mr. *Goldesbrough*, the proper Officer, may inform Your Lordships, what the Practice of the Court is.

Mr. *Goldesbrough*. Upon Decrees, when Causes are heard, the Counsel pray what Decree is proper: Where Estates are to be sold, they order the money to be brought before the master.

Mr. *Lutwyche*. My Lords, I desire to ask one Question; Mr. *Goldesbrough* is a very experienced Officer of the Court, hath been a good while in the Place, and probably may give Your Lordships some light into this matter. The Question I would ask, is, When he first knew the Office, whether it was usual to direct the money to the masters, in the manner it hath of late been directed?

Mr. *Goldesbrough*. I can't say it was.

Mr. *Lutwyche*. The next Question is, When the present Usher of the *Rolls* had given Security, whether there were not some Orders made by the late Lord *Chancellor*, as well as by the masters of the *Rolls*, for Payment of money to the Usher of the *Rolls*; that is, into Court?

Mr. *Goldesbrough*. Yes, there was.

Mr. *Lutwyche*. I desire him to explain the Difference between paying the money into Court, and paying the money to a master. What is understood by paying it into Court?

Mr. *Goldesbrough*. Paying it into Court, is paying it to the Usher.

Mr. *Lutwyche*. I desire to know, whether there were not some Orders made, after Mr. *Trevor* the present Usher had given Security, for Payment of money to him?

Mr. *Goldesbrough*. Yes, there were.

Mr. *Lutwyche*. I desire to know, how soon after those Orders were varied?

Mr. *Goldesbrough*. I can't remember when the Orders were varied; as to those made before Hearing, and for continuance of an Injunction, I don't know they are altered yet.

Mr. *Lutwyche*. What I ask is, Whether he had any Directions touching the varying of Orders, for the Payment of money; any Direction, I mean, from my Lord *Macclesfield*, to vary the Order?

Mr. *Goldesbrough*. Money paid before Hearing, was paid into Court; money paid upon the Decree, was brought before the master. I had no Direction from my Lord *Macclesfield* to vary the Order.

Mr. *Lutwyche*. Was there any Variation or Difference in drawing up the Order, for some time after the Usher gave Security, from what it was some time before?

Mr. *Goldesbrough*. Upon interlocutory motions, the money was brought before the Usher, and so it hath been ever since.

Mr. *Lutwyche*. Was it always so?

Mr. *Goldesbrough*. It hath been so ever since.

Mr. *Lutwyche*. Ever since what time?

Mr. *Goldesbrough*. Ever since the Time that Mr. *Trevor* gave Security.

Mr. *Lutwyche*. What I would know is, Whether the Orders and Directions at first were not in general, to pay the whole money into Court?

Mr. *Goldesbrough*. No, my Lords.

Mr. *Lutwyche*. How was it?

Mr. *Goldesbrough*. On all Orders interlocutory before Hearing, it was paid in to the Usher: On all Orders for money, subsequent to the Hearing, it was brought before the master.

E. of *Macclesfield*. This Question hath been asked Mr. *Goldesbrough*, with relation to the paying of money into Court, and being brought before a master, I desire he would inform Your Lordships what the difference between them is?

Mr. *Goldesbrough*. Money brought into Court, is money brought in before Hearing, and is subject to the Order of the Court, to be paid out either before the Hearing, or after, as the Nature of the Case requires. Money brought in after Hearing, is money to be put out on Security, and is brought before the master.

E. of *Macclesfield*. Whether when money is ordered to be brought in to be disposed of, as upon a Purchase, or upon a Decree, to pay Debts, &c. The Course of the Court in all his Time hath been to bring it into Court, or before a master?

Mr. *Goldesbrough*. I can't say it hath been so in all my Time: Since the Revolution it hath been generally brought in before the master, before it was brought into Court.

E. of *Macclesfield*. Have the Orders made by me, since the Usher gave Security, been made in the same manner as those by my Predecessors?

Mr. *Goldesbrough*. Yes, They have been the very same.

E. of *Macclesfield*. I desire to know, when first the money paid into the Hands of the Usher went into another Course, that is, upon the Usher's Death, or not giving Security; and what method was taken then?

Mr. *Goldesbrough*. I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Usher, and it was upon that Consideration, that the money was ordered before the master.

E. of *Macclesfield*. And afterwards was there not an Alteration made of all the money that used to be paid to the Usher? Was it not ordered to be brought before the junior masters?

Mr. *Goldesbrough*. In my Lord *Cowper*'s Time, when there was a Difference between the Usher and his Deputy, my Lord *Cowper*, upon that, did order the money to be brought, and lodged in the two junior masters Hands. They were each to keep a Key, and the Usher another: When any money was paid, it was paid out of the Chest, kept under those Keys; and the money that was paid in, was paid in there.

E. of *Macclesfield*. Was not the money that used to be paid in to the Usher's Hands, directed in to the junior masters Hands?

Mr. *Goldesbrough*. It was so.

E. of *Macclesfield*. As to the money appointed to be disposed of, for payment of Debts, or otherwise, how was that paid? Was that put into the Chest, or into the Hands of the respective masters, to whom it was referred?

Mr. *Goldesbrough*. I think it was put into the Chest; there was then no Difference at all.

E. of *Macclesfield*. Had no other masters then any money brought before them? was all brought before the junior masters?

Mr. *Goldesbrough*. The general Order was, for the money to be brought before the junior masters, to be kept in a Chest there.

E. of *Macclesfield*. Mr. *Goldesbrough* mistakes the Question. I don't ask how the money was usually brought; but had no other master money brought before him in my Lord *Cowper's* Time?

Mr. *Goldesbrough*. Yes, My Lords.

E. of *Macclesfield*. What money was that? Upon what Occasion?

Mr. *Goldesbrough*. The bringing the money to the two junior masters, was found to be inconvenient; whereupon, after that it was altered, and the money was brought before the masters, to whom the Reference was in Court.

E. of *Macclesfield*. Whether the money that was paid in to the two junior masters, was not such money as was before ordered to be paid into Court?

Mr. *Goldesbrough*. Yes.

E. of *Macclesfield*. I desire you would recollect, whether you was not present at a meeting of the Master of the *Rolls*, and *Usher*, and others; whether this was not under Consideration, what money should be paid into Court, and what should be brought before the master?

Mr. *Goldesbrough*. Yes.

E. of *Macclesfield*. Whether you was not then asked, whether money directed after a Cause is heard, to be disposed of, was not brought before a master?

Mr. *Goldesbrough*. Yes, I was asked that question.

E. of *Macclesfield*. What Account did you give of the Course of the Court in that Particular?

Mr. *Goldesbrough*. I gave the same as now, That the latter Practice had been to bring it before the master, to whom the Cause was referred.

E. of *Macclesfield*. Do you remember, whether the *Usher* was not asked, whether he had any Precedents of money paid into his Hands, to be distributed amongst Legatees, or Creditors, and what the Answer was?

Mr. *Goldesbrough*. He said he had none.

E. of *Macclesfield*. Do you apprehend the Course of the Court to be, that money brought in before Hearing, is to be paid in to the *Usher*, and money after Hearing, to be brought in before the master?

Mr. *Goldesbrough*. Yes, I do.

E. of *Strofford*. I desire he would inform your Lordships, what the Security is, and how much, that is given by the *Usher*; and whether it is the same now, as it was before my Lord *Cowper* made that Alteration?

Mr. *Goldesbrough*. I can't say any thing as to that, I know nothing of it, it doth not lie in my Province.

Mr. *Serj. Probyn*. Your Lordships will please to remember, in the Case of Mr. *Elde*, though he paid 5250 *l.* all the money was returned, except 1850 *l.* So the same as to Mr. *Thurston*, 5250 *l.* that all was returned in a reasonable Time, except 2000 *l.* so that to these Facts, we shall not trouble your Lordships with any Witnesses. But now we shall beg leave to lay before your Lordships another Evidence, that when

Mr. *Thurston* was admitted into this Office, upon the Payment of 5000 Guineas, another Gentleman offered 6000 *l.* Mr. *Cottingham* proved the same as to Mr. *Elde*. This we do to shew, that his Lordship was not that avaricious Person, as he hath been represented; he refused 6000 *l.* and took less from another. We desire Mr. *Ellis* may be called.

Mr. *Ellis* sworn,

Mr. *Serj. Probyn*. We desire Mr. *Ellis* may be asked, what he knows of any Sum of money that was offered for the Mastership in *Chancery*, to which Mr. *Thurston* was admitted, and what that Sum was?

Mr. *Ellis*. Upon the Death of Mr. *Borret*, Mr. *Richard Lucas* came to me at my Lord *Macclesfield's*, and told me, That his Brother desired to have the Place of a Master in *Chancery*, then vacant: And he said, that as I was in my Lord *Macclesfield's* Family, I might be of Service to him, in conveying Mr. *Lucas's* Proposal to my Lord. He then told me, what I was to offer my Lord *Macclesfield* for that Place; he said he was so sensible of my Lord *Macclesfield's* Honour and Generosity, that he would leave it entirely to his Lordship, what he would have in Consideration of his coming in. But if my Lord *Macclesfield* did not approve of a Proposal so undetermined as that was, I was to offer 6000 *l.* or 6000 Guineas; I don't remember which of those two Sums, but one of them I am certain it was. I did offer it to my Lord, who told me Mr. *Lucas* had been well recommended to him, and he was satisfied with his personal Character, and with this Offer. My Lord *Macclesfield* said no more; and I could not press his Lordship to explain himself any further. I returned that Answer to Mr. *Lucas*, and heard nothing further of that matter, till my Lord *Macclesfield* had declared that Mr. *Thurston* should have it.

Mr. *Com. Serj.* I desire he may be asked, whether the Gentleman that applied to him, was not his Friend and Acquaintance?

Mr. *Ellis*. Mr. *Richard Lucas* was my Acquaintance; when he desired me to do this, I told him it was not proper for me to apply about matters of such Nature; but in Friendship to him, I would speak to my Lord about it.

Mr. *Plummer*. I don't know whether the counsel have done; if they have, I desire to ask this Witness what Mr. *Richard Lucas* is himself?

Mr. *Ellis*. He is a Clergyman.

Mr. *Plummer*. I desire to ask him, If Mr. *Richard Lucas* did not, at the same Time that he proposed the 6000 *l.* lay some Restriction or Condition, upon which he was to pay it. Had not you such Instructions?

Mr. *Ellis*. No, I don't remember he did any.

Mr. *Plummer*. Then I desire to ask you, If he did not say, Provided Mr. *Borret's* Deficiency was made good?

Mr. *Ellis*. He mentioned no such Condition to me; he did speak of Mr. *Borret's* Deficiency; I told him I had heard there would be no Deficiency there. Upon which he said, he had been assured there would be none, by a Gentleman known to us both; but however that be, says he, my Brother is willing to enter into a Treaty with my Lord *Macclesfield* upon those Terms.

Mr.



Mr. *Serj. Probyn*. My Lords, we shall trouble your Lordships no further upon these Articles we have been upon, the other Gentlemen will answer what is to follow.

Mr. *Robins*. May it please your Lordships, I am likewise by your Lordships Permission assigned of Counsel with the noble Earl, who has the misfortune to lie under the Weight of so heavy a Charge, as an impeachment of the whole Body of the Commons of *Great Britain*; and shall beg leave to open to your Lordships the Nature of his Defence, and the Strength of his Evidence, with regard to the *Eleventh* and *Twelfth* Articles of this impeachment.

I am sensible, my Lords, that the Solemnity of this Prosecution, from the Weight and Number of those, who are become the Accusers of this noble Earl, and the awful Appearance and Wisdom of those who are to be his Judges, and the Name of an impeachment in Parliament, may seem to carry an Argument of greater Crimes and greater Guilt, than are to be met with in the ordinary Courts of Justice below.

But, my Lords, with the greatest Submission, if the Solemnity of the Proceedings on this Occasion has not altered the Nature of Things, and imprinted a Guilt where there is no Guile, we humbly hope we shall be able to lay before your Lordships some few Observations and Circumstances of Evidence, that will, at least, extenuate, if not wholly abate and take out the Sting and malignity of the several Crimes, whereof this noble Earl stands accused.

Your Lordships, without Question, will have long since observed, That the Losses and Sufferings of Widows, of Orphans, and others, who, from the Distress and Impotence of their Condition to help or defend themselves, have fled to the Court of Chancery, when this noble Earl presided there, for Sanctuary and Protection; that these have been justly made use of as the greatest Aggravations of the Crimes, whereof he is charged, and they have been displayed with the utmost Force of Eloquence, and in the most moving Strains of Commiseration and Pity.

And I believe, my Lords, every one that heard them have shared and gone along with the Honourable Managers for the House of Commons, in the Concern and Indignation they have so justly shewn towards those, who have been the Authors and Contrivers of them.

These, my Lords, are Subjects, wherein the richest Fancy may almost lose it self, and the poorest can never be at a Loss for something to offer to move and affect the Passions of mankind.

And the learned managers for the Honourable House of Commons, have adorned and set off their Charge against the noble Earl on this Head, with so many Beauties of Expression, and so great a Propriety and Choice of Language, to engage and win over all the Passions of Humane Nature to their Side, that it will be difficult, if not impossible, for Us, who may seem to have undertaken an Argument leading to disprove and reason against the Force and Truth of all these, to hope for Success, but by shewing to your Lordships, that the noble Earl entirely joins with the learned managers in their just Resentment and Concern on this Occasion, that he is deeply affected with the losses, the Depredations and the Havock, which has been made of the Fortunes of the unhappy Suitors of the Court of Chancery.

That he has long been endeavouring to put a

Stop to them, that at one Time he has contributed his Reason, his Judgment, and his Understanding, to find out effectual methods for the Cure of them; at other Times has made Use of his Power, his Authority and that Majesty wherewith, as Lord Chancellor, he seems to be invested, to enforce and hasten the compleating of them.

That he has convened the masters, the Registers, and the several Officers belonging to his Court, to consult, advise and assist, in finding out means to stop the growing Evil; that he has assisted with his Purse, has advanced considerable Sums of money of his own, and when Nothing would do, when the mischief appeared too big for his single Endeavours to oppose, that he then at last presumed humbly to lay the whole before his Majesty in Council, as well for his Majesty's Assistance and Direction, as to testify how much he had at Heart the finding out a Remedy for the Cure of those overgrown Diseases, this Epidemical Contagion, which was spreading through every Part of the Court where he presided, and seemed to threaten Destruction and Ruin to the whole.

These, my Lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned Spectator at the Tragedy that was acting around him; that he saw and felt the Comotions it had raised, and was fully determined to put an End to them as speedily and effectually as he could.

But when, my Lords, a Stop was put immediately to his Endeavours; when he was disarmed almost in the very Beginning of his Onset, and when the great Seal, and therewith his Power to proceed further, was taken from him, your Lordships will not impute it to him, that he was forced to sit still, and leave it to others to effect what he had, so prosperously and happily, begun.

Your Lordships, without question, will have already observed, That these fatal mischiefs did not spring up all at once, That they had long been growing, That the Seeds of them had lain buried and concealed for a considerable Time, and, That they hardly appeared at all, till they were grown too stubborn and obdurate, to yield to an easy Cure.

Your Lordships will likewise, no doubt, have observed, that however in the strictest way of considering Things, the Chancellor may possibly be thought to be answerable for them; yet, that they did not originally proceed from him, that he had not the immediate Custody or Ordering of the Suitors money or effects.

That the Masters in Chancery, who are no less than Eleven in Number, by the Constitution of the Court, and the Nature of their Office, were necessarily to be entrusted with that Part of the Business thereof.

And when your Lordships shall likewise be pleased to observe further, That enough, and more than enough for the strongest Constitution of Body, and the greatest Abilities both of Mind and Understanding, remained still for the Chancellor's own Share, in the Dispatch of the daily and necessary Business of the Court where he presided, the innumerable Avocations, by his Attendances on your Lordships, on His Majesty, and the Council, and other Services, which the Duty of his High Station required from him; Your Lordships, no doubt, will

will easily reflect, that he had but little leisure, suddenly, and immediately to go through so arduous, so difficult, and so tedious an Undertaking, as the stating and settling of the masters Accounts, for no less than almost a million of money, which has now appeared to be in their Hands. And, your Lordships, we are persuaded, are no strangers to the many and almost insuperable Difficulties which even at last have attended the Prosecution of that Affair, the great length of Time it has taken up, the number and variety of meetings and Consultations with Persons of the greatest Abilities and Experience, to go to the bottom of it, and whether even yet they have been able fully to effect it, or have fixed on such methods of Enquiries as have laid open the whole Scene, or will certainly prevent the like mischiefs for the time to come; these, my Lords, we humbly apprehend, are Considerations that will not be thought altogether unworthy of your Lordships Notice, in determining the Guilt or Innocence of this noble Earl, of the Crimes laid to his Charge.

It must indeed be admitted that they have for the present, taken away the money, Effects, and Securities of the Suitors out of the masters Hands, and so have prevented any loss for the time to come on their Part.

But whether, my Lords, they are even yet disposed of in such manner as fully to answer the Ends proposed, whether the Ease and Convenience of the Suitors of the Court will appear to be more effectually provided for, than they were before, by the methods that have now been taken to dispose of their money and securities; these, my Lords, I am afraid are Questions more easily asked, than answered.

But, my Lords, all I would be understood to mean by this, is, and I mean nothing more by it, than that the settling and adjusting of the masters Accounts for such great Sums of money, placed and disposed of in such variety of Hands, so difficult to be thoroughly considered or understood; and so little to be depended on if they were understood; that this, my Lords, was rather the work of Persons at full leisure, of Persons conversant in the Nature and manner of Accounts, that it was the work of variety of Persons of different Capacities and Abilities, and so the taking of these Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the single Endeavours of a Chancellor to the same end, by being unsuccessful, will not be made criminal, and that he will not be obliged under the pain of an Impeachment in Parliament, to do what, with the greatest Submission, has never yet been attempted, or if attempted, has met with the same ill Success with the Endeavours of the present Earl, and could never hitherto be compleatly or perfectly effected.

But, my Lords, with great Submission, if the stating and settling of these Accounts, on a just and lasting Foundation, should be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to take care of them, yet as this is a Work of the greatest Moment, Judgment, and Consideration, and must unavoidably take up a very great portion of Time, and put a total Stop and Obstruction for the present to all the other Branches of his high Office, we humbly hope, my Lords, that his being cut off in the midst of his Endeavours of that kind, and thereby prevented from

further Pursuit of them, that this will be a Consideration of the greatest Weight with your Lordships in determining the Fate of this noble Earl, and that he will not be made Criminal for leaving it unfinished, when his Power of proceeding further therein, was suddenly and unexpectedly taken from him.

My Lords, your Lordships very well know that the Business not only of the Court of Chancery, but of all the other Courts of *Westminster-Hall*, and even of your Lordships Supreme Court of Judicature, is, and must necessarily be distributed and disposed of into variety of Hands, that some are assigned to one Province, some to another, and all of them concurring to the same End, the carrying on the Business of the respective Courts to which they belong.

And, my Lords, the Officers and Ministers of each of these Courts of Justice, on their being admitted thereto, give each of them the Security of an Oath, or some personal Security for the due and faithful discharge and execution of their Duty; whilst they continue in their Offices.

Now, my Lords, what can be the End of requiring and resting on these Securities, but to relieve and ease the minds of their Superiors from the necessity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more immediate Duty?

The Officer is at the Peril of his Oath, or the Security he has given, nay, even at the Peril of the Office itself, to discharge his Duty as he ought, and justly forfeits his Office by a neglect or breach of any part of his Duty therein; and if one or two of them should have no regard to all or any of these Ties, must the ten Righteous that are left, nay, must the Chancellor himself be punished for their Sakes?

But, my Lords, Masters in Chancery are generally, if not always, chosen from the Profession of the law, and the manner of their Education and the nature of their Studies are justly supposed to set them above the Temptation of mean, of base, or little and unjust Actions.

Many of that Profession your Lordships will permit me to observe, do now, and have in all Ages, worthily adorned even the august Body of the House of Peers, and have been advanced to the highest Dignities in the State.

And, then, my Lords, I humbly hope 'twill not be thought an Observation altogether improper, that when one of this liberal Education, when one brought up in the study and practice of a Profession, whose very Principles consist in the knowledge of Virtue and Honour, of the Rules of Justice and Equity, and all the Accomplishments which can adorn Life, or make him useful to his King and Country; I say, my Lords, I humbly hope 'twill not be improper to observe, that when such a one applies for an Office in the Civil Government, which he is in any Degree qualified for, 'tis no wonder that he should meet with a more favourable Reception than other Persons, who perhaps may have nothing but their Estates or Fortunes to recommend them.

The very Profession of such a one is, my Lords, almost a sufficient Security and Recommendation of itself, and immediately induces a Persuasion and Belief, that they will do nothing to forfeit their Honour, their Reputation, or that Credit and Esteem, which they so justly do and ought to Regard and Value.

But when, my Lords, 'tis remembered that the additional Security and Sanction of an Oath is likewise required from them, when they invoke the Majesty of Heaven to Bless them as they perform their Duty, what higher, what greater or better Security can be taken from them for the due and faithful Discharge of their Duty in the Office they are entering upon?

The Oaths they take upon that Occasion, your Lordships have already heard, and no doubt will have observed, that they differ little from the Oath, which even the Lord Chancellor himself takes on his being admitted to his own high Office.

And as they sit with him in Judgment on the Bench, share with him in carrying on the most important Business of that Court, which is next in Dignity to the Supreme Court of Judicature we are now before, when they are in most Cases necessary for the distributing and dealing out Justice and Equity, and fixing the Rules and Bounds of Property to the Suitors there. Can it, or will it, my Lords, be easily or readily imagined, that they should have no Regard to all these sacred Ties of Duty, that they should prostitute their Honour, their Conscience, and every Thing that is dear and valuable to them, for the sake of any worldly or temporal Consideration whatsoever?

These, my Lords, we humbly apprehend are some of the Reasons, which may be offered, why no personal Security has ever been required from a Master in Chancery, on his Admission into that Office, any more than from the Chancellor himself.

And if this be so, tho' there could be no need, or Occasion for the Chancellor's making any Declarations concerning their Ability or Substance, yet we humbly hope we shall be able to shew to your Lordships, that this Declaration, which is made one of the Articles of an Impeachment against this noble Earl, that even this too, was not without its just Foundation of Reason and Truth.

And this, my Lords, leads me to observe a little on the Eleventh Article of this Impeachment.

[*Article XI.*] My Lords, the Eleventh Article contains a two-fold Charge against the Earl; First, That whilst he continued in the Office of Lord Chancellor, in order to advance and increase the illegal and corrupt Gain arising to himself from the sale and disposal of the Offices of Masters in Chancery, he did admit several Persons to those Offices, who at the time of their Admissions were of small Substance and Ability, unfit to be trusted with the great Sums of money and Effects of the Suitors lodged in their Hands.

The Second Charge against the Earl in this Article, is, That he did publicly in open Court falsely represent the Persons by him admitted to the Offices of Masters of the Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them.

These, my Lords, are the two Branches of this Article against the Earl, and I would beg leave to observe upon it in general, that 'tis not so much as charged or insinuated in any part of it, that the Earl knew or had the least Notice of any insufficiency or inability in the Masters at the Time he admitted them to take upon them that great Trust.

If that had been the Case, or could have been clearly made out, the Commons without doubt

would not have omitted so material an Aggravation of this part of their Charge against the Earl.

They have indeed proved, that the Earl did not think fit to take the masters own Words for their Abilities and Fortunes, and therefore never asked them the Question.

But, my Lords, we hope we shall be able to shew to your Lordships, that the Earl took a much more proper and effectual method, to be satisfied of the Truth of their Circumstances and Abilities, than by any Appeal he could have made to themselves; that he did not content himself with barely asking the Question for the sake of an Answer, which he ought to have had no regard to, whether true or false, but that he weighed, considered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of so great Trust.

That in Consequence thereof, he absolutely rejected some, though their Friends offered him a greater Present, or if it must be called so, a greater Price for their Offices than others, for want of an Estate or Fortune in Possession of their own, that might be some ways adequate to the great Charge they were going to be entrusted with.

That from the same Views of Security to the Suitors of the Court, he refused to admit others, from an Apprehension that the Sums they offered, though considerably greater than were offered by others, would too much exhaust and lessen their own Fortunes, to be able with any Degree of Ease or Credit to support themselves, or be consistent with the Safety and Security of the Suitors money and Effects, to be entrusted with them.

These Instances, my Lords, we shall be able to produce to your Lordships; and when we have so done, we hope we shall need to be in very little Pain for the Second Part of this Charge, which the Earl by his Answer has partly admitted to be true, that is, that he believes he may upon some Occasions, have declared, That he thought the, then, Body of masters as good, with Respect both to their Estates and Ability for the Discharge of their Office, as had been at any time before.

This, my Lords, the Earl owns by his Answer, That he may on some Occasions have said; and if it were true, where was the Crime of it? 'Twas indeed more than he needed to have said, as no One had Authority to require him to make any Declaration at all about the masters.

But, my Lords, if he had said more than he needed to have said, and yet his saying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the Honourable Managers for the House of Commons, both in their Opening, and the Course of their Evidence, have tacked to this Declaration a Circumstance arising from the Death of Mr. *Fellowes*, one of the masters, which happened just before this Declaration was made, from whence they would infer, and one of them was pleased to say, 'Twas a necessary Declaration to be made at this Time, to give Notice that the Office was worth buying, or to that Effect,

But, my Lords, we humbly hope, how ingenious soever the Observation may be, that it will have no Weight with your Lordships, if the Truth and Nature of the Case it self will support the Declaration that was made upon that Occasion.

But, my Lords, before I leave this Article, I would beg leave to add one Observation more to what I have already said upon the first Part of it, concerning the Obligation on the masters in Chancery to be faithful in the Discharge of their Duty, from the Honour of their Profession, and the Nature and Sanctity of the Oath they take on their being admitted masters.

And, my Lords, I the rather chuse to take Notice of it, because 'tis an Argument, which the honourable managers for the House of Commons have themselves furnished us with.

Your Lordships were pleased to observe, That in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Masters in Chancery as high as possible, and therefore they read to your lordships several Commissions, and put in others to the Table, from the Time of *Edward the Vith*, down to this Time, to prove, That the Masters in Chancery were joined in Commission with the Master of the Rolls, and the Judges themselves, for the hearing and determining of Causes in Equity, in the Absence of the Chancellor.

And 'twas said by one of the learned managers in the first Day's Opening upon that Occasion, That the Masters in Chancery were next in Power to the Chancellor himself, after the Master of the Rolls.

From which I would humbly presume to infer, That if this be so, if they are Persons of such Eminence and Worth, and so nearly related to Justice it self, on their commencing masters, 'tis still a higher Obligation on them to be careful in the Discharge and Execution of their Office; and then, whether these Considerations, whether the Ties of Honour, of Conscience, and of the Venerable Company they are from thenceforth joined with, and made equal to; whether these may not in a great measure be supposed to supersede that strict Enquiry, which a Lord Chancellor would otherwise think himself obliged to make; this, my Lords, we humbly hope will not be thought an Argument altogether foreign to the present Question before your Lordships, but will, we hope, at least extenuate, if not wholly wipe off any Guilt, that for want of such Enquiry might possibly be imputed to the Earl on his Admission of Masters.

But, my Lords, there is one Observation further, which I cannot let pass on this Occasion, though 'tis not strictly to the Article I am now upon.

And that is, my Lords, what the same learned manager observed in his Reasoning upon that Point, That the Offices of Masters in Chancery being Offices of such great Trust and Dignity, that no Offices were more improper to be bought and sold than they, except those of the Judges themselves.

This, my Lords, might, and no doubt, was a very just and proper Observation to be made, in support of the Point they were then endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to disparage and weaken another Part of their Articles, which, without doubt, they have equally at Heart to maintain, and that is the obliging

these great Men, these Judges, these Masters in Chancery, to give Security for the Suitors money and effects in their Hands, as if they were not fit otherwise to be trusted with them.

They are just before made a sort of petty Chancellors, equal in Dignity and Power to the Judges themselves, and fit to be entrusted with the Disposal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places must not be bought or sold; but here they are reduced and abased to the low and servile Condition of a common Receiver or Rent-Gatherer, and must give Security for all the Suitors money or effects that shall happen to come to their Hands for fear they should run away with it.

All, my Lords, I shall presume to add further under this Head, is, That though one of the masters has indeed frankly owned, That he was worse than nothing when he came into his Place of a Master in Chancery, yet from another part of his Evidence, he owns, and it fully appears, that he grossly abused and imposed upon the Earl in concealing it from him, of which the Earl, when he came to have Notice, very justly complained, and expressed his Surprize and Resentment, that he should pretend to come into an Office which he was not able to pay for.

And how far the same Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Distress afterwards for want of it: This, my Lords, must be left to his own Conscience, and the Gratitude of his own Heart; as must also the like Return of Fifteen Hundred Guineas made to another of the masters under the like Distress and Inability to bear the Want of it; These, my Lords, are Instances of the greatest Generosity, Honour and Tenderness, I had almost said Charity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occasions; however, they have been disfigured and disguised, by the Learning and Ingenuity of the Honourable Managers for the House of Commons.

In the mean time, my Lords, I would beg leave to observe, that the ready Paying and Producing of these Sums to the Earl, for their Places at first, their not giving him the least Notice or Intimation that it was not their own money, and the Figure and Appearance they made in the World; these all concurring might easily mislead the noble Earl into a Persuasion and Belief, that they really were what they appeared to be; that they were well able and sufficient to bear the Expence of it. And neither of these Two, or of the other masters have given any Sort of Evidence, that the Earl knew, or had reason to entertain the least Suspicion to the contrary: And if now, at last of all, the Deficiencies of these, and of all the other masters placed in by the Earl shall appear to have been already made good, or to be so far secured, as to prevent any Danger of a Loss to the Suitors of the Court, from their several Offices (which we humbly hope, on the strictest Examination, will appear to be the Case) we may then humbly presume to hope, that the Earl will not be thought to be Criminal under any Part of this Article; but that Your Lordships great Justice will acquit him wholly of it.

[*Article XII.*] But, my Lords, I would now humbly beg leave to offer a few Words and Observations on the Twelfth *Article*, which comes next to be considered of. This

This, my Lords, charges that whilst the Earl was Chancellor, an unjust and fraudulent method was practis'd in the Court of *Chancery*, on the Sale of Masters Places, and on the Admissions of new Masters; that the Sums agreed to be paid for the Purchase thereof, were paid out of the Suitors money, either by way of Retainer, or by replacing the same again, in the Hands of the Selling Master, immediately after the Admission of the new one: And that by this Practice the Price and Value of these Places was greatly advanced, and Persons of small Ability and Substance were encouraged to contract for the same, which has occasioned great Deficiencies.

This Part, my Lords, shews only the Contrivances amongst the masters themselves, how to get into those Offices; and so far the Earl seems to be but little concerned in it.

But then comes the Charge against the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted therewith, yet, for his own unjust and corrupt Profit, in the Selling of those Places, he took no measures to prevent or reform that Abuse, either by causing Schedules to be taken of the money and effects of the Suitors, delivered over to the new master, or by appointing any Person to supervise or inspect the Transfer, and Delivery thereof: But on the contrary, suffered that fraudulent Practice to continue without controul, whereby great Embezzlements have been made of the Suitors Money and Effects.

My Lords, the noble Earl, by his Answer, says, That he was totally ignorant of this practice amongst the masters; but admits, that he never gave any particular Directions for Delivery of the Suitors money and effects, by a Schedule to the succeeding master; and says, he never heard that his Predecessors ordered such Schedules to be made; but says, he believes such Schedules were made, between the new master and the old, on the general Order of Transfer, made of Course on the Admittance of the new master.

This, my Lords, is the Earl's Answer to this Article. And as he has in general denied his Knowledge of these Practices amongst the masters, it was certainly expected by Your Lordships, that the honourable managers for the *House of Commons*, would have fully proved it upon him, and thereby have falsified his Answer to this Part of the Charge.

But, my Lords, if I did not greatly mistake the Evidence to this Point, it has proved nothing more, than that the Earl knew of this Practice, at the same time that all the rest of the World did, that is, a little before *Christmas* last; when the Curtain drew up, and display'd the masters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Assistance and Help of Mr. *Thomas Bennet*, and the Affidavits that were made by him and others on that Occasion.

But, my Lords, with great Submission, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redressing it for the time to come; for the great Seal was taken from him sometime before, and then all his Knowledge after could be of no use to him, but only to shew how treacherously he had been dealt with, in not being let into this useful Part of Learning, whilst it might have done him any good.

And, my Lords, if this be so, as it can be no ways Criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of, and which the masters kept private amongst themselves, We humbly hope, how ill soever the Masters may be thought to have deserved of this noble Earl, that the Earl himself will not be thought to have deserved ill of your Lordships, in not endeavouring to prevent it; and that in Consequence thereof, Your Lordships great Justice will acquit him of this Part of the Impeachment.

And, my Lords, As to the last Part of this Charge, the not causing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the succeeding Master, as a method, which might in all probability have prevented the Practices amongst the Masters, complained of in the first Part of this Article; this, my Lords, we humbly apprehend, neither can, nor is intended, even by the Articles themselves, to affect the Earl further or otherwise, than as a means he ought to have made use of, to put a Stop to these dangerous Contrivances, formed and set on foot amongst the Masters, to dispose of their Places to the best Advantage.

But, my Lords, If the Earl himself knew nothing of these Contrivances, if he was wholly a Stranger to, and unacquainted with the mischief, 'twill surely, we hope, be no Crime in him, that he did not look out for a Cure.

But, my Lords, It may, perhaps, be worth while, just to consider of the wonderful Discovery that seems to have been made of these Schedules, and how far they would have answered the ends proposed, admitting the Earl had known of these Practices amongst the Masters, and had been better disposed than the *Commons* are pleased to think he was, for the remedying of them.

And, my Lords, I am afraid this would have proved very far from being an infallible method of remedying these Evils for the time to come; for, my Lords, if the Masters would but trust one another, or any Body would trust them for a very few Days, might they not have done just the same thing they did before? might they not have immediately replaced the Money again in the Hands of the Selling Master? or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as soon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had so done, and this had been discovered and complained of, would it not, with great Justice, have been called instituting a trifling and fallacious method of Security for the Suitors, which could do them no manner of Service, but tended only to amuse and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may, we humbly hope, be thought deserving of Your Lordships Notice; especially, my Lords, when it might have been so easily explained and urged as no doubt it would have been by the learned Managers, that the very taking of these Schedules was for the sake of seeing into the Nature and Value of the Office to be sold, that he might the better know how to set his Price upon it.

But, my Lords, I shall only beg leave to add one or two very short Observations more upon this Head, and then call such Witnesses, as we have, to speak to these two Articles.

And, my Lords, the first Observation I would beg leave to mention, is, that the Earl by his Answer

swer owns that he did not, neither did he ever hear, that any of his Predecessors ordered such Schedules to be made; neither is there the least Proof on the Part of the Honourable Managers for the House of Commons, that any such Schedules ever were made, or thought of, 'till Mr. *Lightbourn* very happily hit upon them.

Indeed, the Earl owns by his Answer, that he believes such Schedules were usually made between the Old master and the New, on the General Order of Transfer made of Course in the Admittance of the new master.

But, my Lords, these are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at least was to have one Part of them; or else they could be of no Use to him in guarding against any fraudulent Practices of the masters. And if he had had one, what Security that could have been to the Suitors of the Court, if the masters should have been disposed to make Use of their money afterwards; this my Lords, I have already endeavoured to consider of.

The next Observation, my Lords, I would beg leave to make under this head, is, That if such Schedules had been made, what Security would this have been to the Earl, that they were in all Respects true, or with any certainty to have been depended on?

Some, my lords, even of the masters themselves, in the hurry they were lately obliged to give in their Accompts, discovered afterwards several mistakes and Omissions therein; and though they were given in upon Oath, yet on a Review, and a more narrow and careful Inspection and Examination of them, 'twas found they were not altogether to be relied on; and therefore the masters were forced to set them right in their Post-Accounts, given in at some distance of Time after; and whether any, or what other, or better Security for the Truth of those Accounts has been yet found out, I am wholly ignorant of.

My lords, the Third, and last Observation, I would beg leave just to mention, and submit to your lordships under this head, is, Whether there be any, and what real mischief in the Practice it self, so grievously complain'd of in this Article?

It is, my lords, notorious, That in every one of the Offices of these masters in Chancery, there is always necessarily a much greater Sum of Money lying dead in the Office, than goes to pay for their Places, either for want of Securities whereon to place the money, or from the different Claims of Persons entitled thereto; or to satisfy the Demands of Creditors, and other Persons, as they shall from Time to Time come in and prove their Debts, and from several other Causes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Suitors money, lying dead in their Hands, or raising so much money out of their own Estates and Fortunes, in order to let the Suitors money lie dead; whether a Practice of this Nature, which does no Sort of Hurt to the Suitors, is of no Advantage to the masters, and which the Earl himself was wholly a Stranger to, and which if he had known, could not have been prevented; whether this can be heightned or improved into so heinous a Crime in the Earl, as to need or deserve the most solemn Prosecution, which we are acquainted with, a Prosecution by the Representatives of the whole Body of the

Nation; this, my lords, we humbly hope will deserve to be thought of. In the mean time, as the Commons have chosen your lordships to be the Judges, the Earl himself with the greatest Pleasure joins with them, and humbly appeals to your lordships Just and Impartial Judgment.

Mr. *Serj. Probyn*. My Lords, the Evidence, which we have next to lay before your lordships, relates to the 11th Article, by which it stands charged that several matters admitted by the noble Earl, were Persons of small Substance and Ability; and in that respect very unfit to be trusted with the Great Sums of money, and other Effects belonging to the Suitors, which were lodged in their Hands by Order of the said Court; notwithstanding which the Noble Earl did publickly in open Court declare them to be Persons of great Fortunes, and in every respect qualified for the Trust so reposed in them, to the manifest Deceit and Prejudice of the Suitors of the said Court: But, my lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now only to account for the Abilities and Circumstances of such of the masters, as they have descended into any particular Evidence against, upon that Head: Now the masters, who have been admitted in by his lordship, and against whom any Insinuations of this kind have been levelled, are Mr. *Kynaston*, Mr. *Bennet*, Mr. *Elde*, and Mr. *Thurston*: But I should in the first Place observe, as to Mr. *Elde* and Mr. *Thurston*, That there is not the least Pretence of any Deficiency in either of their Offices, from any Evidence that has been yet offered by the learned Managers; they stand both of them without Objection in point of Substance; as to Mr. *Kynaston*, indeed, I do own, That at the Time, when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but since that Time he hath given such Security, as the Court thought fit to accept of, for answering it to the Suitors concern'd. At the time of his Admission he appears to have been a man of Fortune; he had a good Estate in Land, and a considerable sum of money in Bank; and had a great deal of Wood upon his Estate: If he really was a man of a considerable Fortune at that time, and if he appeared so, and came well recommended in other respects to the noble lord, what Foundation is there left to support that part of the Charge against the noble Earl? As to Mr. *Tho. Bennet*, indeed, tho' he did make an Appearance in the World, equal to a man of Fortune, yet he now pretends it was far from being so, tho' he had an Estate in land; yet he has told your lordships it was incumbered; but, with Submission to your lordships, it doth not appear that any of these Incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the same light as in the Year 1720. when he saith he was worth 20,000*l.* and these Incumbrances being private it is impossible the noble Earl should then know them; we shall shew that at this time he was not only a man of visible Substance, but of real Substance, equal to those, who are usually admitted into these Offices; and if he was equal, both in reputation and fortune, with those admitted by the noble Earl's Predecessors, we hope it shall not be imputed a Crime in him, to have trod in their steps in that particular: In order to make this out against Mr. *Bennet*, we shall prove that about the time when he applied to *Hiccocks*, to get back part of the 7000*l.* he then declared his Substance was so good, that if he could but have 2000*l.* he would pay the rest himself; he denied before your Lord-

ships, that he said so, but we have Persons of undoubted Character to prove, that he did say so. And when that appears, we hope you will give the less Credit to Mr. Bennet's Testimony in any other particular, which concerns his Fortune; we shall likewise prove, as to Mr. Hiccocks and Mr. Rogers, that the Sums of money, which they retained, are now submitted to be returned by them respectively to the Court, to answer any Deficiency, so far as the Estates of their Successors shall fall short in satisfying the same; so that upon the whole, the Suitors are in no possibility of suffering by any Transaction of Bennet or Kynaston. We shall beg leave to call our Witnesses, and prove the several Facts I have opened to your Lordships upon this Article.

Mr. Com. Serj. My Lords, we humbly apprehend, that in this Case the noble Earl is not responsible for the bad Circumstances of the Party; if he, upon inquiry, have received such an Account as is proper to rely upon, and to satisfy a reasonable man, it is sufficient: The greatness of the Trusts reposed in these masters, hath been magnified, and great it is; but your lordships will please to consider, that it is not to be expected from the Nature of the Thing, that Persons of great or overgrown Fortunes, should take upon them those Offices. They have informed your lordships, that 120,000*l.* hath been in one of these Gentlemen's hands. I believe no Persons of such vast Estates as 100,000 or 150,000*l.* would give themselves the trouble of executing these Offices, attended with such risque, and requiring so great attendance. I believe the Office of a master in Chancery will never find either such buyers or sellers; all that can be expected is, that they must be men of reasonable Fortunes, Persons of 4 or 500*l.* a Year, brought up with a liberal Education; Persons, who are of good Characters as to their Integrity and Abilities; this is all that can be reasonably expected, and we apprehend it hath appear'd to your lordships, that these masters, which the Evidence hath been given of, were such, and such a Representation was made of them to the noble Earl. My lords, I must submit it upon the Evidence given in that behalf by the Gentlemen of the house of Commons in this Prosecution, that Mr. Kynaston did appear no way unfit, but a Person proper to be admitted into such an Office; no Objections are made either to Mr. Elde or Mr. Thurlston. As to Mr. Thomas Bennet, it will appear that his Deficiency will be made good, and that is the best proof of his Ability; and, we hope, Mr. Kynaston's will be so too: As to Mr. Thomas Bennet, he hath denied that ever he told Mr. Hiccocks, that if he would return 2000*l.* he would pay the rest: Being ask'd, whether he had declared to any Body, that he had made that offer to Mr. Hiccocks, he answered directly in the Negative, that he had not, no he was sure he had not; he was asked the Question over and over. But, if my Instructions don't fail me, we shall produce three witnesses to shew your lordships, that Mr. Bennet declared the same thing over and over again, and consequently it could not be a slip of his memory.

Mr. Steele called.

Mr. Serj. Probyn. I desire he may inform your lordships, as to what Reputation and Character Mr. Bennet was of, in point of Fortune, when he was admitted master?

Mr. Steele. Which of the Bennets?

Mr. Serj. Probyn. Mr. Thomas Bennet:

Mr. Steele. It is near two Years ago since Mr. Thomas Bennet came to be admitted a master in Chancery, he was looked upon then to be a man of good Substance and of good Reputation; and since that he had married a Lady of a good Fortune, he made a good Appearance in the World, and was generally esteemed to be a man of Substance.

Mr. Serj. Probyn. Did he keep his Coach?

Mr. Steele. I have heard so; I don't know that of my own Knowledge.

Mr. Plummer. My Lords, if the Counsel have done, I desire to know what Character Mr. Bennet had as to his Integrity, whether he was accounted an honest man or no?

Mr. Steele. My lords, I never heard to the contrary in my life; nor ever knew any thing to the contrary.

Mr. Walker sworn.

Mr. Serj. Probyn. We desire that Mr. Walker will inform your lordships, what he knows of any Proposal or Agreement for the Repayment of any money by Mr. Hiccocks.

Mr. Walker. My lords, Mr. Hiccocks, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the monies and securities of the Suitors of the Court of Chancery, to his Successor Mr. Bennet? It having been alledged by Mr. Bennet, that he retained out of them 7500*l.* Mr. Hiccocks did think fit to submit to the Payment of that money, to make so much good to the Suitors of the Court, as the Estate of Mr. Bennet should prove defective in satisfying, as appears by the Petition delivered by him, and the Answer to the Petition.

Mr. Latwycbe. We shall see that by the Petition. We desire that the Copy of the Petition may be read; they are giving an Account of written Evidence: I desire to ask you, whether you are not concerned as Clerk for Mr. Hiccocks?

Mr. Walker. I am concerned for Mr. Hiccocks as his Solicitor.

Mr. Latwycbe. Whether you had any Authority from Mr. Hiccocks to present that Petition?

Mr. Walker. I had Authority to present that Petition.

Mr. Latwycbe. When did you present the Petition?

Mr. Walker. About three or four Days ago.

Mr. Serj. Pengelly. We desire to see what the Petition is? It hath been presented since the Great Seal was in Commission: Read it.

Mr. Walker reads it.

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The humble Petition of John Hiccocks, Esq; late one of the Masters of this Court

Sheweth,

THAT by an Order of the 23d of Feb. last upon the Affidavit of Thomas Bennet, Esq; your Petitioner's Successor, (who swore that the Sum of 7500*l.* part of the Monies belonging to the Suitors of this Court, did remain

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in your Petitioner's Hands, and was never paid over to him) it was ordered that your Petitioner should be examined upon Interrogatories, whether all the Monies, Securities, and other Effects, belonging to the Suitors of the Court, were delivered over by your Petitioner to the said Thomas Bennet, and whether your Petitioner kept away any, and what part, by him.

That Interrogatories have been accordingly prepared, and your Petitioner is ordered to put in his Examination, or stand committed.

That your Petitioner, by Reason of his Indisposition, is not in a Capacity to put in his Examination.

That though your Petitioner did pay over, satisfy, and assign to the said Thomas Bennet, all the Monies, Effects, and Securities of the Suitors of the Court in your Petitioner's Hands; and the said Thomas Bennet hath given your Petitioner a Receipt in full for the same, yet, so far, as the Estate of the said Thomas Bennet shall fall short to satisfy the just Demands of the Suitors of the Court; your Petitioner is willing to pay the Sum of 7500 l. into Court, Subject to the Order of the Court, so soon as your Petitioner can raise the same; and your Petitioner is willing to pay the Sum of 2000 l. part thereof within ten Days, and the Residue thereof within three Months, so as the same (as between your Petitioner and the said Thomas Bennet) may not be construed to extend to ease the said Thomas Bennet's Estate from being liable in the first Place to answer the Demands of the Suitors of the Court; but so as the same may abide as a Security to answer any deficiency of the said Thomas Bennet's Estate; and to the end it may appear whether there will be any deficiency or not, that the real and personal Estate of the said Thomas Bennet may be forthwith sold, and disposed of; and in the first place applied to answer the Demands of the Suitors of the Court; and the rather, for that your Petitioner is informed, the said Tho. Bennet hath, pursuant to some Order of this Court, by Recognizances, and other Assurances, subjected his whole Estate towards making good those Demands.

Your Petitioner therefore most humbly prays your Lordships, that, upon Payment into Court of the said 7500 l. on the Terms aforesaid, subject to the further Order of the Court, all further Proceedings upon the said Order, for Compelling your Petitioner to be examined upon Interrogatories, may be stayed.

And your Petitioner, &c.

He reads the Order, May 5th, 1725.

UPON Payment of 3000 l. into Court, and giving Security, such as Mr. Holdford shall approve of, for Payment of the further Sum of 4500 l. also into Court, in a Month, both Sums to be Subject to the further Order of

the Court; let all proceedings for the compelling the Petitioner to be examined upon the Interrogatories before the Master, be stayed. Hereof give notice forthwith

J. Jekyle, C. S.

R. Raymond, C. S.

Mr. Serj. Pengelly. I would be glad to know, Whether we can rely upon this as an Authentick Order. Did he examine it?

Mr. Walker. The Original Petition and Answer are in the Register's Office, to draw up an Order.

Mr. Lutwyche. Is it a right, a true Copy?

Mr. Walker. It is.

Mr. Lutwyche. Did you examine it?

Mr. Walker. Yes, I did.

Mr. Com. Serj. If it is not wholly immaterial to examine into the Circumstances of this Gentleman, I would ask whether Mr. Hiccocks is a Person of Ability, sufficient to make good this Sum?

Mr. Walker. My Lords, I don't know the Circumstances of Mr. Hiccocks, nor his Riches. I believe he is able to do what he hath proposed. I believe he hath paid the 3000 l. in money this morning; he told me he would; and he hath proposed Security for the Remainder, 4500 l. and I believe the Security will be approved of.

Mr. Lutwyche. If they have done, I desire he may be asked, How long ago it was since Mr. Hiccocks was ordered to be examined upon Interrogatories?

Mr. Walker. I think the Order is dated the 29th of February.

Mr. Lutwyche. And how long ago is it since this Proposal was made?

Mr. Walker. The Petition was presented the 8th of this Instant May.

Mr. Lutwyche. Was the Petition presented before his Examination? When was it answered?

Mr. Walker. It was answered the 8th of May. It was preferred a little while before. I believe, two or three Days. There was an Order, That Mr. Hiccocks should put in his Examination in four Days, or stand committed; thereupon this Petition was presented.

Mr. Lutwyche. I think it was on Payment of so much money, and giving Security for the rest, that all Proceedings were to stay. I don't find Mr. Walker can say the money is paid, or Security given.

Mr. Walker. Mr. Hiccocks told me the 3000 l. was paid, and I know he hath offered Security for the 4500 l.

Mr. Lutwyche. One or two Securities?

Mr. Walker. I believe only Sir John Buckworth,

Mr. Richard Rogers sworn.

Mr. Serj. Probyn. I desire he may be asked what he knows of the Payment of any money, or the Directing the Payment of any money into Court by Mr. Rogers, the late master, in Satisfaction of the Deficiency of Mr. Kynaston?

Mr. Rogers. I did, my Lords, by the direction of Mr. Rogers, the late master, prefer a Petition about the latter End of April last, upon the 28th, or 29th of April, to the Right Honourable the Lords Commissioners, and thereby did offer to give a Recognizance to make good to the Suitors of the Court any Sum not exceeding 6000 l. as the Estate of Mr. Kynaston should prove defective in answering



ing the Effects of the Suitors of the Court. The Petition is answered, and I believe they design to pay the money.

Mr. Serj. Probyn. Have you the Petition?

Mr. Lutwyche. Is the Order Drawn up?

Mr. Rogers. The Petition it self I have in my Hand.

*The Clerk reads.*

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The humble Petition of *William Rogers, Esq;* late one of the masters of the High-Court of Chancery,

Sheweth,

**T**HAT by an Order, made by your Lordships the 20th of January last, it was ordered that Mr. Kynaston, one of the Masters of the said Court, who succeeded your Petitioner, should in a Week depostite the Sum of 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  in the Bank of England (being the Ballance of the Account of Money and Securities of and belonging to divers Suitors of the said Court, paid into the Hands of the said Master Kynaston, and your Petitioner) or in Default thereof, that the said Master Kynaston should enter into a Recognizance, in the Penalty of 53,817 l. with two or more Sureties to answer and pay the same as your Lordships should direct.

That the said Kynaston not having paid the said 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  into the Bank, or given security for the same, as the said Order directed; and having before proposed towards Satisfaction of the said 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  to assign over a Debt of 20,850 l. owing to him from one De la Hay, for the Benefit of the said Suitors; it was by an Order made by your Lordships the 29th of Jan. last, Ordered, That the said Master Kynaston should assign over De la Hay's Debt to Mr. Holford, one other of the Masters of the said Court, for the Benefit of the said Suitors, and should give his own Recognizance for the said 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  in the Penalty of 53,817 l. And upon his so doing, the Time for his performing the said former Order should be enlarged to the Wednesday following.

That by another Order made the 3d of Feb. last, your Lordships Ordered, That upon Mr. Kynaston's assigning of the said Debt, and upon his signifying his Consent to be examined upon Interrogatories for Discovery of all other his real and personal Estate, and that the same might be assigned, and conveyed to the said Master Holford in Trust for the said Suitors, the time for performing the former Order should be enlarged to the Wednesday following.

That pursuant to the said Order, the said John Kynaston assigned over the said De la Hay's Debt, but the same not being sufficient to answer the said sum of 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  Nicholas Paxton, Solicitor for, and on Behalf of the suitors of the said Court, on the 15th of Feb. last, preferred his Petition to your Lordships, setting forth the several Proceedings aforesaid; and that it appeared by Mr. Kynaston's Affidavit that 6000 l. part of the said 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  was retained by your Petitioner, at the time your Petitioner surrendered his said Office to the said Mr. Kynaston; and that the same still remained in your Petitioner's Hands: It was therefore prayed that your Petitioner might forthwith pay the same for the Benefit of the said suitors, or to such

Persons, and in such manner, as your Lordships should direct.

That upon bearing the said Petitioner, upon the 23d. of Feb. last, your Lordships were pleased to Order your Petitioner should be forthwith strictly examined before Mr. Holford, one of the Masters of this Court, whether all the Monies, Securities, and Effects, belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. Kynaston, and whether he kept any, and what Part thereof by him.

That in pursuance of the last Order Interrogatories have been exhibited for the examination of your Petitioner; and in Case your Petitioner should put in his Examination thereto, he doubts not, but it would appear that your Petitioner hath acted with great Justice towards the said Master Kynaston, and that Mr. Kynaston ought to answer and make good the said 6000 l. to the Suitors of the said Court; however your Petitioner being unwilling that any part of the Deficiency in the said Master Kynaston's Office should be imputed to your Petitioner, or that the Suitors of the Court should be put to any Expence or Trouble, in making any further Enquiry touching the said 6000 l. your Petitioner is willing (if your Lordships shall think fit) to give his own Recognizance, or a good and sufficient Mortgage, to be approved of by one of the Masters of this Court, to such Person or Persons as your Lordships shall direct, to answer and make good to the Suitors of this Court any sum not exceeding 6000 l. as the Estate and Effects of the said Mr. Kynaston shall fall short of satisfying the said 26,908 l. 11 s. 3 d.  $\frac{1}{4}$ , which he was ordered to depostite in the Bank of England as aforesaid; or if your Lordships shall think it more for the benefit and security of the said Suitors, that your Petitioner should bring 6000 l. into Court, your Petitioner is willing to bring in such sum for the Purpose aforesaid, having a reasonable Time allowed him to raise the same.

Forasmuch therefore as it is not pretended, but that your Petitioner has paid and delivered over to Mr. Kynaston all the Money and securities belonging to the suitors of this Court, which were in your Petitioner's Hands at the Time when he surrendered his said Office to the said Mr. Kynaston, except the sum of 6000 l.

Your Petitioner humbly prays your Lordships will be pleased to make such Order in the Premises, as to your Lordships shall seem meet; and that in the mean Time all Proceedings upon the said Order of the 23d of February last, for examining your Petitioner upon Interrogatories, may be stayed.

And your Petitioner, &c.

*The Clerk reads the Order.* 29th of April, 1725.

Upon the Petitioner's paying the said 6000 l. into Court, subject to the further Order of this Court, let all Proceedings upon the said Order of the 23d of February last, for examining the Petitioner upon Interrogatories be stayed. Hereof give Notice forthwith.

Jeff. Gilbert, C. S.  
R. Raymond, C. S.

There was another Petition preferred, but never answered.

Clerk

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The Humble Petition of William Rogers, Esq; late one of the Masters of this Court,

SHEWETH,

THAT Mr. Paxton, in behalf of the Suitors upon Mr. Kynaston, being 26,908 l. 11 s. 3 d.  $\frac{1}{4}$  deficient in his Accounts, to answer the Suitors monies in his Hands, having, by his Petition to your Lordships, represented (*inter alia*) That your Petitioner, upon surrendering your Petitioner's Office to him, detained, and still hath in his Hands, the Sum of 6000 l. of the said Suitors money; your Lordships, upon hearing the said Petition, on the 23d of February last, were pleased to order your Petitioner should be examined before Mr. Holford, one of the masters of this Court, Whether all the Monies, Securities and Effects, belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. Kynaston?

That your Petitioner, on the 29th Day of April last, preferr'd the annexed Petition to your Lordships; and your Lordships were, thereupon pleased to make the Order thereunto subscribed.

That your Petitioner is informed, the said Mr. Kynaston hath, pursuant to a former Order of your Lordships, by Recognizance and Assurances, subjected his whole Estate towards making good his said Deficiency.

That your Petitioner, upon surrendering his Office, received from the said Mr. Kynaston, proper Discharges for all Monies, Securities and Effects of the said Suitors, then in your Petitioner's Hands, which your Petitioner is ready to produce and prove: And the said Mr. Kynaston from that Time, never pretended but that the Account delivered in to him, contained a full Account of all the Money, Effects and Securities of the Suitors of the Court in your Petitioner's Hands, except the Sum of 70 l. or thereabouts, which your Petitioner was always ready to pay him, provided he would have given your Petitioner an Account wherein the said Omission or Mistake consisted; and your Petitioner, upon Examination of his Vouchers, found the same to be true; but the said Mr. Kynaston hath hitherto neglected so to do, though your Petitioner hath sent to him several Times for that Purpose.

That your Petitioner, upon the terms mentioned in the annexed Petition, is willing to pay a ready Obedience to your Lordships Order thereupon; and for that Purpose, now humbly offers, in Six Days time, to pay 2000 l. part of the said 6000 l. into Court, subject to the further Order of the Court, so far as may be necessary to make good any Deficiency to the Suitors of the Court, which Mr. Kynaston's Estate shall not be sufficient to answer.

And your Petitioner humbly prays, he may have a Month's Time to pay in the remaining 4000 l. (your Petitioner being obliged to borrow the same on his Estate) and that all Proceedings on the said Order of the 23d of February last, against your Petitioner, may in the mean Time, be stayed: And your Petitioner further humbly prays your Lordships, That the said Order, made by your Lordships on the 29th of April last, may be so far explained, that as between the said Mr. Kynaston and your Petitioner, the same may not be construed to extend to ease the said Mr. Kynaston's Estate from being liable,

in the first Place, to answer the Demands of the Suitors of the Court; or, if all, or any part of the said 6000 l. shall be applied for that Purpose; that your Petitioner may then stand in the Place of the Suitors of the Court, to have Satisfaction out of the Estate of the said Mr. Kynaston, for all, or so much of the said 6000 l. as shall be so applied; and that the said 6000 l. so to be deposited by your Petitioner, or any Part thereof, may not be applied towards making good the said Mr. Kynaston's Deficiency, till after Sale and Disposal of all the said Mr. Kynaston's real and personal Estate for that Purpose.

And your Petitioner shall ever pray, &c.

Mr. Serj. Pengelly. Is there any Order upon this?

Mr. Rogers. This was never answered.

Mr. Lutwyche. If they have done, I desire he may be asked, if he hath given any Notice to the Solicitor of the other Side, of the Order on the first Petition?

Mr. Rogers. I did acquaint Mr. Paxton, that I had such an Order; but I did not serve it upon him.

Mr. Com. Serj. I desire to ask you, Whether, when you told Mr. Paxton of it, he insisted upon a formal Service?

Mr. Rogers. Mr. Paxton said, Let it be done as soon as possible.

Mr. Com. Serj. What Answer did you give to Mr. Paxton, when he desired it might be done as soon as possible?

Mr. Rogers. I told him, I was raising the money by Direction of Mr. Rogers.

Mr. Com. Serj. I ask you, If you had any Directions from Mr. Rogers, for the Payment of, or for raising the money?

Mr. Rogers. Yes, I had. I believe it will be paid in a Day or two. I can't directly say what Day. Such a Sum is not immediately raised.

Mr. Com. Serj. I desire he may be asked, Whether there is any Reason to doubt of his Ability to raise the money?

Mr. Rogers. I believe he is able to give a Security; but, as he lives in the Country, he may not be able at present to pay so much money; but he is now in Town, and endeavouring to raise the money.

Mr. Com. Serj. My Lords, we beg leave to call two or three Gentlemen, with Respect to Mr. Thomas Bennet, what he hath said; and that he said he was able to pay all the rest of the money, if Mr. Hiccocks would pay 2000 l.

Mr. Holford called.

Mr. Serj. Probyn. My Lords, we beg leave to begin with Mr. Holford, and to ask him, Whether he was not employed, or concerned as a Friend to Mr. Thomas Bennet, to go to Mr. Hiccocks, and what Proposals he was to make to Mr. Hiccocks?

Mr. Holford. Presently after the Article was delivered in by Mr. Thomas Bennet, relating to the money he said was in the Hands of Persons of Ability and Substance, to the Judges and Gentlemen of the Bank, Mr. Bennet did send to me, to desire I would speak to Mr. Hiccocks, that if he would pay him but 2000 l. he would pay the Remainder of the money. I did not much care to undertake it; but upon some Importunity, I did go upon the said message; and it was this, That he desired me to tell Mr. Hiccocks, that if he would

pay him back 2000 *l.* he could or would take care that the rest should be paid, and Mr. *Hiccocks* should not be troubled about the Remainder.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he had any Discourse with Mr. *Thomas Bennet*, concerning what passed between him and Mr. *Hiccocks*?

Mr. *Holford*. Mr. *Hiccocks* told me——

Mr. *Lutwyche*. That is no Evidence.

Mr. *Holford*. I am only relating the Answer he returned to my message; which was, That Mr. *Bennet* had given in that Article, and brought his Name in Question, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that Answer, and never troubled myself any more about it.

Mr. *Lutwyche*. I desire Mr. *Holford* would recollect the Time.

Mr. *Holford*. I believe it was the next Day after he had given in that Article.

Mr. *Lutwyche*. I think they call this Witnesses to prove a Contradiction in Mr. *Bennet*'s. Mr. *Holford* says, He said he was willing, he would take care the rest should be paid. I desire to know, Whether he declared he had the money to pay, the money in his own Hands?

Mr. *Holford*. No, my Lords, I can't say he told me so.

E. of *Macclesfield*. I desire to ask him, If Mr. *Bennet* did not expressly tell him, That he was able to pay the money; or if Mr. *Holford* would have gone upon the Errand, without being satisfied that he was able to pay the money?

Mr. *Holford*. Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* said to be true, and that he could make good what he at that Time sent me to desire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

Mr. *Thurston* called.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Thurston* may inform your Lordships what he hath heard Mr. *Thomas Bennet* say, in relation to Mr. *Hiccocks*, about his paying back 2000 *l.*

Mr. *Thurston*. I do remember Mr. *Thomas Bennet* told me, and I think I was then sitting in the publick Office, that if *Hiccocks* (as I think his Expression was) would pay him back 2000 *l.* he would make up the rest himself.

Mr. *Serj. Probyn*. I desire Mr. *Thurston* to explain himself, whether he expressed himself in that manner that Mr. *Thurston* apprehended he was able to do it?

Mr. *Thurston*. I can't swear critically to the last Words, that he would make up the rest himself; but he spoke in such Words, that I understood he meant so; that was the Sense of those Words, as I have delivered it now to your Lordships.

Mr. *Serj. Probyn*. Had you any Discourse at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurston*. I believe I had some Discourse with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000 *l.*? The Reply he gave me was, All he had in the World would not do it.

Mr. *Serj. Probyn*. I desire he may be asked, if he had any Discourse with Mr. *Thomas Bennet* at any Time, about his Ability to pay this money, or whether he was able to pay it?

Mr. *Thurston*. I had no Discourse with Mr.

*Thomas Bennet* directly, of his Ability to pay in this money, when these Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks*'s detaining his money by way of Retainer; explaining the Reason, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors money, that it was the most compendious method of doing in that Case, and prevented the Trouble of mortgaging his Estate.

Mr. *Serj. Probyn*. Did he say any thing in case of his death, Whether he should leave sufficient to satisfy it?

Mr. *Thurston*. He said at that Time, if he died, there would be Estate sufficient to answer it; therefore he had the less Occasion to trouble himself to raise the money, but to pay it in the particular manner I have mentioned.

Mr. *Plummer*. I desire to ask him, If Mr. *Bennet* explained to him in what manner the money was to be raised, to make good the Deficiency?

Mr. *Thurston*. He did not at all explain to me, how he was to raise it.

Mr. *Plummer*. I desire to ask you more particularly, Whether he mentioned to have insured any money upon his Life?

Mr. *Thurston*. Not at that Time, as I remember; I have heard him at other Times talk of insuring of money on his Life.

Mr. *Serj. Pengelly*. When was the first Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thousand Pounds, he would make up the rest himself?

Mr. *Thurston*. My Lords, I can't remember distinctly the Time, never having imagined I should be called upon to repeat it on this Occasion; but it must necessarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

Mr. *Elde* called again.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Elde* may inform your Lordships what Discourse he had with Mr. *Bennet*, in relation to the money in Mr. *Hiccocks*'s Hands?

Mr. *Elde*. Some small Time after I had given in my Accompt, I saw Mr. *Bennet*; and he came up to me and said, That it was hard that he could not have any money from Mr. *Hiccocks*. He said, If he would pay him 2000 *l.* he would, or could pay the rest. I do not remember which.

Mr. *Serj. Probyn*. Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde*. I know nothing of Mr. *Bennet*'s Circumstances; I am as little acquainted with him, as with any I must necessarily have Correspondence with.

Mr. *Serj. Probyn*. My Lords, We shall not trouble your Lordships with any further Evidence on the 11th Article, in which we think we have sufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the purchase money was paid out of the Suitors money; that is a Fact that lies upon the Gentlemen of the House of Commons to prove: It is impossible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witnesses; but by Mr. *Thomas Bennet*: Now this being a Fact that rests intirely upon Mr. *Bennet*'s Evidence, we submit, Whether your Lordships can believe any thing upon the Credit of his Testimony?

Mr. *Com.*

Mr. Com. Serj. My Lords, We humbly apprehend the Gentlemen of the House of Commons, by joining these Two Articles together, did it as if they were the same, and did depend upon one another: For unless the matter in the 11th Article be established, what was done on the 12th, will be of no great Significancy; For if Persons of good Ability, who are responsible, and fit to answer the money that comes to their Hands, be admitted to be masters, it is not very material whether the Forms of transferring in like Transactions of that Nature are strictly pursued or no; because the Person, being sufficient and responsible, will answer that money that is so detained. I choose to call them Forms, for, with Submission, if we examine them, they are Forms, and nothing else: Whether they take all the money from the preceding master, or replace with the Successor's own money, what is detained by the Predecessor, it comes to the self same Thing, and are only different Forms or methods of Payment. Upon the whole, we apprehend, We have established our Answer to the 11th Article; we think the other follows of Course; and that there is no Necessity to give your Lordships any further Trouble on this Head; but that the Noble Earl will stand clear as to any Accusation on these Two Articles.

*Then all Persons concerned in the Impeachment, were directed to withdraw, and then the House adjourned to Ten o'Clock the next Morning.*

Friday, 14 May, 1725. *The Seventh Day.*

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

L. Ch. J. King. Mr. Serjeant *Probyn*, you may go on.

Mr. *Strange*. My Lords, We who are Counsel for the Noble Earl within the Bar, beg leave to proceed to his Defence against the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in these Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a master of the Court; upon whose Failure it is charged, that there was a total Neglect, either to secure his Person or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Prosecution of this Endeavour to conceal the deficiency in *Dormer's* Office, a precarious and trifling Composition was made with a Creditor of Mr. *Dormer's*; and this without any Notice to the Suitors of the Court.

My Lords, I shall, for my Part, confine myself at present to these Two Articles only, reserving any thing I may have to offer in general to the close of the defence; but before I proceed

to observe upon the Evidence brought to support the Charge contained in these Two Articles, it will be proper to take Notice to your Lordships, That the Honourable Managers for the House of Commons, have not offered one Tittle of Proof, as to the declaration pretended to be made, relating to Mr. *Dormer's* being gone to take the Air, though they were pleased to enlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordships, who are incapable of receiving any Impressions from Facts that are barely opened, and not proved; and therefore we rest assured, that no Weight will be laid upon this Circumstance, since no Evidence has been produced in Support of this Part of the Charge.

My Lords, as to the other matters contained in these Articles, we humbly hope to give your Lordships abundant Satisfaction in the Noble Earl's Behaviour on that Occasion; that all the proper Steps were taken to secure the Interest of the Suitors; and that, if there still remains any Deficiency, it is not to be imputed to any Neglect of the Noble Earl within the Bar.

Your Lordships were pleased to observe in the Course of the Evidence produced by the Honourable managers for the House of Commons, That Mr. *Dormer's* Failure happened about *Christmas*, 1720. My Lords, it was about that Time that Mr. *Wilson*, who had large Effects of Mr. *Dormer's* in his Hands, stopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suspicion of any one, to retire himself to *Holland*; and soon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was lost; for the Two Senior Masters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer's* Affairs: His Chambers were searched; the Transfer of any Stock in the publick Funds was stopp'd; and all Endeavours used to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though these methods were very proper to prevent the embezzling of Mr. *Dormer's* Effects, yet your Lordships will readily perceive, that no Steps, that could be taken whilst Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Proposal of Mr. *Dormer's*, to come over and discover his Effects for the Benefit of the Suitors, in case he might be assured of his liberty, and not be left to die in a Gaol in his old Age (as himself expresses it) the Noble Earl within the Bar, was prevailed upon to give him those Assurances; but upon Condition, That he made a full Discovery, and assigned over all he had.

Suppose, my Lords, the Proposal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Person of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Presence or Consent, nor were there any means to procure it under these Circumstances, without some Compliance on the Side of the Noble Earl. To say, my Lords (and it was only said) That Dr. *Eddisbury's* Person was secured, is, in my humble Apprehension, an Argument of no weight in this Case, since it does not appear, that he was out of the Reach of the Court before his Failure;

lure; and, I am persuaded, the Gentlemen, who mentioned this Instance, don't desire to have it thought, That the Noble Lord, who then presided, was capable of so great a Breach of Faith, as to deprive him of his Liberty after a Promise to the contrary: It must be submitted, therefore, to your Lordships, whether the committing a man in the Power of the Court, was a Precedent that could be followed in the Case of Mr. *Dormer*.

My Lords, to finish this Part of the Defence in not securing the Person of Mr. *Dormer*, I shall beg leave only to observe, That though it is alledged in the Articles, and was insisted on in the Opening and Summing up, That Application was made to the Earl of *Macclesfield* for that Purpose, yet the Honourable Managers forgot to call any Witnesses to the Proof of that Particular; which must therefore rest upon the Denial in the Answer of the Noble Earl.

My Lords, It was insisted upon, That Mr. *Dormer* had not complied with his own Proposal in discovering and delivering up his whole Effects; and for that Purpose a Witness was called to inform your Lordships of a very great Discovery that has been since made of a Quantity of Hops, that belonged to Mr. *Dormer*: Your Lordships remember how very lamely they were proved to belong to Mr. *Dormer*, and how reasonable an Account was given of their being kept so long in Hopes of a better market. My Lords, we shall not presume to entertain your Lordships with any Counter-Proof of such a trifling Evidence (as a learned manager was pleased to call it) but beg leave to infer from thence, That it is evident a more than ordinary Care was taken in looking after Mr. *Dormer's* Effects, since, after Four Years, which have past from the Time of assigning his Estate, a few musty Hops are all that are discovered.

My Lords, we humbly hope to make it fully appear to your Lordships, That the complying with Mr. *Dormer's* Proposal was the only means to procure any Satisfaction: Had not Mr. *Dormer* been induced to come over, his Books and Accounts would never have appeared; and had he died Abroad, as he did soon after his coming Home, I am persuaded the deficiency would have been much greater: And if a full discovery of his Effects was not made (which, however, I apprehend there is no Foundation to believe, after the Hops are laid out of the Case) the same will appear to be owing to his death, which happened in a short Time after his Return.

My Lords, The several Steps that were taken towards securing the Effects of Mr. *Dormer*, must necessarily promulge his Failure in some measure; the Chambers could not be searched; there could not be Caveats enter'd in the Books of all the publick Funds; nor could *Lockman* be caution'd against expecting any more out of the Effects of Mr. *Dormer*, without making some Noise, and giving People Notice: And, therefore, when we have made out these Facts, I humbly hope, the Noble Earl will stand acquitted of any design to conceal the State of *Dormer's* Office, in Prejudice of the Suitors; but that, considering all the Circumstances of the Case, he took the wisest and properest Course to secure as ample a Satisfaction for the Suitors, as it was in his Power to do.

My Lords, The 14th Article, relating to the Composition with *Wilson*, will give me no Occasion to take up much of your Lordships Time. It is called a precarious and trifling Composition,

and was aggravated in the Opening, and so, of course, in the summing up, by a matter, which they failed in the Proof of, That *Wilson* was suffered to compound this Debt, though he paid others their whole Demand with Interest.

My Lords, The Witness, who was called to prove this, did by no means come up to what was opened: He did, indeed, say, That he was informed, That *Wilson* had paid some Persons their whole Debt; but he, at the same Time, acquainted your Lordships, That these were small Debts; and that he did not pay them out of his own Effects, but from a Supply administered by a Friend, only to give him a Credit at his setting up again; and the unfortunate End of this man (of which I am just now informed) is an unanswerable Proof of his Inability to pay the Whole.

My Lords, As a further Argument to prove the Reasonableness of this Composition, I beg leave to appeal to another Part of the Evidence produced on this Article by the managers of the House of Commons; whereby it appeared, That Mr. *Wilson's* Books were perused by two masters, and himself was put upon his Oath; and that he swore the Composition he then offered, was all he was able to make; which I humbly submit to your Lordships, as an Answer to what an Honourable manager was pleased to object, when he insisted, that there ought to have been a Commission of Bankruptcy against *Wilson*, that thereby his Effects might have been discovered upon Oath.

My Lords, There were many other Creditors of Mr. *Wilson's*, besides Mr. *Dormer*, who might have applied for a Commission of Bankruptcy, if it would have been for their Advantage; but, as every body is acquainted with the great Expence and Delay of such a Procedure, I believe they will be thought to have taken the wisest Course: Here was all the Benefit of a Commission, by the putting *Wilson* upon his Oath, and none of the Expence and Delay that attend such an Inquiry.

My Lords, Another Thing opened, and not proved, is, That at the Time of this Composition, *Poulter*, who was *Wilson's* Debtor, was worth nothing: It is true, my Lords, he was afterwards in Execution, and escaped; but if we make it appear to your Lordships, That at the Time of the Composition he was a visible Person, and not suspected, I humbly hope, whatever has happened subsequent to the Composition, will be no Ingredient in shewing it to have been a trifling and precarious one at the Time of making it.

My Lords, I beg leave humbly to observe, That the Honourable Managers have not been pleased to instance, how the Suitors would have been in a better Condition, in case this Composition had not been made: Could they have shewn your Lordships, that if Part of the Debt had not been taken, the Whole might have been obtained, I must confess, there would have been some Reason to have called this a trifling Composition; but, since nothing of that Nature has been attempted, I must submit the whole Transaction, upon what I have already offered, to have been a Transaction most for the Advantage of the Suitors, considering the Circumstances that attended this Composition.

My Lords, An Honourable Manager, who spoke Second upon this Article, was pleased to say, That by this Composition the Suitors were

tyed

tyed down to a certain Loss of Half their Demand. My lords, I humbly apprehend the Consequence to be directly otherwise; and that the Suitors are not tyed down at all: As they were no Parties to the Composition, they were not bound by it; nor is Mr. *Wilson*, by this Composition, in any degree discharged as to the Suitors of the Court; so that if *Wilson* be able to pay the Whole, he is still as liable to the Demands of the Suitors, as if this Composition had not been made; and if this be so, it will be to the Advantage of the Suitors, that they had no Notice, which, however, I apprehend, was, in the Nature of the Thing impracticable.

My lords, It was insisted upon, That the Petitions, and Orders, and Reports on this Occasion were in an unusual and clandestine manner; and a Certificate has been read to your Lordships to prove, That they were never filed and registred, as is usual in other Cases: But do they, my lords, pretend to say, that this was by the Order, or with the Privity of the Earl of *Macclesfield*? The Business of a Chancellor is to make Orders; but I never yet heard it was his Duty to see them drawn up and registred; and therefore, if there was any thing unusual in this, it is not to be imputed to the Neglect of the Noble Earl, unless it was proved to have been by his express Direction.

My lords, It has already appeared, that this Composition, and the Proceedings upon it, did not proceed from the Noble Earl; but were proposed to him; Mr. *Edwards* did acquaint your Lordships, That it was himself, who first proposed it to the Earl, after having advised with Mr. *Hiccocks*, who put him into that method.

This, my Lords, is the Nature of our Defence against the 13th and 14th Articles of the Commons Charge: We humbly hope the several Steps that were taken, will appear to have been for the Benefit and Advantage of the Suitors, and with no other View, than the securing them their whole Demand; that the Composition so much complained of, was given into, only as a means towards the attaining that End, and could in no Event be prejudicial to the Suitors of the Court, as the Gentlemen of the House of Commons would represent it to your lordships.

Mr. *Dormer Parkhurst* sworn.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Parkhurst* may be asked, What Conversation passed between him and Mr. *Dormer*, previous to his going abroad, and upon what Occasion he was obliged to go abroad?

Mr. *Parkhurst*. Mr. *Dormer* came to me about the latter End of *November*, 1720, at my Chambers. I had then some-body else with me; upon that Account he said nothing to me, but desired I would come next morning early to him. I went, and when I came to him (he lived then in Chambers in *Lincoln's-Inn*) he shut the Door, and told me, he had a thing of great Importance to communicate to me in relation to himself; and then told me, he designed to go abroad: He said Mr. *Wilson*, his Goldsmith, the Day before had been with him (this was on a *Sunday* Morning, and he had been with him the *Saturday* before) and had acquainted him, That the *Monday* following he should be obliged to shut

up Shop, and stop payment: He had a great deal of money in his Hands, and he was afraid, that as soon as it was known, that Mr. *Wilson* was unable to pay; the Solicitors, and Practisers belonging to the Court, who knew he kept Mr. *Dormer's* Cash, would immediately be alarmed; and that Application would be made thereon, to my Lord Chancellor; and he believed, that the first thing to be done, in relation to himself, would be to confine him; and that there would be an Order for his being committed; and therefore to prevent that (for he could not live a Week without Air and Liberty) he was resolved to withdraw himself, and retire to some Place or other. Upon this, I expressed a great deal of Concern, and endeavoured to persuade him against it: I desired him to make his Circumstances known to my Lord Chancellor and the masters: He said No; he was sure the Consequence would be his Confinement, and was come to a Determination with himself, to secure his Person; his Uneasiness, was from the Fear, that he should be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any Order, from my Lord Chancellor; but the first Thing he would do, he was resolved to withdraw, to secure himself from being confined.

Mr. *Serj. Probyn*. What happened after he was gone abroad? and what Notice was taken of it?

Mr. *Parkhurst*. In a little time after this, I understood he had put this Resolution in Execution, and had withdrawn himself. He had desired me, that I should not mention it to any Body; and gave out by his Clerk, that he was gone into the Country. I did, after this, in about three Weeks receive a letter from him, that he was then at *Rotterdam*; and there was a letter inclosed, which he desired me to shew to some of the masters. I think I shewed it to Mr. *Rogers*; afterwards, according to his Directions in the letter to me, I carried it to Mr. *Cottingham*. It was directed to Mr. *Cottingham*, who was then Secretary to my Lord Chancellor; I carried the letter to him, and left it with him.

Mr. *Serj. Probyn*. If you can, recollect what were the Particulars of that letter, the Contents of it, relating to any Terms of his coming over again.

Mr. *Parkhurst*. It is a great while ago; I have but a faint Remembrance of it; but I think it was much to the same Purpose with what he communicated to me at first, after he had acquainted me with the unhappy Affair, as hath been mentioned. He said he had a great Sum of money in Mr. *Wilson's* Hands; and when he found *Wilson* unable to pay, he was apprehensive of an immediate Confinement, which he could not possibly bear; therefore he had withdrawn himself; but that he had left his own Estate intire behind him, and every thing relating to the Suitors; and he was willing to come over to give an Account of the State of the Office, and of his own Estate; and he was willing to make over all his own Estate, to answer the Deficiency of the Office, as far as it would go, and to do every thing the Court should think fit to order him, provided he might have his liberty both before and after: He desired he might not be confined, and he would do every Thing that the Court would order him to do, or should be desired of him, as much as if he was confined.

Mr. Serj. Probyn. We desire he may be asked, If he knew how it was, that Mr. *Wilson* came to have so much of Mr. *Dormer's* Effects in his Hands, and upon what Account?

Mr. *Parkhurst*. I did not know, till this Affair happened of *Wilson's* failing, what money he had in his Hands belonging to Mr. *Dormer*. I used to see Mr. *Wilson* with him; I knew Mr. *Wilson* had Cash of his in his Hands; but afterwards, by way of Justification of himself, for losing so much money, I heard him say, it was an unlucky Accident, he had a considerable Sum of money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what to lay it out in; the Stocks were so high and precarious, he would not buy any; and he thought *Wilson's* Hands as safe a Place as any at that Time; he could not keep it by him in his Chambers, and he was going into the Country for three or four Weeks; and when he saw things were settled, then he would lay it out: But when he came back to Town, he found Mr. *Wilson* in those declining Circumstances. This was after he returned from *Holland*. I knew nothing before of this, nor that he had any great Sum of money in his Hands.

Mr. Serj. Probyn. He saith that he did propose, That he would come over and make a Discovery of, and deliver up his Effects, in case his Person was secured; now I desire he may recollect, before he did come over, if he knew of any Steps taken to secure his Effects; and whether any Thing in his Chambers was taken Care of, and by whom?

Mr. *Parkhurst*. I can give but one Instance of it, that is, Mr. *Rogers*, a master in *Chancery*, came to me one morning, and desired me, upon the Account of being a Relation, for I was no otherwise concerned, that I would go along with him to look into Mr. *Dormer's* Chambers, to see what there was, what Securities, or any thing of that Nature belonging to the Office. I remember we did find several Things, several Land Tax Tallies which Mr. *Rogers* gave an Account of. I don't know what the Number was.

Mr. Serj. Probyn. Who took Possession of them?

Mr. *Parkhurst*. Mr. *Rogers*, the master in *Chancery*.

Mr. Serj. Probyn. By whose Direction did you understand that Mr. *Rogers* took this Care?

Mr. *Parkhurst*. I understood it was by the Direction of the Court. He came to me, and desired me to go along with him, to see that no Person muddled with any Thing but what belonged to the Suitors; and he took them, and locked them up in his Closet or Scrutore.

Mr. Serj. Probyn. My Lords, we have done with this Evidence.

Mr. *Plummer*. I think he says, the Reason of Mr. *Dormer's* having so much money in the Hands of Mr. *Wilson*, was, that there was a great Sum of money come in upon the Land-Tax: I desire to know, if Mr. *Dormer* left this money dead in the Hands of Mr. *Wilson*, or if he had any Interest for it?

Mr. *Parkhurst*. I know nothing of that. By way of Justification, he said, It was unlucky he had so much money paid into his Hands at that Time; Times were so precarious, he did not know how to lay it out.

Mr. Serj. Pengelly. I desire he may be asked, Whether Mr. *Wilson* did not usually keep Mr. *Dormer's* Cash, and the Cash of the Office?

Mr. *Parkhurst*. I believe he did, I know but few Instances of it.

Mr. Serj. Pengelly. Whether he never heard him declare that Mr. *Wilson* paid him Interest?

Mr. *Parkhurst*. I never heard him declare he did: He never spoke to me about it particularly.

Mr. *Lutwyche*. I desire he may be asked, Whether he can inform your Lordships, how long Mr. *Wilson* had been Banker to Mr. *Dormer*?

Mr. *Parkhurst*. I can't say exactly how long: I believe some Years.

Mr. Com. Serj. If the Gentlemen have done with this Witness, we beg leave to call another, to prove what Care was taken to stop those Effects, that were in the publick Funds.

Mr. *John Elphinstone* sworn.

Mr. Com. Serj. My Lords, we desire that Mr. *Elphinstone* may inform your Lordships what he knows of any Orders or Directions given, in relation to the Effects of Mr. *Dormer* that were in the Publick Funds; and by whom those Directions were given?

Mr. *Elphinstone*. My Lords, I have been to search the Books of the Bank, the *South-Sea*, and *East-India* Companies, to see what Stock *Blackwood Dormer*, Esq; one of the masters of the Court of *Chancery* had in the Books of those Companies, and what Orders there were for stopping Mr. *Dormer's* transferring such Stock. My Lords, I went first to the Bank, and searched a Book of that Company, called a *Ledger*, where Mr. *Dormer's* Accompt was stated by way of Debtor and Creditor. I found in that Book, a *Memorandum* written over Mr. *Dormer's* Account in red letters, as follows, *Q. No Transfer*. I likewise enquired, if there were any Orders of the Court of *Chancery*, for stopping the Transfer of such Stock? I was told by the Clerk, That he knew of none. I enquired of the Clerk at the Transfer-Office, if there was any Order of the Court of *Chancery* for, transferring Mr. *Dormer's* Stock to Mr. *Edwards*, the succeeding master; after some search, he brought me an original Order, Signed *Parker*, C. dated 11 July, 1721. I have a Copy of that Order in my Hand, whereby it appears, that all the Stock and Annuities, in the Name of Mr. *Dormer*, were ordered to be transferred to Mr. *Edwards*, on the 12th of July 1721, viz. the Day after the Date of the said Order. I found in the Transfer Book of that Company the Sum of 3393*l.* 16*s.* transferred by Mr. *Dormer* to Mr. *Edwards*, and Mr. *Edwards's* Acceptance of the same. This is a Copy of the original Order. I afterwards went to the *South Sea* House; I searched the Books of that Company, and in the Book marked Letter *D.* N<sup>o</sup>. 6. Folio 430. where Mr. *Dormer's* Accompt is stated by way of Debtor and Creditor, I found a *Memorandum* over Mr. *Dormer's* Account, which is as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed) or from the Court of Chancery*. I also searched the Transfer-Book of the said Company; and I found in Book N<sup>o</sup>. 5. Page 86. that on the 12th Day of July 1721. 2251*l.* 14*s.* *South Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*, and under the Transfer I saw Mr. *Edwards's* Acceptance; Mr. *Dormer* signed the transfer, and Mr. *Edwards* signed the Acceptance. I enquired if there were any Orders for stopping Mr. *Dormer's* Stock from being transferred.

ferred. I found no such Order, nor any Order for transferring the Stock that was transferred; and the Reason which the Clerk of that Office gave, was, That upon the unhappy Turn of the Affairs of that Company, several of the Clerks being discharged, and many Books and Papers being destroyed, lost, or mislaid, and the rest in the utmost Confusion, rendered it impossible to find any such Paper at this Distance of Time. I went likewise to the *East-India* Company; but I could not find upon those Books any Stock belonging to Mr. *Dormer*, or that he had any Interest in that Company.

Mr. *Strange*. I beg leave to take Notice of one Thing he says, relating to the Words expressly entered in one *Leidger* Book; it stands that Mr. *Dormer* should not transfer any Stock, he being failed.

Mr. *Elphinstone*. Yes, the *Memorandum* entred in the *South-Sea* *Leidger* Book, is, as follows: *Stock not to be transferred without Order from the Court of Directors (he being failed) or Court of Chancery*; the Words, *he being failed*, are in a Parenthesis, and then follow the Words, *or Court of Chancery*.

Earl of *Macclesfield*. Who was then Governor of the *Bank*?

Mr. *Elphinstone*. I think Mr. *Hanger* was.

Mr. *Serj. Probyn*. Were the Entries dated?

Mr. *Elphinstone*. There was no Date to any of the *Memorandums*; they are wrote just over Mr. *Dormer's* Account, and under a Line drawn to separate Mr. *Dormer's* Account from another Person's.

Mr. *Serj. Probyn*. Was that before the Transfer made to *Edwards*?

Mr. *Elphinstone*. There is no Date to the *Memorandum* for stopping the Transfer of Mr. *Dormer's* Stock; but it must be before the Transfer.

Mr. *Serj. Probyn*. But the Entry in the Books, was it precedent or subsequent to the Transfer?

Mr. *Elphinstone*. When I searched for the Account, I found the Account and the *Memorandum* for stopping the Transfer of the Stock, placed over it, in a Book called the *Leidger*, and when I searched for the Transfer of the Stock, I found that in the *Transfer-Book*, which is a different Book.

Mr. *Serj. Probyn*. What *Transfer-Book* was it?

Mr. *Elphinstone*. It was the *Transfer-Book* No. 5. in Page 86. where I found Mr. *Dormer's* Transfer, and Mr. *Edwards's* Acceptance; but the *Leidger* is quite a different Book. It was in the *Leidger* marked D that I found the *Memorandum* for stopping the Transfer of Mr. *Dormer's* Stock over his Account; but I could not tell what Day of the month it was entred; there were promiscuous Dates in the Year 1720, 21, 22, 23, and 24, to several Articles of that and other Accounts, but no Date to the *Memorandum* at the Head of his Account. I took this Copy of it, which I have in my Hand.

Mr. *Lutwyche*. I desire to ask one Question, which, indeed, is to explain, what he mentioned concerning an Order, that I think, he takes to be signed by my Lord Chancellor. I desire to know the Date of it?

Mr. *Elphinstone*. It was a loose Order brought to me, dated 11 July 1721.

Mr. *Lutwyche*. Who brought it?

Mr. *Elphinstone*. It was brought to me by a Clerk that belongs to the *Transfer-Office* at the *Bank*.

Mr. *Lutwyche*. Was that Original Order left in the Book?

Mr. *Elphinstone*. No, my lords, I saw no Book of Orders; it was a single Order brought to me.

Mr. *Lutwyche*. You say there was an Order signed *Parker C.* was there any such Order drawn up by the Register of the Court?

Mr. *Elphinstone*. I know nothing of its being drawn up by the Register. I saw *Parker C.* Signed to an Order; and I believe it was the noble Earl's Hand.

Mr. *Serj. Pengelly*. He hath a Copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutwyche*. Mr. *Elphinstone* may read it to your Lordships.

Mr. *Elphinstone* reads. *Martis 11. July 1721.*

" I do order, that all the *Bank* Stock and Annuities  
" therein subscribed, belonging to *Fleetwood Dor-*  
" *mer*, Esq; late one of the masters of this Court,  
" be by him forthwith transferred to *Henry Ed-*  
" *wards* the succeeding master." *Parker C.*

*To the Governor, Deputy Governor, and Directors of the Bank of England.*

Mr. *Serj. Pengelly*. We desire he may be asked Whether he heard any thing of Mr. *Dormer's* being gone to take the Air?

Mr. *Elphinstone*. No, My Lords, I never did, upon my Oath.

Mr. *Serj. Pengelly*. Whether he did not hear the Earl of *Macclesfield* make a Declaration to that Purport?

Mr. *Elphinstone*. I do not remember that the Noble Lord ever made any such Declaration.

Mr. *Serj. Pengelly*. He mentioned several Orders he found in the Books of the *Bank*, as I apprehended him; whether there any other Order under My lord *Macclesfield's* Hand?

Mr. *Elphinstone*. No, I saw but one Original Order, signed by the Noble Earl, of which, this is a Copy in my Hand.

Mr. *Lutwyche*. This was an Order under my Lord's Hand, a considerable Time after: I desire he may be asked, whether he hath heard of any Order directed to the Governor, Deputy Governor, &c. of the *Bank*, and sign'd by the Chancellor, and that Original Order left there?

Mr. *Elphinstone*. My Lords, I would be very cautious of saying any Thing that I do not remember; but I do remember something of a Discourse of an Order given for stopping of *Dormer's* Stock and Effects about the Time of Mr. *Dormer's* absconding, but when it was I can't tell.

Mr. *Lutwyche*. He did not understand me: My Question is, Whether or no he hath ever heard of any Order directed to the Governor, &c. of the *Bank*, and signed by the Chancellor, and that Original Order left there?

Mr. *Elphinstone*. No, My Lords, I don't say I heard of any other Order, signed by my Lord Chancellor, and directed to the Governor, &c. of the *Bank*; but I heard an Order was given by my lord, to stop *Dormer's* Stock.

Mr. *Lutwyche*. I only ask, Whether in this, or any other Instance, my lord Chancellor made Orders to the *Bank*, to be left there?

Mr.



Mr. *Elphinstone*. I don't know what Orders are made; it was out of my Province; I had nothing to do with that; my Business was quite another Thing.

Mr. *Serj. Probyn*. I would beg leave to take Notice of one Observation, that has been made on the Evidence given in Relation to the Order of the late lord Chancellor, as tho' it was unusual to direct any in that manner to the *Bank*; but to that I beg leave to answer, that this was not an Order of Court; but only a particular Direction, which he, in his private Capacity, sent to that Company, out of his great Care to secure the Effects of the Suitors; and this, I apprehend, fully clears him of the Objection made to him of Neglect to do it in his judicial Capacity.

Mr. *Com. Serj.* Your lordships cannot choose but observe, that this very Thing implies some Caution taken, that these *Effects* of Mr. *Dormer's* should not be transferred without the Privy of the Great Seal: This Order, we apprehend, was for that Purpose; and to make this plain, we shall shew, that Mr. *Cottingham* went from my Lord Chancellor about this matter.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. We desire Mr. *Cottingham* may be ask'd, How he came to have Notice, and from whom, of Mr. *Dormer's* withdrawing himself; and what care was taken to secure his Effects?

Mr. *Cottingham*. Soon after *Christmas*, 1720, to the best of my Remembrance, as to the Time, Mr. *Parkhurst*, Mr. *Dormer's* Nephew, came to me, and told me, his Uncle, Mr. *Dormer*, had withdrawn himself into *Holland*; and the Reason was, upon account of his having left money and Effects belonging to the Suitors, in Mr. *Wilson's* Hands, and Mr. *Wilson* had been very unfortunate in the *South Sea* Year, and was likewise gone off. I acquainted the Earl of what passed. The Earl directed me to attend the two Senior masters, Mr. *Hiccocks* and Mr. *Rogers*, and consider what was proper to be done on that Occasion. On Consideration, we agreed, that it was necessary to get Mr. *Dormer* over.

We then considered, that it was not possible to have him over, unless he was secure of his Liberty. A proposal was made to the Earl, that in case he came over, he should have his liberty: The Earl agreed to it. In the mean Time, to the best of my Remembrance, Orders were given for searching of his Office, and securing what Effects and Papers were there. The masters told me, that pursuant to these Directions, they had searched his Office, and lock'd up what they found there; but his Effects there were of very little Value.

The next Step the Earl took, was, he directed Persons to go to the *Bank* and *South-Sea* House, to

stop the Transferring of any Stock or Effects in his Name.

In *April* following, when Mr. *Dormer* returned, he came late to me one Evening, and asked me, If the letter writ by the master, was writ by the Earl's Direction? I told him Yes. He then asked me, If the Earl had promised his Liberty? Otherwise he would be gone again.

I told him the Earl had promised him his Liberty, if he would make a full Discovery of all his Effects upon Oath; and make over all he had to the two Senior masters, for the Benefit of the Suitors of the Court; and assist them in getting in every Thing that belonged to him.

He said, these Conditions he readily submitted to and would attend the masters accordingly. I spoke to Mr. *Rogers*, to know whether he would have an Order in Form to examine Mr. *Dormer* upon Interrogatories; and that, if he would, I would prepare one, and get it sign'd. He told me, It was not necessary; and that they thought it was best to get the Estate and Effects in the first Place before that should be done; fearing if Mr. *Dormer* was severely dealt with, he should run away, and an Order might be had afterwards, if necessary. I forgot to tell your Lordships one Circumstance: Some time, in the Summer following, either in *July* or *August*, I happened to dine one Day at the *Blue-Posts*, behind *Lincolns-Inn*. Mr. *Dormer* came to me with Tears in his Eyes; he cried bitterly, and said, That the masters had strip'd him of all he had in the World, and beg'd I would intercede with the Earl to allow him something. I desired him not to insist upon it; for his Effects, as I was inform'd, were not sufficient to pay his Debts, and he knew well, that the Earl could not give away the Effects of the Suitors; It was out of his Power.

Mr. *Plummer*. I think you say, Sir, That Mr. *Dormer* failed, by leaving his money and Effects in Mr. *Wilson's* Hands; I desire to ask him, What he means by his Effects?

Mr. *Cottingham*. The money and Effects belonging to the Suitors of the Court.

Mr. *Plummer*. And you told my Lord of that?

Mr. *Cottingham*. Yes, I told my lord what Mr. *Parkhurst* had mention'd of the money and Effects of the Suitors of the Court being left in *Wilson's* Hands.

Mr. *Com. Serj.* I desire he would inform your lordships, whether or no, upon this Occasion and Transaction, he applied to the masters to make up this Deficiency of Mr. *Dormer's*?

Mr. *Cottingham*. As to the Deficiency of Mr. *Dormer*, I always apprehended and understood, that the masters would make good that Deficiency, Mr. *Lightburn* excepted, who always declared, he would do nothing towards it, unless it were put on another Foot.

Mr. Com. Serj. I desire he may be asked whether he gave any such Information to the Earl of Macclesfield?

Mr. Cottingham. I did so; I told the Earl of it; and to the best of my Remembrance Mr. Hiccocks and Mr. Rogers; my Lords, I wont be positive, but I think Mr. Hiccocks and Mr. Rogers did order me to wait upon the Earl, and let his Lordship know that the Body of the masters had undertaken to make up the Deficiency; I do think so, I will not be positive of that, I think it was so.

Mr. Com. Serj. I desire he may inform your Lordships, if he knows how it came to pass that Mr. Dormer had money in Mr. Wilson's Hands?

Mr. Cottingham. Mr. Parkhurst told me, and I think Mr. Dormer likewise, but of that I am not certain, that Mr. Dormer had left the money in his Hands when he went into the Country in the long Vacation.

Mr. Onslow. I desire he may be asked what were the Words that Mr. Rogers and Mr. Hiccocks said to him when he apprehended the masters would make good the Deficiency?

Mr. Cottingham. I think it was what I told your Lordships, that the Body of the masters would make good the Deficiency; I do not, I cannot swear that positively.

Mr. Onslow. Did any other of the masters tell you so?

Mr. Cottingham. Mr. Godfrey told me, I am positive of this, that Mr. Godfrey told me that the Body of the masters would make good the Deficiency; I must except Mr. Lightboun.

I have heard Mr. Edwards say, that he would never have paid his 500*l.* if he had not apprehended that it would have been made good.

Mr. Com. Serj. This makes it necessary for us to ask another Question, and I desire he may be asked, tho' he doth not remember the particular Words, yet whether that induced him to believe that they intended so to do?

Mr. Cottingham. It did.

Mr. Com. Serj. Whether upon this Belief he did inform the noble Earl that they would make good Mr. Dormer's Deficiency?

Mr. Cottingham. I did, I told the noble Earl so, and that his Lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. Lutwyche. I desire he may be asked whether the Deficiency of Mr. Dormer was ever stated so as to know how much it was?

Mr. Cottingham. No.

Mr. Lutwyche. Did they agree to make up the Deficiency when they did not know how much it was?

Mr. Cottingham. I heard some of the masters say at first, that it was 17,000*l.* or 18,000*l.* afterwards they said 20,000*l.* and then 22,000*l.* and of late it comes out to be 26,000*l.*

Mr. Lutwyche. If I understand Mr. Cottingham right, he speaks of several masters, I desire to know whether he means all, except Mr. Lightboun? I desire to know whether they all singly promised?

Mr. Cottingham. Singly, as I remember; Mr. Edwards can tell I was at a meeting with them at the Tavern, I think they said singly.

Mr. Serj. Pengelly. I desire he may be asked whether this Discourse with the masters about

paying this Deficiency was absolute, or upon some particular Terms or Conditions of paying the money?

Mr. Cottingham. Mr. Edwards told me that they would make good the Deficiency, provided they continued on the old Foot as usual.

Mr. Serj. Pengelly. That is, to have the Disposal of the money, the money to be in their Hands?

Mr. Cottingham. Yes.

Mr. Lutwyche. I desire to know whether you acquainted the Earl of Macclesfield with this?

Mr. Cottingham. No, this was but lately that Mr. Edwards told me that. It was, I believe, in November or December last.

Mr. Lutwyche. Did none of the other masters acquaint you so?

Mr. Cottingham. No, I don't remember any other master did.

Mr. Lutwyche. I desire to ask you whether you ever heard what Interest Mr. Wilson allowed to Mr. Dormer?

Mr. Cottingham. In December last, when the Accompts were before the Judges, the Earl told me that Mr. Wilson's Composition was complained of; it was said, that Mr. Wilson had paid 20*s.* in the Pound; and ordered me to talk with Mr. Wilson; and accordingly I did see him, and blamed him for imposing upon the masters in the Composition he made with them, when he had paid other Creditors whole Demand; he denied it.

Mr. Lutwyche. That is not the Question; what Interest did Mr. Wilson allow Mr. Dormer for the Suitors Cash?

Mr. Cottingham. I am going on to that Part. Mr. Wilson said to me; why is all the Blame laid upon me? I allowed Mr. Dormer very large Interest for his money: I could have set aside his Debt upon the Score of an usurious Contract; I was resolved I would not do it, I would shew my self to all the World to be an honest man; I gave my Creditors all that I had, what would they have more?

Mr. Lutwyche. Whether he mention'd Ten per Cent. or no?

Mr. Cottingham. No, he did not, but he said he had given large high Interest, and the Court had had as much as his other Creditors.

Mr. Com. Serj. When was this Discourse?

Mr. Cottingham. It must have been in December last, when the Judges were inquiring into this matter, because he told me Mr. Edwards had been with them about the Composition.

Mr. Serj. Probyn. Recollect what was said upon this Discourse, whether he said that the Court or the Masters had as much as any of his other Creditors?

Mr. Cottingham. He told me, I am an honest man, the masters had as much as my other Creditors, what would they have more?

Mr. Serj. Probyn. It is our Misfortune we can't produce Mr. Wilson here, we are deprived of his Evidence, which would have been very material, by his Death; we are told he has very lately shot himself.

Mr. Cottingham. He was very poor, I always looked upon him to be an honest man; he told me at the same time, I forgot to tell your Lordships, if Mr. Poulter could be but delivered up, he should be very easy; he was sure he was in Circumstances to pay him.

Mr. Com. Serj. My Lords, if the Gentlemen have done with this Witness, we desire to call a Witness or two in relation to the fourteenth Article, to shew the Credit of *Poulter* when his Debt was assigned. We apprehend that a little Evidence will serve to clear up the Innocence of this noble Earl on this Occasion: The great Concern the noble Earl had to make up this Deficiency of Mr. *Dormer*, made him with the best of his Knowledge and Power apply thereto; a little Evidence will make it appear, that however unfortunate it was in the Consequence, he did it to make the most he could for the Suitors of the Court.

Mr. *Hunt* Sworn.

Mr. Com. Serj. My Lords, we call this Witness to prove the two Judgments, the one against *Poulter*, to shew that there was a real Debt due from *Poulter* to *Wilson*; the other is a Copy of a Judgment by *Wilson* against the Marshal of the King's Bench, for the Escape of *Poulter*.

Mr. *Hunt*. My Lords, I examined these two Copies of Judgments with the Records in the Court of King's Bench. They are true Copies of the Judgments.

Mr. Com. Serj. I desire he may be asked whether he was the Attorney for Mr. *Wilson*?

Mr. *Hunt*. I was the Attorney for Mr. *Wilson* in that against *Machen*, and entred up the Judgment in the other.

Mr. Com. Serj. Is it your Lordships Pleasure that the Judgment should be read at large?

Mr. Serj. *Probyn*. Read only a Word or two of the Judgments, the Names of the Plaintiff and Defendant, the money demanded, and the Sums recovered.

Clerk reads the Beginning and Ending.

*Memorandum quod alias, scilicet Termino Sancti Hilarii ult' preterit' coram Domino Rege ven' Willielm' Wilson versus Edwardum Poulter—Idco considerat' est quod predict' Willielm' recuperet versus prefat' Edwardum Poulter damna sua, que quidam damna in toto se attingunt ad octodecim mille septingent' & sexagint' libras duodecim solid' & quinque denar'.*

Mr. Serj. *Probyn*. The first is against *Poulter*.

Mr. *Lutwyche*. Look when the Judgment was signed.

Mr. *Hunt*. It was signed 22 Dec. 1721.

The Judgment read against *Machen*.

*Placita coram Domino Rege apud Westm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilson—protulit—billam—vers' Richardum Machen—de placito debiti—quod reddat ei octodecim mille septingent' octogint' & un' lib.—Idco considerat' est quod predict' Willielm' Wilson recuperet &c.*

Judgment signed 27 Nov. 1724.

Mr. Com. Serj. If your Lordships please he may be asked if he knows of any Offer made by *Poulter* for a Composition, and what Sum of money was offered, and how Mr. *Wilson* behaved himself on that Occasion.

Mr. *Hunt*. I don't know of any Composition offered, of my own Knowledge, I have heard the present Marshal of the King's Bench say, there was 1000 *l.* offered; but I had Orders from my Client,

if any Offer was made to me, not to accept it, but to refer the Person who made it to him.

Mr. Com. Serj. As Mr. *Wilson* is dead, I desire Mr. *Hunt* may be asked Whether Mr. *Wilson* gave any Reason for that Order not to compound with him?

Mr. *Hunt*. Mr. *Wilson* hath often said that it was his Opinion Mr. *Poulter* was able to pay him.

Mr. Com. Serj. We have done, my Lords, with this Witness.

Mr. Serj. *Probyn*. My Lords, we beg leave to call a Witness to shew that at this Time Mr. *Poulter* had the Reputation of being a man of Substance, and an honest man.

Mr. *Peter Gandy* Sworn.

Mr. Serj. *Probyn*. My Lords, I desire Mr. *Gandy* may give your Lordships an Account whether Mr. *Poulter* had not the Reputation of being a substantial man about the year 1722 or 1723.

Mr. *Gandy*. Mr. *Poulter* always lived in good Reputation, and was reputed to be an honest man; he lived at *Hackney*, he told me he purchased 6000 *l.* South-Sea Stock, which cost him 36,000 *l.* and transferred it to Mr. *Knight*, and Mr. *Knight* gave him nothing for it.

Mr. Serj. *Probyn*. I desire to ask you whether he was a substantial honest man?

Mr. *Gandy*. I believe he was; he always bore an extraordinary Character, I believe I might summon all *Exchange-Alley*, and they would say the same; he was reputed to be worth a great deal of money and a very honest man.

Mr. *Lutwyche*. At what time was this that he was thought a man of Substance?

Mr. *Gandy*. When he lived at *Hackney*.

Mr. *Lutwyche*. After he was arrested?

Mr. *Gandy*, Yes.

Mr. *Lutwyche*. Will you say after he was arrested he was a substantial man?

Mr. *Gandy*. No, my Lords, I do not say he was, but he was generally reputed to be so.

Mr. *Lutwyche*. Whether at the same time you mention that he told you the Circumstance of transferring Stock to Mr. *Knight*, that was not given as a Reason for his Deficiency.

Mr. *Gandy*. He said he had been able to pay Mr. *Wilson* every Farthing, if Mr. *Knight* had not gone away.

Mr. *Lutwyche*. That is what Mr. *Poulter* told Mr. *Gandy*.

Mr. Serj. *Pengelly*. I desire he may be asked when *Poulter* was first known to be in a failing Condition?

Mr. *Gandy*. I don't know.

Mr. Serj. *Pengelly*. When was he arrested?

Mr. *Gandy*. I don't know; he told me he should have been able to have paid Mr. *Wilson* if Mr. *Knight* had not gone away.

Mr. Serj. *Pengelly*. Did he give you that as a Reason why he could not pay Mr. *Wilson*?

Mr. *Gandy*. Mr. *Knight* not paying him, he said he could not pay Mr. *Wilson*.

Mr. Serj. *Pengelly*. Was that the Reason?

Mr. *Gandy*. Here is another Gentleman will tell you he was employed to make a Composition with Mr. *Wilson* and he can tell you more.

Mr. *Onslow*. What was *Poulter*'s Profession?

Mr. *Gandy*. He was a Servant to Mr. *Stroud*.

Mr. *Onslow*. What is Mr. *Stroud*?

Mr. *Gandy*. Mr. *Stroud* is a Sworn Broker.

Mr.

Mr. Onslow. I desire to know what Profession this Person is of?

Mr. Gandy. I transact in *Exchange-Alley* as a Broker.

Mr. Lutwyche. Did not Mr. Poulter transact as a Broker too?

Mr. Gandy. Yes.

Dr. Sayer. We are not now upon the Point what he was really worth at that time, but what his Reputation and Character was, and therefore we desire to know what that was, whether he was not looked upon as a substantial man?

Mr. Gandy. He bore a good Character.

Mr. Strange. What was his Character, as to his Circumstances at that time?

Mr. Gandy. His Character was then very good, and so continued till he was put in Prison.

Mr. Strange. Where is he now?

Mr. Gandy. He is at *Rotterdam*.

Mr. Scott Sworn.

Mr. Com. Serj. I desire that Mr. Scott may inform your Lordships whether he knew Mr. Poulter, and what his Character and Reputation was, as to Substance.

Mr. Scott. Mr. Poulter I had been acquainted with a great many Years; I looked upon him to be a very honest man; and in the Year 1720 he transacted abundance of Business, and I did a great deal of Business for him, and some other Gentlemen at that time, as a Scrivener. In the Year 1720, upon the Fall of the Stocks, he came and told me he was ruined by it, and begged of me to assist him. He told me at first he had some Accompts depending with Mr. Wilson.

Mr. Serj. Pengelly. I desire he may repeat it, where he told him, and when?

Mr. Scott. About *December* 1720, before Mr. Knight went away, he said he had large Accompts with Mr. Wilson, and that he was utterly ruined, because he said he had transferred 6000 *l.* South-Sea Stock to Mr. Knight, which cost him 40,000 *l.* or better, and if he could not get it of Mr. Knight, he must be ruined. He told me I was acquainted with several Gentlemen of Mr. Wilson's Acquaintance, and desired me to speak to him or them about this matter.

Sometime after Mr. Wilson's Agents, Mr. Ashton, I think, and one Mr. Newton, sent to Mr. Poulter, and desired a meeting on the Behalf of Mr. Wilson. I went on the Behalf of Mr. Poulter, and carried a Friend with me; we met at the *Crown Tavern* over against *St. Clement's Church*, and we told them how Mr. Poulter was served; that Mr. Knight had so much Stock of his without any manner of Consideration, as Mr. Poulter had told us; that Mr. Poulter was willing to do any thing they could expect. Some considerable time afterwards, I heard Mr. Poulter had been arrested, and he desired me, as being acquainted with Mr. Wilson, to go to Mr. Wilson and see if I could make up the Affair, he apprehended that his Bail would surrender him: Whereupon I went to Mr. Wilson, and told him, that Mr. Poulter protested to me he was worth but 3500 *l.* or thereabouts, and that he would endeavour to get Friends to make it up 4000 *l.* if Mr. Wilson would accept it. I was with Mr. Wilson several times about this matter, but he would not accept it.

Mr. Serj. Pengelly. Did he give any Reason why he would not accept it?

Mr. Scott. He said he looked upon Mr. Poulter not to be an honest man, and that he could pay more; I said he had better take that than keep him in Prison.

Mr. Com. Serj. Notwithstanding these private Intimations of his Disability, I desire to know what was his general Character as to his Circumstances?

Mr. Scott. He was looked upon to be a very honest man, and in good Circumstances; he hath been trusted with Thousands and Thousands of Pounds.

Mr. Serj. Pengelly. I desire he may be asked, Whether the money, the 24,000 *l.* Wilson lent to him, was not for Stock-jobbing, for him to traffick with in the Alley.

Mr. Scott. I know nothing at all of that.

Mr. Serj. Pengelly. Whether he hath not declared so?

Mr. Scott. No, I know nothing of that; whenever I was in Company with Mr. Wilson he was always very shy, and would not speak freely.

Mr. Plummer. I desire he may be asked, Whether in *June* or *May* 1720, he looked upon Mr. Poulter to be a good man?

Mr. Scott. Mr. Poulter, in *April* or *May* 1721, told me his Circumstances, and desired me to go to Mr. Wilson to meet those Gentlemen, and to treat with them; but every body then, except four or five Persons to whom he had made known his Circumstances, reputed him an honest and a substantial man.

Mr. Com. Serj. I desire he may inform your Lordships, In *May* 1721, what his general Character was, or what was generally thought by other People of him, without relation to his own particular Knowledge.

Mr. Scott. He was looked upon as a man of Substance, and a very honest man.

Mr. Sandys. I desire he would explain himself; Whether he was looked upon at that time by himself to be a sufficient man, and able to answer the Demand of Mr. Wilson?

Mr. Scott. He had told me a Reason to induce me to have but an ill Opinion of his Ability, that he had transferred 6000 *l.* Stock to Mr. Knight, which cost him 40,000 *l.* and upwards.

Mr. Serj. Pengelly. Whether Mr. Poulter at that time went on dealing in the way of Business as he did before?

Mr. Scott. No, I believe he did not at that time: I believe in 1720 his Business was done, and he thought himself worth a great deal of money.

Dr. Sayer. Whether in the Year 1720 he was not looked upon to have got a great deal of money, and for that Reason to have quitted his Business?

Mr. Scott. It was then taken so; he was then looked upon as a man of great Substance: There were not above five who knew his Circumstances to be otherwise; he was generally looked upon then to be a man of Substance.

Mr. Lutwyche. It is a very surprising way to establish a man's Reputation to say he was a man of Substance when he offered a Composition, and at the same time he could not pay his Debts, he is understood to be a man of Substance; I desire to know, Whether it was after or before you had that meeting, and offered the Composition?

Mr.

Mr. *Scott*. I believe it was after.

Mr. *Lutwyche*. Did you take him to be a man of Substance afterwards, after you had offered a Composition for him?

Earl of *Macclesfield*. This Gentleman hath answered two Things very consistent, that he and three or four more, who knew Mr. *Poulter's* Circumstances, knew that he was not a man of Substance then, but that all other People looked upon him to be a man of Substance, and he tells you how he came to be so esteemed.

Mr. *Scott*. Yes, so it was.

Mr. *Lutwyche*. I desire to know again, whether after the Year 1720, he transacted Business as he used to do?

Mr. *Scott*. No.

Mr. *Lutwyche*. I desire to know again, where he lived after the Year 1720, and what means he had to live upon, besides his Business?

Mr. *Scott*. He lived as a Gentleman at *Hackney*, had his House well furnished and full of Plate; I have been at his House several times.

Mr. *Lutwyche*. How long ago?

Mr. *Scott*. I believe a Year and a half, or two Years ago?

Dr. *Sayer*. I don't apprehend it is material what this Gentleman thought from the private Conversation he had with Mr. *Poulter*. The general Reputation is sufficient for us to justify what was done; I desire he may be asked, whether till that Conversation he himself did not look upon him to be a man of Substance?

Mr. *Scott*. I looked upon him to be a man of Substance, till he told me he was so unhappy that he could not get his forty thousand Pounds and upwards of Mr. *Knight*.

Mr. *Lutwyche*. When was it he told you so?

Mr. *Scott*. I believe some time in *December* 1720 that he told me so first.

Mr. *Lutwyche*. The Composition was in 1722.

Mr. *Serj. Pengelly*. I desire he may be asked one general Question, Whether after the Year 1721 Mr. *Poulter* retained any Character of Sufficiency or Ability?

Mr. *Scott*. He was looked upon by every one that did not know this Affair of Mr. *Knight's*, to be a man of Sufficiency in 1721.

Mr. *Lutwyche*. After 1721, Whether it was not generally known that Mr. *Poulter* was an insufficient man?

Mr. *Scott*. No, I believe not.

Earl of *Abingdon*. If they have done, I desire to ask this Witness a Question, Whether it was generally known that Mr. *Poulter* had transacted for Mr. *Knight*?

Mr. *Scott*. Not as I know of, I believe not.

Mr. *Serj. Probyn*. My Lords, we shall trouble your Lordships with no further Evidence on this Article. So if your Lordships please, we shall now proceed to the other Articles.

Mr. *Strange*. With your Lordships Permission we will now go on to the next Set of Articles that were opened by the managers for the Honourable House of Commons, which are the fifteenth, sixteenth and seventeenth Articles. And I shall now, as I did before, confine my self to these particular Articles.

The Charge, my Lords, in these three Articles consists of several Acts supposed to be done by, or by the Order of, the noble Earl within the Bar, and are laid to be all tending to the same Design

of concealing the Deficiency of *Dormer's* Office.

For which Purpose, my Lords, it is said the Accompts of the masters were called for, not with any Design of examining the Accompts, but with an Intent to terrify the masters, and oblige them to contribute towards answering the Demands that should be made upon that Office: And as an Instance of this Design, the Commons charge, That after a Contribution by nine of the masters, the Earl did not oblige them to bring in their Accompts.

That upon occasion of another Sum of money wanted to pay off a Suitor who had an Order for money in *Dormer's* Office, the noble Earl pressed the masters to raise it amongst themselves; and, upon their Refusal, caused his Secretary to pay it: And that notwithstanding this Notice of *Dormer's* Deficiency, an Order was afterwards made for Mr. *Edwards* to enquire, whether there was likely to be a Loss of any money deposited with Mr. *Dormer*.

And as a farther Instance of this Endeavour to conceal the Deficiency, it is insisted on, that several Orders were made for the paying some Suitors the whole of their Demand, without regard to that just Proportion to which the other Suitors were entitled.

This, my Lords, is the State of the Complaint contained in these three Articles.

And as to the first part of the Complaint in calling for the Accompt, and terrifying the masters into a Contribution, I shall beg leave to insist upon two Facts; either of which, in my humble Apprehension, will be a sufficient Defence against the Charge.

The first, my Lords, is, That the Contribution was voluntary: And the next is, That long after this Contribution the Accompts were continued to be called for, notwithstanding it is charged to have been dropp'd immediately upon the Contribution.

To prove the Contribution voluntary, I beg leave, my Lords, in the first place to look back upon Mr. *Lightboun's* Evidence, where he acquainted your Lordships, that upon his asking the noble Earl, who the Proposal came from, the Earl's Answer was, That it came from some of the masters: And he concluded his Accompt of that Conversation with informing your Lordships, that upon his declining to contribute, the Earl left him to his Liberty.

But, my Lords, not to rest it upon Mr. *Lightboun's* Evidence only, we shall call Mr. *Cottingham*, who was acquainted with the whole Transaction, and will inform your Lordships, that the Contribution was altogether voluntary, and of their own Proposal.

My Lords, the other Branch of the Article, and which indeed is the Jet of the whole, relates to the dropping the Design of looking into the Accompts upon the making of this Contribution, which we shall be able to falsify; and the Account, my Lords, we shall give of the whole Transaction is this:

In *February* 1720, Mr. *Cottingham*, by the Earl's Directions, wrote a Letter to the Masters, requiring them to make up their Accompts, and present them to the Earl, according to a Plan which he imparted to them in that Letter.

Your Lordships are pleased to observe, that Mr. *Dormer's* failure was at *Christmas*, and this Letter in *February* following, before Mr. *Dormer* had any leave to come over, or any Discovery had been made of the Condition of his Office.

My Lords, The use which the Honourable managers say was to be made of this Letter, was so little understood, that some of the masters did, pursuant thereto, make up and deliver in an Account, tho' not according to the Directions they had received; and the Affair of Mr. *Dormer* coming on, caused a Stop in making up these Accounts, till after the appointing a Successor, and the making the Contribution, which, I think, is already fixed to have been in or about *August* 1721.

My Lords, The Summer being then far advanced, and every Body going out of Town, the Accounts were not exacted at that Time; but upon their Return to *London* a new Order was sent by Mr. *Cottingham* in *November*, with fresh Directions for bringing in their Accounts.

My Lords, I must here beg leave to observe, that if the Contribution was all that was aimed at by calling for these Accounts, how comes it to pass that Mr. *Lightboun*, who never contributed, was not called upon, in a particular manner, to bring in his Account, which, I did not observe, was proved, or so much as opened by the learned managers?

My Lords, The true Reason why these Accounts were not brought in, was the insuperable Difficulties of such an Undertaking; of which, I am persuaded, no other Evidence need be given, than to reflect on the Proceedings that have been of late in taking these Accounts.

But, my Lords, a learned manager was pleased to say, Why did this noble Earl keep the Office, if he was not able to do the Business of it? I hope your Lordships won't think the noble Earl was idle all the while: Every Body knows the great Variety of Business, and the continual hurry a Chancellor is in: The ordinary Business of the Court of Chancery is sufficient to engage a Man of uncommon Application: What a Fatigue then, my Lords, must it be, when the necessary Attendance upon your Lordships, and at the Council Table, are both taken into the Account? Sure I am, my Lords, it can never be said, that there was no want of Time or Leisure for taking these Accounts.

My Lords, The next Branch of the Charge is the Order for 1000*l.* to Mrs. *Chitty*, which it is said was paid by the Noble Earl's Direction, in order to conceal the Deficiency: But pray, my Lords, does not the Article and Evidence both destroy the Supposition? Could the Earl of *Macclesfield* intend to conceal the Deficiency, when he cautioned *Lockman* against marrying Mrs. *Chitty*, in prospect of any more Money to be coming out of *Dormer's* Office. "That this would be the last Payment (I give your Lordships the very Words) she was like to receive out of the Money paid into the Hands of Mr. *Dormer*, for the Residue thereof was in danger of being lost, by reason of the Deficiency in the Effects of Mr. *Dormer*." Is this, my Lords, a Concealment of the Deficiency? A Payment of 1000*l.* of the Noble Earl's own Money, in order that the Suitor should have no suspicion of a Deficiency!

But to go further, my Lords, we shall shew, that the payment of this Money did not proceed

from any such low Motive, as, I may say, is uncharitably represented in this Article, but from a noble Mixture of Generosity and Compassion.

Mr. *Lockman*, my Lords, represented himself as an undone Man if he had not the Money: He first insinuated himself among the Noble Earl's Servants, as a Person under the utmost Distress; and the frequent Solicitations, which himself owns, are a strong Evidence of that Distress: When he had gained Access to the Earl, he told his Story in so moving a manner, not without Intimations of some desperate Resolution he might be forced to take if he had not the Money against the time, that, in pure Compassion to his Distress, the Noble Earl (whose Purse was always open to the Unfortunate) was prevailed with to order him the Money. And we shall prove to your Lordships, that how little sensible soever he now is of so great a Favour, yet at that time he express'd himself in Terms of one the most highly obliged; and I believe when our Witnesses to this Transaction come to be examined, they will leave Mr. *Lockman* very little Credit with your Lordships, and will wipe away the most remote suspicion of affecting any Concealment by this Transaction.

My Lords, The last Branch of this Article relates to a Declaration said to be made by the Earl in the Cause of *Harper* and *Cafe*, and an Order made therein for Mr. *Edwards* to enquire if there was likely to be a Loss of any Money deposited with Mr. *Dormer*.

My Lords, The particular Occasion and manner of that Declaration and Order have been fully stated by the Evidence we have already given of the several Judgments and Proceedings that have been against Mr. *Poultter* and the Marshal, which I shall not trouble your Lordships with a repetition of, it being sufficient for my Purpose in answering it as an Instance of Concealment, to observe, that the whole Transaction was after the Accounts of the Masters had been laid before the Committee of Council, when it was too late, and to no purpose to affect any Concealment.

My Lords, The last Branch of the Charge I am now upon, relates to the making Orders for paying to several Suitors their whole Demand, out of the Effects of Mr. *Dormer*, without regard to that just Proportion to which the other Suitors were intitled: And the Case of *Eddisbury* was mentioned for this purpose; tho' I did not observe the Gentlemen enter'd into any Proof of what was done in that Case.

My Lords, In Proof of this Article several Orders were read: But I appeal to the Evidence of Mr. *Edwards*, whether it did not appear, upon his cross Examination, that it was but in one Cause only where the whole Money was paid out; and whether that single Instance is a sufficient Proof of this Article, I must submit to your Lordships.

But, my Lords, the true Answer is this: Both the Noble Earl and Mr. *Edwards* doubted not but that the Deficiency would be made good, and proceeded upon that Expectation; nor can a stronger Evidence be given (and I desire it may be applied to some of the other Articles) that they were under this Persuasion, than Mr. *Edwards's* making Payments without any Objection.

Especially, my Lords, when it is consider'd too, that Mr. *Lightboun*, who was so averse at first to any Contribution, has in that letter which

has been read to your Lordships, mentioned several of his own Schemes for making good the Deficiency.

And if there was a Prospect of making good the Deficiency (as I humbly apprehend it is plain there was) it was very proper and natural to make the Orders in the manner they are now complain'd of. The nature of ordering Money out of Court makes it impossible the Suitors should call for it all at once, but the same is order'd out by Degrees: And Mr. *Cottingham's* taking an Assignment of *Chitty's* Order, shews plainly, that it was expected Effects would in time come in to discharge that, and all other Demands.

I would not, my Lords, be understood by any thing I have offered, as if I intended to dispute the Rule of Equity that has been laid down by the Managers, That where several Persons have Demands out of one Common Fund that cannot answer the whole, there ought to be an Average in such Case: But what I shall beg leave to insist upon is, That that Rule only holds place where the Quantum of what is left to answer is fix'd and certain. In this Case the Effects were daily coming in, and therefore a Declaration of an Average where there was likely to be no Deficiency, would not, in my humble Apprehension, have been advisable or proper.

I beg leave, my Lords, to close my Observations upon all the Articles relating to the Concealment of *Dormer's* Deficiency, with submitting it to your Lordships Judgment, if the whole Transaction does not speak itself to have been one continued Endeavour to secure to the Suitors their whole Demand, and to have been no more.

Mr. *Serj. Probyn*. My Lords, the Managers, when they entered upon these Articles, produced an Order made by the late Lord Chancellor, in the Year 1720, by which the Masters were obliged to bring in their Accounts, which as they charge to have been concerted with other Views, and for very different Ends than at first appear, we think it will be extremely proper for us to begin our Defence to that Part of the Charge with a Witness who is ready to shew your Lordships the real Designs the impeached Earl had in calling for these Accompts; and his Evidence, we humbly conceive, will satisfy your Lordships that it could be for no other Purpose than that the Earl might the better know the true State and Condition of their respective Offices, in order to find out a proper Method of redressing such Grievances as were most apprehended at that Time. My lords, it will appear by the Course of the same Witness's Evidence, that the other Order that was made upon them afterwards in *December* following, in as strong Terms as the former, could be for no other Reason or Purpose than that his lordship hath assigned in his Answer, that he might understand the State of the several Offices, so as to be able to apply proper Remedies to the Danger which was then dreaded. All this will appear yet more fully from the Evidence of another Witness, who is to inform your lordships of the particular Directions the Noble Earl gave about the Manner of bringing in these Accompts, with the Names of the Causes of the respective Solicitors concerned in them, and also what the several Sums first paid in were, the Time when so paid in, and also when the same or any Part were paid out

again, together with many other Particulars which his lordship thought necessary for his more exact Information. It will be likewise made appear to your lordships, how the Masters were severally consulted with about this Matter, and that the Assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. *Holford* (who had been in the Office for twelve Years) that it was next to impossible to bring in their Accompts, as first directed, in any reasonable Time; then it was, and not before, that the noble Earl condescended that they might bring them in in a different Manner. Now, my lords, as to the Suggestion that all this was only a Scheme, made use of to terrify the Masters into a Contribution towards *Dormer's* Sufficiency, give me leave to say it is impossible to collect the least View of that Kind from the Evidence laid before your lordships on that Head; for the Masters who did contribute on this Occasion, have all sworn that they paid in their Money voluntarily, and without being any ways influenced by his lordship's Threats or Persuasions; so far from that, that Mr. *Lightboun* (the only Master who refused concurring in this Contribution) made no other Objection at first to it, than that the Proposal did not come from his lordship, but from the other Masters; for in that Case he declared, That, if it had come from the noble Earl himself, he might have had more Regard to it, and would have taken it into his Consideration. So that we doubt not upon the whole, but it will plainly be made appear to your lordships, that the constant Application which the noble Earl made from time to time to the Masters for this Purpose, proceeded from no other View, than that as soon as he might be truly informed of the State of their Offices, he should apply proper Remedies to whatever Abuses he should discover; and that as this was always his real Intention, so he would have put it effectually in Execution, had he not resigned the Great Seal so soon.

Mr. *Com. Serj.* My lords, we shall call a Witness to shew, that after the 500*l.* apiece was paid, the Accompts were called for; it cannot then be pretended, that this calling for the Accompts was to terrify the Masters to pay this 500*l.* apiece.

The Time of the Payment of these five hundred Pounds was in *August*; these Accompts were called for in the Beginning of *November*.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. I desire Mr. *Cottingham* would inform your lordships whether any Directions were given to call in those Accompts about *November*, 1721.

Mr. *Cottingham*. I did in *November*, by the Direction of the Earl, write a letter dated the 7<sup>th</sup> *Nov.* 1721.

L. *Ch. Just. King*. Have you any Draught of that letter?

Mr. *Cottingham*. I have a Draught, the Committee required me to leave the letter with them.

Mr. *Lutwyche*. My lords, we will do the noble Earl all the Justice we can; here are the letters.

Mr. *Cottingham*. The first letter is dated *Feb.* 14. 1720.

Mr. *Lutwyche*. Who is it directed to?

Mr.

Mr. Cottingham. The Letter is directed to each master, and this is the letter.

SIR,

I Am commanded by my lord Chancellor to signify to you, that you do with all convenient Speed lay before his lordship an Accompt in several Columns,

1. Of the Name of the Cause.
2. The Solicitor or Agent.
3. The Date of the Order.
4. For what Purpose the money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

A distinct Account of the Securities.

1. Cause.
2. From whom the Security is taken.
3. What the Security is.
4. In whose Name taken.
5. For how much each Security.
6. The total of the several Securities in the same Cause.
7. In whose Hands lodged.

A distinct Accompt of money paid out.

1. Cause.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant;

14 Feb. 1720.

P. Cottingham

SIR,

BY my letter of the fourteenth of February last, I signify'd to you my lord Chancellor's Pleasure; which was that you should with all convenient Speed lay your Accompt before his Lordship; (the method whereof was to be in several Columns subscribed at the Foot of that letter.) I am now further to acquaint you, that his lordship is very much surprized to find, that in all this Time no such Accompt hath been laid before him: And therefore hath commanded me to tell you, that it is expected to be delivered in, on or before the last Day of this Term. And, if this is not comply'd with, you will oblige his Lordship (though very unwillingly) to think of other measures; which I doubt not but you will avoid, by a ready Compliance with what is a second time required of you. And to the End there may be no mistake as to the method of your accompting, I here subscribe it again at the Foot of this Letter; and am,

Sir,

Your very humble Servant,

7 Nov. 1721.

P. Cottingham.

To the best of my Remembrance, this Letter was delivered to ten of the masters.

Mr. Lutwyche. Did you read it to them?

Mr. Cottingham. No: I am going to give you an Account. My Lords, according to a Memorandum I kept at that Time of this letter, it was delivered to ten of the masters: to Mr. Rogers, Mr. Hiccocks, Mr. Fellowes, Mr. Lightbourn, Mr.

Bennet, Mr. Holford, Mr. Barrett, Mr. Godfrey, Mr. Conway, and Mr. Lovibond.

Mr. Serj. Probyn. We desire that the second Letter in Nov. 1721. may be read.

Mr. Cottingham. The second Letter is dated 7 Nov. 1721. "Sir, by my letter of the fourteenth of February last, I signify'd, &c. N. 47."

Mr. Serj. Probyn. By this it appears to be after the several 500 Pounds were paid in, the last 500 Pounds was paid in in August, before, which shews that these Accompts were to be delivered in for no other Reason than that the Suitors should have Satisfaction, as soon as a proper Remedy could be found.

Mr. Ccm. Serj. I beg leave to make one Observation; here is——

Mr. Lutwyche. If they have any more Questions to ask the Witnesses, they may; the Observing is proper afterwards.

Dr. Sayer. I only beg leave to ask this one Question, to be better informed. The Letter recites, it is written by the Command of my lord Chancellor: I would ask whether my lord Chancellor did give such Directions?

Mr. Cottingham. Yes, my Lords, he did.

Mr. Plummer. If they have done with the Question, I would ask Mr. Cottingham in the Words of his own Letter, Whether the Earl of Macclesfield did oblige the masters to deliver in their Accompts in Pursuance of such his said Order?

Mr. Cottingham. Of the Letter of November 1721. I have kept no Memorandum; of the first Letter I have.

Mr. Plummer. Whether that Letter of 1721. was delivered to the masters?

Mr. Cottingham. I believe it was.

Mr. Plummer. Then I desire to know, if the masters did deliver in their Accompts?

Mr. Cottingham. I don't remember they did.

Mr. Plummer. I desire he may be asked, if after this time that the 500 l. was paid in Obedience to the first letter, there was afterward any other Demand made upon the masters for more money?

Mr. Cottingham. I know of no Demand made upon them, except the 500 l. apiece.

Mr. Plummer. I desire he may be ask'd if he doth not remember Mrs. Chitty's Affair, and if that was not after 1721?

Mr. Cottingham. The Business of Mrs. Chitty was but in July last.

Mr. Serj. Pengelly. I desire he may be asked, Whether since no Accompt was called for after this last Letter, whether he did not understand the Reason to be, because he apprehended the masters would make good Mr. Dormer's Deficiency?

Dr. Sayer. My Lords, I submit it, whether that Question is material as to what his Apprehension was; your lordships are Judges only upon Evidence of Fact, and not upon his Thoughts or Apprehensions.

Mr. Serj. Pengelly. Why were not the Accompts called for afterwards?

Mr. Cottingham. I really can't tell the Reason.

Mr. Serj. Pengelly. Whether he acquainted my Lord Macclesfield that the masters would make good the Deficiency?

Mr. Cottingham. I told your lordships I did.

Mr.



Mr. *Serj. Pengelly*. Therefore I desire he may be asked, Whether after that Time he received any Orders to send to the masters to give in their Accounts?

Mr. *Cottingham*. I can't speak particularly as to the Times.

Mr. *Serj. Pengelly*. Whether those other measures, intimated in his letter to be taken, were not signify'd to him by my Lord *Macclesfield* to be, that the Cash should be taken out of their Hands?

Mr. *Cottingham*. My Lord called me into his Study, and directed me to write this Letter; all he said was, he was sorry that the masters had not brought in their Accompts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other measures: My Lord did not say to me what those other measures were, whether it was to make an Order in Form, and then he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the masters, that he would take other measures, what those other measures were I do not know, but I apprehended it to be an Order his Lordship would make for obliging him to it.

Mr. *Snell*. I desire he may be asked, Whether he did not himself apprehend by those other measures, the taking the money out of the masters Hands?

E. of *Macclesfield*. My lords, I submit it whether a Question of this kind is proper; he hath been asked what those measures were; he hath told your lordships that he knows not, but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your lordships with it.

Mr. *Cottingham*. Your Lordship said you would take other measures; what I apprehended was, your lordship would make an Order in form if they did not comply with that letter.

Dr. *Sayer*. My lords, I beg leave to ask one Question: Whether the masters, after this letter was brought to them by Mr. *Cottingham*, did not represent to him the Difficulty of making up their Accompts?

Mr. *Cottingham*. There were several Particulars mention'd in the former Letter, there was the Causes to be named, &c. Some of the masters told me they had not kept their Accompts so as to answer all the Particulars in the letter; others said it would take up a great deal of Time; others that the manner required was very difficult and tedious, and that it was almost impracticable, so many *Items* were contained in the letter, that they seemed to say it could not be done.

Dr. *Sayer*. I desire he may be asked, Whether he hath any Paper of the method of Accompting required by the Committee, that his majesty was pleased to direct to look into this matter?

Mr. *Cottingham*. I have not a Copy of it here. There is an original Order, if the masters please to produce it, I left it with Mr. *Lightboun*.

Mr. *Com. Serj.* If the Gentlemen have it, I hope they will produce it.

Mr. *Cottingham*. The original Order is of the third of *November* last, which I left signed by the Earl.

E. of *Macclesfield*. This will come more properly under another Article: The Gentlemen,

the masters, will take Care to look it out that it may be ready by that Time.

Mr. *Cottingham*. My Lords, I have now found it; I can't say it is a true Copy, dated the third of *November*, 1724. signed *Macclesfield, C. Let the several Masters* — Am I to read it, my Lords?

Mr. *Lutwyche*. What, the Order of the third of *November* last?

Mr. *Com. Serj.* This Order cannot relate to this matter. We are now upon the second Letter in 1721. The Letter is framed in so strong Terms, that it can't be supposed but the Earl was very much in Earnest, and it can't be insinuated as if intended to make the masters comply in the Affair of Mrs. *Chitty* and *Lockman*, because that Transaction was but in *July* last.

Earl of *Macclesfield*. I desire, my Lords, to go a little back again, upon recollecting that the Question the honourable Manager was pleased to ask, about his giving me an Account that the masters would make good the Deficiency, carries an Insinuation, as if this method were dropp'd upon it: I desire he would inform your Lordships, Whether he can be sure of the exact Time, whether this was before or after *November*, 1721.

Mr. *Cottingham*. I really can't be sure of the exact Time.

E. of *Macclesfield*. How near was it to Mr. *Dormer's* going out, and Mr. *Edwards's* coming into his Office?

Mr. *Cottingham*. Mr. *Edwards* came in in *May* 1721. It was near his coming in.

E. of *Macclesfield*. I desire to know whether you can recollect the Time you did tell me of it? Whether it was after *November* 1721. or before?

Mr. *Cottingham*. I several Times mentioned it to your Lordship before *November* 1721. and I believe several Times after, but that I cannot certainly tell, nor can I be particular to a Day.

E. of *Macclesfield*. Did you ever hear of it before the 500*l.* a-piece was paid?

Mr. *Cottingham*. No, my Lords, it was after they had paid the 500*l.* a-piece; but, my lords, I don't know that they agreed to make good the Deficiency, I only told my lord I thought they intended it.

Lord *Trevor*. He hath proved two letters sent by the Direction of the Noble Earl. As to the first letter he kept a *Memorandum* as to the Time, but no *Memorandum* of the second. I would ask him as to the Time, when the masters made that Representation of the Difficulty of giving in the Accounts, whether it was before or after the second letter, or between the first and the second Letter?

Mr. *Cottingham*. To both the Letters they still made a Representation of the Difficulty.

Lord *Trevor*. Then I desire to ask one Question more, that is, Whether, after the Representation made after the second letter, they owned that they had received the second letter?

Mr. *Cottingham*. I verily believe that the second letter was deliver'd to the Masters as the other was, but I have kept no *Memorandum* of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a *Memorandum*; I enquired after him; he hath been gone from me, and I can't find him out: I verily believe it.

I have

I have no Reason to doubt but I gave it; the masters know that.

Mr. *Serj. Probyn*. If Mr. *Holford* is called, he will explain it; on his cross Examination he admitted a second letter was sent for him, and left in the publick Office: That appear'd in his cross Examination.

Mr. *Strange*. It might not be improper (this letter is before the honourable managers) to enquire if they had it not from some of the masters.

Mr. *Cottingham*. No, they had it from me.

Mr. *Holford* called.

Mr. *Serj. Probyn*. I desire he may be ask'd, Whether he had not any notice of the letter in *November 1721*, whereby the masters were obliged to bring in their Accounts?

Mr. *Holford*. Indeed, my Lords, I do not remember that letter.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he remembers a second letter about Accounts?

Mr. *Holford*. Whether it was a letter or a message I cannot tell; but between the first Account in *February 1720*, and the last in *November* last, I was called upon to Accompt, and had prepared it; but this second letter dated in *November 1721*, I do not remember any thing of it.

Mr. *Serj. Probyn*. How long was it after the Payment of the 500 *l.*

Mr. *Holford*. It was a good while after.

Mr. *Serj. Probyn*. That is all we contend for.

Mr. *Holford*. I believe not above a Year before the last.

Mr. *Serj. Pengelly*. I desire he may be asked, whether after this letter, supposed to be in *November 1721*, his Accompt was ever demanded of him?

Mr. *Holford*. I did deliver to my Lord an Account of *November 1721*; and I think a Year before *November* last, in pursuance of either a letter or a message, I don't know which, my Lord required an Account; then I deliver'd an Account of money, not of Securities in my Hands.

Mr. *Serj. Pengelly*. Whether that was an Account in pursuance to that letter, demanding and requiring it of him?

Mr. *Holford*. Not as I know of, indeed.

Mr. *Lutwyche*. My Lords, as some mention hath been made of it, I think it may be proper to know what he can say to it, whether he ever promised to make good the Deficiency of Mr. *Dormer*?

Mr. *Holford*. I never did my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Probyn*. I desire he may inform your Lordships what he knows in relation to the Payment of the 1000 *l.* to *Lockman*, and what Conversation he had with Mr. *Lockman*.

Mr. *Cottingham*. About the beginning of *July* last, to the best of my Remembrance, Mr. *Lockman* told me, that Mrs. *Chitty* had an Order upon Mr. *Edwards* the master, to pay her 1000 *l.* That she had been with the master, but could not get the money, and that he had spoke to my Lord *Macclesfield* about it, and the Earl had promised to speak to the master. — And he desired

me to speak to the Earl concerning it: I promised I would, and accordingly I did; he sent me to the master. When I came to him, I spoke to him of it; he said he had no money; I informed the Earl of it; the Earl said he could not tell what to do. I informed Mr. *Lockman* of it; he seemed to be under the greatest Concern, and said, if he had not the 1000 *l.* he was undone; he was going to marry Mrs. *Chitty*, and Mrs. *Chitty* would not marry him, unless his Debts were paid, and she had given him this 1000 *l.* to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 *l.* was not paid, he was undone.

I have not seen a Gentleman in a greater Distress than he appeared to be; on which I told him, if he would please to have a little Patience I would consider the thing, and see what could be done. I did consider it; and it came into my mind that Mr. *Lightboun* had not paid his 500 *l.* I acquainted the Earl with it, and said Mr. *Lightboun* had not paid his 500 *l.* and if he could prevail upon him to do it, I thought it would be easy to get 50 *l.* a-piece of the other masters, and that would do.

By the Earl's Order, I attended Mr. *Lightboun*, and told him that the Earl expected him to pay his 500 *l.* but I could not get a Penny from him; so he refusing to pay the 500 *l.* that Proposal of the 50 *l.* a-piece dropt: I acquainted the Earl of this; he said he could not tell what to do. I acquainted Mr. *Lockman*, and told him I had done all that was in my Power to do; and that it was not to be done, unless he expected I should pay it out of my own Pocket, which I was sure he could not expect: When I told him that, he said, I am undone, Mrs. *Chitty* will not marry me, his Royal Highness the Prince of *Wales* will not protect me, my Creditors will throw me into a Gaol, there I must rot and starve. He made use of so many extravagant Expressions, and was under that Pain and Agony of mind, that I apprehended he would do himself a mischief. I could say nothing to it, I had done all for an unfortunate Gentleman that possibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to speak with me immediately; he begged of me of all things in the World to go: On that I went to the Earl. The Earl was pleased to send for me into an inner Room, and said, that he was teized out of his life by Mr. *Lockman*; I told him I was so too, I had no Rest Night nor Day for him; I then represented to the Earl his own Story in Substance as he had told me. The Earl said he was sorry to find Mr. *Lockman* brought to that State and Pass. I told the Earl I was afraid of the Consequence, I did not know what a despairing man might do, he seemed to be in the utmost Despair. Upon that the Earl ordered me to pay him the 1000 *l.* and said, he would pay it me again. When I saw Mr. *Lockman*, I told him I had now received Orders to pay him; I had not the money by me, but he should have it in a little time, three or four Days would break no Squares; he said, I am fatisfy'd, provided it is paid. I said I had it not by me, I must borrow it; I did so; and on the thirtieth of *July* I paid him the 1000 *l.* I think it was three or four Days after, he asked me what Reward he should give me; I told him that his Distress was so great that he should not give me

any Reward; I would not take a Penny of him, and I never had the Value of a Dish of Coffee of him; I paid him the money, I borrow'd it for that Purpose. Says I, Mr. *Lockman*, it appears to me that you are in great Distress, I will borrow the money. I did borrow the money, and paid Interest for it, meerly to supply the Gentleman.

Mr. *Serj. Probyn*. I desire he may be asked if he knows of any other Sum of money demanded by Mr. *Lockman* after this 1000*l.* was thus agreed to be paid him?

Mr. *Cottingham*. After this money was agreed to be paid, an*l.*, I think, the same Evening, I received this letter from him, which any Gentleman that will may read. (*The Letter read.*) Sign'd *Lockman*. Monday Evening.

S I R, Monday Evening.

I Am very sensible of the Favour you have already done me, in promoting what my Lord in so affable a manner was pleased to promise me, which Kindness I shall gratefully acknowledge all my life: But as there is so great a Necessity, I hope you will pardon me the sooner in being once more troublesome, to beg of you to remind his Lordship of letting Mrs. Chitty have the other 574*l.* which my Lord was pleased to say we should have, and without which Mrs. Chitty, who hath neither out of Chancery nor her Estate received any money this two Years, cannot spare me the whole 1000*l.* As my whole Ease and Quiet depends on your kind Assistance, I must beg, Sir, once more to use your Interest to let us have it on Thursday Afternoon, between Four and Five, when Mrs. Chitty intends to wait on you for the other. I shall be very proud on all Occasions to shew with how much Gratitude and Esteem I am,

S I R,  
Your most oblig'd  
humble Servant,  
*A. Lockman.*

Dated Monday Evening, no other Date. My Lords, Upon the Receipt of this letter, the very same Evening I laid it before the Earl, I told him that it appeared by this he wanted 570*l.* more. The Earl said he was very much surprized at this Gentleman's sending such a letter, he did not know what he meant by 570*l.* more that he promised, and, in short, told me he could advance no more.

Mr. *Strange*. I desire he may be asked, whether he had any Discourse with Mr. *Lockman*, relating to this 570*l.* after this letter?

Mr. *Cottingham*. I had a Discourse with him some time afterwards about the letter.

Mr. *Serj. Probyn*. I desire to ask him, whether after this letter Mr. *Lockman* came to know what Answer he would give him?

Mr. *Cottingham*. Mr. *Lockman* came on the Thursday following, being the thirtieth of July; Mrs. Chitty did not come: And then I told him that I had received his letter, and had laid it before the Earl, and that the Earl understood not what he meant by it, that this was a growing upon him, and he would not pay a Penny more; I thought he had been very generous to him, and I told him I wondered what he meant.

Mr. *Serj. Probyn*. I beg leave to take notice,

and your Lordships will please to recollect, that *Lockman* swore he never made any Demand of any money besides the 1000*l.*

Mr. *Lutwyche*. That is to be observed when the Witness is examined throughout.

Mr. *Serj. Probyn*. I ask whether Mr. *Lockman* did petition my Lord Chancellor for this Sum of money?

Mr. *Cottingham*. I don't remember Mr. *Lockman* petitioned. I believe not.

Mr. *Serj. Probyn*. Or Mrs. Chitty?

Mr. *Cottingham*. Yes, Mrs. Chitty did, before the Payment of this 1000*l.* as I remember.

Mr. *Lutwyche*. Was there any Petition preferred before the Payment of the 1000*l.* because the money was not paid according to the Order, which I think was dated March 17, 1723.

Mr. *Cottingham*. Yes: I told you so before.

Mr. *Lutwyche*. I desire to know whether there was not a general meeting of the masters before my Lord Macclesfield order'd him to pay the said 1000*l.* to Mr. *Lockman*?

Mr. *Cottingham*. Yes, there was.

Mr. *Lutwyche*. Whether it was not after the meeting of the masters, when it was propos'd to Mr. *Lightboun* to pay his 500*l.* and the others 50*l.* a-piece?

Mr. *Cottingham*. Yes, I believe it was.

Mr. *Plummer*. Mr. *Cottingham* hath given a long Evidence, he hath told you on the Application for this 1000*l.* he recollected that Mr. *Lightboun* had not paid his 500*l.* and if he could get him to pay his 500*l.* and the other masters 50*l.* a-piece, that would make up the 1000*l.* The Question I would ask is, if Mr. *Cottingham* had then any Orders from the Earl of Macclesfield to convene the masters?

Mr. *Cottingham*. No, I had then no Orders.

The first Order I had to convene the masters together, was on a Monday, before Payment of the 1000*l.* as I remember: Mr. *Edwards* was then at my Lord's House, and my Lord ordered me to speak to him to convene the masters, and they were convened, and came to my Lord's House that Evening, as I was told, but that was after the money was ordered to be paid.

Mr. *Lutwyche*. I desire Mr. *Cottingham* may look upon that, and tell us whether it is his Hand.

Mr. *Cottingham*. This is my Hand (*reads.*) His Lordship can do nothing in it at present.

Mr. *Lutwyche*. Do you remember any thing of this Petition being offered?

Mr. *Cottingham*. Yes, I do remember it; it is a Petition of Mrs. Chitty preferred to the Earl, to be paid 1000*l.* This Petition came to my Hands, the Earl said, he could do nothing in it at present, and this Order writ upon it is my Hand.

Mr. *Lutwyche*. Whose Petition is it?

Mr. *Cottingham*. The humble Petition of the Defendant *Elizabeth Chitty*, Mrs. Chitty's Petition.

Mr. *Lutwyche*. What is the Answer writ upon the Back.

Mr. *Cottingham*. His Lordship can do nothing in it at present.

Dr. *Sayer*. We apprehend it is of Consequence to have this meeting cleared. I desire he may be asked, whether he knows of any meeting of the masters, and when, and what was done there?

Mr. *Cottingham*. Yes, there was a meeting that Evening, but I was not present.

E. of *Macclesfield*. By the Questions they have asked, they have taken it for granted as if he knew what was done at that meeting of the masters; I desire to know whether he was present or not at that meeting of the masters?

Mr. *Cottingham*. I was not, I said so before.

E. of *Macclesfield*. Then I think he says the Day of Payment of this money was on the thirtieth of July.

Mr. *Cottingham*. Yes.

E. of *Macclesfield*. What Day were the masters called upon to meet?

Mr. *Cottingham*. I can't be positive, but I think it was the Monday before Payment of the 1000 *l.* This meeting of the masters was between the Order and the Payment of the money.

Mr. *Plummer*. I believe there is a mistake in this matter; I desire to know of Mr. *Cottingham* whether Mr. *Edwards* was not by when he acquainted the Earl with this Demand, and proposed to him the method of paying it by Mr. *Lightboun's* 500 *l.* and the other masters 50 *l.* a-piece.

Mr. *Cottingham*. No, no.

Mr. *Plummer*. I desire it may be cleared then, and to ask him if Mr. *Edwards* was not by when he acquainted my Lord *Macclesfield* of the Demand of the 1000 *l.*

Mr. *Cottingham*. No, Mr. *Edwards* was not by: When this 1000 *l.* was directed to be paid, Mr. *Edwards* was in the House, but the Earl did not see him; when I spoke to Mr. *Lightboun* for the 500 *l.* it was only between Mr. *Lightboun* and me, Mr. *Edwards* was in the House when my Lord spoke to me, and ordered me to speak to Mr. *Edwards* to convene the masters together.

Mr. *Serj. Pengelly*. I desire he may be asked whether the 1000 *l.* was paid before he made the Proposal to my Lord *Macclesfield*, that Mr. *Lightboun's* 500 *l.* and the other masters 50 *l.* would pay it?

Mr. *Cottingham*. The money was paid afterwards, I have told you so before.

Mr. *Serj. Pengelly*. Before the 1000 *l.* was paid, whether did not you hear that the masters had refused to advance the further Sum of 50 *l.* a-piece?

Mr. *Cottingham*. Yes, I told you so before, that Mr. *Lightboun* would not pay his 500 *l.* so the other masters did not pay their 50 *l.* a-piece; this was some time before the Payment of the 1000 *l.*

Mr. *Elphinstone* called.

Mr. *Strange*. My Lords, we desire Mr. *Elphinstone* to give your Lordships an Account of what he knows of the Application of Mr. *Lockman* for this 1000 *l.*

Mr. *Elphinstone*. My Lords, Mr. *Lockman* and I often had Conversation together before he received the 1000 *l.* upon the Account of Mrs. *Chitty*. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the 1000 *l.* against a certain Day, on which he had engaged to pay it, he should be ruin'd and undone; and some time after he told me, that his Creditors had been with much Difficulty brought to give him some few Days longer for Payment of the Composition, and that if he had it not then, he should be ruin'd and undone for ever; swearing by the blessed Name of God, that that Disappointment would be a means of breaking off the match with the Lady.

Mr. *Serj. Probyn*. Go on.

Mr. *Elphinstone*. I can't be positive as to the

Day, whether it was the same Day that he received the 1000 *l.* or a Day or two before; but I then heard the noble Earl declare to him, that in Pity and Compassion to his Circumstances, and the great Difficulty he then laboured under, he the said Earl had given Directions to Mr. *Cottingham* to pay him the 1000 *l.* and about two Hours after, or something more, Mr. *Lockman* came to me, and with abundance of Joy told me how much obliged he was to the noble Earl, for that he had relieved him in his Circumstances, by giving Mr. *Cottingham* Orders to pay him the 1000 *l.* He seemed to express this with an uncommon Pleasure, and did not at all doubt it would be agreeable to Persons of the highest Distinction and Character to know it, and that he would make them acquainted with it. My Lords, I think it was on Friday last, in a Conversation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion; and said, Damn it, it hath happen'd, thro' a silly Word or two I dropt to the Solicitor on the other side, I asked him what it was, he said it was his telling him he had received the 1000 *l.* for Mrs. *Chitty*, by the noble Earl's Direction.

Mr. *Serj. Probyn*. After this money was paid, whether he hath had any Discourse with him, and whether it was owned by him that it was out of the Earl's own Pocket?

Mr. *Elphinstone*. Yes, many and many a time, and with great Respect.

Mr. *Plummer*. I desire the Counsel for the noble Lord may explain one thing: I think the Witness said, Mr. *Lockman* said He had rather give two or three hundred Pounds than have been examined. Whether the Witness doth apprehend by what Mr. *Lockman* said, that he comes an unwilling Witness?

Mr. *Elphinstone*. No, my Lords, I did not say that Mr. *Lockman* was an unwilling Witness, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion.

Mr. *Serj. Probyn*. We shall give your Lordships, no further Evidence on this Article; we shall now proceed to the seventeenth Article, which charges the Earl of *Macclesfield*, that in order to conceal the Deficiency in *Dormer's* Office, and to prevent any publick Enquiry, he did from time to time, in Violation of the Trust reposed in him, make Orders on Mr. *Edwards* for Payment of the money belonging to several particular Suitors, which had been lodged in the Hands of Mr. *Dormer*; in Obedience to which Orders several Sums were paid, without Regard to, or Consideration of the Proportion which the rest of the Suitors were entitled to, out of the Effects of the said Mr. *Dormer*, whereby many of the said Suitors lost the Benefit of their proportionable Share, to which in Justice they were entitled.

The Crime supposed in this Charge is denied by the Earl in his Answer; he had no certain Knowledge what Mr. *Dormer's* Estate would come out to be; but he was under a full Persuasion that Effects would come in in due Time, to make full Payment; and that the only Reason why they were not paid in an Average, was because no Application was made by any of the Suitors for that Purpose.

Mr.

Mr. *Com. Serj.* As to the seventeenth Article, your Lordships observe there was a full Persuasion both in the noble Earl and Mr. *Edwards*, that there would be sufficient to pay every one; besides I think he himself made not above one Order, not more than this one in the Case of *Chitty*; your Lordships will please to observe, from the Evidence of Mr. *Edwards*, that the noble Lord who made these Orders was firmly of an Opinion, from the Accounts he had received, that the Deficiency would be made up, so likewise Mr. *Edwards* was then under the same Persuasion: We shall rest it here, that it was no manner of Fault, under these Apprehensions, to make such an Order as that was.

Mr. *Robins.* If your Lordships please, there is in the Close of the sixteenth Article a Declaration, supposed to be made by the Earl of *Macclesfield*, then sitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court at that Time, I apprehend that what he said was —

Mr. *Plummer.* If the Gentleman speaks as Counsel, he stands in a proper Place, but if he comes as an Evidence, I beg he may come to the Bar and be sworn; I humbly appeal to your Lordships if it is not proper.

*Lords.* Ay, ay.

Dr. *Sayer.* If the Gentlemen think it proper to insist upon it, the Gentleman is ready to be sworn.

Mr. *Com. Serj.* The Gentleman's Character is so unexceptionable, that we hope the learned Gentlemen will not put this Difficulty upon him of taking an Oath in a Cause, wherein he is Counsel.

Mr. *Plummer.* My Lords, I insist upon it, because then I shall have the liberty of asking some Questions, which I apprehend I have not now.

Mr. *Serj. Probyn.* My Lords, We submit it upon the Evidence that hath been already given, he himself did declare then, when it came before him regularly, he would examine into it; and the first Opportunity this came before him in Judgment, he then put it into a method, and accordingly referred it to a master, and all proper measures were taken.

Mr. *Com. Serj.* My Lords, We shall, with your Lordships Permission, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 15th Article. The Charge therein contained is in Effect, that tho' the Earl knew, that the masters of the Court might and did dispose of, and traffick with the Effects of the Suitors; and tho' Proposals were made for remedying of it, yet the Earl neglected to enquire into the Accounts of the masters, permitted, and encouraged them to employ, and traffick with the Effects of the Suitors, and took no Care that those Effects should be placed out, so as to prevent such Practices of the Masters, or that they should give such Security as was proposed; and this is charged to be done with a corrupt View and Intention of making an unlawful Gain by the Sale of those Places, and to keep up the Price of them.

The Proof of these matters depends entirely upon the Testimony of Mr. *Lightboun*, Mr. *Holford*, and Mr. *Kynaston*, with the particular Repetition of whole Evidence, I shall not presume to trouble your Lordships, after so much Time has been already spent; but shall beg leave to ob-

serve upon the whole, that there is not the least Evidence to support that Part of the Article, whereby the Earl is charged with permitting and encouraging the Trafficking with the Suitors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence which Mr. *Lightboun* has given upon this Article. He has inform'd your Lordships, that when a Proposal was made, in order to the making good the Deficiency in *Dormer's* Office (which the Earl had confessedly so much at Heart) that each master should out of the Suitors Effects in his Hands, place out a Sum of money, the Interest whereof should be applied for that Purpose; the Earl would not give the least Countenance to that Practice, by coming into the Proposal; but in plain Terms declared he neither could nor would give any Encouragement or Direction for the Disposal of the Suitors Effects, for any other Purpose than their own Benefit.

My Lords, The Gentlemen of the House of Commons are so sensible of the Defect of their Evidence as to this Point, that they seem not to rely upon it, but are forced to fly to Implication for Assistance; and your Lordships are told that this Part of the Charge is a Consequence of the Earl's not having taken Care that the Suitors Effects were so placed out, as to put it out of the Power of the masters to make such an use of them; and that this Neglect amounts to a Permission and Encouragement to the masters, to dispose of and traffick with them as they have done.

My Lords, If this Part of the Article is to be considered as a distinct separate Charge, it is so obvious, of how dangerous a Consequence it would be to admit such argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordships with laying any thing more to it; if it is to be looked upon as a Consequence only of some other Part of the Charge, as a mischief arising from the neglect of putting those Effects of the Suitors out of the Power of the masters to make such use of them, I am something at a Loss to know why it is made a distinct self-subsisting Charge; it may perhaps by that means swell the Bulk of the Article, but we humbly submit it to your Lordships Consideration, whether it at all increases the Weight of it.

My Lords, The Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omission only of doing what it is conceived he ought to have done, for the Prevention of this misbehaviour of the masters; that perhaps was thought too slight a Ground for an Article of an Impeachment, especially when the Neglect here complained of does not consist in the not redressing any particular Grievance, pointed out by the Complaint of any of the Suitors of the Court, but in the not making general Orders for the Reformation of the matters. Perhaps, my Lords, it might be thought, that such a Charge would have been sufficiently answered, by alledging, as the Truth is, that the masters have only been continued by the Earl in the same Degree of Trust and Power in which he found them, and with which they were invested long before he presided in that Court: It may be too, my Lords, it might be consider'd, how wide and dangerous a Field for Impeachments and other Prosecutions would have been opened, by making

it criminal in every one who had the Superintendency of an Office, barely to neglect, or omit, the introducing such new general Orders and Regulations, as seem'd to carry a Probability of preventing the Abuses of the under ministers of such Office; and therefore it is, my Lords, as it may be presumed, that the Earl's Behaviour in this Respect is alledged to be fraudulent, and unjust, and with an Intention of making unlawful Gain to himself, by the Disposal of those Offices, and with a corrupt View and Intention to keep up the Price of them: So that it is not Remissions, or Negligence that the Earl stands here accused of, but Fraud and Corruption, and if this is not made out, we must humbly submit it to your Lordships Judgment, whether or no this Article does not fall to the Ground?

But what Proof, what Evidence has been offer'd for that purpose? None, my Lords, that I remember; but your Lordships are left to collect it, by way of Argument, from the Earl's not having made use of proper Expedients to prevent this ill Practice; the masters, by that means, were more at Liberty to make a Profit out of their Offices, which for that Reason sold at higher Prices, and therefore the Earl must be guilty of this Neglect with that View; a severe (tho' not a strict) Consequence indeed! Is the Prospect of Gain, from hence, so certain, as to tempt so strongly? And are there no other Reasons apparent why the Earl should defer his Regulations in this matter? I need not put your Lordships in mind of the great Uncertainty of a Continuance in that high (but slippery) Station: And as the Profit suppos'd to be in View, depends upon the Death or Alienation of the masters, which sometimes do not happen in a long Interval of Time, when this Uncertainty is added to the other, I appeal to your Lordships, whether it can be easily imagined, that any, even the most greedy Person, allowing him only to be in his Senses, could be prevail'd upon to hazard his Reputation and Quiet, upon such distant, such uncertain Hopes; especially, my Lords, if the Necessity of so harsh a Conclusion be excluded, by its appearing that there were other matters, which might probably enough be the Reason, or Occasion of the Earl's not immediately entering upon these Regulations.

It appears, by what Mr. *Lightbourn* has said, that the Earl was very willing and desirous of having these matters regulated; and that when he first inform'd the Earl that he had something to offer to his Consideration in relation thereto, the Earl seem'd very glad, and mightily pleas'd with the Proposals, and gave him all due Encouragement.

It appears, my Lords, that after some time taken by Mr. *Lightbourn*, to discourse the masters upon this Head, he wrote a letter to the Earl, containing several Proposals for the regulating the Affairs of the masters; and your Lordships will observe the times and manner of the Earl's sending for and pressing the masters to bring in their Accounts, which, notwithstanding the different turn that has been endeavour'd to be given to it, we humbly insist upon it, appears to have been done, in order the better to enable the Earl to judge of and regulate these matters.

As there were Proposals for regulating the Conduct of the masters, in respect of the Suitors, so several Grievances, which the masters were suppos'd to labour under, and in which the Suitors

too were suppos'd to be concern'd, were represent'd to the Earl; and, amongst others, that of money being order'd to be paid into the Hands of the Usher of the Court, instead of the masters; which was represent'd as a thing of ill Consequence, and dangerous to the Suitors of the Court, as well as injurious to the masters. It appears likewise, that it was thought proper, if not necessary, to take all these matters into Consideration together, that the intended Regulation might be entire, and not by piece-meal; and Mr. *Lightbourn* himself was of that Opinion, as well as Mr. *Holford*. And tho' it is alledged, that the Earl was credibly inform'd that the sufficiency of some of the masters was much suspected, and consequently, that a more immediate regard should have been had to what concern'd the Effects in their Hands; yet when your Lordships consider how that stands upon Mr. *Lightbourn's* Evidence; that it was only a general Intimation, without naming any particular Person, and that Mr. *Lightbourn* declared he had no certain Ground for such Suspicion; it will not, we hope, be thought a Fault not to single out that Part of the intended Regulation; especially when the same Witness informs your Lordships that it was as impracticable for the masters to have given an adequate, that is, a proper Security, as for the great Officers of the *Exchequer*, or the Treasurers of the *South-Sea*, or other great Companies to do so. And your Lordships will be pleas'd to think it well deserves Consideration, whether it was in the Earl's Power to compel the masters to give even such Security as they could; and if it should be said, that if they would not have complied, he might have order'd the money out of their Hands; it will require time to consider where, in such Case, he must have plac'd those Effects. It would have been as extraordinary to have required Security from the masters which came in afterwards, and so to have put them upon a Foot different from the others, when it was under Consideration how to settle the whole. But, my Lords, the Event has shewn that there was not so much occasion for so speedy a Precaution in this matter, for the Purpose for which it was then principally intended, which was the preventing the masters from embezzling the Securities of the Suitors in their Hands, since there is no occasion of Complaint in that respect, they having been all deliver'd up, and the Deficiencies which have happen'd have been in the Cash in their Hands, of which there was then so little apprehension or likelihood, that the preventing it was one of the things the least under Consideration. So short sighted and uncertain is human Prudence! So different the Judgments made of things in Prospect only, from what they are in Experience! I make no Question but your Lordships will have a due regard thereto, and make all equitable Allowances on that Account.

Your Lordships have been further inform'd, that, in order to settle these matters, several meetings were had, and, amongst the rest, one very solemn one, at which were present both the Earl and the master of the Rolls. I need not trouble your Lordships with a Repetition of what pass'd there, it is sufficient to observe, that nothing being settled, the Earl, whose mind was intent upon this Affair, propos'd some Expedients to facilitate matters; particularly, that if the masters would quit their Pretensions to a co-ordinate

nate Power of Judicature with the master of the Rolls, that matters might be made easy, in respect of the ordering the Payments of the money: But this would not be complied with. And when it was found, by Experience, impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole matter into his Consideration; and since he could not have the Concurrence of others, he himself would regulate these matters as soon as he could. Upon the whole of the Evidence offer'd upon this Article, more especially from what Mr. *Lightboun* and Mr. *Holford* have said, it plainly appears, that for a considerable time past, even from the latter end of the Year 1721, there has been an Intention of regulating the Offices of the masters of the Court of Chancery; that such Intention has been pursued, and several Steps taken, and Endeavours used, to bring it to effect; and your Lordships, I hope, perceive the many Difficulties that have interposed, and will not be at a Loss to find Reasons for the Earl's not having actually made these Regulations, very different from the distant view of an unjust Gain.

My Lords, the Business of Reformation, however desirable it may be, is in all Instances, attended with Difficulties, and in the present Case, those Difficulties have been increased by the different and jarring Interest of the Parties concerned; which, at least, prevented their Concurrence in such Reformation, and in a great measure deprived the Earl of the Benefit of the Advice of those, who were the most able to inform him what was fit to be done.

Your Lordships are sensible how great a Portion of the Earl's time must necessarily be taken up in the dispatch of the ordinary Business of that Court, and in his Attendance upon the publick Functions of his Office; and if, under these Circumstances, he has not been able to bring his good Intentions to effect, and compleat them, before it was put out of his Power so to do, your Lordships, we hope, will think it more his misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omission in that respect, which can be adjudged to be Criminal. We shall not trouble your Lordships with any Evidence upon this Article, but submit it upon what has been already offer'd.

Mr. *Robins*. May it please your Lordships, The last Article which the managers for the honourable House of Commons have been pleased to close this solemn Prosecution withal, is the Nineteenth; wherein they have endeavour'd to represent the Earl, as designing to abuse and impose upon his most sacred majesty, for the sake of screening and protecting the masters from a Parliamentary Enquiry, and to keep up the Price and Credit of their Offices.

But, my Lords, we humbly hope no Evidence appears to have been given that does in the least support or prove any such Designs in the Earl.

'Tis true, indeed, that when his majesty was graciously pleased to order the masters Accounts to be laid before a Committee of the Lords of the Council, in order to inspect the same, that the Earl, in Obedience to his majesty's Commands, thought he could not be too zealous in giving Orders for their preparing and getting the same ready, and therefore order'd them immediately to set about it.

And when some of them objected, that 'twas impossible to have them ready by the time ex-

pected, the 10th of *November* last, especially Mr. *Holford's*, which was to be an Account of twelve Years, that the Earl however order'd them to be got ready in the best manner they could, and told them, if it should appear they wanted more time to make them perfect, that on Application it would, without doubt, be granted.

After which your Lordships have heard, that at a meeting of most of the masters at Mr. *Edwards's*, when Mr. *Cottingham* came in, he proposed to them, some say, three things, others two; but all of them agree in Substance, that 'twas to have their Accounts and Securities inspected, and to produce the Ballance of Cash in their Hands, if it should be required.

And as to the inspecting of their Accounts and Securities, your Lordships have been pleased to observe, that not one of them appear'd to make any Difficulty or Objection to it, but, on the contrary, readily consented and agreed to it.

But as to the producing their Ballance of Cash, they were something startled at that, as not knowing what was intended by it; and therefore asked Mr. *Cottingham* if they were only to produce or shew it, or if 'twas going to be taken away from them.

And though Mr. *Cottingham's* Answer was, that they were only to produce it, as he understood, yet several of them appear'd to be very jealous that 'twas going to be taken out of their Hands; and Mr. *Edwards*, one of the masters, expressly said so, and therefore advised them to get it ready as soon as they could.

But your Lordships have been pleased to observe, that whatever they understood by it, yet not one of them said, or so much as insinuated, to Mr. *Cottingham* that they were not able to answer or make good their Ballance of Cash, only that some of them had it not all ready immediately; and Mr. *John Bennett* said it could not be expected they should keep it all by them, for fear of having their Threats cut, and that therefore they must have some reasonable Time given them to raise it in; and Mr. *Conway* expressly swears that he apprehended they all said they were able and sufficient to produce their Cash and Effects.

And, my Lords, it seems very natural and reasonable to believe that they did say so, or at least that Mr. *Cottingham* understood it so, because when some of them ask'd whether they were to produce it in *Specie*, or whether Bank Notes or Goldsmith's Notes would not do as well, he made Answer, it certainly would do as well, and therefore advised those that had not such Notes ready by them to provide them, and to stand by and assist one another.

Now, my Lords, with great Submission, all this seems to be a very natural, plain and artless Representation of this meeting: And when Mr. *Cottingham* had thus acquainted the masters what was expected from them, and had Assurances from them all, that they were ready and willing to comply with what had been proposed,

Can there be any room to doubt but that the Noble Earl was very well pleased with this Account from Mr. *Cottingham*? And therefore when they met after, at the Earl's House on the 10th of *November*, no wonder he did not particularly ask them the Question, whether they were able and sufficient to pay or make good the Ballance of their Cash, for this Mr. *Cottingham* had before assured  
him

him they were, and therefore no need for the Earl to ask the Question over again.

And Mr. *Lovibond*, one of the masters, swears expressly, not only that he himself was ready and willing to pay and produce his own Ballance, but that, from what passed at the Earl's House, he believed or thought all the rest of the masters were so too.

Now, my Lords, if this be so, if the Noble Earl was fully satisfied that all the masters were able to make good their Accompts, and he was just then going to lay a State of them before the Lords of the Council; is it at all to be wonder'd at, that his Lordship should give them his Advice or Opinion what Form of Words or Subscription he thought would be most proper to express their meaning by?

And as he approved of the Form made use of by Mr. *Holford* on that Occasion, was it or could it possibly be any Crime in the Earl to advise the rest to subscribe or under-write the same Form to their Accompts likewise?

And your Lordships have been pleas'd to observe, from the Evidence of all the masters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very same Subscription to their Accompts.

'Tis true indeed, my Lords, some of them, when they were got by themselves, were conscious they could not come up fully to it, and therefore varied the Form, as best suited their own Circumstances.

But your Lordships have been pleas'd likewise to observe, that the Noble Earl was so far from being in any Plot with the masters, to deceive his majesty or the Lords of the Council, that he took their Accompts, with the Subscriptions they had under-wrote, without so much as ever looking to see if they were conformable to Mr. *Holford's* Subscription, and apprehended they really had been all the same, till upon reading them before the Lords of the Council, the variance between them appear'd.

But your Lordships have not heard of one Word of Reproof given them by the Earl afterwards, for not observing his Directions in making the Subscription he desired.

If the Earl had had any Designs of imposing on his majesty or the Council, by getting the masters to under-write such a particular Form of Subscription to their Accompts, would he not have been more careful before he carried in those Accompts to the Council Board, to have seen that they had exactly pursued his Orders, for fear of a Discovery?

Nay, my Lords, can it possibly be imagin'd but that when he came afterwards to find they had deceived him, and had not under-written the Subscription, they pretended, and went out of the Room seemingly on purpose to comply with;

I say, my Lords, can it possibly be imagin'd, but that if the Earl had had any Views or Designs of his own in it, he would have severely rebuked and reprimanded them afterwards for not observing his Directions.

But your Lordships have not heard one Word of Proof that the Earl complain'd, or ever said any thing afterwards to the masters about it.

Now, my Lords, if this be so, can there possibly be a greater or stronger Concurrence of Circumstances to shew that the Advice or Encourage-

ment which the Earl afterwards gave the masters to assist and supply each other with money and Effects, and represent'd to them that 'twould be for their Honour and Service to appear able and sufficient; I say, my Lords, can any thing in the World be more unnatural, than to imagine, that by this the Earl meant to advise them to make a false shew and appearance?

They had before assur'd him, or given him the strongest Reasons possible to believe, that they could make a true shew and appearance. Why then should he advise them to make a false shew and appearance? What End or Purpose in the World could this serve, either for themselves or his Lordship?

This surely, my Lords, could never be the Earl's meaning; or if it was, whilst he was under a Persuasion that they were all able and sufficient to answer and make good the Ballance of their Accompts; if he meant to advise them to make a false shew and appearance, it must have been by advising them to conceal Part of their Cash and Effects, for fear the World should really take their Words, and be of Opinion that they were as able and sufficient to make good their Accompts, as they had under their Hands acknowledged themselves to be.

But, my Lords, as the Construction the other way is not only most natural, but also consistent and agreeable with all that had before pass'd on that Occasion, surely, my Lords, it must be a strange wresting and perverting of Words to understand them otherwise.

The Sum of this whole Article, my Lords, is this: The masters were on a sudden call'd upon to bring in their Accompts of Cash and Effects, and they did so, and declared, at the same time, that they were able and willing to make good the same on a reasonable time given them for raising the money; but being afterwards called upon for their money sooner than they expected, and applying to the Earl for his Advice and Directions what to do in it, he advises them to assist and supply one another with money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and sufficient, and that he would not have them let the World see, at a time when there had been so much Clamour and Noise about them, that they were not always ready, even at a Minute's Warning, to make good their Accompts.

This, my Lords, is the whole of this grievous Complaint against the Earl; and as it seems to be nothing but a Piece of good Advice in the Earl given to the masters for their own sakes, in great Sincerity and Friendship, as the Earl expresses himself in his Answer, without any possibility of Advantage to the Earl himself, we humbly hope your Lordships will not think it worthy of a Place in this Impeachment.

Mr. *Com. Serj.* My Lords, we shall not give your Lordships much trouble on this Article, we shall only call Mr. *Holford*.

Mr. *Holford* not then appearing, Mr. *Cottingham* was called in again.

Mr. *Serj. Probyn.* My Lords, we desire that Mr. *Cottingham* may inform your Lordships of the time the masters had the letter which he refers to, and which he deliver'd, whereby the Accompts are directed to be brought in. We did desire



desire Mr. *Holford* to bring it up with him: If Mr. *Holford* hath not the letter, and it is not among the masters, we must examine Mr. *Cottingham* about it.

Lord *Ch. Just. King.* Mr. *Holford* is come.

Mr. *Serj. Probyn.* This is the Copy of a letter, the Original of which Mr. *Holford* hath; if he hath it not here, I hope your Lordships will give leave to read the Copy.

My Lords, I desire that Mr. *Holford* may give your Lordships an account of this letter.

Mr. *Holford.* My Lords, I have it not; Mr. *Kynaston* did inform me just now that he believed it might be in his Custody, but he hath it not here.

Mr. *Serj. Probyn.* Your Lordships will give us leave to examine Mr. *Cottingham*.

Mr. *Cottingham.* My Lords, there was an Order made, dated the 3d of *November* last, of which my Clerk made a Copy. I can't say I examined it myself: The Order is,

Let the several masters of the high Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein distinguishing, in several Columns,

The Names of the Parties to the Cause.

The Dates of the Orders for bringing in ———— } Money  
or  
Securities

The Time of bringing in each Sum.

Particularly expressing the Sums transferred and paid to them at their coming into their Office in the first Place.

How the same hath been disposed.

What Sums paid out, and to whom, ———— } } When  
and  
What invested in Securities, } } By what Order.  
Specifying the Securities, by Dates, Numbers, &c.

Where the Securities are at present.

What money remains in their Hands.

Where the same now is.

Nov. 3, 1724.

MACCLESFIELD, C.

Mr. *Com. Serj.* My Lords, we beg leave to observe, that this Order is very much the same with the Directions given by the Noble Lord before to bring in their Accompts; but, upon the Nature of the thing, there seems to be a very good Reason why they did not comply punctually with it.

Mr. *Plummer.* Upon this Observation, my Lords, I beg leave to ask this Witness, Whether the masters have not given in some Account, notwithstanding the Difficulty of the method?

Mr. *Cottingham.* Yes, my Lords, they have.

Earl of *Macclesfield.* Mr. *Holford* will inform your Lordships of this.

Mr. *Holford.* I believe this is a Copy of the Order given by my Lord *Macclesfield* for bringing in our Accompts in *November* last.

Mr. *Serj. Probyn.* I desire he may be asked whether the masters were able to make up the Accompts pursuant to the Directions given in that Order.

Mr. *Holford.* I believe it was the next Day after this was sent, that Mr. *Cottingham* did inform me of it; I had not seen it, I was then at *Westminster*, sitting in Court with my Lord *Macclesfield*; after the Court was up I went into the little Room be-

hind the Court with my Lord, and I did say, I thought it would be very tedious to do exactly as this Order directed, because it would require a transcribing of every Particular that each master in the Court had ever paid and received for several Years, even where Causes were ended many Years ago, and that I thought it an impracticable Thing. My Lord told me that must be no Objection to the bringing in of the Accompts; if we could not do as well as he wish'd, we should do it as well as we could; and desir'd them to be ready, that they might be brought in by the Time prefixed.

Mr. *Com. Serj.* I desire he may be asked whether there were any Arguments used by my Lord to recommend Dispatch in this matter?

Mr. *Holford.* My Lord recommended it to me to be sure to have the Accompt ready by the Time; I think he said it was to be delivered in to the Council by such a Day.

Mr. *Com. Serj.* I desire he may inform your Lordships if nothing was said about making an Excuse a Pretence for delaying the Accompts.

Mr. *Holford.* My Lord did desire that they might be prepared according to those Directions, but said This must be no Excuse for not bringing in the Accompts as well as you can by the Time.

Mr. *Plummer.* When this Accompt was asked for, how long was it before it came in?

Mr. *Holford.* Three or four Days or a Week.

Mr. *Plummer.* And you gave them in compleat and right, fully and amply.

Mr. *Holford.* Yes, there were some little mistakes which were rectified afterwards, very small ones.

Mr. *Com. Serj.* By Reason of this Question that hath been asked, give me leave to trouble your Lordships with asking another, Whether in the Accompt deliver'd in there was any thing more than the Ballance of the Accompt?

Mr. *Holford.* Yes, the Accompt I deliver'd in was an Accompt of every particular Cause, and of the money and Securities in every Cause, and I did add the Solicitors Names in every Cause, as far as I knew; I believe all the others were not so.

Mr. *Com. Serj.* How were the others?

Mr. *Holford.* I believe the others were the same, only not the Solicitors Names.

Mr. *Com. Serj.* I don't mean that, but whether there was not the Ballance of each particular Accompt deliver'd in?

Mr. *Holford.* There was the Ballance of the particular Causes, and the whole summed up together.

Mr. *Serj. Probyn.* I desire he may be asked, whether it was practicable to give in their Accompts in the method directed within the Time prescribed them?

Mr. *Holford.* It was not.

Mr. *Serj. Probyn.* I desire he would inform your Lordships, whether they have not been call'd upon frequently to hasten their Accompts?

Mr. *Com. Serj.* I desire he may be asked whether they have been since called upon by the honourable Committee of the Council, to bring in their Accompts according to the said method?

Earl of *Macclesfield.* I desire he may be asked, whether after this Accompt brought in, and the Ballance made upon every Cause, they have been since called upon to make up the Accompt according to the first Instructions or not?

Mr.

Mr. *Holford*. We have not been required to pursue the former Instructions.

Mr. *Com. Serj.* If the Gentlemen of the House of Commons have done as to this Article, we have done. My Lords, We shall now beg leave to call some Witnesses to the establishing the Reputation of Mr. *Cottingham*; when one side have endeavoured to lessen his Credit, it will be necessary for the other Side to call Witnesses to confirm his Credit. As to the Testimony he hath given, it is very material, as it stands in Opposition to the Evidence of others; tho' it be not directly contradicted, yet it is very different from some Accounts, which your Lordships have received from some of the masters, particularly from Mr. *Thomas Bennet*: And as for the managers of the House of Commons, notwithstanding he was call'd a Witness by themselves, tho' they have not said in direct Terms that he is a Person not to be credited, yet calling him a *black Minister of Iniquity*, and using a great Number of such like other Expressions seem to carry some Insinuation, as if Mr. *Cottingham* was not a man of that Integrity as I believe all that know him will bear Testimony to. We beg leave therefore to call a few of that Number as Witnesses to his Character and Reputation, who have known him for several Years, and have had a full Opportunity of knowing his Character and Behaviour in the several Stations he has been in.

Mr. *Goldsbrough* called.

Mr. *Serj. Probyn*. My Lords, I desire he may be asked how long he hath been acquainted with Mr. *Cottingham*?

Mr. *Goldsbrough*. I have been acquainted with Mr. *Cottingham* upwards of twenty Years.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, during his Acquaintance with him, what hath been his Character?

Mr. *Goldsbrough*. All the Time he was a Solicitor, I observed him to have a good Character; he behaved himself with all Integrity and Fidelity as ever I knew any body of his Profession.

Mr. *Serj. Probyn*. You speak as to his general Character.

Mr. *Goldsbrough*. I never heard he had any Blemish on his Reputation, he always maintain'd a very fair Character.

Mr. *Serj. Probyn*. During the Time he was Secretary to the Lord Chancellor, how did he behave himself?

Mr. *Goldsbrough*. He bore a very fair Character in the Place, as fair as ever any body did that went before him.

Mr. *Price* sworn.

Mr. *Com. Serj.* We desire he may give your Lordships an Account what he knows of the Character of Mr. *Cottingham*, and how long he hath known him?

Mr. *Price*. My Lords, I have known him upwards of twenty Years, I never knew any body say any thing amiss of him, I always took him to be a very fair and honest man: I know no man in his Place behav'd himself better than he hath done.

Mr. *Com. Serj.* We desire to ask not only to what Mr. *Price's* Opinion is, but to what is the Opinion of others, as to his general Character?

Mr. *Price*. I believe, if you ask his Character

of an hundred People; ninety of them will give him rather a greater Character.

Mr. *Com. Serj.* And as to the remaining ten, what Character doth he believe the remaining ten will give him?

Mr. *Price*. I believe that the remaining ten cannot justly charge him with any thing that is ill.

Mr. *Hickman* call'd and sworn.

Mr. *Serj. Probyn*. I desire Mr. *Hickman* may likewise give your Lordships an Account how long he hath known Mr. *Cottingham*?

Mr. *John Hickman*. I have known Mr. *Cottingham* thirty Years, I believe; he had always a very good Character, he was Clerk to me for two Years, he was a diligent faithful Clerk, and hath had a very good Character ever since; and I never heard any thing to the contrary.

Mr. *Blitman* sworn.

Mr. *Serj. Probyn*. My Lords, We have a great number to this Purpose; I desire you would inform my Lords how long you have known Mr. *Cottingham*, and what his Character is?

Mr. *Blitman*. My Lords, I have known, and been intimately acquainted with Mr. *Cottingham*; for above twenty Years; while he was a Practiser in the Court of *Chancery*, we were now and then concern'd one against another in Business, and I observ'd him to act with great Diligence for his Clients, and in a fair way of Practice in respect to his Adversaries; he had the Character of the Practisers of the Court of *Chancery* in general, for being a very honest and fair man; after he was promoted to be Secretary to my Lord *Macclesfield*; every Practiser of the Court that had any Business must have frequent Recourse to him, and he was observ'd to discharge that Office with great Justice and Dispatch to the Suitors, with great Civility to the Practisers, and with a strict Regard to the Honour of his master and the Court; he was content with his just Fees, without ever demanding or expecting more on Pretence of Expedition, or upon any other Account. In general, I took him for a very honest man, and he was always so reputed during the Time that I knew him.

Mr. *Serj. Probyn*. My Lords, we might apply to some of the learned Managers themselves, were it proper upon this Occasion, but we hope his Character is so clearly established, by what Evidence has been already offer'd, that there is no Necessity for troubling your Lordships with any more on this Head: But we shall trouble your Lordships with one Piece of Evidence more, of a different kind, which the noble Lord is with a great deal of Difficulty oblig'd to submit to, and that relates to the private Conduct of himself, of which many enjoy the Benefits, and all were enjoyn'd and oblig'd to keep secret; but now it is become necessary to make known, since he hath been represented in Publick as a Person full of Corruption, that hath studied nothing in the whole Conduct of his life but the amassing great Riches to himself, in Oppression of his Majesty's Subjects; it is now become necessary, for the Vindication of his Lordship's Innocence, to shew that his Actions (which best speak the Intention) have been of a different Nature; that as his Lordship hath received great Bounties from his Majesty, so he hath been as liberal in sharing them with those

who have wanted his Relief. Multitudes of Instances might be given of this kind, but we shall only lay some few before your Lordships, and then beg leave to submit to your Consideration, whether it be possible to suppose, that a noble Lord, whose Heart was so charitably inclin'd to relieve the afflicted who apply'd to him, and to seek Opportunities of doing good to Strangers who were no ways known to him, could be guilty of Actions such as his have been represented by the Managers of the House of Commons. How can these things be reconciled, that a man, truly religious, truly virtuous and charitable, should be guilty of Oppression, Injustice, Avarice, and Corruption? We beg leave to lay some few Instances of this Nature before your Lordships, and then submit their Weight to your Lordships great Judgment.

Mr. Com. Serj. I beg leave to observe, that in a great many Articles, the Intention being what the managers have much relied upon, we humbly apprehend we have clear'd the noble Lord from those Intentions he is charg'd with, by what we have already offer'd to your Lordships; but if any Doubt should still remain, when it shall appear that he was a constant Benefactor to the Oppressed and Afflicted, that a constant Spirit of Benevolence hath reigned in the Breast of this noble Lord towards mankind, you will think it impossible for a man to be so contradictory to himself, that at the same time as he was doing all the Good he could in Private, he should be guilty of Avarice, Corruption and Oppression in the most publick manner. These Qualities are so inconsistent, that they could not reign in the same Breast at one and the same time, for that Reason we shall beg leave to mention a few of the great many Instances we might produce on this Head; and first we desire that Mr. Oaker may be called.

Mr. Oaker sworn.

Mr. Serj. Probyn. My Lords, I desire that Mr. Oaker may give your Lordships an Account how long he hath been employ'd under the noble Earl within the Bar?

Mr. Oaker. I serv'd his Lordship all the Time that his Lordship had the Great Seal.

Mr. Serj. Probyn. I desire he may give a general Account during all the time that he serv'd his Lordship, how far he hath been privy to any charitable Actions he hath done?

Mr. Oaker. My Lords, I have the Names of some few in my Hand, I can only tell the Names and Sums of such as accidentally came in my way, for his Lordship always did those Actions privately, and with his own Hands, if it could conveniently be. When I first came to serve his Lordship, having heard his Lordship's Character of being very bountiful to almost every body that came in his way, I therefore endeavoured to inform myself more particularly from such Persons as I apprehended apply'd to him for any Assistance of that Nature. The first that I remember was one Mr. Brown, who had been Author of several Practical Books in the Law; his Lordship was pleas'd for some Years before I acted under him, to pay for him 24s. a month for his Board and Subsistence, besides Cloaths and Pocket-money; the Person that used to pay it being absent in my time, I paid it for near seven Years, till *Christmas* last, when he died.

Mr. Serj. Probyn. At the time he died, how old was he?

Mr. Oaker. He said he was on *Bartholomew* Day last aged 102. As I have been inform'd, my Lord sent a Surgeon and an Apothecary to attend him, and paid them, and the Expence of his Funeral; and the whole that came within my Knowledge was about 120*l.* Afterwards there were two Clergymen recommended to his Lordship for a living that was in his Disposal; my Lord could not soon determine which to give it to; one of them was a poor Curate in *Surrey* at *Thames Ditton*: This poor man complain'd, that he could not attend longer in Town, nor had money to carry him home; my Lord gave him a Guinea, and told him he might go home, he need not stay, but should be sent to when he had determin'd what to do for him. A little while after, he came to Town again, and said that it being reported, that his Lordship would give him a living, he was turn'd out of his Curacy, and being an Inmate, was order'd by the Officers of the Parish to quit the Parish, but that he had not money to remove his Family; and my Lord being told of that, sent for him, and gave him a Sum of money in a Paper; I asked the Clergyman what it was he gave him, and he said *twenty Guineas*. He had soon after a living given him by my Lord, in *Kent*, and then as he was removing his Family to his living, they were, here in Town by the way, taken ill of the measles; upon which the poor Gentleman wanting money to proceed on his Journey, came again to my Lord, and his Lordship gave him twenty Guineas more, as he told me; and I believe his Lordship hath given him several times since, but I don't know the Particulars, neither had I known any of those I have mention'd, had not the poor Clergyman himself told me of them.

Mr. Com. Serj. What is his Name, and where is his living?

Mr. Oaker. His Name was *Vigers*, and his living is near *Sittingbourne* in *Kent*. There was one man, a converted *Jew*, I believe he is here himself; he hath had of my Lord seventy or eighty Pounds. There is one *Thwaites*, a Quaker, who hath attended the Houses of Parliament long, and is very well known, hath had a pretty large Sum of money, besides other Assistance Sixty Pounds I paid him at once by my Lord's Order. There is one Mr. *Wickam*, a Gentleman in the Navy, a half-pay Officer; he had out-run that, and was in the *Marshalsea* Prison, and could not make up his matters; a Friend of his was personally acquainted with me, and said my Lord had some Knowledge of this Officer, and desir'd me to acquaint him with his Case, which I did, and his Lordship said he had no Acquaintance with him, but had known his Father, and for his sake would clear him; and it being said he was in for about thirty Pounds, his Lordship said if it came to forty Guineas he would pay it, so that it set him out of Distress, and cleared him of all Debts; the Gentleman did make up his Affairs, and my Lord paid the money, and besides gave him a whole Suit of Cloaths, double Shoes and Stockings, and Wigs, and new Sword and Belt, fit to appear in the World again, which came to something above forty Pounds in the whole. Another poor Clergyman my Lord gave a living to, and he was very lame, and came to Town to go into the cold Bath; he happened to be arrest-

ed for an old Demand of 36*l*. His Wife came to my Lord, who gave her money for present Subsistence, and order'd me to take care that the whole Affair should be made up, and the whole Debt was clear'd and discharg'd, and all the Costs and Charges paid out of his Lordship's Pocket. There are abundance of other small Sums I might mention of the same kind, but it would be endless to trouble your Lordships with them. Then there is another matter which I mention to your Lordships, not so much for the Value as for the manner of doing it; a poor Gentleman residing at the *Bath*, had a Place given him, as he said, in *Ireland*, but had not money to carry him over, and therefore only beg'd 40*s*. to carry him over to *Ireland*; my Lord order'd me to remit him five Guineas, which he received, but afterwards he wrote word that he and his Family were ill at the Time, and therefore had expended the money, and wanted the same Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordships Bar one Mr. *Saunders*, a Clergyman, who hath fundry times received of his Lordship's Favours whilst a Youth, and upon the Foundation in the *Charter-House*; and when he went from thence to the University, his Lordship gave him forty Guineas; and afterwards, when he was near going into Orders, remitted him sixty Pounds to clear all matters in the University, which I sent to Dr. *Bentley* by his Lordships Order. I don't mention several other Particulars, but they are very numerous, both what passed through my Hands, as well as others of his Lordships Servants, hardly a Week passed without some Instance of this kind.

Mr. *Com. Serj.* As you was under the Great Seal, you can inform my Lords, when Clergymen were admitted to their livings, whether his Lordship has not frequently order'd their Fees to be remitted them?

Mr. *Oaker.* My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordship paid the Fees of the Patent Officers and Stamps out of his own Pocket; and hath given the Clergymen money besides to pay their Journeys to their livings, and otherwise to sustain them, and to buy Books.

Mr. *Com. Serj.* Do you remember Mr. *Higgs*?

Mr. *Oaker.* Mr. *Higgs* was greatly indebted, and in Prison; his Lordship discharg'd him, and paid such Debts as were insisted upon, to the Value of about ninety Pounds: He is there to give your Lordships a particular Account.

Dr. *Sayer.* As a great deal depends upon the manner of doing these things, I would ask him as to the manner in which they were done, whether in an ostentatious manner, or how;

Mr. *Oaker.* My Lord did these generous Actions merely as they fell in his way, and without mentioning them, or letting them be seen or known, as far as I could ever perceive; so that where I did not apply to his Lordship myself for such People as came to me, I never knew it but by Accident; and in Cases where I was privy, my Lord generally gave me more than was asked, his method being, as far as might be, to set Persons entirely free, and to do them a full Service.

Mr. *Hunt*, a Clergyman, sworn.

Mr. *Serj. Probyn.* My Lords, we desire that Mr. *Hunt* would recollect and give your Lordships

an Account of what charitable Acts he hath known done by the Earl of *Macclesfield*?

Mr. *Hunt.* I have known my Lord to be a very generous and noble Patron: I can speak from several Instances, relating not only to myself, but to several other Gentlemen of the University of *Oxford*. The first Time I had the Honour of being known to his Lordship, was about *Whitsuntide* 1722, upon the Recommendation of one Mr. *Thornbury*, Vicar of *Thame* in *Oxfordshire*. The Noble Lord asked Mr. *Thornbury* what Persons he knew in the University that were inclinable to be studious: Mr. *Thornbury* was so kind as to mention me as one: Upon which his Lordship sent for me to dine with him the Day after; I carried him some of the private Exercises that I had done in the University, which his Lordship read over, and was so kind as to approve. His Lordship kept me with him several Days, and desired to have more Conversation with me, and he dismiss'd me with a generous Present of twenty Guineas, telling me he should be glad to see me when he came to *Shirburn*, and that he design'd to make me a Present now and then till he could do something else for me. About *Christmas* after was the next Time I waited on my Lord: I carried him again some of my University Exercises, which his Lordship perused, and was so favourable as not to dislike them. His Lordship dismiss'd me at that Time, with another generous Present of twenty Guineas, and further Assurances of future Favours. About this time I had received a letter from Mr. *Gagnier*, Deputy Professor of *Arabick* in the University of *Oxford*; wherein he complained to me, that he had been ill used by some Persons in the University, for having writ a Poem in Praise of her Royal Highness. This I related to his Lordship: His Lordship express'd a great deal of Concern for his misfortune, pity'd his Case, and sent him by me a Present of twenty Guineas. The third Time I had the Honour to wait upon his Lordship was about *Michaelmas* 1723, when I received likewise a Present of twenty Guineas: I should have also mention'd that I received other smaller Presents from his Lordship, five Guineas at one time, and one Guinea at another. The last time I had the Honour of waiting on his Lordship and receiving his Bounty, was about *Easter* 1724, when his Lordship made me the usual generous Present of twenty Guineas, and was so kind as to send by me thirty Guineas more, viz. fifteen to Mr. *Hutchinson*, and fifteen to Mr. *Greenway*; so that within the space of two Years I received of his Lordship's Bounty, for the use of myself and the Gentlemen of my Acquaintance, one hundred and thirty six Guineas, upon no other Account, and for no Consideration whatever, but to encourage us in our Studies, and support us in the University.

Dr. *Sayer.* I would know whether the thirty Guineas were look'd upon as a single Bounty, or was it to be an annual Charity?

Mr. *Hunt.* I believe so; they told me they had received it as such before; we all looked upon our several Benefactions as to be continued.

Mr. *Smithys*, a Clergyman, sworn.

Mr. *Serj. Probyn.* I desire he may give an Account of what he knows of my Lord *Macclesfield's* Charities.

Mr. *Smithys.* My Lords, In the Year 1721 there became vacant the Place of a master of an Hospital

Hospital in the Town of *Colchester*, in the Disposal of my Lord Chancellor, to which mastership, King *James* the First had annex'd the Cure of Souls of a Parish adjoining, and which Parish had no other Provision for a minister.

The former master had taken no notice of the Parish, nor had any Care been taken time out of mind (as I have been informed by the Inhabitants of the Parish) of either burying their dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, sent to me to know if I would accept of the master's Place. I would not mistake, my Lord's Chaplain sent me word, if I would accept of the Place, and let him know my Christian Name, his Lordship would send me the Grant of it. I did so, and then my Lord was pleased to enquire into the Nature of the thing. I informed his Lordship that no Care was taken of the Parish at all, tho' I apprehended the master of the Hospital ought to take Care of it. My Lord then was pleased to give me the Grant of the Hospital, and obliged me to a particular Care of the Parish; and at the same time desired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for divine Service; none had been performed in it (as I had been informed) Time out of mind; and the Parishioners were in such a Condition of Poverty, that they were not capable of making it fit for divine Worship.

My Lord then was pleased to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I informed his Lordship thirty Pounds would do it. My Lord ordered me to set the Workmen at work, and he would pay their Bills. Before the Church was finished, through my Unskilfulness, and the Cunning of Workmen (as I then thought) this thirty Pounds would not do. I acquainted his Lordship with it, and he desired to know how much more would do. The Workmen told me ten Pounds. My Lord ordered the Workmen to proceed, and they should be paid the other ten Pounds; but by the falling of a Wall, and other Accidents, this money was not still enough. I was ashamed to betray my own Ignorance, in suffering myself to be so imposed upon by the Workmen (as I imagined his Lordship would think) I determined to pay the rest of the money myself; but being encouraged by Dr. *Sayer*, I did inform his Lordship of the Condition we were in. I then received an unlimited Commission to let the Workmen finish the Work, and send up their Bills when they had done, which they did, and my Lord immediately paid the money, which amounted to 52*l.* 6*s.* 11  $\frac{1}{2}$  *d.*

Dr. *Sayer*. I desire he may be asked what sort of Parish this is, and what kind of People the Inhabitants of it are?

Mr. *Smithys*. It is a poor Parish, but not numerous; there is not one in the Parish that is called master; nor one, I believe able to contribute a Shilling towards a Work of this kind, without hurting himself or his Family.

Dr. *Sayer*. I desire he may be asked whether the Earl has any relation to it, or any Estate thereabouts?

Mr. *Smithys*. He hath no relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any man belonging to it.

Mr. *Plummer*. If my Lord *Macclesfield* thinks it decent to give this Evidence, we do not think fit to oppose it.

Dr. *Sayer*. The Charities laid out by my Lord *Macclesfield* have been to fit out Clergymen for Parishes, and to provide Churches for Parishes.

Mr. *John Meyer* sworn.

Mr. *Serj. Probyn*. I desire this Witness to inform your Lordships, whether he was not formerly a *Jew*.

Mr. *Meyer*. I was a *Jew* formerly.

Mr. *Serj. Probyn*. I desire he would give your Lordships an Account of his Conversion, and what Circumstances of life he was then in, and how he was relieved?

Mr. *Meyer*. I was, by several misfortunes, and by the hardship of my Relations, reduced to great Extremities, after I was converted from *Judaism*.

Mr. *Serj. Probyn*. After you were converted, what Charities have you received? Have you received any Collection made for you by any Person?

Mr. *Meyer*. I did apply myself to my Lord *Macclesfield* for Charity, by the Recommendation of several worthy Clergymen: Upon which Recommendation, his Lordship was pleased to bestow upon me a Charity of fifty Guineas. I was set up in a way of living in the Parish of *St. Katherine's* near the *Tower*; then the Fire happen'd there, and I was burnt out, after which I had a dangerous Fit of Sickness.

His Lordship got an Account of the same, and sent me a second Relief of twenty Guineas. The same Time that his Lordship gave me fifty Guineas, he sent twenty Guineas to the Reverend Mr. *Shute*, who was Treasurer to the Society for propagating the Gospel in Foreign Parts.

Mr. *Edward Sanders* sworn.

Mr. *Serj. Probyn*. I desire he may give an Account of what he hath received of my Lord *Macclesfield's* Bounty?

Mr. *Sanders*. My Lords, in the Year 1713 the Duke of *Somerset*, through the Intercession of the Earl of *Macclesfield*, put me into the Charter-House, where I was educated eight Years and an half; all which Time his Lordship furnished me with Books; and at my leaving of the School, he gave me forty Guineas for the better prosecuting my Studies at *Cambridge*: In a Year and an half after this, he gave me sixty Pounds. My Lords, this was not all; for when I acquainted his Lordship at my going into Orders, that I owed some money at *Cambridge*, his Lordship was pleased to give me forty Guineas more, towards the discharging of my Debts.

Mr. *Thornbury*, a Clergyman, sworn.

Mr. *Serj. Probyn*. My Lords, I desire he may inform your Lordships what he knows of his Lordships Charity?

Mr. *Thornbury*. My Lords, what I have to inform your Lordships of is this; that in the Year 1721, about the latter End of *July*, some Application having been before made to my Lord Chancellor by my Father, I had the Honour to be sent for by his Lordship to *London*. When I came to Town, as it was my only Business, so I made it my earliest Care to wait upon his Lordship, who was pleased to receive me with the greatest Kindness and

and Condescension, telling me he had some Livings at that time in his Disposal, one of which he intended for me; his Lordship likewise offered, if I had a Mind to see the Livings, he would be at the Expence of my Journey, and that I should have my Choice when I was come back; but I answered, I would refer that to his Lordship's Pleasure. In a few Days after, he ordered his Secretary of the Presentations to prepare a Presentation of me to a Vicarage in *Somersetshire*, called *Ninthead*. When the Presentation was sealed, and I had received Instructions to go and wait upon his Lordship for it, he was graciously pleased not only to give me the Presentation, but also discharged the whole Fees, and likewise made me a Present of 100 Guineas to buy me Books withal.

Mr. *Tho. Withers*, and Mr. *Henshaw* called, who not immediately appearing,

Mr. *Serj. Prbyn*. My Lords, I am told here is a Reverend Prelate, who will willingly stand up in his Place, and give your Lordships an Account of what he knows of some of my Lord *Macclesfield's* Charity.

The Lord Bishop of *Oxford* stands up.

Mr. *Serj. Prbyn*. I desire your Lordship would give an Account of what you know of this Matter?

Bishop of *Oxford*. My Lords, the Question put to me is concerning my Lord *Macclesfield's* Benefactions and Encouragement to Learning in the University of *Oxford*. I am a good Witness of it; for my Lord some time since desired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make a considerable Progress in Law, Physick, Divinity, or any other Branch of Learning. He said he was willing to bestow a considerable annual Stipend on them, for no other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Regard to Party, but merely for the promoting of Learning in the University. I recommended several Persons to him, and enquired into the Characters of some who were recommended by others, and have no Reason to doubt but that every one that was thought deserving had a considerable Allowance. I can't charge my Memory with particular Sums, but believe his Lordship said he was willing in the whole, to expend this way four or five hundred Pounds every Year. This is the Sum of what I know, if your Lordships desire to be informed of any Thing more particularly, I am ready to give an Answer to the best of my Knowledge.

Mr. *Com. Serj*. My Lords, we have now gone through our Evidence, and I shall beg your Lordships Indulgence for the making some short Observations upon what has been offered in Defence of the noble Earl, now at your Lordships Bar; and as this Proceeding has already been drawn out to a very great Length, I am sensible it will become me, to use as much Brevity as may be. I shall, however, before I proceed, beg leave to trespass upon your Lordships Patience so far as to say, that it in the Course of this Proceeding, any thing should have slipped from us who are of Counsel for the Earl, which might not be so exactly suitable to the very great Respect

and Deference, which is due from every one to this august Assembly, I hope your Lordships will, in your great Goodness, impute it only to the Inadvertency, which the Variety of Incidents and Hurry attending Proceedings of this Nature, may reasonably be supposed to occasion, and as such excuse it.

We hope, my Lords, that what has been humbly offered to your Consideration, in Behalf of this noble Earl, has made him appear a Person very different from what he has been represented to be, by the Gentlemen of the House of Commons; and I am apt to persuade myself, that if they had been as well informed beforehand, of what he had to say in his Vindication, as they were of what they had to object to his Conduct, your Lordships would have been spared the great Trouble occasioned by this long Prosecution.

It is, my Lords, the peculiar Happiness of our Constitution, to have in the different Parts of it, all the Requisites necessary and proper for the Preservation of the Peace and Welfare of those who have the good Fortune to live under it. In those, whose Part it is, like Centinels, to watch for and guard the Liberties and Safety of the People; who are the grand Inquisitors, to search into, and expose every Thing that has even the Appearance of being hurtful or dangerous to the Liberties or Properties of those they represent; Vigour, Warmth, Zeal, I had almost said some Degree of Passion, seem proper Qualifications; whilst Calmness, Moderation, and Patience, not altogether without Tenderness and Mercy, are the proper Characteristics of those, who by the Constitution are to determine and judge. And, my Lords, I may venture to say, that, to the Glory of our Nation, all these Qualities have been exercised, and every Part of our Constitution hath exerted itself, upon Occasion of this Proceeding: His Majesty's great Condescension, in readily laying this Matter before his Parliament; the Zeal and Vigour of the House of Commons, in examining into it; the great Abilities and Industry which the learned Gentlemen, who have had the Honour of managing this Prosecution, have shown, (they'll pardon me, I hope, for saying, I could have wished it had been attended with something less Harshness and Severity;) and your Lordships great Goodness and Patience, hitherto so conspicuous, and of the Continuance of which there is not the least Reason to doubt, are so many illustrious Proofs of it.

Give me leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair. His Readiness, when after his Endeavours for that Purpose, he found the thorough Reformation of the Court of Chancery a Work too difficult for him singly to effect, in laying the Affair before his Majesty in Council; the seasonable and proper Orders he afterwards issued out upon that Occasion; and his Zeal in pressing to have them immediately comply'd with; leave him still, we hope, some Share of the Reputation and Merit of what has been, or is likely to be done towards the Reformation of that Court. Nor will your Lordships be at a Loss, to what Cause to ascribe this Behaviour of the Earl, notwithstanding the Representations which have been made of him; when you shall consider the steddy Affection and Zeal for our Constitution, which on all Occasions

have so remarkably appeared in him. Your Lordships, no doubt, remember those Times and Conjunctions, which it was thought required not only good Wishes and Affection, but Vigour likewise and Courage, to support and preserve to us the Continuance of our Constitution. Then it was, and for that end, that this noble Lord so eminently exerted all those great Abilities he was Master of; and that with such Success, as gained him the approbation of his Majesty, who thought his Services so signal, as to justify his Munificence towards him, and his Goodness in raising him to so great Honour. And can it easily be thought, my Lords, that one so qualified, so affectioned, so distinguished, should enter into a wild Design of deceiving both King and Parliament? Or that he should enter into it, and carry it on in so poor and indiscreet a manner, as is suggested in the Charge against him? in a manner so void of Thought and Contrivance, that it relishes more of Madness than any thing else. Suppose he could be thought capable of attempting to conceal Matters that were so notorious to every body, and that by a Means, which from the very Nature of it, must in some short Time have betrayed the Contrivance; yet surely, my Lords, his Fears and Apprehensions would have restrained him from communicating himself in a Matter of so high Concern, without Distinction, to so many Persons as were then supposed to be present; that he should publicly give such Orders as would certainly expose him to the Resentment of his Majesty, and both Houses of Parliament, in Hopes that such a Secret would be kept by so many People as are supposed to be concerned in it; surely, my Lords, is a Charge of so extraordinary a Nature, as will require better Proof than what arises from uncertain Expressions, in Discourse with a Number of People at the same time, and they in so great a Hurry and Confusion, that there was very great room for Misapprehensions, and where it was easy for one to mistake what was said to another, as if spoke to himself: And from hence it proceeded, as I presume, that the Account given of that Transaction, by the Gentlemen concerned in it, is so various and uncertain, that we humbly hope your Lordships will not think it reasonable to be relied on, as a Proof of such a Charge.

My Lords, the Foundation of this whole Complaint against the Earl is his Acceptance of Presents or Gratuities, upon the Disposal of Places; or, as the Gentlemen of the House of Commons are pleased to style it, the selling of Places, principally those of the Masters of the Court of Chancery. We have admitted the Facts, but without admitting those Circumstances which accompany it, as it stands charged in the several Articles for that Purpose; and we hope we have satisfied your Lordships, that it was no ways illegal to act as the Earl hath done upon those Occasions. To support our Reasoning upon that Head, we proposed to shew to your Lordships, what the Sense and Opinion of divers great and learned Men had been, in respect to the Law in that Point, from their own Practice and Behaviour: And we hope that the Evidence which hath been offered for that Purpose, hath plainly made it out, that the Earl hath the constant Usage of his Predecessors in that Office, as well as of other great Persons in other Stations, to

countenance what he hath done upon such Occasions, and that without any Marks of Parliamentary Resentment. If this noble Lord stood in need of an Excuse for having taken Presents, how effectual would this be for that Purpose? For sure, my Lords, if it were allowed that he had erred in this Matter, yet after such great Examples, your Lordships would think it an Error only, and not an Offence which deserved a heavy Censure.

The rest of the Articles have so near a Relation to the charge of taking Money, being only Aggravations of that Matter, under the several Circumstances therein contained, that I humbly apprehend, they do in a great measure depend upon, and will stand or fall together with it. And as the Evidence which has been given in relation to them, and the Observations made thereon, have been so full, and are yet so fresh in your Lordships memories, I will avoid troubling your Lordships with a needless Repetition of any thing upon those Heads.

My Lords, the Source of all the Evils here complained of in the Earl, is supposed to be Avarice: Every thing is ascribed to an immoderate Thirst after Gain, an irregular Desire of amassing Wealth. And great Endeavours have been used to persuade your Lordships, that the Earl was so wholly tainted, so thoroughly possessed with this Vice, that he had nothing in View but to gratify it; and every single Action of his had a Tendency that Way. But sure, my Lords, the Evidence just now laid before your Lordships, shews a Spirit and Temper of Mind far different from that, and totally inconsistent with it. And none, I hope, will object against our having entered into a Proof of that Nature; there are some Occasions, and surely this is one, that will justify the most modest man in publishing his own good Deeds; and upon which even charitable Acts, as first intended, as they ought to be bury'd in Silence, and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and disclosed to publick View.

My Lords, the Instances which we have produced are not of pompous Charities; we should then, no doubt, have been told that Vanity and Ostentation had the greatest Share in them: Had they been a few Instances only which were laid before your Lordships, though far exceeding in Value those which have now appeared; it would perhaps have been said, that those were Starts and Fits of Charity: But your Lordships will observe that these have flowed in a continual Stream, and can be owing to nothing but a constant habitual Benevolence towards Mankind, a regular and continual Inclination to do good. And can such a Temper and Disposition of Mind be consistent with insatiable Avarice, base Corruption, and merciless Cruelty, in spoiling and oppressing Widows, Orphans, and Lunatics, and such too, who were under his Guardianship and Protection?

My Lords, we hope it will be thought impossible for such opposite Sentiments to reign in the same Breast, at the same time; and that at least, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of presuming always in Favour of Innocence, but this Benignity of Temper in the Earl will determine your Lordships to consider

der it in the most favourable Light, and never to intend any thing harsh, which will admit of a milder Construction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to raise your Lordships Compassion and Indignation upon this Occasion. It is no Wonder, my Lords, that Women and Children should be frightened at the first Appearance of the Deficiency in the Suitors Effects, which was represented in so terrible a View; but we hope, my Lords, the Terror is sunk with the Deficiencies, and that in a great Measure these Cries are hushed, and Tears dry'd up, now it already appears (as we hope it evidently does) that no very considerable Loss is likely to happen to the Suitors, and that the Prospect of its being lessened still improves.

Under these Circumstances should your Lordships think (which we humbly hope there is no Ground to suppose) that the Earl has fallen into any mistakes; yet when his Majesty, your Lordships, and the Commons, have extended their Clemency to those masters, who have been the acknowledged, the immediate Instruments and Actors of the Evils complained of, and of whatever may be prejudicial to the Suitors; and the Legislature hath interposed, to preserve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object, on which your Lordships Goodness did not shine. We rather hope your Lordships will consider his misfortunes; and when you look upon the high Eminency from whence he is fallen, and view him at your Lordship's Bar, scourged with the severest Stripes the Tongue can inflict, and what can be more cutting? a Punishment, from which he had some Reason to expect that his Relation to your illustrious Body might have protected him: That these Circumstances will raise those generous Sentiments of Tenderness, which always dwell in noble Breasts: A Tenderness, no ways inconsistent with your Lordships Justice, to which the Earl cheerfully submits himself; and that in Imitation of the unerring Judge of all, whose Vicegerents you are on this Occasion, your Lordships will in Judgment remember Mercy.

Mr. Onslow. I would not interrupt the Gentleman that spoke last before he had ended; but I must now, before this Gentleman goes on, inform your Lordships that an Incident hath happened, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the least suspected as to his Veracity, and the Truth of what he says? but in judicial Proceedings, especially in a criminal Case, as this is, the Managers think Witnesses of all Sorts are to be examined upon Oath; not, as I have said, that they have any Doubt of the Reverend Prelate's Veracity; but for the sake of the Precedent, and to prevent ill Consequences, the Managers think his Lordship must, as all other Persons do, give his Testimony upon Oath: Your Lordships have Precedents in the Case of my Lord *Strafford* and others. The Witnesses, if members of your Lordships House, are to be sworn at the Table, and give their Evidence in their Place.

Mr. Serj. *Pengelly*. My Lords, if it is insisted upon, that what the Reverend Prelate says should be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give

his Evidence upon Oath. And this being so material an Incident, and the Prosecution having proceeded so far, we humbly beg leave to put your Lordships in mind, that it is insisted upon in Point of Testimony, that the Reverend Prelate would be pleased to be sworn.

Lord *Lechmere*. No doubt but the Reverend Prelate ought to be sworn. It was not taken Notice of. If the Prelate be called upon as a Witness, his Evidence must be upon Oath.

Bishop of *Oxford*. My Lords, I should be very sorry to give any Offence to your Lordships; if the honourable Managers insist upon it that I take my Oath, and your Lordships direct me so to do, I am as willing to give my Evidence upon Oath, as without it. I submit it to your Lordships, whether you will look upon the Journals, to see how the Precedents stand.

Lord *Lechmere*. If it be insisted upon to look into the Journals, the Parties must withdraw.

Thereupon it was waved, and the Bishop sworn.

Bishop of *Oxford*. My Lords, for the Advancement and Encouragement of Learning in the University of *Oxford*, I remember my Lord *Macclesfield* some time since, told me he was willing to allow considerable Salaries to Persons that were studious and sober; and that this should be done for the Advancement of any Sort of Learning in general, without restraining it to any particular Science or Faculty, and without any Relation to Party, provided the Persons were worthy: And I desire leave to own to your Lordships, that otherwise I would not have had any Concern in it. I did, my Lords, recommend several Persons, whom I thought proper Objects of his Lordship's Bounty; and at his Lordship's Request, enquired the Characters of others, who had been before recommended to him. I have Reason to believe that several of these succeeded in his Lordship's Favour, and received bountifully from him. I dare not, at this Distance of Time, charge my memory with particular Sums, but believe that the noble Lord assured me, he was willing, in the whole, to lay out this way four or five hundred Pounds a Year. This, as near as I can remember, is the Substance of what I said before.

Mr. *Robins*. My Lords, I shall presume to take up very little of your Lordships Time, in observing on what has passed at this solemn Assembly of the two Houses of Parliament.

The Occasion of it has been to examine into the Conduct and Behaviour of a Member of your own august Body, during the Time he had the Honour to serve his most sacred Majesty in the high Office of Lord Chancellor.

And the Commons have faithfully discharged their Part, by omitting no one Circumstance or Ingredient, that could possibly serve to heighten and aggravate the Crimes they have thought fit to lay to his Charge.

But whether after all, the Mistakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itself, are not the whole, the Sum total of all this solemn and pompous Trial, will I believe with many remain for ever the Question.

It would not perhaps be for the Service of this noble Earl to say, that every Step he took, every Advance he made, for the Benefit and Relief of the



the Suitors of the Court where he presided, was the best that could possibly have been invented; 'twill, we hope, be sufficient to say, that he sincerely thought them the best: And if better have been since found out, which have proved more effectual to the same end, it only proves him not to have been infallible, which surely is no Crime.

And if the Actions of his private Life, his Justice, his Piety, his Charity, and his Compassion for others, may be allowed to cast any Light or Reflection on his publick Conduct and Behaviour, I believe, my Lords, I may presume to affirm that those who are acquainted with his Innocence in the one, will never be brought to think him criminal in the other.

My Lords, I am afraid many are the Abuses, the Corruptions and the Evils which have sprung up in our Courts of Justice, even to the Disparagement and Discredit of Justice itself. And Complaints of this kind have been made in almost all Ages, though at the same Time they have been justly placed to the Account of some of the lowest, and most inferior Officers and Ministers, which are necessarily and unavoidably made use of in the Dispensation and Distribution of Justice.

And if an effectual Method of Cure could be found out for these; if those who are to give the last Hand to the Completion of Justice were pure, the Streams would then run clear and undisturbed to the end.

But, till that is done, till Means are applied for the purging and clearing these Channels, thro' which Justice must be conveyed, 'tis no wonder that the Fountains themselves look as it were muddy, and polluted by Reflection.

But, my Lords, how desirable soever these Ends may be, they are only the Work of the Legislature; a Chancellor, or a Judge, may sit by and lament, but they cannot help them.

They are only to be effected by that Power, which has a Sort of Omnipotence; and when they are effected, I believe none will rejoice and congratulate themselves more, than the many learned, great, and upright Men, which preside in our several Courts of Justice.

In the mean time, my Lords, as the Sentence which is prayed against this noble Earl, will be of little Avail to stop the Mischief; as 'twill in some sort be a Punishment of the Innocent, and letting the Guilty escape: We are too well acquainted with your Lordships just and righteous Proceedings, to be in any Pain for this noble Earl.

Let selling of Places, taking of Presents, or any other the known and usual Profits attending great Preferment, be for ever abolish'd by a plain and explicit Law; and I believe I may presume to say, that no Complaints of this kind will ever be made more; that *Westminster-Hall* will never again be named in an Impeachment, and that your Lordships will have no Trouble of this kind for the future.

But this, my Lords, I am sure I may venture to say, and I will say no more; that if it had been the Fortune of this noble Earl to have liv'd in such happy Days, his Name would never have been transmitted to Posterity in an Impeachment.

Mr. *Strange*. My Lords, we are now come to the Close of the Defence, wherein to avoid Confusion, I have hitherto confined my self to the particular Part which it was my Duty to open;

your Lordships will therefore permit me to take Leave of this august Assembly with some few short Observations both upon the Charge and the Defence.

Your Lordships did for four Days successively sit to hear this noble Earl arraign'd as the most corrupt, oppressive, and avaricious Person upon Earth: It was done too, my Lords, in a Manner, from which I should have thought the Relation he bears to your Lordships would have been a sufficient Protection; and without which the honourable Managers might very well have discharged their Duty to the House of Commons, in laying the Case before your Lordships.

But, my Lords, whatever Resentment this Treatment of one of your own Body might raise in your Lordships, I must for my own Part confess, that I heard it all with Pleasure; as it was an open Acknowledgment, that all honest Art and legal Liberty were necessary in aggravating the Charge, and possessing your Lordships with that Opinion of the noble Earl, that the Gentlemen of the House of Commons desire you would entertain.

My Lords, the Charge in one general View consists of an Accusation against the noble Earl, either for doing what his Predecessors did before him, or for not doing what it is not pretended they ever did: A singular Misfortune to this noble Person, that the following such great Examples should in every Instance be imputed to him as a Crime.

As to the accepting Presents for Offices, my Lords, we have fully proved to your Lordships, that the same was done by the Predecessors of the noble Earl within the Bar; and we must humbly insist, that if the Statute of *Edward VI.* be taken as laying a Restraint upon that Practice, yet having put the Case, and said what should be the Consequence, your Lordships cannot go out of that Statute to punish the noble Earl.

My Lords, it is the Misery (I may say the Slavery) under which other Nations groan, that the Punishment for Crimes is arbitrary and variable, and that he who commits the smallest Offence may be put to undergo the most rigorous Punishment: But God be thanked, my Lords, *he hath not dealt so with this Nation*, but that *this People hath Knowledge of the Laws*; Crimes here are stated, and so, my Lords, are their Punishments; and give me Leave, my Lords, to say, that this is one of the main Channels through which our Ancestors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your present Consideration puts the Case of accepting Money for an Office, and says, the Consequence shall be the Loss of Nomination: There are no Words that declare Offices were not saleable by Law, or that they shall not be saleable for the future, upon which to found a Prosecution by Indictment or Impeachment; though if such Words were in this Act, I should still humbly insist, that as well upon an Impeachment as upon an Indictment, the Statute, and that only, must be the Guide in ascertaining the Punishment.

My Lords, the Articles have bestowed many Epithets upon this Action; such as illegally, corruptly, extorsively, &c. But your Lordships will not find them in this Act of Parliament.

And

And as to its being an Offence at Common Law, give me leave, my Lords, only to put you in mind of three Proviso's in this Act, which speak the contrary in the strongest Terms. The first is the Clause which confirms all Bargains then made, and which were to take Effect at a future Day. The next is a Declaration to what Offices the Act shall not extend, some whereof are of a publick Nature, as Keeper of a Forest, Manor, &c. And the third is that which takes Notice, that by Law the Judges might dispose of Offices, and therefore leaves them to the full Liberty they had before the Act.

And if in this Impeachment we stand clear as to the selling of Offices, then no Acts or Omissions towards raising the Price (if any such had been proved) will make the Earl criminal, which is the whole of the Charge.

My Lords, your Lordships were told in a very moving manner, that the noble Earl was pursued hither by the united Cries of Widows and Orphans——But we have heard none: No Instance has been given of any one Preference in Judgment, of one Penny taken during the whole Course of his administering Justice to these Kingdoms, or of any one voluntary Complaint that has been made against the Earl; and yet, my Lords, he has been represented as if his Crimes were well blown, as if he had divested himself of Humanity, and taken Pleasure in the Misery and Distress of his Fellow-Subjects: as one, whose only Motive of Action was inordinate Gain and wicked Lucre; and as one, overtaken by the Commons, triumphing in the Luxury of unpunished Crimes. You have been told too, my Lords, That *in him* Oppression usurped the Seat of Justice; and that *by him* the Beauty of Justice was deformed, and *through his Means* Justice stood afar off, and Equity could not enter.—How little Ground, my Lords, there was for these Complaints, may, I think, be fairly inferred from the Defect of Evidence in this Particular; since, after the strictest Scrutiny both into his publick and private life, your Lordships have not had one Witness appear at your Bar against him.

But, my Lords, since the Cries of Widows and Orphans were so much mentioned by the honourable Managers; we, who are Counsel for the noble Earl, thought it our Duty to shew your Lordships, that those Cries were not *against* him as an Oppressor, but *to* him as a Reliever. And how little soever this noble Earl thought of having an Account of these Matters brought to your Lordships Bar, yet surely, my Lords, this is now a Circumstance, under which it is lawful *for the left Hand to know what the right Hand doth*. And these Acts of Charity and Generosity, which were not treasured up for your Lordships Bar, but for a greater, are however proper to appear in this Place, in Vindication of the noble Earl against a Charge of Covetousness and Corruption.

And now, my Lords, give me leave to add, That tho' the private manner in which these Charities were performed, has made it necessary for us to enter into a particular Account, and an Account that takes in some of them only; yet the noble Earl has a Merit to plead, of which I am sure there is no Occasion to call a Witness. Your Lordships all remember the Time when he presi-

ded in the Queen's Bench, and saw (unmoved) the Tide of Preferment rolling towards a distant Shore. The true Interest of his Country in the present Royal Family was then his steady Pursuit, and his Merit consisted in advancing it to the utmost; and his Majesty, who was best able to judge of the Greatness of his Services, thought they deserved a Reward proportioned to the most exalted Merit, and therefore added him to your Lordships Body.

E. of *Macclesfield*. My Lords, I beg leave that I may have the liberty to lay before your Lordships some Observations on the several Parts of the Evidence given on both Sides.

Your Lordships will easily imagine, that a Charge of this Nature must have affected me very much, and the great Fatigue I have undergone hath not allow'd me the liberty to consider every Part so as to make the proper Reflections fit to lay before your Lordships.

I hope your Lordships will give me a little Time to recollect my Thoughts, that I may speak in such a manner as is fitting to your Lordships. I desire your Lordships will give me leave to make my Observations on *Monday* next.

*Then the Managers and the Counsel withdrew; and the House adjourned to Monday Morning next, the seventeenth Day of May.*

Monday the seventeenth of May, 1725.

### *The Eighth Day.*

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

*Lord Ch. Just. King.* Mr. Serjeant Probyn, you may proceed.

*Mr. Serj. Probyn.* My Lords, I am humbly to ask your Lordships Pardon for some Omissions we have made in the Evidence we were instructed to lay before your Lordships in Behalf of the noble Lord impeached the last Day we had the Honour to attend your Lordships upon this Occasion: We had some Witnesses to offer more than were examined at that Time, and we hope your Lordships Indulgence will continue to hear them now; they are but very few, but yet such as we apprehend are extremely material to the noble Lord's Defence. The last Evidence we laid before your Lordships related to several Charities given by the noble Earl, in order to shew that he was not of that avaricious Temper as hath been represented in Support of this Prosecution; and that the constant habitual Course of his Life and Actions hath been directly contrary to any Disposition of this Kind; but we apprehend it would still have greatly added to the Weight of this Evidence, had it at the same Time appeared to your Lordships what the Funds were, out of which these Charities arose; that the real Estate which this